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 Orientation of Indian Constitution\_BBA\_2

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## Unit 1. Introduction to the Indian Constitution

### Learning Objectives

1. Understand the historical background of the Indian Constitution, including the role of the Constituent Assembly and the process of its drafting.
2. Explain the significance of the Constitution as the supreme law of the land and its role in shaping India's democratic framework.
3. Identify the key features of the Indian Constitution, such as federalism, parliamentary system, secularism, and fundamental rights.
4. Analyze the Preamble of the Constitution and interpret its guiding values—justice, liberty, equality, and fraternity.
5. Differentiate between various parts of the Constitution, including Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties.
6. Examine the structure of government established by the Constitution, including the Union, State, and Local levels.
7. Assess the importance of constitutional amendments and how they allow the Constitution to evolve with changing socio-political needs.
8. Develop an appreciation for constitutional morality and the role of citizens in upholding democratic values and constitutional principles.

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- 1.3 Historical Background: Indian Independence & Framing of the Constitution
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- 1.5 Vision of the Constitution Makers
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## 1.0 Introductory Caselet

“A Nation’s Blueprint: Drafting the Indian Constitution n.d.”

India gained independence in 1947 after almost two centuries of British colonial rule. The country grappled against the backdrop of a massive and heterogeneous population with multiple languages, religions, castes and cultural forms for unification into one sovereign state.

In order to resolve this, the Constituent Assembly was based on representatives from varying regions, communities and beliefs. Having debated, discussed and compromised for almost three years, they gave to themselves and posterity the Indian Constitution which was promulgated on 26th January 1950.

The Constitution, it was hoped, would facilitate democracy for all citizens. It provided for Fundamental Rights to protect individuals from state excesses, Directive Principles of State Policy to guide state policy making; and a quasi-federal framework with strong centre maintaining unity and integrity of the nation while recognizing diversity.

A symbolic, but significant part was the recitation of a Preamble according status of India as a "sovereign, socialist, secular and democratic republic". This set of values still influence the policy and activities of the government and citizenship in contemporary India.

Today, too, India’s democracy is at the centre of arguments about Constitutional principles: freedom of speech, equality before the law and individual rights versus collective welfare. The Constitution is not fixed in time; it is a living document that changes through amendments to reflect evolving hopes of society.

### Critical Thinking Question

India is frequently called a “unity in diversity” nation. With all these disruptions of religion, language, caste and regionalism, do you believe the Indian Constitution has done well to keep it together thus far? Why or why not? Back up with examples.

## 1.1 What is a constitution?

A Constitution is the highest legal document of a country which sets out its basic principles, structure and powers of government. It sets out how power will be shared between institutions, protects the rights of citizens and outlines the powers needed to provide justice and governance. It is democracy's lynchpin by which stability, accountability and the protection of freedoms can be preserved.

### 1.1.1 Definition and Meaning of a Constitution

A constitution, in its most general sense, is a body of fundamental rules or principles according to which a state or other organization is acknowledged to be governed. It is the supreme juridical order which provides the bases for the production, exercise and limitation of political power. Unlike regular laws that legislatures can pass or change, the constitution is a higher form of law—it is difficult to amend and generally requires more stringent procedures for amendment.

A constitution is not just a piece of paper. It reflects the spirit of the agrarian people, their tradition and freedom as well as dreams for government and justice. It does not only enumerate the powers of different organs of the state but also restricts them ensuring no authority becomes absolute. By entrenching rights, a constitution becomes the guardian of personal freedom by protecting it from potential government insinuation.

For example, the Indian Constitution represents the hopes of a nation newly born- justice, liberty, equality and fraternity.

### 1.1.2 Functions and Purpose of a Constitution

The constitution plays several vital roles in a political order. Its goal is not only to build government structures, but also to make it that the relationship between the state and society be characterized by justice, equality and fair play.

#### Organizing Political Power

The heart of a constitution is the question of who gets to wield power in what ways. It creates the legislative power to pass laws, the executive power to enforce them,

and also for courts to apply and interpret. And checks division of power ensures that the power doesn't become too concentrated.

#### Ideal of Governance Laid Down

Each constitution is a representation of some basic values and ideas. For instance, guiding principles of the Indian Constitution include democracy, secularism, socialism and federalism.

These values inform the conduct of government and formulation of policy, guaranteeing that state behaviour reflects national objectives.

### Protecting Rights of Citizens

Constitutions defend people against oppression by the state because they give them rights which can be enforced in law. These rights enable citizens to question the actions of government where they breach fundamental freedoms. For instance, the right to equality guarantees non-discrimination while freedom of expression allows citizens to express opinions without any fear.

### Limiting Arbitrary Authority

In the absence of a constitution, also those in power could have misuse their powers. It is the law of land that acts as a limit to governance. Judicial review of legislative or executive acts prevents abuse of power, thus contributing to the concept of rule of law.

### Conflict Resolution and Unity

In multicultural societies, such a conflict-resolving mechanism is institutionalized by the constitution. Federal constitutions (e.g., India) distribute powers between the centre and the units in order to achieve the unity in diversity. This builds political stability and national integration.

### Framework for Change

A constitution is not a static thing: it was written to change. Its amendment provisions enable it to change in response to social, political and economic shifts. For instance, constitutional amendments in India have tackled matters such as reducing the voting age, giving power to local governments and widening the reach of fundamental rights.

By doing so, the constitution doesn't just rule over the state – it also protects democratic principles and fosters accountability, making sure that governance is for people and not by rulers.

### Did You Know?

“The Indian Constitution, adopted in 1950, is the longest written constitution in the world, with 395 Articles and 8 Schedules at the time of its adoption. It not only defines the structure of government but also guarantees citizens’ rights, limits state power, and provides mechanisms for peaceful conflict resolution. It now has 448 Articles, 25 Parts, and 12 Schedules.”

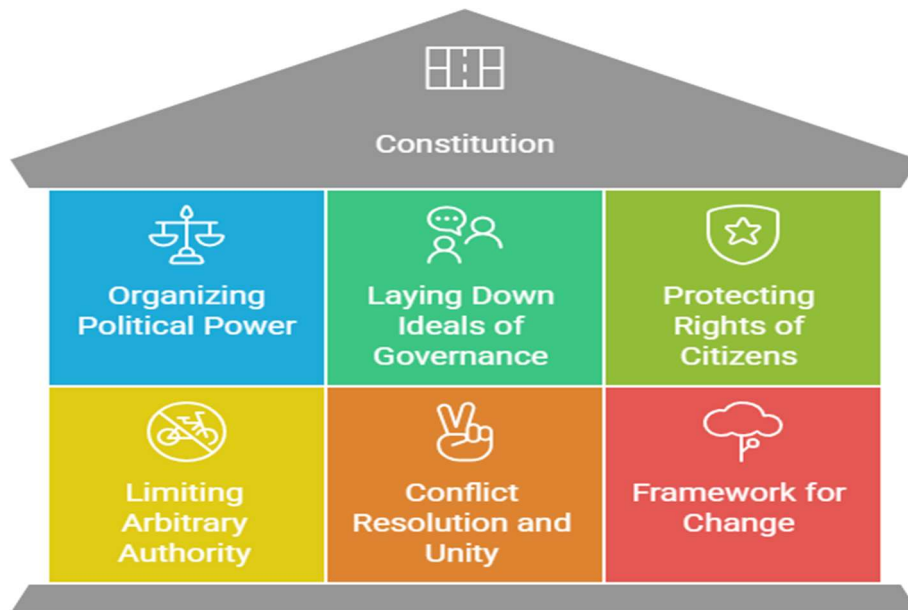


Figure 1.1

### 1.1.3 Types of Constitutions: Written and Unwritten

Constitutions may be classified as written or unwritten according to whether the principles of government are in a single authoritative document, where they can be found in a variety of sources. Both structures serve to achieve the same end result— governing, protecting freedoms and interpersonal order, but possess these two systems contrast in form of structure, clarity and flexibility.

#### Written Constitution

The written constitution is a single legal document that contains the foundational rules, principles and procedures of governance. It is constructed precisely, typically at a specific time in history and after a turning point such as independence, revolution or unification.

#### Key Features

- Rules and Maxims are all transcribed into a single, authoritative document.
- Brings structure and definition to government, its powers, and the rights of citizens.
- Includes an amendment process to anticipate future needs.
- It is the highest law governing everyone, from government to citizens.

#### Examples

-1. The Indian Constitution (1950) The largest constitution in the world giving detail of government, rights, directive principles and duty.

- The U.S. Constitution (1789) — A relatively brief document, one that has been consistent over the course of more than 230 years and under which American democracy operates to this day.

#### Advantages

- Brings clarity to governments and citizens.
- Provides stability, because changes will not be made lightly.
- Creates a sense of consistency because all rules are written down in one place.
- Better preserves basic rights, because they are specifically expressed.

#### Limitations

- May be inflexible, because amendments often require special procedures or supermajority approval.
- May show a lack of agility in adjusting to fast-paced political, social or technological shifts.
- Runs the risk of obsolescence if amendment procedures are too arduous or infrequently employed.

#### Unwritten Constitution

**Unwritten constitution** An **unwritten constitution** is one **that** does not exist in one single, written source. Instead, it develops through practices, institutions, court decisions, legislation, customs and traditions of the past.

#### Key Features

- There is nowhere a document that contains all of the constitutional rules.
- Is based on accepted customs, practices, and precedents.
- Easily bendable, adjusts effectively without specific legislation\*requiring the adjustment.
- Rests largely on political traditions and judicial interpretation.

#### Example

- The British Constitution – Since it's unwritten, but features significant historical documents in it such as:

- o Magna Carta (1215)
- o Bill of Rights (1689)
- o Parliamentary statutes and conventions
- o Precedents and common law Advantages

- Flexibility Is Its Strongest Asset, especially in the face of modern challenges.
- Adapts naturally to new political and social realities.
- Prevents lengthy or cumbersome process for amendment.

**Limitations**

- Can be confusing and uncertain, because the rules are spread among many different sources.
- This may lead to ambiguity or conflicting interpretations as not all rules are written.
- Lean heavily on political culture and goodwill, which can occasionally be abused.

**Comparison Between Written and Unwritten Constitutions**

Aspect	Written Constitution	Unwritten Constitution
<b>Form</b>	Codified in a single authoritative document	Dispersed across customs, laws, and conventions
<b>Clarity</b>	High – citizens and authorities know the exact rules	Low – rules may be vague and scattered
<b>Aspect</b>	Written Constitution	Unwritten Constitution
<b>Flexibility</b>	Generally rigid; amendments are formal and complex	Highly flexible; evolves with society
<b>Stability</b>	More stable due to formal codification	May face uncertainty due to lack of codification
<b>Examples</b>	India, U.S., France	United Kingdom, New Zealand (partially)

## 1.2 Importance of a Constitution in a Democracy

The Constitution is the bedrock of all democracies. It is not just a piece of paper, but a constitutional blueprint that moulds the political, social and economic life of a nation. A constitution stops power from being arbitrary – a judgement, opinion or action given little thought to the rights of subjects. There is provision for conflict resolution and prevention as spelt out by Quid Pro Quo. Without a constitution, democracy would be without rudder, and at the mercy of any kind of authoritarianism or arbitrariness. The constitution, therefore, is the guarantor of stability, legitimacy and continuity in government.

### 1.2.1 Constitution as the Supreme Law

To be the paramount law of the land is one of the very functions of a constitution. All the laws passed by the legislature and all acts of executive must be in accordance with the principles embodied in this constitution. None, no matter how powerful, is above that. This supremacy means that the government has to work within a set of laws and can't decide things on a whim.

In India, for instance, Article 13 provides that all laws in contravention of the Fundamental Rights shall be void. Judiciary, including the Supreme Court and high courts have the power of judicial review to declare a law and order legislation or actions as unconstitutional. This is a safeguard against abuse of authority, and what that suggests is the idea that democracy operates through rules, not rulers.

In all other democracies as well the position of the constitution is supreme. The US Constitution, for example, has served as the model of government for more than two hundred years and the judiciary is vested with the authority to declare laws or executive actions in violation of it unconstitutional. The sovereignty of the constitution safeguards democracy from sliding into dictatorship, under Article 32 and Article 226 each.

### 1.2.2 Ensuring Rights and Duties of Citizens

No democracy is at all complete without the rights and liberties of citizens. These rights are guaranteed by the constitution and enable individuals to lead lives of dignity, freedom, and equality. They provide a freedom that allows citizens to participate in the democratic process, give voice to their views and protest wrongs.

Basic Rights in India are a set of rights guaranteed to citizens by the constitution.

- EQUALITY -equal protection of the laws.
- Freedom – The right to freedom giving access to free speech, expression and movement.

- Fundamental Right to Constitutional Remedies- providing for legislations/ orders against the violation of Fundamental Rights.

These rights serve as a buffer to prevent excesses by the state and to safeguard individual freedom. Likewise, in the United States, by establishing a Bill of Rights that preserves freedoms such as speech, religion and assembly — essential components of democracy.

But rights need to be accompanied by duties. The Charter should remind Canadians that freedom is impossible without responsibility. Fundamental Duties -These are described in Article 51A of the constitution and include, among others:

- Respect for the Constitution and national values.
- Preserving cultural heritage.
- Protecting the environment.
- Preserving the unity, integrity and stability of the country.

These obligations emphasize the fact that democracy is not just a matter of claiming rights from state but also helping in making some contribution to society. In this manner, the constitution ensures a balance between the right of citizens to live as free individuals and the debt they owe to community and country.

### 1.2.3 Balancing Power between Institutions

The other major contribution of the constitution is the allocation and balancing of power between various organs of government. Only when no one ruler can wield all power can democracy hope to thrive. Thus, the charter lays down a separation of powers between the parliament (legislative), Governor General (executive) and judiciary to prevent any abuse of power.

- The Legislature makes laws.
- The President executes and enforces the laws.
- Judiciary, which interprets laws and sees that they are in accordance with the constitution.

This was intended to avoid a concentration of power in one branch, and ensure accountability. For example, the Indian Parliament may enact laws belonging to jurisdictions on which they are empowered to legislate but if they violate Fundamental Rights, they can be declared by the Judiciary as void. The executive too sets policy but is ultimately responsible to the legislature through debates, question hours and motions of no confidence. At the same time, the judiciary is not free (or randomly dependent) because it operates within constitutional constraints in the appointment and functioning of judges.

This fine balance maintains clear, open and accountable governance. It stops dictators and tyranny from gaining a foothold so democratic beliefs are safe.

#### 1.2.4 Safeguarding Democracy and Rule of Law

The preservation of democracy is perhaps the most important function of the constitution. It does this by incorporating the rule of law:

- All citizens shall have the same opportunity, under equal conditions, both to compete with one another and to obtain for himself and his family a standard of living adequate for his and their health and well-being.
- No one, not leaders or government officials, is above the law.
- All such determinations should be made according to the procedures established by law.

This is what rules out tyranny and makes government fair. For instance, the highest-placed of civilians could be sued in court for a breach of law and equality would have been upheld.

The constitution also safeguards democracy by ensuring free and fair elections, often under the scrutiny of an independent election body. The Election Commission in our country, India, also manages to hold neutral elections through which power is handed over from one government to another peacefully. Moreover, constitutional protections enshrine freedoms such as speech, assembly and association that allow citizens to challenge authority and put leaders on the spot.

An independent judiciary also acts as a defender of democracy by protecting the constitution, setting aside unconstitutional actions and recognising rights. These balances ensure that democracy is not just a piece of paper but actually works in the field.

#### “Activity: Constitution in Action”

Divide students into three groups representing the Legislature, Executive, and Judiciary. Give them a scenario, such as a proposed law restricting free speech. Ask each group to role-play their constitutional role. Afterward, discuss how the constitution balances power, safeguards rights, and ensures democracy functions under the rule of law.

#### 1.3 Historical Background: Indian Independence & Framing of the Constitution

The background of the Constitution of India is traced back to freedom movement and post-1947 nation-building. After centuries of foreign domination, India aspired for independence

based on democracy, justice and equality. The Assembly, which conceived of at 1946 and established the Constitution, created a strong unified framework for India.

### 1.3.1 Legacy of Colonial Rule

The Indian political and administrative system was highly influenced by the British colonial period. The colonial mode of administration was exploitation and oppression, but it brought into India institutions that served as germs of constitutional growth.

- **Administrative Control:** The British brought institutions such as the Indian Civil Service, uniform laws and a partially independent judiciary which formed the skeleton of a new civil service in how India was governed.

- **Legislative Developments:**

The Indian Councils Act 1861 retrospectively introduced limited election-based representation.

Indian Councils Act 1909 (Morley-Minto Reforms) provided for Indian representation but was too narrow and diplomatic; introduced separate electorates.

Dyarchy at the provincial level was introduced by **the Government of India Act of 1919 (also known as the Montagu-Chelmsford Reforms).**

**The Government of India Act 1935** envisaged provincial autonomy and a federal system but never implemented the same.

- **Impact on Indians:**

C) Such concessions were minimized, and ultimate authority remained with the British.

They also taught Indian leaders the ways of parliamentary methods and kept aware of the significance of effective constitutional structure.

Therefore, the colonial legacy showed both the risks of arbitrary rule and the wonders of governance that was regular sending also the message seeking a new constitution to secure rights, equality and self-bending.

### 1.3.2 Demand for a Constituent Assembly

The concept of Indian Constitution made by Indians was first time presented in the early 20th century.

- **M.N. Roy's Resolution (1934):** The resolution was moved by M.N. Roy, a political thinker who argued that such an assembly alone would be competent to frame the Constitution and serve as an authority in place of central government because it would embody the will of people.

- **Indian National Congress Demand (1935):** The idea was formally accepted by the congress and it reiterated that Britain could not determine India's destiny with its own laws. It must be in accordance with the will of India.
- **Cripps Mission (1942):** Dispatched by the British during World War II, it accepted the Indian principle of self-rule but offered proposals that fell short and were turned down by Indian leaders.
- **Cabinet Mission Plan (1946):** Offered a concrete roadmap on how to elect, through indirect election, the Constituent Assembly. Provincial legislatures appointed members to ensure representation of various interests, regions and communities.

That demand was pivotal because it reflected India's resolve to write its own destiny and a rupture with millennia of foreign enslavement.

### 1.3.3 The Indian Independence Act of 1947

The India Independence Act, a bill enacted by the British Parliament in July 1947, was the legislation that laid down the terms under which India's political status shifted from colony to dominion.

- **Partition of India:** The Act formed two new dominions, India and Pakistan that came into effect from 15 August, 1947.
- **Termination of British Suzerainty:** It finally came to end British suzerainty and vested complete power in Indian hands.
- **Princely States:** The princely states were released from suzerainty and the option of accession to either dominion was restored.
- **Active Indian Constituent Assembly:** The Indian Constitution Assembly was activated as a constituent of the sovereignty, fashioning laws and also crafting the constitution.

This Act was the remotely controlled— by way of the Whitehall — formal dismantling of British colonialism [which] vested legal authority to govern themselves in Indians.

### 1.3.4 Steps toward Drafting the Indian Constitution

The making of the Constitution was a grand adventure and involved the delicate management of India's diversity, history and aspirations.

- **Formation of the Constituent Assembly:**

It was first convened on 9th December 1946 with the membership of 389 who were also representatives from provinces, princely states and other sections.

Its membership was slashed to 299 after Partition.

- Leadership:

Dr.Sachchidananda Sinha was made the temporary chairman.

Dr. Rajendra Prasad was subsequently elected as permanent president of the Assembly.

- Drafting Committee:

Established in August 1947, presided over by Dr. B.R. Ambedkar, who is known as the Principal Architect of the Indian Constitution.

Among the members of the Committee were K.M. Munshi, Alladi Krishnaswamy Iyer and Mohammad Saadullah.

The Constitutional Adviser was N. Madhava Rau.

- Deliberations:

In all 165 days over—2 years, 11 months and 18 days (9 Dec 1946 –24 Jan1950), 7,635 amendments were proposed to the Draft Constitution and of these,2,473 amendments were actually moved on the floor of the Assembly.

The following provisions were taken from various sources:

- o Parliamentary system from Britain
- o Rights – the US Constitution and judicial review
- o Directive Principles from Ireland
- o Federal structure from Canada
- o Emergency provisions from Germany

- Adoption:

The Constitution became effective from 26th January, 1949.

It was adopted on 26 January 1950, to recall the Purna Swaraj declaration of independence of 1930.

The result was the longest written constitution in the world, necessarily living up to India's complex social fabric and democratic aspirations.

#### 1.4 Role of the Constituent Assembly

It was the Constituent Assembly that framed India's Constitution. It was a product of 1946 and brought various regions, classes and Political Outlooks. Through discussions and debates

it wrote the Constitution that ensured democracy, justice and equality. Having brought that fortress down, the Assembly built the edifice of India's polity, ensuring citizens' rights and national unity.

#### 1.4.1 Composition of the Constituent Assembly

- Creation: The Constituent Assembly came into existence as per the Cabinet Mission plan of 1946.
- Membership: Originally 389 members from provinces, princely states and chief commissioner's province; After the Partition, the strength shrank to 299 members.
- Election Method:

Members were elected indirectly by the provincial legislative assemblies using a system of proportional representation by means of the single transferable vote.

Seats were distributed among provinces and princely states in proportion to their population.

There was representation for all sections in it such as SC's, Minorities and women.

- Presidency:

Dr. Sachidananda Sinha was appointed as Acting President.

A second grand gathering is held, with Dr. Rajendra Prasad now elected the full-term president of the Assembly.

- The Big Shots: The Assembly was, after all, comprised of stalwarts like Jawaharlal Nehru, Sardar Vallabhbhai Patel, Dr. B.R. Ambedkar, Maulana Azad and others – ensuring that while they debated hotly and held dissenting views on several issues – there would always be a great play of opinions/interests being considered.

#### 1.4.2 Key Committees and Their Contributions

The Assembly conducted much of its work through various committees dealing with different parts of the Constitution. The most serious were listed in those to the 22 committees:

- Committee of the Whole House (Chairman: Dr. B.R. Ambedkar)

Custodian of the official version of Constitution.

Borrowed features of other constitutions of the world that suited Indian conditions.

- Committee on Union Powers (Chairman Jawaharlal Nehru)

Enumerated the powers of the federal government. Moulded the federal structure through a firm centre.

\*Union Constitution Committee (Chair: Jawaharlal Nehru)

Addressed the central government structure, which included the executive powers.

- Committee on Provincial Constitution (Chairman: Sardar Vallabhbhai Patel)

Requirements for provincial government addressed.

- Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas (Chairman: Sardar Vallabhbhai Patel)

Suggested the incorporation of FRs and safeguards for minorities. Had played in an important part in assuaging tensions between individual freedom and social equality.

- Managing Committee (President: Dr. Rajendra Prasad)

Planned the business at the Assembly and supervised other committees' work.

These committees ensured thorough scrutiny of various constitutional matters before being sent for discussion in the Assembly.

### 1.4.3 Debates and Discussions in the Assembly

- The Constituent Assembly held elaborate deliberations for 2 years, 11 months and 18 days.
- The members discussed practically every aspect of the governance such as federalism, parliamentary vs. presidential system, official language, rights of minorities, Fundamental Rights.
- JAWAHARLAL NEHRU: The Objectives Resolution which presented guiding principles of the Constitution that were eventually enshrined in the preamble, introduced by Jawaharlal Nehru in December 1946.
- The discussions mirrored a range of ideological arguments, such as:
  - o Ambedkar widely supported social justice and equal opportunity for all.
  - o Patel emphasised on national unity and consolidation.
  - o Nehru focused on democratic values and internationalism.
- Total number of amendments to the Draft Constitution: 7,635; actual number of amendments moved on the floor of the Assembly: 2,473.

- These understanding guaranteed the fact that the Constitution would be a document which struck a balance between liberty and authority, unity and diversity as well as tradition and modernity.

### Did You Know?

“The Constituent Assembly held debates for 166 days over nearly three years to finalize the Indian Constitution. More than 2,000 amendments were proposed, and nearly 1,000 were accepted, making it one of the most detailed, inclusive, and debated constitutions ever framed in world history.”

#### 1.4.4 Adoption of the Constitution on 26th November 1949

The framing and adopting of the Indian Constitution on 26 November 1949 was a historical day in India’s democratic journey. The Drafting Committee, under Dr. B.R. Ambedkar’s chairmanship, submitted the final draft to the Constituent Assembly on November 1949. \After lengthy discussions, careful examination and finishing touches, the Constitution was ultimately adopted on this day marking the end of the process of making Constitution. However, it was further decided that the Constitution would be enforceable from the 26th January 1950 – a date specifically selected to commemorate the Purna Swaraj Resolution of 1930 which has announced India’s aspiration for complete independence.

Some key takeaways from this adoption are:

- 24th January 1950: 284 members in the Assembly put their sign to the Constitution to express its acceptance.
- Dr. Rajendra Prasad was elected the First President of India.
- It was hailed that Dr. B.R. Ambedkar was the Principal Draftsman of the Constitution.
- The Constitution defined India as a sovereign, socialist, secular, democratic republic.

In accepting this document, India has laid the cornerstone of governance premised upon justice, equality, liberty and fraternity and charted a course for future generations under the principles of democracy.

#### 1.5 Vision of the Constitution Makers

The Constitutional framers’ dream was to create an India that was just, inclusive and democratic, grounded in liberty, equality and fraternity. They tried to safeguard the rights and guarantee justice on social and economic fronts, while securing freedom for every individual

with corresponding responsibility of citizens; so that India became a Sovereign Secular Democratic Republic.

### 1.5.1 Goals of Justice, Liberty, Equality, and Fraternity

The founding fathers knew that freedom would be an empty abstraction without social, economic and political empowerment.

- The goal of justice was conceived as multidimensional:
- Social justice sought to end the centuries-old practice of discrimination on grounds of caste, gender and community.
- Economic justice attempted to lessen disparities of wealth and opportunity by orienting the state toward a welfare orientation.
- Political justice was to give all citizens the same opportunities for political involvement and representation.

Articles such as the Directive Principles of State Policy advocated for by the state to undertake welfare measures, educate and ensure an equal distribution of resources.

- Freedom was seen as necessary for human dignity. It was not limited to political freedom but included freedom of thought, speech, belief and association. The framers protected liberty by enshrining those as Fundamental Rights that could be enforced in courts.
- Equality was of the utmost importance in a society riddled with casteism, gender inequality and social stratification. The Constitution provided for equality before law (Article 14) and proscribed discrimination on grounds of religion, race, caste, sex or place of birth. It also banned untouchability (Article 17) and incorporated positive provisions such as reservations to benefit the underprivileged.
- Brotherhood was stressed to unite India's disparate population. It urged the promotion of brotherhood, togetherness and respect for the dignity of every human being. The founding fathers had a vision of democracy in which it was not possible for freedom and equality to coexist without fraternity because the sense of mutual respect and everyday harmony were the antecedent of stability.

## Foundations of a Just Society

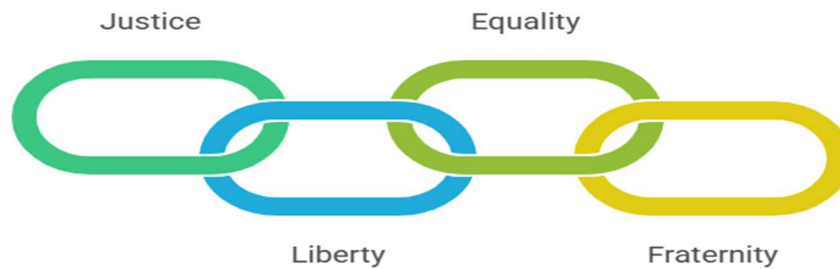


Figure 1.2

### 1.5.2 Emphasis on Secularism and Democracy

Having seen the horrors of Partition in 1947, the Constitution framers understood the perils of religious discord and thus underscored secularism as a foundational tenet. The word “Secular” was inserted in the Preamble of Indian Constitution by 42nd Constitutional Amendment Act, 1976.

- Secularism signified the state would not interfere in religious matters. People had the right to freedom of conscience and could profess, practice and propagate any religion (Article 25). No religion would have been granted primacy and, therefore, there would be no disharmony in India’s multi-faith ethos.
- Democracy was made central to the constitutional vision. The framers chose the British parliamentary system of government for they wanted a system in which everyone would be accountable and responsible for decisions. The use of Universal Adult Franchise was in itself revolutionary, considering that it gave every adult citizen of the country, irrespective of caste, creed, education and wealth.
- Besides, institutions like the Election Commission of India, an independent judiciary and a system of checks and balances were created to protect democratic functioning. His secular agenda and belief in democratic principles provided the framework to safeguard diversity, while fostering inclusiveness, thus transforming India as a shining example of unity in diversity.

### 1.5.3 Balancing Tradition and Modernity

The Constitution makers were also confronted with the task of reconciling India’s ancient cultural heritage and the entire gamut of a modern democratic state. They did not seek to

throw tradition out the window, but rather to transform urges and apply them so that they would further democratic values.

- Tradition: Reverence for India's tradition of pluralism, tolerance and unity was enshrined in the Constitution. Department of community value, kith and kin value and neighbourly behaviour were recognized, further strengthened by incorporation of Fundamental Duties (42nd Amendment, 1976). Ancient institutions like village panchayats were given constitutional recognition and modern relevance under Article 40 in the Directive Principles.

- Modernity: The Constitution drew on progressive ideas from other democracies and applied them to a country like India. For example:

- o In U.S., it was Fundamental Rights and judicial review.

- o Ireland, the Directive Principles of State Policy.

- o And from Canada, federalism and a powerful center.

With inclusion of ideas of equality, empowerment of women and social justice, the Constitution departed from regressive practices followed in the past.

- Balancing Act: The framers struck a careful balance between old and new. The caste had been abolished but cultural diversity was not. Local government, from the village up, was preserved but made democratic. This fusion of the old with the new, ensured a seamless movement from colonialism and a traditional community into a progressive, democratic republic.

### Knowledge Check 1

Choose the correct option:

1. Which ideal in the Preamble ensures the elimination of caste discrimination and equal opportunity for all?

a) Liberty

b) Justice

c) Fraternity

d) Secularism

2. Universal adult franchise in India grants voting rights to:
  - a) Only property owners
  - b) Only educated citizens
  - c) All adult citizens
  - d) Only tax payers
3. From which country did India borrow the concept of Directive Principles of State Policy?
  - a) USA
  - b) Canada
  - c) Ireland
  - d) France
4. Which principle ensures harmony and solidarity among India's diverse population?
  - a) Liberty
  - b) Democracy
  - c) Equality
  - d) Fraternity

### **1.6 Dr. B.R. Ambedkar – Architect of the Indian Constitution**

Dr. B.R. Ambedkar, the Architect of Indian Constitution was Chairman of the Drafting Committee. He founded the principles of justice, equality, liberty and fraternity to curb social imbalances. His Wednesday was the India that he had dreamed into a democratic, secular republic with rights and social justice protections.

#### **1.6.1 Role of Ambedkar as Chairman of the Drafting Committee**

There, a Dr. Ambedkar in the making was born on 29th August 1947 when he became the chairman of drafting committee which changes India, it's society and it's people for what I can judge everything after that date doesn't remain same or rather expected from a human being. Supreme Chairman of the committee, he synthesized inputs received from various sub-committees recommendations made by experts as well as debates conducted on the floor of Constituent Assembly & also with reference to comparative analysis vis-à-vis constitutions of

other countries. His legal scholarship, common sense and democratic convictions make the Constitution far-sighted as well as pragmatic.

Under his leadership:

- The draft combined principles of democracy, rule of law and fundamental rights to form the basis for governance.
- Checks and balances among the legislative, executive and judiciary received specific emphasis in order to ensure the accountability of all.
- A federalism with a strong centre framework was calibrated, balancing unity with diversity in the regions.
- Ambedkar also made sure that the language of the Constitution was clear, coherent and legally sound to be applicable as per India present or past situations.
- In Assembly debates, he argued the draft and responded to criticisms, explaining why various provisions were needed.

Thanks to his diligence, the Constitution became a resilient blueprint for such an integrated and newly independent country.

### **1.6.2 Contribution to Social Justice and Equality**

Ambedkar was a legal scholar and lifelong advocate against social inequality including the discrimination on the basis of caste. His aspirations for social justice are imbued in the Indian Constitution, which makes democracy more than a political right by responding to long-standing social and economic injustices.

Key contributions include:

- Abolition of Untouchability (Article 17): Made untouchability illegal and an offense punishable by law, a seminal move against caste-based hierarchies.
- Part III- Fundamental Rights: Provided for equality before law (Article 14) and prohibited discrimination on grounds of religion, race, caste, sex or place of birth.
- Reservations: Provided for reservations for the Scheduled Castes, Scheduled Tribes and other backward classes to enable them to join legislature, services and educational institutions.
- Principles of State Policy: Stressed on social-economic justice, fair distribution of wealth and state as a welfare state.

Ambedkar never got tired saying that political democracy without social democracy would be futile. He had strongly insisted that justice would be possible only when freedom, equality and fraternity mingled together.

### 1.6.3 Ambedkar's Legacy in Indian Democracy

Dr. Ambedkar's contribution is possibly not limited to him being the chief architect of our Constitution. His thoughts and vision are still an inspiration to India's democratic trajectory and its socio-economic purpose.

- **Guardian of Democracy:** By taking a stand on constitutional morality and the importance of institutions, Ambedkar helped secure that India's democracy was based on principles rather than persons.
- **Champion of Equality:** His unwavering struggle against discrimination based on caste or community and for affirmative action in the form of reservations had become a template to spread empowerment among the oppressed.
- **Champion of Rights:** He gave voice to citizens in the constitution by incorporating Fundamental Rights, and enabling them to challenge the excesses of states, while asserting their freedoms.
- **Embodiment of Power:** For millions of marginalized Indians, Ambedkar stands as a powerful symbol of dignity, equality and social justice.
- **Long-Term Impact:** His liberal views on education, women's rights, economic changes and labour reforms keep influencing the policy-making in contemporary India.

## 1.7 Unique Features of the Indian Constitution

The Indian Constitution stands out for its vast length, details and pliability. It is a written constitution that combines inflexibility with the capacity for amendment. It provides for a Federal structure with independent judiciary and this itself gives enough power to articulate the depth of constitution, so let's not be elitist. It promises fundamental rights, Directive principles. Divorce the state from Religion. Gives right to all citizens above 18 years the right to vote. (Inclusive and active)

### 1.7.1 Longest Written Constitution

The Indian Constitution is known as the lengthiest written constitution of any sovereign country in the world. As originally enacted the Constitution of India contained 395 Articles

in 15 Parts and 8 Schedules. Since then it has undergone a number of amendments and the latest consisted of 98 Articles in January 2017.) As of October 2018, there have been over a hundred amendments made to the Constitution.

Several reasons account for its excessive length:

- India's social, cultural and linguistic diversity which merited elaborate detailing to account for the intricacies of governance in a pluralized society as India.
- The importance of prescribing in detail the organs of administration, legislation and judiciary, so that power would not remain nebulous or indefinite.
- Provisions are there for both the Union government and the State governments in a single document, which is unlike federations such as that of USA where they have separate constitution for the states.
- The borrowing from a range of international constitutions, thus broadening its vision. For example, the American Bill of Rights influenced Fundamental Rights, Irish Constitution influenced Directive Principles and Canadian model evolved into federalism with strong centre.

This comprehensiveness is what makes the Constitution not just a source of its own history – but an encyclopaedia on governance ranging from emergency law and elections, language rights to fundamental duties.

### 1.7.2 Blend of Rigidity and Flexibility

The most remarkable feature of the Indian Constitution is its neither quick flexible nor unchanging like U.S. or British Constitutions. Instead, it weights the two of them to find a weighted tradeoff between stability and plasticity.

- **Rigged elements:** Some important aspects, such as sharing revenue between the centre and states based on what is decided by the Finance Commission, or about who votes in India's federal legislative body, require approval by a special majority of parliament (two-thirds of members present and voting plus majority of total strength) and ratification by at least half the states. This inflexibility prevents rush or arbitrary changes in the fundamental nature of governance.
- **Mutable elements:** On the other hand, other provisions are amendable by Parliament by a simple majority, akin to ordinary legislation. For errors in the quantity of judges in the Supreme Court or reconstitution of states, are simple procedures.

This particular amalgam allows the Constitution to retain its shape in its core principles while adapting proactively to new social, political or economic conditions. That it has more than 100 times been amended is proof of its flexibility.

### 1.7.3 Federal System with Unitary Bias

While it creates a federal system, the Indian Constitution is not classic federation such as found in the United States. Rather, it is characterized as a “quasi-federal” system because it grants considerable authority to the centre to maintain national unity.

- Federal features:

- o The powers of the Union and the States are distinctly defined in the constitution (vide.art.246 & 246A) voted list.

Seventh Schedule Union List State List Concurrent List

- o The Supreme Court and the High Courts are independent judicial authorities which determine disputes arising between the Union and the States.

- o Each government is independent in its own jurisdictions.

- Unitary bias:

- o In times of crisis all authority comes under Union government, which has the power to make laws about State List subjects and direct state administrations.

- o The Union can also make laws relating to items in the State List if Rajya Sabha passes a resolution for this purpose and during a national emergency.

- o The Governor being appointed by the President is an indirect way for the center to assert influence on state administration.

This was an intentional design, which reflected India’s experience of Partition and its pressing need for strong nation-building in a country with many riding fissures of region, religion and language. The framers of the Constitution were aware that a federal system only could promote strife; then, and thereupon they organised a system which should give play to both state sovereignty and central authority.

### 1.7.4 Parliamentary Form of Government

The Indian Constitution largely follows the British parliamentary model; however, it is not like a pure Parliamentary system. In such a system, the executive is answerable to elected members of the legislature and would not remain in office if it lost the confidence of the majority therein.

The main features of this model are:

- The President of India is the head of state and is as a matter of protocol bound by the advice of the Council of Ministers.
- The Prime Minister is the actual head of the executive, who leads the Council of Ministers and are collectively responsible to Lok Sabha.
- **The COUNCIL OF MINISTERS** can continue **as long as it has the** majority **support** in **the Lok Sabha**. A vote **of** no-confidence can force it out of office.
- There is a strong and regular interaction between the executive and the legislature, facilitating daily accountability.

This model was adopted instead of the presidential one because the framers believed that this suits India's plural and diverse society, having more responsibility and not domination of executive by a single individual.

### 1.7.5 Fundamental Rights and Directive Principles

The goal of the Indian Constitution makers was to balance individual freedom with social welfare and this dual commitment is nowhere more apparent than in Parts III and IV, (Fundamental Rights and Directive Principles of State Policy).

#### • Fundamental Rights

They are legally guaranteed rights and are the bedrock of Indian democracy by offering freedoms to all its citizens. They include:

- Right to Equality
- Freedom and Liberty (with right to speech, dissent, association etc.)
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Such Bills were considered in the Constituent Assembly, and their inclusion was deemed unnecessary as all citizen have been guaranteed constitutional remedy under article 32 of the Constitution which assures endowment of some fundamental rights by being "guaranteed" (Ambedkar's word) such a right for its enforcement.

These rights shield against arbitrary state action and are essential for dignity and autonomy of individuals.

- Directive Principles of State Policy (DPSP) (in the British constitution '')

The DPSPs are non-justiciable sources of inspiration and principles for the State to be used while framing laws and policies to establish a just society in terms of social, economic and political criteria. Key directives include:

- Providing free and compulsory education
- Promoting health and nutrition
- Pay equity
- Wage and working condition that allow for dignified lives
- Minimizing disparities of income, wealth and social status

The Directive Principles signify the ideal of welfare state and make democracy in India not only political but also social and economic.

- The Right of Children to Free and Compulsory Education was brought within the fold of Fundamental Rights by 86th Constitutional Amendment Act, 2002, inserting therein Article 21-A.

#### **1.7.6 Universal Adult Franchise**

One of the most radical is to institute universal adult suffrage, which the framers did right from the very first day of independent India. While many democracies enfranchised people in incremental steps — keeping, say, women or the poor out of voting booths for years and in some cases even decades — India proclaimed all of its adult citizens would earn suffrage, irrespective of caste, gender, religion, education and wealth.

The voting age was originally 21, but the 61st Constitutional Amendment (1988) reduced it to 18, further widening participation.

Universal suffrage led to several different consequences:

- It enshrined the norm of political equality, according to which all citizens' votes are equal in value.
- It gave voice to oppressed communities, particularly women, Dalits and the poor who were able to influence governance from below.
- It helped define India as the world's largest democracy, a title that is now more than just iconic — with more than 900 million eligible voters today.

This was a reflection of the framers' trust in their countrymen, even in an era when illiteracy and poverty were rampant. It was a bold experiment in the trusting of ordinary citizens to hold up democratic values.

## 1.8 Summary

- ❖ **The Constitution: The Indian Constitution is the supreme law of the land** that manages and controls national governance and explores democratic values.
- ❖ 2) It lays down the government's structure, powers and functions and it also regulates relations between the state and its people.
- ❖ The Constitution protects fundamental rights and provides for fundamental duties, that strike a balance between freedom and responsibility.
- ❖ It was set in the background of colonial rule and independence, demand for self-rule and formation of the Constituent Assembly.
- ❖ The Constitution was made by the Constituent Assembly after discussing in details and doing committee work. Adopted on 26th November 1949 and enacted on 26th January, 1950.
- ❖ The framers dreamt of a country founded on justice, freedom, equality and fraternity.
- ❖ democracy and secularism.
- ❖ Dr. B.R. Ambedkar, the Chairman of the Drafting Committee was instrumental in achieving some provisions which bespoke social justice, equality and constitutional morality.
- ❖ Indian Constitution is the longest written constitution being rigid and flexible in nature.
- ❖ 11 Global Edition) It provides a federal system of government with strong center, parliamentary form of government and rule of law concept.
  - Universal adult franchise and emphasis on inclusive governance make it one of the best constitutions in the world.

## 1.9 Key Terms

1. Constitution – The basic law of a country which outlines the structure and power of the government, like in Nigeria.
2. Preamble – The opening section of the Constitution stating its purposes and goals.
3. Fundamental Rights – Basic rights guaranteed to all people and which the courts can enforce.
4. Directive Principles of State Policy – Recommendations to guide the establishment of an ideal welfare state.
5. Fundamental Duties – Duties of citizens to maintain national integration and to uphold the dignity of the individual.
6. Rule of Law – The law applies equally to all.
7. Secularism -This is basically equality of all religions before the state without anyone being preferred.
8. Federalism – Powers of the Union and State governments.

9. Parliamentary – Democratic type of government which is answerable to the legislature.
10. Universal Adult Franchise – All adult citizens can vote, irrespective of gender, race or class.
11. Judicial Review – Authority of courts to determine laws (and other acts of government) to be unconstitutional if they conflict with the Constitution.
12. Amendment – An alteration or addition to the Constitution.
13. Fractions and divisions of Assembly Constituent Assembly-The representative body who framed and adopted the Constitution of India.

### 1.10 Descriptive Questions

1. Define what is a Constitution. Why is it called the highest law of a country?
2. Explain the basic functions and objectives of a constitution in a democratic society.
3. Distinguish Between Written and Unwritten Constitutions With Appropriate Exemplification.
4. Discuss the significance of a constitution in preserving democracy and the supremacy of law.
5. Discuss the historical context of Indian Constitution. In this you may discuss: (2013/ 250 words) Legacy of colonial rule as a space to frame an identity Other pertinent constitutional development with India's Independence; particularly The Indian Independence Act, 1947.
6. Explain the composition of Constituent Assembly and the function of its major committees in framing Constitution.
7. What was the vision of Preamble of Indian Constitution? Describe the importance of justice, freedom, equality and fraternity.
8. Analyse the contribution of Dr. B.R. Ambedkar as Chairman of the Drafting Committee in providing for social justice.
9. Enumerate special features of the Indian Constitution that separate it from other constitutions of the world.

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## Answers to Knowledge Check

### Knowledge Check 1

1. b) Justice
2. c) All adult citizens
3. c) Ireland
4. d) Fraternity

## 1.12 Case Study

### The Framing of India's Constitution by The Constituent Assembly

#### Introduction

Framing of Indian Constitution was a momentous endeavour, that lifted India from colonialism to become the world's largest democracy. The Constituent Assembly, which from Representatives of different regions, communities and ideologies made strenuous efforts to draft a document that would both symbolize the unity of the nation as well as safeguard the rights of its citizens. But it was not without difficulties – the art of forging opinion, harmonizing tradition with modernity and dealing with the aspirations of a people from many backgrounds demanded compromise and statesmanship.

#### Background

The long struggle for Indian independence had generated a powerful demand for self-government and a constitution written by Indians. The Constituent Assembly came into existence in 1946 with the implementation of Cabinet Mission Plan. With 299 members following Partition, it brought to its platform lawyers and scholars as well as freedom fighters and social reformers. Dr. B.R. Ambedkar, chairman of the Drafting Committee would be instrumental in tweaking out the final document. The Assembly sat for 2 years, 11 months and

18 days working over 2,473 amendments before passing the Constitution on November 26th, 1949.

#### Problem 1: Underlying Reconciliation of Diverse Opinions

The Assembly was made up of men from different walks of life—those who favoured strong central control, and those who wanted the states to have more independence. There were also arguments over language, the rights of minorities and the shape of government.

c) Answer: The Assembly, through much debate, compromise and consensus evolved a federal system with a strong Central government coupled with essential rights and democratic institutions ensuring unity in diversity.

#### MCQ

What did the Constituent Assembly do to manage differences in opinion?

- a) Ignoring minority voices
- b) Imposing majority decisions without debate
- c) Coming to consensus by arguing back and forth, by negotiating and compromising
- d) Postponing contentious issues indefinitely

Answer: c) To establish consensus by arguing and compromising.

Problem 2: Heritage vs Modernisation And that's how we were able to maintain traditions  
When I was a child, there was no school in my small village.

They had to deliberate over how much of India's heritage to preserve and how much contemporary democratic practice to incorporate. For instance, caste discrimination had to be done away with but local governance through panchayats was to be upheld.

Solution: The Constitution abrogated untouchability and brought in equality before law, principles which were handy borrowed from foreign constitution; on the other hand village panchayats and cultural rights were recognised with a view to preserving Indian culture.

#### MCQ

What is the ideal of relationship between tradition and modernity in the Indian Constitution?

- a) Only adopting Western democratic principles
- b) Retaining caste practices under law
- c) Abolition of untouchability with continuation of village panchayats
- d) Ignoring cultural diversity in governance

Answer: c) Doing away with untouchability keeping the village panchayats intact

Problem Three: Social Justice For some, energy justice includes the concept of social justice.

In a nation so accustomed to inequality, it became crucial for the constitution to act as an instrument of protecting those who did not have power. Without such protections, democracy may also deprive oppressed voices of a voice. Solution: Ambedkar enshrined the fundamental rights and secured the abolition of untouchability guaranteeing reservation by law of seats in legislatures and services for Scheduled Castes and Scheduled Tribes to promote social justice.

MCQ

Which part of the Constitution deals with social justice directly?

- a) Right to Property
- b) Abolition of Untouchability
- c) Freedom of Trade
- d) Separation of Powers

Answer: b) Abolition of Untouchability

Conclusion

The CA could give to the nation a Constitution which accommodated differences, did justice to all citizens and treated tradition with modern impulses. The movement's accomplishments illustrate the power that open debate, accommodation and far-seeing political leadership can have in shaping a living document to help guide the world's largest democracy.

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## Unit 2: Preamble and Philosophy of the Constitution

### Learning Objectives

1. Understand the significance of the Preamble as the guiding spirit and key to interpreting the Indian Constitution.
2. Explain the historical context of the Preamble, including its link to the Objectives Resolution moved by Jawaharlal Nehru in 1946.
3. Interpret the ideals enshrined in the Preamble—Justice, Liberty, Equality, and Fraternity—and their role in shaping India’s democratic identity.
4. Analyze the terms “Sovereign, Socialist, Secular, Democratic, and Republic” and evaluate how these principles define the Indian state.
5. Examine the Preamble’s legal status through landmark judicial interpretations, including the Kesavananda Bharati case (1973).
6. Assess the philosophical foundation of the Constitution, exploring how the Preamble reflects the aspirations of the people of India.
7. Recognize the Preamble’s role as a source of inspiration for governance and policymaking, despite its non-justiciable nature.
8. Develop critical insight into constitutional philosophy, understanding how the Preamble connects democracy, social justice, and nation-building.

### Content

- 2.0 Introductory Caselet
- 2.1 What is the Preamble?
- 2.2 Meaning of Key Terms
- 2.3 Justice, Liberty, Equality & Fraternity – Core Constitutional Ideals
- 2.4 Philosophical Influences
- 2.5 Supreme Court Interpretations of the Preamble
- 2.6 Summary
- 2.7 Key Terms
- 2.8 Descriptive Questions

## 2.9 References

## 2.10 Case Study

### 2.0 Introductory Caselet

#### “Objectives Resolution”

In 1947, Jawaharlal Nehru moved an Objectives Resolution in the Constituent Assembly which was later unanimously adopted by the Assembly. The Objectives Resolution among other declarations, made it clear that various religious communities in India should not be isolated from one another and form separate groups and also that it shall be the policy of Federal government to see all citizens were equal, without any discrimination based on religion. The Preamble, we are told, was to be the Constitution’s “identity card”—a summary statement of that document’s soul, philosophy and aims.

The Preamble of the Constitution declares India to be a Sovereign, Socialist, Secular, Democratic Republic assuring its citizens of Justice, Liberty, Equality and Fraternity. Every word was mined to capture the hopes of a new nation emerging from colonial rule and confronting poverty, inequality and social division.

History The Preamble has been an anchor in India’s democratic journey. In the Kesavananda Bharati case (1973), for example, the Supreme Court ruled that that Preamble symbolises essential constituent of Constitution and cannot be amended even by Parliament. At debates on issues such as equality, secularism or liberty, leaders and judges have combed the Preamble in search of direction.

So, the Preamble does not merely introduce the Constitution; it contains a philosophical content which explains and motivates its entire scheme to govern, protects democracy and preserves the image of those who gave such identity.

#### Critical Thinking Question

If the Preamble is to be seen as the “soul” of the Constitution, what would you say regarding its effectiveness in shaping India’s democratic and social transformation since 1950? Support your view with examples.

### 2.1 What is the Preamble?

Preamble is the preface of the Indian Constitution which reflects philosophy and fundamental values embodied in it. It announces India as a sovereign, socialist, secular, democratic republic and that its aims are justice, liberty, equality and fraternity. It’s the soul of the Constitution, expressing vision from framers.

### 2.1.1 Preamble Definition and Nature

The Preamble is the introductory statement to the Indian Constitution that summarizes its motivations and objectives. It enunciates the general principles on which the Constitution is based and upon that the philosophy of our constitution; it serves as marker for giving light to know its spirit. The Preamble does not delegate powers or provide enforceable rights but articulates the intentions and aspirations that the framers intended to realise in enacting their Constitution.

The nature of preamble can be explained with the following points: It is fundamental to the constitution Judiciary cannot legislate upon it; instead, its power relies on elaborate structure and spirit behind the Constitution. ACTIONS AS INCLUDED IN THE PREAMBLE It describes what actions are included in delivering complete justice.

- It has been called as the “identity card of the Constitution” by the Late Sr. Advocate N.A. Palkhiwala, because it represents a brief profile of Part III of it.
- It is a component of the Constitution — but one that does not itself create rights nor impose duties.
- It is non-justiciable, which means that it cannot be directly enforced before the courts; however, it carry significant weight in aiding judicial interpretations of constitutional provisions.
- The Preamble is inspired by the Objectives Resolution presented by Jawaharlal Nehru in 1946 in the Constituent Assembly.
- Primarily, it embodies the will of the people and reflects the ideal of the Constitution framers to strive for; thus pledging those committed towards establishing a sovereign, socialist, secular and democratic republic.

#### Did You Know?

“The Preamble of the Indian Constitution was inspired by the Objectives Resolution of 1946, moved by Jawaharlal Nehru. Originally adopted on 26th November 1949, it was amended only once, during the 42nd Amendment (1976), when the words Socialist, Secular, and Integrity were added to strengthen its vision.”

### 2.1.2 Purpose and Significance of the Preamble

Preamble of the Indian Constitution is the soul and spirit of every other aspect. To the naked eye it may not mean much but actually that is how you raise the philosophy of India laid in its

Constitution, which has been knocking at our doors, constantly reminding us about some kind of a state that we want to. Initiating with the phrase “We, the people of India” from the Preamble amply reveals the fountain head – sovereign will of the people – not monarch or an alien power. This is evidence that in a democracy, power emanates from the people and is delegated to their elected representatives.

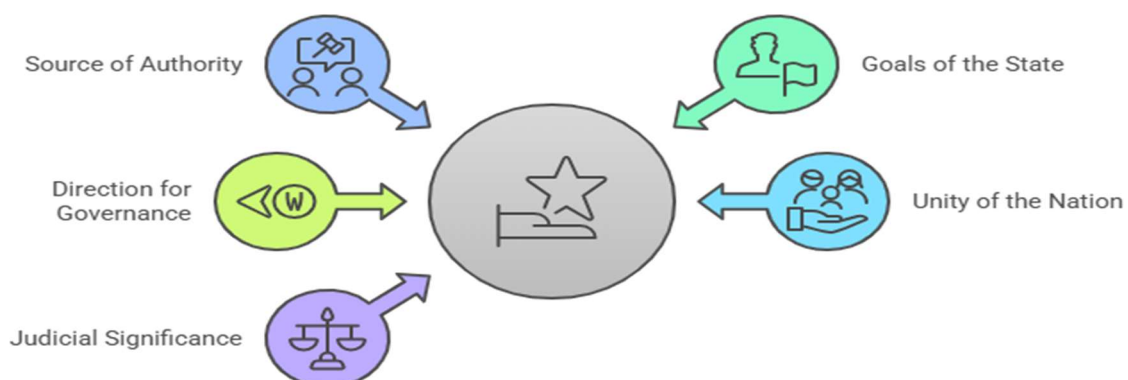
The Preamble also declares India to be a Sovereign, Socialist, Secular, Democratic Republic. These words were chosen carefully to give expression to the aspirations of an independent country freed from alien rule. They offer political meaning not only but also moral purpose to government. In addition to that, the Preamble describes the aims of the Constitution including Justice, Liberty, Equality and Fraternity and these are part of State policy and foundation of democracy.

Its significance can be emphasized as follows:

- Authority: The People are the ultimate authority over the Constitution.
- Objectives of the State: Justice (social, economic and political), Liberty (of thought, expression, belief, faith and worship), Equality (of status and opportunity) and Fraternity (assuring dignity of individual through unity).
- A Guide for Governance: An ethical and philosophical guide for lawmakers, executives, and jurists.
- Unity of the Nation: Encourages national unity and integration in a composite society by emphasizing fraternity and dignity.
- Judicial Pronouncement: In Kesavananda Bharati Case (1973), the Supreme Court interpreted that Preamble is a part of Constitution and was made to link it with basic structure doctrine i.e. which inferred that these fundamental values can never be destroyed by the Parliament.

The dust in the Preamble is not legally enforceable but a guiding star of the Constitution where all institutions, including political parties’ organization have to hew because these are the values which are basic features of our Republic.

### Factors Highlighting Importance



## Figure 2.1

### 2.1.3 Role of the Preamble in Constitutional Interpretation

Although the Preamble confers no rights or powers (there being no clauses in it), its legal value lies in interpretation. Whenever lack of clarity arises in a constitutional provision, the usual practice of the judiciary is to take recourse to the Preamble of the Constitution for understanding its intent and philosophy as propounded by The Makers Of The Constitution. Thus, it is a device to unlock the real spirit of the Constitution.

Several key cases illustrate the evolution of that role:

- Berubari Union Case (1960): Supreme Court held that Preamble was not a part of the Constitution and it could not be used to enlarge constitutional power.
- Kesavananda Bharati Case (1973): Supreme Court rejected the earlier view and ruled that the Preamble is a part of constitution. The Preamble is not enforceable and therefore is non-justifiable, but it indicates the basic structure which Parliament cannot destroy or modify.
- LIC of India Case (1995): The Court reiterated the importance of the Preamble, and said it is a key to open our mind as to what the Constitution seeks to achieve when its specific terms are not clear.

Long and Ghosh, JJ that the Preamble has been transformed into a beacon of constitutional morality. It allows the courts to protect democracy by judging whether an amendment or a law conforms to the basic concept of justice, liberty, equality and fraternity.

In practice:

- Constitutional provisions that are ambiguous have to be clarified with reference to the Preamble by judges.
- It serves as a moral guide for the policies and decisions of state.
- It keeps the Constitution a living document, rooted in the values of democracy and human dignity.

### 2.2 Meaning of Key Terms

The Sovereign, Socialist, Secular, Democratic, and Republic qualifiers in the Preamble denote the constitutional identity of India. These qualifiers assert India's independent decision-making, dedication to social and economic justice, religious neutrality, governance of the

people by the people, through elected representatives, and the equality of citizens without hereditary privilege. They define India's democracy. Elucidations are as follows:

### 2.2.1 Sovereign

The word signifies that India is free of external authority. For a country that, for centuries, was under British colonial authority, sovereignty was a radical concept. It ensured that Indians alone determined the destiny of their nation. Sovereignty in the Constitution applies regardless of whether it's internal governance or foreign policy. Sovereignty implications are:

- India can make its laws and policy without foreign interference.
- Authorities: India solely govern its internal administration, legislation, and judiciary.
- India is free as a member of the global polity; this implies that India is free to enter into treaties, join organizations based on its independent policy.

Significance : sovereignty is the hard-earned independence of 1947. It is about self-rule. Second, Sovereignty reminds its citizens that the ultimate power lies in the people. Third, sovereignty ensures India adopts non-alignment during the Cold war, making India make decisions independent of other global powers. In sum, sovereignty epitomizes the political independence and the people's supremacy as the ultimate authority.

### 2.2.2 Socialist

The qualifier was included into the Preamble on the 42nd Constitutional Amendment in 1976. Though the spirit of socialism was always spirit through the Directive principles of state policy; consequently, it still explicitly defined India's commitment to social and economic justice. Socialism in India it entails o Establishment of mixed economy: with some sectors like energy, banking, and transport wholly owned by the state.

o Welfare measures such as poverty alleviation, free education, public health projects and food security.

o Social changes, like redistribution of land and reservations for backward classes [to] minimize social disparities.

• Significance:

o Secures economic and social justice as well as political justice.

o An aspiration to build a society of fairly distributed wealth and opportunity.

o Safeguards weaker sections of society from exploitation, providing them with dignity and equality for every citizen.

Back to reality, the Indian socialism that is in operation is a democratic one and not communist; one which hopes to balance equality with individual freedom and private enterprise.

### 2.2.3 Secular

The word secular was also added through the 42nd Amendment (1976), even though the constitution already had principles of secularism enshrined in it. Secularism involves the state having no official religion, and treating all religions with equal respect. This principle was especially important in post-Partition India and after, when religious diversity and strife loomed large.

- Implications of secularism:

- o There shall be freedom of conscience (Article 25): # And to profess, practice and propagate religion.

- o The state may not discriminate, based on religion, in matters of employment and education and political involvement.

- o The state has the authority to control or restrict religious observances that are opposed to public order, morality, or health.

- Significance:

- o Keeps balance and harmony in a religiously diverse community.

- o Avoid allowing one religion to dominate, there should be equality among community.

- o Protects religious freedom and social harmony, thereby deepening democracy by being more inclusive.

India's version of secularism is often referred to as "positive secularism" — which suggests that the state does not enjoy complete separation from religion, and should respect all of them equally.

### 2.2.4 Democratic

"The land of the people's King," Yema Sanguma said, stressing that the word democratic in French refers to the notion that power belongs to the people and is exercised by elected representatives. Democracy in India is not just about political participation but also its values like equality, liberty and dignity.

- Implications of democracy in India:

- o Universal Adult Suffrage: Every individual above 18 years is entitled to vote irrespective of the caste, sex, religion or wealth.

- o There's accountability through free and fair elections by an independent Election commission.

- o India is a parliamentary democracy and its executive is accountable to the legislature with the provision for removal by no confidence vote.

- Significance:

- o Regularly secures the citizens' political rights and avoids accumulation of power.

- o Promotes public participation, debate and disagreement, fostering a democratic culture

There are some ways in which soundtrack is good for America: • Good vs bad Here are the list of things that occur when soundtrack has not been involved.

- o Maintains stability in a multicultural society by guaranteeing an opportunity for representation and recognition.

Democracy in India, therefore, is not only a matter of voting at regular intervals but also depends on constitutional institutions, judicial review and citizen participation.

### 2.2.5 Republic

The Statue uses the term republic to indicate a non-hereditary monarch form of government. In India, this principle underpins the idea that leadership is a product of merit and choice, not birth or privilege.

- Implications of being a republic:

- o The President of India is indirectly elected by the public through an Electoral College.

- o No one carries locational citizenship.

- o The highest constitutional office is open to every citizen, no matter what caste, sex or wealth they happen to be.

- Significance:

- o Severs the chains of feudal and kingly custom.

- o Reflects the concept of equality before law and sovereignty of the people.

- o Strengthens democratic values in that to whom more shall be given is when government officials are selected by the people, of the people.

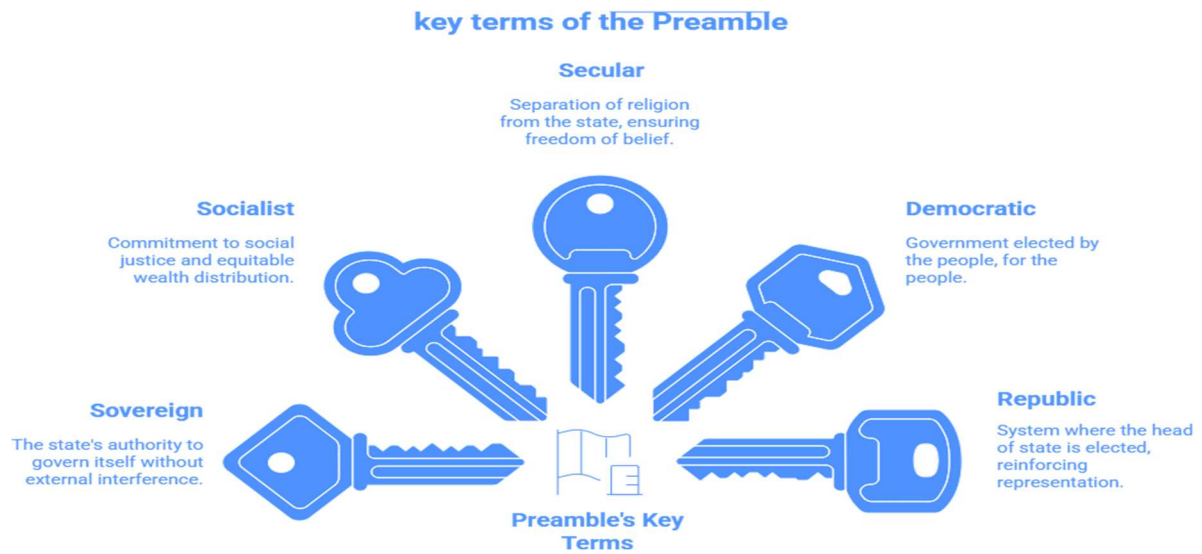


Figure 2.2

## Knowledge Check 1

Choose the correct option:

1. Which term in the Preamble signifies India's freedom from external control?
  - a) Republic
  - b) Sovereign
  - c) Secular
  - d) Socialist
2. The term "Socialist" was added to the Preamble by which amendment?
  - a) 44th
  - b) 42nd
  - c) 40th
  - d) 36th

3. Which key term ensures that India has no state religion and treats all faiths equally?
  - a) Democratic
  - b) Secular
  - c) Sovereign
  - d) Republic
4. In a Republic, the head of state is:
  - a) Hereditary ruler
  - b) Elected representative
  - c) Nominated leader
  - d) Military chief

### **2.3 Justice, Liberty, Equality & Fraternity – Core Constitutional Ideals**

Justice, Liberty, Equality and Fraternity—Its core constitutional values—are the Antordaan to the guiding philosophy of the Indian Constitution. Justice which consolidates the fundamental notion of justice in social life, economic and political; Liberty which encapsulates a closer meaning to freedom as essential to dignity; Equality ensuring equal status and equal opportunity with regard to fraternity assuring dignity of an individual and the unity of the nation.

#### **2.3.1 Justice – Social, Economic, and Political**

The Constitution's framers envisioned justice in three dimensions — social, economic and political — so it would be fairness in all aspects of life.

- **Social Justice:** The objective is to close the centuries-old gaps based on caste, religion, gender and social status. Article 17 abolishing untouchability, Article 15 prohibition of discrimination based on caste or sex or religion and the reservation for Schedule Castes, Scheduled Tribes and Other Backward Classes are such provisions to ensure equality.
- **Economic Justice:** Equal distribution of wealth, income and opportunity. The Directive Principles of State Policy (Articles 38 and 39) oblige the state to strive for livelihood, decrease economic disparity and ensure that possession of material resources serve the common good. Land reforms, rural employment schemes and poverty alleviation programmes are indicative of the above goal.

- **Political Justice:** Ensures that each citizen has equal opportunities to participate in the political system. Universal adult suffrage and the right to contest elections ensure inclusiveness in governance and check any kind of political exclusion.

By harmonising these three dimensions, the Constitution creates the norms of a welfare democracy on which rests social equity.

### **2.3.2 Liberty—thought, expression, belief, faith and worship**

Freedom is the bastion of human dignity that enables personal development of the person and responsible use of freedom. Liberty is protected in the Constitution through Fundamental Rights (Articles 19-22 and Articles 25-28).

**Freedom of Thought and Expression:** Article 19 The constitution provides guarantees freedom of speech, expression, and press to citizens who are free to speak their mind, criticize government policies and join public discussions.

- **Belief, faith and worship:** Article 25 provides for freedom of conscience in Art. 25 which gives right to profess, practice and propagate religion— an expression of India's oriental culture.

However, liberty is not absolute. It is subject to such reasonable restrictions as may be imposed in the interests of public order, morality and sovereignty and integrity of the State. This equilibrium ensures that freedom is enjoyed without upsetting the balance of society.

### **2.3.3 Equality – Equality before Law and Equal Protection of Laws**

The Constitution gives primacy to the equality, realizing that political democracy cannot be divorced from social and economic equality. Article 14 enunciates the twin principles of :-

- **Equal Application of the Law:** All men are equal before law and cannot be discriminated against in the matter of punishment.
- **Equal Protection of the Laws:** Persons similarly situated or suffering a disadvantage can be treated equally, but groups who are disadvantaged may receive special interventions to achieve substantive equality.

Such other constitutional assurances to reenforce equality includes the:

- **Abolition of Untouchability (Article 17)** – ending one of the worst forms of discrimination.
- **End Of Titles (Article 18)** that no citizen of India could enjoy any hereditary titles.
- **Equality of Opportunity in Matters of Public Employment (Art.16)**, barring discrimination in the matter of public employment.

In such-a-fashion, the Constitution prorating these guarantees.)) on to the social and economic plane.

### 2.3.4 Fraternity – Promoting Unity and Integrity

Fraternity is that feeling of brotherhood and unity among the citizens. For a nation as diverse as India and given the heterogeneity of Indian society in terms of culture, language and religion, a fraternity is needed to keep the country united.

The Constitution associates with fraternity two things:

- Dignity of the Individual: Each person or citizen should have self-respect, equal treatment and esteem in the society.
- Unity and Integrity of the Nation: Fraternity inspires a feeling of social harmony, solidarity and creates conditions congenial to the strengthening of the unity and integrity of the nation.

Fraternity cannot be legislated or enshrined in the constitution; it must be nurtured through everyday practice in toleration, respect and cooperation. Unless the citizens' fraternity has been developed in the practical sense, liberty and equality will never bloom.

“Activity: Living the Preamble”

Divide students into four groups, each representing Justice, Liberty, Equality, and Fraternity. Ask them to identify real-life examples (laws, policies, or social practices) that reflect their assigned ideal. Each group presents briefly. The class then discusses how these four ideals together shape India's democratic identity and governance.

### 2.4 Philosophical Influences

Indian Constitution has been often described as a borrowed constitution because it is based on so many other constitutions. But it is also unique, because the framers didn't just borrow wholesale — they considered best practices of global constitutions and adapted them to India's social realities and indigenous traditions. This lent the Constitution its universality and originality. Political influences were drawn from revolutionary such as the French Revolution, democratic ideals from US experience, administrative models of the British colonial government and borrowings from different countries like Ireland, Canada, Australia, South Africa, Japan and Germany. Every influence was thoughtfully applied to the newly independent, diverse and democratic India.

### 2.4.1 French Revolution – Liberty, Equality, Fraternity

The French Revolution of 1789 showcased the formidable ideals “Liberty, Equality Fraternity” to the world. They became catchwords of oppressed peoples around the world, and were eventually incorporated into many contemporary constitutions.

- Influence on India:

- o Liberty: The Indian Constitution offers liberty in several forms. Articles 19–22 protect freedom of speech, freedom of association, freedom of movement, and freedom of religion, as well as the right to form associations. That way people can form their personality without the body-state insinuating itself too much.

- o Equality: French doctrine and policies of equality seemed to have heavily influenced Indian constitutional provisions such as Article 14 (equality before law), Article 15 (prohibition of discrimination), Article 17 (abolition of untouchability) and Art. They were designed to break down India’s centuries-old social hierarchies.

- ♣ Fraternity: India took the idea of fraternity as a constitutional objective because it wanted to foster unity in its highly diverse society. The Preamble refers to guaranteeing the individual’s dignity and nation’s unity and integrity, with fraternity as a moral force uniting citizen.

- Import: By adopting these ideals, Indian Constitution grounded their commitment to humanitarian perspective and democratic ethos which means freedom was not only about political sovereignty but also creating a just, equal and united society.

### 2.4.2 American Bill of Rights – Individual Liberties

The Bill of Rights (1791) – the first 10 amendments to the U.S. Constitution – was revolutionary for including enforceable rights against the state. It prompted democracies around the world to recognize that citizens need legal means to shield themselves from government overreach.

Influence on India:

- Fundamental Rights: India took the idea of rights that can be legally enforced, guaranteeing freedoms like speech, equality before law and freedom from arbitrary arrest. These rights allow citizens to take their cases to court if they believe society is interfering with their liberties.

- Judicial Review: The phrase “judicial review” does not appear in the Constitution. This has been, however suggested and enshrine in many articles including article 13. This allows courts to strike down laws that violate constitutional rights, and thus to maintain the supremacy of the Constitution over legislation and executive action.

- **Due Process and Fair Procedure:** Although India did not reproduce the American phrase “due process of law” entirely, it recognized that the personal liberty should not be deprived without fair legal procedure, this is clear from Article 21.

Significance:

This loaning gave constitutional remedies to Indian citizens, challenged arbitrary exercise of state power and made democratic institutions accountable for the majority. Dr B.R. Ambedkar had gone to the extent of describing Article 32 (i.e., Right to Constitutional Remedies) as "heart and soul of the Constitution".

### **2.4.3 Government of India Act, 1935 – Administrative and Federal Features**

The Government of India Act, 1935, was a colonial document, the value of which to the framers can hardly be overstated. It was the most comprehensive constitutional document penned before independence and many of its provisions survived into independent India bereft of their colonial pangs.

- **Influence on India:**

- o **Federal Structure:** The Act distributed powers between the Centre and Provinces by way of lists of subjects. It was adopted as the basis for India’s Union List, State List and Concurrent List in the Seventh Schedule.

- o **Public Service Commissions:** The Act laid the foundation for fair and unbiased recruitment bodies; resulting in the establishment of Union Public Service Commission (UPSC) and State Public Service Commissions.

- o **Provincial Autonomy:** Provinces had been given elected legislatures for the first time, although this still was a form of limited autonomy. This impulse grew into India’s federal framework wherein states will have legislatures and governments.

- o **Emergency Provisions:** The British incorporated provisions for central authority to function in emergencies. India followed suit (Articles 352, 356, and 360), albeit with a democratic rather than imperial rationale.

- o **Bicameral Legislature:** The Act envisaged a legislative council consisting of two houses at the Centre, to be known as the Lok Sabha and Rajya Sabha.

- **Significance:** By making these provisions applicable, the framers wanted that the independent India had a tried and tested administrative machinery, but reorienting it to democratic values, accountability and welfare.

### **2.4.4 Other Global Inspirations**

Over and above the foregoing, India's Constitution took from here and there whatever was found to be good and useful in so many countries; thus our" Constitution is one of the most comprehensive documents of its kind in the world.

- British Parliamentary System

o India opted for the Westminster form of government. The President is the symbolic head of state and real executive power is exercised by the Prime Minister and the Council of Ministers.

The Cabinet's collective responsibility, and the power of the Lok Sabha to dismiss the government by parliamentary vote of no confidence were also borrowed from Britain.

o This arrangement guarantees the executive's accountability to the legislature, a central feature of parliamentary democracy.

- Principles of the Irish Policy Petticoat 4.24 The Principle's overriding significance lies in its bearing on ordinary law: Irish Case Law.

o Part IV of the Indian Constitution which is related to Directive Principles of the State Policy was taken from Irish Constitution.

o These are non-enforceable principles, but they should be used by the state while making laws to establish the social and economic democracy.

o Examples include guarantee of living wages, free education, less inequality and world peace.

- Canadian Constitution

o Canada influenced India's strong Centre model of federalism.

o The fact that residual powers (powers not enumerated in the Constitution) has been vested with the Centre was borrowed from Canada as well.

o This was very necessary for the unity in India's variegated federal polity.

- Australian Constitution

o India lent the matters on the Concurrent List and trade and commerce within the territory.

o The dispute resolution provision between the states were borrowed substantively from Australia.

- Weimar Constitution of Germany

o Inspired India's emergency powers (Articles 352, 356, and 360) pursuant to which the Centre may "take over" during crises.

- South African Constitution

- o Adapted the process for constitutional amendments that mixes rigidity and flexibility.
- o Also affected the indirect elections system to the Rajya Sabha, Upper House of India.
- Japanese Constitution
- o Gave the term 'procedure established by law' to Article 21, dealing with protection of personal liberty.
- o This provided India with an example to guarantee freedom and yet maintain elasticity in legislation.

## 2.5 Supreme Court Interpretations of the Preamble

An important judicial odyssey of the Preamble of the Indian Constitution. Initially, this was considered to be a merely ornamental and legally gratuitous preamble. The Supreme Court eventually came to see it as a fundamental plank of the Constitution, and a lodestar for interpretation. Its importance has especially grown after 1973 when the 'Basic Structure Doctrine' had been formulated.

### 2.5.1 Berubari Union Case (1960) – Preamble Not a Part of the Constitution

The most extensive quote in detail the Preamble came in a decision of Berubari Union (1960). The case emerged when both India and Pakistan decided to give Berubari Union, an area in West Bengal, to Pakistan. The question was whether the transfer should be implemented through a constitutional amendment.

- Supreme Court's View:

- o The Preamble is not a part of the Constitution (per Court).
- o It cannot serve as a repository of real power for either and central Government / Parliament.
- o It can only serve as a reference tool in interpretation of the obscure constitutional provisions, and has no separate source of legal authority-subordinate to the Constitution.

- Impact:

- o This ruling rendered the Preamble an unenforceable introduction.
- o For over ten years the Preamble was viewed to be a general statement which had no functioning value.

### 2.5.2 Kesavananda Bharati Case (1973) – Preamble as an Integral Part

The position of the Preamble underwent a complete transformation in Kesavananda Bharati case (1973), one of India's most momentous constitutional cases. The case was filed by Kerala seer Kesavananda Bharati, who had challenged amendments which curtailed the right to property. Much more significant was whether the amending power of Parliament under Article 368 was all-embracing.

- Supreme Court's View:

- o A 13-judge bench, the largest ever in Independent India, passed a judgement upon it.

- o The Court's ruling that Preamble is a part of the Constitution and over ruled Berubari Union case.

- o Despite being non-justiciable (not justiciable i.e. cannot be directly enforced in courts), it reflects the central philosophy of the .

kal, and the purpose of the Constitution.

- o The Court evolved the Basic Structure Doctrine which propounded that the Preamble enshrines values of sovereignty, secularism, democracy, justice, liberty, equality and fraternity. These are the bases of the Constitution and cannot be amended or destroyed even by the Parliament.

- Significance:

- o The Parliament possesses the power to amend the constitution yet it is not authorized to change or abolish its basic structure.

- o The values enshrined in the Preamble were incorporated as basic features of the Constitution.

- Impact:

- o The Preamble, which was hitherto an arbitrary statement, found a place in the central pantheon of the canon of constitutional construction and interpretation.

- o The people were given the security that no political majority of which a despotic/traitorous government was possible would be able to subvert the intrinsic philosophy, or natural law aspect then-of, of the Constitution.

### 2.5.3 Evolution of Judicial Approach to the Preamble

Judicial Approach towards Preamble There has been a marked evolution in the approach of the judiciary towards its application in different places.

- Berubari Union Case (1960):
  - o The Preamble was pronounced out of the syllabus of the Constitution.
  - o It was interpretational, not legally binding.
- Kesavananda Bharati Case (1973):
  - o Preamble was accepted as part of the Constitution.
  - o It was related with the basic structure doctrine and its principles were not amendable.
- Subsequent Cases:
  - o SR Bommai v. Union of India (1994): The Court relied on the Preamble to emphasize that secularism is an essential feature of the Constitution. This placed a check on the misuse of Article 356 and the states from arbitrary dismissal by themselves.
  - o LIC of India v. Consumer Education and Research Centre (1995): The Court reiterated that the Preamble must form part of constitutional analysis, directing the courts in upholding principles of justice, liberty, equality and dignity.
- Trend:
  - o After 1973, courts have consistently used the Preamble as a constitutional lodestar to determine whether subsequent governance and amendments are consistent with these founding principles.

#### 2.5.4 Preamble and the Basic Structure Doctrine

The foundational feature of Indian constitutional law, known as the Basic Structure Doctrine, was developed in Kesavananda Bharati (1973). It puts restrictions on the powers of the Parliament to amend the Constitution, as per Articles 368 so that it can not exercise its constituent functions in an arbitrary or capricious manner since apart from making alterations in various provisions of the Constitution, they can't change its basic framework or structure. The Preamble plays a much more important role in this doctrine is that the values contained in preamble namely sovereignty, socialism, secularism, democracy republic justice liberty equality fraternity has been held as part of basic structure of constitution. Such values can never be eroded, diluted or wished away through a Parliamentary majority enshrined in a Constitution. For example, Parliament cannot say India is a theocratic state because secularism is a basic feature; it cannot end free and fair elections because democracy is integral to the system; nor can it reverse fundamental ideals such as equality or liberty, which form part of the bedrock of the constitutional order. In integrating the Preamble to the basic structure, the Supreme Court issued a constitutional checkpoint; it eased telos enough into positivist mould to conclude that Constitution's structurally inalienable philosophy be permanent and immutable. This is true also to the extent that the Constitution must be

flexible, and can adapt to changing conditions, but its basic norms are indestructible – they safeguard the democracy of India for generations that have yet to come.

## 2.6 Summary

- ❖ The Preamble constitutes the preface or the introduction to Indian Constitution and reflects its spirit and aspirations.
- ❖ It was based on Jawaharlal Nehru's Objectives Resolution (1946) and enacted alongside Constitution in 1949.
- ❖ In its Preamble, the Constitution described India a Sovereign, Socialist, and Secular Democratic Republic.
- ❖ It gives top most priority to four basic ideals i.e., Justice, Liberty, Equality and Fraternity as the cornerstone of governance.
- ❖ Justice prevails at social, economic and political levels.
- ❖ ∞ Liberty ensures freedom of thought, expression, belief and faith and worship.
- ❖ Equality assures equality before law and equal protection of laws facilitating abolition of social as well as legal discrimination.
- ❖ Brotherhood seeks unity, integrity and dignity of the individual in a plural society.
- ❖ Preamble was influenced by World around: French Revolution (liberty, equality, fraternity), American Bill of Rights( individual rights) and Irish Constitution(Directive Principles).
- ❖ These key administrative and federal provisions were incorporated in the Indian Constitution having drawn from the Govt. of India Act, 1935
- ❖ Judicial Interpretations developed: Berubari case (1960) held that it is not a part of the Constitution and D.C. Jayanth Vs TN AIR 1974 SC-1 has listed absolutist, relativist and natural rights in Fundamental Rights.
- ❖ Kesavananda Bharati (1973) acknowledged it as an integral part of the basic structure doctrine.
- ❖ The Preamble now acts as a beacon and constitutional rampart, directing interpretation and shielding the values of democracy.

## 2.7 Key Terms

1. Preamble – The opening statement to the Constitution stating its philosophy, goals, and purposes.
2. Independent Sovereign of India – Free to control itself without the domination of others.
3. Socialist Support for a lower level of inequality and more justice in economic life.
4. Secular – All religions are treated equally by the state and there is no official state religion.

5. Democratic - A system in which the people elect their officials through free and fair elections.
6. Republic – Chief of state is elected, not hereditary.
7. Justice – Promoting fair treatment and access to opportunities in social, economic, and political domains.
8. Liberty – Freedom of thought, expression; belief, faith and worship.
9. EqualCitizenship law applies equally to all citizens.
10. Fraternity- The brotherhood among us, to ensure dignity of people and unity of the nation.

## 2.8 Descriptive Questions

1. Explain the Preamble of the Indian Constitution. Discuss its nature and significance.
2. Describe the role of the Preamble in interpreting the Constitution.
3. Explain the words Sovereign, Socialist, Secular, Democratic and Republic as used in the Preamble.
4. Discuss the way in which India's constitutional philosophy revolves around the ideals of Justice, Liberty, Equality and Fraternity.
5. Track two byblk's world creation of the Preamble to documents as diverse as French Revolution, USA Bill of Rights, Irish Constitution.
6. Q... Discuss the significance of Government of India Act, 1935 in framing administrative and federal structure of India.
7. Describe the interpretation of the Preamble by the Supreme Court in Berubari Union case (1960) and Freedom Fighter's case, 1982.
8. Kesavananda Bharati case (1973).
9. Explain the Preamble and Basic Structure Doctrine.
10. Examine the Preamble to be the "philosophical compass" of the Indian Constitution with relevant illustrations.

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### Knowledge Check 1

1. b) Sovereign
2. b) 42nd
3. b) Secular
4. b) Elected representative

## 2.10 Case Study

### The Preamble as India's Constitutional Compass

#### Introduction

The Preamble of Indian Constitution has the special significance or is used as a source of interpretation of the Constitution. It embodies the will of the people by proclaiming India to be a Sovereign, Socialist, Secular and Democratic Republic which secures to all its citizens Justice, Liberty, Equality and Fraternity. The Preamble has been used by the judiciary, from time to time, as source of inspiration in overcoming constitutional conundrums and upholding democratic content. But it remains controversial on the questions of its juridical status, interpretative authority and actual influence on governing India.

#### Background

The Preamble was adopted in 1949 but it's only after three years that it came into force on January 26, 1950 and was influenced by Nehru's Objectives Resolution (1946). At first in Berubari Union case (1960), the Supreme Court ruled that Preamble was not a part of the Constitution. But in the Kesavananda Bharati case (1973) this view was overruled, and it held to be part of the Constitution intertwining into the basic structure doctrine. Since that time,

the Preamble has functioned as a constitutional polestar, steering interpretation and protecting democracy.

#### Problem Description 1: Uncertain Legal States of Being

The debate raged long about the enforceability of the Preamble. Was it legally binding or merely a symbolic statement?

So the solution is: The Kesavananda Bharati case held that Preamble is part of the Constitution and yet, not enforceable in itself. It is an interpretative instrument to fortify constitutional philosophy.

#### MCQ

What was the finding of Kesavananda Bharati case regarding the Preamble?

- a) It is not in the Constitution
- b) It is a legally enforceable like the Fundamental Rights
- c) It is a provision of the Constitution but non-justiciable
- d) It is amenable to unlimited alteration

Answer: c) It is a part of the Constitution but not justiciable

#### Problem 2: Protecting Constitutional Values

Critics asked whether parliamentary amendments might empty out the spirit of the Preamble by amending its core ideals, say secularism or democracy.

Answer: According to the SC, the Preamble is part of the Basic Structure doctrine and hence Parliament cannot alter basic features like sovereignty, democracy and secularisms.

#### MCQ

What is the principle which saves the Preamble from being abrogated by Parliament?

- a) Separation of Powers
- b) Basic Structure Doctrine
- c) Fundamental Duties Doctrine
- d) Rule of Law

Answer: b) Basic Structure Doctrine

#### Problem 3: The Practice of Realizing Ideals

Although the Preamble promises justice, liberty, equality and fraternity; converting them into a practice is still not easy on account of poverty, inequality and social cleavages.

Ans: Courts and policymakers across the globe continued interpreting different policies with reference to role of welfare, pushing for laws that expands the role of state in guaranteeing rights (say – enactment of RTE) or simply upon preserving inclusivity and democracy.

MCQ

Which of the following exemplifies equality as represented in the Preamble?

- a) Right to Property
- b) Abolition of Untouchability
- c) Emergency Provisions
- d) Appointment of Governors

Answer: b) Abolition of Untouchability

Conclusion

The firmament upon which the Indian Constitution rests is its Preamble. From being considered a mere preamble in *Berubari* to becoming part of the basic structure in *Kesavananda Bharati*, its journey mirrors the evolution of India's democracy. It still directs social change, both for legislators and judges and citizens who are committed to justice, liberty, equality and fraternity.

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## **Unit 3: Fundamental Rights – The Cornerstone of Democracy**

### Learning Objectives

1. Understand the concept of Fundamental Rights as enshrined in the Constitution.
2. Explain why Fundamental Rights are essential for a democratic framework.
3. Identify the different categories of Fundamental Rights guaranteed to citizens.
4. Analyze the role of Fundamental Rights in protecting individual liberty and dignity.
5. Examine the limitations and reasonable restrictions on Fundamental Rights.
6. Evaluate landmark judicial interpretations that have strengthened Fundamental Rights.
7. Discuss the relationship between Fundamental Rights and Directive Principles.
8. Appreciate the importance of Fundamental Rights in ensuring equality and justice.
9. Apply the knowledge of Fundamental Rights to real-life democratic practices.

### Content

- 3.0 Introductory Caselet
- 3.1 Meaning & Importance of Fundamental Rights
- 3.2 Six Fundamental Rights under Part III
- 3.3 Right to Equality (Articles 14–18)
- 3.4 Right to Freedom (Articles 19–22)
- 3.5 Right to Constitutional Remedies (Article 32)
- 3.6 Landmark Cases
- 3.7 Restrictions and Reasonable Limits on Rights
- 3.8 Summary
- 3.9 Key Terms
- 3.10 Descriptive Questions
- 3.11 References
- 3.12 Case Study

### 3.1 Meaning & Importance of Fundamental Rights

These rights are called as Fundamental Rights because they cover and protect the most fundamental aspect of human life, which is individual existence, personal freedom and equality; these rights together with human rights were made a part of the Indian Constitution to allow its citizens take pride in being Indian. They are part III, protect people against state arbitrariness and offer remedial rights through courts. Such rights underpin democracy, enabling people to effectively be a part of national life.

#### 3.1.1 Concept of Fundamental Rights

Fundamental Rights are certain inalienable rights which every citizen is entitled to, by virtue of his existence as a human being. They are guaranteed in Part III of the Constitution (Articles 12–35) and are regarded as essential for the development of the individual and the nation in a democracy.

They are called "fundamental" in as much as they lay down the framework of tungsten-state individuals. They cannot simply be stripped by the government and are a court enforceable act. Where they are infringed the citizens have rights to go before the court for their protection and enforcement under Article 32 and Article 226. There are various Fundamental Rights in Indian Constitution which some apply only to the Citizens of India and few Fundamental rights include foreigners/foreign nationals, citizens of foreign countries or natural persons of other Nationalities as well as artificial persons like Corporations or any association of individuals.

Preamble to the Constitution of India states that: "the people of India resolved to secure ourselves justice, liberty, equality and promote among us all fraternity," which...bear in mind articles such as Universal Declaration of Human Rights 1948, mandated inclusion of a bill with rights inherent in the individual and freedoms for every citizen. The purpose of these rights is to guarantee equality, freedom and justice to all citizens beyond any discrimination or abuse from the State.

#### 3.1.2 Importance of Fundamental Rights in a Democracy

The Fundamental Rights also have a significant impact on the sustenance and the advancement of democracy. They are multi-use acts that protect both individual freedom and the common good.

**Safeguarding Individual Liberty:** Fundamental Rights protect the citizens against the arbitrary action of the State and guarantee them various freedoms.

**Equality before the Law:** They ensure that nobody can be discriminated against on the grounds of religion, race, caste, sex or place of birth.

**Democratic Participation:** Because these rights protect freedom of speech, expression, assembly, and association; individuals are better able to take a full part in the democratic life of society.

**Checks and Balances:** They restrict the government so that it cannot abuse its power.

**Promotion of Social Justice** Untouchability is abolished and exploitation is prohibited, these are rights which are meant to pave the way for a more just society.

**Human Dignity and Development:** The Rights Should Provide Opportunities for People → To study, to work and to express one’s own opinion.

**Democracy Foundation:** Democracy is of no value unless the people have freedom and equality. Under the Indian constitution at present, such a system arises from Fundamental Rights.

Indeed, without FRs, democracy would remain as just a political arrangement with nothing to actually protect regular people from exploitation and waved off their violation on grounds of any petty disagreement.

**Did You Know?**

“Fundamental Rights in India not only safeguard individual liberty but also limit state power, ensuring democracy remains people-centric. Inspired by global charters like the U.S. Bill of Rights, they guarantee equality, freedom, and justice, making them essential for protecting human dignity and empowering citizens to actively shape governance.”

**Cornerstones of Democracy**

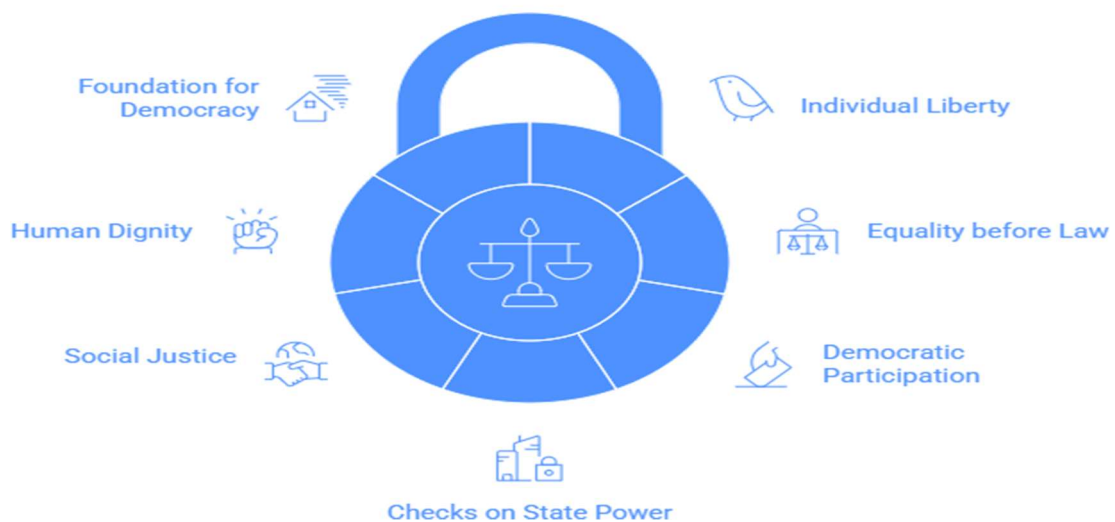


Figure 3.1

### 3.1.3 Difference between Fundamental Rights and Ordinary Rights

- Fundamental Rights and Ordinary Rights are both designed to protect people, but their origin, area of application and the degree of protection they grant varies. Fundamental Rights are protected and guaranteed by the Constitution at Part III; not all rights are fundamental rights, only those clearly defined by the Constitution – any right that is not included in the sections for Fundamental Rights or Human Rights do not necessarily have a higher status than other laws. They are regarded as fundamental, indispensable, and inherent rights at the heart of democratic rule.
- Ordinary Rights: These rights are created by the laws and regulations enacted by Parliament or state legislatures. These rights tend to concern the everyday - property, contracts, trade rules or administrative process. They are not superior to fundamental rights in the constitution.
- Another distinction lies in enforceability. These rights are enforceable in the courts by affirmative action, and also by way of negative compulsion through the imposition of sanctions against the state for failing to achieve or secure these objectives. Fundamental Rights can be directly enforced against any authority including government under Article 32 (right to constitutional remedies) and High Courts under Article 226. Ordinary Rights may be enforced in only the lower courts, according to the procedure established by the particular law which conveys them.
- The protection given varies, too. Fundamental Rights function primarily as a negative check on the state by averting the arbitrary exercise of governmental authority and protecting certain freedoms. Common Rights on the other hand tend to govern between people, and not necessarily the State.
- When it comes to amenability, Fundamental Rights are provided a unique constitutional protection. Although they can be modified, their basic nature and identity cannot be changed because of the Basic Structure Doctrine. Standard Rights, on the other hand, may be amended or repealed by a simple majority of the legislature at any time.
- For the last, Fundamental Rights are more extensive—they have general applicability to all citizens (with a chopping and changing in next exception, e.g., certain rights restricted only for using by citizens and not aimed at foreigners). Regular Rights have a range of only the law which creates the.

### 3.2 Six Fundamental Rights under Part III

The six Fundamental Rights of the Indian Constitution act as a credo in protecting the most basic liberties of citizens while also providing for equality, dignity and freedom from arbitrary State interference. These are the Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights and the Right to Constitutional Remedies.

#### 3.2.1 Right to Equality (Articles 14–18)

The Fundamental Right to Equality: The bedrock of the democratic and just society. It guarantees equality of all persons before the law and forbids any discrimination by the State.

- Article 14 – Equality before law and equal protection of laws:

Every one, be he high or low, rich or poor of any caste and creed has the same right. The State cannot accord special treatment and cannot discriminate in legal matters.

- Article 15 – The prohibition of discrimination:

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex and place of birth. Simultaneously, this Article gives the State an opportunity to enable provisions for women, children and such as are socially or educationally backward for securing their rights of equality.

- Article 16 – Equality of opportunity in matters of public employment:

That there shall be no discrimination, in public employment under the State, against any citizen on the ground of religion. But, reservations are allowed for backward classes, schedule castes and tribes to rectify historical wrongs.

- Article 17 – Abolition of untouchability:

No kind of untouchability is allowed. It is illegal to neglect any basic human dignity on the grounds of caste, and offering or accepting discrimination based on caste is an offence.

- Article 18 – Elimination of titles:

All non-military and non-academic titles are discontinued. That prevents the rise of social hierarchies and preserves equal rights between citizens.

This right not only envisages the equality before law but also combats evils which are deep-rooted in social development like untouchability and discrimination.

#### 3.2.2 Right to Freedom (Articles 19–22)

Freedom of Rights granting freedoms essential for the full development of individuality and significant parts functioning democracy. It is one of the most significant rights, as it directly impacts on personal life and is therefore a fundamental principle.

- Article 19 – Six basic freedom:

Immunization Freedom, Know Your Rights7-2-3GuaranteesFreedom of speech and expression (inc. media), peaceful assembly, association, movement, residence and profession/occupation5. These freedoms are essential for democratic participation but also come with reasonable limitations in relation to decency, public order and national security.

- Article 20 – Protection in case of conviction for offences:

Safeguards citizen from ex post facto laws (criminal offense if not a crime when committed), double jeopardy, and self-incrimination.

- A obt 21 – Protection of life and personal liberty:

Provides that the State may not take away life or liberty save in accordance with a procedure which is just, fair and reasonable established by law. The judiciary later interpreted this to include rights such as the right to privacy, right to livelihood and right to a clean environment.

- Article 21A – Right to education:

First by the 86th Constitutional Amendment Act (2002), free and compulsory education was made a fundamental right of all children in the country between the ages of 6 to 14 years, thereby opening up access for education to everyone.

Article 22 – Safeguards of rights in case of arrest and detention:

Secures for persons the right not to be arbitrarily arrested and held in detention. It says a person should be informed of the grounds of arrest, and produced before a magistrate within 24 hours and that he cannot be kept in detention without the authority of law. It also addresses preventive detention but imposes limits on the duration of such detentions.

This is a basic right which makes it possible for citizens to express themselves freely, move about and live with dignity without any fear of the State acting arbitrarily against them.

### 3.2.3 Right against Exploitation (Articles 23–24)

Article 23- Right against Exploitation This article says that no human being can be exploited for economic work or employment, under age children cannot work in a factory.

- Article 23 – Traffic in human beings and forced labour:

Criminalizes human trafficking, begar (involuntary rest upon a lord's order or service) and other forms of exploitation. That every man should be able so to live his life that he can realize dignity and freedom without becoming the victim of any forced or bonded labor.

- Article 24 – Prohibition of child labour:

Prohibits the work of children under the age of 14 in factories, mines, or other dangerous activities. It preserves the childhood and reinforces the countries' rights to education and health.

The Constitution through such provisions, ensures that security is not rendered a dead letter to any person because of economic or social dislocation.

### 3.2.4 Right to Freedom of Religion (Articles 25–28)

The Right to Freedom of Religion with its secular thrust secures the secular identity of the Indian State. It is an articulation of right to adherence, practise and propagation of any religion or belief in choice.

- Article 25 – Freedom of conscience and free profession, practice and propagation of religion;

Subject to public order, morality or health and to the other provisions of this article, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

- Article 26 – Freedom to administer religious matters:

The followers of the trust or beliefs may found and maintain institutions requisite therefor, and manage their affairs in other respects without interference from others.

- Art 27 – No taxation on endowments for religious propurgaoses:

No one can be required to pay taxes for the support of a church or ministry.

- Article 28 – Right to freedom as regards attendance at religious instruction:

No religious education can be given in a State educational institution. But private bodies institutions can provide religious education.

This very right helps India preserve its Plural and Diverse culture by providing the freedom to profess and practice any religion while avoiding favouritism with regard to any religion, except where it is essential for keeping law and order in place.

### 3.2.5 Cultural and Educational Rights (Articles 29–30)

The Cultural and Educational Rights protects the rights of cultural, linguistic and religious minorities.

Article 29 – Protection of interests of minorities:

He gives any group of citizens the right to preserve their own language, alphabet or culture. 11 It also forbids the State to deny admission to any educational institution maintained by the State on religion, race, caste, language or any of them.

• Article 30.- Right of minorities to establish and administer educational institutions:

Any section of citizens, including linguistic and religious minorities, also have the right to establish and administer educational institutions of their choice. In this way the minorities can keep a memory image of their own ethnical culture.

education.

These rights safeguard India's multicultural tapestry and prevent minorities from becoming marginalized.

### 3.2.6 Right to Constitutional Remedies (Article 32)

The Right to Constitutional Remedies is often referred to as the 'heart and soul of the Constitution' by Dr. B. R. Ambedkar. It gives life to all other Fundamental Rights as meaningful and enforceable.

• Article 32 – Remedies for enforcement of rights:

The citizens can directly approach the Supreme Court (or the High Courts under Article 226) if any of their Fundamental Rights are being violated. Writs The courts can issue writs including:

o Habeas Corpus- to get out someone unlawfully hold.

o Mandamus – to direct performance of a public duty.

o Prohibition a) Can be used to prevent lower courts from going so far outside their jurisdiction that they are not acting as a court of law.

o Certiorari – to dismiss an illegal order by a lower court.

o Quo Warranto – to refrain someone from holding a public office illegitimately.

It is in fact this right that functions as sentinel vis-a-vis true to all Fundamental Rights This is the guarantor that no arbitrary State action remains outside the law.

## Knowledge Check 1

Choose the correct option:

1. Which Article abolishes untouchability in India?
  - a) 14
  - b) 16
  - c) 17
  - d) 18
2. Right to Education (6–14 years) is guaranteed under which Article?
  - a) 19
  - b) 21
  - c) 21A
  - d) 22
3. Prohibition of child labor below 14 years in factories is under:
  - a) Article 23
  - b) Article 24
  - c) Article 26
  - d) Article 30
4. The “heart and soul of the Constitution” is:
  - a) Article 19
  - b) Article 21
  - c) Article 29
  - d) Article 32

### 3.3 Right to Equality (Articles 14–18)

Article 14–Article 18 The Right to Equality provides for equality before law, no discrimination on grounds of religion, race, caste, sex or place of birth and equal opportunity in matters of public employment. Article 17 abolishes untouchability and forbids its practice in any form,

while Article 18 denies certain titles. It is to ensure that fairness, social justice and the principle of equality are guaranteed in democracy.

### 3.3.1 Article 14 – Equality before Law

8 Article 14 guarantees that everyone is equal before the law, and has equal protection of the laws within the territory of India.

The principle of equality before the law guarantees that no one, regardless how powerful or mighty, stands above the law. It's the same law for everybody.

Equal protection of law means protection from the same laws rather than of all laws; that is, persons similarly situated are to be treated alike by the law and no undue preference can be shown.

It is a bulwark against the State exercising arbitrary power. But it does allow reasonable classification (not discrimination) if such classification is founded on intelligible differential and has a rational nexus to the object intended.

### 3.3.2 Article 15 – Prohibition of Discrimination

11 Article 15 impermissible for the State to discriminate against any citizen on the basis of religion, race, caste, sex and place of birth.

No citizen shall be refused entry to or interdicted from a shop, hotel, inn, public restaurant or eating house, nor the use of wells, tanks and roadways and the like as are vested in the local authority unless such person has been condemned to payment for State funds for any purpose other than what he may have defaulted reason to by the authorities provided after due process.

10 Yet the Constitution permits the State to make special provisions for women and children, as well as for any socially and educationally backward class of citizens or SC/ST.

It is founded on the principle of effective equality which includes giving preferential treatment for an interim period through empowering deprived groups and eliminating social injustice that has been prevalent for over a thousand years.

### 3.3.3 Article 16 – Equality of Opportunity in Public Employment

Article 16 provides for equality of opportunity to all citizens in the employment and appointment to any office under the State.

It bans discrimination based on religion, race, caste, sex (although not gender identity), descent, place of birth and residence. However, it allows certain exceptions:

- It is for the State to provide for reservation of appointments or posts in favor of backward classes, SCs and STs.
- Residence can be made a condition of eligibility for certain State or Union offices by Parliament.

This article qualifies the principle of equality with a concept of justice by providing reservations for historically disadvantaged communities.

### 3.3.4 Article 17 – Abolition of Untouchability

Untouchability is abolished and its practice in any form is forbidden. Thus, it is made a criminal offence to practice untouchability.

It provides equality by eliminating one of the most reprehensible aspects of discrimination in Indian society.

The Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have been enacted to achieve this objective.

The State is bound to see that untouchability is eliminated and that those affected by caste-based discrimination are protected.

### 3.3.5 Article 18 – Abolition of Titles

Article 18 Abolition of other titles conferred by the State shall be abolished, save those granted in respect of military or academic qualification. Aliens may be prohibited from acknowledgment to such titles without the sanction of the President. It also says that an Indian cannot accept a title from any foreign State.

The goal is to secure social equality by putting an end to the emergence of artificial class distinctions like 'Raja', 'Maharaja' or 'Sir'.

Even the civilian awards— Bharat Ratna; Padma Vibhushan; Padma Bhushan; or Padma Shri are not titles, but for distinction/ merit & there is no privilege attached to them that passes on to the next of the kin.

**“Activity: Equality in Everyday Life”**

Students will form small groups and list three real-life situations where equality is upheld and three where inequality is observed (e.g., school, workplace, public spaces). Each group will present examples, linking them to Articles 14–18, encouraging awareness of constitutional protections against discrimination.

### **3.4 Right to Freedom (Articles 19–22)**

The Right to Freedom (Articles 19-22) provides for personal freedoms that are indispensable for the development of an individual and the sustenance of a democracy. It involves freedom of speech; the right to express you; right to meet, form association, and take part in others association freely; considerations your property as your personal usage in purpose of pursuing happiness. It also provides for protection on conviction, defence against arbitrary arrest and confers rights to life and personal liberty with exceptions.

#### **3.4.1 Article 19 – Six Freedoms Guaranteed**

"I understand about six freedoms that are the basics for a citizen to have," Article 19 grants six freedoms to citizens:

**Freedom of Speech and Expression :** The Citizens are free to express their views, opinions through words of mouth/writing/print/pictures or any other medium. You can have reasonable restrictions for sovereignty, security, decency, public order or morality.

**Right to Assemble Peacefully and Without Arms –** Form assembly without arms – Citizens have right form public assembly peacefully, but that which is subject to the maintenance of public order.

**Freedom to Establish Associations or Unions –** Citizens have the right to establish associations, unions, or societies for political, social or cultural objectives.

**Right to Travel –** Citizens have the right to travel throughout India, except in restricted and protected areas.

**Right to Residence –** Citizens are free to live in any part of India (Subject to reasonable restrictions for security or public interest)

**Freedom to Pursue Any Profession, Occupation, Trade or Business –** Every citizen is free to pursue any livelihood [or] occupation of his [her] choice subject only to restrictions in the interest of public health, morality, safety and welfare and as provided by law.

These liberties are the bedrock of democracy, allowing citizens to express views, congregate collectively and earn a living.

20 Protection in respect of Conviction for Offences

### 3.4.2 Article 20 – Protection in respect of Conviction for Offences

THE LEGAL ASPECT Article 20— of the Indian Constitution accords certain rights to persons accused of crimes, thereby guaranteeing justice and fairness, while imposing restrictions on the powers of the State in criminal jurisprudence. They are, however, qualified in the sense that they do not protect citizens alone but also foreigners and non- citizenship rights cannot be suspended not even during an emergency therefore are absolute rights.

- No Ex Post Facto Laws

Meaning | An ex post facto law is something that makes an act a crime itself or increases the punishment for an act which although committed, still was not a crime. Article 20(1) prohibits a person being punished for an act that was not an offence when it was committed.

Example: If a law is enacted in 2024 that criminalizes an activity, and a person did the same thing legally in 2023, he cannot be punished.

Significance: This in turn would prevent the same people being victimized by ex post facto laws and guard against the arbitrary use of legislative power.

- No Double Jeopardy

Sense: Double jeopardy is prevented by Article 20(2) which accords protection against being tried and punished more than once for the same offence.

Example: Once an individual is tried and found not guilty, they cannot be tried again for the same crime.

Judicial interpretation: The Supreme Court has held that this is applicable in case of previous prosecution and punishment of any person once, departmental proceedings and civil penalty will not be covered under Article 20(2).

Its importance: It stops people from being harassed repeatedly through court trials and supports the principle of finality in criminal justice.

- No Self-Incrimination

Implication: The right under A 20(3) guards an accused against self incrimination. It prevents any coerced or tortured confession from being adduced as evidence.

Extent of guarantee: This right is guaranteed to any accused person. It includes oral testimony, compelled written statements and forced production of personal documents.

Judicial Pronouncement: In Nandini Satpathy v. P.L. Dani (1978), the Supreme Court widened the scope of this safeguard by ruling that an accused is entitled to be informed how he is arrested, if arrest has not been made in his presence and of right to silence as enshrined under Article 20(3) of the Indian Constitution.

Importance: It protects the dignity of a human being, resists abuse by those in authority, and enforces “the presumption of innocence.”

### 3.4.3 Article 21 – Protection of Life and Personal Liberty

Article 21 is the soul of the Constitution. It says “No one shall be deprived of his life (or) personal liberty except according to the procedure established by law.” Initially, in *A.K. Gopalan v. State of Madras* 1950, the Supreme Court gave it a narrow interpretation whereby any procedure prescribed by law was enough. However in *Maneka Gandhi v. Union of India* (1978), the court widened this meaning holding that procedure established by law must be fair, just and reasonable, not arbitrary or oppressive. This revolutionary decision converted Article 21 to a robust protectorates of human rights.

It is, therefore, not surprising to find that the judiciary has engrafted a number of rights on Article 21 and it has become the most versatile and dynamic Fundamental Right.

- Right to life with dignity: Life is not just an existence; it also means living with a certain degree of respect.
- Right to life: Work and wages are crucial for a good life.
- Right to health, and a clean environment: The courts have argued that pollution-free air, clean water and health facilities are integral part of the right to life.
- Right to privacy: The court has recognised it as a fundamental right in *K.S. Puttaswamy v. Union of India* (2017), protecting personal autonomy and confidentiality.
- Right to prompt trial: This prevents justice being meted out for ever and is established in *Hussainara Khatoon v. State of Bihar* (1979).

Accordingly, Article 21 has been a dynamic repository of human rights which shield the individual from capricious state action and seek to promote the full-fledged growth in life and liberty.

### 3.4.4 Article 21A – Right to Education

Article 21A was inserted into the Indian Constitution by the 86th Constitutional Amendment Act in 2002, acknowledging education as a strategy of empowerment. It declares education as a Fundamental Right for all children between the age group 6 to 14. This is the clause that makes basic education not a matter of privilege but an entitlement.

- Enforcement: This Article is enforced by the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act). It provides:
  - o Free and compulsory clothes by government schools.

o Compulsory allotment of 25% of seats for children from economically deprived sections: Private Schools.

o Teacher qualifications, infrastructure and quality of education standards.

• Significance:

o Makes literacy and empowerment available through the provision of basic education.

o Bridges the social and economic divide, providing opportunity for children from poor families to rise above their circumstances.

o Enhances democracy; the more you educate people, the more they know about their rights and duties as a citizens.

Article 21A is thus a significant departure towards social justice; it guarantees that every child, irrespective of her background, has access to education.

### **3.4.5 Article 22 – Protection in Cases of Preventive Detention**

This article compromises individual freedoms with national security and public order. This contains two parts - one related to safeguards for the arrestees and other about laws when it comes to preventive detention.

#### Rights of Arrested Persons

- Right to know grounds of arrest: It ensures transparency and prevents arbitrary detention.
- Right to be represented by counsel of choice: Protects the right for a well prepared and effective defence.
- Right to be produced before a magistrate in 24 hours: Prevents illegal detention by subjecting it to judicial oversight.
- Prevention of detention for more than 24 hours without forbearance: Introduces accountability and curbs police power.

#### Preventive Detention

- contrary to retributive detention (retribution for a crime), preventive detention is directed at preventing an individual from committing a potential future offense.
- A person is able to be detained for up to 3 months without the consent of parliament.
- The detention is extendable up to 1 year or beyond under laws like the National Security Act (NSA), if Parliament agrees.
- This section has been contentious as it provides wide ranging powers to State which could be abused.

Significance:

- Sets out a process for managing threats to security and public order.
- It also underscores the tension between individual freedom and state security.
- The judiciary has consistently held that the preventative detention must also be sparing and strictly follows the constitutional safeguards.

### 3.5 Right to Constitutional Remedies (Article 32)

Article 32 - The Right to Constitutional Remedies, also known as the 'heart and soul of the Constitution' according to Dr. B.R. Ambedkar, this provision gives citizens **the right to move the Supreme Court directly for the enforcement of Fundamental Rights. It provides** judicial recourse through writs, thereby saving state excesses and preserving democracy, liberty & justice.

#### 3.5.1 Dr. Ambedkar on Article 32 – “Heart and Soul of the Constitution”

For Dr. Ambedkar's explanation reminds us of how integral Article 32 is to the architecture of Fundamental Rights as a whole. He based his argument on three reasons:

- Rights without remedies are meaningless: A right matters only if there is a way to make it relevant. The materialisation of Fundamental Rights, sans Article 32, is mere paper acts.
- Judiciary as guardian: The article conferred on the SC (Supreme Court) original jurisdiction over FRs so that citizens did not have to depend on legislatures/executives. Established: The Court was now the watchdog of democracy.
- Court's duty, not mere power: Unlike discretionary remedies, Article 32 imposes a constitutional obligation on the Supreme Court to protect rights. That makes it a standout among many constitutions, which leave remedies to regular legislation.

Ambedkar's vision underpinned and adopted by the Parliament made article 32 a drsyopits living guarantee to every citizen that his rights could not be snatched away with impunity.

#### 3.5.2 Writs: Habeas Corpus, Mandamus, Certiorari, Prohibition, Quo Warranto

Article 32 grants the Supreme Court (and Article 226 confers similar power to High Courts) the power to issue writs for the enforcement of Fundamental Right. These are judicial orders created to protect freedom and prevent abuse of power.”

Habeas Corpus (“produce the body”)

- o It is the most famous writ that compels a person in custody to be brought before by a court.
- o Object: To safeguard individual's freedom and to prevent illegal detention of a person.
- o Example: The suspension of Habeas Corpus in ADM Jabalpur v. Shivkant Shukla during Emergency (1975-77) was roundly panned and facilitated its inviolability approach with explanations.

#### Mandamus ("we command")

- o Granted to a public official, authority, or body for the discharge of an obligation imposed by law upon it.
- o It serves the reaction of public officials not exercising or refusing to exercise their statutory duties.
- o Example: If an organization otherwise entitled to a license is wrongfully denied, the court may order them to issue it Raise Property Changed 2. Action Seeking To Compel An Agency Water Pollution Control v. NYC Department of Environmental Protection June 4, 2009 - by Michael Meyers The statute in question will often be a state or local law; but if it runs afoul of federal statutory provisions relating to anti-discrimination and some other areas, a violation is result through denial of funds raised thereunder..

#### Certiorari ("to be certified")

- o Issued to suppress the orders passed by such lower court or tribunal on their acting beyond jurisdiction or in violation of law.
- o Purpose: Avoid acts ultra-vires courts and quasi-courts.
- o Example: If an order comes from the tribunal without hearing the opposite party then a higher appeal court can set aside that order.

#### Prohibition

- o Granted to prevent a lower court or tribunal from exercising jurisdiction in a case over which it has no power.
- o Object: Protects citizens from illegal trials and defies unjust action of the judiciary.
- o Example: If the district court starts hearing a case, which is legally part of High Court, then higher court may stop that trial.

#### Quo Warranto ("by what authority")

- o Behalf of a party to keep one out of an office which the other ought to hold.
- o Purpose: =Protects the integrity of public office by making sure that only people eligible to lawfully hold office do so.

o Example: If a person is holding the office of Vice-Chancellor, but is not fulfilling the statutory requirements for eligibility, then he be removed by court.

Article 32 provides great weapons to the citizens of this country in the form of these writs for enforcement fundamental rights, their own as well as those of others — both against myself and others.

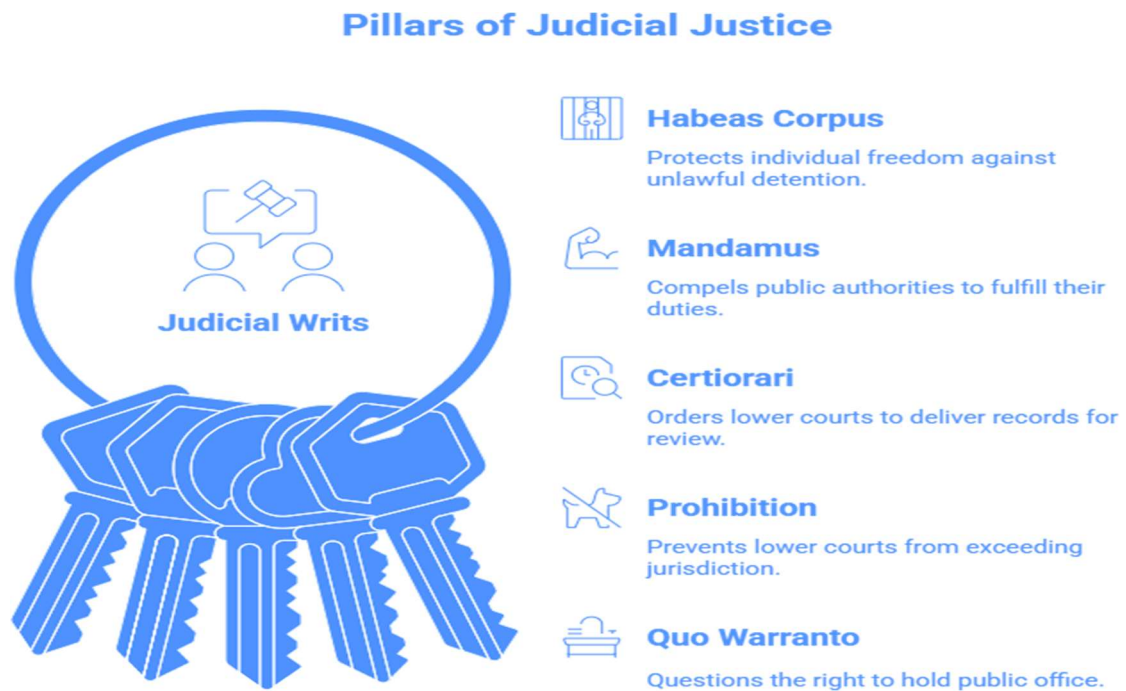


Figure 3.2

### 3.5.3 Judicial Activism and Public Interest Litigation (PIL)

The judiciary has been dynamic in its interpretation of Article 32 over the years, allowing it to stretch through.

Judicial Activism And The Public Interest Litigation (PIL) movement.

- Judicial Activism

Alludes to the doctrine fosters by courts of leading from the Constitution in order to ring-fence rights, despite legislative shortcomings.

Explanation: The courts have interpreted Article 21 under this approach to include right to health, education, livelihood, privacy, environment and speedy trial.

Example: In *Maneka Gandhi v. Union of India* (1978), the Supreme Court expanded Art 21 to include that “procedure established by law” had to be fair, just and reasonable.

- Public Interest Litigation (PIL)

An innovative idea that enables any citizen or a group to submit a petition on behalf of the public/poor.

Explanation: PILs have enabled ordinary people to gain access to justice when they cannot approach the courts directly in case of any violation. Examples:

- *Hussainara Khatoon v. State of Bihar* (1979): Established the right to speedy trial for undertrial prisoners.
- *MC Mehta v. Union of India*: The right to life was read as also implying the right to a pollution-free environment.
- Cases on women’s rights, defending slum dwellers and bonded labor originations as well were taken up through PILs.

It confers a right of standing on any member of the public to approach the court (not necessarily the victim) in cases where other’s rights are violated. Public Interest Litigation (PIL) in India is a judicial innovation, which has contested the traditional meaning of and reasoning behind law as it had been previously understood. PIL has emerged out of the realization that often there could be no access to courts for the poor or oppressed. The poor or oppressed are not knowledgeable about their rights nor can they afford to seek legal assistance from a lawyer. PIL suit can take cognizance independent even somebody else and concerned with public at large.

Judicial Activism and PIL have read Article 32 as a flexible tool of justice-making that transcends private concerns to publish law for the good of all.

#### Role of the Practice of Article 32

- Providing a direct relief for breach of the Fundamental Rights.
- Opens the Supreme Court to everyone, no matter your station in life.
- Outfit the courts with potent writs to stop abuse of power.
- Strengthens judicial review, a constitutional bedrock.
- It goes beyond the protection of the individual towards social concerns through PIL and becomes an instrument of social revolution.

### 3.6 Landmark Cases

Supreme Court judgements Central to Fundamental Rights are the landmark decisions of the Supreme Court that interpreted these provisions and gave them meaning. These were the cases like Kesavananda Bharati v. State of Kerala, Maneka Gandhi v. Union of India and Hussainara Khatoon v. State of Bihar which furthered rights, deepened democracy and ushered in Basic Structure Doctrine.

#### 3.6.1 Kesavananda Bharati v. State of Kerala (1973)

This case is considered as a landmark in the constitutional history of India. The controversy had started after holder Swami Kesavananda Bharati, the head of a religious mutt (monastery) in Kerala's Edaneer Mutt, came to court challenging the land reform laws brought in by the government at that time. The question widened-it was whether the Parliament had plenary power to amend the Constitution which included Fundamental Rights.

- Background:

- o The case occurred at a time when Parliament was frequently changing the Constitution to effectuate socio-economic changes.

- o Previous decisions (Shankari Prasad, Sajjan Singh, Golaknath) were producing conflicting views on the question as to whether the Fundamental rights could be amended or not.

- Supreme Court's View:

- o The judgement was pronounced by a 13-bench, which is the highest ever in India.

- o The Court determined that while Parliament was given the power to change the Constitution, it is not absolute.

- o The Basic Structure Doctrine—Court established: Parliament cannot distort or amend the basic features of Constitution.

- Components of the Basic Structure (explicated):

- o Fundamental Rights: Citizens rights are the core of democracy n cannot be done away with.

- o Check and Balance System: The courts should have the power to review laws for constitutionality.

- o Democracy and Rule of Law: The elections, and by extension democratic governance, must be protected.

- Impact:

- o This decree amounted to an enduring protection for democracy.

o It guaranteed that no government could leverage its parliamentary majority to rip up constitutional values and eliminate rights.

### 3.6.2 Maneka Gandhi v. Union of India (1978)

This decision was the one which most broadly interpreted Article 21. It was born when government impounded the passport of Maneka Gandhi without affording her a hearing. She assailed that step on the ground that it violated her Right to Personal Liberty.

Supreme Court's Ruling:

The Court said that the phrase "procedure established by law" in Article 21 cannot be mistaken to mean any procedure, but only a fair and just (and not an arbitrary) procedure.

Unreasonable laws, unjust procedures would also not pass the test of Article 21.

The Court read Article 21 with Article 14 (Right to Equality) and Article 19 (Right to Freedom), which is considered as the "Golden Triangle" of rights.

Wider Interpretation of Article 21 (explained):

Right to Travelling Abroad: The right to travel is included in the meaning of Liberty, it means liberty even to go outside India.

Right to Privacy and Dignity: Personal liberty includes autonomy and dignity.

Right to due process: The administrative and legal processes should be fair.

Impact:

This decision interpreted Article 21 expansively as a provision of human rights.

It set the stage for subsequent judgments recognizing rights other than liberty such as livelihood, environment and education under Article 21.

### 3.6.3 Other Cases Expanding the Scope of Fundamental Rights

In addition to Kesavananda Bharati and Maneka Gandhi, many other rulings have lent meaning to Fundamental Rights.

- A.K. Gopalan v. The State of Madras (1950)

- o An early article 21 case where the court sustains law of preventive detention.

- o The Court took a strict, or narrow construction ruling that any procedure provided by law is due process no matter how much liberty it punishes.

o This opinion was later turned down in *Maneka Gandhi*, the Court demanded fairness and reasonableness.

- *Indira Gandhi v. Raj Narain (1975)* • *First Judges V. Union of India (1981)* Rape Cases: • *Before Mathura's Case(1972)*: This was case of Mathura, a helpless and illiterate marwardi young girl living with uncle and step mother in his fertile land who was repeatedly raped by police men when alleged theft was stolen from the house of relative of her master and rape resulted to death due to torture.

o This matter originated in the petition filed questioning the election of Prime Minister Indira Gandhi.

o Parliament's failed second try to pass the 39th Amendment – one that would've made the election of the Prime Minister (once again) not justiciable.

o This amendment, along with the other unlawful amendments, was invalidated by the Supreme Court as judicial review and free elections are implied parts of basic structure.

o It served to remind us that the constitution is a higher authority than the Prime Minister himself.

- *Olga Tellis v. Bombay Municipal Corporation (1985)* • This is the case that led to one such landmark ruling to be entered by the Indian Supreme Court.

o Commonly referred to as the *Right to Livelihood Case*.

o *Pavement dwellers of Mumbai* opposed their evictions, as it deprived them of earning the livelihood.

o The Court explained that in Article 21 the *Right to Life* implies and means the *Right to Livelihood*, because no one can live without the means of livelihood.

o This widened the scope of Article 21 to socioeconomic rights.

- *Justice K.S. Puttaswamy vs Union of India (2017)*

o The *Right to Privacy* was held to be a *Fundamental Right* under Article 21 by all nine judges of the Supreme Court.

o The verdict carries an outsize importance for privacy, surveillance, Aadhaar and personal freedoms.

o It was also ruled that privacy is integral to dignity and liberty as it is a part of the essential framework of the Constitution.

### 3.7 Restrictions and Reasonable Limits on Rights

SECTION II: RESTRICTION SAND REASONABLE RESTRICTIONS ON FUNDAMENTAL Rights to ensure that Fundamental Rights are not unrestricted but measurable against the maintenance of public order, morality, public health and security and the rights of others. Constitution allows reasonable restrictions by way of laws, reconciling freedom of individual with social interest, ensuring democracy while avoiding abuse/discrimination in the name of rights.

#### 3.7.1 Grounds of Restriction under Article 19(2)

Art.19 confers six forms of fundamental freedoms, however they are not absolute and subject to reasonable restriction under Article 19(2). These grounds include:

Sovereignty and Integrity of India - Restrictions can be placed to safeguard the unity, sovereignty and integrity of the country.

Security of the State – Freedoms can be limited if they will cause a threat to the nation, for example, if one starts a rebellion, or involving in terrorism.

Relations with foreign States – Restrictions could come in force only to preserve diplomatic relations of India with any other country.

Public Order - Rights can be limited if they disrupt peace and order, for example by provoking riots or illegal assemblies.

Decency and Morality – Freedom of speech cannot prostrate itself before filthy language.

Contempt of Court – Limitations on expressions if the same is intended to lower the authority or dignity of courts.

Libel - Freedom of speech does not permit ruining someone else's good name.

Instigation of an Offence – Any activity which may lead criminals to commit offence can be curbed.

Therefore, the Constitution reconciles liberties with duties to make sure that rights are not taken advantage of in a way that does harm to society.

#### 3.7.2 Emergency Provisions and Suspension of Rights

Articles 352, 356, and 360 of the Constitution of India permit suspension of Fundamental Rights including freedom of speech under specific emergency conditions.

(head of state or higher) Article 19 is automatically suspended during a National Emergency as per Article 352 which covers war, external aggression or armed rebellion.

- Parliament can alter the application of other Fundamental Rights at this time.
- Article 359 permits the President to suspend the right to move any court for remedies for alleged contravention of Fundamental Rights.
- For instance: During the Emergency of 1975–77, certain rights were suspended, underscoring how checks on executive power are essential.

The emergency laws guarantee the stability of the State, however are to be applied with caution so not to abuse citizen's rights.

### 3.7.3 Balancing Rights with Duties and Social Order

The Fundamental Rights are harmonized by the Directive Principles of State Policy with the object of ensuring balanced life in society.

- Rights ensure that citizens are free, and duties remind the citizens of their responsibility towards the nation.
- Such as freedom of speech is contingent on acting responsibly and not spreading hate or violence.
- The Right to Equality needs to be harmonised with the duty to advance harmony and tolerance variegation.

2 • Article 21 reads: The States shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

It is about the balance of rights and obligations - to ensure that individual freedom does not compromise social well being. It establishes a structure of exercising freedom which is responsible, in keeping with law, order and social justice.

### 3.8 Summary

- ❖ Fundamental Rights are protected under part III of the Constitution (articles 12 to 35).
- ❖ They are necessary processes for protecting freedom, equality and justice in a democratic society.
- ❖ Right to Equality (Articles 14–18): It guarantees equality before the law and prohibits discrimination on grounds of religion, race, caste, sex or place of birth.
- ❖ Freedom of Right (Articles 19-22) gives freedom to speech, movement, profession and right to life and liberty.
- ❖ Article 21A provides free and compulsory education of children between the ages of 6-14 years.

- ❖ Right to Exploitation (Articles 23–24) against forced labor, trafficking of human beings and employment of children in the cruel forms of works.
- ❖ Right to Freedom of Religion (Articles 25–28) provides freedom from religion and secures secularism of the State.
- ❖ Cultural and Educational Rights (Articles 29-30) safeguard the interests of minorities to preserve their culture and to set up institutions.
- ❖ Right to constitutional Remedies (Article 32) is that any citizen can go directly to court if one felt that fundamental rights had been violated.
- ❖ The Supreme Court and the High Courts can issue writs such as habeas corpus, mandamus, prohibition, certiorari and quo warranto.
- ❖ Judicial activism and PILs have broadened the horizon of Fundamental Rights making them available to the people.
- ❖ Decisive cases like Kesavananda Bharati (1973) and Maneka Gandhi (1978) reinvigorated and expanded the scope of these rights.
- ❖ The Fundamental Rights can be restricted in such a way that it maintains equilibrium between the individual liberty and social peace.

### 3.9 Key Terms

1. Fundamental Rights– The rights and freedoms that are guaranteed to all the citizens of India by our constitution, which is enforceable by the courts.
2. Equality before Law – It is the principle that all persons are equal in law whether they belong to any group or not (Article 14).
3. Untouchability - Caste based practice of discrimination that the Article 17 has abolished.
4. Vice and Preventive Detention – Incarceration to stop people from committing crimes (Article 22).
5. Writs – Court orders to safeguard these Fundamental Rights.
6. PIL (Public Interest Litigation) – A case filed for protecting the interest of the public, which may even be filed by a non-aggrieved person.
7. Doctrine of Basic Structure – The Doctrine that there is a basic structure to a Constitution which can not be altered by Parliament.
8. Reasonable Restrictions – the restrictions imposed by law on Fundamental Rights for public order, morality and national-interest.
9. Judicial Activism - The doctrine based on the Court's power of judicial review; i.e., the court has a duty to step in and check abuses when other branches of government have failed to do so.

### 3.10 Descriptive Questions

1. Discuss the role of Fundamental Rights in upholding democracy.
2. Explain the features of Right to Equality (Articles 14–18) giving illustrations.
3. Which are the 6 freedoms provided under article 19? Explain with limitations.
4. Discuss the significance of Article 21- Right to Life and Personal Liberty in Indian democracy.
5. Explain the extent of Right against Exploitation (Articles 23 – 24) with examples.
6. Discuss your conception of Article 32 as an instrument/ device for implementation of the Fundamental Rights.
7. Analyse the significance of the landmark cases such as that of Kesavananda Bharati (1973) and Maneka Gandhi (1978).
8. What is the balancing of fundamental rights and social order in 'reasonable restrictions'?
9. Briefly explain Judicial Activism and PIL in the context of Fundamental Rights.

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### Answers to Knowledge Check

#### Knowledge Check 1

1. c) 17

2. c) 21A
3. b) 24
4. d) 32

### 3.12 Case Study

#### Freedom of Expression and the Right to Dissent in a Democracy

##### Introduction

Fundamental Rights are the heart and soul of Indian democracy which guarantees freedom, equality and dignity to all its citizens. Of these, the Right to Freedom of Speech and Expression under article 19(1)(a) is responsible for empowering individuals to speak their mind. But there can be no such thing as unlimited freedom. Limits can be 'reasonable' according to Article 19(2) of the Constitution between freedom on one side and public order, security and morality in the other.

This case study notes how courts interpret the delicate balance of free flow of ideas in a society and societal stability. It serves as a reminder of the need to defend dissent and promote responsible exercise of rights within democratic constraints.

##### Background

There have been several such cases in recent years that tested the limits of freedom and speech and expression in India. Peaceful demonstrations were arranged by students and activists, protest against government decision. They said they were exercising a constitutional right but, in certain instances, authorities secured restrictions for public order and security reasons.

The matter posed a fundamental constitutional dilemma: Can the State stifle peaceful expression and dissidence under the guise of preserving order or is such behaviour in violation of Article 19?

##### Problem Statement 1: Boundaries of Free Speech

There are citizens who cannot express criticism about what the government does. The authorities say such speech can ferment unrest.

Solution: Courts have made us understand that peaceful criticism, though some in the government may fidget, is all covered under Article 19. Freedom of speech may be limited only if the speech advocates violence or endangers sovereignty.

MCQ:

GK / Indian Polity / What is the constitutional provision that allows free speech to be restricted in India?

- a) For the sake of party face
- b) For purposes of public order and morality
- c) To avoid being criticized for the policies of the government
- d) To ensure only positive expression

Answer: b) For the maintenance of public order and morality

The Bad Use of preventive Detention: Problem Statement 2

People can be and are prevented from expressing dissent, often by being detained preventively. This leads to concerns regarding misuse of Article 22 rules.

Solution: The courts have emphasized that preventive detention cannot become a shortcut for tackling peaceful protests. It maintains the citizens' right to constitutional remedies under Article 32.

MCQ:

Which Article provides the right to approach directly to Supreme Court for enforcement of rights by a citizen?

- a) 14
- b) 19
- c) 21
- d) 32

Answer: d) 32

Problem 3: The Balancing Act of Inalienable Rights and Social Order

Too much freedom can result in hate speech or libel, while too little makes for a weakened democracy. The trick is to keep your balance.

Answer: To protect our liberties and bring about order, the courts apply rule of reasonable restrictions in which rights come with responsibility.

MCQ:

Name the Article which provides freedom to impose reasonable restrictions on speech and expression?

- a) Article 14

b) Article 19(2)

c) Article 21A

d) Article 25

Answer: b) Article 19(2)

Conclusion

Freedom of speech is a hallmark of democracy which enables citizens to question, criticise and participate in the governance of their country. And in the meantime, restrictions prevent that freedom from being abused to sabotage national security or social harmony. Courtroom interpretation and constitutional reservations still protect dissidence in India as a valid form of democratic expression.

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## Unit 4: Directive Principles of State Policy (DPSPs) and Fundamental Duties

### Learning Objectives

1. Understand the concept and significance of Directive Principles of State Policy in guiding governance.
2. Explain the classification of DPSPs into Socialist, Gandhian, and Liberal-Intellectual principles.
3. Analyze the role of DPSPs in promoting social justice, equality, and economic welfare.
4. Evaluate the differences between Fundamental Rights and Directive Principles in the Indian Constitution.
5. Examine the constitutional amendments and judicial interpretations that strengthen the implementation of DPSPs.
6. Understand the origin, importance, and purpose of Fundamental Duties in the Constitution.
7. Identify the specific Fundamental Duties of citizens as listed in Article 51A.
8. Assess the relationship between Fundamental Duties, Fundamental Rights, and DPSPs in ensuring responsible citizenship.
9. Develop an awareness of the practical importance of DPSPs and Fundamental Duties in promoting democracy, unity, and integrity in India.

### Content

- 4.0 Introductory Caselet
- 4.1 Nature of DPSPs
- 4.2 Classification of DPSPs
- 4.3 DPSPs as Guides to Governance
- 4.4 Fundamental Duties under Article 51A
- 4.5 Comparison of Fundamental Rights and DPSPs
- 4.6 Case Law
- 4.7 Summary
- 4.8 Key Terms

4.9 Descriptive Questions

4.10 References

4.11 Case Study

## 4.0 Introductory Caselet

### Balancing Growth with Social Justice

The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), a welfare program to ensure right to work, was launched by the Government of India in 2005. The scheme, besides being an anti-poverty instrument, is specifically designed to take the implementation of the Directive Principles of State Policy- particularly those that pertain to securing right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

Meanwhile many environmental problems were posed as industrialisation large project took the lead. Citizens and environmentalists also wielded the Fundamental Duties, particularly the duty “to protect and improve the natural environment,” when they took to litigation to oppose projects that led to an ecological imbalance.

This case illustrates the close connection between Directive Principles which direct content of government policies and Fundamental Duties which keep reminding citizenry about their responsibilities in nation building. Together, they hope to find the right road between development, social justice and sustainability.

#### Critical Thinking Question

How can citizens and State act united to ensure that the economic developmental policies respect ‘Directive Principles of State Policy’ as well as ‘Fundamental Duties’.

### 4.1 Nature of DPSPs

The Constitution of India enumerates the Directive Principles of State Policy (DPSPs) to guide and govern state mechanism for social welfare and justice. These are non-justiciable but serve as moral obligations for the state to guide policies. DPSPs seek to build a welfare state, and ensuring equality, dignity and people`s sense of well-being.

#### 4.1.1 Concept of Directive Principles of State Policy

The Directive Principles of State Policy (DPSP) are the guidelines or principles given to the federal institutes governing the state of India, to be kept in citation while framing laws and policies.

They are supposed to guide the State in enacting its laws and ordering its policies to realise the four main visions of justice, liberty, equality and fraternity as declared by the Preamble.

DPSPs are based on the Irish Constitution and combine Gandhian philosophy with socialist principles as well as liberal approach.

They set forth the for government to follow: Social and economic justice Mitigating inequality of various kinds Reduction of concentration of wealth Promotion of welfare of people Securing a social order based on justice They, therefore, serve: A moral obligation on the State to promote welfare To build a society which will make individual development possible On this basis, DPSPs urge not only peaceful revolution but also constructive counter-revolution.

#### 4.1.2 Non-justiciable Nature of DPSPs

The DPSPs are stated to be non enforceable by courts. Members of the public can't march in court and demand that they get enacted.

This nature is intentional, because:

- They are concerned with large social economic aims for which resources, programming and time are necessary.
- The government may not be able to carry out all of the very ambitious proposals immediately.

Although not directly enforceable, they are basic to governance.

The courts have consistently read Fundamental Rights in the shadow of DPSPs, which makes their indirect enforceability.

Examples:

o Right to education (originally a directive principle of state policy, later accorded the status of fundamental right in terms of Article 21A).

o Environmental protection is a Directive Principle, but it has been recognized by the court as an integral component of the right to life.

#### Did You Know?

“The Directive Principles of State Policy are non-justiciable, meaning they cannot be enforced in a court of law. However, they are considered fundamental for governance. Interestingly, many welfare schemes like MGNREGA and Right to Education were inspired by DPSPs, even before becoming legally enforceable rights.”

#### 4.1.3 Importance of DPSPs in Indian Governance

The Directive Principles of State Policy (DPSP) are an integral part of the Indian Constitution, as they set out the economic and social framework for governance in India. As non-justiciable, they are not without effect on governing and law-making because they serve as moral and political directions for the administration. Their significance can be recognized in the light of following:

- Guiding principles for legislation

DPSPs frameworks for legislators to formulate policies for social and economic justice. They would make sure that every law or policy is consistent with the principles of equality, fairness and a shared sense of belonging.

- Promotion of a welfare state

The principles urge the State to work towards fulfilling fundamental necessities such as education, health, food and employment. They are trying to reclaim the dithering/marginalized and oppressed classes / castes through welfare policies.

- Strengthening democracy

DPSPs provides the democratic base of India by ensuring equality, liberty and justice. They give substance to democracy by guaranteeing that governance is not restricted to political rights but includes social and economic rights.

- Link between FRs & Duties

FRF are based on rights, whereas FDF enforce duties. DPSPs supplement both by making rights not only potentially realizable, but also under enabling conditions free for everyone to realize.

- Ensuring social and economic justice

DPSPs mandate the State to minimise disparities in wealth, status and opportunities. They stress equitable distribution of resources, so that development reaches all groups in society? and especially the poor and disadvantaged.

- Setting a vision for governance over the long term

The Five Principles are only overarching principles to be gradually realised by the State as long term aims. This will help ensure a stable development toward balance and sustainability, so the nation's social and economic health remains strong.

- Judicial guidance

Although DPSPs are not enforceable in courts, the judges frequently invoke them while interpreting the constitutional clauses. Their relevance is especially important in cases involving the public interest and welfare, with an impact on judicial rulings.

- Maintaining constitutional balance

DPSP's reconcile individual rights with collective welfare. So too do they save us from the rush toward anti-social individualism at the expense of the common good, and so they reaffirm the impulse behind cooperative and participatory government.

## 4.2 Classification of DPSPs

DPSPs are further classified as: (I) Socialist Principles which seek to promote social and economic equality; (II) Gandhian Principles inspired by the theory of Mahatma Gandhi revolving around self-reliance and rural development; and (III) Liberal-Intellectual Principle aiming at democracy, international peace and justice ensuring balance in governance of the State.

### 4.2.1 Socialist Principles

The socialist principles seek to achieve the welfare state as envisaged by Preamble where social, economic and political justice is not denied. They are motivated by socialist principles and aim to decrease disparities of wealth, income and social status.

Article 38: Mandates the State to strive to promote a social order based on justice. It needs to be about reducing income inequality, status inequality, facility and opportunity inequalities.

Article 39:

Ensuring all citizens have an acceptable livelihood.

Avoiding wealth and resources being concentrated in a few hands. Men and women will receive the same pay for doing the same jobs.

The health and vigor of working men and women and the protection of childhood and youth from exploitation.

Article 41: Directs the State to secure work provisions and make effective provision for education, public assistance in cases of unemployment, old age, sickness and disablement.

Article 42: Provides for human conditions of work and relief from maternity.

Article 43: The state will Endeavour to secure a living wage and decent conditions of work for workers.

Section 45: Obligation of the State to raise nutrition level and standard of living and improve public health.

Example in action: Programmes such as Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and Right to Education Act have been motivated by these socialist doctrines.

#### 4.2.2 Liberal-Intellectual Principles

These standards are inspired by the basic tenets of liberal democracy, including personal freedom, cultural expression and the rule of law on a world scale.

Article 44: Uniform civil code for the citizens; This UCC is intended to replace personal laws based on the scriptures and customs of each major religious community in India with a common set governing every citizen.

Article 45: Requires the State to attend to early childhood care, and free education of children up to six years of age.

Article 48: Obliges the State to develop agriculture and animal husbandry scientifically.

Article 50: Proposes removal of the judiciary from the executive cause for independence.

Article 51: Requires the State to aid in ensuring international peace, security and respect for international law and treaty obligations.

Example in practice: India's active role at the United Nations and in peacekeeping operations is Article 51, while continued independence of judiciary is under Article 50.

#### 4.2.3 Gandhian Principles

These principles are based on the philosophy of Mahatma Gandhi, which emphasizes rural development, decentralisation, self-sufficiency and improving the lot of weaker sections.

Article 40: Provision of the State to take steps for organizing village panchayats and endowing them with such powers as may be necessary to enable them to function as units of self-government.

Article 43: Promotes cottage industries and Village Industries in rural areas, to secure self-employment.

Article 46: The State shall promote with special care the educational and economic interests of the weaker section of the people, and in particular, the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Article 47: Statement forbidding intoxicating drinks and drugs injurious to health.

Article 48: The State shall prohibit cow slaughter and protect milch and draught cattle.

Practice example: 'Panchayati Raj' under the 73rd Constitutional Amendment (1992) is a function of Gandhian ideas to promote democratic process at lower tiers of government.

#### 4.2.4 Other Classifications by Scholars

In addition to the conventional classification of Directive Principles of State Policy (DPSPs) into Socialist, Gandhian and Liberal-Intellectual ones, several scholars have made more specific classifications reflecting their broader context.

One such method is to subdivide these responses into Positive and Negative DPSPs. Some positive directives oblige to the State to have constructive role in promoting people's welfare i.e. Article 39, Equal Pay for Equal work, etc. Negative orders, on the other hand, prohibit certain practises from occurring; Art 47 prohibits intoxicating drinks and drugs keeping us healthy and moral.

There is another classification which divides them into Social, Economic and Political DPSPs. Attention is called to social orders in respect of education and health, prohibition of alcohol and improvement of the weaker section. Economic principles emphasize equitable distribution of economic output, decent work and livelihood, fair wages and labor welfare. Political instructions to strengthen democracy and exercises judicial independence, application of the United Civil Law Code, and promotion of international peace and security.

Another group consists of Neo-Gandhian or Environmental Principles added through subsequent constitutional amendments. For example, Article 43A (42nd Amendment, 1976) provides for workers' participation in the management of industries and Article 48A (also by 42nd Amendment, but in 1976) states that the: State shall protect and improve the environment and safeguard forests and wildlife. This environmental centric bias has invested modern governance with the Environment Protection Act, 1986 and nurtured judicial activism in environmental conservation.

In this way these alternative classifications provide a more dynamic and variegated picture of DPSPs than regime theory, demonstrating how they inform governance not only with respect to the twin issues of social justice and economic justice in the country but also as society adapts to new challenges such as industrial relations and environment sustainability.

### “Activity: Mapping DPSPs to Real-Life Policies”

Students will be divided into three groups—Socialist, Liberal-Intellectual, and Gandhian. Each group must identify one government scheme or law corresponding to their assigned category of DPSPs and present how it reflects the constitutional directive. This encourages practical understanding of abstract constitutional provisions.

#### 4.3 DPSPs as Guides to Governance

Directive Principles of State Policy (DPSPs) serve as a beacon to the government of India, to establish an ideal society. They command the State to work for welfare, justice and equality. States must mould policies and laws. They are non-justiciable, but they offer a vision of how to achieve a just and equitable society.

#### 4.3xRoleofDPSPs in Formulation of Policy

DPSPs act as the beacon lights for governance, and requires that governments adhere to constitutional directives when framing policies.

**Sanguk.in Legislative Directives:** They direct in legislative action the parliament and state legislatures in enacting positive laws for promoting welfare of the people and reduction of inequalities. For instance, many of the labor laws, rent control laws and environmental legislations are based on DPSPs.

**Moral Responsibility –** Governments are morally obligated to implement DPSPs as they constitute the ‘Constitutional Genesis’ and as such represent the “Constitutional conscience”.

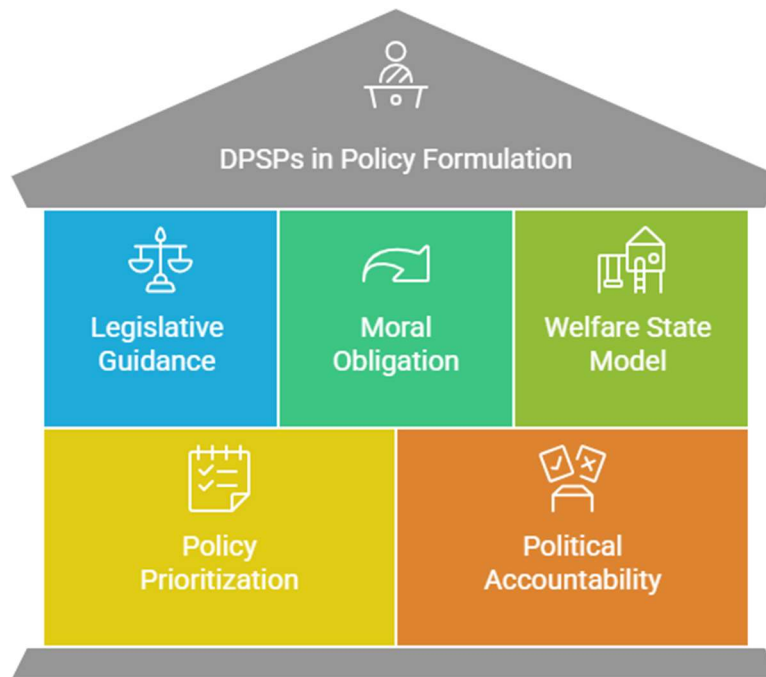
**Welfare State Model:** They transition government from a “police state” (concerned only with law and order) to a welfare state (committed to justice, health, education, employment).

**Policy Prioritization:** They help the government to set targets such as universal education, rural development and social security in the long-term national planning.

**26 Political Accountability:** Governments are held to account by their implementation of policies that are consistent with DPSPs, including movements towards poverty alleviation and initiatives for social justice.

Illustrative Examples:

- Five Year Plans and NITI Aayog strategies represent the vision of Articles 38 and 39.
- MGNREGA (2005) is the result of Article 41.
- Maternity Benefit Act, 1961 is based on Article 42 (humane working conditions).



**Figure 4.1**

#### **4.3.2 Examples of DPSPs in Indian Policies**

Directive Principles of State Policy (DPSPs) have played an important part in the formulation of Indian policies and governance since independence, be it through their function as a guideline to the state or being used like a yardstick upon which enacted laws may be compared to.

Under land reforms directed by Article 39 (b) and (c), institution of the Zamindari system, acquisition of ceiling surplus land, and distribution of such lands to the individual cultivators aimed at removing feudal structures; but the schemes could be effectively implemented in some states only.

In the field of education, according to Art.41 and 45 - progressive interventions such as the Right to Education Act,2009 the Mid-Day Meal Scheme and childhood programmes under ICDS have increased literacy and school enrolment but quality and access remain issues.

Spurred on by social justice, which is based on Article 46 of the Constitution, the government adopted reservations in education and jobs for SCs, STs and OBCs, as well as welfare measures including scholarships and poverty reduction programs that together improved the representation of disadvantaged sections.

On the health and nutritional front, informed by Article 47, landmark legislations like National Food Security Act (2013), Ayushman Bharat for health insurance and National Rural Health

Mission (NRHM) have improved accessibility to healthcare and nutrition, but not in similar extent in rural vis-à-vis urban areas.

Environment: The Gandhian approach to environmental protection, incorporated through Article 48A in the 42nd Amendment (1976), with legislations like Environment Protection Act (1986) and creation of National Green Tribunal (2010) set a legal environment framework too for sustainable development that address challenges such as pollution, deforestation and climate change.

These are few among the many such illustrations, where they show that DPSPs have been not just ideals for realization but have also steered the social development in India and linked constitutional morality with effective governance.

### 4.3.3 Judicial Use of DPSPs in Constitutional Interpretation

Non-enforceable in the courts, the Directive Principles of State Policy (DPSPs) have been held to be fundamental in the governance of the country and its continued progress. The judiciary has used these to develop the content of Fundamental Rights and bring laws into line with principles of justice, equality and welfare.

In *State of Madras vs. Champakam Dorairajan* (1951) SC had ruled that FR will supersede DPSP. The decision laid bare their bone of contention, paving the way for India's first constitution amendment in 1951 -- the First Constitutional Amendment passed along with provisions for reservation in education.

The famous decision of *Kesavananda Bharati v. State of Kerala* (1973) turned the tide when it said that the harmony between FRs and DPSPs is part of the basic structure of our Constitution. This made the role of DPSPs in constitutional interpretation more robust.

In *Minerva Mills v. Union of India* (1980) the Court held Fundamental Rights and DPSPs to be supplementary rather than contradictorily opposed. It repealed some parts of the 42nd Amendment, which had placed DPSPs above Fundamental Rights, and ensured that balance was again established between them.

The judiciary has also leveraged DPSPs to enlarge the scope of individual rights. In *Unni Krishnan v. State of Andhra Pradesh* (1993), the Right to Education, which was once upon a time, only a DPSP is now part and parcel of Article 21 (Right to Life). All these served as the precursor for the introduction of Article 21A, enshrining Right to education as a Fundamental one. So also, in *Olga Tellis v. Bombay Municipal Corporation* (1985), the Right to Livelihood was accepted under Article 21 with reference to Article 39.

In *State of Kerala v. N.M. Thomas* (1976), the Court held reservations in promotion to be constitutional because it interpreted the notion of equality with reference to the goal of social justice enunciated in DPSPs.

In general, DPSPs are spirit of the Constitution according to judiciary. They are not enforceable in their own terms, but are infused into the interpretation of Constitution as guiding principles to direct judges towards a broader vision for rights and to make sense of laws and policies grounded on these social objectives.

#### 4.4 Fundamental Duties under Article 51A

Introduction of the Fundamental Duties in Article 51A was from the 42nd Amendment (1976) to highlight that citizens too have some duty towards the country. Cultivate love for country, discipline and respect for the constitution, environment and public property to inculcate the mind with balanced rights and duties for the common good.

##### 4.4.1 Origin and Incorporation (42nd Amendment, 1976)

Constitutional Journey: The Indian Constitution makers, originally had not kept F.Ds. They considered that the duties were already a part of Indian society and once it was incorporated in the Constitution, people would themselves feel inclined to practice it.

Swaran Singh Committee (1976): Set up during the period of Emergency (1975–77), it suggested incorporation of the Fundamental Duties in the Constitution.

42nd Amendment (1976): This added Part IVA of Article 51A, on the recommendations of the committee which contained ten Fundamental Duties.

Borrowed Idea: The idea drew on the Constitution of the former USSR, which emphasized not only citizen rights but also duties.

Amendment 86th Amendment (2002) Adding the eleventh Fundamental Duty i.e., parent to provide opportunities for education of his child, or as the case may be, ward between age of six and fourteen years.

Purpose:

- To develop discipline, civic sense and a sense of duty among people.
- To protect rights with responsibilities, lest freedom deteriorate into license.
- To promote and maintain national unity, integrity and democratic practices.

##### 4.4.2 List of Fundamental Duties

Art 51A The Art 51A describes the Fundamental Duties of every citizen of India.

11 To uphold and protect the sovereignty, unity and integrity of India. To promote among the people a sense of unity and national integration.

To defend and preserve the sovereignty, unity and integrity of India.” To defend the nation and perform service to the country whenever summoned.

To bring about integration of all the people of India amongst ourselves.

1 To respect and cherish the rich heritage of our composite culture.

To maintain and enhance the natural environment, forests, lakes, and rivers in such a way that there is pending litigation over this? Positive Button A native New Yorker talking shit about Oklahoma.

3 Scientific temper, humanism and the spirit of inquiry and reform; To protect public property and to renounce violence.

To pursue, with excellence, all areas of human and collective activities so that the nation may constantly rise to higher levels of achievement.

To enable the state governments free and compulsory education to all children of age 6 to 14 (amendment by the 86th amendment act, 2002).

#### 4.4.3 Importance of Fundamental Duties in Civic Responsibility

But, however unenforceable by law, the Fundamental Duties have critical significance in the formation of civic consciousness:

Balance between Rights and Duties: Without duties, rights can be abused/freedom may not necessarily be used responsibly. Duties are source of reminding us that rights always have duties with them.

Consolidating National Unity: Responsibilities such as respecting the Constitution, maintaining sovereignty and safeguarding our country serve to strengthen national integration.

Social and Cultural Responsibility: Obligations to maintain heritage and promote solidarity support cultural diversity and inclusiveness.

Protection of environment: Art 51A(g) emphasis, i.e is on citizen responsibility to environmental protection laid the foundation for environmental activism and judicial interventions.

Propagating Scientific Temper: The constitution enforces a scientific temper and humanism to that people might think on more rational lines and make reforms.

**Democratic Participation:** The citizens are expected to participate and get involved in the government through respecting for law, public property and common benefit.

**Parental Responsibilities:** The obligation of parents towards the education of children points to the relationship between education and responsible citizenship.

**Practical Impact:**

- Public awareness and environment conservation, voter awareness etc., campaigns and schemes like “Swachh Bharat Abhiyan” which are intended for the welfare of the nation is a reflection of spirit enshrined in the Fundamental Duties.

#### **4.4.4 Judicial Recognition of Fundamental Duties**

Although Fundamental Duties are not legally enforceable, the Supreme Court has used them for interpreting and enforcing other constitutional restrictions and enforcements.

**AllMS Students Union v. AllMS (2002):** The Supreme Court said that Fundamental Duties are no less important than Fundamental Rights. They are not something that citizens may ignore.

**M.C. Mehta v. Union of India (1988):** The Court relied on Article 51A(g) and stressed upon the duties of citizens to protect environment, which drew up numerous environmental safeguards.

**Aruna Roy v. Union of India (2002):** The Court held that Fundamental Duties are not enforceable; they perform the role of moral imperatives in directing legislators and executives.

**Javed v. State of Haryana (2003):** It was held that disqualifications for contesting the panchayat elections on a candidate having more than two children in Article 18 to perform duties as envisaged by part IVA of the constitution are linked with duty to strive towards promotion of responsible parenting and policies in the country under Article 51A.

**Approach of Case-law:** Courts generally evoke duties while reading the compass of Fundamental Rights. Article 19 (freedom of speech), for instance, has to be read balancing with devotion to promote harmony under Article 51A(e).

**Judicial Philosophy:**

- The judiciary upholds the Fundamental Duties as constitutional instructions to citizens.
- They are not legally enforceable, but they provide interpretive guides to promoting democracy and responsible citizenship.

- A number of committees (including Justice Verma Committee, 1999) have made recommendations to make them more effective such as by connecting them with legal consequences.

### Knowledge Check 1

Choose the correct option:

1. In which year were Fundamental Duties incorporated into the Constitution of India?
  - a) 1950
  - b) 1976
  - c) 1980
  - d) 2002
2. Which Constitutional Amendment added Fundamental Duties to the Indian Constitution?
  - a) 44th Amendment
  - b) 42nd Amendment
  - c) 86th Amendment
  - d) 52nd Amendment
3. The total number of Fundamental Duties after the 86th Amendment (2002) is:
  - a) 10
  - b) 11
  - c) 12
  - d) 9
4. Which Fundamental Duty was added by the 86th Amendment, 2002?
  - a) Respect National Anthem
  - b) Protect environment
  - c) Provide education to children
  - d) Preserve culture

5. The Fundamental Duties are mentioned under which Article of the Indian Constitution?

- a) Article 19
- b) Article 32
- c) Article 51A
- d) Article 21

#### 4.5 Comparison of Fundamental Rights and DPSPs

Fundamental Rights are enforceable rights providing guarantees of individual freedom, equality before law and protection against state action, whereas DPSPs are directives given to the State to guide the establishment of an egalitarian society in which basic needs of food would be fulfilled. Rights entitle to freedom, while DPSPs direct state parties in policy-formulation thus maintaining a balance between the rights of the individual and the welfare of all.

##### 4.5.1 Nature: Justiciable vs. Non-Justiciable

###### Fundamental Rights – Justiciable in Nature

Fundamental Rights are protected by the Constitution of India and they cannot be denied to any citizen of India. It is this justiciability which means that if the rights are violated then a citizen can go to courts for resolution. Whereas Article 32 provides for the right to move the Supreme Court, Article 226 on the other hand gives similar power to High Courts. This enables the judiciary to grant writs including habeas corpus, mandamus, prohibition, quo warranto and certiorari for upholding rights. Such provisions include (but are not limited to) the Right to Equality (Article 14; where every citizen is guaranteed equal treatment before the law), Right to Freedom (Article 19; which guarantees freedom of speech and expression among other things), and "Right to Constitutional Remedies" (it's called "the heart and soul" of our Constitution by Dr. B.R. Ambedkar). Therefore, real life is committed to the concept that Fundamental Rights are more than pious aspirations or fundamental values but are enforceable rights with corresponding obligations of the State.

###### DPSPs – Non-Justiciable in Nature

As opposed to that, Directive Principles of State Policy are non-justiciable and cannot be directly enforced by the courts. No man has a right to these as his guarantee in a court of justice. Rather, they should be used as moral, political and policy hall posts for the State to mold laws and programs. For example, Article 39 is for securing equal pay for equal work, Article 41 ensures the right to work, education and competitive public assistance and Article

48A imposes duty of environmental protection. Although not justiciable, DPSPs are said to be core points of governance as they contain the goals for a welfare state and direct the legislative and executive authorities in formulating policy.

#### Key Difference

The difference between them is, of course, in what they are: regarding their nature and modality:

- Fundamental Rights are rights based on justice, which are guaranteed to the citizens by the Constitution and which can be enforced by court.
- DPSPs are moral-political duties, not enforceable under law but indispensable in generating what contributes to making rights real.

The two principles effectively stand together in a balance-Fundamental Rights protect individual freedoms, while DPSPs direct the State to achieve collective welfare and social justice.

#### 4.5.2 Areas of Conflict between Rights and DPSPs

There may be a conflict between the Directive Principles of State Policy and Fundamental Rights, as in some cases the former can curtail the latter in order to achieve social and economic justice. Property rights and land reforms One of the first and crucial issues to surface as a result of these two definitions are property rights versus land reform. Even as Article 39 like provisions required the State to distribute land and prevent its concentration, Art.31's right to property gave individuals legal weapons to defend their properties. As a consequence, several land reform laws were invalidated by courts in the 1950s and 1960s, leading to the Parliament passing constitutional amendments but ultimately deleting the Right to Property as a Fundamental Right from Article 19 of Part III through the Constitution (44th Amendment) Act, 1978.

Another battleground is reservation policy. The State is mandated to promote with special care, the educational and economic interests of Scheduled Castes, Scheduled Tribes and Other Backward Classes under Article 46. But this sometimes comes into conflict with the Right to Equality (under Article 14), as reservations are considered by critics as discrimination. The courts have intervened, over time, to find the middle ground between competing claims, reserving while restricting (to a cap of 50% as laid down in Indra Sawhney).

So too has there been a battle ground over the social discipline of economic liberty. The DPSPs, especially Article 39, lay down that there should be no concentration of wealth and resources in a few hands. In pursuit of this ideal, individual economic freedom under Article 19(1)(g) is curtailed with the result that the question of competing interests between an individual's economic liberty and the larger goal of equality surfaces. For instance, in its early

years of independence, the courts were striking down several progressive socio-economic laws in preference to individual rights, giving the upper hand to Fundamental Rights over DPSPs.

So, the conflicts over these issues reflect a more fundamental constitutional problem that is, how to reconcile the citizens' freedom and rights with the onerous task of State in securing social and economic justice. In due course, with the aid of Judicial Interpretation and Constitutional Amendment, these two provisions are brought to the convergence in overall attempts towards harmonizing between Rights and DPSPs rather than their antagonism.

### **Did You Know?**

“In the early years after independence, many land reform laws based on DPSPs were struck down by courts for violating the Right to Property under Fundamental Rights. This conflict led to the First Constitutional Amendment (1951) and later to the 44th Amendment, which abolished the Right to Property.”

### **4.5.3 Harmonious Construction and Balance**

The Indian Constitution does not carry beliefs on a collision course about FRs and DPSPs, but as principle to live them in harmonics. Both are integral to the constitutional structure – Fundamental Rights protect the freedom and equality of individual, and DPSPs direct the state to secure economic and social justice. Neither is total and both should be harmonized to form a balanced political framework.

In order to achieve this harmony, several constitutional amendments were implemented:

- The 25th Amendment (1971) accorded priority to DPSPs in the matter of distribution of resources and dispersal of wealth.
- The 42nd Amendment (1976) laid down that in case of a clash between DPSP and FR, the former would prevail over the latter in certain matters.
- But with 44th Amendment (1978) to some extent this tilt was balanced as it did two things:  
1. Protected fundamental rights and reemphasized that they and along with DPSPs have to co-exist. #Important\_CJ\_articles..litstitute\_provisions/DPSP..coachpolitico

The judiciary too, has evolved from viewing Fundamental Rights and DPSPs as opposing provisions to construing them harmoniously in support of the constitutional values. An example of this symbiosis is the Right to Education still being a DPSP under Article 41, natural justice making it enforceable and then by way of the 86th Amendment (2002) moving to become a Fundamental Right under Article 21A.

In the *Property Owners Association v. State of Maharashtra* (5th Nov. 2024), the Court fleshed out how we should understand the Constitution as pushing a balance between individual rights (say, property and equality) and State goals (like welfare, redistribution or urban safety). This decision highlights the dynamic role of the judiciary to ensure that both sets of constitutional values are given effect.

This shift shows the way that the Constitution is structured not only to protect individual liberties, but at the same time to promote individual welfare by a concatenated arrangement of its parts.

#### 4.5.4 Role of Judiciary in Balancing Rights and Ideals

The judiciary has incorporated the role of harmonizing the Fundamental Rights and Directive Principles of State Policy (DPSP) from each other. In the early years, the Supreme Court held in *Champakam Dorairajan v. State of Madras* (1951) that Fundamental Rights take precedence over DPSPs. This strict view-point created several obstacles for the progress of social justice legislation specifically reservation, and ultimately it was overcome with the First Constitutional Amendment (1951) incorporating reservation laws into constitutional immunity.

Landmark *Kesavananda Bharati v. State of Kerala* (1973) was a turning point in this regard. The Court then enunciated the Basic Structure Doctrine, holding that although Parliament has “the power to amend any Article of the Constitution including that part which deals with Fundamental Rights”, it does not have the power to change its and this right is inherent and there are no limitations under Indian law. Further, the Court held that “a balance” of FR’s and DPSPs is part of the basic structure, so any consideration of a fundamental value other than one protected by law must be “infused with [this] balancing approach.”

This balance was also expounded in *Minerva Mills vs Union of India* (1980) where the Court invalidated some sections of 42nd Amendment which brought DPSP under absolute dominance over FR. It reiterated once more the importance of cohesion between Parts III (Fundamental Rights) and Part IV (DPSPs), to the soundness of the Constitution, which in turn is a part of its basic structure.

In *Unni Krishnan v. State of Andhra Pradesh* (1993), the Court extended the meaning of rights to include Right to Education which was originally provided under DPSP in Article 41 an integral part of liberty—rights under Articles 14 and 19 and as such was held to be a fundamental right. This juristic invention ultimately resulted in the incorporation of Article 21A by which education became a justiciable Fundamental Right.

On the whole, judicial interpretation has moved from a static “Rights versus DPSPs” position to an inclusive one in which the two are understood as being mutually reinforcing—the means of implementing the Constitution’s objectives of justice, equality, liberty and fraternity.

This serves as a philosophy, which allows individual freedom to be protected while promoting the general idea of the welfare state.

## 4.6 Case Law

The case law of Directive Principles of State Policy (DPSP) underscores their impact on the interpretation of the constitution. Judicial decisions such as Champakam Dorairajan (1951), Kesavananda Bharati (1973), Minerva Mills (1980) and Unni Krishnan (1993) explain how courts harmonized disputes against Fundamental Rights, interpreting that the DPS offered an assistance to India's constitution scheme.

### 4.6.1 State of Madras v. Champakam Dorairajan (1951) – Primacy of Fundamental Rights

The second-dominant Supreme Court case which involved the same issue was State of Madras v. Champakam Dorairajan (1951). It originated during the times in which the Madras Government passed a regulation reserving seats in certain educational institutions for communities based on caste. This community system of reservation was impugned by Champakam Dorairajan, claiming that her Right to Equality under Art. 15 was violated at Article.

In its ruling, the Supreme Court distinguished between Fundamental Rights -those that are enforceable and legally protected- and DPSPs-led by non-justiciable ideals-and held that latter cannot run counter to fundamental rights. Where there is a clash between the two, the Fundamental Rights will take precedence declared the Court. In return, the caste based reservation policy implemented by the Madras Government was declared as unconstitutional.

The ramifications of the judgment were dire. It brought out clearly the inherent conflict between the justiciable Fundamental Rights that safeguarded individual freedoms and the DPSPs which aimed to bring about social and economic justice. It restricted the Policy-making power of the state in terms of welfare generating policies specifically when they contradicted with Fundamental Rights.

In order to deal with this situation, the First Constitutional Amendment (1951) was passed by Parliament. Article 15(4), which was added by this amendment, enables the State to make special provisions for the advancement of socially and educationally backward classes of citizens (SEBC) or for the Scheduled Castes and Scheduled Tribes. This amendment effectively sanctified the reservation policy and allowed the State to push for social justice as per the DPSPs.

Accordingly, the Champakam Dorairajan, cannot merely be seen as first such big battle of Rights versus DPSPs but at the same time can and should also be regarded as momentous for

constitutional progress in India. It showed how the Constitution had to change over time, not just through amendments but also by judicial interpretation, for an equilibrium to be struck between the ambitions of individual equality and that of collective social justice; providing a blueprint for future cases such as Kesavananda Bharati and Minerva Mills.

#### **4.6.2 Minerva Mills v. Union of India (1980) – Balance between Fundamental Rights and DPSPs**

Minerva Mills Ltd. v Union of India (1980) was one of the landmark judgments in the Indian constitutional law that discussed about the weightage of Fundamental Rights v Directives Principles of State Policy; These were introduced by 42nd Amendment Act, 1976, It also defined limited amending power under Article 368 and Basic Structure doctrine. The issue surfaced post the 42nd Amendment to the Constitution in 1976 during Emergency. This amendment sought to place DPSPs above Fundamental Rights by making deep changes in Articles 31C and 368, thus restricting the power of judicial review and diluting individual rights protection. These two provisions were challenged before the Supreme Court by a private company, Minerva Mills, whose properties had been nationalized by the government.

The Supreme Court in its historic decision invalidated the 42nd Amendment which had accorded paramountcy to DPSP over FRs. The Court observed that the reconciliation and equilibrium of Part III (Fundamental Rights) with Part IV (DPSPs) is itself a “Basic Structure” of the Constitution, which also could not be undone by a constitutional amendment. Fundamental Rights and DPSPs : The judges pointed that neither of the two can claim absolute supremacy as both are inextricably linked with the realization of the objectives of our Constitution – individual liberty on one hand and social justice on the other.

The judgment had a dramatic effect. It restored the balance of power between Fundamental Rights and DPSPs making sure that one would not trump over other. At the same time, it upheld and fortified the Doctrine of Basic Structure propounded in Kesavananda Bharati (1973), according to which an amendment that seeks to destroy or damage its core elements would be void. For such a decision protected the power of judicial review, preserved personal liberty and kept the constitution as something alive that must maintain equilibrium between liberty and social justice.

#### **4.6.3 Maneka Gandhi v. Union of India (1978) – Expanding Fundamental Rights**

Maneka Gandhi v. Union of India (1978) Although for a brief period after Maneka's case, Delhi Control Order was treated as good law, it has since been overruled and does not form the measure on which Article 21 is gauged. The case originated when the government seized Maneka Gandhi's passport invoking “public interest” but without giving her reasons or a hearing. She filed a writ petition challenging the government decision granting the

permission, contending that such an action violated her Right to Personal Liberty under Article 21.

The supreme court, in its decision, held that the procedure established by law under Article 21 should be a “just, fair and reasonable” one and not arbitrary whimsical or oppressive. This interpretation represented a break from the earlier strait-jacketed approach in A.K. Gopalan, when the Court had ruled that a law, no matter how arbitrary, would be valid if it was passed by Parliament. It was further held that Fundamental Rights should not be read in isolation with one another, but instead involving Articles 14 (Right to a fair trial), 19 (Freedom of Speech) and 21 (Life Liberty) together which means between the three they form a more composite cover of rights.

The consequences of the verdict were revolutionary. It has very significantly widened the ambit of Art 21 and made it a reservoir of several human rights- to livelihood, education, health, dignity and clean environment. Many of these rights were echoes and reflections of those in the Directive Principles of State Policy, bridging between non-justiciable socio-economic goals and enforceable Fundamental Rights. This also bolstered the concept of judicial activism because the Court started using Article 21 as a means tool to preserve human liberty and social justice by making sure that government has conformed itself not only to Fundamental Rights but also to DPSPs.

#### 4.6.4 Other Significant Judicial Pronouncements

It is also set as a constitutional landmark, where the Supreme Court has given the Doctrine of Basic Structure in its judgment by ruling out Kesavananda Bharati V. State of Kerala (1973). The Court held that though Parliament has vast powers to amend the Constitution, it does not have the power to change its basic structure. crucially the judgement stated that under Indian jurisdiction, both Fundamental Rights and DPSP are the “Constitutional soul” and hence a trade-off has to be made between individual freedoms and socio-economic justice.

In the case of Unni Krishnan v. State of Andhra Pradesh (1993), the Court broadened the concept of Right to Life under Article 21 by reading in the Right to Education, hitherto a DPSP enshrined in Article 41, as an inseparable aspect of life and dignity. It was because of one such progressive understanding that the 86th Constitutional Amendment (2002) put in a new article, Article 21A, by which education became a Fundamental Right for those below 14 years age.

Further, the ambit of Article 21 was expanded in Olga Tellis v. Bombay Municipal Corporation (1985), with the Supreme Court holding that Right to Livelihood is part of right to life. This was also because of DPSPs of social justice and right to work prompting this, to keep the constitutional commitment of dignity a reality for person staying on pavements or who are urban poor.

Elements of environmental jurisprudence were derived from DPSPs as well as in the Fundamental Duties. In *M.C. Mehta*

*v. Union of India* (1988 and subsequent cases), the Court widened the scope of Article 21 by bringing in the Right to a Clean and Healthy Environment, inspired by Article 48A (Duty of State to protect environment) and Article 51A(g) (Duty of citizens to protect nature). This cluster of cases put the base for severe judicial activism in environmental protection.

In *State of Kerala v. N.M. Thomas* held that reservation in promotion is constitutionally permissible and the Court interpreted Article 16 (Equality of Opportunity) keeping in mind Article 46 directing the state to promote with special care, educational & economic interest of weaker section. This recast the judiciary as one that would reconcile equality with social justice.

Generally it was the approach of giving primacy to the Fundamental Rights (*Champakam Dorairajan* 1951) which was jettisoned in favour of harmonious construction. The courts increasingly acknowledged that Fundamental Rights and DPSPs are not adversaries, but partners-in-execution in pursuit of the constitutional philosophy that is formed from liberty, equality, justice and dignity for all persons.

#### 4.7 Summary

- ❖ Directive Principles of State Policy (DPSPs) are non-justiciable instruments in the Constitution of India for realising social and economic democracy.
- ❖ They are supplementary to the Fundamental Rights and jointly ensure a balance of freedom at the individual level with collective good.
- ❖ DPSPs are typecasted to as Socialist, Gandhian and Liberal-Intellectual principles and recent inclusions such as environmental amendments.
- ❖ Academicians also distinguish between Positive/Negative or Social, Economic and Political in relation to DPSPs for better comprehension.
- ❖ DPSPs are directives to governance and ideologies formulated on the basis of land reforms, education, social justice, health and environmental protection.
- ❖ For eg: Zamindari abolishment, Right to Education Act, reservation policies, Ayushman Bharat programme and environmental legislation.
- ❖ ∞ The Fundamental Duties under Article 51A were incorporated so that the citizens of India owe obligations not only to respect and abide by the Constitution, but also to protect the environment.
- ❖ Fundamental Rights are justiciable and can be imposed by courts whereas DPSPs are non-justiciable moral-political guidance.
- ❖ Conflicts often emerge—between the rights of property and land reforms, between equality and reservation policies.

- ❖ Constitution and judiciary tend to reconcile through constitutional amendments (25th, 42nd, 44th) and the principles like harmonious construction ISSUE IN HARMONIOUS CONSTRUCTION.
- ❖ Landmark cases (Champakam Dorairajan, Kesavananda Bharati, Minerva Mills, Unni Krishnan and Olga Tellis) moulded the relationship of Rights vis a vis DPSPs.
- ❖ Courts oscillation from Rights based jurisprudence to Rights with DPSPs, ensuring that both do not interfere in Constitutional design of India.

#### 4.8 Key Terms

1. Fundamental Rights – These are rights guaranteed to the citizens of India under Part III of the Constitution and are legally enforceable.
2. DPSPs: Not justifiable provisions in Part IV of Constitution to secure welfare state.
3. Fundamental Duties: There are moral duties of the citizens regarding national discipline and fellow feeling contained in Article 51 A.
4. Justiciable – A principle or right capable of being enforced by the courts.
5. Non-Justiciable – The clauses which are not enforceable in court of law but have moral and political importances.
6. Basic Structure Doctrine -A legal principle that some provisions of the Constitution cannot be amended by the Parliament.
7. Harmonious Construction – Modality of reading Fundamental Rights with DPSPs and vice versa so that one should not overcome another.
8. Social Justice – Making inequality less of an ideal and ensuring that opportunities and distribution are fair.
9. Welfare State – A system in which the state plays a key role in the protection and promotion of health and social well-being for its citizens.

#### 4.9 Descriptive Questions

1. Define the Directive Principles of State Policy (DPSPs) and analyse their relevance in Indian polity.
2. Distinguish between the Fundamental Rights and DPSPs, giving suitable illustrations.
3. Discuss the importance of 42nd Constitutional Amendment, 1976, in adding Fundamental Duties.
4. Critically examine the conflict between Fundamental Rights and DPSPs with reference to case laws!
5. Discuss the significance of Fundamental Duties in enhancing civic sense in India.
6. Discuss the role of judiciary in harmonising Fundamental Rights with Directive Principles.

7. Critically examine the importance of Gandhian ideals in the light of DPSPs in contemporary socio-economic perspective.
8. Analyze the *Minerva Mills v. Union of India* (1980) and its role in the relationship between Fundamental Rights and DPSPs.

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#### Answers to Knowledge Check

##### Knowledge Check 1

1. b) 1976
2. b) 42nd Amendment
3. b) 11
4. c) Provide education to children
5. c) Article 51A

#### 4.11 Case Study

##### Balancing Development with Constitutional Ideals

##### Introduction

India has struggled over the past few decades to achieve – at the same time: high economic growth, social justice and environmental sustainability. The DPSPs are the guidelines to be followed by each State in making laws and policies, while ensuring wealth for all (Trickle-up economics) as well livelihood and good environment. At the same time, Fundamental Duties enjoin citizens to promote harmony and common brotherhood; respect for public property and environment.

One example would be during the period when scale infrastructure projects, such as building dams and industries were employed to achieve economic growth. Though these projects were in consonance with Article 39(b) and (c) of the DPSPs (to distribute resources), they at the same time gave rise to some environmental issues. Citizens argued a logical case against the thoughtless plunder of forests and rivers, citing Article 51A(g) (duty to protect the environment). This case is a textbook example of the real life tension between state policy directions and citizen duty, which are not easy to reconcile in practice.

### Background

- Objective of Policy: To accelerate the pace of development through industrialization and growth of infrastructure creating more employment opportunity and improving welfare.

- Directive Principles Involved:

- o Article 38: Social and economic justice to be promoted.

- o Article 39(b) & (c): Ownership and control of material resources; acquisition to public good.

- o Article 47: Promotion of nutrition and public health.

- o Article 48A: Environmental protection.

- Fundamental Duties Involved:

- o Article 51A(g): Preservation and improvement of the natural environment.

- o Article 51A(i): Safeguarding public property.

- o Article 51A(j): The endeavour to excel in joint endeavours.

Tensions between development, ecological conservation and the displacement of vulnerable communities lies at the heart of this conflict.

### Problem 1: Balance between Economic Development and Social Justice

- Issue: Speedy industrial projects benefited a few while displacing tribal communities without adequate rehabilitation.

- Solution: Establish land reforms, rehabilitation policies and inclusive development plans to see that justice prevails.

### Problem to Be Solved 2: Environmental Issues Versus Developmental Demands

- Challenge: Forest cleared for industries, causing ecological imbalance.
- Solution: Tighten up the concept of the environmental impact assessment, vigorously carry out afforestation and popularize green technology.

Problem 3: The role of the informed Citizen with regard to Responsibilities

- Problem: People neglect their duties, like keeping the environment clean or respecting public property.
- Solution: Public campaigns, local collectives, and rules that ensure duties are real.

Case Questions

What is the role of the Directive Principles in shaping government's policy on economic development and social justice?

How can the Fundamental Duties help India to achieve sustainable development?

How may judges reconcile the tension between developmental functions and constitutional goals?

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## Unit 5: Union and State Structure – Federalism in India

### Learning Objectives

1. Understand the meaning and concept of federalism as adopted in the Indian Constitution.
2. Explain the division of powers between the Union and the States under the Constitution.
3. Analyze the significance of the Union List, State List, and Concurrent List in Indian federalism.
4. Examine the unique features of Indian federalism, including its quasi-federal nature.
5. Identify the role of constitutional bodies (e.g., Finance Commission, Inter-State Council) in maintaining Union–State relations.
6. Discuss the circumstances under which the Union government can override the State government’s powers.
7. Evaluate the impact of emergency provisions on the federal balance of power.
8. Assess the judicial interpretation of federalism through landmark cases.
9. Develop an understanding of the challenges and cooperative aspects of Indian federalism in practice.

### Content

- 5.0 Introductory Caselet
- 5.1 Union of States
- 5.2 Nature of Indian Federalism
- 5.3 Distribution of Powers
- 5.4 Centre–State Relations
- 5.5 Role of Governors
- 5.6 Inter-State Council
- 5.7 Emergency Provisions and Federalism
- 5.8 Landmark Cases
- 5.9 Summary

- 5.10 Key Terms
- 5.11 Descriptive Questions
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## 5.0 Introductory Caselet

### “Federal Tensions in Pandemic Management”

#### Introduction

The Indian Constitution follows a federalism with strong centralist in bias. Though the States are largely autonomous in many cases, the Union government has authority to legislate and intervene in order to ensure order especially during emergencies. The COVID-19 pandemic accentuated both the resilience and strains of the Indian federalism, showing how both Union and States need to work in unison while also balancing between curbing demarcated freedoms.

#### Background Constitutional Basis

- Union List– The Union Parliament makes laws on matters such as defence, foreign affairs, currency and national security.
- State List: Subjects such as police, health, agriculture and local governance are legislated upon by states.
- Concurrent List – Both Union and States make laws on these (In case of conflict, Union law takes precedence)

#### Pandemic Context

- Health is a State List subject, however in the wake of the COVID19 pandemic, excited by the Union.

government used a central law, the Disaster Management Act, 2005, to order uniform lockdowns throughout the country.

- States raised objections to this centralized approach, insisting that local circumstances differed and needed locally relevant plans.

This experience pointed up the Janus-faced nature of Indian federalism—cooperative sometimes, conflictual at other times.

#### Case Insights

- Federalism in India is not static, constitutional division of powers but a dynamic equilibrium which can tilt heavily during emergencies.
- Although effective Union control can lead to national unity and uniformity, the over-centralized authority might create disincentive for states' autonomy and local efficiency.
- Crises typically strain federal systems, but they also demonstrate the value of intergovernmental cooperation.

### Critical Thinking Question

And in times of national crises — pandemics, natural disasters etc — should the Union government have overriding powers to enforce uniformity, or States autonomy to frame their own policies based on local conditions? How can a balance be created?

## 5.1 Union of States

The constitutional model in which India has been described a "Union of States". Indicates an example unity of a variety of regions in one country. The word further dwells on the infinite and eternal strength of Union and that it cannot be threatened by existence of different states under the federal structure.

### 5.1.1 Constitutional Basis of the Indian Union

India is a sovereign, socialist, secular, democratic republic with a parliamentary form of government as prescribed by its constitution.

Article articles deal with the Federal structure of India.

The Constitution establishes a two-part polity:

- Union Government at the Centre.
- State Governments in each state.

Union has been vested with more powers than the states which is one of a kind in Indian federalism.

Contrary to a conventional federation, the Indian Union, unlike the erstwhile Dominions of Canada or Australia, was not created by agreement between multiple independent states but in a single nation – Constitution being closely modelled on British Parliamentary system.

### 5.1.2 Article 1 and the Concept of “Union of States”

“India, that is Bharat, shall be a Union of States,” says Article 1 of the Constitution.

It makes clear that the Indian federation is not a product of an agreement between states but is a union based on Constitution.

The term “Union of States”, was purposefully preferred to the “Federation of States” for two reasons;

- The Indian Union remains indestructible: the states are not free to secede or to separate from the union.
- While states in classical federations have "full territorial self-rule", the Union may take away state territory, name or boundary (Articles 2–4).

Accordingly, the Indian model doesn't weaken the "centre", but weakens it and yet recognises states are sovereign unit of governance.

### 5.1.3 Difference between “Union of States” and “Federation”

Union of States (India)

Constitutional, not a compact of states. The Union is unbreakable; there is no secession for states.

Parliament can form new states (such as the formation of Telangana in 2014). Central government is more powerful than state governments, particularly in a crisis. Example: India.

Federation(Classical Model eg USA) Formed by treaty/compact among independent states.

States are inalienable and cannot be reconstituted by the Union. Original sovereignty of the states; The Union derived from the states. In theory, the centre and states are co-equal.

Example: United States of America.

“Activity: Mapping India’s Union of States”

Students will be divided into groups and asked to identify instances where Parliament reorganized state boundaries (e.g., creation of Telangana, division of Punjab). Each group will explain how these changes reflect the concept of India as a Union of States rather than a traditional federation.

## 5.2 Nature of Indian Federalism

Quasi-federal, mixed or compound of federal and unitary elements. Even though powers are distributed between the Centre & States, the Constitution is inclined towards a stronger

centre. In crisis or confrontation, the Centre dominates. This makes for National Unity while allowing Regional Autonomy under normal conditions.

### 5.2.1 Federal Features of the Indian Constitution

There are a number of federal features in the Indian Constitution, which were included to preserve the autonomy of states and yet maintain national unity. One of its trials have been the double form of government which provides for a clear separation and demarcation between Central Centre and State, two categories to Project on or pocket at deca-dos-level. Every layer functions independently in its domain (defined by the Constitution).

Another important factor is the use of a written Constitution, which is one of the longest in the world. It had 395 Articles originally; now hundreds more have been added. This is a clear, explanatory and detailed document that provides set-ups between the Union and the States with little to no room for common controversy between them.

The Constitution is supreme and the Union and State Governments are both subject to it. No authority is supreme within it, and any enactment of either can be declared unconstitutional by the courts.

Indian federalism: Division of powers A significant component in Indian federalism is the division of powers, defined in Seventh Schedule (Articles 245–246). It classifies powers into three lists: the Union List (such as defence, foreign affairs), which only the Centre can legislate on; the State List (police, agriculture), exclusively for states; and the Concurrent List (education, forests), where both can legislate. The determination of a clash in the Concurrent List, Union law shall prevail.

The Supreme Court at the apex of this independent judiciary enhances federal principles. It is the custodian of the Constitution and has a power to adjudicate disputes between Centre and States under Article 131, witnessed in inter-state contentions such as the Cauvery water issue.

At the Centre, bicameralism also upholds federalism by providing the states a theoretical voice in Parliament through the Rajya Sabha. This is supposed to give the states some influence where legislation concerning them is concerned.

Finally, the Indian Constitution is inflexible on federal issues. Such amendments that “in any way” affect the federal balance of power need to be approved, besides by a special majority in Parliament, at least by half of the states under Article 368. Hence no major re-organisation of Centre–State relations possible without wider agreement.

### 5.2.2 Unitary Features of the Indian Constitution

Despite the fact that India is a federation by design, its Constitution has various unitary elements and this inclination toward centralisation is strong. The most significant indicators are the powerful Centre (where the number of subjects in the Union List are more, 100 next to 97 initially) and since then than State List and these concern Supreme National interest such as defence, foreign affairs and atomic energy. Additionally, under Article 248, any residuary powers (those not specifically mentioned in the lists) belong to the Union Government.

A second important unitary characteristic is the presence of one Constitution and one citizenship. Unlike the US which has a separate constitution in each state, India operates as a nation of equivalent states under one unified Constitution. Likewise, Indian nationals have a single and identical citizenship all over the country in the form of Article 5-11.

Central control is further stressed by the Union's power over states. While Articles 2 to 4 of the Constitution allow Parliament to form new states, reorganize them — including changing the boundaries and names — it does not have these powers over Jammu and Kashmir. For instance, creation of Telangana from Andhra Pradesh has been done by a central statute enacted by Parliament in 2014.

The emergency provisions of India strengthen its unitary nature in times of crisis. Article 352 permits the Union to enact laws on a subject of concurrent powers of State List, while it is under National Emergency. The President has the authority to dismiss of any state under Article 356 and impose President's Rule, subjecting such a state to direct central control. Article 360 allows for a Financial Emergency, under which the Union may direct to any State with regard to financial matters.

Another tool of centralization is the appointment of Governors. 2.3 Governors are representatives of the Union government in the states, appointed by the President. They are also vital in advising President's Rule under Article 356.

India has also one common integrated judiciary and a single election commission. There is the same judiciary organism — directed by the Supreme Court — for both Union and states, and free-and-fair elections are held at these levels by the Election Commission of India, underscoring further (if needed) how integrated our governance structure is.

The final pointer relates to Parliamentary supremacy in Concurrent List matters as the central bias. If the Union law has clashed with the State law on a matter of Concurrent List, Article 254 provides that the law made by Parliament or Parliamentary legislature shall prevail and respective State Law would be void in so far as it is inconsistent with Union Law?

### 5.2.3 Quasi-Federal Nature with Unitary Bias

The Indian federal system, it is commonly said to be a quasi-federal one with strong unitary bias; that is, it exhibits both features of a federation and union type federations. Unlike classical federations like the United States where federalism is based on an agreement among sovereign states forestry unlike in both contexts Indian federalism is a product of a single Constitution which provides that, have there be only Union of state with no such right to secede. Therefore the Indian model does not acknowledge sovereignty of states; instead it focuses on an indestructible unity of nation.

This monist prejudice is reflected in a number of constitutional and practical areas. The states, for example, have no right to ask for separation or independence and on key issues (such as defence, external affairs and finance) the Centre has overriding powers. In legislative subjects, even those in the Concurrent List, Union law can override conflicting state laws and emphasize central supremacy.

This peculiar character of Indian federalism is well acknowledged by the judiciary. Federalism is part of the basic feature, the Court reaffirmed in S.R. Bommai v. Union of India (1994) and it was now held to be beyond the pale of tinkering even by a constitutional amendment. The Court however also observed that India was not a federal state in the conventional sense as it is more of a structure leaning heavily towards centralisation. Then again in Kesavananda Bharati v. State of Kerala (1973), the Court highlighted that the balance between the powers with Union and states should be held by maintaining constitutional harmony.

In practice, this is how Indian federalism works in two different modes. At all other times (abnormal or usual), it is cooperative federalism where the Centre and States pool together in policy planning and governance, pooling resources and responsibilities. During crises or emergencies, however, the system is converted to a tenant of centralised federalism since the Union government becomes empowered on managing national unity and public peace.

### 5.2.4 Comparative Perspective – U.S. and Indian Federalism

Feature	United States (Classical Federation)	India (Quasi-Federal Union)
Formation	Formed by agreement among sovereign states	Created by a Constitution, not state agreement
Nature of Union	Indestructible states, federation is indestructible	Indestructible Union with destructible states

<b>Constitutions</b>	Dual – federal and state constitutions	Single Constitution for Union and States
<b>Citizenship</b>	Dual citizenship (state + federal)	Single citizenship
<b>Division of Powers</b>	Residual powers with states	Residual powers with Union

Conclusion from Comparison:

Decentralized Federalism → U.S. = Strong states, weak center.

• India = Centralized Federalism (Quasi-Federalism) → Strong centre with a considerable but restricted state autonomy.

Knowledge Check 1

Choose the correct option:

1. Which Article gives residuary powers to the Union Parliament?
  - a) Article 245
  - b) Article 248
  - c) Article 254
  - d) Article 368
2. Which feature shows the federal character of the Indian Constitution?
  - a) Single Constitution
  - b) Division of Powers
  - c) Appointment of Governors
  - d) Emergency Provisions
3. In India, the Concurrent List subjects are:
  - a) Only for Union
  - b) Only for States
  - c) Shared by both

- d) Decided by Judiciary
- 4. Indian federalism is often described as:
  - a) Purely Federal
  - b) Purely Unitary
  - c) Quasi-Federal
  - d) Confederal

### 5.3 Distribution of Powers

The constitution which has distribution/ devolution of legislative, executive and financial powers between Union and States. This division is exposed in the Seventh Schedule of the Constitution through its three lists – The Union List, State list and Concurrent list that guarantee both central supremacy as well as state autonomy.

#### 5.3.1 Union List

The Union List contains 100 (originally 97) subjects on which Parliament may make laws including exclusive legislation for the whole of India. These are regions which need unified control to safeguard national unity, security and overall development.

Under Article 246 of the Constitution, it says that only Parliament can make laws in respect to any of the entries in List I. It is so that vital decisions that are relevant to the whole country and people are centred on from one place, for uniformity and unity.

The topics in this list are of contemporary relevance and as such are sensitive to both states' interests of war and peace, making it necessary for them not to fall into the hands of states but come under only Union scrutiny. Besides, the list also includes atomic energy and currency, coinage and mint; banking and insurance other than those on these subjects; which are regulated by respective state laws.

It also includes infrastructure and communication services like railway, airways and water transport which facilitates national integration as well as inter-state efficiency. Voting and interstate commerce are other major issues -- then as now, requiring a national standard to work meaningfully in all states.

The importance of the Union List lies in its contribution to maintain national unity and uniform pattern of centralized coordination on matters deemed essential for sovereignty, security stability of the nation and economic prosperity as well as efficiency of administration.

### 5.3.2 State List

As of today, the State list comprises 61 subjects (originally 66 in the Constitution) which pertain to the control and management of local or regional affairs at certain levels, with the exclusive domain of state legislatures as provided for in Article 246(A) [State List] of the Indian Constitution. This categorisation is to help each state/local government address their peculiar needs and so meet the challenges of the socio-economic and cultural diversity in Nigeria.

But it is not absolute this exclusiveness. In some extraordinary situations, such as national security and systemic emergencies can parliament legislate with respect to subjects in the state list. These are: when a national emergency is in operation (Article 352), while President's Rule has been imposed in any state (Article 356), if the Rajya Sabha passes a resolution in national interest (249 Article) and two or more states permit Parliament to legislate on the subject concerned.

Highly representative subjects of State List are police, public order, public health and agriculture etc. – all closely relating to routine administration and largely dependent on the local situation. Other issues such as market and fairs, betting and gambling too are the state sponsored subjects/freedoms that can be regulated by states according to local customs/values.

The importance of the State List is that it provides independence to the states for their internal administration, while facilitating regional governance and local control based on diversities in regional environment.

### 5.3.3 Concurrent List

The Concurrent List comprises 52 items (originally 47) and covers subjects on which both the Union as well as State legislatures can legislate, such as Article 246 of the Constitution. This list represents a compromise of the need for centralised control and state flexibility, enabling two levels of government to deal with complex matters requiring national uniformity as well as regional conformity.

However, if a subject in the Concurrent List is contradictory between Union law and State law, then Union law will prevail over State law according to Article 254. The establishment of legal system unity serves to unify on a national level for matters concerning governmental fundamentals and national interests.

Common examples of such subjects in India include education, forests, trade unions and criminal law—matters which require both localised central oversight and a degree of local autonomy. Marriage and divorce, bankruptcy and insolvency are other key writers take on the shared role in matters affecting people nationwide.

The importance of the Concurrent List lies in that it facilitates a certain degree of uniformity in legislation and at the same time allows individual states to meet local variations and priorities. It reflects the spirit of co-operative federalism by allowing both the Centre and States to act in the areas of common interest.

### **5.3.4 Residuary Powers of Legislation**

According to Article 248 of the Indian Constitution, residuary powers (matters that are not enumerated in either of the three lists - Union List State List or Concurrent List) is exclusively vested with the Parliament. This includes legislative competence on novel and unforeseen matters not conceived at the time of framing the Constitution.

The latter is in stunning contrast to the American system of federalism, under which residuary powers resided with the States, and was therefore characterized by a greater degree of State autonomy. In comparison, the grant by India to the Centre of residuary powers was an expression of the unitary nature of its Constitution and emphasis on strong centre.

Some examples of subjects under residuary powers are: Cyber laws, space exploration, regulation of artificial intelligence/heuristic programming and atomic energy (already provided in the union list which become a residuary subject) – matters that have assumed great importance in contemporary times and can be regulated effectively only by the Union for technical reasons and national consequences.

The importance of residuary powers has been articulated as making an instrument in the hands of promoting unity Government, and at the same time makes it a flexible instrument which can be adapted to new fields of governance. Which enables the Centre to legislate with ease, in relation to new areas of operation which are not covered under the Constitution.

## **5.4 Centre–State Relations**

Constitutional, administrative and fiscal relations between Union and States in India. These relationships support coordination, division of labour, and systems of checks and balances. They are divided into legislative, administrative and financial spheres so as to ensure a form of federalism instead of JACOB CANTER IN INDIA 94 competitive/collaborative'(cooperative) federalism while keeping the Centre in absolute control whenever deemed necessary.

### **5.4.1 Administrative Relations**

The Centre State aspects of administration are covered by Articles 256 to 263 of the Constitution. These provisions specify the ways in which administrative powers and functions

are shared or coordinated, and also include central directive principles as well as those of cooperative federalism.

Articles 256 and 257 empower the Union to give directions to the States for compliance with laws made by Parliament, although not in contravention of the Constitution. These directions must be followed by states under constitutional obligation. For instance, the Union can urge States to implement environmental laws or disaster management plans that help standardise national protocols in different geographical territories.

The third category of executive powers relates to mutual delegations between the Centre and the States, which are provided for in the Constitution under Articles 258 and 258A. Upon concurrence, neither is allowed to refuse a request by the other to perform certain functions on its own behalf. Union also delegates Census work to the States.

A significant bulwark of administrative uniformity is the formation of All-India Services under Article 312. Services such as the Indian Administrative Service (IAS), Indian Police Service (IPS), and the Indian Forest Service (IFS) which are recruited by the Union, but whose members serve both the Union and State governments. These services provide uniform administrative system and for the integration of national life and promotion of good governance in the whole country.

In order to promote cooperation and coordination among the states, as Article 263 provides for setting up of an Inter-State Council by the President. This is a body where inter-State issues can be discussed and resolved, whether in terms of the Goods and Services Tax (GST) rollout, water sharing or matters linked to performance on targets. The Council works for consultation and consensus among the states and between the states and the Centre.

However, on an average the Constitution also incorporates cooperative mechanisms which suggest joint decision making and that the Union does not hold absolute or at least stronger administrative control.

#### 5.4.2 Legislative Relations

Legislative relations between the Centre and states is based on Articles 245 to 255 of Indian Constitution. These provisions define the legislative powers distribution, the amplitude of each bureaucracy and under what conditions Parliament may legislate on provincial issues, a fair compromise between autonomy and hegemony.

The allocation of legislative subjects is provided for in the Seventh Schedule, which contains three lists:

- Union List (100 items): Unlimited jurisdiction of Parliament to legislate on subjects which are in the national interest such as defence, foreign affairs and banks.

- State List (61 items): Laws related to police, public health and agriculture are made only by state legislatures on subjects of regional interest.
- Concurrent List (52 items): Both the Union and the States are competent to legislate on a subject in this list, such as criminal law and education. In the event of a clash, however, Union law will trump the state's, under Article 254.

In some circumstances, the Parliament can make laws over subjects in State List and thus provides an extension to its legislation:

- Article 249: If Rajya Sabha passes a resolution (by two-thirds majority), **that it is necessary in the national interest to create one or more All-India Services**, Parliament can legislate on State subjects.
- Articles 352 & 356: for the time being, Parliament may have power to make laws on any subject enumerated in the State List as a state of Emergency or President's Rule prevails.
- Article 252: Parliament can make laws on a State subject if two or more States desire that the law be made; but it shall apply only to those States unless other states adopt, direct.
- Article 253: For executing any international agreement, treaty or convention, Parliament may pass a law even on items in the State List.

Illustration: A classic example of legislative and constitutional working together and amending is the introduction of Goods & Services Tax (GST). It needed an amendment to the Constitution making it possible for both Union and States to tax the same thing (goods and services), causing a reversal of existing division of powers.

### 5.4.3 Financial Relations

Financial relations **between the Centre and the States** in India **are dealt with by** Articles **268 to 293 of the** Constitution. **These** articles make **provisions** regarding allocation of powers to tax, revenue distribution and grants, in line with both the unitary nature of the Union as well as financial cooperation in a federal structure.

The primary feature of India's fiscal architecture is Union supremacy in taxation. Such high-yielding taxes including income tax, corporation tax, customs duty and excise duty and comprehensive in nature are enacted by the Union of India. On the other hand, the tax base of the States is confined to a few sources such as state excise, stamp duty and land revenue etc. It's a common tendency for the States to become reliant on the Centre in terms of both resourcing and succour.

The distribution of the tax proceeds is constitutionally classified as follows:

- Union Taxes – imposed and collected by the Union (such as customs duties).

- State Taxes: - These taxes are imposed and collected by the States (land revenue, state excise)
- Shareable Taxes – taxes imposed and collected by the Union, but shareable with States like income tax and part of GST.

To promote a just and dynamic fiscal system, the Constitution calls for a Finance Commission every five years. Finance Commission recommends the principles governing distribution of central taxes/duties and their devolution to States and grants-in-aid thereto. For instance, the 15th Finance Commission proposed a higher share of tax devolution to States that gave them more fiscal independence and reduce regional imbalance.

One of the game changing moves with regard to India's fiscal relations was constitutional amendment for the introduction of Goods and Services Tax (GST) and establishment of GST Council under Article 279A. The GST regime has ushered in a single, unified indirect tax structure that subsumes multiple Central and State taxes. The GST council, a body also consisting of Union and State Finance Ministers, is empowered to ensure accord on the conflicts and dissimilarities with regards to indeterminate taxes in the establishment.

But cooperation on financial front under the GST was not always smooth. While the pandemic may have brought GST into recent debate, it is because of these continuing challenges to "true" fiscal federalism.

### Understanding Centre-State Relations

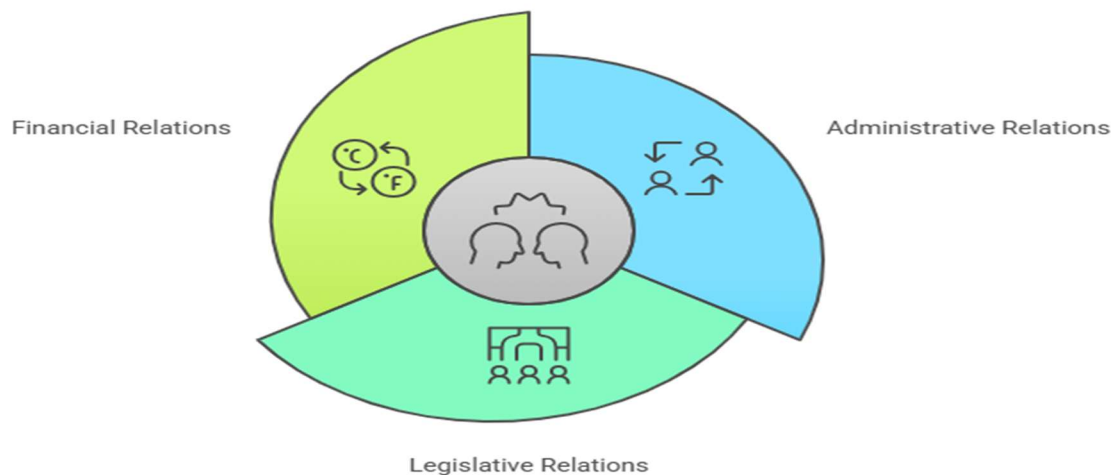


Figure 5.1

### 5.5 Role of Governors

Governors are the constitutional heads of states who are nominated by the President. They supervise the administration of states, assent to bills and may reserve them for the

consideration of President. Although supposed to act impartially, their position is often accused of political partiality and interference in the affairs of elected state governments.

### 5.5.1 Constitutional Position of Governors

The Governor is the head of state, but his or her powers are largely ceremonial; the substantive functions over which the governor can exercise some authorities are under the control of an elected Government. If the office of government is defined by Articles 153 to 162. As with the President at the Union level, Governor is only a nominal executive authority in the state and all his real powers are exercised on the advice of the elected Council of Ministers. SD : It refers to \*Candidate Specific Deposit. The Governor is also a connecting link between the Centre and the State; he acts as an agent of the Union Government in state's administrative system.

#### Dual Role of the Governor

Performs ceremonial duties as the constitutional head of the state.

As the representative of the Union, makes sure that state government acts under Constitution and report to President in case of constitution breakdown.

#### Appointment and Tenure

The Governor is appointed by the President for a term of five years under Article 155.

Although the term is for five years, as per Article 156, the Governor can remain in office indefinitely, a sitting governor can be dismissed under certain conditions.

#### Powers of the Governor

- Executive Powers:

- o Appoint their own Chief Minister and Ministers on the advice of CM.

- o Appoints Advocate-General and members of State Public Service Commission.

- o Heads the executive as a whole, and by representing the पट state to all foreign visitors.

- Legislative Powers:

- o Calls summoning, proroguing and dissolving the Himachal Pradesh Legislative Assembly.

- o Approves or reserves for the President's consideration the bills passed by legislature.

- o Ability to discuss and communicate with the Legislature, and recommend President's Rule under Article 356 in the event of breakdown of constitutional machinery.

- Judicial Powers:

o Article 161 states that the Governor has power to pardon, reprieve, respite or remit, whether subject to any condition or not - - punishment of any person convicted of any offence against a law relating to a matter to which the executive powers of the state extends.

### Status and Discretion

The Governor, however acts on the counsel of the Council of Ministers, Bairath headed by the Chief Minister, as is the situation in all other States. The same applies to the appointment of a Chief Minister in a case of hung verdict, reserving bills for the President or recommending President's Rule needs to be approved by the Centre. These discretionary authorities have been a matter of controversy, especially in light of the neutrality and political impartiality expected from the Governor.

### Did You Know?

“The Governor, though called the constitutional head of a state, is appointed by the President and holds office at the pleasure of the President. This means the Union government can remove a Governor anytime, highlighting the Governor's dual role as both a state head and Union's representative.”

### 5.5.2 Discretionary Powers of Governors

Although the Governor is a independently exercising constitutional head of state, he or she is not the nominal executive authority of its government, which is vested in the Chief Minister and his/her council of ministers. These powers are crucial to the preservation of constitutional order, particularly when political instability or breakdown of government occurs.

There are, however, two discretionary powers that I would like to discuss here for the moment — of appointing the Chief Minister when no party or alliance has a clear majority in the Legislative Assembly is one. When that happens, the Governor needs to exercise discretion and extend an invitation to a most plausible leader to form a government. Likewise, if a government in power no longer retains majority support in the House, or only holds a minority of seats, the Governor can remove it.

President's Rule recommendation under Article 356 is yet another such discretionary power. If the Governor is of opinion that a state's constitutional machinery has failed in discharging its responsibility, they can send a report to the President recommending central intervention and even dismissal of the state government.

The Governor is also vested with powers under Article 200 to reserve for the President's consideration any bill passed by the State Legislature. This is typically done when a bill seems to run afoul of core federal laws, or if the constitutionality is unclear.

In some areas, such as the Sixth Schedule areas in the North-east, Governors also have special responsibilities with respect to tribal administration. Frequently, these powers also comprise control of finances and appropriations, maintenance of law and order, legislative matters in tribal regions.

Lastly, in politically uncertain situations for example a hung Assembly, the Governor can also issue directions regarding summoning, proroguing or dissolution of the Legislative Assembly. They can call for extra time to negotiate the formation of a government or push for new elections.

Although these powers are constitutionally endowed, their exercise—especially under such politically sensitive circumstances—has always been a contentious issue with respect to neutrality and accountability of Governors in Indian federal polity.

### **5.5.3 Controversies Relating to Governor's Role**

The office of Governor has, on numerous occasions been a subject matter of the constitutional and political controversy on account of allegations or factual basis confirmed, that the holder of this office does not always act as nominee or representative of Union government but directly as its agent. Among the most common accusations levelled against them is that they are political appointees, nominated by the Union government and owe allegiance to the ruling party at the Centre. This has the effect of sullyng their neutrality as constitutional heads.

One such irreconcilable disagreement has revolved around the misuse of article 356, a constitutional provision that permits imposition of President's Rule in a state. Such a recommendation of the Governors under Article has played a significant role in dislodging State Ministers more than 100 times since independence and the same was not always for reasons of any true breakdown but political.

The ousting of elected state governments (sometimes under suspicious circumstances) has been another very contentious feature. One well-known instance was the sacking of the government of N.T. Rama Rao in Andhra Pradesh in 1984, an action that was condemned as a blatantly political act.

Governors also have come under fire for slow decision-making on legislation passed by state assemblies, effectively halting or delaying the will of the elected houses. We have seen such instances in states like Tamil Nadu and Kerala, where significant bills were held up for long periods without convincing reasons.

In some states such as West Bengal, Kerala and Maharashtra, governors were alleged to have been partisan in day-to-day politics which led them into disputes with Chief Ministers. These frequent run-ins have increasingly led to accusations about Governors acting as agents of the Centre rather than neutral constitutional persons.

#### 5.5.4 Judicial Pronouncements on Governor's Powers

In view of these controversies, and the defiance by Governors to ring in their discretion and Governor's rule, the Supreme Court has made valuable contributions to interpret and restrict these discretionary powers of Governors through some epoch-making judgments. Those decrees have sought to uphold the principles of federalism, democratic accountability and constitutional morality.

- **Shamsher Singh v. State of Punjab (1974):**

The Governor is a constitutional head, and he can do nothing without the advice of the council of ministers except where the Constitution requires him to exercise his discretion. This decision served to limit the arbitrary exercise of gubernatorial authority.

- **Rameshwar Prasad v. Union of India (2006):**

The Supreme Court ruled that the recommendation made by the Governor in 2005 to dissolve the Bihar Assembly was unconstitutional, thereby strengthening the notion that Governors cannot proceed on mere assumption or political expedience.

- **Nabam Rebia v. Deputy Speaker (2016)**

Answer : In this case, the Court has observed that except as otherwise provided by the Constitution, Governor shall act on advice of Council of Ministers in exercise of his functions relating to matters with respect to which, HE (the Governor) is required to receive Advise or Act in his discretion.

- **S.R. Bommai v. Union of India (1994) .**

This case was a precedent in determining that the Governor's report advising President's Rule under Article 356 could be reviewed by the judiciary. The Court held that a major part of the Government is to be tested on the floor of Assembly and not at the whims of a Governor.

- **Recent Judicial Trends:**

The judiciary has repeatedly asked that, Governors act as true constitutional heads and not political stooges. The courts have stressed the need to respect federal principles, secure state sovereignty and maintain gubernatorial authority within constitutional boundaries.

## 5.6 Inter-State Council

The Inter-State Council • The Inter-State Council acts as a fair dispute redressal mechanism and promote inter-state harmony by attempting to prevent disputes in advance. • The Council is established under Article 263 of the Constitution. It is a forum for exchange of policies and best practices among states with an objective to strengthen federalism by suiting national objectives in the context of local needs.

### 5.6.1 Constitutional Provision (Article 263)

Under Article 263 of the Indian Constitution, the President can set up an Inter-State Council (ISC) -if it is necessary for securing a greater coordination of policy and action with respect to the Centre and States or among states. The provision for the Council is drawn up in the Constitution, but it is not essential; it is enabled and left to the discretion of the President.

As per Article 263 the Inter – State Council may be framed for the purposes specified below:

- Dealing with and making recommendations on disputes between States.
- Enquiry and discussion of a matter of common interest between the Union and one or more States or between two or more States.
- Advocating for greater policy and action alignment on these issues.

So, although a constitutional body, its creation and conduct is at the discretion of the executive - unlike other permanent constitutional bodies.

### 5.6.2 Composition and Functions

Establishment The Inter-State Council was set up in 1990 by a Presidential order on the recommendation of the Sarkaria Commission.

The Council is made up of:

- Prime minister → Chairman of the Council.
- All State Chief Minister → Members.
- Chief Ministers of Union Territories with legislatures → Members.
- Administrators of Union Territories without a legislature → Members.
- Members of the Union Cabinet including the Minister of Home Affairs > Ex-Officio Members.
- Other Union Ministers could be, based on the agenda, invited as special invitees.

Functions The Council has advisory and consultative functions, which include:

- Considering and suggesting policies to enhance Centre–State and inter-state relations.
- Mitigating inter-state disputes, like water-sharing, boundaries or resource sharing.
- Evaluating the functioning of centrally sponsored schemes and laws which mandate co-execution by both tiers.
- To contribute towards achieving coordination in the economic and social planning and to ensure a more perfect policy implementation within the States.
- Promoting cooperative federalism by doing periodic deliberations between the Union and the States on common subjects of interest.

The non-political forum, provided by the Inter-State Council for exchanges of views, functions as an instrument of conflict management and policy harmonisation to resolve conflicting issues through consultation; the effectiveness of which depends largely on how often it meets and on how earnestly its recommendations are received.

### 5.6.3 Importance in Resolving Centre–State Disputes

Consultation Mechanism: A venue for Member States to express their concerns directly in the Union.

Conflict Resolution: Useful in resolving touchy conflicts like water-sharing (Cauvery, Krishna) and border disputes.

Cooperative Federalism: To promote co-operation between the Union and the States.

Concurrent Subjects: Policy convergence to align the policy on subjects in the Concurrent List e.g., education, environment etc.

Bridge of Trust: Political animosities lower as two sides talk outside the courts.

Example: The Inter-State Council was involved in examining the recommendations of Sarkaria Commission (1988) and Punchhi Commission (2010), focusing on building an effective framework for Union–State relations.

## 5.7 Emergency Provisions and Federalism

In the time of emergency (Articles 358–359), more extensive powers are conceded to the Union and hence, changing its federal structure in an over-riding way. These are the National, State and Financial Emergencies. Though necessary for national integrity, they concentrate power thereby detracting from State sovereignty and exposing the quasi-federalist character of the Constitution with a unitary bias.

### 5.7.1 National Emergency (Article 352) and Its Impact on Federalism

Article 352 of the Constitution of India states that if the President is satisfied that a grave emergency exists whereby the security of India or any part of its territory is threatened by war, external aggression or armed rebellion, he may issue a proclamation to that effect. If promulgated, the emergency will have a radical impact on federal balance by concentrating power at Union level.

Impact on Federalism:

- Parliament will have 'powers to make laws with respect to' in State List, which will supersede the ordinary distribution of legislative powers!
- The executive power of the Union also includes giving binding directions to State governments.
- Fundamental Rights – Article 19 rights (right to freedom of speech and expression) can be suspended when a National Emergency is in force.
- The federal structure as a whole is highly centralised, downgrading the States to administrative units under Union domination.

Examples of National Emergency include:

Indo-Pak War (1971) – States of Emergency was declared to 'ensure the security of India'.

- 1975–77 Emergency: Declared by then Prime Minister Indira Gandhi and widely condemned as authoritarian overreach and abuse of constitutional provisions.

These cases illustrate the extent to which National Emergency provisions, although designed for real emergencies, have profound reverberations on Indian federalism and its practice of democracy.

### 5.7.2 State Emergency / President's Rule (Article 356)

Article 356 grants the President power to cause 'President's Rule' to direct a state if the Governor, in his/her opinion, sees that it has become impossible for the state government to conduct itself in accordance with constitutional provisions and as such failure of constitutional machinery has occurred.

Impact on Federalism:

State Legislative Assembly is to be dissolved or suspended, and all its legislative powers are vested in the Union Parliament.

- The President may exercise his powers directly under the Centre in performing executive acts of the State which means that such a state has direct control over states.

- This dislocates the federal balance and does so especially when invoked repeatedly or for political purposes.

Examples of President's Rule include:

- Its application in Jammu and Kashmir (2018) citing political instability.
- It has been invoked in opposition-ruled states most often, sparking fears of political misuse, more so before constitutional safeguards were put in place by the S.R. Bommai v. Union of India (1994) judgment.

Although, Article 356 is a protection mechanism in the event of constitutional collapse, yet it has often been exploited and abused upon culminating into weakening of federal spirit but at the same time strict judicial and legislative checks had urged demand for closer scrutiny.

### 5.7.3 Financial Emergency (Article 360)

The President can proclaim a Financial Emergency if they believe the money stability or credit of the nation or any part (including a state) is under threat. Though such a mechanism is built into the system to ensure that its economic integrity will be preserved, its activation would amount to an extreme fiat of monetary power.

Impact on Federalism:

- It is possible for the Union to give binding financial orders to Member States, even suppressing their budgetary autonomy.
- Government employees, including state-level officials and judges, can have their salaries and allowances cut.
- The state would have to abide by Union directions in regard to the finance and expenditure.
- The consequence of this is that the degree of State financial autonomy, if any, would be largely read off; leaving practically no headway for autonomous fiscal planning or governance.

It is significant that the declaration of Financial Emergency has not been made so far even while India had faced sporadic economic crises, and it is the only one of the emergency orders in Part XVIII which has never come into force.

### 5.7.4 Criticism of Emergency Provisions as Threat to Federalism

Emergency measures are meant to maintain the unity, security, and stability of the country but they have been criticized for subverting the federal structure and values of democracy enshrined in its Constitution.

### Key Criticisms:

- Over-Centralization:

In times of disaster, especially National and State disasters, the distribution of authority is heavily skewed in favour of the Union government to the detriment not just to States but also federalism.

- Misuse of Article 356:

The President's Rule provision has been severely abused for political ends, more often than not to oust opposition governments in the states rather than when there are authentic constitutional breakdowns.

- Erosion of Democratic Spirit:

"The lessons that emerge from the Emergency of 1975-77 are still fresh in every citizen's memory – how misuse of emergency provisions destroy public trust in political actors and institutions, undermine the social fabric of the nation and weaken, subvert or collapse systems for delivery on development outcomes," they say.

- Judicial Safeguards Needed:

While the judiciary, in cases such as S.R. Bommai v. Union of India, has intervened to prevent abuse of Article 356, that doesn't allay concerns of misuse during emergencies that could potentially be arbitrary or politically motivated. More robust legal and institutional protections are still felt to be required.

## 5.8 Landmark Cases

Centre–State relations in India have been marked by landmark judgements, which further defined the limits of constitutional regulation. Landmark opinions in cases such as S.R. Bommai (1994), Kesavananda Bharati (1973) and Nabam Rebia (2016) upheld federalism, restricted the abuse of Article 356, and stressed that Governors and the Union are constitutionally bound to act: opponent apprehensions proved unfounded; no state has slid into chaos or disaster due to a proactive Governor.

### 5.8.1 S.R. Bommai v. Union of India (1994) – Limits on Article 356

This was a landmark case that really moulded the relationship between Centre and State and put strong restrictions on arbitrary implementation of Article 356, which allows for President's Rule to be imposed in states. The case was brought after various state governments were dismissed over alleged political reasons, leading to judicial scrutiny.

#### Judgment Highlights:

- The Supreme Court had very severely restricted the use of Article 356, holding that it cannot be used just to suit political convenience.

The report of the Governor seeking President's Rule was held amenable to judicial scrutiny, thereby enabling the court to consider whether it was in accordance with law as laid down by the Constitution.

- It was observed that imposition of President's Rule cannot be enacted merely because of political changes but due to real constitutional breakdown.
- Federalism is a part of the "Basic structure" of the Constitution and can't be amended by the Parliament".

Impact:

- The judgment had checked the abuse of Article 356 and upheld the autonomy of state governments.

It reiterated that floor tests would decide majority on the floor of the legislative assembly and not at the discretion of Governor.

- Overall, the case enshrined Indian federalism and underscored judicial checks on executive overreach.

### 5.8.2 Other Judicial Pronouncements on Federalism

The Court has in several other cases asserted and reinforced federalist credentials of the Constitution.

- Kesavananda Bharati v. State of Kerala (1973):

- o Put forward Basic Structure Doctrine thereby, curbing Parliament's power to amend the basic features of the Constitution.

- o Federalism came to be recognised as part of the basic structure not amenable to whims and fancies.

- State of West Bengal v. Union of India (1963)

- o The Court determined that Indian States are not sovereign.

- o It clarified that India is a Union of States and states were not sovereign.

under the Constitution.

- Rameshwar Prasad v. Union of India (2006):

- o Worried the unconstitutional to dissolution of Bihar Assembly in 2005 by a Governor report.

o The Supreme Court set aside the action, holding that the Governors' recommendations under Article 356 are justiciable.

**Nabam Rebia v. Deputy Speaker (2016):** In this case, the Supreme Court held that MLAs' disqualification should not be decided by a tribunal of two judges who are politically interested in their candidates.

o The Governor's power to prorogue or dissolve the State Assembly was curtailed.

o It interpreted such acts to be the result of the consultation with Council of Ministers, except during changed constitutional circumstances.

- **Union of India v. H.S. Dhillon (1972):**

o This case defined that the residuary power of legislation rests with Parliament under Article 248, re-emphasizing that the central holds sway over matters not included in the three constitutional lists.

### **“Activity: Mock Court on Federalism”**

Students will be divided into groups to reenact landmark cases like S.R. Bommai v. Union of India or Kesavananda Bharati. One group will argue for the Union, another for the State, and a panel will act as judges to decide, reinforcing constitutional principles of federalism.

### **5.9 Summary**

- ❖ India has been termed as a Union of States under Art. 1 and not a federal state that is loose in nature.
- ❖ India's federalism is of such nature that it takes up features from both federal and unitary governments.
- ❖ There is a division of power by the Constitution between Union list, State list and Concurrent list.
- ❖ Article 248 The residuary power rests with the Union.
- ❖ Centre-State relations are also about administrative, legislative and financial relationships.
- ❖ Governors are the constitutional heads of states and representatives of Union.
- ❖ The Inter-State Council (Art. 263) encourages coordination and dispute resolution.
- ❖ There is part XVIII: Emergency Provisions (Articles 352-360), which grants the Union extraordinary powers.
- ❖ (I'll use state for short.) Is your power decentralized or centralized?
- ❖ President's Rule under Article 356 has been always a debatable issue.

- ❖ The judiciary has set limits on the power of the Union through landmark cases.
- ❖ Indian federalism may also be characterized as quasi-federal with a bias for the unitary.

### 5.10 Key Terms

1. Federal Union – A constitutional union of states that are members of the indestructible Union.
2. Federalism:- is a type of government in which the power is divided between state and national government.
3. Union List: The subjects over which only the Parliament has exclusive powers.
4. State List – Matters of regional interest and on which the States alone are competent to legislate.
5. Concurrent List – Subjects on which both the Union and States can legislate, but if there is a conflict between laws made by them then that of the Union will prevail.
6. Residuary Powers – The powers which are not given in any list they exclusively belong to the Union.
7. President's Rule – Suspension of State government under Article 356 when constitutional machinery in the State fails.
8. Finance Commission – Constitutional body through which financial relations between Union and States are regulated.
9. Inter-State Council – It is an advisory body under Article 263 to make recommendations on disputes between Centre and States and among the states.
10. Quasi Federalism – It is Indian federation with federal form but unitary bias.

### 5.11 Descriptive Questions

1. What is Indian federalism? How does it differ from classic federal systems such as the U.S.?
2. Explain the functional assignment between Union and states as defined in Seventh schedule.
3. Discuss the position of the Governor in Centre–State relations. Why is it often controversial?
4. Discuss the relevance of Article 263 for cooperative federalism.
5. Discuss the effect of emergency provisions on Indian federalism with examples.
6. Discuss the judgment of Supreme Court in S.R. Bommai v Union of India (1994) critically.
7. Examine the character of Centre – State financial relations. How do the Finance Commission and G.S.T. Council shape them?

8. "India is a quasi-federal state with a unitary bias. Refer to constitutional provisions and case laws.

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## Answers to Knowledge Check

### Knowledge Check 1

1. b) Article 248
2. b) Division of Powers
3. c) Shared by both
4. c) Quasi-Federal

## 5.13 Case Study

### Federal Tensions and Collaborative Federalism in the Implementation of GST

#### Introduction

One of the largest reforms in India's fiscal federal structure occurred with the introduction of Goods and Services Tax (GST) in 2017. GST replaced numerous indirect taxes with a single tax system in pursuit of the principle of "One Nation One Tax." Even as it promoted economic integration, it strained India's federal balance by compelling the Union and States to share tax powers and revenues.

Formation of GST Council (Article 279A) is a watershed moment in the history of cooperative federalism for making agreed decisions on tax rates. But disputes erupted over revenue compensation, especially during the coronavirus pandemic, when the States sought higher pay for their lost revenue. The case also has the potential to unravel dynamics of Centre-State harmony and discord in India's quasi-federal set-up.

### Background

- Union's Aim: To create a common tax system and enhance compliance.
- States' Concerns: Loss of fiscal independence and reliance of the Union for compensatory funds.
- Constitutional Provisions Involved:
  - o Article 246A: Special provision with respect to goods and services tax.
  - o Article 279A: appointment of GST Council.
  - o Finance Commission: Revenue-sharing recommendations.

### Issue 1: Fiscal-Autonomy to the States

- Issue: The states worried about losing the power to tax autonomously.
- Impact: Greater reliance on the Union for money.
- Solution: Robust consultation mechanisms in GST Council and compensation assured for the first 5 years.

### MCQ

Which was the constitutional body formed to look decisions related GST?

- a) Finance Commission
- b) GST Council
- c) NITI Aayog
- d) Inter-State Council

Answer: b) GST Council

### Issue 2: Disputes of compensation amid the COVID-19 epidemic

- Problem: States suffered revenue loss, Union did not have funds to pay for compensation.
- Impact: Strained Centre–State relations.
- Solution: Borrowing regime organised, highlighted need to revisit fiscal federalism.

MCQ

Why did GST compensation disputes surge during COVID-19?

- a) Excess revenue surplus
- b) Decline in tax collections
- c) Increase in State tax powers
- d) Withdrawal of GST Council

Answer: b) Falling in the collections of tax

Issue3: Cooperative Federalism on the Ground

- Concerns: Decision making at the GST Council was a balancing act of Union and State interests.
- Impact: Demonstrated both cooperation (with joint decisions) and tension (such as revenue sharing).
- Solution: Reinforcing cooperative federalism through consensus-based policy development.

MCQ

Which aspect of Indian federalism does the GST Council reflect?

- a) Rigid Federalism
- b) Confederalist
- c) Cooperative Federalism
- d) Dual Federalism

Answer: c) Cooperative Federalism

Conclusion

The GST case only reaffirms our two observations: financial matters will by and large demonstrate the Union's supremacy; however, institutions such as the GST Council typify cooperative federalism. Issues such as definition of compensation show us the difficulty of achieving Union control and State autonomy in our federal system, but they also highlight the role of dialogic mechanisms in Indian federal democracy.

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## Unit 6: Parliament, Executive and Judiciary

### Learning Objectives

1. Understand the structure and composition of the Parliament in a democratic system.
2. Explain the roles and powers of the Executive in governance and policy implementation.
3. Analyze the functions and responsibilities of the Judiciary in upholding the Constitution.
4. Differentiate between the law-making powers of Parliament and the enforcement role of the Executive.
5. Evaluate the importance of judicial review in maintaining checks and balances.
6. Examine how the separation of powers ensures accountability and prevents misuse of authority.
7. Explore the interrelationship and coordination among Parliament, Executive, and Judiciary.
8. Assess the role of these three organs in protecting citizens' rights and promoting justice.
9. Develop critical thinking on contemporary issues and challenges faced by these institutions in practice.

### Content

- 6.0 Introductory Caselet
- 6.1 Structure and Powers of Parliament
- 6.2 The Executive
- 6.3 Independence of the Judiciary
- 6.4 Structure of Courts
- 6.5 Judicial Review & Judicial Activism in India
- 6.6 Landmark Case Law
- 6.7 Summary
- 6.8 Key Terms

6.9 Descriptive Questions

6.10 References

6.11 Case Study

## 6.0 Introductory Caselet

1975 – Proclamation of Emergency One of the most controversial periods in Indian democracy, 1975 saw the imposition of the Emergency. Prime Minister Indira Gandhi, at the helm of the Executive, declared a state of emergency in light of internal disturbances. Basic human rights had been revoked while opposition leaders were placed under arrest; the press was under strict censorship.

The supine Parliament, packed with members of the ruling party, assented to the proclamation and extended it on several occasions with barely a whimper. The Judiciary on the other hand was under a huge pressure, and it is supposed to guard the Constitution. For instance, in the celebrated case of ADM Jabalpur v. Shivkant Shukla (1976), Supreme Court justified suspension of right to life and liberty, causing much opprobrium later for what came to be seen as a judicial failure to uphold citizens' rights.

When the Emergency was lifted in 1977, there were elections and the ruling party was voted out. What this laid bare was both the strengths and weaknesses of India's democratic structure, or how our three organs (Parliament, Executive, Judiciary) function in time of crisis.

### Critical Thinking Question

Do you agree that the Judiciary should have done more at the time of Emergency to safeguard people's rights? What incident does this describe the supremacy of checks and balances between Parliament, Executive & Judiciary?

## 6.1 Structure and Powers of Parliament

### 6.1.1 Lok Sabha – Composition, Powers and Functions

#### Composition:

- The Lok Sabha is the house of the people, directly elected by universal adult suffrage, so called.
- It can be up to 552 members, comprising:
  - o 530 delegates from the States.
  - o Not more than 20 members to represent the Union Territories.

o Up to 2 members of Angelo-Indian community if not adequately represented who shall be nominated by President (This has been scrapped through 104th Constitutional Amendment, 2019).

- Members are elected to the office for the duration of 5 years or until House is dissolved sooner.

#### Powers

- As far as legislative powers are concerned, particularly in Money Bills, the Lok Sabha is stronger than the Rajya Sabha.
- It directs the Executive as the Council of Ministers is collectively accountable to Lok Sabha.
- It is authorized to begin impeachment proceedings against the President.
- It has a monopoly on financial laws, among them the annual budget and grants.

#### Functions

- Legislates on matters enumerated in the Union List and Concurrent List of the Constitution.
- Exercises control over government policies and actions through debates, question hours and motions.
- Endorses taxation and spending plans by passing financial bills.
- Is central to amendments of the Constitution.

### 6.1.2 Rajya Sabha: Composition, Powers and Functions

#### Composition

- The Rajya Sabha is the Council of States and represents the states and Union territories.
- size of the Rajya Sabha maximum number 250 members, consisting :
  - o 238 are chosen by the State and Union Territory legislatures in accordance with system of proportional representation by means of a single transferable vote.
  - o 12 members are appointed by the President as people with distinction in literature, science, art or social service.

- It is a continuing body and does not get dissolved, but one-third of the members retire every two years.

#### Powers

- Is co-equal with the Lok Sabha in passing ordinary legislations, except in Money Bills.

- Can introduce and pass bills, with the exception of financial bills that are first presented in the Lok Sabha.
- Has a big role in constitutional amendments.
- Is empowered to suggest the establishment of new All-India Services if required.

#### Functions

Represents the States and maintains a balance of power between the federal government.

- Amends, deliberates or reviews bills passed by the Lok Sabha.
- Acts as a deliberative body dealing with long-term policy matters.
- Scrutinises the legislation made in hurry or under popular pressure passed by Lok Sabha.

### 6.1.3 Presidential Role in the Legislature

- The President of India is part of Parliament but not a member of either House.
- The President can call for and adjourn sessions of the Parliament and may dissolve Lok Sabha.
- No bill is law unless the President has signed it.
- The President can send back a non-Money Bill for the reconsideration of the Parliament but, if it is passed by the Parliament again, it must be assented by the President.
- The President presents reports including those by the Finance Commission, Union Public Service Commission and Comptroller and Auditor General to Parliament.
- Joint sitting on deadlock between two Houses if there is a failure to agree on ordinary bill.
- The President communicates address to both Houses at the commencement of the first session after general election and at the commence of each session.

### 6.1.4 Law-making Procedure in Parliament

#### Introduction of a Bill

- Bill -A bill may originate in either House of Parliament other than a Money Bill, which can only be introduced in Lok Sabha.
- Bills are of four types - ordinary bills, money bills, financial bill and constitutional amendment bill.

#### Stages in Law-making

### First Reading

o The bill is proposed and its 'purpose' is established. The discussion is not elaborated at this point.

### Second Reading

o The bill is gone over with a fine-tooth comb. It may be sent to a committee for review. There can be introduced and discussed amendments.

o The bill is then considered clause by clause.

### Third Reading

o The bill is then reviewed in its ultimate form. No Member may speak to more than the acceptance or rejection of the bill.

o If it is passed, the bill then goes to the other House.

### Consideration in the Other House

- The opposing House follows suit. It can approve the bill, amend it or reject it. In the event of a disagreement, the President can call for a joint sitting.

### Assent of the President

After being approved by both Houses, the bill is submitted to the President.

- The President may:

- o Assent so it becomes law.

- o Withhold assent (absolute veto).

- o Return the wishes of the empoweree (other than a Money Bill) for reconsideration.

### Special Procedure for Money Bills

- The Money Bill can only be introduced in the Lok Sabha with the prior recommendation of the President.

- After it is cleared by the Lok Sabha, it goes to the Rajya Sabha, which can only suggest changes within 14 days. These recommendations may be accepted or rejected by the Lok Sabha.

- The Lok Sabha is the Supreme authority.

### Constitutional Amendment Bills

- Bills of this kind need a three-quarters majority in both houses.

- Ratification is needed in some cases also by at least half of the State legislatures.

### “Activity: Mock Parliament Debate”

Students will be divided into groups representing the Lok Sabha, Rajya Sabha, and the President. A sample bill will be introduced, debated, and passed through different stages of the law-making procedure. This role-play activity will help learners understand the composition, powers, and functions of Parliament.

#### 6.1.5 Checks and Balances in Parliamentary Functions

The principle of checks and balances ensures that one organ of government Parliament, Executive or Judiciary “does not become too powerful any abuse of power is checked by another. There are indeed checks and balances in place within the parliamentary system to ensure accountability and the sanctity of democracy.

##### Control over the Executive

- The Executive (Council of Ministers) is collectively responsible to Lok Sabha.
- The parliament is able to keep a check on the government by way of debates, questions, zero hour, adjournment motion and no confidence motions.
- This makes it not possible for the Executive to rule arbitrarily.

##### Financial Control

- Parliament has tight control over government spending.
- No money can be withdrawn from the Consolidated Fund of India other than with the authorization of Parliament.

Parliamentary Sanction: The parliamentary sanction is necessary for annual budgets, demand for grants and appropriation bills which ensures transparency.

##### Legislative Scrutiny

- All bills, except Money Bills, passed by one House are considered by the other Houses for their discussions and approval.
- The two approvals guarantee that laws are given fulsome scrutiny, across the various issues involved.

##### Role of the President

- The President, as an active member of Parliament, may refuse assent to or return for reconsideration non-Money Bills.

- Presidential powers: The power to summon, prorogue and dissolve the Lok Sabha functions as a check in parliamentary functioning.

#### Judicial Oversight

- Judicial review allows the courts to overturn legislation enacted by Parliament that runs counter to the law of the land.
- This provides protection against unconstitutional laws.

#### Bicameral System

- The participation of the Lok Sabha and Rajya Sabha is an inbuilt check.
- Whereas the Lok Sabha represents people, the Rajya Sabha represents the states and serves as a revising chamber in order to prevent passing of any hasty or populist legislation.

#### Internal Mechanisms

- Parliamentary committees (like Public Accounts Committee, Estimates Committee, Departmental Standing Committees) examine the expenditure details, and policy formulations of the Government in great depth.
- These are bipartisan committees that ensure accountability.

## 6.2 The Executive

### 6.2.1 Role and Powers of the Prime Minister

- The PM is the head of Government and holds the most powerful position in the executive.
- The PM is appointed by the President and should be a member of either House of Parliament who in the opinion of President, commands confidence of Lok Sabha.

#### Powers and Functions

- Leader of the Council of Ministers: The PM appoints and determines the portfolios of ministers, s/he can also ask them for their resignation.
- Policy-Maker: Instrumental in shaping domestic and foreign policies.
- Leader of the Lok Sabha: Leads debates, explains government policies and secures the passage of bills.
- Adviser to the President: Consults about the summoning, proroguing of the House and dissolution of Lok Sabha.
- International Representation: Represents India in all international forums, conventions and international negotiations.

- **Coordination:** Coordinating various ministries and departments to facilitate easy governance.

## 6.2.2 Council of Ministers – Composition and Responsibilities

### Composition

- The Prime Minister chairs the Cabinet, which is divided into three classes:
  - o **Cabinet Ministers:** Ministers heading key ministries and making major policy decisions.
  - o **Ministers of State (Independent Charge):** In-charge of certain departments, without being under a Cabinet Minister.
  - o **Minister of State:** Help Ministers in charge of certain ministries.

### Responsibilities

- Assists the Prime Minister in policy formation and implementation.
- Implements laws passed by Parliament.
- Manages several departments and service delivery to the public.
- Remains collectively responsible to Parliament and operates as a collective team.

## 6.2.3 Collective Responsibility of the Council of Ministers

\*The Constitution, in Article 75(3), provides for collective responsibility of the Council of Ministers to Lok Sabha.

- All ministers are collectively responsible for the decisions made by the Cabinet, even if they opposed them during discussions.
- When the Lok Sabha passes a vote of no confidence the entire Council including the Prime Minister has to collectively resign.
- This doctrine promotes accountability of the Executive to the Legislature.

## 6.2.4 Relationship between President, Prime Minister, and Council of Ministers

- The President is a ceremonial head of the State and the Prime Minister is its functional head.

- The President is bound to act in accordance with the advice rendered by Prime Minister and the Council of Ministers, however, he may also exercise his/her discretion in certain matters.
- The Prime Minister is the intermediary between the President and the Council of Ministers by presenting Cabinet decisions.
- The Prime Minister heads the Council of Ministers, which is responsible for day to day administration, and the President who symbolizes the nation.
- This arrangement bears resemblance to the parliamentary form of government in which the President is a nominal head while real powers are vested with the Prime Minister and the Council of Ministers.

### Knowledge Check 1

Choose the correct option:

1. Who is the real head of the Executive in India?
  - a) President
  - b) Prime Minister
  - c) Chief Justice
  - d) Governor
2. Which Article establishes the collective responsibility of the Council of Ministers?
  - a) Article 72
  - b) Article 74
  - c) Article 75(3)
  - d) Article 76
3. Which category of ministers head important ministries and take major policy decisions?
  - a) Cabinet Ministers
  - b) Ministers of State
  - c) Deputy Ministers
  - d) Parliamentary Secretaries

4. The President acts on whose aid and advice in most cases?
- Parliament
  - Supreme Court
  - Prime Minister and Council of Ministers
  - Governor

### 6.3 Independence of the Judiciary

#### 6.3.1 Constitutional Provisions Ensuring Judicial Independence

- Security of Tenure - Judges of the Supreme Court and High Courts are not fixed their tenure of office till they attain the age of retirement (65 years for Supreme Court, 62 years for High courts).
- Fixed Conditions of Service: The salaries, allowances and other service conditions of judges acting in respect of a Supreme Court are charged on the Consolidated Fund (CF) of India, which means that they can never be voted by Parliament and thus will not have any kind discussed with the Parliamentarians.
- Practice after retirement: A person who has held office as a judge of the Supreme Court shall not be entitled to practice in any court of law or before any other authority within the territory of India.
- Judicial Review: as well has the power of judicial review (where courts can rule on whether laws and executively actions are constitution or unlawful).
- Division of Executive from Judicial: Executes separates in its functions the executive from judicial power.
- Oath of Office: Judges take an oath to follow the Constitution, and laws, of India without fear, favor.

#### 6.3.2 Appointment, Tenure, and Removal of Judges

##### Appointment

- Judges of Supreme Court which include the Chief Justice of India (CJI) are appointed by the President and can be removed on charges of proven misbehaviour or incapacity after a Parliament resolution following presentment of address for such removal supported by special majority in each house of Parliament.

- The appointment of a High Court judge is made by the President after consultation with the Chief Justice of India (CJI), Governor of that state, and Chief Justice of an HC.

#### Tenure

- Judges would serve only until retiring age:
  - o 65 years for judges of the Supreme Court.
  - o 62 years for Judges of the High Court.

#### Removal

- Judges are removable only by means of an impeachment process carried out by Parliament on the grounds of proved misbehaviour or incapacity.
- The process would require a special majority in both houses of Parliament.
- Protection against removal other than on the grounds specified in article 311 of the Constitution from office during tenure.

### 6.3.3 Separation of Powers and Judicial Autonomy

- The Constitution lays down the doctrine of separation of powers between the Legislature, Executive and Judiciary.
- The Judiciary is independent and operates without interference of the other two.
- Judicial independence means judges can invalidate laws or executive actions that conflict with the Constitution.
- The principle of judicial review promotes independence, since it gives the Judiciary the authority to interpret constitutional provisions and safeguard citizens' rights.
- Decision-making independence helps the Judiciary to serve as a safeguard against actions that are arbitrary or unconstitutional.

### 6.3.4 Challenges to Judicial Independence

- Executive Interference: Influence in judicial appointments and transfers can jeopardize independence.
- Appointments on the back burner: Vacancies in higher judiciary exist for a long time causing difficulties and denting judicial strength.
- Political Pressure: Judges or court decisions can be influenced in some high-profile circumstances.

- **Public Criticism and Media Trials:** Media hype of certain cases may amount to undue pressure on judges.
- **Judicial Review vs. Accountability:** On one hand review is essential to hold accountable, but on the other extreme intervention under its garb may affect independence.
- **Corruption and Opacity:** Claims of corruption and lack of transparency in the collegium system recurrently threaten the credibility of judges.

## 6.4 Structure of Courts

### 6.4.1 Supreme Court - Composition, Jurisdiction and Powers

#### Composition

- Under Article 124 (1) of the Constitution, the Supreme Court is a court of record.
- It comprises the Chief Justice of India (CJI) and not more than 33 other judges.
- Judges are nominated by the President, on the recommendation of collegium.

#### Jurisdiction

- power to hear and decide the original cases between the Union and one or more States, contending parties are not States; all questions involving disputes between Federal Government and State or Kos.; cmd supreme vs.

Appellate Jurisdiction: Appeal against High Courts' decisions in civil, criminal or constitutional cases.

- **Advisory Jurisdiction:** The President may take the Courts opinion on any questions of law or fact of public importance at a time under Article 143.
- **Writ Jurisdiction:** Writ (habeas corpus, mandamus, prohibition, certiorari and quowarranto) jurisdiction for enforcement of fundamental rights.

#### Powers

- Custodian of the Constitution and protector of the fundamental rights.
- Exercises the power of judicial review to invalidate unconstitutional laws and executive actions.
- Final interpreter of the Constitution.
- Control over the other courts throughout India.

### 6.4.2 High Courts – Structure and Jurisdiction

## Structure

- There is a High Court for every State, except Joint High Courts for two or more States and Union territories.
- Consists of a Chief Justice and judges appointed by the President.
- Judges sit until they are 62.

## Jurisdiction

- Original Jurisdiction: A few High Courts have original jurisdiction over civil and criminal case, especially cases of high value or where no other authority has the jurisdiction.
- Appellate: Appeals from subordinate courts, seems to me.
- Writ Jurisdiction: High Courts can also issue writs for enforcement of fundamental rights under Article 226 similar to the Supreme Court but its scope is wider and it covers legal rights besides fundamental.
- Supervisory Jurisdiction: Has power of supervision on all courts subordinate to it.

## Did You Know?

“High Courts in India not only safeguard fundamental rights but also protect legal rights under Article 226, giving them wider powers than even the Supreme Court in certain cases. Some High Courts, like those in Bombay, Calcutta, and Madras, are among the oldest, established during British rule in 1862.”

### 6.4.3 Subordinate Courts – District and Lower Judiciary

#### District Courts

- Run at the district level, and headed by a District judge.
- Try civil and criminal cases that arise in the district.

Appointment of The District Judge is made by the Governor of the State in consultation with the High Court.

#### Lower Judiciary

- It covers the courts like Civil Judges, Judicial Magistrates, Family Courts and Sessions Courts.
- Deal with local level cases, i.e., property disputes, petty criminal offences and family dishes.

- Work under the administrative control of the concerned High Court.

#### 6.4.4 Hierarchy of Courts and Appeals System

- The Indian judiciary is a hierarchy with different levels of courts having varying degree of power.
- Below are Subordinate Courts, then High Courts, with the Supreme Court at the top.

#### Appeals System

- Decisions by lower courts can be taken up to higher courts for justice and correction of errors.
- Appeals are escalated in the Stack:
  - o The District Courts to the High Court.
  - o From the High Court to Supreme Court.
- The system makes certain that litigants get at least two levels of judicial recourse and enhances the predictability for interpretation of the law.

### 6.5 Judiciary Review & Judicial Activism in India

#### 6.5.1 Concept and Scope of Judicial Review

- Judicial review is the power of courts to scrutinize laws and executive actions to determine whether they are compatible with the Constitution.
- It is a concept that arises from the doctrine of constitutional supremacy.
- The apex court and high courts have the power to quash any law or executive action if it violates fundamental rights or exceeds constitutional mandate.
- Judicial review applies to three primary situations:
  - o Legislative Measures: To examine whether the laws enacted by Parliament or State legislatures are unconstitutional.
  - o Executive Orders: To assess the legality and rationale of actions taken by the executive.
  - o Judiciary: Higher courts can examine the rulings of the lower courts.
- It guarantees protection of basic rights, preserves federal equilibrium and insures the rule of law.

### 6.5.2 Judicial Activism – Meaning and Development

- Judicial activism describes the role of the court in creating interpretation of law and constitution to accord rights and justice when these are not found embodied in black letter law.
- It was especially strong in India, emerging with a vengeance during the late 1970s and 1980s, after the Emergency.
- The judiciary started interfering with issues of environment, human rights, corruption and governance through PILs.
- The judicial activism has been reflected in the form of a Landmark case such as Kesavandna Bharati v. State of Kerala (1973) (basic structure doctrine) and Vishaka v. State of Rajasthan (1997) (guidelines against sexual harassment at workplace).

### 6.5.3 Judicial Restraint vs. Judicial Overreach

- Judicial Restraint: Definition- Judges should interpret the Constitution and laws as more narrowly worded, limit their own power actively seek to avoid unnecessary interference with the other branches of government. Its accent is on the respect of the separation of powers.
- Judicial Overreach: It is referred to as judicial overreach when the judiciary trespasses its jurisdiction by excessively interfering in policy making or administrative matters. Critics maintain this is against democratic processes.
- The fusion of restraint and activism is necessary in order to protect both justice and democratic accountability.

### 6.5.4 Impact of Judicial Review and Activism on Indian Democracy

- Fortification of Constitutional Rights: Judicial Review confirms that no statute or executive order will be allowed to diminish the citizens' constitutional rights.
- Government Accountability: Judicial activism checks the Executive and Legislature to ensure that they are not abusing their powers.
- Devolving Law: Over time, courts have put expansionary constructions on statutes and there by strengthened justice delivery where legislation was wanting.
- Public Confidence: The judiciary's assertive actions have raised public confidence in the courts as guardians of rights.
- Worrisome aspect: Greater judicial overreach into governance would subvert the doctrine of separation of powers and cause acrimony among organs of government.

This twin face of judicial review and judicial activism has had an essential bearing on the development of India's constitutional democracy - governing rights as well as governance.

## 6.6 Landmark Case Law

### 6.6.1 Kesavananda Bharati v. State of Kerala (1973) – Basic Structure Doctrine

- The case originated when a religious leader, Kesavananda Bharati, challenged Kerala's laws that put limits on how much land an individual could own and argued they violated his fundamental rights.
- The question that had been debated pertained to whether Parliament's power to amend the Constitution under Article 368 was absolute.
- The Supreme Court held that while Parliament has ample power to amend the Constitution, it cannot tamper with its "basic structure."
- The Court listed various aspects like the primacy of the Constitution, rule of law, judicial review, federalism and separation of powers as constituting the basic structure.
- This ruling developed the Basic Structure Doctrine, which operates as a bulwark against constitutional amendments which can subvert democracy.

### 6.6.2 Indira Gandhi v. Raj Narain (1975) – Limits of Executive Power

- The case originated when Raj Narain, a rival politician of the Prime Minister Indira Gandhi, filed an election petition before the High Court challenging her election from Lok Sabha on the allegation of electoral malpractice.
- Indira Gandhi's election was invalidated by the Allahabad High Court, triggering a constitutional crisis.
- The case went all the way to the Supreme Court, which upheld some of the High Court's decision and nullified a constitutional amendment intended to put the Prime Minister's election beyond judicial review.
- The verdict upheld the values that no one — not even a prime minister — is above the law.
- It underscored an important role for the judiciary in monitoring executive power and upholding democratic accountability.

### 6.6.3 Vishaka v. State of Rajasthan (1997) – Gender Justice & Guidelines on Sexual Harassment

- This is the follow up case filed after the infamous Bhanwari Devi gang rape in Rajasthan.

- The Supreme Court laid down cognizable guidelines for workplace sexual harassment in the absence of an enactment on it, holding that they would be binding so as to ensure gender justice at work place and to prevent discrimination and ensure equality between men and women.
- Those rules, called the Vishaka Guidelines, compelled employers to create complaints committees, establish a safe workplace and institute preventative policies.
- The Court drew on international conventions, such as CEDAW (**Convention on the Elimination of All Forms of Discrimination Against Women**), to stretch **the constitutional** protections under Articles 14, 15,19 and 21.
- The case was a pivotal moment in the acknowledgment gender equality and workplace rights in India.

## 6.7 Summary

- ❖ There are 3 members in Indian Parliament- Lok Sabha, Rajya Sabha and President.
- ❖ The Lok Sabha directly represents the people and enjoys vast powers over legislation and financial control.
- ❖ The Rajya Sabha is the representative of the States and it serves as a revising chamber.
- ❖ The President is a component of Parliament, exercising a critical function in the processes of law-making.
- ❖ The Prime Minister is the actual head of the Executive and chairman of the Cabinet.
- ❖ Council of ministers is collectively responsible to Lok Sabha for its acts.
- ❖ Independent Judiciary Constitutional guarantees, tenure in office and protection from removal arbitrary.
- ❖ Ultimate Court is the Supreme Court, followed by High Courts and Subordinate Courts' which constitute a uniform judiciary.
- ❖ Judicial review: this is the process that enables courts to determine whether laws and executive actions are constitutional.
- ❖ § Judicial Activism broadens the horizon of dispensation of Justice specially PIL and §
- ❖ Land mark cases such as Kesavananda Bharati, Indira Gandhi v. Raj Narain and Vishaka v. State of Rajasthan would influence Indian constitutional law.
- ❖ Check and balance between Parliament, Executive, Judiciary protected democracy and avoided arbitrary use of power.
- ❖ iv The Judiciary As Guardian Of The Constitution It is the judiciary's responsibility to maintain order over the State and the government, thereby safeguarding fundamental rights and rule of law.

## 6.8 Key Terms

1. Parliament -The supreme legislative body comprising of Lok Sabha, Rajya Sabha and the President.
2. Lok Sabha-Lower house of parliament directly elected by the people.
3. Rajya Sabha – The body that is the upper house of India's Parliament.
4. President – He is the constitutional head of State and an integral part of Parliament.
5. Prime Minister- The actual chief of the Executive, head and leader of the government.
6. Council of Ministers – Group of ministers other than Prime Minister to help and advise the President.
7. Collective Responsibility: The system of the collective responsibility of the council to Lok Sabha is based on which all ministers in the cabinet share responsibility collectively.
8. Judicial Review – Authority of courts to test laws and official acts by the standard of what the Constitution allows.
9. Judicial Activism – when the judiciary itself plays an active role in interpreting and increasing rights and justice.
10. Judicial Restraint – The notion that the courts should not get involved with legislative and executive business.
11. Basic Structure Doctrine (BSD) – It is the judicial principle that the Parliament cannot amend or alter the basic framework or structure of the Constitution.
12. Writ Jurisdiction – Power of court to issue writs for enforcement of fundamental rights.
13. What is Checks and Balances It is the division of power among three co-equal branches of government.

## 6.9 Descriptive Questions

1. Discuss the structure and functions of Lok Sabha. Discuss its role in law making.
2. Explain the composition and powers of Rajya Sabha. How does it serve as a revising chamber?
3. Examine the functions and powers of the Prime Minister in India's parliamentary democracy.
4. Explain the composition and functions and of Council of Ministers. How is collective responsibility ensured?
5. Which provisions of Indian constitution protect the independence of Judiciary in India?
6. Explain the organisation of Indian judiciary with special reference to hierarchy of courts.
7. Discuss the meaning and extent of judicial review in India. And why has it become a must for democracy?

8. Distinguish between the judicial activism, judicial restraint and judicial overreach with examples.
9. Discuss the role played by path breaking cases like Kesavananda Bharati v. State of Kerala and Vishaka v. State of Rajasthan for development of Indian constitutional law.

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### Answers to Knowledge Check

#### Knowledge Check 1

1. b) Prime Minister
2. c) Article 75(3)
3. a) Cabinet Ministers
4. a) Prime Minister and Council of Ministers

### 6.11 Case Study

“Judicial Review and the Preservation of Fundamental Rights in Times of Emergency”

#### Introduction

· The balance of power amongst the Parliament, Executive and Judiciary is at the heart of India's democratic system. But the balance is frequently tested during crises. It was such a moment that Emergency of 1975 threw up, raising questions about the nature of constitutional rights, powers of an executive and how far judges are independent. This paper is a case study of how the Judiciary during the Emergency utilized judicial review to meet resistances and what it suggests for democratic governance.

### Background

Several other fundamental rights were also suspended: these include Article 21, which deals with the right to life and personal liberty. The Executive defended the suspension on national security and public order grounds. Parliament ratified the proclamation and amendments reducing rights. Detainees held without charge took their cases to the Supreme Court. The decision of the court in *ADM Jabalpur v. Shivkant Shukla* (1976) is one of the most celebrated decisions delivered by the Indian history.

### Issue 1: The Fundamental Right Gets Suspended

The government contended that an Emergency was no time that one could be sensitive about enforcing the right to move courts for enforcement of

fundamental rights was suspended. There was no redress at law for detentions, even though the arrests were illegal.

### Solution

In a split verdict, the Supreme Court accepted the government's plea — that even the right to life could be suspended during an Emergency. This underscored the importance of stronger protections. Subsequent amendments to the Constitution and judicial precedents have explained that basic structure is, including right to life, non-negotiable.

### Problem Statement 2: The Role of Judiciary in Crisis- Introduction

The ruling cast doubts on the ability of the Judiciary to serve as an independent check against when the Executive wielded its expanded powers.

### Solution

The Supreme Court, post the Emergency, has re-evaluated its position in subsequent assignments and carved out its identity as sentinel of basic rights. It became more activist in its stance via PILs, ensuring better protection of legal rights and thwarting misuse power.

### ProblemStatement3:Keeping the checks and balances in place

Excess of concentration of power in the Executive, which emerged during Emergency.

Without their being so monitored, the reality will be that parliamentary and Government decisions would have the real potential to thwart democracy.

## Solution

The Supreme Court, through its decisions in Kesavananda Bharati case and subsequently, further refined the Basic Structure Doctrine that certain core constitutional values including separation of powers, judicial review and rule of law are beyond the pale of destruction.

## Case Questions

How was the ADM Jabalpur case a setback to judicial independence?

How did judiciary safeguard fundamental rights after Emergency?

To what extent does the basic structure theory provide a check against abuse of power?

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## Unit 7: Constitutional Amendments and Landmark Cases

### Learning Objectives

1. Understand the process of constitutional amendment under Article 368 of the Indian Constitution.
2. Explain the significance of constitutional amendments in adapting the Constitution to changing social, political, and economic needs.
3. Analyze the Kesavananda Bharati case (1973) and its role in establishing the Basic Structure Doctrine.
4. Examine the impact of the Indira Gandhi v. Raj Narain case (1975) on executive accountability and limits of power.
5. Evaluate the contribution of the Vishaka v. State of Rajasthan case (1997) in ensuring gender justice and workplace safety.
6. Explore how judicial review safeguards the Constitution against unconstitutional amendments.
7. Assess the balance between Parliament's amending power and the Judiciary's role in preserving fundamental principles.
8. Develop critical insights into how constitutional amendments and landmark cases have shaped Indian democracy over time.

### Content

- 7.0 Introductory Caselet
- 7.1 Procedure for Constitutional Amendments (Article 368)
- 7.2 Landmark Amendments
- 7.3 Doctrine of Basic Structure
- 7.4 Kesavananda Bharati Case (1973)
- 7.5 Judicial Review of Amendments
- 7.6 Summary
- 7.7 Key Terms
- 7.8 Descriptive Questions
- 7.9 References

## 7.10 Case Study

### 7.0 Introductory Caselet

By the 24th and 25th Constitutional Amendments Act of 1971, Indian Parliament inserted clauses into Articles 13 and 368 thereby asserting its power to amend any part of the constitution, including Fundamental Rights. This resulted in the landmark case of Kesavananda Bharati v. State of Kerala (1973), where the Supreme Court had to determine whether Parliament's power to amend under Article 368 is absolute.

The Court held that while Parliament has sweeping authority to amend the Constitution, it cannot violate its "basic structure" — principles like the supremacy of the Constitution, rule of law, judicial review and separation of powers. The judgment laid down the "Basic Structure doctrine." and further ruled that any constitutional amendment which tends to disturb this basis structure is invalid.

Subsequently, during the Emergency (1975–77), amendments were adopted by Parliament which sought to limit judicial review and immunize from scrutiny the Prime Minister's election. But largely on the basis of *Indira Gandhi v. Raj Narain* (1975), the Supreme Court ruled against such provisions, asserting that even the office with supreme executive power must be held accountable to constitutional checks.

These cases demonstrate how constitutional amendments and judicial actions have molded India's democracy, serving to accommodate both the imperative of flexibility along with the protection of core values.

#### Critical Thinking Question

If Parliament is given unfettered power to amend the Constitution, do you feel it will strengthen or weaken democracy? "To what extent does the Basic Structure Doctrine enable a balance between flexibility and stability in governance?"

### 7.1 Amendment Procedure of the Constitution (Article 368)

#### 7.1.1 Types of Amendments: Simple Majority, Special Majority, Special Majority with State Ratification

##### (a) Amendment by Simple Majority

- Some provisions can be changed as though they were an act of ordinary legislation, by a simple majority of the members present and voting in each house of Parliament.
- These changes are not included in Article 368 but come under a legislative procedure.

- Areas that the two-thirds repeal amendment technique would expand probably pertain to technical or procedural matters rather than fundamental constitutional provisions.

- Examples include:

- o Creation of new states or change in the boundaries (Article 2, 3).

- o Establishment or abolition of Legislative Councils in States (Article 169).

- o Alterations in the state representation in parliament.

- o Delimitation of constituencies.

#### (b) Amendment by Special Majority

- Article 370: This is the most common process, under Article 368.

- Requires:

- o Yes by majority of each House membership, and

- o Two-thirds of the members present and voting.

- The higher threshold results in more consensus for the big changes.

- Examples include:

- o Changes in 'Fundamental Rights' (Part III).

- o Objective Resolution of the Sovereignty and Integrity of Pakistan was passed as preamble to Constitution in 1949 but part of the Constitution; however it will not be operative unless made so.– PART IV o Directive Principles of State Policy.

- o Provisions as to the powers of Parliament and of the Union Judiciary (But not including) o Powers of the parliament and the union judiciary.

#### (c) Amendment by Special Majority and State Ratification

- Consent of states is also required for amendments to the federal structure in India.

- The amendment must be approved by special majority in both Houses of parliament and ratified by at least half of the state legislatures.

- It is also in keeping with the federal structure of India as it binds states to changes in a vital organ of Indian Constitution.

- Examples include:

- o President (Article 54, 55), 5.

- o Powers of the Union and States (Articles 73, 162)o.

- o Division of powers (Article 7, Schedule VII).

- o Representation of states in Parliament.
- o S.C/Jurisdiction of the Supreme Court/High Courts.

### Types of Amendments

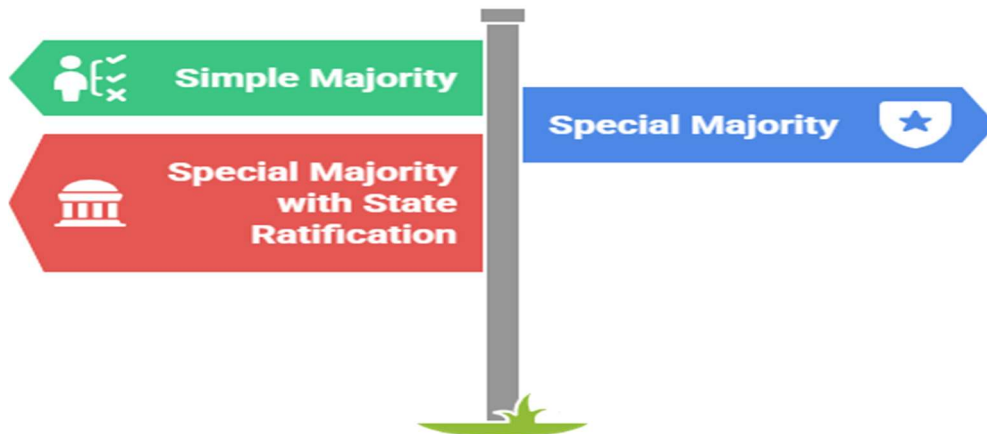


Figure 7.1

#### 7.1.2 Role of Parliament in the Amendment Process

- Initiation: An amendment to the constitution can be initiated only in Parliament. The state legislatures have no authority to suggest amendments.
- Introduction of bill: The amendment bill may be introduced in either House of Parliament. It can be introduced by a minister (government bill) or a private member (private bill).
- Passage in Each House: Lok Sabha and Rajya Sabha must pass the bill separately with majority (simple, special or special with state ratification) required for amending the constitution. There is no provision for disagreement to be resolved by joint sitting.
- PRESIDENT ROLE: Once it passes from both houses, the bill is put before the President for assent. This renders the President powerless to veto as in normal bills. He must approve it, thereby incorporating the amendment in the Constitution.
- State Ratification (if necessary): If the amendment pertains to federal clauses, then the latter has to be ratified by two-thirds of state legislatures before being presented to President.
- The result of this process is one in which, whether Parliament forms the centrepiece or not, some amendments need state involvement, in keeping with India's quasi-federal nature.

#### 7.1.3 Limitations on Amending Power

- In the beginning Parliament arrogated to itself unfettered power of amendment of the Constitution under Article 368. But judicial construal has been quite restrained.

- The most significant limitation was enunciated in *Kesavananda Bharati v. State of Kerala* (1973), where the Supreme Court held that although Parliament could amend any part of the Constitution, it cannot affect its basic structure or core elements.
- Contents of the Basic Structure are as follows:
  - o Supremacy of the Constitution.
  - o Form of government—Sovereign democratic republic.
  - o Secular character of the Constitution.
  - o Indian Federal System with its unity and integrity.
  - o Independence of the Legislature, Executive and Judiciary.
  - o Rule of law and Jurisdiction.
  - o Independence of the judiciary.
- This doctrine serves as a permanent bulwark against arbitrary, politically motivated amendments that could subvert democracy.
- Also, Parliament cannot utilise its amending power to:
  - o Abolish fundamental rights.
  - o Swap India from a democracy to dictatorship.
  - o Destroy the essence of federalism.
- The doctrine ensures that amendments enhance and modernize the constitution without changing its philosophy.

### **“Activity: Simulated Amendment Debate”**

Students will be divided into groups representing the Lok Sabha, Rajya Sabha, and State Legislatures. A mock constitutional amendment bill will be introduced, debated, and passed using different types of majorities. This activity helps learners understand Article 368 procedures and the role of consensus in constitutional amendments.

## **7.2 Landmark Amendments**

### **7.2.1 42nd Amendment (1976) – “Mini Constitution”**

- Enacted during the Emergency (1975–77) while Prime Minister Indira Gandhi was in office.

- Author of the Mini Constitution which introduced far-reaching and radical reforms.

Key Provisions:

- Inserted the words “Socialist,” “Secular” and “Integrity” into the Preamble.
- Placed Fundamental Duties (Article 51A) in the Constitution.
- Removed judicial review of laws in most cases by curtailing the power to courts used to stop them.
- Extended the term of Lok Sabha and State Legislative Assemblies from 5 years to 6 years (reversed by the 44th Amendment later).
- Transferred subjects such as education, forests and wildlife from the State List to the Concurrent List which effectively transferred it from state jurisprudence to Union environment.
- Gate open for Parliament to amend any provision of the Constitution including even the Fundamental Rights.

### **7.2.2 44th Amendment (1978) – Safeguards after Emergency**

- Enacted by the Janata Party government after the Emergency to reinstate democracy.

Key Provisions:

- Lok Sabha and State Assemblies now have their term back to 5 years.
- Returned the power of judicial review to the courts.
- Declared Right to Life and Personal Liberty (Article 21) non-suspend able even during the Emergency.
- Restricted the Executive’s power to invoke a National Emergency:
  - o Writer recommendation of the Cabinet was required for declaring emergency.
  - o The announcement must be ratified by Parliament within 30 days (it was previously 60 days).
- Increased safeguard for rights of the people and curbed abuses of authority by the Executive.

### **7.2.3 73rd Amendment (1992) – Panchayati Raj Institutions**

- Conferred constitutional status to the Panchayati Raj institutions for the purpose of local self governance in the rural areas.

#### Key Features:

- Inserted Part IX (Articles 243 to 243O) and the 11th Schedule into the Constitution.
- Instituted three-tier structure of Panchayati Raj:
  - o Village level (Gram Panchayat).
  - o Intermediate level (Panchayat Samiti).
  - o District level (Zila Parishad).
- Reservation for Seats for the Scheduled Castes, the Scheduled Tribes and not less than 1/3rd of seats reserved for women.
- Conducted regular elections in 5 years by State Election Commissions.
- Created State Finance Commissions to suggest sharing of financial resources.
- Empowering Panchayats to enable them to plan and execute economic development and social justice programme.

#### **7.2.4 74th Amendment (1992) – Urban Local Bodies**

- Enhanced the role of local self-governance in cities with the constitutional recognition of municipalities.

#### Key Features:

- Included Part IXA (Articles 243P–243ZG) and the 12th Schedule.
- Instituted three categories of urban local bodies:
  - o Municipal Corporations for large cities.
  - o Municipal Councils for smaller towns.
  - o Nagar Panchayats for transitional areas.
- Allowed for direct elections to the municipalities.
- Reserved seats for SCs, STs and not less than one-third for women.
- Obligation of State Finance Commissions to balance the resources and finances.
- Gave autonomy to the municipalities in dealing with 18 matters listed under the 12th Schedule, such as urban planning, land use regulation, public health and sanitation.

#### **7.2.5 101st Amendment (2016) – Goods and Services Tax (GST)**

- Intended to implement a unified system of indirect tax throughout the country.

Key Provisions:

- Added Article 246A, providing for concurrent powers to Union and State Legislatures to make laws related to GST.
- Created the GST Council (Article 279A) to recommend rates, exemptions and model laws.
- Unified several indirect taxes such as excise duty, VAT and service tax, into a single GST.
- Advocated the idea of “One Nation, One Tax, One Market”.
- Facilitated business environment and better transparency of revenues.

### 7.2.6 103rd Amendment (2019) – EWS Reservation

- Created reservation on economic grounds as a new category.

Key Provisions:

- Amended Articles 15 and 16 to facilitate 10 per cent quota in jobs and education for the Economically Weaker Sections or EWS.
- For Individuals who are not covered by any existing SC, ST and OBC reservation.
- Eliminated factors for eligibility based on family income and home ownership.
- Signalled a new trend in affirmative action by accepting economic backwardness as a reservation ground.
- Upheld by Supreme Court in 2022, but is still debated for its impact on equality and social justice.

Knowledge Check 1

Choose the correct option:

1. Which amendment is called the “Mini Constitution”?
  - a) 24th Amendment
  - b) 42nd Amendment

- c) 44th Amendment
- d) 73rd Amendment
- 2. The 44th Amendment made which right non-suspendable even during Emergency?
  - a) Right to Equality
  - b) Right to Freedom
  - c) Right to Life and Liberty
  - d) Right to Education
- 3. Panchayati Raj Institutions received constitutional status through which amendment?
  - a) 73rd Amendment
  - b) 74th Amendment
  - c) 42nd Amendment
  - d) 101st Amendment
- 4. The 103rd Amendment provides reservation for whom?
  - a) SCs
  - b) STs
  - c) OBCs
  - d) EWS

### 7.3 Doctrine of Basic Structure

#### 7.3.1 Origin of the Basic Structure Doctrine

A chain of landmark Supreme Court cases outlined the scope and limit of Parliament's authority to alter the Constitution: \* Shankari Prasad v. Union of India 1951: -held Parliament understood to modify certain Fundamental Rights under Article 368. \*: did not include constitutional amendments. Sajjan Singh v. State of Rajasthan 1965: retraced Shard Prasad opinion and pointed the virtue of Parliament's amending authority. Nevertheless, a few, the justice courteously hinted preserving the Fundamental Right's conscience. \* Golaknath v. State of Punjab 1967: a twist to the argument and a judgment Ladies' home. Court. Malta elected the Parliament could not change Fundamental Rights. The Court the verdict was poised on Fundamental Rights transcendent people more in the scope. \* Kesavananda Bharati v. State of Kerala 1973: this case decided by the numerous constitutional bench 13 judges. The

Court with the help of 7:6 biggest verdict articulated " \* Subsequent cases Reifying the Doctrine Indira Gandhi v. Raj Narain 1975: -Stricken away an amendment saying the Prime Minister's election above judicial control. Thereby held amount all to be basic. Minerva Mills v. Union of India 1980: -relaying the little amending influence itself to be the reconciliation Uluru was the most crucial IPS officer at the scene. Waman Rao 1981, I.R. Coelho 2007 : finally strengthened the doctrine when practiced in about 1973.

### 7.3.2 Core Features Considered Part of Basic Structure

The Supreme Court has not provided definitive set of basic structure elements, but it has over years recognized some essential principles:

- Primacy of the Constitution – There is no authority before the people than that of the Constitution.
- Sovereign, Democratic and Republican Polity – The political nature of the Indian state cannot be altered.
- Secular Nature: The state should have no religion.
- Register in the lists (Rule of Law) – no one is above, ever.
- Division of Powers – There are 3 separate branches of the government (Legislature, Executive and Judiciary) which have specific areas in which they can operate.
- Judicial Review and Judicial Independence – Courts should be allowed to check unconstitutional acts.
- Federal Character of the Constitution - There should be equilibrium between Union and State.
- Free and Fair Elections – Critical to the survival of democracy.
- Parliamentary Form of Government – The executive is responsible to the legislative.
- Fundamental Rights – No dilution or removal of any core rights.
- Balance between FP & DP: one cannot be at cost of other.

These are the principles that make up the "spirit" of the Constitution, and they cannot be amended out of existence.

### 7.3.3 Importance of Doctrine in Constitutional Interpretation

The Basic Structure Doctrine is of sheer consequence in the constitutional text of India:

- Limits Parliamentary Power

Prevents misuse of Article 368 by Parliament for rewriting the Constitution or damaging democracy. For instance, to stop a scenario where Parliament would be able to pass an amendment declaring India a dictatorship.

- **Judicial Safeguard Against Arbitrary Amendments**

As the guardian of the Constitution, the Supreme Court can nullify any amendment that destroys the basic structure.

This is what lends stability to constitutional government.

- **Preserves Core Democratic Values**

Guarantees that fundamental features of democracy, secularism and federalism cannot be overridden by a brute political majority.

- **Balance Between Flexibility and Rigidity**

Although many provisions in the Charter can be modified by Parliament to reflect the realities of changing times, it acts as a barrier to alteration of its central elements.

This is to guarantee that the Constitution does not lose its inherent identity, yet keeps growing.

- **Protection of Citizens' Rights**

Protects Fundamental Rights against possible amendments to dilute or abolish them. Respects the dignity, freedom and equality of individuals.

## **7.4 Kesavananda Bharati Case (1973)**

### **7.4.1 Background and Context of the Case**

- **The Dispute:**

- o Kesavananda Bharati served as the head of a Hindu religious mutt (Edneer Mutt) in Kerala.
- o He disputed Kerala state's land reform law, which attempted to limit the control of his mutt's properties.

- **Larger Constitutional Question:**

Originally, however, the case was simply about property rights; but this issues quickly ballooned into:

Is there no limitation on the power of Parliament under Article 368 to amend the Constitution, including Fundamental Rights?

- **Conflicting Precedents:**

- o Shankari Prasad case (1951): Supreme Court said in this case that Parliament can change any part of the Constitution and it included FRs also.

- o Sajjan Singh v. State of Rajasthan (1965): State that the amendment power was untrammelled.

- o Golaknath v. State of Punjab (1967): Overruled earlier position; decided that Parliament could not prevent courts from deciding the issue.

amend Fundamental Rights at all.

- Political Context:

- o The Indira Gandhi regime, which had an overwhelming majority, brought several amendments to enhance the powers of Parliament.

- o It fuelled fears that the Constitution could be subverted by a majority in power.

- The Bench:

- o The case was decided by the biggest bench in Indian history — 13 judges of the Supreme Court.

- o The hearings ran for 68 days – indicative of the significance of this matter.

#### 7.4.2 Establishment of the Basic Structure Doctrine

- The case gave birth to the landmark Basic Structure Doctrine, not found anywhere in the text of the Constitution but judicially discovered, which is now a cornerstone of our constitutional jurisprudence.

Some of the core features listed in the Basic Structure are:

- Supremacy of the Constitution.

- Government of representative, democratic and republican character.

- Secular character of the Constitution.

- The balance of the three organs viz. Legislature, Executive and Judiciary.

- Judicial review and the independence of the judiciary.

- Federal character of the Constitution.

- Rule of law.

- Subsequent cases incorporated other ingredients like free and fair elections, parliamentary form of government and harmonious relationship between Fundamental Rights and Directive Principles.

This doctrine has proved to be the last-gasp protection against such a political majority's being allowed to destroy the identity of the Constitution.

### 7.4.3 Long-term Impact on Indian Constitutional Law

- Permanent Check on Parliament
  - o Barred any one majority from completely rewriting the Constitution.
  - o Made sure that no amendment could turn India into a dictatorship or decimate basic democratic principles.
- Strengthened Judicial Role
  - o Raised the Supreme Court to the level of Constitution's protector.
  - o Required courts to interpret the Constitution in a manner that it did not conflict with its basic structure.
- Preservation of Democracy
  - o Ensured that key principles such as secularism, rule of law and independence of judiciary cannot be done away with.
  - o Even in political hegemony, the spirit of Constitution is guarded.
- Follow-up Cases Strengthening the Doctrine:
  - o *Indira Gandhi v. Raj Narain* (1975): Invalidated a constitutional amendment that sought to insulate from judicial scrutiny the election of the Prime Minister.
  - o *Minerva Mills v. Union of India* (1980): Reiterated that the "limited amending power" is a basic feature in itself.
  - o *I.R. Coelho v. State of Tamil Nadu* (2007) -- On the principle, to remove laws from the Ninth Schedule (laws earlier excluded from judicial review).
- Global Significance
  - o The Basic Structure Doctrine has been acclaimed worldwide as a distinctive Indian creative contribution to constitutional jurisprudence.
  - o It reconciles the doctrine of Parliamentary sovereignty with that of constitutional supremacy and ensures the strength of Indian democracy.

Did You Know?

“The Kesavananda Bharati judgment (1973), decided by the largest-ever 13-judge bench of the Supreme Court, still holds the record for the longest hearing in Indian legal history—68 days of arguments. This case permanently limited Parliament’s power, ensuring that India’s Constitution can evolve but never lose its basic structure.”

## 7.5 Judicial Review of Amendments

### 7.5.1 Role of Judiciary in Reviewing Amendments

- It is the duty of the Judiciary to serve as the ultimate arbiter of Constitutional interpretation.
- As an editorial board commenting on amendments it:
  - o Mapping of amendments with constitutional provisions.
  - o Preventing the core fundamental rights from being compromised or deleted.
  - o Any process should be robust enough to prevent the Legislature from changing the character of the Constitution.
- Judicial review authorizes the court to nullify amendments that:
  - o Undermine democracy, secularism, or federalism.
  - o Curtail judicial independence.
  - o Be contrary to fundamental principles like the rule of law or free and fair elections.
- This role was especially important at the time of and immediately after the Emergency (1975-77) when drastic amendments tried to centralise authority in the Executive.

### 7.5.2 Balancing Flexibility with Rigidity in Constitutional Design

- The Indian Constitution is meant to be supple enough to accommodate changing needs and stiff enough to conserve core values.
- Flexibility:
  - o Parliament can change most clauses to deal with social, economic and political problems.
  - o Example: 73rd and 74th Amendments (1992) Panchayati Raj and Urban Local Bodies, deepened decentralization.
- Rigidity:
  - o The role of the judiciary to preserve first principles from erosion is secured.

o Example: Parliament cannot amend the Constitution to abolish free elections or create a dictatorship in India.

- The balance is what the framers had in mind: a living Constitution that evolves with the times while preserving its core.

### 7.5.3 Cases Reinforcing Judicial Review of Amendments

Landmark Supreme Court Cases that Affected the Power of Judicial Review to turn back Amendments:

Kesavananda Bharati v. State of Kerala (1973) Decided Issue: Whether the power to amend the Constitution is an unlimited or circumscribed power?

o Introduced the Basic Structure Doctrine.

o Parliament can amend any part of the constitution, except its basic structure.

Indira Gandhi v. Raj Narain, A.I.R. 1975 S.C.

o The 39th Amendment sought to immunise the election of a Prime Minister from judicial review.

o The Supreme Court fell it down, that judicial review and free election are part of basic structure.

Minerva Mills and others v. Union of India (1980)

o Repealed the provisions of the 42nd Amendment that allowed for Parliament to amend the Constitution without check.

o Held that the “limited amending power” is at least part of the basic structure.

I.R. Coelho v. State of Tamil Nadu (2007)

Ruled that even legislations inserted into the Ninth Schedule (which were immune from judicial scrutiny) after 1973 can be reviewed if they violate the basic structure.

These cases enshrined the principle of judicial review as an enduring protection in constitutional government.

### 7.5.4 Criticism and Debates on Judicial Intervention

**Critique:**

- What's more, critics say, judicial review enables unelected judges to strike down elected representatives' decisions and thus fundamentally subverts parliamentary sovereignty.

- Judicial involvement in policy or political questions is often criticized as judicial activism.
- Excessive use of judicial review can upset the balance between Legislature, Executive and Judiciary.

Defense:

- The role of judicial review in defending democracy against abuse by political power is at issue for defenders.
- It acts as a check on authoritarianism, particularly post-Emergency, when unbridled parliamentary power almost rode roughshod over fundamental rights.
- The system of judicial review ensures the rule of law, secularism, federal character and freedoms of citizens with continuity.
- It reaffirms that Parliament is mighty, but the Constitution supreme.

## 7.6 Summary

- ❖ The procedure for amendment of the Constitution is laid down in Article 368 – both flexibility and permanency are maintained.
- ❖ Amendments may be made by simple majority or special majority (or a special majority with state ratification), depending on the issue.
- ❖ The fundamental amendments, after their initiation, are discussed and passed by Parliament.
- ❖ Amendment 42nd (1976) as termed “Mini Constitution” strengthened central authority but curtailed the judicial review.
- ❖ The 44th Amendment (1978) re-established democratic guarantees and ensured the life and liberty of individuals under Emergencies.
- ❖ Constitutional status was conferred on rural and urban local bodies by 73rd and 74th Amendment (1992) respectively.
- ❖ The Goods and Services Tax (GST) has been implemented by the 101st Amendment in 2016 which embodied a unified system for taxes.
- ❖ The 103rd Amendment (2019) accorded 10% reservation to the E.W.ceans.
- ❖ Kesavananda Bharati Case (1973) gave rise to the concept of Basic Structure Doctrine, curtails the power of amendment by Parliament.
- ❖ The doctrine contains elements such as democracy, secularism, judicial review and rule of law.
- ❖ Judicial review provides a safeguard so that Parliament can never alter the Constitution to such an extent as to take away its essential character.
- ❖ Black-letter cases such as Minerva Mills (1980) and I.R. Coelho (2007) reiterated courts’ power of review over amendments.

- ❖ The mixture of the *Freiheitsentwertung* and a Downsian concept of indirect constitutional amendment accounts for both adaptability and state stability.

## 7.7 Key Terms

1. Article 368 (Provision in the Constitution as to amending procedure)
2. Bare Majority – At least half the members present and voting in Parliament.
3. Special Majority – Simple majority of total membership and two-thirds members present and voting.
4. State Ratification – Half of State Legislatures must approve certain federal amendments.
5. 42nd Amendment – Popularly referred to as the “Mini Constitution,” passed in the Emergency era.
6. 44th Amendment – Reversed the democratic protections of legitimate processes and judicial checks during the Emergency.
7. Structure Doctrine, Basic – Constitutional doctrine that the Parliament has no power to modify or change the Constitution’s basic framework.
8. Judicial Review – Ability of the courts to review and void a law, or an amendment to the Constitution, that it finds unconstitutional.
9. Kesavananda Bharati Case – 1973 case laying the foundation of Basic Structure Doctrine.
10. I.R. Coelho – 2007 decision that ninth schedule laws post-1973 must pass the basic structure test.

## 7.8 Descriptive Questions

1. Discuss the process of amendment under Article 368. What is the difference between all three types of amendments?
2. Examine the importance of 42nd Amendment Act (1976). Why is it known as the “Mini Constitution”?
3. Discuss the 44th Amendment Act (1978) and its significance in restoring democracy after the Emergency.
4. Discuss the significance of 73rd and 74th Amendments for promoting local self-government in India.
5. Examine the provisions of the 101st Amendment act for introduction of Goods and Services tax (GST). How has it influenced India’s economic face?
6. Discuss the constitutional amendments 101st and one introduced by 103rd Amendment Act (2019). Why was it not just another chapter in reservation policy?

7. Explain the facts, judgement, implications of Kesavananda Bharati v. State of Kerala (1973) case?
8. What is the Essential Structure Doctrine? Examine how it has evolved over different Supreme Court rulings.
9. Discuss the controversies of constitutional amendments judicial review with special reference to Supreme Court judgements? Do you believe it enhances or diminishes parliamentary democracy?

## 7.9 References

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## Knowledge Check 1

1. b) 42nd Amendment
2. c) Right to Life and Liberty
3. a) 73rd Amendment
4. d) EWS

## 7.10 Case Study

### Basic Structure Doctrine and Boundaries of Parliamentary Power

## Introduction

The power of the Parliament to amend the Constitution has been a matter of debate in Indian constitutional history. And while some amendments are needed to keep the Constitution dynamic, unchecked powers can come to threaten democracy itself. The trend shifted with the **Kesavananda Bharati v. State of Kerala (1973) case**, when **the Supreme Court** introduced the concept wherein of **Basic Structure Doctrine**. This case will be analysed to consider the battle between the Parliament's wish for elasticity, on the one hand and the Judiciary's obligation to safeguard Constitution identity.

## Background

During the early decades following independence, Parliament enacted numerous constitutional amendments in order to attain greater social and economic reforms. But there were a number of changes which limited Fundamental Rights, leading to the issue as to whether Parliament could amend even its most basic constitutional beliefs. The Kesavananda case adjudicated by a 13 Judge bench that became the watershed in this struggle.

### 1.1 The Problem of Infinite Amending Power at the Hands of Parliament

Parliament said that it had the power to alter any provision of the Constitution, and this included

Fundamental Rights, under Article 368. Opponents worried that this could destroy democracy by enabling majorities to rewrite the Constitution.

## Solution

It was ruled by the Supreme Court that most of the provisions in Parliament could be otherwise amended to any extent, but not its basic structure. This helped to prevent the degradation of fundamental values such as democracy, secularism and independence of judiciary.

## MCQ

Which was the case that brought in the doctrine of basic structure in India?

- a) Golaknath v. State of Punjab
- b) Shankari Prasad v. Union of India
- c) Kesavananda Bharati Vs State of Kerala
- d) Minerva Mills vs. Union of India

Answer: c) Kesavananda Bharati v. State of Kerala 14.

Problem 2: Review of Court vs The Supremacy of Parliament

The disagreement centered on the idea of unelected judges deciding that amendments made by elected representatives of the people should be struck off.

#### Solution

The Court was actually protecting democracy, not constraining it," the ruling said. The power of judicial review emerged as a counter-weight to parliament supremacy operating within its constitutional parameters.

#### MCQ

Which principle was laid down in the case of *Indira Gandhi vs. Raj Narain (1975)*?

- a) Judicial Review as basic structure
- b) Unlimited amending power of Parliament
- c) Abolition of Fundamental Rights
- d) Absolute supremacy of the Executive

Ans: a) Judicial Review is part of the basic structure

Problem 3: The constitution's sustainability over time

Too many amendments, and particularly during the Emergency, threatened the structure of the Constitution. The citizens worried their rights were being eaten away.

#### Solution

The verdict of the Supreme Court in *Kesavananda* and then in *Minerva Mills (1980)* brought certainty by harmonising parliamentary authority to amend with judicial safeguard against violation of the Constitution's constancy values.

#### MCQ

Which amendment was invalidated in part under the doctrine of basic structure when *Minerva Mills v. Union of India (1980)*?

- a) 24th Amendment
- b) 39th Amendment
- c) 42nd Amendment
- d) 44th Amendment

Answer: c) 42nd Amendment

#### Conclusion

The Kesavananda case and the doctrine it laid down forever altered Indian constitutional law. It kept the Constitution flexible but checked its abuse. The Judiciary, in so doing, protected the democratic essence of India and preserved the spirit of Constitution untouched for posterity by fixing a limit to Parliament's amending power.

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## Unit 8: Rights of Marginalized Groups and Social Justice

### Learning Objectives

1. Explain the concept of social justice and its significance in promoting equity and fairness within society.
2. Identify the various marginalized groups and analyze the challenges they face in accessing rights and opportunities.
3. Examine constitutional provisions, legal frameworks, and international conventions that safeguard the rights of marginalized communities.
4. Evaluate the role of government policies, NGOs, and social movements in advancing social justice for disadvantaged groups.
5. Develop critical thinking skills to assess discrimination, inequality, and exclusion in different social, economic, and political contexts.
6. Explore strategies for inclusive development and empowerment of marginalized groups through education, employment, and participation.
7. Foster empathy, sensitivity, and ethical responsibility towards marginalized communities in personal and professional life.
8. Apply the principles of equity and justice to propose solutions for reducing inequalities and ensuring human rights for all.

### Content

- 8.0 Introductory Caselet
- 8.1 Constitutional Safeguards for SCs, STs, OBCs, and Minorities
- 8.2 Reservation Policy
- 8.3 Rights of Women
- 8.4 Rights of Children
- 8.5 Emerging Rights
- 8.6 Summary
- 8.7 Key Terms
- 8.8 Descriptive Questions

## 8.9 References

## 8.10 Case Study

### 8.0 Introductory Caselet

#### “Bridging the Gap – Story of Asha’s Education”

Asha, a 15-year-old girl in a rural village surrounded by tribal areas of central India, had longed to be a teacher. But her journey was fraught with obstacles. Her parents, day laborers, could hardly scrape together enough for food. Education was seen as a “luxury,” particularly for girls, and her family occasionally wondered aloud whether sending her to school was worth the trouble of giving up help with household chores or agriculture.

The social barriers in her community were strong. Girls were more often taken out of school by the age of 12 due to employment, premature marriage or insufficient funds. The closest high school was 5 kilometers away, and with no transport deemed safe, many parents were reluctant to send their daughters that distance.

Things started to change when the government created a scholarship program for tribal children involving free textbooks, uniforms and bicycles for girls. At the same time, an ngo worked with the home school to establish after-school learning centers and mentoring. These interventions eased the financial burden on families and provided students with further academic support.

The doors opened and the excuses poured in, but it only fuelled Asha’s resolve. She not only managed to go back to school but also did well enough to become the first girl in her village to clearly state-level board exams with distinction. Her accomplishment made her family proud and the community, too. Other parents, observing her success, began to think that educating a girl could hold long-term advantages. Gradually, social attitudes began changing and larger cohorts of girls entered school.

Now, Asha dreams of becoming a teacher and go back to her home village to give other children, mostly girls, the courage and knowledge they need to rise above poverty and marginalization.

#### Critical Thinking Question

In Asha's case, government policy and NGO intervention were critical in generating opportunities. What extent do you believe that measures to overhaul structures (for instance, infrastructure improvement, eliminating gender bias and guaranteeing employment opportunities) are necessary along with these schemes for achieving social justice to the underprivileged?

### 8.1.1 Provisions for Scheduled Castes (SCs) and Scheduled Tribes (STs)

#### SCs and STs were the most oppressed sections of Indian society. " special constitutional guarantees were given for their security and advancement:

oppressed sections of Indian society. " special constitutional guarantees were given for their security and advancement:

#### Abolition of Untouchability (Article 17):

- o Made untouchability a punishable practice; it was outlawed.
- o Reinforced by the Protection of Civil Rights Act (1955) and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989).

#### Equality and Protective Discrimination:

- o Article 15(4) and 16(4): Power to make provision for reservation in educational institutions and reservations in appointments.
- o Reserved category-STs and SCs also. Graphical pressure on educational institutions and government jobs on reserved basis.

#### Political Representation:

- o Articles 330 & 332: Reservation of seats in Lok Sabha and State Legislative Assemblies;
- o Preserves political voice and representation in organization decision-making.

#### Directive Principles (Article 46):

- o It obligates the State to advance educational and economic interests of SCs/STs.

#### Safeguards against Exploitation:

- o Article 23 and Article 24: Article on No human trafficking, bonded labour and no child labour.

#### Special Commissions:

- o National Commission for Scheduled Castes (Article 338).
- o National Commission for Scheduled Tribes (Article 338A).

They are agencies that investigate complaints and monitor policies and advise governments about social welfare.

Illustration: The reservation of seats in IITs, IIMs and Parliament have given birth to SC, ST and minority leaders and professionals who can think outside the box.

### Constitutional Safeguards for SCs, STs, OBCs, and Minorities

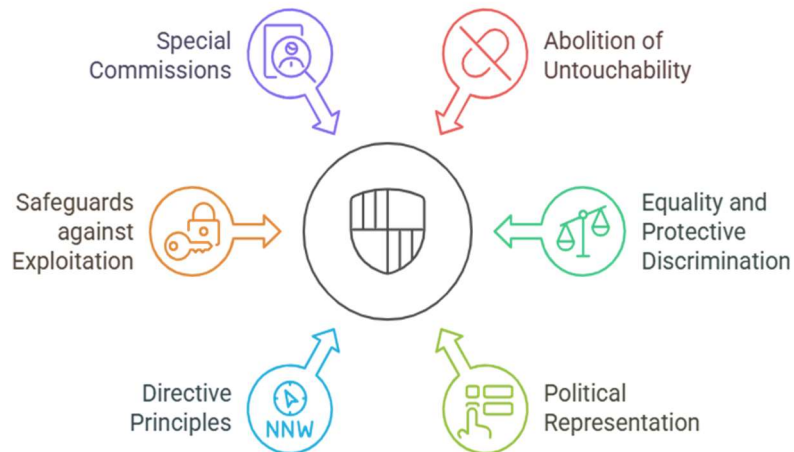


Figure 8.1

#### 8.1.2 Safeguards for Other Backward Classes (OBCs)

OBC refers to castes that were defined as socially and educationally backward, but not subject to historical injustices as the SCs/STs.

Constitutional Backing:

- o Article 15(4) & 16(4): State may make special provisions for socially and educationally backward classes.

Mandal Commission & Reservation:

- o The Mandal Commission (1979) suggested 27% reservation for central government jobs and higher studies.

- o Introduced in 1990, this continues to be an important action towards the upliftment of OBCs.

National Commission for Backward Classes (NCBC) :

- o formed in 1993, constitutionally provided for under Article 338B passed in the year 2018.

- o Counsels and supervises reservation welfare program.

Supportive Measures:

- o Scholarships, skill development, hostel facility & coaching facility to help improve opportunities.

Illustration: OBC reservation in civil services gave first-generation learners and administrators from disadvantaged backgrounds access.

### 8.1.3 Rights of Religious and Linguistic Minorities

India is a diverse country with lots of religions and languages. To ensure that governments respect this diversity, the Constitution includes distinct rights:

Cultural & Educational Rights (Articles 29 & 30) :

- o Minorities have a right to preserve their culture, language and script.
- o They can promote and administer own educational institutions (e.g., Aligarh Muslim University, St. Stephen's College ) • HOLDERS o Can run their schools but will use state curriculum/language 3.

Freedom of Religion (Articles 25–28):

- o Freedom of religion – to profess, practice and propagate.
- o The right not to receive religion as a subject in state-funded schools.

Linguistic Protection (Articles 350A & 350B):

- o Children's mother tongue is used as a basic medium of instructions during their primary education.
- o Special Officer for linguistics minorities to be appointed.

Non-Discrimination (Article 15):

- o No discrimination **by the State on the basis of religion, race, caste, sex or place of birth.**

For example, schools belonging to minority communities such as Christian missionary institutions and Madrasas have the freedom to remain in their identity even while participating in what is recognized as national education.

### 8.1.4 Role of National Commissions (SC, ST, OBC and Minorities)

The Constitution has independent commissions to make certain there are measures.

National Commission for Scheduled Castes (Article 338):

- o Investigates complaints of rights violations.
- o Advises the government on welfare policies.

National Commission for Scheduled Tribes (Article 338A):

- o Addresses ST-centric themes such as land alienation, displacement and forest rights.

National Commission for Backward Classes (Article 338B):

- o Advisory on inclusion/exclusion in OBC during reservation.

- o Examination of the functioning of reservation policies.

National Commission for Minorities (1992 Act):

- o Looks into the problems of religious/linguistic minorities.

- o Minority rights in education, employment and culture would be protected.

## 8.2 Reservation Policy

### 8.2.1 Historical Background of Reservation in India

An arrest of reservation goes back at the caste system which is archaic and dehumanising tool used to prevent people from lower/untouchable caste getting educated, owning properties or having control over power.

Pre-Independence Developments:

- o Princely States: Certain princes particularly of Mysore and Kolhapur added reservation in jobs and education in their domains in 19th–20th century.

- o Government of India Act, 1909: Provided for separate electorate to the Muslims and hence started political reservation.

- o Communal Award (1932): Suggesting the idea of separate electorate for Depressed Classes (Dalits) to make up from this Dr. B.R. Ambedkar and Mahatma Gandhi entered into a compromise known as Poona Pact instead of so called as conceived by BR Ahemdkar. Under the Pact, Dalits were given reserved seats in legislatures but within the Hindu electorate.

Post-Independence:

- o The Indian Constitution granted (1950) political representation and special legal rights othe SCs and STs in legislatures, education, and public employment.

- o Originally planned for 10 years, these situations have been renewed several periods because the inequalities haven't faded away.

Key Idea: Reservation should not be seen as charity, but a tool for justice and equality, compensating for centuries of social exclusion.

### 8.2.2 Mandal Commission Report and Its Impact

Formation of the Commission:

- o The Mandal Commission, led by B.P. Mandal, was established in 1979 to determine the “socially and educationally backward classes.”

Recommendations (1980 Report):

- o OBCs (Other backward classes) has been recognized as a deprived section.

- (iii) Proposed 27% quota for OBCs in central government jobs and higher education over the existing 22.5 per cent reservation for SCs and STs.

Implementation (1990):

- o Prime Minister V.P. Singh declared OBC reservation in central services.

- o Provoked widespread demonstrations, including violent student riots and self-immolations.

Impact:

- o Politically aroused OBC castes, and in turn a system of Indian politics has changed with new emerging regional OBC leaders.

- o Socially extended education and job opportunities but with challenges of “creamy layer” non – eligibility (the wealthier OBCs are excluded) were incorporated.

- o Stirred discussions on meritocracy v/s social justice.

Example: Leaders of the OBCs such as Lalu Prasad Yadav and Mulayam Singh Yadav became a force in states like Bihar and Uttar Pradesh after Mandal.

### **8.2.3 93rd Constitutional Amendment – Reservation in Educational Institutions**

Provision (2005):

- o Inserted Article 15(5): Authorised the State to make special provisions for SCs, STs and OBCs in private unaided educational institutions (other than minority educational institutions aided by the State under Article 30).

Purpose:

- o Continued reservation benefits even for non- government institutions as the role of private higher education is becoming more and more significant.

Judicial Validation:

- o Ashoka Kumar Thakur v. Union of India (2008): Supreme Court ultimately upheld OBC-quota in higher education and declared that 50% cap applies to total quotas including SC, STs while creamy layer principle must not be violated.

Impact: Increased access to quality education for marginalised communities and empowered education as a tool.

#### 8.2.4 103rd Constitutional Amendment – EWS Reservation

Provision (2019):

- o Inserted Articles 15(6) and 16(6).
- o 10% reservation introduced for the Economically Weaker Sections (EWS) of society in education and public employment.
- o Served the "forward" castes who were poor, but not exempt under SC, ST or OBC quotas.

Significance:

- o Economic reservation is introduced instead of merely aligning facilities on caste basis.

Judicial Endorsement:

- o *Janhit Abhiyan v. Union of India* (2022): Supreme Court has upheld the amendment (3:2), validating EWS quota.

Debate: While it targeted demands of economically weaker sections in upper castes, critics said that the move was a departure from the original purpose of reservation — to end historical atrocity and caste-based discrimination.

#### Did You Know?

“The 103rd Constitutional Amendment Act, 2019 introduced a 10% reservation for the Economically Weaker Sections (EWS) in education and public jobs. For the first time, economic criteria became the basis of reservation, benefiting poor upper-caste groups. The Supreme Court upheld its validity in 2022.”

#### 8.2.5 Debates on Reservation and Social Justice

Reservation is one of India’s most contentious policies. Arguments in Favor

- Is a form of representation and empowerment for minority communities.
- Support us to break cycles of poverty, discrimination and exclusion.
- Ensures a variety of perspectives are heard in governance and public services.

Arguments Against

- Viewed as undermining meritocracy and promoting dependency.
  - Fosters animosity between non-beneficiary groups and thereby sows social discord.
  - Politically manipulated, as parties promise reservation to win elections.
  - Implementation challenges: benefits are routinely hijacked by the “creamy layer.”
- Contemporary Debates
- Extending the Demand: Marathas, Jats, Patidars, Gujjars and other groups have campaigned to be included in reservation lists.
  - Creamy Layer for SCs/STs? – There is ongoing debate whether even prosperous SCs/STs should be treated as such.
  - Future of Reservation: Whether to make a shift towards need-based (economic) reservation or remain with caste-based (social justice-old model).

## 8.3 Rights of Women

### 8.3.1 Constitutional Provisions for Gender Equality

The Constitution provides strong grounding for gender equality by incorporating rights in both Fundamental Rights and Directive Principles.

All are equal before Law (Article 14): Women at par with men in constitutional eye.

Non-discrimination (Art 15(1)): Sex discrimination is not permitted.

Protective Discrimination (Article 15(3)): Allows special laws/policies for women and children (ex.: maternity benefits, reservations).

Equality of Opportunity (Article 16): Equality in opportunity for appointment to public service.

Directive Principles:

- o Article 39(a): Right to adequate means of livelihood.
- o Article 39(d): Same wage for same work.
- o Article 39(e): Raising the level of nutrition & standard and improving public health.
- o Article 42: Protection of Motherhood and of the work place.

Fundamental Duties (Article 51A(e)): Renounce practices derogatory to the dignity of women.

Illustration: Women’s reservation in Panchayati Raj institutions (73rd Amendment, 1992) was feasible because the Constitution accepted the concept of positive discrimination.

### 8.3.2 Protective Legislation and Reforms

Since then, several laws have been adopted to end gender injustice and protect and promote the rights of women:

Hindu Code Bills (1950s): Brought modernity in the marriage, adoption and succession laws of Hindus by giving women rights in property and inheritance.

Dowry Prohibition Act (1961): Prohibits the exchange of gifts at the time of wedding, yet is not strongly implemented.

Equal Remuneration Act (1976): This law ensured that men and women received the same wage for doing the same job.

The Maternity Benefit Act (1961, amended 2017): Enlarged the period of maternity leave to 26 weeks; a crèche facility was introduced in workplaces.

Indecent Representation of Women (Prohibition) Act, 1986: Who can play women in an indecent manner using ads or publications.

The Protection of Women from Domestic Violence Act (2005): Defined and criminalized domestic violence including physical, sexual, emotional or economic abuse.

Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act (2013.)

The POSH Act made it compulsory to have Internal Complaints Committees in the places of work.

Criminal Law (Amendments):

- o 1983 & 2013 amendments reinforced laws on rape, acid violence and harassment.

- o The 2013 modification was a consequence of the Nirbhaya agitation.

Impact: These constitute a structure for gender justice although social constructions and actualisation continue to pose challenges.

### 8.3.3 Vishaka v. State of Rajasthan (1997) – Sexual Harassment Guidelines

Background:

- o In 1992, a social worker in Rajasthan, Bhanwari Devi, was gang-raped by members of the upper caste for opposing child marriage.

- o There was no law that specifically for sexual harassment in the workplace back then.

The Case:

- o Women's groups filed PIL in Supreme Court.

o The Court ruled that sexual harassment is a violation of Articles 14, 19 and 21.

The Guidelines (Vishaka Guidelines):

- o Employers should have measures for preventing harassment in place at every workplace.
- o Setting up of Complaints Committees having women members.
- o Obligation of employers to provide safe workplaces.

Significance:

- o First realisation of sexual harassment as a breach of fundamental rights.
- o Continued to be the legislation in force and use until The POSH Act (2013) legislated.

### **8.3.4 Recent Judicial Developments in Women's Rights**

In the process, the courts have enlarged women's rights to go beyond mere protection to include autonomy, dignity and equality.

Reproductive & Personal Autonomy

- Suchita Srivastava v. Chandigarh Administration (2009): Decriminalised abortion, upheld women's right to reproductive choice.
- X v Union of India (2022): Unmarried women permitted abortion up to 24 weeks, aligning with married women.

Workplace Equality

- The decision in Air India v. Nargesh Meerza (1981) Invalidated discriminatory rules of airways that required their the mandatory retirement from service on marriage/pregnancy of air hostesses.
- Lt. Col. Nitisha v. Union of India (2021): Permanent commission for women in the armed forces; rejecting stereotypes of women's "inferiority."

Cultural & Religious Equality

- Shayara Bano v. Union of India (2017): Struck down instant triple talaq as unconstitutional.
- Indian Young Lawyers Association v. State of Kerala (2018): Permitted women's entry into Sabarimala temple and struck down religious exclusion.

Political Representation

- Several states have already implemented 50% reservation for women in grassroots level as local bodies. It has empowered countless women in panchayats and municipalities, changing the political culture of rural and semi-urban India.

- The Women’s Reservation Bill (2023), aimed at reserving 33% seats of the Lok Sabha and State Legislative Assemblies for women, has been passed by both Houses as law. This is a milestone in promotion the representation of women in high offices of law- making. “Execution of the Bill is not right away. It is explicitly associated with the implementation of the next census, and therefore delimitation (drawing up constituency boundaries) following it. This implies that even if it is now legal, the reservation of women in Parliaments and State Assemblies will only come into effect after the administrative and procedural provisions are completed.

Trend: Courts are giving constitutional morality precedence over tradition when it comes to the rights of women.

“Activity: Spot the Rights”

Students will be divided into groups and given case scenarios involving issues like workplace harassment, unequal pay, or denial of education. Each group must identify the constitutional provision or law that protects women in the case. Groups will present solutions, linking theory with practical application.

## 8.4 Rights of Children

### 8.4.1 Constitutional Provisions Related to Children

The Indian Constitution offers children fundamental rights and directive principles .

Right to Equality & Non-Discrimination

- o Article 14: That, there was equal protection of the law for children as adults.
- o Article 15(3): Permits the State to create special provisions for children (e.g., free education, mid-day meal).

Right to Education & Development

- o Article 21A (amended 86, 2002): Right to free and compulsory education for children aged 6-14.
- o Article 45: Early childhood care and education for all children until they complete the age of six years by state.

Right to Protection from Exploitation

- o Article 23: Human trafficking and forced labour is prohibited.

- o Article 24: Banning employment of children below the age of 14 years in hazardous industries (such as factories and mines).

#### Directive Principles of State Policy

- o Article 39(e): To ensure children are not employed in work that is hazardous, cause them harm or prevent them from their education.

- o Article 39(f): Protects children and youth from exploitation and being abandoned in body or soul.

Example: The Anganwadi program that ICDS (Integrated Child Development Services) is a part of, is derived from Article 45.

### 8.4.2 Right to Education Act (2009)

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) was enacted by Parliament to give effect to Article 21A.

#### Key Provisions:

- o Free and compulsory education for children between 6 to 14 years of age.
- o 25% of seats in private schools to be reserved for the children belonging to EWS category.
- o Ban on corporal punishment, mental harassment, screening tests and capitation fees.
- o Prescribe minimum norm (such as Pupil teacher ratio, infrastructure and working days) o Will include private players.

#### Significance:

- o First law in India to make education as a fundamental right.
- o Enables integration of the most marginalised children into formal schooling.

#### Judicial Support:

- o Society for Unaided Private Schools v. Union of India (2012): SC upheld RTE's Constitutional validity and reserved 25% in private schools. The government closed down all schools that did not follow the Right to Free Education Act. institution shut down by govt., in State education Chief Minister closed all non-RTI institutions et al.

Impact: Higher enrolment, particularly among the poor and marginalized children, but continuing challenges in the quality of education and dropout rates.

### 8.4.3 Child Labour and Legal Safeguards

It is one of India's most persistent social challenges throughout its history. But poverty, despite constitutional bans, frequently compels children to work.

And Child Labour (Prohibition and Regulation) Act, 1986 (29 of 1986).

- o Bans employment of children under the age of 14 in all occupations except home-based employment and entertainment industry (in which proper safeguards are provided).

- o Bans hazardous work for adolescents (14-18 years).

Juvenile Justice (Care and Protection of Children) Act, 2015 :

- o Special legislation for children below 18 in conflict with law and in need of care.

- o Contains mechanisms for adoption, foster care and rehabilitation.

The Prohibition of Child Marriage Act, 2006:

- o Declares child marriages voidable.

- o Plays punitive role against those who facilitate and celebrate child marriages.

Protection of Children from Sexual Offences (POCSO) Act, 2012:

- o Special law for child sexual abuse – And immediate redressal and justice built in, along with the most stringent punishment.

Example: NGOs like Bachpan Bachao Andolan have saved thousands of children from bonded labour and trafficking and connected them to rehabilitation programmes.

#### **8.4.4 Role of Judiciary in Protecting Children's Rights**

Courts have been active and proactive in the protection of children's rights.

Right to Education:

- o Unnikrishnan v. State of Andhra Pradesh (1993): Proclaimed education as a fundamental right and gave birth to Article 21A: Part III article re-enacted as part IV Articles.

Child Labour & Exploitation:

- o M.C. Mehta v. State of Tamil Nadu (1996): Compensation and rehabilitation ordered for children working in hazardous industries.

Children in Custody & Protection:

- o Sheela Barse v. Union of India (1986): Directed the humane treatment and release of children in jails.

Nutrition and Welfare Schemes:

o People's Union for Civil Liberties vs. Union of India (2001): Ordered conversion of food schemes into legal entitlements, and enhancement in mid day meals for children.

Child Sexual Abuse:

o The Courts have stressed for child-friendly courts, speedy trials as also the protection of the victim pursuant to POCSO.

Trend: The judiciary understands child rights broadly — in relation to dignity, survival, development and even international responsibilities.

### Knowledge Check 1

Choose the correct option:

1. Which Constitutional Article provides free and compulsory education for children aged 6–14 years?
  - a) Article 14
  - b) Article 21A
  - c) Article 24
  - d) Article 39
2. The Right to Education Act was enacted in which year?
  - a) 2002
  - b) 2005
  - c) 2009
  - d) 2012
3. The POCSO Act, 2012, is related to protection of children from:
  - a) Labour exploitation
  - b) Sexual offences
  - c) Malnutrition
  - d) Child marriage
4. In *M.C. Mehta v. State of Tamil Nadu (1996)*, the Supreme Court dealt with:
  - a) Child marriage

- b) Child labour in hazardous industries
- c) Right to education
- d) Juvenile justice

## 8.5 Emerging Rights

### 8.5.1 Right to Privacy – Justice K.S. Puttaswamy v. Union of India (2017)

The Constitution did not specifically enumerate the right to privacy. Indian courts for decades had offered conflicting views on whether privacy was a fundamental right.

- Early Position:

- In *M.P. Sharma v. Satish Chandra* (1954) and *Kharak Singh v. State of U.P.* (1962), the Supreme Court had ruled that privacy was not a fundamental right • These two judgments focused on 'state action', meaning as long as information collected about a person isn't forcibly extracted by a government agency, it does not infringe upon the protection offered under Article 21

What did LPG mean for Aadhaar?

- o This view was considered inadequate as India entered the era of digitalisation, when matters such as personal data and surveillance (or privacy) as well as autonomy became more important.

- Turning Point:

- o In 2012, the Supreme Court referred to a larger bench the question whether there was in India a right to privacy when it heard petitions that challenged any notion of the existence of Aadhaar biometric identity scheme.

- o The Supreme Court in *Justice K.S. Puttaswamy v. Union of India* (2017) held by a nine-judge bench that privacy is a fundamental right under Article 21.

- Key Principles Laid Down:

- o Privacy is a part of life and liberty, which none shall be deprived of.

- o It incorporates personal options, bodily integrity, family life, sexual orientation, health data and information self-determination.

- o Privacy is a prerequisite for dignity, democracy and freedom of speech.

- Importance:

- o It altered the concept of citizens rights in digital space.

- o Laid constitutional groundwork for challenges to surveillance, data abuse, and even reproductive and sexual rights.

o Signified an unprecedented growth of a basic rights in India.

### 8.5.2 LGBTQ+ Rights – Navtej Singh Johar v. Union of India (2018)

For more than 150 years, Section 377 of the Indian Penal Code outlawed “carnal intercourse against the order of nature.” This discarded colonial-era law was used to harass and marginalize LGBTQ+ people.

- Background:

o In 2009, in the case Naz Foundation v. Government of NCT of Delhi decriminalized homosexuality.

o But, in 2013, Koushal v. Naz Foundation saw the Supreme Court overrule this to bring criminality back and there was a national uproar.

o In 2016, a batch of petitions including one by dancer Navtej Singh Johar was filed challenging Section 377.

- Judgment:

o In 2018, a five-judge Constitutional bench unanimously decriminalized Section 377 so far as it pertained to consensual same-sex relations between adults.

o The Supreme Court ruled in favour of the equal rights for people who identify themselves as LGBTQ+ based on: Equality (Article 14), Dignity and liberty (Article 21) and Freedom to expression (Article 19).

o It reaffirmed that rights in India are guided by constitutional morality, and not majority morality.

- Impact:

o It has given LGBTQ+ people recognition and dignity.

o Triggered new discussions around “conjoint homosexual marriage,” “sex unions” inheritance rights, adoption rights and anti-discrimination protections.

o Made for a moment of Indian culture that embraced rather than marginalised and ignored guided by constitutional morality.

### 8.5.3 Other Contemporary Judicial Developments in Rights Discourse

"Apart from private rights and LGTBQ+ rights, our judiciary has expanded the realm of rights jurisprudence in other areas. These mirror the changing issues of contemporary society and the judicial resolve to ensure that justice is done in fresh circumstances.

#### Right to Die with Dignity:

- o The right to die with dignity was held to be encompassed in Article 21 in the case of Common Cause v. Union of India (2018).
- o Allowed passive euthanasia, as well as accepted living wills; asserting the right to autonomy where medical decisions were made at the end of life.

#### Decriminalization of Adultery:

- o The court had struck down Section 497 of the IPC that criminalised adultery in Joseph Shine v. Union of India (2018).
- o The judgement focused on dignity, equality and autonomy; stating that viewing women as the possession of men is unconstitutional.

#### Women's Rights in Religious Spaces:

- o Indian Young Lawyers Association v. State of Kerala (2018) [Sabarimala case]: The Court held that women of all ages should be permitted to enter the temple and exclusion, based on gender is against the principles of equality and dignity.

#### Digital Rights and Internet Freedom:

- o In Anuradha Bhasin vs Union of India 2020 the Court held that access to internet is one of means to exercise ones' freedom of speech and trade.
- o Stressed that internet restrictions must satisfy the necessity and proportionality tests.

#### Environmental Rights:

- o The Right to clean environment is read into Article 21 (Right to Life).
- o Environmental protection has been deemed as vital for the health and dignity of present day as well as future generations by the courts.

#### Identity and Citizenship:

- o Aadhaar judgments weighed right to welfare delivery against rights of privacy and surveillance.
- o Refused to interfere with Aadhaar data by laying down the primary principle that none of welfare schemes exist in their place, one may not insist on smothering them out of existence.

### 8.6 Summary

- ❖ The Constitution of India provides for equality and social justice by making special provisions for the backward classes including the SCs, STs, OBCs, women and children as well as minority.

- ❖ Organic laws providing certain safeguard to SCs/STs are abolition of untouchability, reservations in the political area, educational sector and service front and protection from abuse.
- ❖ OBCs have already been getting reservations in job and education on the basis of Mandal Commission Report (1990) and creation of NCBC.
- ❖ Members of the minority communities have both cultural, educational and religious freedom under Articles 29 – 30 and also linguistic safeguards under Articles 350A & 350B.
- ❖ Historical evolution of reservation policy ( ) the Poona Pact (1932) to the latest constitutional amendment eg 93rd (OBC in private education ) and 103rd( EWS).
- ❖ Debates concerning reservation centre on whether it must be a balancing of social justice with merit, how the creamy layer is to be dealt with and broadening reservations in accordance with newer categories like economic backwardness.
- ❖ Women’s rights are guaranteed under the constitution (Article 14–16, 39, 42) as well as protective laws: POSH Act, Domestic Violence Act and Maternity Benefit Act.
- ❖ Vishaka v. State of Rajasthan (1997) is the case that has been identified as violation of fundamental rights, preventing workplace safety instructions.
- ❖ In recent judicial pronouncements, women’s right to reproductive autonomy, abolition of triple talaq and their right of temple entry have further been strengthened.
- ❖ Rights of the child are provided under Article 21A, 23 and 24, RTE Act (2009), POCSO Act (2012) and laws relating to child labour.
- ❖ The judiciary has taken an initiatory role in the field of child rights by directing reforms in education, food security, elimination of child labour and protection in custody.
- ❖ Emergent rights like privacy, LGBTQ+ rights, right to die with dignity and digital rights shows that the Constitution is a living document.

## 8.7 Key Terms

1. It is principle of fairness and extends equality to those who would not normally have it.
2. Reservation Policy: A policy of giving a percentage (or reserved) seat to the marginalized sections of society in education, jobs and politics.
3. Mandal Commission: A commission set up in 1979 that recommended 27% OBC reservation for education and government jobs.
4. EWS Reservation: 10% reservation introduced by the 103rd constitution amendment, 2019. They are called economically weaker sections.
5. POSH Act (2013): An act that aims to prevent and address the sexual harassment at workplace.
6. RTE Act (2009): Provides free and compulsory education for children 6–14 years.

7. 20. POCSO Act (2012): Safe guards the interest of children against sexual offences with severe punishments and friendly procedures for child victims.
8. Right to Privacy: August 24, 2017 Puttaswamy v. Union of India , is declared as a fundamental right under Article 21.
9. Section 377: Colonial-era law that makes homosexuality illegal, it was decriminalized in Navtej Johar v. Union of India (2018).
10. Constitutional Morality : Fundamental principle that social precepts or practices in contrary to constitutional democratic values such as equality and dignity must yield.

### 8.8 Descriptive Questions

1. Critically examine the constitutional provisions for safeguarding the interests of Scheduled Castes and Scheduled Tribes in India.
2. Examine the recommendations of Mandal Commission and its impact on Indian society and politics.
3. Discuss the 93rd and the 103rd Constitutional Amendments critically in relation to the policy on reservation.
4. Discuss the contribution of judiciary in promoting women rights giving examples of famous judgments.
5. Discuss the Vita of Vishaka Guidelines (1997) in the framework of rights for women at workplace.
6. Critically examine the Right to Education Act (2009) with regard to its success in providing education for all children.
7. Describe the problem of child labour in India and critically examine the legal provisions to contain it?
8. Discuss the acceptance of Right to Privacy in Justice K.S. Puttaswamy v. Union of India (2017) along with its ramifications beyond privacy.
9. Evaluate significance of the judgment in Navtej Singh Johar v. Union of India (2018) on enlarging boundaries of equality and dignity under the Constitution.

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### Answers to Knowledge Check

#### Knowledge Check 1

1. b) Article 21A
2. c) 2009
3. b) Sexual offences
4. b) Child labour in hazardous industries

### 8.10 Case Study

#### Ensuring Educational Access for Tribal Children

##### Introduction

The need of the hour for social justice in India is to provide communities which have historically been marginalized with equal opportunities. (Tripp refers to such Girl-to-Girl lessons in page 111 of "From So Simple a Beginning," under the title, "Commonalities and Differences: Science.") science news star Bible myths unveiled, part two Creationists have an eagle-eye for inconsistencies and inaccuracies. Right to education of good quality for every tribal child, it is not only a Constitutional commitment but also a critical tool of empowerment, dignity and inclusion.

Focusing on the case of tribal children, this study examines obstacles to implementing educational rights, policy responses, and potential steps by which constitutionally assured entitlements can be turned into actual opportunities.

##### Background

Constitution also gives protection to the STs in Articles 15(4), 16(4), 46 and 338A for their educational and economic promotion. However, in practice tribal children generally leave

schools because of a lack of facilities such as infrastructure, language and poverty. Government interventions such as Eklavya Model Residential Schools (EMRS), scholarships, and the Right to Education Act, 2009 have been established to bridge these gaps; however, there are issues in implementation.

#### Problem Statement 1: No Availability of Quality Schools in Tribal Region

Most tribal-villages are situated in remote areas and have either inadequate or no proper school. High dropout rates are a result of distance to schools, bad infrastructure and shortage in teaching staff.

Solution: Opening more residential schools and mobile teaching units in remote regions. Teachers being recruited from the local tribal communities would lead to better communication and understanding of culture.

#### Problem 2: Language and Cultural Constraints

Many tribal children can speak their local languages but formal education is conducted in regional or national languages, hence there are challenges in understanding the language and getting alienated.

Solution: Early education with bilingual models, tribal language in association with regional language. This will narrow any achievement gap and instill cultural pride.

#### Problem 3: Poverty and Child Labor.

Tribal children, impoverished through poverty are compelled to go for child labour which reduces their journey of education. To many parents, education is not seen as an investment but a burden.

Solution: Widen scholarships, mid-day meals and conditional cash transfers for tribal families to encourage schooling. Education connected to the development of skills can help people learn to better purpose.

#### Problematic5: Policies are not well Implemented

Numerous policy components are waylaid by weak monitoring and corruption, despite several schemes. A large number of schools, which were approved under tribal education programmes, have not been made operational.

solution: a development of systems that monitor communities and the inclusion in school management programmes of tribal leaders and nongovernmental organizations (NGOs) Application of digital dashboards for monitoring attendance, infrastructure and fund utilization can improve transparency.

#### Conclusion

Empowerment for tribal communities is grounded in education. The Constitution and administrative policies offers a solid framework but sound implementation, cultural empathies and community involvement are critical for social justice grounded in reality. India has the potential to establish an inclusive education system which may provide tribal children opportunities for upward mobility and equality by addressing needs for access, language, poverty and governance.

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## Unit 9: Contemporary Relevance of the Constitution

### Learning Objectives

1. Explain the significance of the Indian Constitution in addressing present-day challenges such as social justice, equality, and governance.
2. Analyze how constitutional principles guide responses to contemporary issues like digital privacy, environmental protection, and gender equality.
3. Evaluate the role of judicial interpretations in expanding fundamental rights to suit modern societal needs.
4. Assess the effectiveness of constitutional amendments in adapting the Constitution to changing political, social, and economic realities.
5. Examine the relevance of constitutional values such as secularism, democracy, and federalism in today's pluralistic society.
6. Explore how the Constitution balances individual freedoms with collective welfare in the context of emerging global and national issues.
7. Develop critical perspectives on debates around reservation, minority rights, and LGBTQ+ rights through the lens of constitutional morality.
8. Apply constitutional principles to propose solutions for contemporary challenges like technology regulation, corruption, and inclusive development.

### Content

- 9.0 Introductory Caselet
- 9.1 Role of the Constitution in India Today
- 9.2 Key Challenges
- 9.3 Role of Citizens in Upholding the Constitution
- 9.4 Current Debates
- 9.5 Constitution as a Living Document
- 9.6 Summary
- 9.7 Key Terms
- 9.8 Descriptive Questions

## 9.9 References

## 9.10 Case Study

### 9.0 Introductory Caselet

#### “Privacy in the Digital Age – Ramesh’s Dilemma”

Ramesh, a 27-year-old IT worker from Bengaluru, was excited by the breakneck digital transformation racing through India. Just as many other people do, he used mobile programs for banking, shopping and spending.

medical visits and daily travel. What he discovered was a frustration, convenience at his fingertips — until one day when he stumbled on something odd.

Ramesh recently bought a product online through a new payment app and he suddenly started receiving personalised advertisements on his social media accounts, along with promotional calls from unknown numbers.

The pattern was too exact to be accidental. Slowly, he came to understand that his private data — where he was located.

information about his location, advertisements he had viewed and other information like birth dates, details of shopping habits and purchasing behavior — was shared with third-party companies without his knowledge.

Distressed, Ramesh started to read on data privacy and discovered that in Justice K.S. Puttaswamy v. Union of India (2017), the Supreme Court had adjudged the Right to Privacy as a fundamental right under Article 21. The judgment also stated that privacy which forms an essential core of human dignity and personal liberty.

as well as information privacy and digital privacy.

However, Ramesh remained worried. He asked himself:

- If he was covered by the right to privacy as per the Constitution then why were his details not safeguarded?
- In the age of artificial intelligence, social media and mass surveillance, are citizens sufficiently protected by current law?
- Are there new readings of the Constitution or fresh laws to protect citizens in the digital age?

His is a modern problem illustrative of the fact that though written in 1950, the Constitution is as current as today’s headlines. The same principles of equality, liberty, and dignity are only now being made to jump through hoops in cases where floods or fires or fickle crop patterns

throw up tough questions about the meaning of what it is to be connected to a seemingly benign “modern.”

technological governance. The flexibility of the Constitution and its dynamic interpretation ensure that it continues to be not just a historical document but also a living guide to democratic values in modern, contemporary India.

### Critical Thinking Question

In an increasingly digital world, do you believe that the constitutional guarantee of privacy as a fundamental right is adequate to secure citizens or should India have modern laws on digital rights and data protection for 21st century democracy?

## 9.1 Relevance of the Constitution in India Today

### 9.1.1 Constitution as the Foundation of Democracy

Constitution of India remains cornerstone for democracy in this country. It describes India as a Sovereign, Socialist, Secular and Democratic Republic (Preamble, amended in 1976).

- **Universal Adult Franchise:** It means the right to vote enjoyed by all citizens above the age of 18 years (Article 326). This was revolutionary in 1950, particularly because many democracies had introduced the vote gradually. It empowered millions of oppressed people — at least politically, and from the very start — in India.

**Separation of Powers:** A system of separation of powers has been provided by the Constitution through Articles 52 to 151.305 The powers between three main organs, viz., Legislature (i.e. Parliament and State Legislatures), Executive (that is President, Prime Minister, Council of Ministers at Centre and Governor, Chief Ministers in States) and Judiciary (Supreme Court, High Courts and Lower Courts), have been divided and demarcated very clearly now in our country in order to avoid any possible conflict among them..pivotchart.net This denies accumulation of power and provides for balance of power.

- **Accountability and Rule of Law:** No individuals, regardless of their positions, are above the law. The Constitution grants the power of judicial review to courts to invalidate laws and government actions that are found to violate constitutional provisions (Article 13, Article 32).

- **Example:** Despite political turbulence, peaceful transitions of power in general elections since 1952 show how the Constitution undergirds democracy.

### 9.1.2 Role in Ensuring Secularism

In India, secularism would mean that the state does not subscribe to, or promote any religion in particular, and guarantees every one equal treatment before law whatever be its religious beliefs.

- Right to Freedom of Religion (Articles 25–28): Equal rights are given to all the citizens in matters of religion. It is not the state’s place to enforce religious beliefs or to discriminate on them.
- Equality and Non-Discrimination: 15 denounce such a kind of discrimination on the basis religion and 16 guarantees equal opportunities in seeking employment.
- Minority Rights: Article 30 provides Right of minorities to establish and administer educational institutions.
- Judiciary: In S.R. Bommai v. Union of India (1994), the Supreme Court ruled that secularism is an unalterable part of the basic structure of the Constitution.
- Instance: As a national holiday, the state celebrates all these festivals including Eid, Diwali, Christmas and Guru Nanak Jayanti with equal respect to religions.

2

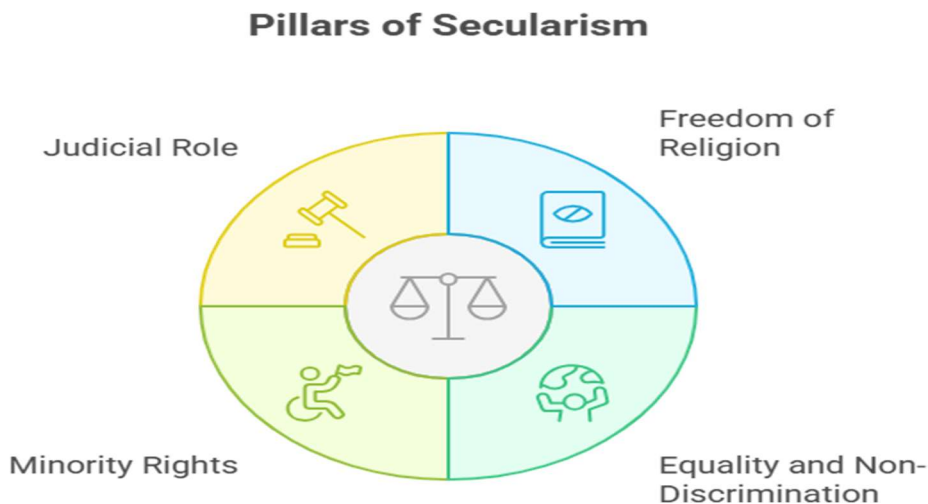


Figure 9.1

### 9.1.3 Promoting Pluralism and Diversity

India is one of the most diverse populated countries in the world with approximately 1.4 billion people, around 22 scheduled (recognized) languages and thousands of its own dialects, several religions practicing their own beliefs and rituals. And the Constitution makes room for this diversity, all within one unified national framework.

- Cultural and Educational Rights (Articles 29–30): Preserve the right of a section of citizens to conserve their distinct language, script or culture, and no citizen shall be denied admission

3

3 into any educational institution maintained by the state/State because of its affiliation based on these rights.

- Federal Structure: Articles 1–2 describe India as a “Union of States,” allowing room for regional identities within the framework of the nation. States have independence in matters such as education, law and order, and health under the State List.
- Language Promotion: The Eighth Schedule lists 22 languages and Article 350A enjoins states to offer instruction at the primary stage in the mother tongue.
- Pluralism in Practice: India’s parliamentary arguments, cultural festivals, regional cinema and, indeed, food habits reflect how diversity coexists under one Constitution.
- Example: The manner in which Tamil as a classical language is accorded its place, tribal customs and local literature encouraged demonstrates how diversity is protected.

#### 9.1.4 Safeguarding Rights and Freedoms in the 21st Century

The Fundamental Rights such as equality are enshrined in Part III of the Constitution (Article 12 to 35).

freedom of expression, protection from abuse and cultural rights. Today these concepts are all ‘cornerstone’ of justice in the 21st century, although they have been extended through judicial interpretation and amendment to constitutional documents.

- Expansion of Rights:

- o Justice K.S. Puttaswamy v. Union of India (2017): Right to Privacy under Article 21 was held good for citizens in digital age.

- o Navtej Singh Johar v. Union of India (2018): De-recognized sexuality as an offence, upheld rights of LGBTQ+.

- o Common Cause v. Union of India (2018) = right to die with dignity and passive euthanasia upheld.

- o Anuradha Bhasin v. Union of India (2020): Recognized access to the internet as a part of freedom of speech.

- Current Issue Resource: These cases illustrate that the Constitution evolves with problems its framers did not anticipate — from data privacy to gender justice to women’s control of their bodies to freedom in the digital age.

- Example: In the context of the Covid-19 pandemic, article 21 (Realization of the right to life) was used to ensure access to oxygen, medical care and vaccination demonstrating that a constitution also has relevance as an instrument in governance at any given time.

8

## 9.2 Key Challenges

### 9.2.1 Federal Tensions and Centre–State Conflicts

India's federalism is peculiar — neither purely federal as in the United States, nor completely unitary. The Constitution calls India a “Union of States” (Article 1), with no right to secede of the states and more powers for the Centre than for the states.

- Nature of Federalism in India:

- o Distribution of powers is mentioned by way of the Union List, State List and Concurrent List (Seventh Schedule).

- o Centre, during emergency (Articles 352, 356 and Article 360) can encroach upon the powers of States.

- o Governors are bridge between Centre and the states, however it is also seen as being misused for politically reasons.

- Major Issues in Federal Relations:

- o Financial disputes: States contend that dependence on the Centre for funds is much too high. GST(2017) shifted taxation to the centre which increased state's reliance on compensational grants.

- o Political tussles: When the ruling parties at the Centre and states are different, tensions rise (e.g., Delhi fighting with the Union government over control of services).

- o Resource conflicts: Water needs sharing disputes such as the Cauvery dispute (Karnataka vs. Tamil Nadu) or Krishna river dispute (Maharashtra, Karnataka, Andhra Pradesh, Telangana).

- o Central laws versus state autonomy: As with the Farm Acts (2020, later repealed) sparked protests as states contended that agriculture is a State List subject.

- Contemporary Relevance:

For India to remain united and move ahead, cooperative federalism is critical — wherein Centre and states cooperate instead of fight. Programs such as NITI Aayog stress partnership, yet genuine collaboration is still a significant work in progress.

### 9.2.2 Judicial Overreach and Concerns of Separation of Powers

The division of power between legislature, executive and judiciary is intended by the Constitution to prevent they can combine for any of them to give notice to curtail their authority from each other.

concentration of power. The independence of the judiciary is a fundamental concept in any democracy; at the same time, opponents maintain that from time to time the judiciary enters into activities typical of legislatures or stages, and so should be discouraged.

overreach.

- Judicial Activism vs. Judicial Overreach:

- o Judicial activism is good—it gives the court the power to defend rights and hold government responsible when other branches do not.

- o Judicial overreach is when the courts begin to set policy or administrative decisions that are no longer subject to democratic accountability.

- Examples of Judicial Activism:

- o Kesavananda Bharati v. State of Kerala (1973): Gave birth to the basic structure doctrine, which held that Parliament's power to amend the Constitution was not unlimited.

- o Vishaka v. State of Rajasthan (1997): A case where the Court laid down guidelines for sexual harassment in absence of a law.

- o Environment PILs: Banning of industries which are harmful near the Taj Mahal, firecracker ban in Delhi when the Pollution levels reach a peak.

- Concerns of Overreach:

- o The judiciary may also give directions to the executive on policy issues e.g., control of prices administrative appointments or legislative procedure.

- o Opponents contend that judges who have not been elected must not obstruct the will of those who have.

- Relevance Today:

And that is the challenge -- balancing judicial activism in protecting individual rights with restraint so as not to invade into legislature and executive turf.

### 9.2.3 Concept of Constitutional Morality

The concept of constitutional morality is not limited to the letter of law. It is about following the values, spirit and letter of the Constitution — justice, liberty, equality and fraternity — even when they run counter to social norms or majority sentiment.

- Origin of the Concept:

- o The expression was coined by Dr. B.R. Ambedkar, who stated that in a pluralistic society like India constitutional morality is necessary to maintain democracy.

- Judicial Application:

5 o **Navtej Singh Johar v. Union of India (2018):** In this case homosexuality was decriminalized; the Court emphasized constitutional morality as opposed to conservative social morality.

o **Indian Young Lawyers Association v. State of Kerala (2018)** – popularly known as Sabarimala case – (For the entry of women to temple) : Held that treating women with respect and dignity is sacred for the Indian societal norm; it is in fact their right, and not a matter of charity or philanthropy.

o **Shayara Bano v. Union of India (2017):** Unconstitutionalised instant triple talaq on the basis of canonical principles of gender justice.

- Importance:

Constitutional morality means that the rights of an individual must be protected even if such rights harm the majority or comes in conflict with traditional behaviour.

- Debates:

Critics contend that an unfettered reliance on constitutional morality facilitates judge driven subjectivity in interpreting morality. But proponents say it is crucial in ensuring justice for a diverse and often fractured society.

#### 9.2.4 Balancing Tradition with Constitutional Ideals

Cultural and religious traditions of India are more than a thousand years old. Several practices are steeped in community identity. But there are traditions that contradict constitutional ideals of equality, dignity and justice, translating into tensions between law and custom.

- Areas of Conflict:

- Caste system vs. equality: The caste-based stigma and segregation continues especially in the rural India, even though the law prohibited untouchability under Article 17.

- o Religious practices vs. gender rights: Sabarimala temple entry ban on women of menstruating age; Parsi women initially not allowed to retain their status despite marriage outside the community.

- o Personal laws Vs. gender equality: The struggle of Muslim women for triple talaq, and Hindu women voicing their demands for share in property inheritance.

- o Customs vs modern reforms: Despite law, child marriage, dowries and khap panchayat diktats continue.

- Judicial Interventions:

- o **Shayara Bano (2017):** Triple talaq unconstitutional, affirms gender equality.

o Joseph Shine v. Union of India (2018): Decriminalisation of adultery, acknowledging women as free-agent beings.

o Daughters of Hindu as property rights upheld in the Vineeta Sharma v. Rakesh Sharma (2020).

- Ongoing Debate:

The trick is to afford respect to cultural traditions, never at the expense of fundamental rights. One such solution is the introduction of a Uniform Civil Code (Article 44), which, but in fact it's been very controversial given India's diversity.

### 9.3 Role of Citizens in Upholding the Constitution

#### 9.3.1 Constitutional Literacy and Awareness

To be constitutionally literate is to know what the Constitution stands for and how it applies, or should apply, when ordinary citizens conduct the business of their life. It is just too bad that there are many people do not know their rights and obligations who makes democracy weakened.

- Why It Matters:

o Depositories may not claim their rights (Articles 12-35) if they do not know about them.

o Inform on exploitation so that people can resist, demand and use Must be aware.

constitutional remedies that is by filing PILs under Article 32.

- Methods of Promoting Awareness:

o Education: Introduce the teaching of much or all of the constitution at school and university level.

o Public Campaign : Election Commission's Awareness campaigns, legal literacy programmes by the NALSA.

o Digital media such as social media campaigns, podcasts and apps for communicating constitutional literacy.

o The Grassroots: NGOs such as PRS Legislative Research, Centre for Law and Policy Research (CLPR) holding public awareness sessions.

- Example: Voter education campaigns such as "No Voter Left Behind" stress not just the right but also the obligation to vote.

#### 9.3.2 Fundamental Duties of Citizens

The Constitution included rights only at the beginning, when it was first adopted by the framers. However, during the second amendment (1976), Part IV-A was inserted and Fundamental Duties under Article 51A were incorporated according to which citizens should balance their rights with duties.

- Task List (Total of 11):

To uphold and protect the Constitution, to promote National Flag and National Anthem.

To develop the lofty ideals of Freedom struggle.

3.... to keep India's sovereignty, unity and integrity intact.

To defend the country and serve the nation.

To foster unity and shared brotherhood transcending caste, creed or language.

Abandoning practices that demean the dignity of women.

To save the forests, the mountains, rivers and animals.

To protect the public and renounce violence."

To be the best at everything.

To create educational avenues for children (added by 86th Amendment,2002).

To cultivate a scientific temper and humanism.

- Importance:

- o Reiterate to citizens that democracy is a two-way street.

- o Instil discipline, unity and loyalty.

- o Work towards building a society committed to constitutional ideals.

- Limitation: The duties are non-justiciable, which means citizens cannot be prosecuted by a court for failing to perform them. They are still a matter of morality and civic duty.

### Did You Know?

"India has one of the largest electorates in the world, with over 900 million registered voters in the 2019 general elections. Yet, voter turnout averages around 67%. Active civic participation—through voting, local governance, and social movements—is crucial to keeping democracy vibrant and accountable."

### 9.3.3 Civic Responsibility and Participation

The citizens of this country are not the subjects of government, but active participants in governance. Civic duty keeps democracy active not just at election time.

- Forms of Civic Participation:

- o Voting: The fundamental and powerful act of participation. Higher voter turnout strengthens democracy.

- o Local Self Governance: Participation in Gram Sabha, municipality and Ward Committee.

- o Community Action: Volunteer work, community or social service, and neighbourhood organizations.

- o Digital Activism: Online petitions, rights campaigns (e.g., net neutrality, climate action).

- o Right to Hold Protests: Part of freedom of speech and expression under Article 19(1)(a) ino Right to Hold Protests Recognized Anywhere in the...Tags...

- Examples:

- o The India Against Corruption campaign (2011) brought to notice the assets of active citizens 2.

- o Weakening of government was evident in the participation of a large proportion of public in Swachh Bharat Abhiyan o People power and civic duties came in sync with constitutional philosophy 7.

- Relevance Today:

Civic participation went so far as to check the transparency and accountability with the likes of RTI (Right to Information Act, 2005). RTI-filing citizens are a key weapon against corruption.

### 9.3.4 Citizens as Guardians of Constitutional Values

In the end, only the citizens are the keepers of the Constitution. Institutions can defend the law; only human beings protect its spirit.

- Guarding Against Violations:

- o We must fight corruption, casteism, communalism and tendencies to be authoritarian.

- o Public vigilance prevents abuse of authority.

- Promoting Constitutional Morality:

- o Citizens should reflect the values of equality, dignity, liberty and secularity in daily living.

- o To preserve democracy, stand against the evil of discrimination and honor diversity.

- Contemporary Role:
  - o Witnesses to truth expose the scandal in public life.
  - o Youth movements call for climate action, gender justice and internet freedom.
  - o The public would play an active role, protecting democracy from become obsolete.
- Example: How ordinary citizens protest unconstitutional laws or protect freedom of speech is a reminder that public engagement fortifies the foundations of constitutional democracy.

## 9.4 Current Debates

### 9.4.1 Uniform Civil Code (UCC) Debate

- Constitution-and-Legal Accounts Base: Article 44 of the Directive Principles of State Policy prescribes that state shall with time enact UCC. This would subsume personal laws tied to religion or community under a single code that covers marriage, divorce, succession, adoption and inheritance.
- Arguments in Favor of UCC:
  - o creates the conditions for gender justice by abrogating oppressive practices (e.g., polygamy, unequal inheritance, instant triple talaq)
  - o Fosters national unity by minimising differences in religious laws.
  - o Is a real secularism, when laws are the same for all citizens; independent from their religions.
  - o Brings clarity, consistency and certainty in the jurisprudence as application of conflicted decisions do not arise.
- Arguments Against UCC:
  - o Cultural and religious identity of minority communities under threat.
  - o 'Risk of a single majority culture imposing its norm as cultural uniform' (Ward 2009e:28)
  - o Problems in devising a code palatable to India's many religious, linguistic, and tribal communities.
  - o Regarded by critics of the court as politically motivated rather than constitutional.
- Judicial Interventions:
  - o Shah Bano Case (1985): SC Ordered alimony to a Muslim woman whom was divorced which caused controversy and demand for UCC.

- o Sarla Mudgal v. Union of India (1995) – Court condemns personal law for bigamy and reiterates the need of UCC.
- o Shayara Bano versus Union of India (2017): Decriminalization, and gender justice introduced into personal law Through this act, triple talaq was deemed unconstitutional.
- Contemporary Significance: The UCC has been one of the most controversial constitutional issues, epitomizing the conflict between cultural pluralism and uniform rights in law.

#### 9.4.2 Data Privacy and the Personal Data Protection Bill

- Background: Data is the “the new oil” in a digital world. Whether it is the social media or Aadhaar-linked services, people have kept on sharing personal data all around which has raised privacy concerns over its misuse and surveillance.

- Judicial Recognition:

o Justice K.S. Puttaswamy v. Union of India (2017): A nine judge-bench of the Supreme Court held that privacy ‘contributes to the dignity and quality of life as a constitutional value’, and forms part of the core value –“dignity”.

o Privacy as autonomy, comprising bodily integrity, informational privacy and freedom from unwarranted surveillance.

- Legislative Developments:

o Personal Data Protection Bill (2019): Introduced to regulate collection, storage and processing of personal data by companies and the government.

o Following discussion and revision, it was replaced by the Digital Personal Data Protection Act (2023).

- Debates Around Privacy Legislation:

o For Strong Protections: Protects people from corporate abuse and government overreach.

o Fears: The 2023 Act provides very broad exemptions to government entities, which could result in misuse.

o Business: Concerns about compliance costs, localization requirements and data transfer restrictions.

o Citizens: Call for more robust accountability mechanisms and data protection authorities.

- Contemporary Context: The argument encapsulates the struggle to find a middle ground between personal freedom, national security and digital progress. In an era of artificial intelligence and big data,

constitutional rights need updating to ensure digital freedom.

### 9.4.3 Electoral Reforms – Transparency, Funding, and Technology

- Significance of Electoral Integrity: Democratic system in India revolves around free and fair elections. But questions of money power, criminalisation of politics and potential risks in technology erodes the faith in the democratic process.

- Funding and Transparency:

- o Electoral Bond (2018): It was introduced to check the black money, Who can donate - Anybody from BJP or Congress(as both had received most of the Electoral Bonds), Lunatics! Can be given in any denomination and how many - However they want, Donor's name is not disclosed.

- o Controversy: Opponents say the bonds could lead to a decrease in transparency because voters will not know who is funding the parties. Proponents argue that they formalize donations and minimize cash flow.

- Technology in Elections:

- o EVMs (Electronic Voting Machines) and VVPATs (Voter Verified Paper Audit Trails):

Increase efficiency and decrease malpractice but draw suspicion for tampering.

- o Digital Campaigns: The use of social media in elections gives rise to concerns about fake news, foreign influence and over-spending.

- Judicial and Institutional Efforts:

- o Association for Democratic Reforms v. Union of India (2002): Supreme Court (2002) Annuls the Award Secured by a Candidate at an Election!

to disclose candidates' criminal, financial and educational history.

- o Election Commission of India keeps recommending reforms from tighter spending audits to steps to decriminalize politics.

- Relevance Today: The question remains whether the use of technology in elections and electoral reform, can bring transparency, accountability and public trust.

### Knowledge Check 1

Choose the correct option:

1. Article 44 of the Indian Constitution deals with:
  - a) Right to Equality
  - b) Uniform Civil Code
  - c) Freedom of Religion
  - d) Fundamental Duties
2. Which Supreme Court case recognized the Right to Privacy as a Fundamental Right?
  - a) Kesavananda Bharati
  - b) Shah Bano
  - c) Puttaswamy
  - d) Indra Sawhney
3. Electoral bonds were introduced in which year?
  - a) 2002
  - b) 2014
  - c) 2018
  - d) 2020
4. The 103rd Constitutional Amendment (2019) introduced reservation for:
  - a) OBCs
  - b) SCs
  - c) STs
  - d) EWS

## 9.5 Constitution as a Living Document

### 9.5.1 Dynamic Nature of the Constitution

- Flexibility through Amendments:

- o Here the procedure made out through Art 368 for amendment. The process is not too rigid (the U.S. Constitution) or too flexible (the U.K. Constitution).

- o To date, India has passed more than 100 constitutional amendments—large and small.

- Examples of Dynamism:

- o 42nd Amendment (1976): Gave more powers to centre during Emergency; inserted 'Socialist' and 'Secular' in the Preamble.
- o 73rd and 74th Amendments (1992): Strengthened local self-governments by means of Panchayati Raj and urban municipalities.
- o 86th Amendment (2002): Added Article 21A, which made education a fundamental right.
- o 101st Amendment (2016) : It enacted the GST, redefining India's economic federalism.
- Relevance: This power of adaptation without breakage is crucial to continuity of the Constitution in order that it can be sensitive to people's needs.

### 9.5.2 Adapting to Socio-Economic Changes

India has gone from being a poor, agricultural economy to a emerging world power since independence. The Constitution, in turn, has responded to these changes:

Economic justice Articles 38-39 enjoin the state to promote an economic order ensuring equitable distribution of resources, and prevention of concentration of wealth.

- Right to Education: Considering education as an empowerment tool, 86 th Amendment had been passed.

enshrined it as a fundamental right for children between 6 and 14.

- Right to Information (RTI Act, 2005): Based upon the principles of transparency and accountability; this law gives power to citizens to question authorities.

- Environmental Protection: Article 48A (DPSP) and Article 51A(g) (FD) direct the state as well citizen responsibility with respect to protection of environment. Ultimately, judicial interpretations were later on associated with clean environment and Article 21 (Right to Life).

- Welfare Schemes: Programs like MGNREGA (2005) for employment and NFSA (2013) for food show how constitutional ethos of social and economic justice are translated into action.

policy.

- Illustration: The expansion of rights such as food, health and digital access show the Constitution expands to absorb new socio-economic aspirations.

### 9.5.3 Judicial Interpretations and Evolving Doctrines

Judiciary is the guardian and interpreter of constitution. "Through its decisions, it has elaborated the meaning of rights and created doctrines that keep the Constitution vital.

- Key Judicial Doctrines:

- o Basic Structure Doctrine (Kesavananda Bharati, 1973): Parliament does not have the authority to amend essential features of the constitution such as democracy, secularism etc.
- o Doctrine of Reasonableness (Maneka Gandhi v. Union of India, 1978): Stretched Article 21 to right to live with dignity - not mere life.
- o Right to Privacy (Puttaswamy, 2017): The existence of information and digital privacy which is the extension of Article 21.
- o Gender Justice (Shayara Bano, 2017; Navtej Johar, 2018): Expanded the right to equality and dignity to include women's rights and LGBTQ+ rights.
- o Environmental Jurisprudence (M.C. Mehta cases, 1980s onwards): Related Article 21 to right to fresh air, water and ecological balance.
- Relevance: Creative judging makes sure the Constitution remains responsive to new claims of rights and changing social conditions, without having to wait for a legislative fix.

#### 9.5.4 Globalisation and New Constitutional Challenges

India's interface with the international economy, technology, and human rights discussions is established by globalisation. This has brought new difficulties to constitutional governance.

- Digital Rights and Technology:

- o Challenges such as internet shutdowns, artificial intelligence, cybercrime and data privacy stretch the application of basic rights.

- o Anuradha Bhasin v. Union of India (2020): Recognised the importance to free expression in access to internet.

- Trade and Economy:

- o India needs to reflect WTO and global trade commitment vis-à-vis constitutional obligation of protecting SSI and Labour.

- Climate Change and Environment:

- o There have been the judgments which are centered around intergenerational equity and the connection of environmental protection to the right to life.

- o Example: Supreme Court rulings on pollution control in Delhi cogently express environmental issues at global level.

- Human Rights and International Law:

- o Courts frequently read rights consistent with UN stipulations (women's rights, children's rights).

o For instance, *Vishaka v. The State of Rajasthan* (1997) was based on international conventions to formulate guidelines on sexual harassment.

• Contemporary Relevance: In an era of globalisation the constitution would need to be a 'living tree' and take into account not only its determinants on the sovereignty of nation states as it lays but also their citizens in an interconnected world with competing obligations.

## 9.6 Summary

- ❖ The biggest challenge to the relevance of Constitution of India in present times falls on its preamble which further laid its bedrock on democracy, accountability, equality and justice.
- ❖ It protects secularism while encouraging pluralism and diversity by reconciling cultural customs with constitutional values.
- ❖ Fundamental rights have been furthered through interpretations including privacy, dignity, trans justice and digital freedoms.
- ❖ Turfs wars between the Centre and states demonstrate a growing need for cooperative federalism in contemporary governance.
- ❖ Judicialization is a flashpoint for issues surrounding the separation of powers among judiciary, legislative and executive.
- ❖ The doctrine of constitutional morality holds that the values enshrined in the Constitution are intended to have ascendancy over popular or majoritarian sentiments.
- ❖ Citizens have an important role in protection of the constitution responsibly: consciousness, responsibility, citizenship involvement and activism.
- ❖ Issue based debates – there is one on Uniform Civil Code, one on data privacy, another on electoral reforms and even one on reservations.

## 9.7 Key Terms

1. Constitutional Morality- Living one's life and swearing by the ethos of the constitution rather than the morals dictated by society or majority.
2. Uniform Civil Code (UCC) – Suggestion for the adoption of common personal laws which would be applicable to all inhabitants irrespective of their religion.
3. Privacy – A fundamental right under Article 21 in *Puttaswamy v. Union of India* (2017).
4. Doctrine Of Basic Structure – A doctrine that holds the Parliament cannot alter the basic features of the Constitution (*Kesavananda Bharati*, 1973).
5. Electoral Bonds -- An instrument for donations made to political parties, were started in 2018 and sparked discussions over transparency.

6. EWS Reservation – The 10% quota for Economically Weaker Sections brought by the 103rd amendment to the Indian Constitution (2019).
7. Judicial Overreach – When judiciary treads into the sphere of legislature or executive, sounding alarm bells over separation of powers.
8. Constitutional Literacy – The general public's awareness and comprehension of their constitutional rights, obligations and ethos.
9. Living Document – Idea that the Constitution changes over time through new amendments, judicial rulings, or social and political transformation.

### 9.8 Descriptive Questions

1. How does the constitution of India constitute the basis of democracy in modern times?
2. Examine the role of secularism and pluralism in upholding India's unity and diversity.
3. Discuss in detail the difficulties that Centre–State relations remain continuously entangled with, under Indian federalism.
4. What is judicial overreach? Compare and contrast this to its consideration of the doctrine of separation of powers.
5. Define constitutional morality and discuss the significance of constitutional morality in the context of recent judgements of Supreme Court.
6. Explore the roles of citizens in supporting freedom by knowing and understanding civic and constitutional duties.
7. Discuss critically the debate over Uniform Civil Code (UCC) in India.
8. Explain the importance of the Constitution as a living document especial amendments and interpretations by courts.
9. Examine how globalisation and technology are posing challenges to constitutional governance in India.

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## Answers to Knowledge Check

### Knowledge Check 1

1. b) Uniform Civil Code
2. c) Puttaswamy
3. c) 2018
4. d) EWS

## 9.10 Case Study

### Data Privacy and the Right to be Forgotten

#### Introduction

Technology has made a difference in how people connect, exchange and interact in the 21st Century. With all this advancement of course, comes a new challenge -- data privacy. People also leave digital traces in their online shopping, social media and financial transactions. The "Right to be Forgotten" debate has also of late become a stick with which to beat privacy protections in India, probing the limits of the flexibility within Constitution to protect privacy rights in an age where everything we do online is public property.

#### Background

Privacy was not explicitly mentioned in the Constitution. But in the case puttaswamy vs union of India (k.s) (2017), Supreme Court had held that privacy is a part of fundamental right under Article

Yet digital businesses still hoard personal data and manipulate it without sufficient consent. Many members of the general public want old or irrelevant personal data — for example, outdated court records, intimate medical information — to be deleted from the Internet

under some form of a right to be forgotten like that in the European Union's data protection laws.

Challenges 1: Poor Legal Framework current State of law making with regards to livestock welfare is far from being comprehensive at national level.

There is no specific, enforceable law in India that can give its citizens the right to delete personal data from public domains.

Solution: Pass a strong data protection law in line with internationally recognised principles and incorporating the Right to be Forgotten as a statutory right.

MCQ:

In which case, right to privacy was declared as a fundamental right in India?

- a) Kesavananda Bharati v. State of Kerala 20. setUp by short Notes(MAXIMUM 350 WORDS)CASES:11.
- b) Justice K.S. Puttaswamy vs Union of India
- c) Indra Sawhney Vs. Union of India
- d) Shah Bano vs Union of India

Ans a) Justice K.S. Puttaswamy v. Union of India

Problem P2: Dilemma between Privacy and Freedom of Speech

News websites and search engines say that deleting information could limit freedom of the press and transparency. For instance, an erased criminal record might not disclose information relevant to the public interest.

Solution: A proportionate legal test has to be formulated where courts balance the interest of individual privacy vis-a-vis public interest before expunging content.

MCQ:

What is the biggest task to do the right to be forgotten?

- a) Lack of lawyers
- b) Conflict with freedom of expression
- c) High cost of technology
- d) Limited internet penetration

Answer: b) Would violate freedom of speech

(3) Weak Citizen Awareness On the other hand, citizens should be aware of the possible attacks in order to protect themselves.

Indians don't know their digital rights Among Indian Internet users, they don't even know. As a consequence, data is still being exploited without even asking.

Solutions: Undertake massive national digital literacy campaign to disseminate information among citizens about their privacy rights, cyber law provisions and good online practices.

MCQ:

Which option can most effectively safeguard citizens against abuse of digital data?

- a) Digital literacy and strong laws
- b) Avoiding internet use completely
- c) Sharing passwords publicly
- d) Ignoring privacy issues

Answer: a) Digital literacy and robust laws

Conclusion

The Right to be Forgotten controversy illustrates well the way the Constitution is a living document, adjusting to new technological trends. Though the right to privacy has been accepted as a constitutional value, transforming it into effective protection will depend on sound legislation complemented by judicial balancing and vigilant citizens. The future constitutional rights increasingly will depend on how India answers such digital-age dilemmas.