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COURSE NAME

ORIENTATION OF INDIAN CONSTITUTION

COURSE CODE

OL AU



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Unit 1 –4

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Unit 5 –9

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Detailed Syllabus

Block No.	Block Name	Unit No.	Unit Name
1	Foundational Principles	1	Introduction to the Indian Constitution
		2	Preamble and Philosophy of the Constitution
2	Core Rights and Directives	3	Fundamental Rights – The Cornerstone of Democracy
		4	Directive Principles of State Policy (DPSPs) and Fundamental Duties
3	Structure of Governance	5	Union and State Structure – Federalism in India
		6	Parliament, Executive and Judiciary
4	The Evolving Constitution & Social Justice	7	Constitutional Amendments and Landmark Cases
		8	Rights of Marginalised Groups and Social Justice
		9	Contemporary Relevance of the Constitution

Course Name: Orientation of Indian Constitution

Course Code: OL AU

Credits: 0

Teaching Scheme			Evaluation Scheme (100 Marks)		
Classroom (Online)	Session	Practical / Group Work	Tutorials	Internal Assessment (IA)	Term End Examination
6+1= 7 Sessions		-	-	30% (30 Marks)	70% (70 Marks)
Assessment Pattern:	Internal		Term End Examination		
	Assessment I	Assessment II			
Marks	15	15	70		
Type	MCQ	MCQ	MCQ – 49 Marks, Descriptive questions – 21 Marks (7 Marks * 3 Questions)		

Course Description:

This course provides an Orientation of the Indian Constitution, covering its historical background, unique features, the philosophical ideals enshrined in the Preamble, the core concepts of Fundamental Rights and Duties, Directive Principles of State Policy, and the structure and function of the Union and State governments, including the Judiciary. It also delves into constitutional amendments, landmark cases, rights of marginalized groups, and the contemporary relevance of the constitution.

Course Objectives:

1. To understand the historical context, framing process, and unique features of the Indian Constitution.
2. To comprehend the philosophical underpinnings of the Constitution as reflected in the Preamble and its core ideals: Justice, Liberty, Equality, and Fraternity.
3. To identify and explain the various Fundamental Rights, their importance, and the concept of Constitutional Remedies.
4. To differentiate between Directive Principles of State Policy (DPSPs) and Fundamental Duties and their role in governance and citizenship.
5. To analyze the nature of Indian Federalism, the distribution of powers, and the structure and functions of the Parliament, Executive, and Judiciary.
6. To evaluate the impact of Constitutional Amendments and Landmark Cases, including the Doctrine of Basic Structure, and the constitutional safeguards for marginalized groups.

Course Outcomes:

At the end of course, the students will be able to:

- CO1: Remember: State the key historical figures, important articles (like Article 368 and 51A), and landmark cases related to the Indian Constitution.
- CO2: Understand: Summarize the significance of the Preamble and the core constitutional ideals like secularism, sovereignty, and democracy.
- CO3: Apply: Cite and illustrate the practical application of the Fundamental Rights (Articles 14-22) in contemporary scenarios.
- CO4: Analyze: Examine the complex relationship and comparison between Fundamental Rights and Directive Principles of State Policy (DPSPs).
- CO5: Evaluate: Assess the role of Judicial Review and Judicial Activism in interpreting the Constitution and its effects on the Union-State structure, particularly during emergency provisions.
- CO6: Create: Formulate a reasoned argument regarding the contemporary relevance of the Constitution, key challenges, and the role of citizens in upholding its principles.

Pedagogy: Online Class, Discussion Forum, Case Studies, Quiz etc

Textbook: Self Learning Material (SLM) From Atlas SkillTech University

Reference Book:

1. Bakshi, P. M. (2023). *The Constitution of India: With selective comments* (22nd ed.). Universal Law Publishing.
2. Basu, D. D. (2022). *Introduction to the Constitution of India* (25th ed.). LexisNexis.
3. Pandey, J. N. (2023). *The Constitutional Law of India* (59th ed.). Central Law Agency.

Course Details:

Unit No.	Unit Description
1	Introduction to the Indian Constitution: What is a constitution? Importance of a Constitution in a Democracy, Historical Background: Indian Independence & Framing of the Constitution, Role of the Constituent Assembly, Vision of the Constitution Makers, Dr. B.R. Ambedkar – Architect of the Indian Constitution, Unique Features of the Indian Constitution.
2	Preamble and Philosophy of the Constitution: What is the Preamble? Meaning of Key Terms, Justice, Liberty, Equality & Fraternity – Core Constitutional Ideals, Philosophical Influences, Supreme Court Interpretations of the Preamble.
3	Fundamental Rights – The Cornerstone of Democracy: Meaning & Importance of Fundamental Rights, Six Fundamental Rights under Part III, Right to Equality (Articles 14–18), Right to Freedom (Articles 19–22), Right to Constitutional Remedies (Article 32), Landmark Cases, Restrictions and Reasonable Limits on Rights.
4	Directive Principles of State Policy (DPSPs) and Fundamental Duties: Nature of DPSPs, Classification of DPSPs, DPSPs as Guides to Governance, Fundamental Duties under Article 51A, Comparison of Fundamental Rights and DPSPs, Case Law, Summary, Key Terms, Descriptive Questions
5	Union and State Structure – Federalism in India: Union of States, Nature of Indian Federalism, Distribution of Powers, Centre–State Relations, Role of Governors, Inter-State Council, Emergency Provisions and Federalism, Landmark Cases.
6	Parliament, Executive and Judiciary: Structure and Powers of Parliament, The Executive, Independence of the Judiciary, Structure of Courts, Judicial Review & Judicial Activism in India, Landmark Case Law.
7	Constitutional Amendments and Landmark Cases: Procedure for Constitutional Amendments (Article 368), Landmark Amendments, Doctrine of Basic Structure, Kesavananda Bharati Case (1973), Judicial Review of Amendments.

8	Rights of Marginalized Groups and Social Justice: Constitutional Safeguards for SCs, STs, OBCs, and Minorities, Reservation Policy, Rights of Women, Rights of Children, Emerging Rights.
9	Contemporary Relevance of the Constitution: Role of the Constitution in India Today, Key Challenges, Role of Citizens in Upholding the Constitution, Current Debates, Constitution as a Living Document.

POCO Mapping

CO	PO 1	PO 2	PO 3	PO 4	PSO 1	PSO 2	PSO 3	PSO 4	PSO 5	PSO 6	PSO 7	PSO 8
CO 1	1	1	1	1	1	1	1	1	1	1	1	1
CO 2	2	2	1	2	1	1	1	1	1	1	1	1
CO 3	2	2	2	3	1	1	1	1	1	1	1	1
CO 4	2	2	2	3	1	1	1	1	1	1	1	1
CO 5	2	3	3	3	1	1	1	1	1	1	1	1
CO 6	2	3	3	3	1	1	1	1	1	1	1	1

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.

Content

- 1.0 Introductory Caselet
- 1.1 What is a Constitution?
- 1.2 Importance of a Constitution in a Democracy
- 1.3 Historical Background: Indian Independence & Framing of the Constitution
- 1.4 Role of the Constituent Assembly
- 1.5 Vision of the Constitution Makers
- 1.6 Dr. B.R. Ambedkar – Architect of the Indian Constitution
- 1.7 Unique Features of the Indian Constitution
- 1.8 Summary

1.9 Key Terms

1.10 Descriptive Questions

1.11 References

1.12 Case Study

1.0 Introductory Caselet

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

In 1947, India gained independence after nearly two centuries of colonial rule. The nation was faced with the enormous challenge of unifying its diverse population—comprising multiple languages, religions, castes, and cultural identities—into one sovereign state.

To address this, the **Constituent Assembly** was formed with representatives from different regions, communities, and ideologies. Over nearly three years of debate, discussion, and compromise, they drafted the **Indian Constitution**, which came into effect on **26th January 1950**.

The Constitution provided a framework to ensure democracy, equality, and justice for all citizens. It introduced **Fundamental Rights** to protect individuals from state excesses, **Directive Principles of State Policy** to guide governance, and a **federal structure with a strong center** to maintain unity while respecting diversity.

One symbolic yet powerful aspect was the adoption of the **Preamble**, which declared India as a *sovereign, socialist, secular, democratic republic*. This statement of ideals continues to shape the values of governance and citizenship in modern India.

Even today, debates around constitutional principles—such as freedom of speech, equality before law, and the balance between individual rights and collective welfare—remain central to India’s democracy. The Constitution is not just a legal document; it is a **living document** that evolves with amendments to reflect the changing aspirations of society.

Critical Thinking Question

India is often described as a country of “unity in diversity.” Considering the challenges of religion, language, caste, and regionalism, **do you think the Indian Constitution has been successful in holding the nation together? Why or why not? Provide examples to support your view.**

1.1 What is a Constitution?

A **Constitution** is the supreme legal framework of a nation, defining the fundamental principles, structures, and powers of government. It establishes the distribution of authority among institutions, guarantees citizens' rights, and provides mechanisms for justice and governance. As the foundation of democracy, it ensures stability, accountability, and protection of liberties.

1.1.1 Definition and Meaning of a Constitution

A constitution, in its broadest sense, refers to the body of fundamental rules, principles, and laws that determine how a political community is governed. It is the supreme legal authority that establishes the framework for the creation, exercise, and limitation of political power. Unlike ordinary laws, which can be enacted or changed by legislatures, the constitution occupies a higher status—it cannot be easily altered and often requires special procedures for amendment.

The meaning of a constitution goes beyond just a legal document. It embodies the spirit of the people, their values, and their aspirations for governance and justice. It not only prescribes the powers of different organs of the state but also limits them, ensuring that no authority becomes absolute. By codifying fundamental rights, a constitution becomes the protector of individual liberty against the possibility of arbitrary actions by the government.

For instance, the Indian Constitution reflects the aspirations of a newly independent country, aiming to provide justice, liberty, equality, and fraternity.

1.1.2 Functions and Purpose of a Constitution

The constitution serves multiple essential functions in a political system. Its purpose is not limited to establishing government institutions but also to ensuring that the relationship between state and society is based on justice, equality, and fairness.

1. Organizing Political Power

The primary function of a constitution is to define how power is distributed among different organs of the state. It establishes the legislature to make laws, the executive to implement them, and the judiciary to interpret and uphold them. This division prevents concentration of power and ensures checks and balances.

2. **Laying Down the Ideals of Governance**

Every constitution reflects certain fundamental values and ideologies. For example, the Indian Constitution enshrines democracy, secularism, socialism, and federalism as guiding principles. These ideals shape governance and policymaking, ensuring that state action aligns with national goals.

3. **Protecting Rights of Citizens**

Constitutions protect individuals from state oppression by granting them legally enforceable rights. These rights empower citizens to challenge government actions when they violate fundamental freedoms. For example, the right to equality ensures non-discrimination, and the right to freedom of expression allows citizens to voice opinions without fear.

4. **Limiting Arbitrary Authority**

Without a constitution, those in power could misuse their authority. The constitution ensures that governance is carried out within established boundaries. Judicial review of legislative or executive actions prevents misuse of power, reinforcing the principle of the rule of law.

5. **Conflict Resolution and Unity**

In diverse societies, a constitution provides mechanisms to resolve conflicts. Federal constitutions, such as that of India, balance power between the center and states to maintain unity while respecting diversity. This creates political stability and strengthens national integration.

6. **Framework for Change**

A constitution is not a rigid entity; it is designed to evolve with time. Provisions for amendments allow it to adapt to social, political, and economic changes. For instance, constitutional amendments in India have addressed issues like lowering the voting age, empowering local governments, and expanding the scope of fundamental rights.

Through these functions, the constitution not only governs the state but also protects democratic values, promotes accountability, and ensures that governance serves the people rather than ruling over them.

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.”

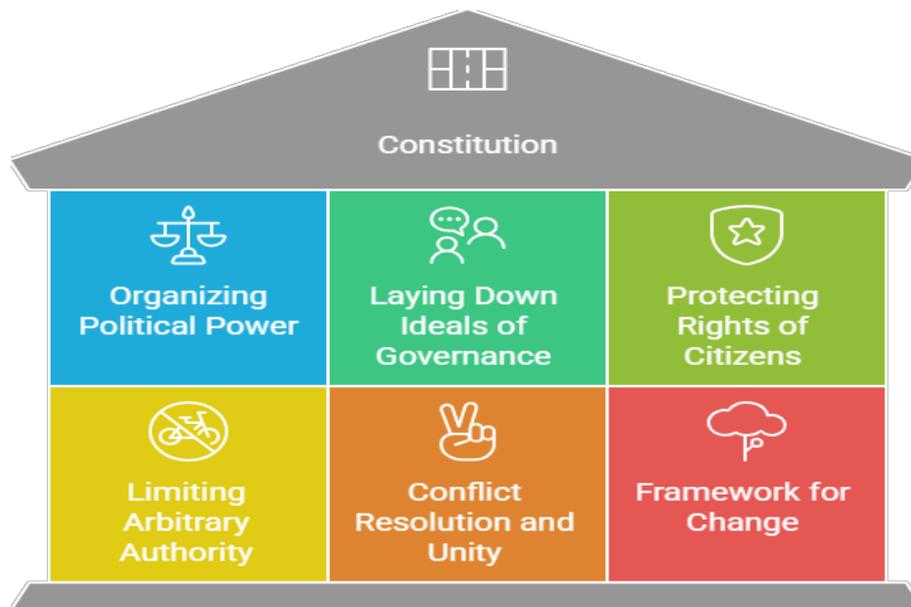


Figure 1.1

1.1.3 Types of Constitutions: Written and Unwritten

Constitutions can be broadly categorized into **written** and **unwritten**, based on the manner in which the principles of governance are documented and practiced. Both forms serve the same ultimate purpose—ensuring organized governance, protecting rights, and maintaining order—but they differ in structure, clarity, and flexibility.

1. Written Constitution

A **written constitution** is a single, authoritative legal document that contains all the fundamental rules, principles, and procedures of governance. It is carefully drafted, usually at a particular point in history, often following significant political or social changes such as **independence, revolution, or unification**.

Key Features

- All rules and principles are codified in a single authoritative document.
- Provides **clarity and certainty** about governmental organization, powers, and citizens’ rights.

- Contains **amendment procedures** to adapt to future needs.
- Acts as the **supreme law of the land**, binding both government and citizens.

Examples

- **The Indian Constitution (1950)** – The most comprehensive constitution in the world, covering governance, rights, directive principles, and duties.
- **The U.S. Constitution (1789)** – Though relatively short, it has remained stable and continues to guide American democracy for over 230 years.

Advantages

- Provides **clarity** to both authorities and citizens.
- Ensures **stability**, since changes cannot be made casually.
- Promotes a sense of **uniformity**, as all rules are collected in one document.
- Safeguards **fundamental rights** more effectively, as they are explicitly written.

Limitations

- Can be **rigid**, as amendments usually require special procedures or supermajority approval.
- May be **slow to adapt** to rapidly changing political, social, or technological circumstances.
- Risks becoming outdated if amendment processes are too complex or rarely used.

2. Unwritten Constitution

An **unwritten constitution** is not contained in a single, consolidated document. Instead, it evolves through **customs, conventions, judicial decisions, statutes, traditions, and historical documents** accumulated over time.

Key Features

- No single document contains all the constitutional rules.
- Relies on long-established **customs, conventions, and precedents**.
- Highly **flexible**, adapting naturally without the need for formal amendments.

- Depends heavily on **political traditions and judicial interpretation**.

Example

- **The British Constitution** – Considered unwritten, though it includes important historical documents such as:
 - **Magna Carta (1215)**
 - **Bill of Rights (1689)**
 - **Parliamentary statutes and conventions**
 - **Judicial precedents and common law**

Advantages

- Extremely **flexible and adaptable** to modern challenges.
- Evolves naturally with changing political and social conditions.
- Avoids lengthy or rigid amendment procedures.

Limitations

- May lack **clarity and certainty**, since rules are scattered across multiple sources.
- This can lead to **ambiguity or conflicting interpretations**, as not all rules are formally codified.
- Rely heavily on **political culture and goodwill**, which may sometimes be abused.

Comparison Between Written and Unwritten Constitutions

Aspect	Written Constitution	Unwritten Constitution
Form	Codified in a single authoritative document	Dispersed across customs, laws, and conventions
Clarity	High – citizens and authorities know the exact rules	Low – rules may be vague and scattered

Aspect	Written Constitution	Unwritten Constitution
Flexibility	Generally rigid; amendments are formal and complex	Highly flexible; evolves with society
Stability	More stable due to formal codification	May face uncertainty due to lack of codification
Examples	India, U.S., France	United Kingdom, New Zealand (partially)

1.2 Importance of a Constitution in a Democracy

A **Constitution** is the foundation of every democracy. It is more than just a legal document; it is a guiding framework that shapes the political, social, and economic life of a country. By laying down fundamental principles, the constitution defines the relationship between the state and its citizens, ensures that power is exercised within limits, and provides mechanisms to resolve conflicts peacefully. Without a constitution, democracy would lose direction and could easily give way to authoritarian or arbitrary rule. Thus, the constitution ensures stability, legitimacy, and continuity in governance.

1.2.1 Constitution as the Supreme Law

One of the most important roles of the constitution is to serve as the **supreme law of the land**. This means that all laws passed by the legislature, and all actions taken by the executive, must conform to the principles laid down in the constitution. No authority, however powerful, is above it. This supremacy ensures that the government operates within a legal framework and cannot act arbitrarily.

For example, in India, **Article 13** clearly establishes that any law inconsistent with the provisions of Fundamental Rights shall be void. The judiciary, especially the Supreme Court and High Courts, has the power of **judicial review** to strike down unconstitutional laws and executive actions. This mechanism acts as a safeguard against misuse of authority and reinforces the idea that democracy runs on rules, not rulers.

In other democracies too, the constitution holds this supreme status. The **United States Constitution**, for instance, has guided governance for over two centuries, and the judiciary often declares laws or executive actions unconstitutional when they violate fundamental principles. Thus, the supremacy of the constitution protects democracy from degeneration into authoritarianism, under Article 32 and Article 226 respectively.

1.2.2 Ensuring Rights and Duties of Citizens

A democracy is incomplete without the **rights and freedoms of its citizens**. The constitution guarantees these rights, thereby empowering people to live with dignity, equality, and liberty. Rights ensure that citizens can freely participate in the democratic process, express their opinions, and challenge injustice.

In India, the **Fundamental Rights** include:

- **Right to Equality** – ensuring equal treatment before the law.
- **Right to Freedom** – allowing freedom of speech, expression, and movement.
- **Right to Constitutional Remedies** – enabling citizens to approach the courts if their rights are violated.

These rights act as a shield against state excesses and protect individual liberty. Similarly, in the United States, the **Bill of Rights** guarantees freedoms like speech, religion, and assembly, which are central to democracy.

However, rights must be balanced with **duties**. The constitution reminds citizens that freedom cannot exist without responsibility. In India, **Article 51A** prescribes **Fundamental Duties**, which include:

- Respecting the Constitution and national ideals.
- Preserving cultural heritage.
- Protecting the environment.
- Safeguarding the unity, integrity, and sovereignty of the nation.

These duties emphasize that democracy is not just about demanding rights from the state but also about contributing to the welfare of society. In this way, the constitution ensures harmony between the freedoms enjoyed by individuals and the obligations they owe to their community and nation.

1.2.3 Balancing Power between Institutions

Another key contribution of the constitution is the **distribution and balance of power** among different institutions of governance. Democracy can only survive if no single authority controls all power. Therefore,

the constitution provides for the **separation of powers** between the legislature, executive, and judiciary, ensuring a system of checks and balances.

- **The Legislature** makes laws.
- **The Executive** implements and enforces laws.
- **The Judiciary** interprets laws and ensures they are consistent with the constitution.

This arrangement prevents the concentration of power in one branch and promotes accountability. For instance, the Indian Parliament can pass laws, but if they contradict Fundamental Rights, the judiciary can strike them down. Similarly, the executive implements policies but remains accountable to the legislature through debates, question hours, and motions of no confidence. At the same time, the judiciary, though independent, is bound by constitutional procedures in the appointment and functioning of judges.

This delicate balance ensures that governance is collaborative, transparent, and accountable. It prevents the emergence of dictatorship or absolute rule, thereby protecting democratic values.

1.2.4 Safeguarding Democracy and Rule of Law

Perhaps the greatest role of the constitution is to **safeguard democracy itself**. It achieves this by embedding the principle of the **rule of law**, which means that:

- All citizens are equal before the law.
- No individual, including leaders and government officials, is above the law.
- All decisions must follow established legal procedures.

This principle prevents arbitrary rule and ensures fairness in governance. For example, even the highest-ranking officials can be tried in court if they violate the law, which reinforces equality and justice.

The constitution also protects democracy by guaranteeing **free and fair elections**, usually conducted by an independent election body. In India, the **Election Commission** ensures impartial elections, allowing peaceful transfer of power from one government to another. Additionally, constitutional provisions guarantee freedoms like speech, assembly, and association, which are essential for citizens to question authority and hold leaders accountable.

An independent judiciary further safeguards democracy by acting as a guardian of the constitution, striking down unconstitutional practices, and upholding rights. These checks make sure democracy is not merely on paper but functions effectively in practice.

“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 **historical background of the Indian Constitution** lies in the struggle for independence and the vision of nation-building after 1947. Following centuries of colonial rule, India sought self-governance rooted in democracy, justice, and equality. The Constituent Assembly, formed in 1946, drafted the Constitution, ensuring a unified framework for independent India.

1.3.1 Legacy of Colonial Rule

The period of British colonialism had a profound impact on the Indian political and administrative system. While colonial governance was exploitative and oppressive, it also inadvertently introduced institutions that laid the groundwork for constitutional development.

- **Administrative Influence:** The British introduced institutions like the **Indian Civil Service**, codified laws, and organized judiciary, which created the skeleton of a modern state system.
- **Legislative Developments:**

The **Indian Councils Act of 1861** allowed limited legislative participation.

The **Indian Councils Act of 1909 (Morley-Minto Reforms)** gave representation to Indians but was largely divisive, introducing separate electorates.

The **Government of India Act of 1919 (Montagu-Chelmsford Reforms)** introduced dyarchy in provinces.

The **Government of India Act of 1935** provided for provincial autonomy and a federal framework, though never fully implemented.

- **Impact on Indians:**

These acts offered limited political representation, keeping ultimate authority in British hands.

At the same time, they trained Indian leaders in parliamentary practices and created awareness of the importance of a strong constitutional framework.

Thus, the colonial legacy highlighted both the dangers of unchecked authority and the importance of structured governance, inspiring the demand for a constitution that would guarantee rights, equality, and self-determination.

1.3.2 Demand for a Constituent Assembly

The idea of an Indian Constitution framed by Indians themselves gradually gained momentum in the early 20th century.

- **M.N. Roy's Proposal (1934):** The demand was first articulated by M.N. Roy, a political thinker, who emphasized that only a Constituent Assembly could represent the will of the people.
- **Indian National Congress Demand (1935):** The Congress officially endorsed the idea, recognizing that India's future could not be decided by British-imposed laws but by the collective will of Indians.
- **Cripps Mission (1942):** Sent by the British government during World War II, it acknowledged the principle of Indian self-rule but its proposals fell short of expectations and were rejected by Indian leaders.
- **Cabinet Mission Plan (1946):** Finally provided a clear framework for electing a Constituent Assembly through indirect elections. Provincial legislatures elected members, ensuring representation from diverse groups, regions, and communities.

This demand was significant because it reflected India's determination to frame its own destiny and marked a break from centuries of being ruled by external powers.

1.3.3 The Indian Independence Act of 1947

The **Indian Independence Act**, passed by the British Parliament in July 1947, was the legal foundation for India's transition from colony to dominion status.

- **Partition of India:** The Act created two independent dominions, India and Pakistan, effective from 15th August 1947.
- **End of British Rule:** It abolished British suzerainty, transferring full authority to Indian hands.
- **Princely States:** The princely states were released from British control and given the option to join either dominion.
- **Constituent Assembly Empowered:** The Indian Constituent Assembly was given full authority to act as a sovereign body, making laws and framing the Constitution.

This Act symbolized the formal end of British colonialism and gave Indians the legal authority to govern themselves.

1.3.4 Steps toward Drafting the Indian Constitution

The drafting of the Constitution was a monumental task, requiring careful consideration of India's diversity, history, and aspirations.

- **Formation of the Constituent Assembly:**
First met on 9th December 1946 with 389 members, representing provinces, princely states, and various communities.
After Partition, the membership was reduced to 299.
- **Leadership:**
Dr. Sachchidananda Sinha served as the provisional chairman.
Dr. Rajendra Prasad was later elected as the permanent president of the Assembly.
- **Drafting Committee:**
Set up in August 1947, chaired by Dr. B.R. Ambedkar, who is often called the Chief Architect of the Indian Constitution.
Other notable members included K.M. Munshi, Alladi Krishnaswamy Ayyar, and Mohammad Saadullah.
N. Madhava Rau served as the **Constitutional Adviser**.

- **Deliberations:**

Total sittings over 165 sittings over 2 years 11 months 18 days (9 Dec 1946 – 24 Jan 1950), 7,635 amendments proposed to the Draft Constitution, 2,473 amendments actually moved on the floor of the Assembly.

Provisions were drawn from multiple sources:

- Parliamentary system from Britain
- Fundamental Rights and judicial review from the U.S. Constitution
- Directive Principles from Ireland
- Federal structure from Canada
- Emergency provisions from Germany

- **Adoption:**

The Constitution was adopted on 26th November 1949.

It came into effect on 26th January 1950, chosen to commemorate the 1930 Purna Swaraj Declaration.

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

1.4 Role of the Constituent Assembly

The **Constituent Assembly** played a crucial role in shaping India's Constitution. Formed in 1946, it represented diverse regions, communities, and political perspectives. Through debates and deliberations, it drafted the Constitution, ensuring democracy, justice, and equality. The Assembly laid the foundation for India's governance, safeguarding citizens' rights and national unity.

1.4.1 Composition of the Constituent Assembly

- **Establishment:** The Constituent Assembly was formed under the **Cabinet Mission Plan of 1946**.
- **Membership:** Initially consisted of **389 members**, representing provinces, princely states, and chief commissioner's provinces. After Partition, the membership reduced to **299 members**.
- **Election Method:**

Members were indirectly elected by the provincial legislative assemblies through proportional representation with a single transferable vote.

Seats were allocated to provinces and princely states roughly in proportion to population.

Representation was given to various communities, including Scheduled Castes, minorities, and women.

- **Presidency:**

Dr. Sachchidananda Sinha served as the **temporary chairman**.

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

- **Influence:** The Assembly included prominent leaders such as Jawaharlal Nehru, Sardar Vallabhbhai Patel, Dr. B.R. Ambedkar, Maulana Azad, K.M. Munshi, and others, ensuring diverse representation of opinions and interests.

1.4.2 Key Committees and Their Contributions

The Assembly worked through several committees to handle different aspects of the Constitution. Among the **22 committees**, the following were most significant:

- **Drafting Committee (Chairman: Dr. B.R. Ambedkar)**

Responsible for preparing the final draft of the Constitution.

Incorporated provisions from global constitutions, adapted to Indian conditions.

- **Union Powers Committee (Chairman: Jawaharlal Nehru)**

Determined the powers of the Union government.

Shaped the federal structure with a strong center.

- **Union Constitution Committee (Chairman: Jawaharlal Nehru)**

Dealt with the framework of the central government, including executive powers.

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

Addressed the structure and powers of provincial governments.

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

Recommended the inclusion of Fundamental Rights and minority protections.

Played a key role in balancing individual liberty with social justice.

- **Steering Committee (Chairman: Dr. Rajendra Prasad)**

Oversaw the proceedings of the Assembly and coordinated the work of other committees.

These committees ensured detailed examination of different constitutional provisions before presenting them for debate in the Assembly.

1.4.3 Debates and Discussions in the Assembly

- The Constituent Assembly engaged in extensive deliberations spanning nearly **2 years 11 months 18 days**.
- Members debated on every major aspect of governance, including federalism, parliamentary versus presidential systems, official language, minority rights, and Fundamental Rights.
- The Objectives Resolution, moved by Jawaharlal Nehru in December 1946, outlined the guiding principles of the Constitution and was later embodied in the Preamble.
- The debates reflected diverse ideological positions, for example:
 - Ambedkar strongly advocated social justice and equality.
 - Patel focused on national unity and integration.
 - Nehru emphasized democratic principles and international outlook.
- 7,635 amendments proposed to the Draft Constitution, 2,473 amendments actually moved on the floor of the Assembly.
- These discussions ensured that the Constitution represented a balance between liberty and authority, unity and diversity, and 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 **adoption of the Indian Constitution on 26th November 1949** was a landmark event in India's democratic history. The Drafting Committee, chaired by **Dr. B.R. Ambedkar**, presented the final draft to the Constituent Assembly in November 1949. After long debates, careful scrutiny, and final modifications, the Constitution was formally adopted on this date, signifying the completion of the Constitution-making process. However, it was decided that the Constitution would come into effect on **26th January 1950**, a date chosen deliberately to honor the **Purna Swaraj Resolution of 1930**, which had declared India's goal of complete independence.

Some important highlights of this adoption include:

- **24th January 1950:** 284 members of the Assembly signed the Constitution, affirming its acceptance.
- **Dr. Rajendra Prasad** became the first President of India.
- **Dr. B.R. Ambedkar** was celebrated as the **Chief Architect of the Constitution**.
- The Constitution declared India to be a **sovereign, socialist, secular, democratic republic**.

By adopting this document, India laid down the foundation of governance based on **justice, equality, liberty, and fraternity**, ensuring that the principles of democracy would guide the nation's future.

1.5 Vision of the Constitution Makers

The **vision of the Constitution makers** was to build a just, inclusive, and democratic India rooted in liberty, equality, and fraternity. They aimed to protect fundamental rights, ensure social and economic justice, and balance individual freedom with collective responsibility, thereby shaping India as a sovereign, secular, and democratic republic.

1.5.1 Goals of Justice, Liberty, Equality, and Fraternity

The framers understood that freedom would have little meaning unless accompanied by social, economic, and political empowerment.

- **Justice** was seen as a multidimensional goal:
 - *Social justice* aimed to remove centuries-old discrimination based on caste, gender, and community.
 - *Economic justice* sought to reduce inequalities of wealth and opportunity by guiding the state toward a welfare model.
 - *Political justice* meant providing all citizens with equal access to political participation and representation.

Provisions such as the **Directive Principles of State Policy** encouraged the state to promote welfare measures, education, and equitable distribution of resources.
- **Liberty** was considered essential for human dignity. It was not confined to political freedom but extended to **freedom of thought, expression, belief, and association**. The framers safeguarded liberty through **Fundamental Rights**, which could be enforced through the courts.
- **Equality** was crucial in a society burdened by caste oppression, gender discrimination, and social hierarchies. The Constitution guaranteed **equality before law (Article 14)** and prohibited discrimination on grounds of religion, race, caste, sex, or place of birth. It also abolished **untouchability (Article 17)** and introduced affirmative measures like reservations to uplift disadvantaged groups.
- **Fraternity** was emphasized to bind together India's diverse population. It called for promoting brotherhood, unity, and the dignity of every individual. The framers believed that liberty and equality could not survive without fraternity, as mutual respect and harmony were vital for the stability of democracy.

Foundations of a Just Society

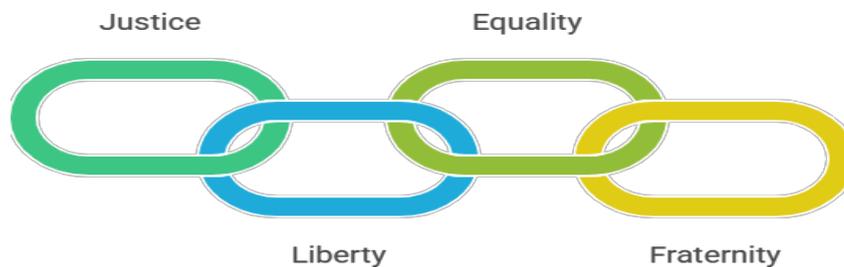


Figure 1.2

1.5.2 Emphasis on Secularism and Democracy

Having witnessed the horrors of Partition in 1947, the Constitution makers recognized the dangers of religious division and emphasized secularism as a foundational value. The word “Secular” was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act, 1976.

- Secularism meant that the state would remain neutral in matters of religion. Citizens were guaranteed freedom of conscience and the right to profess, practice, and propagate any faith (Article 25). No religion would be given preferential treatment, thus ensuring harmony in India’s pluralistic society.
- Democracy was placed at the heart of the constitutional vision. The framers opted for a parliamentary system of government, modeled on the British system, as it ensured accountability and collective responsibility. The adoption of Universal Adult Franchise from the very beginning was revolutionary, granting every adult citizen the right to vote regardless of caste, gender, literacy, or wealth.
- Additionally, institutions such as the Election Commission of India, an independent judiciary, and a system of checks and balances were established to safeguard democratic functioning. Together, secularism and democracy created a framework that protected diversity while promoting inclusivity, making India a model of unity in diversity.

1.5.3 Balancing Tradition and Modernity

The Constitution makers also faced the challenge of reconciling India's **rich cultural heritage** with the aspirations of a modern democratic state. Their vision was not to discard traditions entirely, but to reform and adapt them to align with democratic values.

- **Tradition:** Respect for India's history of pluralism, tolerance, and unity was embedded in the Constitution. Community values such as harmony, respect for elders, and social duty found a place, later reinforced by the inclusion of **Fundamental Duties (42nd Amendment, 1976)**. Traditional institutions like **village panchayats** were recognized and modernized under **Article 40** in the Directive Principles.
- **Modernity:** The Constitution borrowed progressive principles from other democracies and adapted them to Indian conditions. For example:
 - From the **U.S.**, it took Fundamental Rights and judicial review.
 - From **Ireland**, the Directive Principles of State Policy.
 - From **Canada**, federalism with a strong center.By incorporating ideas of equality, women's empowerment, and social justice, the Constitution broke away from regressive practices of the past.
- **Balancing Act:** The framers carefully balanced old and new. Caste was abolished, but cultural diversity was respected. Village governance was retained but restructured democratically. This blending of tradition with modernity ensured a smooth transition from colonial rule and traditional society 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, known as the *Architect of the Indian Constitution*, played a pivotal role as Chairman of the Drafting Committee. He ensured the inclusion of principles of justice, equality, liberty, and fraternity, while addressing social inequalities. His vision shaped India into a democratic, secular republic, safeguarding rights and promoting social justice.

1.6.1 Role of Ambedkar as Chairman of the Drafting Committee

On **29th August 1947**, Dr. Ambedkar was appointed as the **Chairman of the Drafting Committee**, a role that would define his legacy in Indian history. As head of the committee, he consolidated inputs from various sub-committees, recommendations from experts, and debates of the Constituent Assembly, while also drawing on comparative studies of global constitutions. His legal expertise, clarity of thought, and commitment to democratic values ensured that the Constitution was both visionary and practical.

Under his leadership:

- The draft integrated **principles of democracy, rule of law, and fundamental rights**, making them the foundation of governance.
- Special attention was given to **checks and balances** between the legislature, executive, and judiciary, ensuring accountability.
- A framework for **federalism with a strong center** was carefully designed, balancing unity with regional diversity.
- Ambedkar ensured **clarity, precision, and legal strength** in the language of the Constitution, making it adaptable to India's evolving needs.
- During Assembly debates, he **defended the draft** with reasoned arguments, addressing criticisms and explaining the necessity of various provisions.

Through his tireless efforts, the Constitution emerged as a robust document capable of guiding a diverse and newly independent nation.

1.6.2 Contribution to Social Justice and Equality

Ambedkar was not only a constitutional expert but also a **lifelong crusader against social inequality**, particularly caste discrimination. His vision of social justice profoundly shaped the Indian Constitution, ensuring that democracy extended beyond political rights to address entrenched social and economic inequalities.

Key contributions include:

- **Abolition of Untouchability (Article 17):** Declared untouchability unlawful and punishable, a landmark step in dismantling caste-based hierarchies.
- **Fundamental Rights:** Guaranteed **equality before law (Article 14)** and prohibited discrimination on the basis of caste, religion, gender, or status.
- **Reservations:** Introduced safeguards for **Scheduled Castes, Scheduled Tribes, and other disadvantaged groups**, ensuring their representation in legislatures, services, and educational institutions.
- **Directive Principles of State Policy:** Advocated for socio-economic justice, equitable distribution of resources, and welfare-oriented governance.

Ambedkar consistently argued that **political democracy without social democracy would remain hollow**. He emphasized that true justice could only be achieved when liberty, equality, and fraternity coexisted harmoniously.

1.6.3 Ambedkar's Legacy in Indian Democracy

Dr. Ambedkar's legacy extends far beyond his role as chief draftsman of the Constitution. His ideas and vision continue to inspire India's democratic journey and socio-economic policies.

- **Guardian of Democracy:** By emphasizing **constitutional morality** and institutional checks, Ambedkar ensured that India's democracy was anchored in strong principles rather than personalities.
- **Champion of Equality:** His relentless fight against caste discrimination laid the foundation for affirmative action policies, aimed at uplifting marginalized communities.
- **Promoter of Rights:** By embedding **Fundamental Rights**, he empowered citizens to challenge state excesses and assert their freedoms.
- **Symbol of Empowerment:** For millions of disadvantaged people, Ambedkar remains an enduring icon of **dignity, equality, and social justice**.
- **Long-term Impact:** His progressive ideas on education, women's rights, economic reforms, and labor welfare continue to influence policymaking in modern India.

1.7 Unique Features of the Indian Constitution

The **Indian Constitution** is unique for its length, detail, and adaptability. It combines the rigidity of a written constitution with flexibility for amendments. It establishes federalism with a strong center, guarantees fundamental rights, includes directive principles, embraces secularism, and ensures universal adult franchise, making it both inclusive and dynamic.

1.7.1 Longest Written Constitution

The Indian Constitution is recognized as the **longest written constitution in the world**. When it was adopted on **26th January 1950**, it contained **395 Articles, divided into 22 Parts and 8 Schedules**. Since then, through numerous amendments, it has grown further, As of now, the Constitution has 448 Articles, 25 Parts, 12 Schedules.

Its extraordinary length is the result of several factors:

- India's **social, cultural, and linguistic diversity**, which required extensive detailing to address the complexities of governance in such a pluralistic society.
- The need to incorporate detailed provisions on **administration, legislation, and judiciary**, so that governance would not be left vague or uncertain.
- The inclusion of provisions for both the **Union Government and the State Governments** within the same document, unlike countries such as the U.S. where states have their own constitutions.
- The adoption of elements from a variety of global constitutions, which expanded its scope. For example, the U.S. Bill of Rights inspired Fundamental Rights, the Irish Constitution influenced the Directive Principles, and the Canadian model inspired federalism with a strong center.

This comprehensiveness ensures that the Constitution is not merely a framework but an **encyclopedia of governance**, covering everything from emergency provisions and elections to languages and fundamental duties.

1.7.2 Blend of Rigidity and Flexibility

One of the most striking features of the Indian Constitution is that it is **neither as rigid as the U.S. Constitution nor as flexible as the British Constitution**. Instead, it combines both elements to achieve a balance between stability and adaptability.

- **Rigid elements:** Certain key provisions, such as those relating to the federal structure, the distribution of legislative powers, or the representation of states in Parliament, require a **special majority in Parliament** (two-thirds of members present and voting, plus a majority of the total membership) and ratification by at least half the states. This rigidity prevents hasty or arbitrary amendments to the core structure of governance.
- **Flexible elements:** On the other hand, some provisions can be amended by a **simple majority of Parliament**, just like ordinary legislation. For example, changes to the number of judges in the Supreme Court or reorganization of states can be made without complex procedures.

This unique combination enables the Constitution to remain **stable in its fundamental principles** while still being **responsive to social, political, and economic changes**. The more than 100 constitutional amendments passed so far are evidence of its adaptability.

1.7.3 Federal System with Unitary Bias

The Indian Constitution establishes a **federal system**, but it is not a classic federation like the United States. Instead, it is described as a “**quasi-federal**” system because it gives significant power to the center to ensure national unity.

- **Federal features:**

- There is a clear **division of powers** between the Union and the States, enumerated in the **Union List, State List, and Concurrent List** under the Seventh Schedule.
- The **Supreme Court and High Courts** act as independent judicial authorities to resolve disputes between the Union and States.
- Both levels of government are autonomous within their own spheres of authority.

- **Unitary bias:**

- In times of **emergency**, most powers concentrate in the Union government, allowing it to legislate on State List subjects and direct state administrations.
- The Union can legislate on matters in the State List under special circumstances, such as when Rajya Sabha passes a resolution or during a national crisis.
- The appointment of Governors by the President provides the center with an indirect mechanism to influence state governance.

This deliberate design was influenced by India’s experience of Partition and the need for strong national integration in a country with deep **regional, religious, and linguistic divisions**. The framers recognized that a purely federal system could risk disunity, so they opted for a system that allowed both **state autonomy** and **central authority**.

1.7.4 Parliamentary Form of Government

The Indian Constitution adopts the **parliamentary form of government**, modeled on the **Westminster system of the United Kingdom**. In this system, the executive is accountable to the legislature and derives its legitimacy from the confidence of the majority in the lower house.

Key features of this model include:

- The **President of India** is the nominal head of state, representing the unity of the nation but exercising powers largely on the advice of the Council of Ministers.

- The **Prime Minister** is the real executive authority, leading the Council of Ministers, which is **collectively responsible to the Lok Sabha**.
- The **Council of Ministers** can remain in power only as long as it enjoys the confidence of the majority in the Lok Sabha. A vote of no-confidence can compel it to resign.
- There exists a close and continuous relationship between the **executive and legislature**, ensuring day-to-day accountability.

This system was chosen over the presidential model because the framers felt it was more suitable for India's **diverse and pluralistic society**, as it ensures **greater accountability** and prevents the concentration of executive power in a single individual.

1.7.5 Fundamental Rights and Directive Principles

The framers of the Indian Constitution sought to strike a careful balance between **individual liberty** and **social welfare**, and this dual commitment is most clearly reflected in the inclusion of the **Fundamental Rights** (Part III) and the **Directive Principles of State Policy** (Part IV).

• Fundamental Rights

These rights are **legally enforceable** and form the cornerstone of India's democratic framework by ensuring basic freedoms to all citizens. They include:

- **Right to Equality**
- **Right to Freedom** (including freedom of speech, expression, and association)
- **Right against Exploitation**
- **Right to Freedom of Religion**
- **Cultural and Educational Rights**
- **Right to Constitutional Remedies** – regarded by Dr. B.R. Ambedkar as the "*heart and soul*" of the Constitution

These rights act as a **protective shield against arbitrary state action** and uphold the **dignity and autonomy of individuals**.

• Directive Principles of State Policy (DPSPs)

Though **non-justiciable** (i.e., not legally enforceable in courts), the DPSPs serve as **guiding principles** for the State in formulating policies and laws aimed at ensuring **social and economic justice**. Key directives include:

- Providing **free and compulsory education**
- Promoting **health and nutrition**
- Ensuring **equal pay for equal work**
- Securing a **living wage and humane working conditions**
- Reducing **inequalities of income, wealth, and status**

The Directive Principles reflect the **vision of a welfare state** and ensure that democracy in India is not merely **political**, but also **social and economic** in nature.

- The **Right to Free and Compulsory Education** was **shifted** from the Directive Principles of State Policy to the Fundamental Rights by the **86th Constitutional Amendment Act, 2002**, which inserted **Article 21-A** into the Constitution.

1.7.6 Universal Adult Franchise

Perhaps one of the most revolutionary decisions taken by the framers was the introduction of **universal adult franchise** from the very beginning of independent India. At a time when many democracies extended voting rights gradually—often excluding women, the poor, or minorities—India boldly declared that every adult citizen would have the right to vote, regardless of **caste, gender, religion, education, or wealth**.

Initially, the voting age was set at **21 years**, but the **61st Constitutional Amendment (1988)** lowered it to **18 years**, expanding participation further.

The adoption of universal suffrage had several transformative implications:

- It established the principle of **political equality**, making every citizen's vote equally valuable.
- It empowered marginalized communities, including women, Dalits, and the poor, giving them a voice in shaping governance.
- It laid the foundation for India's identity as the **world's largest democracy**, with over 900 million eligible voters today.

This provision demonstrated the framers' **faith in the people of India**, despite high levels of illiteracy and poverty at the time of independence. It was a bold experiment in trusting ordinary citizens to uphold democratic values.

1.8 Summary

- ❖ The Constitution of India is the **supreme law of the land**, guiding the nation's governance and ensuring democracy.
- ❖ It defines the **structure, powers, and functions** of the government and regulates the relationship between the state and citizens.
- ❖ The Constitution safeguards **fundamental rights** and prescribes **fundamental duties**, ensuring a balance between freedom and responsibility.
- ❖ It was framed against the backdrop of **colonial legacy, independence, and the demand for self-rule**, leading to the establishment of the Constituent Assembly.
- ❖ The **Constituent Assembly**, through extensive debates and committee work, drafted the Constitution, adopted on **26th November 1949** and enforced on **26th January 1950**.
- ❖ The framers envisioned a nation built on **justice, liberty, equality, and fraternity**, while emphasizing **democracy and secularism**.
- ❖ **Dr. B.R. Ambedkar**, as Chairman of the Drafting Committee, played a vital role in shaping provisions for social justice, equality, and constitutional morality.
- ❖ The Indian Constitution is unique for being the **longest written constitution**, with a **blend of rigidity and flexibility**.
- ❖ It establishes a **federal system with a strong center**, a **parliamentary form of government**, and principles of **rule of law**.
- ❖ Universal adult franchise and a focus on **inclusive governance** make it one of the most progressive constitutions in the world.

1.9 Key Terms

1. **Constitution** – The supreme law of a nation that defines the framework of government and citizens' rights.

2. **Preamble** – The introductory statement of the Constitution declaring its ideals and objectives.
3. **Fundamental Rights** – Basic rights guaranteed to all citizens and enforceable by courts.
4. **Directive Principles of State Policy** – Guidelines for the state to promote social and economic welfare.
5. **Fundamental Duties** – Responsibilities of citizens to uphold the nation's unity and values.
6. **Rule of Law** – Principle that no one is above the law, and all are equal before it.
7. **Secularism** – Equal treatment of all religions by the state without preference.
8. **Federalism** – Distribution of powers between the Union and State governments.
9. **Parliamentary System** – A democratic system where the executive is accountable to the legislature.
10. **Universal Adult Franchise** – Right of all adult citizens to vote regardless of caste, gender, or status.
11. **Judicial Review** – Power of courts to declare laws unconstitutional if they violate the Constitution.
12. **Amendment** – A formal change or addition made to the Constitution.
13. **Constituent Assembly** – The representative body that drafted and adopted the Indian Constitution.

1.10 Descriptive Questions

1. Explain the meaning of a Constitution. Why is it considered the supreme law of a country?
2. Discuss the main functions and purposes of a Constitution in a democratic society.
3. Differentiate between written and unwritten constitutions with suitable examples.
4. Examine the importance of a Constitution in safeguarding democracy and the rule of law.
5. Describe the historical background of the Indian Constitution, with reference to the legacy of colonial rule and the Indian Independence Act of 1947.
6. Discuss the composition of the Constituent Assembly and the role of its key committees in drafting the Constitution.
7. What vision did the framers of the Indian Constitution set out in the Preamble? Explain the significance of justice, liberty, equality, and fraternity.

8. Evaluate the role of Dr. B.R. Ambedkar as the Chairman of the Drafting Committee and his contribution to social justice.
9. Highlight the unique features of the Indian Constitution that make it distinct 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 Constituent Assembly and the Making of the Indian Constitution

Introduction

The framing of the Indian Constitution was a historic exercise that transformed India from a colony to the world's largest democracy. The Constituent Assembly, representing various regions, communities, and ideologies, worked tirelessly to prepare a document that would unite the nation and protect the rights of its citizens. However, the journey was not without challenges—managing differences of opinion, reconciling traditional values with modern principles, and addressing the aspirations of a diverse society required compromise and statesmanship.

Background

India's long struggle for independence created a strong demand for self-rule and a constitution drafted by Indians themselves. The Constituent Assembly was established in 1946 under the Cabinet Mission Plan. With 299 members after Partition, it represented lawyers, scholars, freedom fighters, and social reformers. Dr. B.R. Ambedkar, as Chairman of the Drafting Committee, played a key role in shaping the final document. The Assembly deliberated for 2 years, 11 months, and 18 days, considering over 2,473 amendments before adopting the Constitution on 26th November 1949.

Problem Statement 1: Reconciling Diversity of Opinions

Members of the Assembly came from varied backgrounds—some emphasized strong central authority, while others demanded state autonomy. There were also debates on language, minority rights, and the form of government.

Solution: Through extensive debate, compromise, and consensus-building, the Assembly created a federal system with a strong center, fundamental rights, and democratic institutions that balanced unity with diversity.

MCQ

Which approach helped the Constituent Assembly handle differences of opinion?

a) Ignoring minority voices

- b) Imposing majority decisions without debate
- c) Building consensus through debate and compromise
- d) Postponing contentious issues indefinitely

Answer: c) Building consensus through debate and compromise

Problem Statement 2: Balancing Tradition with Modernity

The framers had to decide how much of India's tradition should be retained and how much modern democratic practice should be adopted. For example, caste discrimination needed to be abolished, yet local governance through panchayats had to be respected.

Solution: The Constitution outlawed untouchability, introduced equality before law, and borrowed progressive principles from foreign constitutions, while also recognizing village panchayats and cultural rights to preserve Indian traditions.

MCQ

Which of the following reflects the balance of tradition and modernity in the Indian Constitution?

- a) Only adopting Western democratic principles
- b) Retaining caste practices under law
- c) Abolishing untouchability while preserving village panchayats
- d) Ignoring cultural diversity in governance

Answer: c) Abolishing untouchability while preserving village panchayats

Problem Statement 3: Ensuring Social Justice

Centuries of inequality made it essential for the Constitution to protect weaker sections of society. Without safeguards, democracy could fail to empower marginalized communities.

Solution: Ambedkar ensured provisions for fundamental rights, abolition of untouchability, and reservation of seats in legislatures and services for Scheduled Castes and Scheduled Tribes, laying the foundation for social justice.

MCQ

Which provision in the Constitution directly addresses social justice?

- a) Right to Property
- b) Abolition of Untouchability

- c) Freedom of Trade
- d) Separation of Powers

Answer: b) Abolition of Untouchability

Conclusion

The Constituent Assembly successfully crafted the Indian Constitution by reconciling differences, balancing tradition with modernity, and ensuring justice for all citizens. Its achievements demonstrate how inclusive debate, compromise, and visionary leadership can produce a living document that continues to guide the world's largest democracy.

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.

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- 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
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2.0 Introductory Caselet

“Objectives Resolution”

In January 1947, Jawaharlal Nehru introduced the **Objectives Resolution** in the Constituent Assembly, which later became the basis of the **Preamble to the Indian Constitution**. The framers believed that the Preamble would serve as the “identity card” of the Constitution—capturing its spirit, philosophy, and ultimate goals.

The Preamble declares India to be a **Sovereign, Socialist, Secular, Democratic, Republic**, committed to securing **Justice, Liberty, Equality, and Fraternity** for all citizens. Each word was carefully chosen to reflect the aspirations of a nation emerging from colonial rule and facing challenges of poverty, inequality, and social divisions.

Over the years, the Preamble has guided India’s democratic journey. For instance, in the **Kesavananda Bharati case (1973)**, the Supreme Court held that the Preamble reflects the basic structure of the Constitution, which cannot be altered even by Parliament. Similarly, during debates on policies of equality, secularism, or liberty, leaders and judges have looked to the Preamble for direction.

Thus, the Preamble is more than just an introduction; it is a **philosophical charter** that inspires governance, safeguards democracy, and keeps alive the vision of the Constitution makers.

Critical Thinking Question

If the Preamble represents the “soul” of the Constitution, how effective do you think it has been in guiding India’s democratic and social transformation since 1950? Support your view with examples.

2.1 What is the Preamble?

The **Preamble** is the introductory statement of the Indian Constitution that reflects its philosophy, purpose, and guiding principles. It declares India as a sovereign, socialist, secular, democratic republic and highlights the objectives of justice, liberty, equality, and fraternity. Serving as the Constitution's soul, it expresses the vision of the framers.

2.1.1 Definition and Nature of the Preamble

The **Preamble** is the **opening statement of the Indian Constitution**, which declares that the source of all authority lies with the people of India. It outlines the broad objectives of the Constitution and reflects its philosophy in a concise form, serving as a guiding light to interpret the spirit of the document. The Preamble does not confer powers or grant enforceable rights but expresses the ideals and vision that the framers sought to achieve through the Constitution.

The **nature of the Preamble** can be understood through the following points:

- It has been described as the **“identity card of the Constitution”** by **Late Sr. Advocate N.A. Palkhiwala**, since it summarizes the essence of the entire document.
- It is an **integral part of the Constitution**, yet it does not itself create rights or legal obligations.
- It is **non-justiciable**, meaning it cannot be enforced directly in courts, but it plays a crucial role in guiding judicial interpretation of constitutional provisions.
- The Preamble draws inspiration from the **Objectives Resolution of 1946**, moved by Jawaharlal Nehru in the Constituent Assembly.
- Above all, it **represents the will of the people** and captures the vision of the Constitution makers, expressing their commitment to building 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

The **Preamble of the Indian Constitution** acts as the **soul and spirit** of the entire document. It does not merely introduce the Constitution but lays down its **philosophical foundation**, serving as a constant reminder of the ideals and goals that India as a nation aspires to achieve. By beginning with the words “We, the people of India”, the Preamble clearly declares the **source of authority**—the sovereign will of the people themselves, not any external force or monarch. This shows that power in a democracy flows from the people and is exercised through their elected representatives.

The Preamble is also a **statement of ideals**, describing India as a **Sovereign, Socialist, Secular, Democratic, Republic**. These terms were carefully chosen to reflect the aspirations of an independent nation emerging from colonial rule. They provide not just political meaning but also moral direction to governance. Alongside this, the Preamble spells out the **objectives of the Constitution**, namely **Justice, Liberty, Equality, and Fraternity**, which form the guiding principles of state policy and the framework of democracy.

Its importance can be highlighted as follows:

- **Source of Authority:** People are the ultimate masters of the Constitution.
- **Goals of the State:** Justice (social, economic, and political), Liberty (of thought, expression, belief, faith, and worship), Equality (of status and opportunity), and Fraternity (assuring unity and dignity).
- **Direction for Governance:** Provides a moral and philosophical compass for legislatures, executives, and judges.
- **Unity of the Nation:** Promotes solidarity and integration in a diverse society by stressing fraternity and dignity.
- **Judicial Significance:** In the **Kesavananda Bharati case (1973)**, the Supreme Court recognized the Preamble as part of the Constitution and linked it with the **basic structure doctrine**, making it clear that these core ideals cannot be destroyed by Parliament.

Thus, the Preamble is not legally enforceable but remains the **guiding light of the Constitution**, ensuring that all institutions uphold the values on which the Republic was founded.

Factors Highlighting Importance

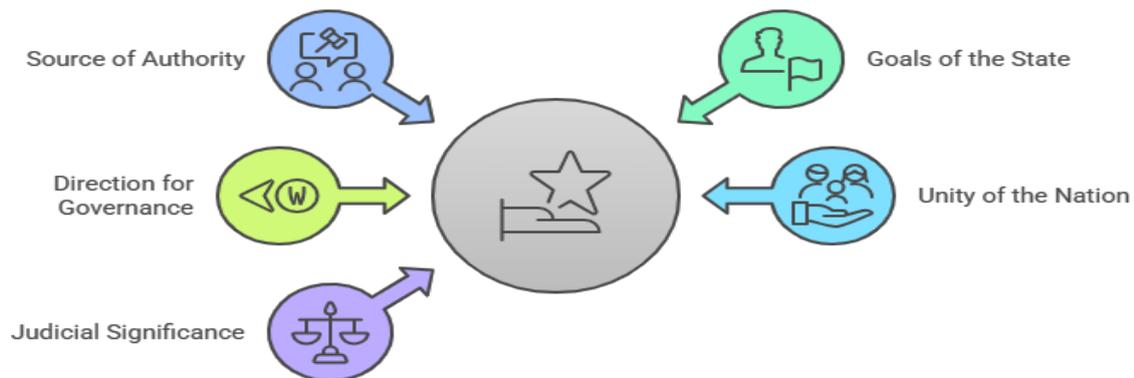


Figure 2.1

2.1.3 Role of the Preamble in Constitutional Interpretation

While the Preamble does not confer rights or powers directly, it plays a **vital interpretative role** in constitutional law. Whenever ambiguity arises in a constitutional provision, the judiciary often refers to the Preamble to understand the **intent and philosophy** of the Constitution makers. In this way, it serves as a **key to unlock the true spirit of the Constitution**.

Some landmark cases highlight its evolving role:

- **Berubari Union Case (1960):** The Supreme Court held that the Preamble was not a part of the Constitution and could not be used as a source of power.
- **Kesavananda Bharati Case (1973):** This landmark judgment overturned the earlier view, declaring the Preamble an **integral part of the Constitution**. It was held that while the Preamble itself is not enforceable, it reflects the **basic structure**, which Parliament cannot amend or destroy.
- **LIC of India Case (1995):** The Court reaffirmed the significance of the Preamble, stating that it is essential for interpreting the philosophy, aims, and objectives of the Constitution.

From these judgments, it is clear that the **Preamble has become a beacon of constitutional morality**. It helps courts safeguard democracy by ensuring that amendments or laws remain consistent with the basic ideals of justice, liberty, equality, and fraternity.

In practice:

- Judges refer to the Preamble when constitutional provisions are unclear.
- It acts as a **moral compass**, guiding state policies and decisions.
- It ensures that the Constitution remains a living document, aligned with the values of democracy and human dignity.

2.2 Meaning of Key Terms

The **key terms of the Preamble**—Sovereign, Socialist, Secular, Democratic, and Republic—define India’s constitutional identity. They signify independence in decision-making, commitment to social and economic justice, neutrality in religion, governance by the people through elected representatives, and equality of all citizens without hereditary privilege. Together, they capture the essence of India’s democracy.

2.2.1 Sovereign

The word **sovereign** signifies that **India is free from the control of any external authority**. After centuries of colonial subjugation, the assertion of sovereignty in the Constitution was a declaration that Indians alone would determine their nation’s destiny. Sovereignty applies both to **internal governance** and **external relations**.

- **Implications of sovereignty:**
 - India can **frame its own laws and policies** without interference from any foreign power.
 - It has **absolute authority** over internal administration, legislation, and judiciary.
 - In external affairs, India acts as an **equal member** of the international community, free to sign treaties, join organizations, or pursue independent policies.
- **Significance:**
 - Symbolizes the **hard-won independence of 1947**, affirming self-rule.
 - Reassures citizens that **ultimate power rests with the people**.
 - Enabled India to adopt **non-alignment during the Cold War**, showing independent decision-making in global politics.

Thus, sovereignty highlights both political independence and the people’s supremacy as the ultimate source of authority.

2.2.2 Socialist

The word **socialist** was added to the Preamble through the **42nd Constitutional Amendment (1976)** during the Emergency. While the spirit of socialism was always present in the Constitution through **Directive Principles of State Policy**, its explicit inclusion reaffirmed India's commitment to social and economic justice.

- **Implications of socialism in India:**

- Adoption of a **mixed economy**, balancing private enterprise with state ownership in key sectors like energy, banking, and transport.
- Implementation of **welfare programs**, including poverty alleviation, free education, public health schemes, and food security.
- **Social reforms**, such as land redistribution and reservations for disadvantaged communities, to reduce social inequalities.

- **Significance:**

- Ensures **justice in economic and social life**, not just in politics.
- Aims to create a society where **wealth and opportunities** are fairly distributed.
- Protects weaker sections from exploitation, ensuring **dignity and equality** for all citizens.

In practice, Indian socialism is **democratic and non-communist**, seeking to achieve equality while respecting individual freedoms and private enterprise.

2.2.3 Secular

The word **secular** was also inserted through the **42nd Amendment (1976)**, though secular principles were already embedded in the Constitution. Secularism means that **the state has no official religion and treats all religions with equal respect**. This principle was vital in post-Partition India, where religious diversity and tensions posed serious challenges.

- **Implications of secularism:**

- Every citizen has the **freedom of conscience and the right to profess, practice, and propagate any religion** (Article 25).
- The state cannot discriminate on religious grounds in employment, education, or political participation.
- The state may regulate or restrict religious practices if they **conflict with public order, morality, or health**.
- **Significance:**
 - Maintains **peace and unity** in a multi-religious society.
 - Prevents domination by any single religion, ensuring **equality among all communities**.
 - Protects both **religious freedom and social harmony**, making democracy more inclusive.

India's secularism is often described as "**positive secularism**", meaning the state respects all religions equally rather than maintaining complete detachment, as in some Western models.

2.2.4 Democratic

The word **democratic** reflects the idea that **ultimate power belongs to the people**, who exercise it through elected representatives. Democracy in India goes beyond political participation; it also includes values like equality, liberty, and dignity.

- **Implications of democracy in India:**
 - **Universal Adult Franchise:** Every citizen above 18 years has the right to vote, regardless of caste, gender, religion, or wealth.
 - **Free and fair elections** conducted by an independent Election Commission ensure accountability.
 - India follows a **parliamentary system**, where the executive is responsible to the legislature and can be removed by a vote of no-confidence.
- **Significance:**
 - Protects the **political rights of citizens** and prevents concentration of power.
 - Encourages **public participation**, debate, and dissent, strengthening democratic culture.
 - Provides stability in a **diverse society** by ensuring representation and accountability.

Democracy in India thus rests not only on periodic elections but also on **constitutional institutions, judicial review, and citizens' active engagement.**

2.2.5 Republic

The word **republic** signifies that the **head of state is elected** and not a hereditary monarch. In India, this principle ensures that leadership is based on merit and choice, not birth or privilege.

- **Implications of being a republic:**
 - The **President of India** is elected indirectly by an **Electoral College** representing the people.
 - No individual or family enjoys political privilege by birth.
 - Every citizen, regardless of caste, gender, or wealth, is eligible to hold the highest constitutional office.

- **Significance:**
 - Breaks away from historical traditions of monarchy and feudal privilege.
 - Embodies the principle of **equality before law** and **popular sovereignty**.
 - Reinforces democratic ideals by ensuring leadership is chosen **by the people, for the people**.

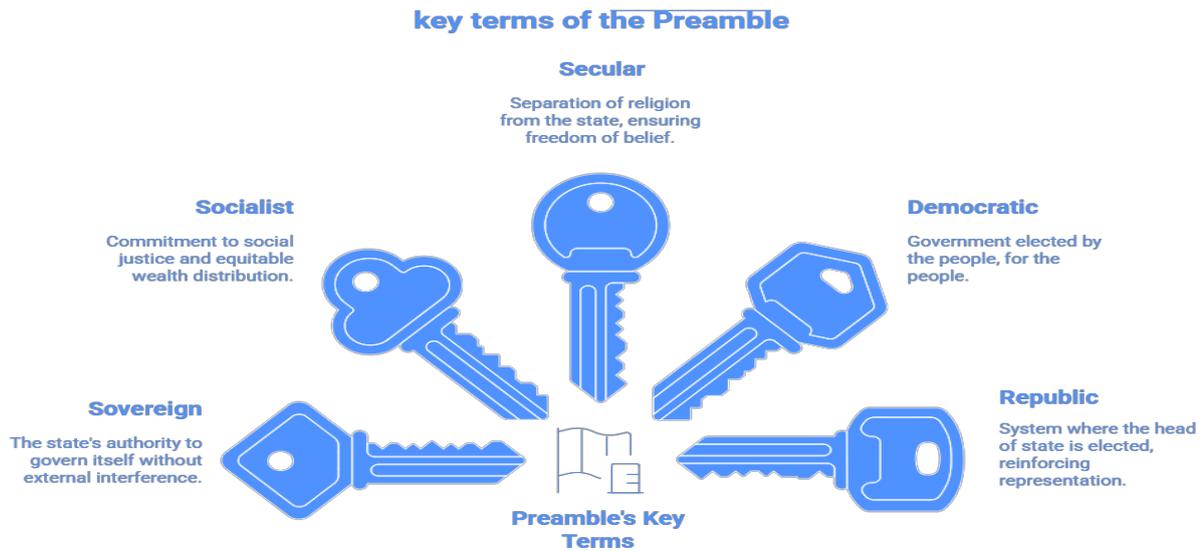


Figure 2.2

The republican character of India strengthens the democratic framework by emphasizing that political authority must always remain accountable to the people.

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

The core constitutional ideals—Justice, Liberty, Equality, and Fraternity—express the guiding philosophy of the Indian Constitution. Justice ensures fairness in social, economic, and political life; Liberty guarantees freedoms essential for dignity; Equality upholds equal status and opportunities; and Fraternity promotes unity and brotherhood, securing the dignity of every individual and the nation’s integrity.

2.3.1 Justice – Social, Economic, and Political

The framers of the Constitution emphasized **justice in three dimensions—social, economic, and political**—to ensure fairness in all aspects of life.

- **Social Justice:** The aim is to remove centuries-old inequalities based on caste, religion, gender, and social status. Provisions such as the **abolition of untouchability (Article 17)**, the **prohibition of discrimination on grounds of caste, sex, or religion (Article 15)**, and the system of **reservations** for Scheduled Castes, Scheduled Tribes, and Other Backward Classes are designed to create a level playing field.
- **Economic Justice:** Ensures fair distribution of wealth, resources, and opportunities. The **Directive Principles of State Policy (Articles 38 and 39)** direct the state to promote livelihoods, reduce economic inequalities, and ensure that ownership of resources benefits the common good. Policies such as **land reforms, rural employment schemes, and poverty alleviation programs** reflect this goal.

- **Political Justice:** Guarantees that every citizen can participate equally in the political process. **Universal adult franchise** and equal rights to contest elections provide inclusivity in governance and prevent any form of political exclusion.

By integrating these three aspects, the Constitution lays the foundation for a **welfare-oriented democracy**, ensuring fairness in society.

2.3.2 Liberty – Thought, Expression, Belief, Faith, and Worship

Liberty is central to human dignity, allowing individuals to develop their personality and exercise their freedoms responsibly. The Constitution secures liberty primarily through **Fundamental Rights (Articles 19–22 and 25–28)**.

- **Liberty of Thought and Expression:** Article 19 guarantees freedom of speech, expression, and the press, enabling citizens to voice opinions, criticize government actions, and participate in public discourse.
- **Liberty of Belief, Faith, and Worship:** Article 25 guarantees freedom of conscience and the right to profess, practice, and propagate any religion, reflecting India’s pluralistic ethos.

However, liberty is **not absolute**. It is subject to **reasonable restrictions** to safeguard **public order, morality, sovereignty, and security of the state**. This balance ensures that liberty is enjoyed without disrupting social harmony.

2.3.3 Equality – Equality before Law and Equal Protection of Laws

The Constitution places great importance on **equality**, recognizing that political democracy must be accompanied by social and economic equality. **Article 14** lays down the twin principles of:

- **Equality before Law:** Every individual is equal in the eyes of the law and cannot be granted special privileges.
- **Equal Protection of Laws:** People in similar circumstances must be treated alike, while disadvantaged groups may be given **special provisions** to ensure substantive equality.

Other constitutional guarantees reinforcing equality include:

- **Abolition of Untouchability (Article 17)**, eliminating one of the worst forms of discrimination.

- **Abolition of Titles (Article 18)**, ensuring that no citizen enjoys hereditary privilege.
- **Equality of Opportunity in Public Employment (Article 16)**, prohibiting discrimination in government jobs.

By embedding these safeguards, the Constitution ensures that **equality extends beyond politics** and permeates into social and economic life.

2.3.4 Fraternity – Promoting Unity and Integrity

The concept of **fraternity** refers to the spirit of **brotherhood and mutual respect** among citizens. For a country like India, marked by immense cultural, linguistic, and religious diversity, fraternity is indispensable for preserving unity.

The Constitution links fraternity with two crucial aspects:

- **Dignity of the Individual:** Every citizen must enjoy self-respect, equal treatment, and recognition of their worth in society.
- **Unity and Integrity of the Nation:** By promoting social harmony and solidarity, fraternity strengthens the foundation of national integration.

Fraternity goes **beyond laws and constitutional provisions**—it requires cultivating values of **tolerance, respect, and cooperation** in everyday life. Only when citizens practice fraternity can liberty and equality truly flourish.

“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

The Indian Constitution is often called a **borrowed constitution** because it draws inspiration from many sources. But it is also unique, because the framers did not copy blindly—they **studied the best practices of global constitutions, adapted them to India’s social realities, and blended them with indigenous traditions**. This gave the Constitution both **universality and originality**. Philosophical influences came from revolutionary movements like the French Revolution, democratic ideals from the American experience, administrative structures from the British colonial system, and innovations from various countries like Ireland, Canada, Australia, South Africa, Japan, and Germany. Each influence was carefully chosen to address the needs of a newly independent, diverse, and democratic India.

2.4.1 French Revolution – Liberty, Equality, Fraternity

The **French Revolution of 1789** introduced the world to the powerful ideals of “Liberty, Equality, and Fraternity.” These became rallying cries for oppressed people across the globe and were later enshrined in many modern constitutions.

- **Influence on India:**
 - Liberty: The Indian Constitution guarantees liberty in multiple dimensions. Articles **19–22** safeguard freedoms of speech, movement, association, belief, and personal liberty. This ensures that individuals can develop their personality without undue interference by the state.
 - Equality: The French emphasis on equality inspired Indian provisions such as **Article 14 (equality before law)**, **Article 15 (prohibition of discrimination)**, **Article 17 (abolition of untouchability)**, and **Article 18 (abolition of titles)**. These measures aimed to dismantle India’s centuries-old social hierarchies.
 - Fraternity: India adopted fraternity as a constitutional goal to maintain unity in its deeply diverse society. The Preamble speaks of ensuring the **dignity of the individual** and the **unity and integrity of the nation**, making fraternity a moral force binding citizens together.
- **Significance:** The adoption of these ideals gave the Indian Constitution a **humanitarian and democratic foundation**, ensuring that independence was not just about political sovereignty but also about building a just, equal, and united society.

2.4.2 American Bill of Rights – Individual Liberties

The **Bill of Rights (1791)**, comprising the first ten amendments to the U.S. Constitution, was revolutionary because it **guaranteed enforceable rights against the state**. It inspired democracies worldwide to recognize that citizens must have **legal tools to protect themselves from government overreach**.

Influence on India:

- **Fundamental Rights:** India borrowed the concept of **legally enforceable rights**, ensuring freedoms such as **speech, equality before law, and protection from arbitrary arrest**. These rights empower citizens to approach courts if their freedoms are violated.
- **Judicial Review:** The term “**judicial review**” is not expressly mentioned anywhere in the Constitution. However, it has been **implied and entrenched in several provisions**, the most direct of which is **Article 13**. This enables courts to invalidate laws that are inconsistent with constitutional rights, thereby preserving the **supremacy of the Constitution** over legislative and executive actions.
- **Due Process and Fair Procedure:** While India did not adopt the U.S. phrase “**due process of law**” in full, it embraced the principle that **personal liberty cannot be curtailed without fair legal procedure**, reflected in **Article 21**.

Significance:

This borrowing empowered Indian citizens with **constitutional remedies**, preventing **arbitrary use of state power** and strengthening **democratic accountability**. Dr. B.R. Ambedkar even called the **Right to Constitutional Remedies (Article 32)** the “**heart and soul of the Constitution**.”

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

The **Government of India Act, 1935**, though colonial in intent, became an important blueprint for the framers. It was the most detailed constitutional document drafted before independence, and many of its provisions were retained in independent India after being **stripped of their colonial bias**.

- **Influence on India:**
 - **Federal Structure:** The Act divided powers between the Centre and the Provinces through lists of subjects. This became the basis of India’s **Union List, State List, and Concurrent List** in the Seventh Schedule.

- **Public Service Commissions:** The Act introduced impartial recruitment agencies, which inspired the creation of the **Union Public Service Commission (UPSC)** and **State Public Service Commissions**.
- **Provincial Autonomy:** For the first time, provinces had elected legislatures with some autonomy. This idea evolved into India's federal model where states have legislatures and governments.
- **Emergency Provisions:** The British included clauses allowing central control during crises. India adopted similar provisions (Articles 352, 356, and 360), though for democratic safeguarding rather than imperial control.
- **Bicameral Legislature:** The Act provided for a two-house legislature at the Centre, which was later developed into the **Lok Sabha and Rajya Sabha**.
- **Significance:** By adapting these provisions, the framers ensured that independent India had a **tested administrative framework**, while reorienting it towards democratic values, accountability, and welfare.

2.4.4 Other Global Inspirations

In addition to the above, India borrowed useful features from many countries, making the Constitution one of the most comprehensive in the world.

- **British Parliamentary System**
 - India adopted the **Westminster model** of government. The **President** acts as the nominal head of state, while real executive power rests with the **Prime Minister and Council of Ministers**.
 - The principle of **collective responsibility** of the Cabinet and the power of the Lok Sabha to remove the government through a **vote of no-confidence** also came from Britain.
 - This system ensures **accountability of the executive to the legislature**, a cornerstone of parliamentary democracy.
- **Irish Directive Principles of State Policy**

- Part IV of the Indian Constitution, the **Directive Principles of State Policy (DPSPs)**, was inspired by the Irish Constitution.
- These principles are **non-justiciable**, meaning they cannot be enforced in courts, but they guide the state in ensuring **social and economic democracy**.
- Examples include: ensuring living wages, providing free education, reducing inequality, and promoting international peace.
- **Canadian Constitution**
 - Canada inspired India's model of **federalism with a strong Centre**.
 - Provisions relating to **residuary powers** (powers not listed in the Constitution) being vested in the Centre also came from Canada.
 - This was crucial for maintaining unity in India's diverse federal structure.
- **Australian Constitution**
 - India borrowed provisions on the **Concurrent List** (subjects on which both Centre and States can legislate) and **freedom of trade and commerce** across the nation.
 - The mechanism for resolving **inter-state disputes** also came from Australia.
- **Weimar Constitution of Germany**
 - Provided inspiration for India's **emergency powers** (Articles 352, 356, and 360), which allow the Centre to assume greater authority during crises.
- **South African Constitution**
 - Borrowed the **procedure for constitutional amendments**, which balances rigidity and flexibility.
 - Also influenced the **system of indirect elections to the Rajya Sabha**, India's Upper House.
- **Japanese Constitution**
 - Inspired the phrase "**procedure established by law**" in **Article 21**, which governs protection of personal liberty.
 - This gave India a model for ensuring liberty while allowing flexibility in law-making.

2.5 Supreme Court Interpretations of the Preamble

The **Preamble of the Indian Constitution** has undergone an important judicial journey. At first, it was treated as a decorative introduction with no legal value. Over time, however, the Supreme Court recognized it as an essential part of the Constitution and a guiding light for interpretation. Its role became especially significant after the formulation of the **Basic Structure Doctrine** in 1973.

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

The first major judicial interpretation of the Preamble came in the **Berubari Union case (1960)**. The case arose when India and Pakistan agreed to transfer the Berubari Union, a territory in West Bengal, to Pakistan. The issue was whether such a transfer required a constitutional amendment.

- **Supreme Court's View:**

- The Court held that the **Preamble is not a part of the Constitution**.
- It cannot be a **source of substantive power** for the government or Parliament.
- It can only serve as a **guide** in interpreting ambiguous constitutional provisions but has **no independent legal authority**.

- **Impact:**

- This judgment reduced the Preamble to a **non-binding introduction**.
- For more than a decade, the Preamble was regarded as a symbolic statement without enforceable value.

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

The status of the Preamble changed completely in the **Kesavananda Bharati case (1973)**, one of the most important constitutional cases in Indian history. The case was filed by Kesavananda Bharati, a seer from Kerala, who challenged amendments that restricted the right to property. The broader issue was whether Parliament's amending power under Article 368 was unlimited.

- **Supreme Court's View:**

- A **13-judge bench**, the largest in Indian history, heard the case.
- The Court **overruled the Berubari judgment** and declared that the **Preamble is a part of the Constitution**.
- Although it is **not justiciable** (cannot be enforced directly in courts), it embodies the **philosophy, values, and objectives** of the Constitution.
- The Court developed the **Basic Structure Doctrine**, holding that the Preamble reflects principles such as sovereignty, secularism, democracy, justice, liberty, equality, and fraternity. These principles form the **basic structure** of the Constitution and cannot be altered or destroyed even by Parliament.
- **Significance:**
 - Parliament retains the power to amend the Constitution, but it **cannot amend or remove its basic structure**.
 - The values stated in the Preamble became **permanent features** of the Constitution.
- **Impact:**
 - The Preamble moved from being a symbolic text to a **central guiding force** in constitutional interpretation.
 - Citizens gained the assurance that no political majority could undermine the **core philosophy of the Constitution**.

2.5.3 Evolution of Judicial Approach to the Preamble

The approach of the judiciary toward the Preamble has evolved in three distinct phases.

- **Berubari Union Case (1960):**
 - The Preamble was declared **outside the Constitution**.
 - It had only **interpretive value**, not legal authority.
- **Kesavananda Bharati Case (1973):**
 - The Preamble was recognized as **an integral part of the Constitution**.

- It was linked to the **basic structure doctrine**, making its ideals unchangeable.
- **Subsequent Cases:**
 - **SR Bommai v. Union of India (1994):** The Court used the Preamble to stress that **secularism is a basic feature** of the Constitution. This limited the misuse of Article 356 and protected state governments from arbitrary dismissal.
 - **LIC of India v. Consumer Education and Research Centre (1995):** The Court reaffirmed that the Preamble is **integral to constitutional interpretation**, guiding the courts in reinforcing the values of justice, liberty, equality, and dignity.
- **Trend:**
 - After 1973, courts consistently treated the Preamble as a **constitutional compass**, ensuring that governance and amendments remain true to the founding ideals.

2.5.4 Preamble and the Basic Structure Doctrine

The **Basic Structure Doctrine**, first laid down in the **Kesavananda Bharati case (1973)**, has become one of the cornerstones of Indian constitutional law. It limits the power of Parliament to amend the Constitution under Article 368, ensuring that while changes may be made to specific provisions, the essential philosophy of the Constitution remains untouched. The **Preamble plays a crucial role** in this doctrine, as the values it enshrines—**sovereignty, socialism, secularism, democracy, republic, justice, liberty, equality, and fraternity**—are recognized as part of the Constitution’s **basic structure**. These ideals cannot be diluted, altered, or abolished, even by a constitutional amendment passed with a parliamentary majority. For instance, Parliament cannot declare India a theocratic state since **secularism** is a basic feature; it cannot abolish **free and fair elections** because democracy is central to the system; nor can it take away fundamental ideals like **equality or liberty**, as they form the foundation of the constitutional order. By connecting the Preamble to the basic structure, the Supreme Court provided a **judicial safeguard**, ensuring that the Constitution’s **core philosophy remains permanent and inviolable**. This means that while the Constitution is flexible and can adapt to changing circumstances, its **fundamental principles are indestructible**, protecting India’s democracy for future generations.

2.6 Summary

- ❖ The **Preamble** is the introductory statement of the Indian Constitution that embodies its philosophy and objectives.
- ❖ It was inspired by **Jawaharlal Nehru’s Objectives Resolution (1946)** and adopted with the Constitution in 1949.
- ❖ The Preamble declares India as a **Sovereign, Socialist, Secular, Democratic, Republic**.
- ❖ It emphasizes four core ideals—**Justice, Liberty, Equality, and Fraternity**—as guiding principles of governance.
- ❖ **Justice** is ensured in social, economic, and political dimensions.
- ❖ **Liberty** guarantees freedom of thought, expression, belief, faith, and worship.
- ❖ **Equality** provides equality before law and equal protection of laws, abolishing social and legal discrimination.
- ❖ **Fraternity** promotes unity, integrity, and dignity of the individual in a diverse society.
- ❖ Global influences shaped the Preamble: French Revolution (liberty, equality, fraternity), American Bill of Rights (individual liberties), and Irish Constitution (Directive Principles).
- ❖ The **Government of India Act, 1935** provided key administrative and federal features later refined in the Constitution.
- ❖ Judicial interpretations evolved: **Berubari case (1960)** excluded it as part of the Constitution, while **Kesavananda Bharati (1973)** recognized it as integral and linked to the **basic structure doctrine**.
- ❖ The Preamble now serves as a **philosophical compass and constitutional safeguard**, guiding interpretation and protecting democratic values.

2.7 Key Terms

1. **Preamble** – The introductory statement of the Constitution declaring its philosophy, ideals, and objectives.
2. **Sovereign** – Independent authority of India to govern itself without external control.
3. **Socialist** – Commitment to reduce inequality and promote social and economic justice.
4. **Secular** – Equal treatment of all religions by the state, with no official religion.

5. **Democratic** – System where people elect representatives through free and fair elections.
6. **Republic** – Head of state is elected, not hereditary.
7. **Justice** – Ensuring fairness in social, economic, and political spheres.
8. **Liberty** – Freedom of thought, expression, belief, faith, and worship.
9. **Equality** – Equal status and protection under the law for all citizens.
10. **Fraternity** – Spirit of brotherhood ensuring dignity, unity, and integrity of the nation.

2.8 Descriptive Questions

1. Define the Preamble of the Indian Constitution. Discuss its nature and significance.
2. Explain the purpose of the Preamble in guiding the interpretation of the Constitution.
3. Discuss the meaning of the terms **Sovereign, Socialist, Secular, Democratic, and Republic** as used in the Preamble.
4. Analyze how the ideals of **Justice, Liberty, Equality, and Fraternity** shape India's constitutional philosophy.
5. Trace the philosophical influences of the Preamble from global sources such as the French Revolution, American Bill of Rights, and the Irish Constitution.
6. Examine the significance of the **Government of India Act, 1935** in shaping India's administrative and federal framework.
7. Discuss the Supreme Court's interpretation of the Preamble in the **Berubari Union case (1960)** and the **Kesavananda Bharati case (1973)**.
8. What is the relationship between the Preamble and the **Basic Structure Doctrine**?
9. Evaluate the Preamble as the “philosophical compass” of the Indian Constitution with suitable examples.

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Answers to Knowledge Check

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 the Indian Constitution acts as a guiding light for governance and constitutional interpretation. It reflects the aspirations of the people by declaring India as a Sovereign, Socialist, Secular, Democratic, Republic committed to Justice, Liberty, Equality, and Fraternity. Over the years, the judiciary has relied on the Preamble to resolve constitutional dilemmas and preserve democratic values. Yet, debates often arise about its legal status, role in interpretation, and its practical impact on India's governance.

Background

Adopted in 1949 and coming into effect on 26th January 1950, the Preamble was inspired by Nehru's Objectives Resolution (1946). Initially, in the **Berubari Union case (1960)**, the Supreme Court held that the Preamble was not a part of the Constitution. However, the **Kesavananda Bharati case (1973)** reversed this view, declaring it integral to the Constitution and tied to the basic structure doctrine. Since then, the Preamble has served as a constitutional compass, guiding interpretation and safeguarding democracy.

Problem Statement 1: Ambiguity of Legal Status

The Preamble was long debated for its enforceability. Could it be considered legally binding, or was it just a symbolic statement?

Solution: The Kesavananda Bharati case clarified that the Preamble is part of the Constitution, though not enforceable in itself. It serves as an interpretative tool that strengthens constitutional philosophy.

MCQ

What did the Kesavananda Bharati case establish about the Preamble?

- a) It is not part of the Constitution
- b) It is legally enforceable like Fundamental Rights

- c) It is part of the Constitution but non-justiciable
- d) It can be amended without limits

Answer: c) It is part of the Constitution but non-justiciable

Problem Statement 2: Safeguarding Constitutional Ideals

Critics questioned whether parliamentary amendments could dilute the spirit of the Preamble by altering core ideals like secularism or democracy.

Solution: The Supreme Court linked the Preamble to the **basic structure doctrine**, ensuring that Parliament cannot destroy essential values such as sovereignty, democracy, or secularism.

MCQ

Which doctrine protects the ideals of the Preamble from being altered by Parliament?

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

Answer: b) Basic Structure Doctrine

Problem Statement 3: Realizing Ideals in Practice

While the Preamble guarantees justice, liberty, equality, and fraternity, translating these into reality remains challenging due to poverty, inequality, and social divisions.

Solution: Courts and policymakers continue to rely on the Preamble to frame welfare policies, expand rights (like Right to Education), and interpret laws in a manner that promotes inclusivity and democracy.

MCQ

Which of the following reflects the Preamble's ideal of equality?

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

Answer: b) Abolition of Untouchability

Conclusion

The Preamble serves as the philosophical soul of the Indian Constitution. From being viewed as a mere introduction in *Berubari* to becoming part of the basic structure in *Kesavananda Bharati*, its journey reflects India's democratic evolution. It continues to guide lawmakers, judges, and citizens, ensuring the nation remains committed to justice, liberty, equality, and fraternity.

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.

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3.0 Introductory Caselet

“The Right to Speak Up”

In the bustling town of Madhavpur, a group of university students came together to raise awareness about the urgent issue of **climate change**. Motivated by the increasing pollution levels and the cutting down of green cover in their city, they decided to organize a **peaceful rally** in front of the municipal building.

The students carried placards with messages like “*Save Trees, Save Tomorrow*” and “*Clean Air is Our Right*”. They used slogans to appeal to citizens and policymakers, emphasizing that safeguarding the environment was not just a necessity but a duty toward future generations. Importantly, the rally was **non-violent, orderly, and purely informative**, intended to awaken civic consciousness.

However, local municipal officials viewed the gathering with suspicion. Claiming that it might disturb traffic and lead to public unrest, they attempted to stop the rally midway. The students, surprised by this reaction, insisted that they were only exercising their **Fundamental Right to Freedom of Speech and Expression**, which allowed them to voice concerns peacefully.

When the matter reached the High Court, the judges had to consider two important aspects:

1. Whether the protest violated “public order” and justified restrictions.
2. Whether the officials had acted beyond their powers by curbing citizens’ rights.

The court ruled in favor of the students, stating that **a democracy thrives only when citizens are free to express their thoughts without fear of suppression**. The judges observed that the right to protest peacefully is an integral part of the democratic framework and that the **State cannot misuse the concept of “reasonable restrictions” to silence legitimate dissent**.

This case reinforced the principle that **Fundamental Rights are not mere words on paper but the living essence of democracy**, ensuring that even ordinary citizens have the power to question authority.

Critical Thinking Question:

Considering this case, consider the following:

If **Fundamental Rights are made absolute**, they may lead to chaos and misuse (e.g., hate speech,

incitement to violence). But if **too many restrictions are imposed**, the very essence of democracy is weakened.

3.1 Meaning & Importance of Fundamental Rights

Fundamental Rights are the essential freedoms guaranteed by the Indian Constitution to ensure dignity, equality, and liberty of individuals. Enshrined in Part III, they protect citizens against arbitrary state action and provide legal remedies through courts. These rights form the foundation of democracy, empowering people to participate fully in national life.

3.1.1 Concept of Fundamental Rights

Fundamental Rights are a set of **basic rights guaranteed to every citizen** by the Constitution of India. They are enshrined in **Part III of the Constitution (Articles 12–35)** and are considered essential for the **overall development of individuals** as well as the **functioning of democracy**.

These rights are called "**fundamental**" because they form the **foundation of the relationship between the State and its citizens**. They cannot be taken away arbitrarily by the government and are **enforceable through the courts of law**. If these rights are violated, citizens have the right to approach the judiciary for protection and enforcement under **Article 32** and **Article 226**. Under the Indian Constitution, some Fundamental Rights apply only to citizens, while others apply to all persons (including **foreigners, corporations, or other non-citizen entities**).

The concept of Fundamental Rights in India is **inspired by the Bill of Rights** in the United States Constitution and other international charters, but it has been **adapted to suit India's social, political, and cultural context**. These rights aim to **secure equality, liberty, and justice** for all citizens and to **prevent any form of discrimination or misuse of power** by the State.

3.1.2 Importance of Fundamental Rights in a Democracy

Fundamental Rights play a crucial role in ensuring the survival and growth of democracy. They serve multiple purposes that safeguard both individual liberty and collective well-being.

Protection of Individual Liberty: Fundamental Rights safeguard citizens from arbitrary actions of the State and ensure that their personal freedoms are respected.

Equality before Law: They guarantee equality by prohibiting discrimination based on religion, caste, gender, race, or place of birth.

Democratic Participation: By securing freedom of speech, expression, assembly, and association, these rights empower citizens to participate actively in democratic processes.

Checks on State Power: They limit the powers of the government, ensuring that it does not misuse its authority.

Promotion of Social Justice: Rights like the abolition of untouchability and prohibition of exploitation aim to create a more just and fair society.

Human Dignity and Development: Fundamental Rights protect the dignity of individuals by giving them opportunities for education, work, and free expression.

Foundation for Democracy: Democracy is meaningful only when citizens enjoy freedom and equality. Fundamental Rights form the basis for such a system.

Without Fundamental Rights, democracy would merely be a political structure without real protection for individuals against oppression or inequality.

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

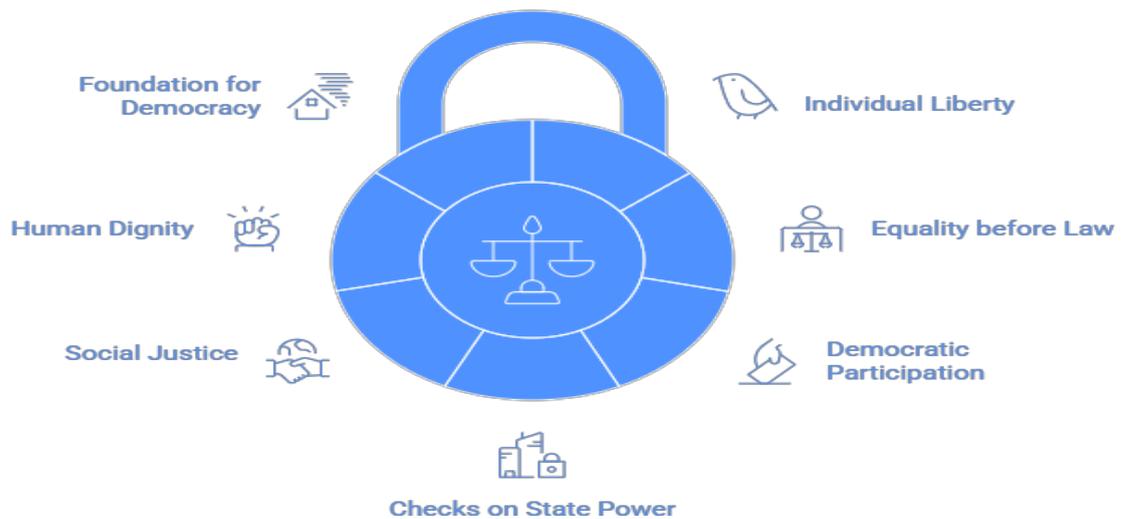


Figure 3.1

3.1.3 Difference between Fundamental Rights and Ordinary Rights

- **Fundamental Rights** and **Ordinary Rights** both safeguard individuals, but they differ in their source, scope, and enforceability. Fundamental Rights are guaranteed directly by the **Constitution under Part III**, giving them a higher legal status than ordinary laws. They are considered **basic, essential, and inalienable rights**, forming the very foundation of democratic governance.
- Ordinary Rights, on the other hand, are created by **laws passed by Parliament or state legislatures**. These rights deal with routine matters such as property rights, contracts, trade regulations, or administrative procedures. Unlike Fundamental Rights, they do not enjoy a superior constitutional status.
- Another distinction lies in **enforceability**. Fundamental Rights can be enforced directly through the **Supreme Court under Article 32** and **High Courts under Article 226**, giving citizens immediate constitutional remedies. Ordinary Rights, however, can only be enforced in **subordinate courts**, following the procedures set by the specific law under which they are granted.
- The **protection offered** is also different. Fundamental Rights primarily act as a **shield against arbitrary state action**, ensuring the government cannot violate core freedoms. Ordinary Rights, in contrast, usually regulate the relationship between individuals and may not always involve the State.

- In terms of **amendability**, Fundamental Rights enjoy a special constitutional safeguard. While they can be amended, their **essential character cannot be altered** due to the **Basic Structure Doctrine**. Ordinary Rights, however, can be modified or repealed at any time by a simple majority of the legislature.
- Finally, the **scope** of Fundamental Rights is broader—they apply universally to all citizens (with some limited exceptions, such as certain rights being reserved only for citizens and not foreigners). Ordinary Rights are limited to the **specific field of law** in which they are created.

3.2 Six Fundamental Rights under Part III

The **six Fundamental Rights under Part III of the Indian Constitution** guarantee essential freedoms to citizens, ensuring equality, dignity, and protection against arbitrary state action. They include the Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies.

3.2.1 Right to Equality (Articles 14–18)

The **Right to Equality** is the cornerstone of a democratic and just society. It ensures that all individuals are treated equally before the law and prohibits any form of discrimination by the State.

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

Every person, irrespective of status, wealth, caste, or religion, is equal in the eyes of law. No special privileges can be granted, and no discrimination can be practiced by the State in legal matters.

- **Article 15 – Prohibition of discrimination:**

The State is prohibited from discriminating against citizens on the grounds of religion, race, caste, sex, or place of birth. At the same time, this Article allows the State to make special provisions for women, children, and socially or educationally backward classes to promote equity.

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

Ensures that no citizen is discriminated against in matters of public jobs and employment under the State. However, reservations are permitted for backward classes, Scheduled Castes, and Scheduled Tribes to correct historical injustices.

- **Article 17 – Abolition of untouchability:**

Untouchability in any form is prohibited. Practices that deny basic human dignity based on caste are illegal, and violation is a punishable offense.

- **Article 18 – Abolition of titles:**

All titles, except those related to military or academic distinctions, are abolished. This prevents the creation of social hierarchies and reinforces equality among citizens.

This right not only promotes equality before law but also actively works against deep-rooted social evils like untouchability and discrimination.

3.2.2 Right to Freedom (Articles 19–22)

The **Right to Freedom** provides citizens with liberties necessary for the development of individuality and the proper functioning of democracy. It is one of the most important rights because it directly affects the personal lives of citizens.

- **Article 19 – Six fundamental freedoms:**

Guarantees the freedom of speech and expression, peaceful assembly, association, movement, residence, and profession/occupation. These freedoms form the backbone of democratic participation but are subject to reasonable restrictions in the interest of public order, morality, and national security.

- **Article 20 – Protection in respect of conviction for offenses:**

Protects individuals against ex post facto laws (punishment for an act that was not an offense when committed), double jeopardy (being tried twice for the same offense), and self-incrimination (being forced to testify against oneself).

- **Article 21 – Right to life and personal liberty:**

Declares that no person shall be deprived of life or liberty except according to a just, fair, and reasonable procedure established by law. Over time, judicial interpretation has expanded this to include rights like the right to privacy, right to livelihood, and right to a clean environment.

- **Article 21A – Right to education:**

Added by the 86th Constitutional Amendment (2002), this guarantees free and compulsory education to children aged 6 to 14 years, ensuring educational opportunities for all.

- **Article 22 – Protection of rights in cases of arrest and detention:**

Provides safeguards to individuals against arbitrary arrest and detention. It requires that a person be informed of the reasons for arrest, presented before a magistrate within 24 hours, and not detained beyond that without legal approval. It also deals with preventive detention but sets limits on its duration.

This right is fundamental for enabling citizens to express themselves freely, move about, and live with dignity without fear of arbitrary action by the State.

3.2.3 Right against Exploitation (Articles 23–24)

The **Right against Exploitation** seeks to protect vulnerable sections of society from being exploited economically, socially, or physically.

- **Article 23 – Prohibition of traffic in human beings and forced labor:**

Prohibits human trafficking, begar (compulsory, unpaid labor), and other forms of exploitation. This ensures that every citizen enjoys dignity and freedom without being subjected to forced or bonded labor.

- **Article 24 – Prohibition of child labor:**

Forbids the employment of children below 14 years in factories, mines, or other hazardous occupations. It safeguards childhood and promotes the right to education and health.

By enforcing these provisions, the Constitution ensures that no individual is deprived of basic human dignity due to economic or social vulnerabilities.

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

The **Right to Freedom of Religion** upholds the secular character of the Indian State. It ensures that individuals have the freedom to follow, practice, and propagate any religion or faith of their choice.

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

Every individual has the right to profess and practice their religion, subject to public order, morality, and health.

- **Article 26 – Freedom to manage religious affairs:**
Religious denominations have the right to establish and maintain institutions for religious purposes, manage their own affairs, and own property.
- **Article 27 – Freedom from taxation for religious purposes:**
Citizens cannot be compelled to pay taxes for the promotion or maintenance of any particular religion.
- **Article 28 – Freedom as to attendance at religious instruction:**
No religious instruction can be imparted in State-run educational institutions. However, institutions managed by private bodies may impart religious education.

This right protects the pluralistic and diverse culture of India by ensuring freedom of belief and practice while preventing the State from favoring any one religion.

3.2.5 Cultural and Educational Rights (Articles 29–30)

The **Cultural and Educational Rights** safeguard the identity of cultural, linguistic, and religious minorities.

- **Article 29 – Protection of interests of minorities:**
Provides any section of citizens the right to conserve their distinct language, script, or culture. It also prohibits denial of admission to educational institutions maintained by the State on the grounds of religion, race, caste, language, or any of them.
- **Article 30 – Right of minorities to establish and administer educational institutions:**
Religious and linguistic minorities have the right to set up and manage educational institutions of their choice. This ensures that minorities can preserve their heritage and identity through education.

These rights preserve India's rich cultural diversity and ensure that minority groups are not marginalized.

3.2.6 Right to Constitutional Remedies (Article 32)

The **Right to Constitutional Remedies** is considered the “heart and soul of the Constitution”, as described by Dr. B. R. Ambedkar. It guarantees that all other Fundamental Rights are meaningful and enforceable.

- **Article 32 – Enforcement of Fundamental Rights:**

Citizens can directly approach the Supreme Court (or High Courts under Article 226) if their Fundamental Rights are violated. The courts have the power to issue writs such as:

- **Habeas Corpus** – to release a person unlawfully detained.
- **Mandamus** – to compel performance of a public duty.
- **Prohibition** – to prevent lower courts from exceeding jurisdiction.
- **Certiorari** – to quash an unlawful order of a lower court.
- **Quo Warranto** – to prevent someone from holding a public office unlawfully.

This right acts as a guardian of all other Fundamental Rights, ensuring that no arbitrary action of the State goes unchecked.

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)

The **Right to Equality (Articles 14–18)** ensures equal treatment before the law and prohibits discrimination based on religion, race, caste, sex, or place of birth. It abolishes untouchability and titles, and promotes equal opportunity in public employment. This right upholds fairness, social justice, and the principle of equality in democracy.

3.3.1 Article 14 – Equality before Law

Article 14 ensures that every individual is equal in the eyes of law and has equal protection of laws within the territory of India.

Equality before law means that no person, irrespective of rank, status, or position, is above the law. Everyone is subject to the same legal system.

Equal protection of laws implies that individuals in similar situations will be treated alike by the law, and no unjust discrimination will be made.

This article is a guarantee against arbitrary action of the State. However, it permits **reasonable classification** (not discrimination) if such classification is based on intelligible differentia and has a rational relation to the objective sought.

3.3.2 Article 15 – Prohibition of Discrimination

Article 15 prohibits discrimination by the State on the grounds of religion, race, caste, sex, or place of birth.

No citizen shall be denied access to shops, hotels, public restaurants, or places of public entertainment, nor shall they be denied the use of wells, tanks, bathing ghats, roads, or places of public resort maintained out of State funds.

At the same time, the Constitution allows the State to make **special provisions** for women, children, socially and educationally backward classes, Scheduled Castes, and Scheduled Tribes.

This ensures **substantive equality** by empowering disadvantaged groups and removing centuries-old social injustice.

3.3.3 Article 16 – Equality of Opportunity in Public Employment

Article 16 guarantees equal opportunity for all citizens in matters relating to employment or appointment to any office under the State.

It prohibits discrimination on the grounds of religion, race, caste, sex, descent, place of birth, or residence.

However, it allows certain exceptions:

- The State can make provisions for the reservation of appointments or posts in favor of backward classes, SCs, and STs.
- Parliament may prescribe residence as a condition for certain State or Union posts.

This article balances the principle of equality with the need for social justice by ensuring **reservations for historically disadvantaged communities**.

3.3.4 Article 17 – Abolition of Untouchability

Article 17 abolishes **untouchability** in all its forms. Practicing untouchability is declared a crime and is punishable by law.

This article provides for social equality by removing one of the worst forms of discrimination in Indian society.

The **Protection of Civil Rights Act, 1955** and the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989** were enacted to give effect to this article.

The State is under obligation to ensure that untouchability is eradicated and that victims of caste-based discrimination receive protection.

3.3.5 Article 18 – Abolition of Titles

Article 18 abolishes all titles conferred by the State, except military and academic distinctions.

Foreigners holding titles are prohibited from accepting them without the consent of the President.

Indian citizens are also prohibited from accepting titles from any foreign State.

The objective is to ensure **social equality** by preventing the creation of artificial social hierarchies based on titles such as "Raja," "Maharaja," or "Sir."

Civilian awards like **Bharat Ratna, Padma Vibhushan, Padma Bhushan, and Padma Shri** are not considered titles since they are honors for merit and do not grant hereditary privileges.

“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)** guarantees essential liberties necessary for individual development and democracy. It includes freedoms of speech, expression, assembly, association, movement, residence, and profession. It also ensures protection in cases of conviction, safeguards against arbitrary arrest, and grants rights to life and personal liberty, subject to reasonable restrictions.

3.4.1 Article 19 – Six Freedoms Guaranteed

Article 19 guarantees six fundamental freedoms to citizens:

Freedom of Speech and Expression – Citizens can express opinions through speech, writing, print, pictures, or any medium. Reasonable restrictions apply for sovereignty, security, public order, decency, or morality.

Freedom to Assemble Peacefully and Without Arms – Citizens can hold public meetings and protests peacefully, subject to public order.

Freedom to Form Associations or Unions – Citizens may form groups, unions, or societies for political, social, or cultural purposes.

Freedom of Movement – Citizens can move freely throughout the territory of India, except in restricted or protected areas.

Freedom of Residence – Citizens can reside in any part of India, though reasonable restrictions may be imposed for security or public interest.

Freedom of Profession, Occupation, Trade, or Business – Citizens may choose any lawful work or business, with restrictions on professions involving public health, morality, or state security.

These freedoms form the backbone of democracy, enabling citizens to voice opinions, organize collectively, and pursue livelihoods.

3.4.2 Article 20 – Protection in respect of Conviction for Offences

Article 20 of the Indian Constitution provides critical protections for individuals accused of crimes, ensuring fairness, justice, and limits on the power of the State in criminal proceedings. These safeguards apply to both citizens and foreigners and cannot be suspended even during an Emergency, making them absolute rights.

- **No Ex Post Facto Laws**

Meaning: An ex post facto law is one that criminalizes an act after it has been committed or increases the penalty for an act already done. Article 20(1) prohibits punishing a person for an action that was **not an offence at the time it was committed**.

Example: If a new law is passed in 2024 making a certain activity illegal, a person who did that activity lawfully in 2023 cannot be punished.

Significance: This ensures that individuals are not unfairly targeted by retrospective laws and protects against arbitrary exercise of legislative power.

- **No Double Jeopardy**

Meaning: Article 20(2) prohibits **double jeopardy**, meaning no person can be tried and punished for the **same offence more than once**.

Example: If someone is tried and acquitted for theft, they cannot be prosecuted again for the same act of theft.

Judicial Clarification: The Supreme Court has clarified that this applies only when the person has already been **prosecuted and punished** once; departmental proceedings or civil penalties are not covered.

Significance: It prevents harassment of individuals through repeated trials and upholds the principle of finality in criminal justice.

- **No Self-Incrimination**

Meaning: Article 20(3) protects an accused from being compelled to **testify against himself**. It ensures that confessions or statements obtained under pressure, coercion, or torture cannot be used as evidence.

Scope: This right is available only to those **formally accused of an offence**. It covers oral testimony, forced written statements, and compelled production of personal documents.

Judicial Interpretation: In *Nandini Satpathy v. P.L. Dani (1978)*, the Supreme Court expanded this protection by holding that an accused has the right to remain silent during police interrogation.

Significance: It preserves human dignity, prevents abuse of power by authorities, and upholds the principle that the burden of proof lies with the prosecution.

3.4.3 Article 21 – Protection of Life and Personal Liberty

Article 21 is regarded as the **heart of the Constitution**. It provides that “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” Initially, in *A.K. Gopalan v. State of Madras (1950)*, the Supreme Court interpreted it narrowly, holding that any procedure laid down by law was sufficient. However, in *Maneka Gandhi v. Union of India (1978)*, the Court expanded its

meaning, ruling that the procedure must be **fair, just, and reasonable**, not arbitrary or oppressive. This landmark judgment transformed Article 21 into a powerful guarantee of human rights.

Over time, the judiciary has read several rights into Article 21, making it the **broadest and most dynamic Fundamental Right**:

- **Right to live with dignity:** Life is more than mere survival; it includes living with self-respect.
- **Right to livelihood:** Employment and income are essential for a meaningful life.
- **Right to health and a clean environment:** Courts have held that pollution-free air, clean water, and health facilities are part of the right to life.
- **Right to privacy:** Recognized in *Justice K.S. Puttaswamy v. Union of India (2017)* as a fundamental right, protecting personal autonomy and confidentiality.
- **Right to speedy trial:** Ensures justice is not delayed indefinitely, as held in *Hussainara Khatoon v. State of Bihar (1979)*.

Thus, Article 21 has become a **reservoir of human rights**, protecting individuals from arbitrary state action and ensuring the holistic development of life and liberty.

3.4.4 Article 21A – Right to Education

Article 21A was added by the **86th Constitutional Amendment Act, 2002**, reflecting India's commitment to education as a tool for empowerment. It makes *education a Fundamental Right for all children aged 6 to 14 years*. This provision ensures that basic education is not a privilege but a **guaranteed right**.

- **Implementation:** The **Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)** enforces this Article. It provides:
 - Free and compulsory education in government schools.
 - A requirement for private schools to reserve **25% of seats** for children from economically weaker sections.
 - Standards for teacher qualifications, infrastructure, and quality of education.
- **Significance:**
 - Promotes **literacy and empowerment** by ensuring access to basic education.

- Bridges **social and economic inequalities**, giving underprivileged children opportunities for upward mobility.
- Strengthens **democracy**, as educated citizens are more aware of their rights and responsibilities.

Article 21A thus represents a **major step toward social justice**, ensuring that every child, regardless of background, can access education.

3.4.5 Article 22 – Protection in Cases of Preventive Detention

Article 22 balances the need for **personal liberty** with the requirements of **national security and public order**. It provides two sets of provisions: safeguards for arrested persons and rules regarding preventive detention.

Rights of Arrested Persons

- **Right to be informed of the reason for arrest:** Ensures transparency and prevents arbitrary detention.
- **Right to consult a legal practitioner of choice:** Allows the accused to defend themselves effectively.
- **Right to be produced before a magistrate within 24 hours:** Prevents illegal custody by requiring judicial scrutiny.
- **Protection against detention beyond 24 hours without approval:** Ensures oversight and limits police power.

Preventive Detention

- Unlike punitive detention (punishment after a crime), preventive detention aims to **prevent a person from committing a possible future offence**.
- A person can be detained for up to **3 months without parliamentary approval**.
- Detention can be extended up to **1 year or more** under laws such as the **National Security Act (NSA)**, if Parliament approves.
- This provision has been controversial because it gives the State wide powers, which may be misused.

Significance:

- Provides a framework to deal with threats to **security and public order**.
- At the same time, it highlights the tension between **individual liberty** and **state security**.
- The judiciary has repeatedly stressed that preventive detention must be used cautiously and with strict compliance to constitutional safeguards.

3.5 Right to Constitutional Remedies (Article 32)

The **Right to Constitutional Remedies (Article 32)**, called the “heart and soul of the Constitution” by Dr. B.R. Ambedkar, empowers citizens to directly approach the Supreme Court for enforcement of Fundamental Rights. It provides legal remedies through writs, ensuring protection against state violations and safeguarding democracy, liberty, and justice.

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

Dr. Ambedkar’s description highlights how central Article 32 is to the entire framework of Fundamental Rights. His reasoning rested on three points:

- **Rights without remedies are hollow:** A right is only meaningful when there is a way to enforce it. Without Article 32, Fundamental Rights would be lofty ideals with no binding power.
- **Judiciary as protector:** The provision gave the **Supreme Court original jurisdiction** in matters of Fundamental Rights, ensuring that citizens need not rely on legislatures or executives. The Court thus became the **watchdog of democracy**.
- **Court’s duty, not just power:** Unlike discretionary remedies, Article 32 imposes a **constitutional duty on the Supreme Court** to enforce rights. This makes it unique compared to many other constitutions, where remedies are left to ordinary legislation.

Ambedkar’s vision ensured that Article 32 became a **living assurance** for citizens that their rights could not be trampled upon without recourse.

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

Article 32 empowers the Supreme Court (and Article 226 empowers High Courts) to issue **writs** for the enforcement of Fundamental Rights. These writs are judicial commands designed to secure liberty and prevent misuse of authority.

1. Habeas Corpus (“produce the body”)

- The most celebrated writ, it requires that a detained person be brought before the court.
- **Purpose:** To protect personal liberty and ensure no one is unlawfully imprisoned.
- **Example:** During the Emergency (1975–77), the suspension of Habeas Corpus in *ADM Jabalpur v. Shivkant Shukla* was heavily criticized, strengthening its later interpretation as inviolable.

2. Mandamus (“we command”)

- Issued to a public official, authority, or body to perform a duty legally required of them.
- **Purpose:** Prevents negligence or refusal by public servants to perform statutory duties.
- **Example:** If an eligible applicant is denied a license unlawfully, the court can compel the authority to grant it.

3. Certiorari (“to be certified”)

- Issued to quash orders passed by lower courts or tribunals that acted without jurisdiction or violated law.
- **Purpose:** Ensures judicial and quasi-judicial bodies act within lawful authority.
- **Example:** If a tribunal delivers a judgment without giving the accused a hearing, a higher court can annul the order.

4. Prohibition

- Issued to stop a lower court or tribunal from continuing proceedings in a case where it lacks jurisdiction.
- **Purpose:** Prevents unlawful trials and protects citizens from being subjected to unauthorized judicial processes.
- **Example:** If a district court takes up a matter that legally falls under the High Court, the higher court can prohibit the proceedings.

5. Quo Warranto (“by what authority”)

- Issued to prevent a person from holding a public office without legal authority.

- **Purpose:** Safeguards the sanctity of public institutions by ensuring only legally qualified individuals hold office.
- **Example:** If a person occupies the post of Vice-Chancellor without meeting statutory qualifications, the court can remove them.

Through these writs, Article 32 provides **powerful tools to citizens**, ensuring both individual freedom and institutional accountability.



Figure 3.2

3.5.3 Judicial Activism and Public Interest Litigation (PIL)

Over the decades, the judiciary has interpreted **Article 32** with great dynamism, expanding its reach through **Judicial Activism and Public Interest Litigation (PIL)**.

• Judicial Activism

Refers to the **proactive approach of courts** in interpreting the Constitution to protect rights even in areas where legislation is inadequate.

Explanation: The judiciary has **expanded Article 21** under this approach to include the **right to health, education, livelihood, privacy, environment, and speedy trial**.

Example: In *Maneka Gandhi v. Union of India* (1978), the Supreme Court broadened Article 21 by insisting that the “**procedure established by law**” must be **fair, just, and reasonable**.

• Public Interest Litigation (PIL)

A revolutionary concept that allows any citizen or group to file a petition on behalf of the public or disadvantaged groups.

Explanation: PILs have made **justice accessible** to those unable to approach courts directly, including the **poor, bonded laborers, women, children, and environmental victims**.

Examples:

- *Hussainara Khatoon v. State of Bihar* (1979): Recognized the **right to a speedy trial** for undertrial prisoners.
- *MC Mehta v. Union of India*: Expanded the **right to life** to include the **right to a pollution-free environment**.
- Cases on **women’s rights, protection of slum dwellers, and bonded labor** also arose through PILs.

It allows any public-spirited person or organisation (not necessarily the aggrieved person) to file a petition in court on behalf of others whose rights are being violated. PIL in India is a judicial innovation rooted mainly in Articles 32 and 226 of the Constitution, allowing any public-spirited person to seek judicial remedy for violation of rights of the public at large.

Judicial Activism and PIL have transformed Article 32 into a living instrument of justice, going beyond individual grievances to address collective public welfare.

Importance of Article 32 in Practice

- Provides a **direct remedy** for the violation of Fundamental Rights.
- Makes the **Supreme Court accessible** to every citizen, regardless of social or economic background.
- Equips the courts with **powerful writs** to stop misuse of power.
- Reinforces **judicial review**, a **basic feature** of the Constitution.
- Expands beyond individual protection to **societal issues** through PIL, making it a **tool of social transformation**.

3.6 Landmark Cases

Landmark cases on Fundamental Rights are judicial decisions by the Supreme Court that shaped the meaning and scope of constitutional provisions. These cases, such as *Kesavananda Bharati v. State of Kerala*, *Maneka Gandhi v. Union of India*, and *Hussainara Khatoon v. State of Bihar*, expanded rights, strengthened democracy, and established the Basic Structure Doctrine.

3.6.1 Kesavananda Bharati v. State of Kerala (1973)

This case is regarded as a **watershed moment in Indian constitutional history**. The dispute began when Swami Kesavananda Bharati, head of a religious mutt in Kerala, challenged land reform laws passed by the state government. The broader issue became whether Parliament had **unlimited power to amend the Constitution**, including Fundamental Rights.

- **Background:**
 - The case arose during a period when Parliament frequently amended the Constitution to implement socio-economic reforms.
 - Previous judgments (*Shankari Prasad*, *Sajjan Singh*, *Golaknath*) had given conflicting answers about whether Fundamental Rights could be amended.
- **Supreme Court's View:**
 - A **13-judge bench**, the largest in Indian judicial history, delivered the judgment.

- The Court ruled that Parliament **does have the power to amend the Constitution**, but this power is **not unlimited**.
- The Court introduced the **Basic Structure Doctrine**—Parliament cannot alter or destroy the essential features of the Constitution.
- **Elements of the Basic Structure (explained):**
 - **Fundamental Rights:** Citizens’ rights form the foundation of democracy and cannot be abolished.
 - **Judicial Review:** The judiciary must retain power to check unconstitutional laws.
 - **Democracy and Rule of Law:** Elections and democratic governance cannot be undermined.
- **Impact:**
 - This judgment created a permanent safeguard for democracy.
 - It ensured that no government could use its majority in Parliament to **dismantle constitutional values** or abolish rights altogether.

3.6.2 Maneka Gandhi v. Union of India (1978)

This case dramatically **expanded the scope of Article 21**. It arose when Maneka Gandhi’s passport was impounded by the government without giving her an opportunity to be heard. She challenged the action, claiming it violated her **Right to Personal Liberty**.

Supreme Court’s Ruling:

The Court held that “**procedure established by law**” in Article 21 cannot mean *any procedure*, but only one that is **fair, just, and reasonable**.

Arbitrary laws or unfair procedures would not satisfy the test of Article 21.

The Court linked Article 21 with **Article 14 (Right to Equality)** and **Article 19 (Right to Freedom)**, creating what is often called the “**Golden Triangle**” of rights.

Expanded Meaning of Article 21 (explained):

Right to Travel Abroad: Liberty includes the right to move freely, even outside India.

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

Right to Fair Procedure: Administrative and legal processes must ensure fairness.

Impact:

This judgment gave Article 21 a **broad, human rights-based interpretation**.

It laid the foundation for later cases recognizing rights such as livelihood, environment, education, and privacy under Article 21.

3.6.3 Other Cases Expanding the Scope of Fundamental Rights

Apart from Kesavananda Bharati and Maneka Gandhi, several other judgments have shaped the meaning of Fundamental Rights.

- **A.K. Gopalan v. State of Madras (1950)**
 - One of the earliest cases on Article 21, where the Court upheld preventive detention laws.
 - The Court adopted a **narrow interpretation**, ruling that any procedure established by law was valid, even if it curtailed liberty.
 - This view was later **overturned in Maneka Gandhi**, where the Court insisted on fairness and reasonableness.
- **Indira Gandhi v. Raj Narain (1975)**
 - This case arose from the challenge to Prime Minister Indira Gandhi's election.
 - Parliament attempted to pass the **39th Amendment**, which placed the Prime Minister's election beyond judicial review.
 - The Supreme Court struck down this amendment, holding that **judicial review and free elections are part of the basic structure**.
 - This case reinforced the principle that even the Prime Minister is subject to constitutional limits.
- **Olga Tellis v. Bombay Municipal Corporation (1985)**
 - Known as the **Right to Livelihood Case**.

- Pavement dwellers in Mumbai challenged their eviction, arguing that it deprived them of livelihood.
- The Court held that the **Right to Life under Article 21 includes the Right to Livelihood**, since no person can live without means of subsistence.
- This case expanded Article 21 into the realm of **socio-economic rights**.
- **Justice K.S. Puttaswamy v. Union of India (2017)**
 - A nine-judge bench of the Supreme Court unanimously recognized the **Right to Privacy as a Fundamental Right** under Article 21.
 - The judgment has far-reaching implications for data protection, surveillance, Aadhaar, and personal liberty.
 - The Court held that privacy is intrinsic to dignity and liberty, forming part of the Constitution's **basic structure**.

3.7 Restrictions and Reasonable Limits on Rights

Restrictions and Reasonable Limits on Rights ensure that Fundamental Rights are not absolute but subject to limitations for maintaining public order, morality, security, and the rights of others. The Constitution permits reasonable restrictions through laws, balancing individual freedom with societal interests, thereby protecting democracy while preventing misuse of rights.

3.7.1 Grounds of Restriction under Article 19(2)

Article 19 grants six fundamental freedoms, but they are subject to reasonable restrictions under **Article 19(2)**. These grounds include:

Sovereignty and Integrity of India – Restrictions may be imposed to protect the unity and sovereignty of the nation.

Security of the State – Freedoms can be curtailed if they threaten national security, such as inciting rebellion or terrorism.

Friendly Relations with Foreign States – Restrictions may apply to avoid harming India's diplomatic ties with other nations.

Public Order – Rights may be restricted if they disturb peace and harmony, such as inciting riots or unlawful gatherings.

Decency and Morality – Freedom of speech cannot extend to obscene or indecent expressions.

Contempt of Court – Restrictions apply if expressions undermine the authority or dignity of courts.

Defamation – Freedom of speech does not allow tarnishing another person’s reputation.

Incitement to an Offense – Any act that provokes others to commit crimes may be restricted.

Thus, the Constitution balances freedom with responsibility to ensure that rights are not abused to harm society.

3.7.2 Emergency Provisions and Suspension of Rights

The Constitution allows suspension of certain Fundamental Rights during a **national emergency** under **Articles 352, 356, and 360**.

- During a **National Emergency** under Article 352 (war, external aggression, or armed rebellion), the rights under **Article 19** are automatically suspended.
- Parliament can modify the application of other Fundamental Rights during this period.
- **Article 359** allows the President to suspend the right to move courts for the enforcement of Fundamental Rights, except those under **Articles 20 and 21**, which cannot be suspended even during emergencies.
- Example: During the **Emergency of 1975–77**, several rights were curtailed, highlighting the importance of checks on executive power.

Emergency provisions ensure the security of the State but must be carefully applied to prevent misuse against citizens.

3.7.3 Balancing Rights with Duties and Social Order

Fundamental Rights are complemented by **Fundamental Duties** (Part IV-A, Article 51A) to maintain balance in society.

- Rights guarantee freedom, while duties remind citizens of their responsibilities toward the nation.

- For example, the **Right to Freedom of Speech** must be exercised responsibly without spreading hate or violence.
- The **Right to Equality** must be balanced with the duty to promote harmony and respect differences.
- The **Right to Education** corresponds with the duty of parents to provide opportunities for children to attend school.

Balancing rights with duties ensures that individual liberty does not harm the collective welfare of society. It creates a framework where **freedom is exercised responsibly, with respect for law, order, and social justice.**

3.8 Summary

- ❖ Fundamental Rights are guaranteed in **Part III of the Constitution (Articles 12–35)**.
- ❖ They are essential for ensuring liberty, equality, and justice in a democratic society.
- ❖ **Right to Equality (Articles 14–18)** ensures equal treatment and abolishes discrimination, untouchability, and titles.
- ❖ **Right to Freedom (Articles 19–22)** provides freedoms of speech, movement, profession, and protection of life and liberty.
- ❖ **Article 21A** guarantees free and compulsory education for children aged 6–14 years.
- ❖ **Right against Exploitation (Articles 23–24)** prohibits forced labor, human trafficking, and child labor in hazardous industries.
- ❖ **Right to Freedom of Religion (Articles 25–28)** ensures religious freedom and maintains the secular nature of the State.
- ❖ **Cultural and Educational Rights (Articles 29–30)** protect the rights of minorities to conserve their culture and establish institutions.
- ❖ **Right to Constitutional Remedies (Article 32)** allows citizens to directly approach courts to enforce Fundamental Rights.
- ❖ The Supreme Court and High Courts issue **writs** like habeas corpus, mandamus, prohibition, certiorari, and quo warranto.

- ❖ Judicial activism and **PILs** have expanded the scope of Fundamental Rights, making them more accessible to the public.
- ❖ Landmark cases such as **Kesavananda Bharati (1973)** and **Maneka Gandhi (1978)** strengthened and widened the interpretation of these rights.
- ❖ Fundamental Rights are subject to **reasonable restrictions**, ensuring a balance between individual liberty and social order.

3.9 Key Terms

1. **Fundamental Rights** – Basic constitutional rights guaranteed to citizens, enforceable by law.
2. **Equality before Law** – Principle that all individuals are equal in the eyes of law (Article 14).
3. **Untouchability** – A practice of caste-based discrimination abolished by Article 17.
4. **Preventive Detention** – Detention of a person to prevent possible future offenses (Article 22).
5. **Writs** – Judicial orders issued by courts to enforce Fundamental Rights.
6. **Public Interest Litigation (PIL)** – Legal action filed to protect public interest, even by non-affected parties.
7. **Basic Structure Doctrine** – Judicial principle that Parliament cannot alter the fundamental framework of the Constitution.
8. **Reasonable Restrictions** – Legal limitations imposed on Fundamental Rights for public order, morality, and national interest.
9. **Judicial Activism** – The proactive role of the judiciary in protecting rights and expanding constitutional interpretations.

3.10 Descriptive Questions

1. Explain the significance of Fundamental Rights in maintaining democracy.
2. Discuss the provisions of **Right to Equality (Articles 14–18)** with examples.
3. What are the six freedoms guaranteed under **Article 19**? Explain with limitations.

4. Analyze the importance of **Article 21 – Right to Life and Personal Liberty** in Indian democracy.
5. Discuss the scope of **Right against Exploitation (Articles 23–24)** with examples.
6. Explain the role of **Article 32** in enforcing Fundamental Rights.
7. Evaluate the importance of **landmark cases** like Kesavananda Bharati (1973) and Maneka Gandhi (1978).
8. How do **reasonable restrictions** balance Fundamental Rights with social order?
9. Write short notes on **Judicial Activism and PIL** in the context of Fundamental Rights.

3.11 References

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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 Speech and the Right to Dissent in a Democracy

Introduction

Fundamental Rights form the backbone of Indian democracy, ensuring that every citizen enjoys liberty, equality, and dignity. Among these, the **Right to Freedom of Speech and Expression under Article 19(1)(a)** plays a crucial role in allowing individuals to voice their opinions. However, this freedom is not absolute. The Constitution permits **reasonable restrictions under Article 19(2)** to balance freedom with public order, security, and morality.

This case study examines how the judiciary interprets the delicate balance between free expression and societal order. It highlights the importance of protecting dissent while ensuring that rights are exercised responsibly within democratic boundaries.

Background

In recent years, several instances have tested the scope of freedom of speech in India. For example, students and activists organized peaceful protests against government policies. While they claimed to be exercising their constitutional right, authorities sometimes imposed restrictions, citing public order and security concerns.

The issue raised a critical constitutional question: **Can the State curtail peaceful expression and dissent in the name of maintaining order, or does such action violate Article 19?**

Problem Statement 1: Limits of Freedom of Speech

Citizens often face restrictions when expressing criticism against government actions. Authorities argue such speech can incite unrest.

Solution: Courts have clarified that peaceful criticism, even if uncomfortable for the government, is protected under Article 19. Only speech that incites violence or threatens sovereignty may be restricted.

MCQ:

What is the constitutional basis for restricting free speech in India?

- a) To protect the ruling party's reputation
- b) To maintain public order and morality
- c) To prevent criticism of government policies
- d) To ensure only positive expression

Answer: b) To maintain public order and morality

Problem Statement 2: Misuse of Preventive Detention

In some cases, individuals are detained preventively for voicing dissent. This raises concerns over misuse of **Article 22 provisions**.

Solution: The judiciary insists that preventive detention cannot be used as a substitute for dealing with peaceful protests. Citizens retain their right to legal remedies under **Article 32**.

MCQ:

Which Article allows a citizen to directly approach the Supreme Court for enforcement of rights?

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

Answer: d) 32

Problem Statement 3: Balancing Rights and Social Order

Unrestricted freedom may lead to hate speech or defamation, while excessive restrictions weaken democracy. The challenge lies in maintaining equilibrium.

Solution: Courts apply the principle of **reasonable restrictions** to ensure rights are balanced with duties, protecting both liberty and order.

MCQ:

Which Article provides for 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

The **Right to Freedom of Speech and Expression** is central to democracy, empowering citizens to question, criticize, and participate in governance. At the same time, restrictions ensure that this freedom is not misused to harm national security or social harmony. Through judicial interpretation and constitutional safeguards, India continues to protect dissent as a legitimate form of democratic participation.

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

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- 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

In 2005, the Government of India launched the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), a welfare program aimed at guaranteeing 100 days of wage employment to rural households. The scheme was not just a poverty-alleviation measure but also an effort to uphold the Directive Principles of State Policy, especially those relating to the right to work, social and economic justice, and raising the standard of living for marginalized communities.

At the same time, various environmental challenges emerged as large-scale projects for industrialization were being promoted. Citizens and environmental activists invoked Fundamental Duties, especially the duty “to protect and improve the natural environment,” while challenging projects that caused ecological imbalance.

This case demonstrates how Directive Principles guide government policies, while Fundamental Duties remind citizens of their role in nation-building. Together, they aim to create a balance between development, social justice, and sustainability.

Critical Thinking Question

How can citizens and the government work together to ensure that economic development policies respect both the Directive Principles of State Policy and the Fundamental Duties?

4.1 Nature of DPSPs

Directive Principles of State Policy (DPSPs) are guiding principles enshrined in the Indian Constitution to ensure social, economic, and political justice. They are non-justiciable but act as moral obligations for the state to frame policies. DPSPs aim to create a welfare state, promoting equality, dignity, and citizens' overall well-being.

4.1.1 Concept of Directive Principles of State Policy

The Directive Principles of State Policy (DPSPs) are guidelines provided in **Part IV of the Indian Constitution (Articles 36–51)**.

They are meant to direct the State in framing laws and policies to achieve the ideals of **justice, liberty, equality, and fraternity** mentioned in the Preamble.

DPSPs are inspired by the **Irish Constitution**, but also reflect Gandhian philosophy, socialist principles, and liberal ideas.

They lay down socio-economic and political goals for governance, focusing on:

- Social and economic justice
- Reduction of inequality in income and wealth
- Promotion of the welfare of the people
- Securing a just social order

DPSPs act as a **moral obligation** on the State to promote the welfare of citizens and bring about a **welfare state**.

4.1.2 Non-justiciable Nature of DPSPs

The DPSPs are described as **non-justiciable**, meaning they cannot be enforced by the courts of law.

Citizens cannot go to court to claim their implementation.

This nature is intentional, because:

- They deal with broad socio-economic goals requiring resources, planning, and time.

- The government may not have the immediate capacity to implement all of them.

Despite being non-enforceable, they are considered **fundamental in governance**.

The judiciary has often interpreted Fundamental Rights in the light of DPSPs, thus giving them **indirect enforceability**.

Examples:

- Right to education (initially a DPSP, later made a Fundamental Right under Article 21A).
- Environmental protection, though a Directive Principle, has been upheld by courts as part 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 (DPSPs) occupy a significant place in the Indian Constitution as they lay down the ideals that the State must strive to achieve for establishing a just, equitable, and welfare-oriented society. Though they are non-justiciable, their influence on governance and law-making is profound, as they act as moral and political guidelines for the government. Their importance can be understood under the following points:

- **Guiding principles for legislation**

DPSPs provide a framework for lawmakers to create policies that uphold social and economic justice. They ensure that every law or reform introduced is in line with the values of equality, fairness, and inclusivity.

- **Promotion of a welfare state**

The principles encourage the State to take steps towards ensuring basic needs such as education, healthcare, nutrition, and employment. By focusing on welfare measures, they aim to uplift marginalized and weaker sections of society.

- **Strengthening democracy**

By advocating equality, liberty, and justice, DPSPs reinforce the democratic framework of India. They make democracy meaningful by ensuring that governance does not remain confined to political rights alone, but extends to social and economic rights as well.

- **Bridge between Fundamental Rights and Duties**

Fundamental Rights guarantee individual freedom, while Fundamental Duties emphasize responsibilities. DPSPs complement both by ensuring that rights are not just theoretical, but supported by conditions that allow people to exercise them effectively.

- **Ensuring social and economic justice**

DPSPs direct the State to reduce inequalities in wealth, status, and opportunities. They emphasize fair distribution of resources, ensuring that the benefits of development reach all sections of society, particularly the poor and vulnerable.

- **Providing a long-term vision for governance**

They act as long-term goals that the State must strive to achieve gradually. This ensures steady progress toward balanced and sustainable development, keeping the nation's social and economic fabric strong.

- **Judicial guidance**

Although DPSPs are non-enforceable in courts, the judiciary often refers to them while interpreting constitutional provisions. They are particularly significant in cases concerning public interest and welfare, thereby influencing judicial decisions.

- **Maintaining constitutional balance**

DPSPs ensure harmony between individual rights and collective welfare. They prevent excessive focus on personal liberties at the cost of social good, thus upholding the spirit of cooperative and inclusive governance.

4.2 Classification of DPSPs

Directive Principles of State Policy (DPSPs) are classified into three main categories: **Socialist Principles**, which promote social and economic equality; **Gandhian Principles**, inspired by Mahatma Gandhi's vision of self-reliance and rural development; and **Liberal-Intellectual Principles**, which emphasize democracy, international peace, and justice, guiding the State toward balanced governance.

4.2.1 Socialist Principles

The socialist principles aim at achieving the idea of a **welfare state** where justice—social, economic, and political—is ensured. They are influenced by socialist ideology and seek to reduce inequality in wealth, income, and social status.

Article 38: Directs the State to promote a social order based on justice. It requires minimizing inequalities in income, status, facilities, and opportunities.

Article 39:

Securing an adequate means of livelihood for all citizens.

Preventing the concentration of wealth and resources in a few hands.

Ensuring equal pay for equal work for men and women.

Protecting the health and strength of workers, and ensuring childhood and youth are not exploited.

Article 41: Directs the State to provide work, education, and public assistance in cases of unemployment, old age, sickness, and disablement.

Article 42: Ensures humane conditions of work and maternity relief.

Article 43: The State must strive to secure living wages, fair conditions of work, and a decent standard of life for workers.

Article 47: Places the duty on the State to raise nutrition levels, improve the standard of living, and promote public health.

Example in practice: Schemes such as the **Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)** and **Right to Education Act** are inspired by these socialist principles.

4.2.2 Liberal-Intellectual Principles

These principles reflect the ideals of **liberal democracy**, emphasizing individual freedom, cultural development, separation of powers, and global peace.

Article 44: Calls for a Uniform Civil Code (UCC) to ensure uniformity in personal laws across all communities.

Article 45: Directs the State to provide early childhood care and free education for children below six years.

Article 48: Requires the State to modernize agriculture and animal husbandry using scientific methods.

Article 50: Advocates separation of judiciary from the executive to ensure judicial independence.

Article 51: Directs the State to promote international peace, security, and respect for international law and treaty obligations.

Example in practice: India's active role in the United Nations and peacekeeping missions reflects Article 51, while judicial independence is maintained through Article 50.

4.2.3 Gandhian Principles

These principles reflect **Mahatma Gandhi's philosophy**, focusing on rural development, decentralization, self-reliance, and upliftment of weaker sections.

Article 40: Directs the State to organize village panchayats, promoting grassroots democracy.

Article 43: Encourages cottage and small-scale industries in rural areas, supporting self-reliance.

Article 46: Directs the State to promote the educational and economic interests of Scheduled Castes, Scheduled Tribes, and weaker sections, and protect them from exploitation.

Article 47: Advocates prohibition of intoxicating drinks and drugs harmful to health.

Article 48: Requires the State to prohibit cow slaughter and protect milch and draught cattle.

Example in practice: The **73rd Constitutional Amendment** on Panchayati Raj (1992) directly reflects Gandhian principles of decentralized governance.

4.2.4 Other Classifications by Scholars

Apart from the traditional three-way classification of Directive Principles of State Policy (DPSPs) into **Socialist, Gandhian, and Liberal-Intellectual**, many scholars have suggested more detailed classifications to capture their wider scope.

One such approach is to divide them into **Positive and Negative DPSPs**. Positive directives require the State to take constructive steps for people's welfare, such as *Article 39* ensuring equal pay for equal work. On the other hand, Negative directives restrict certain practices, like *Article 47* prohibiting intoxicating drinks and drugs, thereby safeguarding public health and morality.

Another grouping classifies them into **Social, Economic, and Political DPSPs**. Social directives focus on education, health, prohibition of alcohol, and upliftment of weaker sections of society. Economic directives stress fair distribution of resources, adequate livelihood, fair wages, and labor welfare. Political directives aim to strengthen democracy by promoting judicial independence, implementation of a uniform civil code, and the promotion of international peace and security.

A further category includes **Neo-Gandhian or Environmental Principles**, which were introduced through later constitutional amendments. For example, *Article 43A* (42nd Amendment, 1976) ensures workers' participation in the management of industries, while *Article 48A* (42nd Amendment, 1976) directs the State to protect and improve the environment and safeguard forests and wildlife. This environmental focus has significantly shaped modern governance, leading to important laws such as the **Environment Protection Act, 1986**, and has encouraged judicial activism in matters of ecological conservation.

Thus, these alternative classifications highlight the **dynamic and evolving nature of DPSPs**, showing how they guide governance not only in matters of social and economic justice but also in adapting to modern challenges like industrial relations and environmental 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) act as guiding lights for governance in India by setting social, economic, and political goals. They direct the State to ensure welfare, justice, and equality, shaping policies and laws. Though non-justiciable, they provide a vision for creating a just and inclusive society.

4.3.1 Role of DPSPs in Policy Formulation

DPSPs function as guiding lights for governance, ensuring that governments align with constitutional ideals when designing policies.

Legislative Guidance: They guide Parliament and State legislatures in creating laws that promote welfare and reduce inequalities. For example, labor laws, tenancy reforms, and environmental regulations often trace their roots to DPSPs.

Moral Obligation: Even though citizens cannot enforce them in courts, governments are expected to follow DPSPs as they represent the “**Constitutional conscience.**”

Welfare State Model: They shift governance from a “police state” (focused only on law and order) to a **welfare state** (ensuring justice, health, education, and livelihood).

Policy Prioritization: They help governments set goals like universal education, rural development, and social security as part of long-term national planning.

Political Accountability: Governments are often judged by their success in implementing policies aligned with DPSPs, such as poverty reduction programs and social justice measures.

Illustrative Examples:

- **Five-Year Plans** and **NITI Aayog policies** reflect the vision of Articles 38 and 39.
- **MGNREGA (2005)** is directly influenced by Article 41 (right to work).
- **Maternity Benefit Act, 1961** draws from Article 42 (humane working conditions).

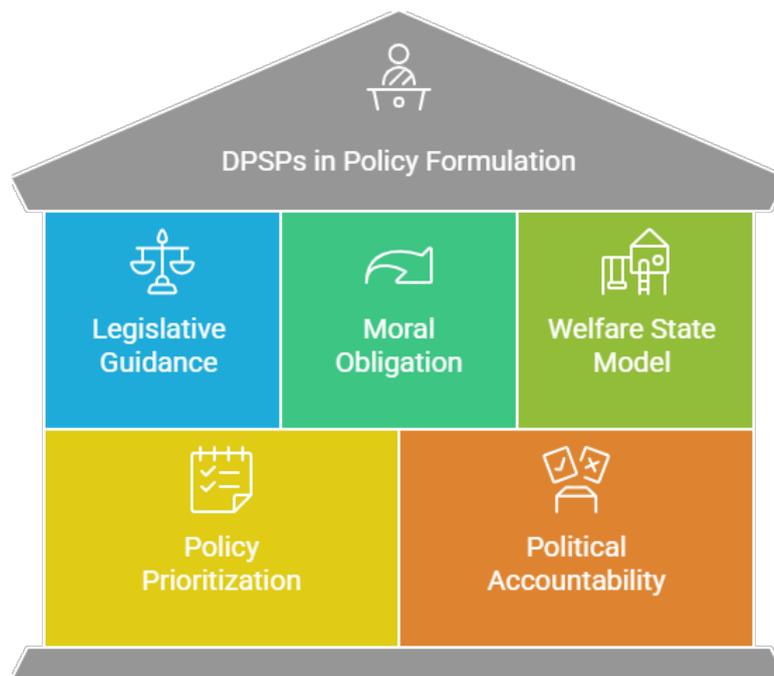


Figure 4.1

4.3.2 Examples of DPSPs in Indian Policies

The Directive Principles of State Policy (DPSPs) have played a crucial role in shaping India’s policies and governance since independence, transforming them from constitutional ideals into concrete action plans.

In the field of **land reforms**, guided by *Article 39(b) and (c)*, measures such as the abolition of the Zamindari system, enactment of Land Ceiling Acts, and redistribution of surplus land sought to break feudal structures and empower peasants, though implementation varied across states.

In **education**, based on *Articles 41 and 45*, progressive initiatives like the Right to Education Act, 2009, the Mid-Day Meal Scheme, and early childhood programs under the Integrated Child Development Services (ICDS) have expanded literacy and school enrollment, even as issues of quality and access continue.

For **social justice**, rooted in *Article 46*, the government introduced reservations in education and employment for SCs, STs, and OBCs, alongside welfare schemes, scholarships, and poverty alleviation programs, which collectively strengthened the representation and upliftment of marginalized groups.

In the area of **health and nutrition**, guided by *Article 47*, major policies such as the National Food Security Act (2013), Ayushman Bharat health insurance scheme, and the National Rural Health Mission (NRHM) have enhanced access to healthcare and nutrition, though disparities between rural and urban areas persist.

Finally, in **environmental protection**, introduced through *Article 48A* in the 42nd Amendment (1976), policies like the Environment Protection Act (1986) and the establishment of the National Green Tribunal (2010) created a legal and institutional framework for sustainable development, tackling challenges such as pollution, deforestation, and climate change.

Together, these examples highlight how DPSPs are not merely aspirational but have continuously guided India's socio-economic transformation, bridging constitutional vision with practical governance.

4.3.3 Judicial Use of DPSPs in Constitutional Interpretation

Though non-justiciable, the Directive Principles of State Policy (DPSPs) have played a significant role in judicial interpretation of the Constitution. The judiciary has often relied on them to expand the scope of Fundamental Rights and align laws with the goals of justice, equality, and welfare.

In **State of Madras v. Champakam Dorairajan (1951)**, the Supreme Court held that Fundamental Rights prevail over DPSPs. This decision highlighted the conflict between the two and ultimately led to the First Constitutional Amendment (1951), which introduced provisions for reservation in education.

The landmark case of **Kesavananda Bharati v. State of Kerala (1973)** marked a turning point, where the Court ruled that the balance between Fundamental Rights and DPSPs forms part of the **basic structure** of the Constitution. This gave DPSPs a stronger role in shaping constitutional interpretation.

In **Minerva Mills v. Union of India (1980)**, the Court declared that Fundamental Rights and DPSPs are complementary, not contradictory. It struck down portions of the 42nd Amendment that had given primacy to DPSPs over Fundamental Rights, thereby reaffirming the balance between the two.

The judiciary has also used DPSPs to expand individual rights. In **Unni Krishnan v. State of Andhra Pradesh (1993)**, the Court interpreted the Right to Education, originally a DPSP, as part of Article 21 (Right to Life). This paved the way for the inclusion of **Article 21A**, making education a Fundamental Right. Similarly, in **Olga Tellis v. Bombay Municipal Corporation (1985)**, the Court recognized the Right to Livelihood under Article 21, drawing inspiration from Article 39.

In **State of Kerala v. N.M. Thomas (1976)**, the Court upheld reservations in promotions, interpreting the principle of equality in light of social justice objectives outlined in DPSPs.

Overall, courts treat DPSPs as the **spirit of the Constitution**. While they cannot be enforced directly, they serve as guiding principles that influence judicial reasoning, expand the scope of rights, and ensure that laws and policies reflect the constitutional vision of justice, equality, and welfare.

4.4 Fundamental Duties under Article 51A

Fundamental Duties under **Article 51A** of the Indian Constitution were added by the 42nd Amendment (1976) to remind citizens of their responsibility towards the nation. They promote patriotism, discipline, and respect for the Constitution, environment, and public property, ensuring that rights are balanced with duties for collective welfare.

4.4.1 Origin and Incorporation (42nd Amendment, 1976)

Constitutional Background: The framers of the Indian Constitution initially did not include Fundamental Duties. They felt that duties were traditionally part of Indian society and would naturally be followed without constitutional compulsion.

Swaran Singh Committee (1976): During the Emergency period (1975–77), this committee recommended the incorporation of Fundamental Duties into the Constitution.

42nd Amendment (1976): Following the committee’s recommendations, **Part IVA** was added, consisting of **Article 51A**, which laid down ten Fundamental Duties.

Borrowed Idea: The concept was inspired by the Constitution of the former USSR, which stressed citizen duties alongside rights.

86th Amendment (2002): Introduced the eleventh duty—parents and guardians must provide opportunities for education to children aged 6 to 14 years.

Purpose:

- To instill discipline, civic sense, and responsibility among citizens.
- To balance rights with duties, ensuring that freedom does not become license.
- To strengthen unity, national integrity, and democratic functioning.

4.4.2 List of Fundamental Duties

Article 51A specifies the following duties of every citizen of India:

To abide by the Constitution and respect its ideals, institutions, the National Flag, and the National Anthem.

To cherish and follow the noble ideals that inspired the freedom struggle.

To uphold and protect the sovereignty, unity, and integrity of India.

To defend the country and render national service when called upon.

To promote harmony and the spirit of common brotherhood transcending religious, linguistic, and regional diversities.

To value and preserve the rich heritage of India's composite culture.

To protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

To develop scientific temper, humanism, and the spirit of inquiry and reform.

To safeguard public property and abjure violence.

To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.

To provide opportunities for education to children between 6 and 14 years (added by the **86th Amendment, 2002**).

4.4.3 Importance of Fundamental Duties in Civic Responsibility

The Fundamental Duties, though unenforceable by law, have significant importance in shaping civic consciousness:

Balance between Rights and Duties: Rights without duties may lead to misuse of freedom. Duties act as a reminder that every right carries responsibility.

Strengthening National Integration: Duties like respecting the Constitution, upholding sovereignty, and defending the nation reinforce national unity.

Social and Cultural Responsibility: Duties to preserve heritage and promote harmony ensure cultural diversity and inclusivity.

Environmental Protection: Article 51A(g) encourages citizens to protect the environment, forming the basis for environmental activism and judicial interventions.

Promoting Scientific Outlook: By emphasizing scientific temper and humanism, the Constitution directs citizens toward rational thinking and reform.

Democratic Participation: Citizens are encouraged to actively contribute to governance by respecting law, public property, and collective welfare.

Educational Responsibility: The duty of parents to educate their children highlights the link between education and responsible citizenship.

Practical Impact:

- Public awareness campaigns, environmental conservation drives, voter awareness programs, and initiatives like “Swachh Bharat Abhiyan” reflect the spirit of Fundamental Duties.

4.4.4 Judicial Recognition of Fundamental Duties

Although Fundamental Duties are not enforceable by law, the judiciary has often invoked them while interpreting constitutional provisions and enforcing other rights:

AIIMS Students Union v. AIIMS (2002): The Supreme Court held that Fundamental Duties are as important as Fundamental Rights. They cannot be ignored by citizens.

M.C. Mehta v. Union of India (1988): The Court invoked Article 51A(g) and emphasized citizens’ responsibility towards environmental protection, leading to several environmental safeguards.

Aruna Roy v. Union of India (2002): The Court observed that while Fundamental Duties are not enforceable, they act as moral obligations guiding legislative and executive action.

Javed v. State of Haryana (2003): The Court upheld disqualification provisions for contesting panchayat elections if a candidate had more than two children, linking it to the duty to promote responsible family planning under Article 51A.

Case Law Approach: Courts often use duties to interpret the **scope of Fundamental Rights**. For example, freedom of speech (Article 19) must be balanced with the duty to promote harmony (Article 51A(e)).

Judicial Philosophy:

- The judiciary treats Fundamental Duties as **constitutional reminders** to citizens.

- They are not legally binding, but they serve as interpretative tools to strengthen democracy and ensure responsible citizenship.
- Several committees (like the **Justice Verma Committee, 1999**) have suggested measures for making duties more effective, including linking 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 justiciable provisions ensuring individual liberty, equality, and protection from state action, while Directive Principles of State Policy (DPSPs) are non-justiciable guidelines directing the State to establish social and economic justice. Rights guarantee freedom, whereas DPSPs guide policy-making, together ensuring balance between individual rights and collective welfare.

4.5.1 Nature: Justiciable vs. Non-Justiciable

Fundamental Rights – Justiciable in Nature

Fundamental Rights are **legally enforceable rights** guaranteed by the Constitution to protect individual liberty, equality, and dignity. Being justiciable means that if these rights are violated, a citizen can directly approach the courts for redressal. Article 32 gives the right to move the **Supreme Court**, and Article 226 extends similar powers to the **High Courts**. This empowers the judiciary to issue writs such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari to safeguard rights. Examples include the **Right to Equality (Article 14)**, which ensures equal treatment before the law, the **Right to Freedom (Article 19)**, which guarantees essential freedoms like speech and movement, and the **Right to Constitutional Remedies (Article 32)**, which Dr. B.R. Ambedkar called the “*heart and soul of the Constitution*.” Thus, Fundamental Rights are not just ideals but **binding obligations** on the State.

DPSPs – Non-Justiciable in Nature

In contrast, Directive Principles of State Policy are **non-justiciable**, meaning they cannot be directly enforced by the courts. No citizen can claim them as a matter of right in a court of law. Instead, they serve as **moral, political, and policy guidelines** for the State to shape laws and programs. For instance, **Article 39** directs the State to ensure equal pay for equal work, **Article 41** promotes the right to work, education, and public assistance, while **Article 48A** emphasizes environmental protection. While not enforceable, DPSPs are considered fundamental to governance, as they represent the ideals of a welfare state and guide the legislature and executive in policymaking.

Key Difference

The central difference lies in their **nature and enforceability**:

- **Fundamental Rights** are **legal entitlements**, binding on the State and enforceable through the judiciary.
- **DPSPs** are **moral-political obligations**, not legally binding but essential for creating conditions that make rights meaningful.

Together, they reflect a balance—**Fundamental Rights protect individual freedoms, while DPSPs guide the State to secure collective welfare and social justice.**

4.5.2 Areas of Conflict between Rights and DPSPs

At times, the Directive Principles of State Policy (DPSPs) and Fundamental Rights come into tension, as the pursuit of socio-economic justice may restrict certain individual liberties. One of the earliest and most significant conflicts arose between **property rights and land reforms**. While *Article 39* directed the State to redistribute land and prevent concentration of wealth, the **Right to Property under Article 31** gave individuals the legal power to protect their holdings. As a result, many land reform laws were struck down by courts during the 1950s and 1960s, compelling Parliament to pass constitutional amendments and ultimately repeal the Right to Property as a Fundamental Right through the 44th Amendment (1978).

Another area of conflict is seen in **reservation policies**. The State, under *Article 46*, is directed to promote the educational and economic interests of Scheduled Castes, Scheduled Tribes, and Other Backward Classes. However, this sometimes clashes with the **Right to Equality under Article 14**, as critics argue that reservations amount to unequal treatment. The judiciary has often intervened to balance these competing claims, allowing reservations while setting limits (such as the 50% ceiling laid down in the Indra Sawhney case).

Similarly, **social control over economic freedom** has been a contested domain. The DPSPs, particularly *Article 39*, call for preventing the concentration of wealth and resources in a few hands. This objective often restricts the **freedom of trade and profession under Article 19(1)(g)**, leading to tension between individual economic liberty and the collective goal of reducing inequality. For example, in the early decades after independence, courts struck down several progressive socio-economic measures in favor of individual rights, reinforcing the primacy of Fundamental Rights over DPSPs.

Thus, the areas of conflict highlight a deeper constitutional dilemma—**balancing individual freedoms with the State's responsibility to ensure social and economic justice.** Over time, judicial interpretation

and constitutional amendments have worked to harmonize these provisions, moving toward a model where Rights and DPSPs complement rather than contradict each other.

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 seeks to **harmonize Fundamental Rights and Directive Principles of State Policy (DPSPs)** rather than place them in opposition. Both are essential to the constitutional framework—**Fundamental Rights** protect **individual liberty and equality**, while **DPSPs** guide the State to ensure **social and economic justice**. Neither is absolute; instead, they are meant to **complement each other** to create a **balanced system of governance**.

To achieve this harmony, several constitutional amendments were made:

- The **25th Amendment (1971)** gave **precedence to DPSPs** in matters relating to the **distribution of material resources** and **prevention of wealth concentration**.
- The **42nd Amendment (1976)** further emphasized the **primacy of DPSPs** over Fundamental Rights in certain areas.
- However, this tilt was moderated by the **44th Amendment (1978)**, which **restored balance** by safeguarding Fundamental Rights and reaffirming that they must **coexist with DPSPs**.

Over time, the judiciary has also shifted its philosophy from treating Fundamental Rights and DPSPs as conflicting provisions to interpreting them in a way that complements and strengthens constitutional ideals. A notable example of this harmony is the Right to Education, which began as a DPSP under Article 41 and was later elevated to a Fundamental Right under Article 21A through the 86th Amendment (2002).

In the case of *Property Owners Association v. State of Maharashtra* (5th Nov. 2024), the Court refined the way the Constitution is understood in forcing a balance between individual rights (such as property and equality) and State policy goals (like welfare, redistribution, and urban safety). This decision underscores the evolving judicial approach to ensuring that both sets of constitutional values are meaningfully upheld.

This transformation highlights how the Constitution seeks to achieve **both individual freedoms and collective welfare** through **harmonious construction**.

4.5.4 Role of Judiciary in Balancing Rights and Ideals

The judiciary has played a **pivotal role** in balancing Fundamental Rights with Directive Principles of State Policy (DPSPs), ensuring that neither undermines the other. In the early years, the Supreme Court in *Champakam Dorairajan v. State of Madras* (1951) held that Fundamental Rights prevail over DPSPs. This rigid interpretation created hurdles for implementing social justice policies, particularly reservations, and eventually led to the **First Constitutional Amendment (1951)**, which provided constitutional protection for reservation laws.

A turning point came with the landmark case of *Kesavananda Bharati v. State of Kerala* (1973). Here, the Court laid down the **Basic Structure Doctrine**, declaring that while Parliament has wide powers to amend the Constitution, it cannot alter its basic structure. Importantly, the Court emphasized that a **balance between Fundamental Rights and DPSPs** is itself part of the basic structure, thereby elevating the role of DPSPs in constitutional interpretation.

The balance was further clarified in *Minerva Mills v. Union of India* (1980), where the Court struck down portions of the 42nd Amendment that gave DPSPs absolute primacy over Fundamental Rights. The judgment reiterated that **harmony between Parts III (Fundamental Rights) and IV (DPSPs)** is essential to the Constitution's integrity and is itself a part of its basic structure.

In *Unni Krishnan v. State of Andhra Pradesh* (1993), the Court expanded the scope of rights by interpreting the **Right to Education**, initially a DPSP under Article 41, as a component of the **Fundamental Right to Life under Article 21**. This judicial innovation eventually led to the inclusion of **Article 21A**, making education a justiciable Fundamental Right.

Overall, judicial interpretation has evolved from a rigid “**Rights versus DPSPs**” stance to a more **holistic approach**, where both are seen as complementary instruments working together to achieve the

Constitution's goals of justice, equality, liberty, and fraternity. This philosophy ensures that individual freedoms are preserved while advancing the broader vision of a welfare state.

4.6 Case Law

Case law on Directive Principles of State Policy (DPSPs) highlights their role in shaping constitutional interpretation. Landmark judgments like **Champakam Dorairajan (1951)**, **Kesavananda Bharati (1973)**, **Minerva Mills (1980)**, and **Unni Krishnan (1993)** show how courts reconciled conflicts with Fundamental Rights, treating DPSPs as complementary to India's constitutional ideals.

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

The case of **State of Madras v. Champakam Dorairajan (1951)** was the first major Supreme Court decision that directly addressed the conflict between **Fundamental Rights** and **Directive Principles of State Policy (DPSPs)**. The dispute arose when the Madras Government issued an order reserving seats in state-run educational institutions for various communities based on caste. This communal allocation was challenged by Champakam Dorairajan, who argued that it violated her **Right to Equality under Article 15** of the Constitution.

The Supreme Court, in its judgment, held that **Fundamental Rights are enforceable and legally binding, while DPSPs are non-justiciable and cannot override these rights**. The Court declared that whenever a conflict arises between the two, Fundamental Rights must prevail. As a result, the communal reservation policy introduced by the Madras Government was struck down as unconstitutional.

The **impact of the judgment** was significant. It exposed the inherent tension between the enforceable Fundamental Rights, which protected individual freedoms, and the DPSPs, which sought to promote social and economic justice. This decision limited the ability of the State to implement welfare-oriented policies, particularly those aimed at uplifting backward classes, if they clashed with Fundamental Rights.

To address this issue, Parliament enacted the **First Constitutional Amendment (1951)**. Through this amendment, **Article 15(4)** was inserted, empowering the State to make special provisions for the advancement of socially and educationally backward classes, Scheduled Castes, and Scheduled Tribes. This amendment effectively validated reservation policies and restored the State's ability to pursue social justice in line with the DPSPs.

Thus, the **Champakam Dorairajan case** not only marked the **first major conflict between Fundamental Rights and DPSPs** but also shaped the trajectory of constitutional development in India. It demonstrated

how the Constitution needed to evolve through amendments and judicial interpretation to balance the goals of **individual equality with collective social justice**, laying the groundwork for later cases like *Kesavananda Bharati* and *Minerva Mills*.

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

The ***Minerva Mills v. Union of India* (1980)** case was one of the most significant constitutional decisions in India, dealing with the balance between **Fundamental Rights** and **Directive Principles of State Policy (DPSPs)**. The controversy arose after the **42nd Constitutional Amendment (1976)**, which was enacted during the Emergency. This amendment attempted to give **primacy to DPSPs over Fundamental Rights** by extensively amending **Articles 31C and 368**, thereby curtailing the power of judicial review and weakening the protection of individual rights. These provisions were challenged before the Supreme Court by *Minerva Mills*, a private company whose assets had been taken over by the government.

The Supreme Court, in its landmark judgment, struck down the provisions of the 42nd Amendment that gave absolute supremacy to DPSPs over Fundamental Rights. The Court declared that the **harmony and balance between Part III (Fundamental Rights) and Part IV (DPSPs) is itself part of the “Basic Structure” of the Constitution**, which cannot be altered even by a constitutional amendment. The judges emphasized that **neither Fundamental Rights nor DPSPs can claim absolute supremacy**, as both are essential for achieving the goals of the Constitution—individual liberty on one hand and social justice on the other.

The **impact of the judgment** was profound. It restored the delicate balance between Fundamental Rights and DPSPs, ensuring that neither could override the other. At the same time, it reaffirmed and strengthened the **Basic Structure Doctrine** established earlier in *Kesavananda Bharati* (1973), holding that any amendment which seeks to destroy or damage the core features of the Constitution would be invalid. The ruling thus protected judicial review, safeguarded individual freedoms, and ensured that the **Constitution remained a living document**, balancing liberty with social justice.

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

The ***Maneka Gandhi v. Union of India* (1978)** case marked a turning point in the interpretation of **Article 21 of the Constitution**, which guarantees the Right to Life and Personal Liberty. The case arose when the government impounded Maneka Gandhi’s passport citing “public interest” but failed to provide her with

reasons or an opportunity to be heard. She challenged this action, arguing that it violated her **Right to Personal Liberty under Article 21**.

In its judgment, the Supreme Court gave a landmark ruling, holding that the **procedure established by law under Article 21 must be “just, fair, and reasonable” and not arbitrary, fanciful, or oppressive**. This interpretation departed from the earlier narrow view in the *A.K. Gopalan* case, where the Court had upheld that any law, however arbitrary, was valid if enacted by Parliament. The Court also held that **Fundamental Rights are not to be read in isolation**; instead, **Articles 14 (Right to Equality), 19 (Right to Freedom), and 21 (Right to Life and Liberty)** are interconnected and must be interpreted together to provide a more holistic protection of rights.

The **impact of the judgment** was revolutionary. It significantly **expanded the scope of Article 21**, transforming it into a reservoir of various human rights, including the rights to livelihood, education, health, dignity, and clean environment. Many of these rights were inspired by the **Directive Principles of State Policy**, thereby creating a bridge between non-justiciable socio-economic ideals and enforceable Fundamental Rights. The decision also strengthened the role of **judicial activism**, as the Court began using Article 21 as a tool to protect individual liberty and promote social justice, ensuring that governance adhered to both the **spirit of Fundamental Rights and DPSPs**.

4.6.4 Other Significant Judicial Pronouncements

The **Kesavananda Bharati v. State of Kerala (1973)** case stands as a constitutional milestone, where the Supreme Court established the **Basic Structure Doctrine**. The Court ruled that while Parliament has wide powers to amend the Constitution, it cannot alter its basic structure. Importantly, the judgment emphasized that **Fundamental Rights and Directive Principles of State Policy (DPSPs) together form the “Constitutional soul”**, and therefore a balance must always be maintained between individual freedoms and socio-economic justice.

In **Unni Krishnan v. State of Andhra Pradesh (1993)**, the Court expanded the interpretation of the **Right to Life under Article 21** by recognizing the **Right to Education**, originally a DPSP under Article 41, as a fundamental component of life and dignity. This progressive interpretation eventually led to the **86th Constitutional Amendment (2002)**, which inserted **Article 21A**, making education a Fundamental Right for children aged 6 to 14 years.

The scope of Article 21 was further broadened in **Olga Tellis v. Bombay Municipal Corporation (1985)**, where the Supreme Court recognized the **Right to Livelihood** as an integral part of the Right to Life. This

decision was heavily influenced by DPSPs advocating social justice and the right to work, ensuring that the constitutional promise of dignity extended to pavement dwellers and the urban poor.

Environmental jurisprudence also drew inspiration from DPSPs and Fundamental Duties. In **M.C. Mehta v. Union of India (1988 and later cases)**, the Court expanded the ambit of Article 21 to include the **Right to a Clean and Healthy Environment**, guided by **Article 48A** (State's duty to protect the environment) and **Article 51A(g)** (citizens' duty to protect nature). This series of cases laid the foundation for strong judicial activism in environmental protection.

In **State of Kerala v. N.M. Thomas (1976)**, the Court upheld reservations in promotions within government services, interpreting **Article 16 (Equality of Opportunity)** in light of **Article 46**, which directs the State to promote the interests of weaker sections. This showed the judiciary's willingness to harmonize equality with social justice.

Overall, the **judicial trend** evolved from an initial stance of granting primacy to Fundamental Rights, as seen in *Champakam Dorairajan (1951)*, towards a philosophy of **harmonious construction**. The courts increasingly recognized that Fundamental Rights and DPSPs are not contradictory but **complementary**, working together to achieve the Constitution's vision of liberty, equality, justice, and dignity for all citizens.

4.7 Summary

- ❖ Directive Principles of State Policy (DPSPs) are non-justiciable guidelines in the Constitution aimed at achieving social, economic, and political justice.
- ❖ They complement Fundamental Rights and together create a balance between individual liberty and collective welfare.
- ❖ DPSPs are classified into Socialist, Gandhian, and Liberal-Intellectual principles, with later additions like environmental directives.
- ❖ Scholars also classify DPSPs as Positive/Negative, or Social, Economic, and Political for a nuanced understanding.
- ❖ DPSPs act as guides to governance, shaping policies in land reforms, education, social justice, health, and environmental protection.
- ❖ Examples include abolition of Zamindari, Right to Education Act, reservations, Ayushman Bharat, and environmental legislations.

- ❖ Fundamental Duties under Article 51A were added to remind citizens of responsibilities like respecting the Constitution and protecting the environment.
- ❖ Fundamental Rights are justiciable and enforceable by courts, while DPSPs are non-justiciable moral-political directions.
- ❖ Conflicts often arise—such as between property rights and land reforms, or equality and reservation policies.
- ❖ The Constitution and judiciary seek harmony through amendments (25th, 42nd, 44th) and doctrines like harmonious construction.
- ❖ Landmark cases (*Champakam Dorairajan*, *Kesavananda Bharati*, *Minerva Mills*, *Unni Krishnan*, *Olga Tellis*) shaped the relationship between Rights and DPSPs.
- ❖ Judicial trend evolved from prioritizing Rights to harmonizing them with DPSPs, ensuring both remain complementary to India’s constitutional vision.

4.8 Key Terms

1. **Fundamental Rights** – Legally enforceable rights guaranteed to individuals under Part III of the Constitution.
2. **Directive Principles of State Policy (DPSPs)** – Non-justiciable guidelines in Part IV of the Constitution directing the State towards a welfare state.
3. **Fundamental Duties** – Moral obligations of citizens listed in Article 51A to promote national discipline and responsibility.
4. **Justiciable** – A principle or right that can be enforced by courts of law.
5. **Non-Justiciable** – Provisions that cannot be enforced in a court but hold moral and political importance.
6. **Basic Structure Doctrine** – Judicial principle that certain features of the Constitution cannot be amended by Parliament.
7. **Harmonious Construction** – Method of interpreting Fundamental Rights and DPSPs so they complement rather than conflict with each other.
8. **Social Justice** – Constitutional goal of reducing inequality and ensuring fair distribution of opportunities and resources.
9. **Welfare State** – A system where the government actively promotes the well-being of citizens through social and economic policies.

4.9 Descriptive Questions

1. Explain the concept of Directive Principles of State Policy (DPSPs) and discuss their role in Indian governance.
2. Differentiate between Fundamental Rights and DPSPs with suitable examples.
3. Examine the significance of the 42nd Constitutional Amendment, 1976, in incorporating Fundamental Duties.
4. Discuss the areas of conflict between Fundamental Rights and DPSPs with reference to landmark cases.
5. Analyze the importance of Fundamental Duties in strengthening civic responsibility in India.
6. Explain the role of the judiciary in balancing Fundamental Rights and Directive Principles.
7. Discuss the relevance of Gandhian principles under DPSPs in today's socio-economic context.
8. Examine the case of *Minerva Mills v. Union of India (1980)* and its impact on the balance between Fundamental Rights and DPSPs.

4.10 References

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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

In recent decades, India has faced the dual challenge of achieving rapid economic growth while ensuring social justice and environmental sustainability. The **Directive Principles of State Policy (DPSPs)** provide guidance to the State in framing policies for equitable distribution of wealth, ensuring livelihood opportunities, and protecting the environment. Simultaneously, the **Fundamental Duties** remind citizens of their responsibility to uphold unity, protect public property, and safeguard natural resources.

One such instance arose when large infrastructure projects like dams and industries were established for economic growth. While these projects aligned with **Article 39(b) and (c)** of the DPSPs (equitable distribution of resources), they also raised environmental concerns. Citizens, invoking **Article 51A(g)** (duty to protect the environment), opposed reckless exploitation of forests and rivers. This case illustrates the practical interplay between **state policy directives and citizen duties**, and the challenge of harmonizing both in governance.

Background

- **Policy Objective:** To promote economic growth, employment, and welfare through industrial and infrastructural expansion.
- **Directive Principles Involved:**
 - Article 38: Promotion of social and economic justice.
 - Article 39(b) & (c): Equitable distribution of material resources; prevention of wealth concentration.
 - Article 47: Raising nutrition and public health.
 - Article 48A: Protection of the environment.
- **Fundamental Duties Involved:**
 - Article 51A(g): Protecting and improving the natural environment.

- Article 51A(i): Safeguarding public property.
- Article 51A(j): Striving for excellence in collective activities.

The conflict emerged when development goals clashed with ecological preservation and displacement of vulnerable communities.

Problem Statement 1: Balancing Economic Growth and Social Justice

- **Issue:** Rapid industrial projects benefited some but displaced tribal communities without proper rehabilitation.
- **Solution:** Implement land reforms, rehabilitation policies, and inclusive development programs to ensure justice.

Problem Statement 2: Environmental Concerns vs. Developmental Needs

- **Issue:** Forest clearance for industries led to ecological imbalance.
- **Solution:** Enforce strict environmental impact assessments, promote afforestation, and encourage eco-friendly technology.

Problem Statement 3: Citizens' Role in Upholding Duties

- **Issue:** Citizens often ignore responsibilities such as protecting the environment or respecting public property.
- **Solution:** Awareness campaigns, community participation, and legal provisions to make duties meaningful.

Case Questions

1. How do Directive Principles guide government decisions in balancing economic development and social justice?
2. What role can Fundamental Duties play in ensuring sustainable development in India?

3. In what ways can the judiciary reconcile conflicts between development projects and constitutional ideals?

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
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5.0 Introductory Caselet

“Federal Tensions in Pandemic Management”

Introduction

The Indian Constitution provides for a federal structure with a strong unitary bias. While States enjoy autonomy in many matters, the Union government has significant powers to legislate and intervene, especially during crises. The COVID-19 pandemic highlighted both the strengths and the strains of Indian federalism, demonstrating how Union and State governments must cooperate while also navigating the tension of retaining their respective powers.

Background

Constitutional Basis

- **Union List:** The Union Parliament legislates on subjects such as defense, foreign affairs, currency, and national security.
- **State List:** States legislate on subjects like police, health, agriculture, and local governance.
- **Concurrent List:** Both the Union and States can legislate on these subjects; however, in the case of conflict, Union law prevails.

Pandemic Context

- Health is a subject under the State List, yet during the COVID-19 pandemic, the Union government invoked the *Disaster Management Act, 2005*, a central law, to impose uniform lockdowns across the country.
- States expressed concerns over this centralized approach, arguing that local conditions varied and required region-specific strategies.

This situation underscored the dual character of Indian federalism—sometimes cooperative, and at other times, marked by conflict.

Case Insights

- Federalism in India is not a rigid division of powers but a dynamic balance that can shift significantly during emergencies.
- While strong Union control can ensure national unity and consistency, excessive centralization may undermine State autonomy and localized effectiveness.
- Crises often test the resilience of federal systems, but they also highlight the importance of intergovernmental collaboration.

Critical Thinking Question

In times of national crisis like pandemics or natural disasters, should the Union government have overriding powers to ensure uniformity, or should States retain autonomy to design policies based on local conditions? How can a balance be created?

5.1 Union of States

The constitutional framework where India is described as a "Union of States." It signifies the unity of diverse regions under one sovereign nation. The term emphasizes the indestructible nature of the Indian Union, even though states have autonomy in certain areas under federal principles

5.1.1 Constitutional Basis of the Indian Union

The Indian Constitution establishes India as a **sovereign, socialist, secular, democratic republic** with a parliamentary system of government.

Federalism in India is provided under **Part I (Articles 1 to 4)** of the Constitution, which lays down the structure of the Union and its states.

The Constitution creates a **dual polity**:

- Union Government at the Centre.
- State Governments in each state.

The Union has been given **greater powers** compared to the States, making Indian federalism unique.

Unlike a traditional federation, the Indian Union was not formed by an agreement among independent states but through the adoption of a single Constitution by the people of India.

5.1.2 Article 1 and the Concept of “Union of States”

Article 1 of the Constitution states: *“India, that is Bharat, shall be a Union of States.”*

It clarifies that the Indian federation is not the result of an agreement between states, but a union created by the Constitution.

The phrase “Union of States” was deliberately chosen instead of “Federation of States” for two reasons:

- The Indian Union is **indestructible** states cannot secede or separate from the Union.
- The Union has the power to **alter state boundaries, names, and territories** (Articles 2–4), unlike classical federations where states enjoy complete territorial sovereignty.

Thus, the Indian model strengthens the Centre while recognizing states as integral units of governance.

5.1.3 Difference between “Union of States” and “Federation”

Union of States (India)

Created by the Constitution, not by an agreement among states.

The Union is indestructible; states cannot break away.

Parliament has power to reorganize states (e.g., creation of Telangana in 2014).

Central government is stronger than state governments, especially in emergencies.

Example: India.

Federation (Classical Model like USA)

Formed by a treaty/compact among independent states.

States are indestructible and cannot be reorganized by the Union.

States have original sovereignty; Union exists because of the states.

Centre and states are co-equal in theory.

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, blending federal and unitary features. While powers are divided between the Centre and States, the Constitution favors a strong central authority. In emergencies or conflicts, the Centre prevails. This ensures national unity while allowing regional autonomy in normal circumstances.

5.2.1 Federal Features of the Indian Constitution

The Indian Constitution incorporates several federal features designed to safeguard the autonomy of states while maintaining the unity of the nation. One of the key features is the **dual government structure**, where

powers are distributed between the Union Government at the Centre and State Governments at the regional level. Each tier operates independently within its jurisdiction as demarcated by the Constitution.

Another significant element is the **written Constitution**, which is one of the lengthiest in the world. Initially containing 395 Articles, it now comprises over 470. This comprehensive and detailed document clearly lays out the relationship between the Union and the States, minimizing the scope for ambiguity and conflict.

The **supremacy of the Constitution** ensures that both the Union and State Governments are subordinate to the Constitution. No entity is above it, and any law enacted by either level that contradicts constitutional provisions can be declared invalid by the judiciary.

A defining feature of Indian federalism is the **division of powers**, laid out in the Seventh Schedule (Articles 245–246). It categorizes powers into three lists: the **Union List** (e.g., defense, foreign affairs), which only the Centre can legislate on; the **State List** (e.g., police, agriculture), reserved for states; and the **Concurrent List** (e.g., education, forests), where both levels can legislate. In case of a conflict in the Concurrent List, Union law prevails.

The presence of an **independent judiciary**, with the Supreme Court at its apex, reinforces federal principles. It acts as the guardian of the Constitution and has the authority to resolve disputes between the Centre and the States under Article 131, as seen in inter-state conflicts such as the **Cauvery water-sharing dispute**.

Bicameralism at the Centre also supports federalism, with the Rajya Sabha (Upper House) representing the states in Parliament. This ensures that states have a say in the legislative process, especially in matters affecting their interests.

Lastly, the Indian Constitution is **rigid in federal matters**. Amendments that alter the federal balance require not just a special majority in Parliament but also ratification by at least half of the states, as per Article 368. This ensures that significant changes to Centre–State relations cannot occur without broader consensus.

5.2.2 Unitary Features of the Indian Constitution

Although India is structured as a federation, its Constitution contains several **unitary features** that reflect a strong centralizing tendency. One of the foremost indicators is the **strong Centre**, where the Union List includes more subjects (originally 97, now 100) than the State List, and these subjects hold greater national importance, such as defense, foreign affairs, and atomic energy. Additionally, under Article 248, any

residuary powers — subjects not enumerated in any list — are assigned exclusively to the Union Government.

Another key unitary trait is the existence of a **single Constitution and single citizenship**. Unlike countries such as the United States where each state has its own constitution, India operates under one unified Constitution for both the Union and the states. Similarly, Indian citizens enjoy **single and uniform citizenship** across the entire country, as enshrined in Articles 5 to 11.

The **Union's control over states** further emphasizes central dominance. Through Articles 2 to 4, Parliament has the power to reorganize states — including altering boundaries, names, and even creating new states. For example, **Telangana** was carved out of Andhra Pradesh in 2014 through a central legislative act.

India's **emergency provisions** reinforce the unitary character in times of crisis. Article 352 allows the Union to take over legislative functions of states during a National Emergency. Under Article 356, the President can impose President's Rule in any state, thereby bringing it under direct central control. Article 360 provides for a Financial Emergency, wherein the Union can issue directives to states regarding financial matters.

The **appointment of Governors** is another centralizing mechanism. Governors are appointed by the President and act as representatives of the Union Government in the states. They also play a crucial role in recommending the imposition of President's Rule under Article 356.

India also maintains an **integrated judiciary and a unified Election Commission**. The same judicial hierarchy — headed by the Supreme Court — serves both the Union and the states, and the **Election Commission of India** conducts free and fair elections at both levels, further highlighting the integrated nature of governance.

Finally, **Parliamentary supremacy in Concurrent List matters** underscores the central bias. If there is any conflict between Union and State laws on a subject in the Concurrent List, Article 254 mandates that the Union law shall prevail, overriding the state legislation.

5.2.3 Quasi-Federal Nature with Unitary Bias

The Indian federal system is often described as **quasi-federal**, meaning it blends both federal and unitary elements, but with a clear **bias towards central authority**. Unlike classical federations such as the United States, where federalism is the result of an agreement among sovereign states, Indian federalism is rooted in a **single Constitution** that creates a Union of States with no right to secede. The Indian model thus does

not recognize the sovereignty of individual states; instead, it emphasizes the **indestructible unity of the nation**.

This **unitary bias** is evident in several constitutional and practical aspects. For instance, states have no right to demand separation or sovereignty, and the Centre retains overriding powers in critical areas such as **defense, foreign affairs, finance**, and during **emergencies**. Even in legislative matters, especially in the Concurrent List, Union law prevails over conflicting state laws, further underscoring central dominance.

The **judiciary has recognized this unique nature** of Indian federalism. In the landmark case of *S.R. Bommai v. Union of India* (1994), the Supreme Court ruled that federalism is part of the **basic structure of the Constitution** and cannot be tampered with. However, the Court also clarified that India is **not federal in the traditional sense**, but rather follows a structure that leans towards **centralized governance**. Earlier, in the *Kesavananda Bharati v. State of Kerala* case (1973), the Court emphasized the need to maintain a **balance between the powers of the Union and the autonomy of the states**, advocating for constitutional harmony.

In practice, Indian federalism operates in two distinct modes. During **normal times**, it functions as **cooperative federalism**, where the Centre and States collaborate on policy and governance, sharing responsibilities and resources. However, during **crises or emergencies**, the system shifts to a form of **centralized federalism**, wherein the Union assumes greater control to maintain national integrity and public order.

5.2.4 Comparative Perspective – U.S. vs. 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
Constitutions	Dual – federal and state constitutions	Single Constitution for Union and States
Citizenship	Dual citizenship (state + federal)	Single citizenship
Division of Powers	Residual powers with states	Residual powers with Union

Judiciary	Dual system – federal and state courts	Integrated judiciary
Amendment Process	States have strong role in amendments	States’ role limited, Parliament dominant
Example of Reorganization	No power to alter state boundaries	Parliament can reorganize states (e.g., Telangana 2014)

Conclusion from Comparison:

- **U.S. = Decentralized Federalism** → Strong states, limited centre.
- **India = Centralized Federalism (Quasi-Federalism)** → Strong centre with limited but significant state autonomy.

Knowledge Check 1

Choose the correct option:

- Which Article gives residuary powers to the Union Parliament?
 - Article 245
 - Article 248
 - Article 254
 - Article 368
- Which feature shows the federal character of the Indian Constitution?
 - Single Constitution
 - Division of Powers
 - Appointment of Governors
 - Emergency Provisions
- In India, the Concurrent List subjects are:
 - Only for Union
 - Only for States
 - Shared by both
 - Decided by Judiciary
- Indian federalism is often described as:
 - Purely Federal
 - Purely Unitary

c) Quasi-Federal

d) Confederal

5.3 Distribution of Powers

The constitutional arrangement that divides legislative, executive, and financial authority between the Union and State governments. This division is outlined in the Seventh Schedule of the Constitution through the Union List, State List, and Concurrent List, ensuring both central control and regional autonomy.

5.3.1 Union List

The Union List comprises **100 subjects** (originally 97) that are considered of **national importance**, requiring uniform legislation throughout the country. These are areas where centralized control is essential for maintaining national integrity, security, and coordinated development.

Only the Parliament has the authority to legislate on matters enumerated in the Union List, as per **Article 246** of the Constitution. This ensures that critical decisions affecting the entire nation are made at the central level, promoting consistency and cohesion.

The subjects included under this list cover a wide range of important domains such as **defense, foreign affairs, war and peace**, ensuring that these sensitive matters remain under the exclusive jurisdiction of the Union Government. Additionally, sectors like **atomic energy, currency, banking, and insurance** fall under this list, allowing for standardized regulation across all states.

Infrastructure and communication services such as **railways, airways, and shipping** are also included, contributing to national integration and efficient inter-state connectivity. Other key topics include **citizenship and interstate trade**, which demand a uniform legal framework to operate effectively across the country.

The **significance of the Union List** lies in its role in preserving **national unity and centralized coordination** in areas vital to sovereignty, economic stability, and administrative efficiency.

5.3.2 State List

The State List currently contains **61 subjects** (originally 66) and comprises matters of **local or regional importance** over which **state legislatures have the exclusive power to legislate**, as outlined in **Article 246** of the Constitution. This division allows individual states to address specific needs and priorities of their regions, reflecting the diverse socio-economic and cultural landscape of the country.

However, this exclusivity is not absolute. Under certain exceptional circumstances, **Parliament** can legislate on matters in the State List. These include: during a **national emergency** (Article 352), when a state is under **President's Rule** (Article 356), if the **Rajya Sabha passes a resolution in the national interest** (Article 249), or when **two or more states consent to Parliament legislating** on a particular matter (Article 252).

Typical examples of subjects under the State List include **police, public order, public health, and agriculture** — all of which are vital for day-to-day governance and deeply influenced by local conditions. Other topics like **markets and fairs**, as well as **betting and gambling**, also fall within the state domain, allowing states to regulate them according to regional norms and values.

The **significance of the State List** lies in its role in **ensuring autonomy for the states** in managing regional affairs, enabling decentralized governance and policy-making that is responsive to local needs and conditions.

5.3.3 Concurrent List

The **Concurrent List** contains **52 subjects** (originally 47) and includes matters on which **both the Union and State legislatures can make laws**, as provided under **Article 246** of the Constitution. This list reflects a balance between central coordination and state flexibility, allowing both levels of government to address complex issues that require national uniformity but also regional adaptability.

However, in the event of a **conflict between Union and State laws** on a subject in the Concurrent List, the **Union law prevails**, as stated in **Article 254**. This provision ensures legal consistency across the country, especially in areas affecting the fundamental framework of governance or national interest.

Typical examples of subjects in the Concurrent List include **education, forests, trade unions, and criminal law** — areas that require both central oversight and state-level implementation. Other important topics such as **marriage and divorce**, and **bankruptcy and insolvency**, are also included, highlighting the shared responsibility in areas that affect citizens across all regions.

The **significance of the Concurrent List** lies in its ability to **promote uniformity in legislation** while still enabling **states to address local variations and priorities**. It embodies the spirit of cooperative federalism, ensuring that both the Centre and States can work together on matters of common interest.

5.3.4 Residuary Powers of Legislation

Under **Article 248** of the Indian Constitution, **residuary powers** — that is, subjects not enumerated in the Union, State, or Concurrent Lists — are vested **exclusively in the Parliament**. This means that the Union

Government has the sole authority to legislate on emerging or unforeseen matters not originally contemplated when the Constitution was framed.

This approach marks a significant departure from the **American federal model**, where **residuary powers lie with the states**, reflecting a greater degree of state autonomy. In contrast, India's allocation of residuary powers to the Centre reflects the Constitution's **unitary bias** and focus on **strong central authority**.

Examples of subjects under residuary powers include **cyber laws, space exploration, regulation of artificial intelligence, and atomic energy** — areas that have gained prominence in recent decades and require centralized regulation due to their technical complexity and national impact.

The **significance of residuary powers** lies in their role in **strengthening the Union Government** while also ensuring the **adaptability of the legal framework** to address new and evolving fields of governance. It allows the Centre to take prompt legislative action in emerging sectors without constitutional ambiguity.

5.4 Centre–State Relations

The constitutional, administrative, and financial interactions between the Union and State governments in India. These relations ensure coordination, division of responsibilities, and balance of power. They are categorized into legislative, administrative, and financial relations, promoting cooperative federalism while maintaining the Centre's authority when needed.

5.4.1 Administrative Relations

Administrative relations between the Centre and the States are governed by **Articles 256 to 263** of the Constitution. These provisions outline how administrative powers and responsibilities are shared and coordinated, with an emphasis on both **central supervision** and **cooperative federalism**.

Under **Articles 256 and 257**, the **Union can issue directions to the States** to ensure the proper implementation of laws made by Parliament. States are constitutionally obligated to comply with these directions. For example, the Union may direct States to enforce **environmental protection laws** or **disaster management protocols**, ensuring national standards are maintained across regions.

The Constitution also allows for the **mutual delegation of functions** between the Centre and States under **Articles 258 and 258A**. The Union can entrust certain functions to State governments, and vice versa, with mutual consent. A common example is the **entrustment of Census operations** to State authorities by the Union.

An important feature supporting administrative uniformity is the creation of **All-India Services** under **Article 312**. Services like the **Indian Administrative Service (IAS)**, **Indian Police Service (IPS)**, and **Indian Forest Service (IFS)** are recruited by the Union but serve both the Union and State governments. These services ensure a **consistent administrative structure**, promote **national integration**, and maintain **high standards** of governance across the country.

To facilitate cooperation and coordination among states, **Article 263** empowers the President to establish an **Inter-State Council**. This body serves as a platform for discussion and resolution of inter-state issues, such as **the rollout of the Goods and Services Tax (GST)** or **water-sharing disputes**. The Council promotes consultation and consensus-building among states and the Centre.

Overall, while the **Union holds stronger administrative control**, especially in terms of supervision and direction, the Constitution also provides for **collaborative mechanisms** that reflect the principles of **cooperative federalism**.

5.4.2 Legislative Relations

Legislative relations between the Centre and the States are governed by **Articles 245 to 255** of the Indian Constitution. These provisions outline the **distribution of legislative powers**, the **extent of each legislature's jurisdiction**, and the **circumstances under which Parliament can legislate on state matters**, reflecting a balance between autonomy and central control.

The division of legislative subjects is laid out in the **Seventh Schedule**, which is organized into three lists:

- **Union List (100 subjects):** Parliament has **exclusive power** to legislate on subjects of national importance such as defense, foreign affairs, and banking.
- **State List (61 subjects):** State legislatures have **exclusive authority** to make laws on matters of regional importance like police, public health, and agriculture.
- **Concurrent List (52 subjects):** Both the Union and States can legislate on these subjects, such as education and criminal law. However, **in case of conflict**, the **Union law prevails**, as per **Article 254**.

In certain situations, the **Parliament is empowered to legislate on State List subjects**, thereby expanding its legislative reach:

- **Article 249:** If the **Rajya Sabha passes a resolution** (by a two-thirds majority) that it is necessary in the **national interest**, Parliament can legislate on State subjects.

- **Articles 352 & 356:** During a **National Emergency or President's Rule**, Parliament can make laws on subjects from the State List.
- **Article 252:** Parliament can legislate on a **State subject if two or more States request it**; the law will apply only to those states unless others adopt it later.
- **Article 253:** To fulfill **international obligations or treaties**, Parliament may legislate on **any subject**, including those in the State List.

Example: A notable case of legislative cooperation and constitutional amendment is the enactment of the **Goods and Services Tax (GST)**. It required **amending the Constitution** to enable both the Union and States to legislate on the same subject (taxation of goods and services), fundamentally altering the existing distribution of powers.

5.4.3 Financial Relations

Financial relations between the Centre and the States in India are governed by **Articles 268 to 293** of the Constitution. These provisions define the distribution of taxing powers, revenue-sharing mechanisms, and grants, reflecting both the **dominance of the Union** and the **need for financial cooperation** in a federal setup.

One of the defining features of India's fiscal framework is the **Union's dominance in taxation**. The Union Government controls **broad-based and high-yielding taxes**, including **income tax, corporation tax, customs duties, excise duties, and the Goods and Services Tax (GST)**. In contrast, the **States have a narrower tax base**, limited to sources like **state excise, stamp duty, and land revenue**. This imbalance often leads to **financial dependence of the States** on the Centre for funds and assistance.

The Constitution provides a classification for the **distribution of tax revenues** as follows:

- **Union Taxes** – levied and retained by the Union (e.g., customs duties).
- **State Taxes** – levied and retained by the States (e.g., land revenue, state excise).
- **Shared Taxes** – levied and collected by the Union but **shared with the States**, such as **income tax and a portion of GST**.

To ensure a fair and evolving fiscal arrangement, **Article 280** mandates the establishment of a **Finance Commission every five years**. The Finance Commission recommends the formula for **distribution of central taxes between the Union and States**, as well as **grants-in-aid** to the States. For example, the **15th**

Finance Commission recommended an **increased share of tax devolution to States**, giving them greater financial autonomy while addressing regional disparities.

A transformative development in India’s financial relations was the introduction of the **Goods and Services Tax (GST)** through a constitutional amendment and the establishment of the **GST Council under Article 279A**. The GST created a **single unified indirect tax structure**, subsuming many central and state taxes. The **GST Council**, composed of Union and State representatives, ensures cooperative decision-making and uniformity in indirect taxation across the country.

However, financial cooperation under GST has not been without friction. **During the COVID-19 pandemic, delays in GST compensation** to States led to **disputes and financial strain**, highlighting the ongoing challenges in achieving true fiscal federalism.

Understanding Centre-State Relations

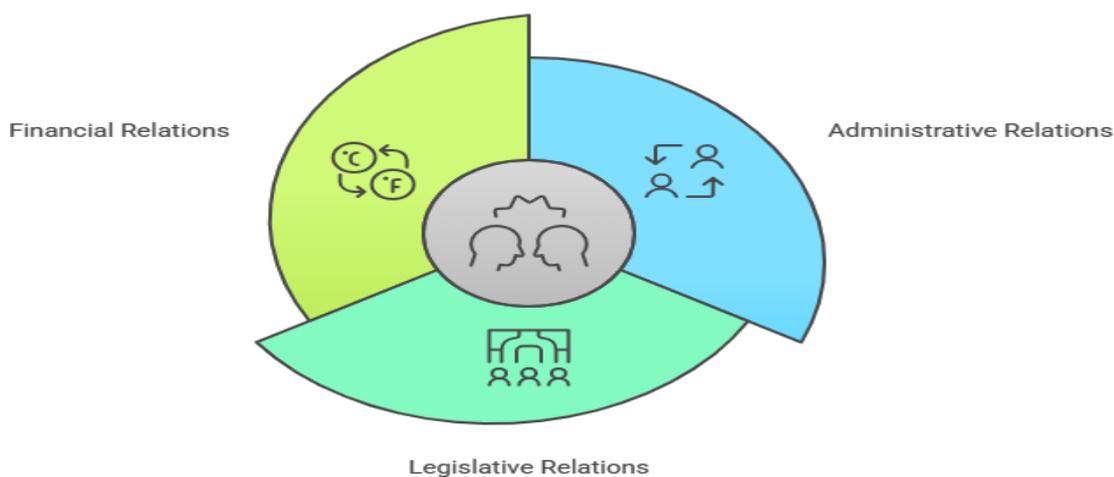


Figure 5.1

5.5 Role of Governors

Governors act as the constitutional heads of states, appointed by the President. They oversee state administration, give assent to bills, and can reserve them for the President’s consideration. While expected to act neutrally, their role is often criticized for political bias and interference in elected state governments.

5.5.1 Constitutional Position of Governors

The **Governor** is the constitutional head of a state, and the provisions related to the office are outlined in **Articles 153 to 162** of the Indian Constitution. Much like the President at the Union level, the Governor functions as the **nominal executive authority** in the state, while actual powers are exercised by the elected Council of Ministers. The Governor also plays a unique role as a **link between the Centre and the State**, representing the Union Government in the state's administrative structure.

Dual Role of the Governor

Acts as the **constitutional head** of the state, performing ceremonial duties.

Functions as the **representative of the Union**, ensuring that the state government operates within the constitutional framework and can report to the President in case of constitutional breakdown.

Appointment and Tenure

The Governor is **appointed by the President** of India under **Article 155**.

While the tenure is nominally **five years**, as per **Article 156**, the Governor **holds office at the pleasure of the President**, meaning they can be removed at any time without assigning a reason.

Powers of the Governor

- **Executive Powers:**
 - Appoints the **Chief Minister** and, on their advice, other **ministers**.
 - Appoints the **Advocate-General** and members of the State Public Service Commission.
 - Oversees the state's administrative machinery as the head of the executive.
- **Legislative Powers:**
 - **Summons, prorogues, and dissolves** the State Legislative Assembly.
 - Gives **assent to bills** passed by the legislature or **reserves** them for the President's consideration.
 - Can address and send messages to the Legislature, and also **recommend President's Rule** under Article 356 if constitutional machinery fails.
- **Judicial Powers:**

- Under **Article 161**, the Governor can **grant pardons, reprieves, respites or remissions** of punishment for offenses against laws under state jurisdiction.

Status and Discretion

The Governor is **expected to act on the advice** of the **Council of Ministers headed by the Chief Minister**, except in certain situations where the Constitution **allows discretion**. This includes appointing a Chief Minister when no party has a clear majority, reserving bills for the President, or recommending President's Rule. These discretionary powers have been the subject of debate, particularly regarding the Governor's neutrality and political impartiality.

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

While the Governor is generally expected to act on the advice of the **Council of Ministers** headed by the **Chief Minister**, the **Constitution grants certain discretionary powers** that allow the Governor to act independently in specific situations. These powers are significant in maintaining constitutional order, especially during times of political instability or breakdown of governance.

One key area of discretion is the **appointment of the Chief Minister** when **no single party or alliance secures a clear majority** in the Legislative Assembly. In such cases, the Governor must use personal judgment to invite the most likely candidate to form a stable government. Similarly, if a government **loses its majority in the Assembly and refuses to resign**, the Governor has the authority to **dismiss it**.

Another major discretionary power lies in **recommending President's Rule** under **Article 356**. If the Governor believes that the **constitutional machinery in a state has broken down**, they can send a report to the President, prompting central intervention and possible dissolution of the state government.

The Governor also has discretion under **Article 200** to **reserve a bill passed by the State Legislature for the consideration of the President**. This is often done when a bill appears to conflict with central laws or raises constitutional questions.

In certain regions, especially in the **Sixth Schedule areas of the Northeast**, Governors are entrusted with **special responsibilities**, such as overseeing tribal administration. These responsibilities often include discretion over financial allocations, law and order, and legislative matters in tribal areas.

Finally, during politically uncertain scenarios like a **hung Assembly**, the Governor may exercise discretion in **summoning, proroguing, or dissolving the Legislative Assembly**. This includes deciding whether to allow more time for government formation or recommend fresh elections.

While these powers are constitutionally sanctioned, their use—particularly in sensitive political contexts—has often sparked debate about the **neutrality and accountability** of Governors in India's federal structure.

5.5.3 Controversies Relating to Governor's Role

The role of Governors in India has frequently been at the centre of **constitutional and political controversy**, largely due to allegations of **partisanship** and **misuse of discretionary powers**. One of the most persistent criticisms is that Governors are often **politically motivated appointments**, nominated by the **Union government** and aligned with the ruling party at the Centre. This perception undermines their position as **neutral constitutional heads**.

A major source of contention has been the **misuse of Article 356**, which allows the imposition of **President's Rule** in a state. Governors' recommendations under this article have led to the dismissal of state governments **over 100 times since independence**, often on **political grounds** rather than genuine constitutional breakdowns.

Another highly controversial practice has been the **dismissal of elected state governments**, sometimes under **questionable circumstances**. A notable example is the dismissal of **N.T. Rama Rao's government in Andhra Pradesh in 1984**, which was widely criticized as a politically motivated move.

Governors have also faced criticism for **delays in giving assent to bills** passed by state legislatures, effectively blocking or stalling the will of elected assemblies. Such instances have been observed in states like **Tamil Nadu and Kerala**, where important legislation has been kept pending for extended periods without adequate justification.

In several states, especially **West Bengal, Kerala, and Maharashtra**, Governors have been accused of **interfering in day-to-day politics**, leading to confrontations with the Chief Ministers. These repeated

clashes have fuelled allegations that Governors act more as **agents of the Centre** rather than as **impartial constitutional authorities**.

5.5.4 Judicial Pronouncements on Governor's Powers

Given these controversies, the **Supreme Court of India** has played a crucial role in interpreting and limiting the discretionary powers of Governors through various landmark judgments. These rulings have sought to reinforce the principles of **federalism, democratic accountability, and constitutional morality**.

- **Shamsher Singh v. State of Punjab (1974):**

The Court ruled that the Governor is **bound to act on the advice of the Council of Ministers**, except in matters where the Constitution explicitly provides for discretion. This case laid the foundation for limiting the arbitrary use of gubernatorial power.

- **Rameshwar Prasad v. Union of India (2006):**

The Supreme Court held that the **Governor's recommendation to dissolve the Bihar Assembly in 2005 was unconstitutional**, reinforcing the idea that Governors cannot act on mere assumptions or political convenience.

- **Nabam Rebia v. Deputy Speaker (2016):**

In this case, the Court stated that the **Governor does not have the authority to summon or dissolve the House without the aid and advice** of the Council of Ministers, except in situations clearly defined by the Constitution.

- **S.R. Bommai v. Union of India (1994):**

This landmark case established that the **Governor's report recommending President's Rule under Article 356** is subject to **judicial review**. The Court emphasized that the **majority of a government must be tested on the floor of the Assembly**, not decided by the Governor's subjective satisfaction.

- **Recent Judicial Trends:**

The judiciary has consistently reiterated that Governors must function as **neutral constitutional heads**, not as political functionaries. Courts have emphasized the importance of upholding **federal**

principles, protecting **state autonomy**, and ensuring that **gubernatorial discretion is exercised within constitutional limits**.

5.6 Inter-State Council

The Inter-State Council, established under **Article 263** of the Constitution, is a **consultative body** aimed at promoting coordination between the Centre and States and resolving inter-state disputes. It serves as a platform for discussion on policies and issues of common interest, thereby strengthening **cooperative federalism** in India.

5.6.1 Constitutional Provision (Article 263)

Article 263 of the Indian Constitution empowers the **President** to establish an **Inter-State Council (ISC)** if it is deemed necessary for ensuring better coordination between the Centre and the States or among the States themselves. While the Constitution provides for the Council, its establishment is **not mandatory**; it is a **discretionary provision** and depends entirely on the President's judgment.

According to Article 263, the Inter-State Council may be constituted for the following purposes:

- **Inquiring into and advising** upon disputes between States.
- **Investigating and discussing** subjects in which the **Union and one or more States** or **two or more States** have a **common interest**.
- **Making recommendations** for **better coordination of policy and action** on such matters.

Thus, while it is a **constitutional body**, its activation and functioning are **subject to executive discretion**, unlike other permanent constitutional institutions.

5.6.2 Composition and Functions

The Inter-State Council was **formally established in 1990** through a Presidential order based on the recommendations of the **Sarkaria Commission**, which had emphasized the need for institutional mechanisms to strengthen Centre–State relations.

The **composition** of the Council is as follows:

- **Prime Minister** → Chairperson of the Council.
- **Chief Ministers of all States** → Members.
- **Chief Ministers of Union Territories with legislatures** → Members.
- **Administrators of Union Territories without legislatures** → Members.
- **Six Union Cabinet Ministers**, including the **Union Home Minister** → Permanent Members.
- **Other Union Ministers** may be **invited as special invitees** based on the agenda.

The Council performs a range of **advisory and consultative functions**, including:

- **Discussing and recommending policies** to improve **Centre–State and inter-state relations**.
- **Resolving inter-state conflicts**, such as disputes over **water-sharing, boundaries, and resource allocation**.
- **Reviewing the implementation** of centrally sponsored schemes and laws that require joint execution by both levels of government.
- **Promoting coordination** in the field of **economic and social planning**, and ensuring **smoother policy execution** across states.
- **Encouraging cooperative federalism** by facilitating regular dialogue between the Union and the States on matters of mutual concern.

By offering a **non-political platform for dialogue**, the Inter-State Council plays a **crucial role in conflict resolution and policy harmonization**, though its effectiveness often depends on how frequently it is convened and the seriousness with which its recommendations are considered.

5.6.3 Importance in Resolving Centre–State Disputes

Consultative Platform: Provides a structured forum for States to voice concerns directly to the Union.

Conflict Resolution: Helps address sensitive disputes such as water-sharing (Cauvery, Krishna) and border disagreements.

Cooperative Federalism: Encourages partnership rather than confrontation between Union and States.

Policy Harmonization: Useful for aligning policies on subjects in the Concurrent List (e.g., education, environment).

Bridge of Trust: Reduces political tensions by allowing dialogue outside the courts.

Example: The Inter-State Council played a role in reviewing recommendations of the **Sarkaria Commission (1988)** and **Punchhi Commission (2010)**, both of which emphasized strengthening mechanisms for Union–State coordination.

5.7 Emergency Provisions and Federalism

Emergency provisions (Articles 352–360) allow the Union to assume greater control during crises, altering the federal structure temporarily. These include National, State, and Financial Emergencies. While essential for national integrity, they **centralize power**, reducing State autonomy and highlighting the Constitution's **quasi-federal** nature with a **unitary bias**.

5.7.1 National Emergency (Article 352) and Its Impact on Federalism

Article 352 of the Indian Constitution empowers the **President to declare a National Emergency** if the security of India or any part of it is threatened by **war, external aggression, or armed rebellion**. Once proclaimed, the emergency significantly alters the federal balance by **centralizing power in the hands of the Union Government**.

Impact on Federalism:

- The **Parliament gains authority** to legislate on subjects in the **State List**, overriding the usual distribution of powers.
- The **executive authority of the Union** extends to issuing **binding directions** to State governments.
- **Fundamental Rights under Article 19** (such as freedom of speech and expression) may be **suspended** during the operation of a National Emergency.
- The overall **federal structure becomes highly centralized**, effectively reducing the States to administrative units under Union control.

Examples of National Emergency include:

- The **Indo-Pak War (1971)**, during which a National Emergency was declared to protect national security.

- The **Emergency of 1975–77**, imposed by then Prime Minister **Indira Gandhi**, widely criticized for authoritarian overreach and misuse of constitutional provisions.

These instances reflect how National Emergency provisions, though meant for genuine crises, have had deep implications for Indian federalism and democratic governance.

5.7.2 State Emergency / President's Rule (Article 356)

Article 356 empowers the President to **impose President's Rule in a state** if the **Governor reports that the state government cannot function** in accordance with constitutional provisions — commonly referred to as **failure of constitutional machinery**.

Impact on Federalism:

- The **State Legislative Assembly may be dissolved or suspended**, and all legislative powers are transferred to the **Union Parliament**.
- The **executive authority** of the state is exercised by the **President through the Governor**, essentially placing the state under **direct central control**.
- This **disrupts the federal balance**, especially if used frequently or for political motives.

Examples of President's Rule include:

- Its imposition in **Jammu and Kashmir (2018)** due to political instability.
- Historically, it has been used **frequently in opposition-ruled states**, raising concerns of political misuse, especially prior to judicial safeguards laid down in **S.R. Bommai v. Union of India (1994)**.

While Article 356 is designed as a safeguard against constitutional breakdown, its **overuse has often weakened the spirit of federalism**, leading to calls for tighter judicial and legislative scrutiny.

5.7.3 Financial Emergency (Article 360)

Article 360 of the Constitution empowers the **President to declare a Financial Emergency** if it is believed that the **financial stability or credit of India—or any part thereof—is threatened**. While this provision exists as a safeguard to maintain economic integrity, its invocation would result in a **drastic centralization of financial authority**.

Impact on Federalism:

- The **Union can issue binding financial directives** to States, effectively removing their fiscal autonomy.
- The **salaries and allowances** of government employees, including **State-level officials and judges**, may be **reduced**.
- State governments would be compelled to **follow Union instructions** regarding financial policies and expenditures.
- As a result, **State autonomy in financial matters is almost entirely overridden**, leaving little room for independent fiscal planning or governance.

Notably, despite occasional economic crises, **India has never declared a Financial Emergency**, making it the only emergency provision under Part XVIII of the Constitution that remains **unused**.

5.7.4 Criticism of Emergency Provisions as Threat to Federalism

While emergency provisions are designed to ensure the **unity, security, and stability of the nation**, they have often been **criticized for undermining the federal structure** and **democratic values** enshrined in the Constitution.

Key Criticisms:

- **Over-Centralization:**
During emergencies, especially National and State emergencies, **power is excessively concentrated** in the hands of the Union, effectively **sidelining the States** and undermining the federal principle.
- **Misuse of Article 356:**
The provision for President's Rule has been **frequently misused** for political purposes, often to **dismiss opposition-ruled state governments**, rather than due to genuine constitutional breakdowns.
- **Erosion of Democratic Spirit:**
The **Emergency of 1975–77** is a stark reminder of how emergency powers can be **used to suppress civil liberties**, weaken institutions, and **disrupt the constitutional balance** between the Centre and the States.

- **Judicial Safeguards Needed:**

Although the judiciary, through landmark judgments like **S.R. Bommai v. Union of India**, has stepped in to **curb the misuse of Article 356**, **concerns remain** about the potential for arbitrary or politically motivated actions during emergencies. Stronger legal and institutional safeguards are still considered necessary.

5.8 Landmark Cases

Landmark judicial decisions have shaped Centre–State relations in India by clarifying constitutional boundaries. Key cases like **S.R. Bommai (1994)**, **Kesavananda Bharati (1973)**, and **Nabam Rebia (2016)** affirmed federal principles, limited misuse of Article 356, and emphasized that Governors and the Union must act within constitutional constraints.

5.8.1 S.R. Bommai v. Union of India (1994) – Limits on Article 356

This landmark case significantly shaped the understanding of **Centre–State relations** and **limited the arbitrary use of Article 356**, which allows for the imposition of **President’s Rule** in states. The case arose after several state governments were dismissed on alleged political grounds, prompting judicial scrutiny.

Judgment Highlights:

- The **Supreme Court imposed strict limitations** on the **use of Article 356**, stating it must not be used for **political convenience**.
- The **Governor’s report** recommending President’s Rule was declared **subject to judicial review**, meaning courts could now examine whether the recommendation was constitutionally valid.
- It was held that **President’s Rule cannot be imposed** unless there is a **genuine constitutional breakdown**, not merely due to a change in political equations.
- The Court declared that **federalism is a part of the Basic Structure** of the Constitution and therefore **beyond the amending power of Parliament**.

Impact:

- The ruling **curbed the misuse** of Article 356 and protected the autonomy of state governments.
- It reaffirmed the importance of **floor tests** to determine legislative majority, not Governor’s discretion.

- Overall, the case **strengthened Indian federalism** and emphasized judicial checks on executive overreach.
-

5.8.2 Other Judicial Pronouncements on Federalism

Several other Supreme Court decisions have further clarified the **constitutional boundaries between the Centre and States**, reinforcing the principles of **federalism** and **constitutional governance**.

- **Kesavananda Bharati v. State of Kerala (1973):**
 - Introduced the **Basic Structure Doctrine**, limiting Parliament's power to amend essential features of the Constitution.
 - **Federalism** was explicitly recognized as an **essential part** of the **basic structure**, immune from arbitrary amendments.
- **State of West Bengal v. Union of India (1963):**
 - The Court held that **Indian States do not enjoy sovereign status**.
 - It emphasized that **India is a Union of States**, and **states are not independent entities** under the Constitution.
- **Rameshwar Prasad v. Union of India (2006):**
 - Concerned the **unconstitutional dissolution of the Bihar Assembly in 2005** based on a Governor's report.
 - The Supreme Court held the action **invalid**, reaffirming that the **Governor's recommendations under Article 356** are **justiciable**.
- **Nabam Rebia v. Deputy Speaker (2016):**
 - The Court restricted the **Governor's power to summon or dissolve** the State Assembly.
 - It held that such actions **must be based on the aid and advice** of the **Council of Ministers**, except in specific constitutional scenarios.
- **Union of India v. H.S. Dhillon (1972):**

- This case clarified that **Parliament has exclusive power over residuary subjects** under **Article 248**, reinforcing the **central dominance** in legislative matters not covered 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 is described as a **Union of States** under Article 1, not a loose federation.
- ❖ Federalism in India combines both **federal and unitary features**.
- ❖ The Constitution provides a **division of powers** through the Union, State, and Concurrent Lists.
- ❖ **Residuary powers** belong to the Union under Article 248.
- ❖ Centre–State relations include **administrative, legislative, and financial aspects**.
- ❖ Governors act as the **constitutional heads of states** and Union representatives.
- ❖ The **Inter-State Council (Art. 263)** promotes coordination and dispute resolution.
- ❖ Emergency provisions (Articles 352, 356, 360) give the Union overriding powers.
- ❖ **National Emergency** centralizes authority, affecting state autonomy.
- ❖ **President’s Rule** under Article 356 has often been controversial.
- ❖ The judiciary, through landmark cases, has defined limits on Union power.
- ❖ Indian federalism is best described as **quasi-federal with a unitary bias**.

5.10 Key Terms

1. **Union of States** – A constitutional arrangement where states are integral units of an indestructible Union.
2. **Federalism** – A system of government with division of powers between Centre and States.
3. **Union List** – Subjects of national importance on which only Parliament can legislate.
4. **State List** – Subjects of regional importance where only States can legislate.
5. **Concurrent List** – Subjects on which both Union and States can legislate, with Union law prevailing.
6. **Residuary Powers** – Powers not mentioned in any list, given exclusively to the Union.
7. **President's Rule** – Suspension of a State government under Article 356 due to constitutional breakdown.
8. **Finance Commission** – Constitutional body recommending financial distribution between Union and States.
9. **Inter-State Council** – Advisory body under Article 263 for resolving Centre–State and inter-state disputes.
10. **Quasi-Federalism** – Indian federal model with federal structure but a strong unitary bias.

5.11 Descriptive Questions

1. Explain the concept of Indian federalism. How is it different from classical federal systems like the U.S.?
2. Discuss the distribution of powers between the Union and the States as per the Seventh Schedule.
3. Examine the role of the Governor in Centre–State relations. Why is it often controversial?
4. Analyze the significance of the Inter-State Council under Article 263 in promoting cooperative federalism.
5. Explain the impact of emergency provisions on Indian federalism with suitable examples.
6. Critically evaluate the Supreme Court's judgment in *S.R. Bommai v. Union of India (1994)*.
7. Assess the nature of Centre–State financial relations. How do the Finance Commission and GST Council influence them?

8. “India is a quasi-federal state with a unitary bias.” Discuss with 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 Cooperative Federalism in GST Implementation

Introduction

The introduction of the **Goods and Services Tax (GST) in 2017** was one of the biggest reforms in India's fiscal federal structure. GST subsumed multiple indirect taxes under a unified tax regime, aiming for **“One Nation, One Tax.”** While it strengthened economic integration, it also tested India's **federal balance**, as both Union and States had to share tax powers and revenues.

The creation of the **GST Council (Article 279A)** became a landmark in cooperative federalism, where both Union and State governments jointly made tax-related decisions. However, disputes arose regarding revenue compensation, particularly during the COVID-19 pandemic, when States demanded higher compensation for revenue shortfalls. This case highlights the interplay of **Centre–State cooperation and tension** in India's quasi-federal system.

Background

- **Union's Objective:** To establish a uniform tax system and increase compliance.
- **States' Concerns:** Loss of fiscal autonomy and dependence on the Union for compensation.
- **Constitutional Provisions Involved:**
 - Article 246A: Special power for GST legislation.
 - Article 279A: Creation of GST Council.
 - Finance Commission: Revenue-sharing recommendations.

Problem Statement 1: Balancing Fiscal Autonomy of States

- **Issue:** States feared erosion of their independent taxing powers.
- **Impact:** Increased dependence on the Union for funds.
- **Solution:** Stronger consultation mechanisms in GST Council and guaranteed compensation for initial 5 years.

MCQ

Which constitutional body was created to oversee GST decisions?

- a) Finance Commission
- b) GST Council
- c) NITI Aayog
- d) Inter-State Council

Answer: b) GST Council

Problem Statement 2: Compensation Disputes during COVID-19

- **Issue:** States faced revenue loss, while Union cited insufficient funds for compensation.
- **Impact:** Strained Centre–State relations.
- **Solution:** Borrowing mechanisms arranged, but highlighted need for revisiting fiscal federalism.

MCQ

Why did GST compensation disputes intensify 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) Decline in tax collections

Problem Statement 3: Cooperative Federalism in Practice

- **Issue:** Decision-making in GST Council required balancing Union and State interests.
- **Impact:** Showed both cooperation (joint decisions) and tension (revenue sharing).
- **Solution:** Strengthening cooperative federalism through consensus-driven policy-making.

MCQ

The GST Council reflects which feature of Indian federalism?

- a) Rigid Federalism
- b) Confederalism

c) Cooperative Federalism

d) Dual Federalism

Answer: c) Cooperative Federalism

Conclusion

The GST case demonstrates that while the Union's dominance is evident in financial matters, institutions like the **GST Council** embody cooperative federalism. Disputes like compensation shortfalls reveal the **challenges of balancing Union control and State autonomy**, but they also underline the importance of dialogue-based mechanisms in India's federal democracy.

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
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6.0 Introductory Caselet

In 1975, India witnessed one of the most debated phases in its democratic history — the proclamation of the **Emergency**. Prime Minister Indira Gandhi, as the head of the Executive, declared a state of emergency citing internal disturbances. During this period, many fundamental rights were suspended, opposition leaders were jailed, and the press was heavily censored.

The **Parliament**, dominated by the ruling party, approved the proclamation and extended it several times, showing little resistance. On the other hand, the **Judiciary**, which is meant to act as a guardian of the Constitution, faced immense pressure. In the famous *ADM Jabalpur v. Shivkant Shukla* case (1976), the Supreme Court upheld the suspension of the right to life and liberty, leading to severe criticism later as it was seen as judicial failure in protecting citizens' rights.

When the Emergency was lifted in 1977, elections were held, and the people voted out the ruling party. This event highlighted both the **strengths and weaknesses** of India's democratic framework, demonstrating how the three organs — Parliament, Executive, and Judiciary — interact in times of crisis.

Critical Thinking Question

Do you think the Judiciary should have acted differently during the Emergency to protect citizens' rights? What does this incident teach us about the importance of checks and balances among Parliament, Executive, and Judiciary?

6.1 Structure and Powers of Parliament

6.1.1 Lok Sabha – Composition, Powers, and Functions

Composition

- The Lok Sabha is the lower house of Parliament, directly elected by the people of India through universal adult suffrage.
- It can have a maximum of 552 members, which includes:
 - Up to 530 members representing the States.
 - Up to 20 members representing the Union Territories.
 - Not more than 2 members of the Anglo-Indian community, nominated by the President if they are not adequately represented (this provision was abolished by the 104th Constitutional Amendment, 2019).
- Members are elected for a term of **five years**, unless the House is dissolved earlier.

Powers

- The Lok Sabha has greater powers in comparison to the Rajya Sabha in matters of legislation, especially regarding Money Bills.
- It controls the Executive, as the Council of Ministers is collectively responsible to the Lok Sabha.
- It has the power to initiate impeachment proceedings against the President.
- It holds exclusive authority in financial matters, including the passage of the annual budget and grants.

Functions

- Enacts laws on subjects listed in the Union List and Concurrent List of the Constitution.
- Controls government policies and actions through debates, question hours, and motions.
- Approves taxation and expenditure proposals by passing financial bills.
- Plays a key role in constitutional amendments.

6.1.2 Rajya Sabha – Composition, Powers, and Functions

Composition

- The Rajya Sabha is the upper house of Parliament and represents the States and Union Territories.
- The maximum strength of the Rajya Sabha is 250 members, of which:
 - 238 members are elected by the legislatures of the States and Union Territories using proportional representation through a single transferable vote.
 - 12 members are nominated by the President for their expertise in fields such as literature, science, art, and social service.
- It is a **permanent body** and is not subject to dissolution, though one-third of its members retire every two years.

Powers

- Has equal powers with the Lok Sabha in passing ordinary legislation, except in the case of Money Bills.
- Can initiate and pass bills, except financial bills, which must originate in the Lok Sabha.
- Plays an important role in constitutional amendments.
- Has the power to recommend the creation of new All-India Services if deemed necessary.

Functions

- Represents the interests of States and ensures federal balance.
- Revises, debates, and scrutinizes bills passed by the Lok Sabha.
- Serves as a deliberative body for long-term policy issues.
- Checks the hasty or populist legislation passed by the Lok Sabha.

6.1.3 Role of the President in the Legislature

- The President of India is an integral part of Parliament, though not a member of either House.
- The President summons and prorogues Parliament sessions and can dissolve the Lok Sabha.
- No bill becomes law without the President's assent.

- The President may return a non-Money Bill to Parliament for reconsideration; however, if Parliament passes it again, the President is bound to give assent.
- The President lays reports such as those of the Finance Commission, Union Public Service Commission, and Comptroller and Auditor General before Parliament.
- In case of a deadlock between the two Houses over an ordinary bill, the President may convene a joint sitting.
- The President addresses both Houses at the beginning of the first session after each general election and at the commencement of the first session each year.

6.1.4 Law-making Procedure in Parliament

Introduction of a Bill

- A bill can be introduced in either House of Parliament, except a Money Bill, which can only be introduced in the Lok Sabha.
- Bills are classified into four categories: Ordinary Bills, Money Bills, Financial Bills, and Constitutional Amendment Bills.

Stages in Law-making

1. First Reading

- The bill is introduced and its objectives are explained. No detailed discussion takes place at this stage.

2. Second Reading

- The bill is discussed in detail. It may be referred to a committee for examination. Amendments may be proposed and debated.
- After thorough discussion, the bill is voted upon clause by clause.

3. Third Reading

- The final form of the bill is considered. Members may speak only on the acceptance or rejection of the bill.
- If passed, the bill moves to the other House.

Consideration in the Other House

- The other House goes through the same stages. It may pass the bill, suggest amendments, or reject it. In case of disagreement, a joint sitting may be convened by the President.

Assent of the President

- After being passed by both Houses, the bill is sent to the President.
- The President may:
 - Give assent, making it a law.
 - Withhold assent (absolute veto).
 - Return it (except a Money Bill) for reconsideration.

Special Procedure for Money Bills

- A Money Bill can only be introduced in the Lok Sabha, with prior recommendation of the President.
- After passage in the Lok Sabha, it is sent to the Rajya Sabha, which can only recommend changes within 14 days. The Lok Sabha may accept or reject these recommendations.
- The final authority rests with the Lok Sabha.

Constitutional Amendment Bills

- Such bills require a special majority in both Houses.
- In some cases, ratification by at least half of the State legislatures is also required.

“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 concept of **checks and balances** ensures that no single organ of government — Parliament, Executive, or Judiciary — becomes too powerful or misuses its authority. Within the parliamentary framework, several mechanisms exist to maintain accountability and preserve democratic values.

Control over the Executive

- The Executive (Council of Ministers) is collectively responsible to the Lok Sabha.
- Parliament can hold the government accountable through debates, questions, zero hour, adjournment motions, and no-confidence motions.
- This prevents arbitrary decision-making by the Executive.

Financial Control

- Parliament exercises strict control over government finances.
- No money can be spent from the Consolidated Fund of India without the approval of Parliament.
- Annual budgets, demand for grants, and appropriation bills require parliamentary sanction, ensuring transparency.

Legislative Scrutiny

- Bills passed by one House must go through another House for discussion and approval, except Money Bills.
- This dual approval ensures that legislation is carefully examined from multiple perspectives before becoming law.

Role of the President

- As part of the Parliament, the President can withhold assent or return bills (except Money Bills) for reconsideration.
- The power to summon, prorogue, and dissolve the Lok Sabha provides balance in parliamentary functioning.

Judicial Oversight

- Judicial review empowers the courts to strike down laws passed by Parliament if they violate the Constitution.
- This serves as a safeguard against unconstitutional legislation.

Bicameral System

- The presence of both Lok Sabha and Rajya Sabha provides an inbuilt system of checks.
- While the Lok Sabha represents the people, the Rajya Sabha represents the states and acts as a revising chamber, checking any hasty or populist measures.

Internal Mechanisms

- Parliamentary committees such as the Public Accounts Committee (PAC), Estimates Committee, and Departmental Standing Committees scrutinize government expenditure and policies in detail.
- These committees work across party lines, ensuring greater accountability.

6.2 The Executive

6.2.1 Role and Powers of the Prime Minister

- The Prime Minister (PM) is the **head of government** and holds the most powerful position in the executive structure.
- Appointed by the President, the PM must be a member of either House of Parliament and command the confidence of the Lok Sabha.

Powers and Functions

- **Leader of the Council of Ministers:** The PM selects and allocates portfolios to ministers and can request their resignation if necessary.
- **Policy-Maker:** Plays a central role in framing domestic and foreign policies.
- **Leader of the Lok Sabha:** Guides debates, explains government policies, and ensures passage of bills.
- **Adviser to the President:** Advises on summoning, proroguing, and dissolving the Lok Sabha.
- **International Representation:** Represents India in global forums, treaties, and international negotiations.
- **Coordination Role:** Ensures coordination among different ministries and departments for smooth administration.

6.2.2 Council of Ministers – Composition and Responsibilities

Composition

- The Council of Ministers is headed by the Prime Minister and includes three categories:
 - **Cabinet Ministers:** Senior members who head important ministries and take key policy decisions.
 - **Ministers of State (Independent Charge):** In charge of specific departments, not under a Cabinet Minister.
 - **Ministers of State:** Assist Cabinet Ministers in specific portfolios.

Responsibilities

- Assists the Prime Minister in policy formulation and execution.
- Implements laws passed by Parliament.
- Administers various departments and ensures delivery of public services.
- Maintains collective responsibility to Parliament and works as a unified team.

6.2.3 Collective Responsibility of the Council of Ministers

- Article 75(3) of the Constitution states that the Council of Ministers is **collectively responsible to the Lok Sabha**.
- All ministers share responsibility for decisions taken by the Cabinet, even if they personally disagreed during discussions.
- If the Lok Sabha passes a **no-confidence motion**, the entire Council, including the Prime Minister, must resign.
- This principle ensures accountability of the Executive to the Legislature.

6.2.4 Relationship between President, Prime Minister, and Council of Ministers

- The President is the **constitutional head** of the State, while the Prime Minister is the **real head** of the government.
- The President acts on the aid and advice of the Prime Minister and the Council of Ministers, except in certain discretionary situations.
- The Prime Minister serves as the link between the President and the Council of Ministers by conveying Cabinet decisions.
- The Council of Ministers, headed by the Prime Minister, ensures day-to-day administration, while the President symbolizes the unity and integrity of the nation.
- This relationship reflects the **parliamentary system of government**, where the President functions as a nominal head and the real executive authority rests 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?**

- a) Parliament
- b) Supreme Court
- c) Prime Minister and Council of Ministers
- d) 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 hold office until they reach the age of retirement (65 years for Supreme Court and 62 years for High Courts).
- **Fixed Service Conditions:** Salaries, allowances, and privileges of judges are charged on the Consolidated Fund of India, ensuring they are not subject to legislative approval.
- **Prohibition on Practice after Retirement:** Supreme Court judges are not allowed to plead or act in any court or before any authority after retirement.
- **Powers of Judicial Review:** The judiciary has the authority to examine the constitutionality of laws and executive actions.
- **Separation from Executive Control:** Judicial powers are kept separate from administrative functions of the government.
- **Oath of Office:** Judges swear to uphold the Constitution and laws of India without fear or favor.

6.3.2 Appointment, Tenure, and Removal of Judges

Appointment

- Supreme Court judges, including the Chief Justice of India (CJI), are appointed by the President after consultation with senior judges, following the **collegium system**.
- High Court judges are appointed by the President in consultation with the CJI, Governor of the concerned state, and Chief Justice of the High Court.

Tenure

- Judges hold office until the age of retirement:
 - 65 years for Supreme Court judges.
 - 62 years for High Court judges.

Removal

- Judges can be removed only through a process of **impeachment** by Parliament, on grounds of *proved misbehavior or incapacity*.
- The process requires a special majority in both Houses of Parliament.
- This safeguard prevents arbitrary removal by the Executive or Legislature.

6.3.3 Separation of Powers and Judicial Autonomy

- The Constitution establishes a **separation of powers** among the Legislature, Executive, and Judiciary.
- The Judiciary functions independently, without interference from the other two organs.
- Judicial autonomy ensures that courts can strike down laws or executive actions that violate the Constitution.
- The principle of **judicial review** reinforces autonomy by allowing the Judiciary to interpret constitutional provisions and protect citizens' rights.
- Independence in decision-making enables the Judiciary to act as a check on arbitrary or unconstitutional actions.

6.3.4 Challenges to Judicial Independence

- **Executive Interference:** Pressure in judicial appointments and transfers may compromise independence.
- **Delay in Appointments:** Prolonged vacancies in higher courts affect efficiency and weaken judicial strength.
- **Political Pressure:** In sensitive cases, attempts may be made to influence judges or court decisions.

- **Public Criticism and Media Trials:** Overexposure of cases in media can create undue pressure on judges.
- **Judicial Accountability vs. Independence:** While accountability is necessary, excessive interference in the name of accountability may undermine independence.
- **Corruption and Lack of Transparency:** Allegations of corruption and opacity in the collegium system are often cited as threats to judicial credibility.

6.4 Structure of Courts

6.4.1 Supreme Court – Composition, Jurisdiction, and Powers

Composition

- The Supreme Court is the highest court of India, established under Article 124 of the Constitution.
- It consists of the **Chief Justice of India (CJI)** and a maximum of 33 other judges.
- Judges are appointed by the President, following the recommendation of the collegium.

Jurisdiction

- **Original Jurisdiction:** Cases involving disputes between the Union and States, or between two or more States.
- **Appellate Jurisdiction:** Appeals against judgments of High Courts in civil, criminal, or constitutional cases.
- **Advisory Jurisdiction:** The President may seek the Court's opinion on constitutional or legal matters under Article 143.
- **Writ Jurisdiction:** Can issue writs (habeas corpus, mandamus, prohibition, certiorari, quo warranto) for enforcement of fundamental rights.

Powers

- Acts as the **guardian of the Constitution** and protector of fundamental rights.
- Has the power of **judicial review** to strike down unconstitutional laws and executive actions.
- Final interpreter of the Constitution.

- Supervisory role over all other courts in India.

6.4.2 High Courts – Structure and Jurisdiction

Structure

- Each State has a High Court, though some High Courts serve multiple States or Union Territories.
- Comprises a Chief Justice and other judges appointed by the President.
- Judges retire at the age of 62.

Jurisdiction

- **Original Jurisdiction:** Some High Courts have original jurisdiction in civil and criminal matters, particularly in cases of high value or significance.
- **Appellate Jurisdiction:** Hears appeals from decisions of subordinate courts within its territorial jurisdiction.
- **Writ Jurisdiction:** Like the Supreme Court, High Courts can issue writs for enforcement of fundamental rights under Article 226, which is broader as it covers legal as well as fundamental rights.
- **Supervisory Powers:** Exercises control over all subordinate courts in the state.

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

- Function at the district level and are headed by a **District Judge**.
- Handle civil and criminal cases arising within the district.

- The District Judge is appointed by the Governor of the State in consultation with the High Court.

Lower Judiciary

- Includes courts such as **Civil Judges, Judicial Magistrates, Family Courts, and Sessions Courts.**
- Deal with cases at the grassroots level such as property disputes, small criminal offenses, family matters, and local civil cases.
- Function under the supervision of the respective High Court.

6.4.4 Hierarchy of Courts and Appeals System

- The Indian judiciary follows a **pyramidal structure** with graded levels of authority.
- At the base are **Subordinate Courts**, followed by **High Courts**, and finally the **Supreme Court** at the top.

Appeals System

- Decisions of lower courts can be appealed to higher courts to ensure justice and correct errors.
- Appeals move upward in the hierarchy:
 - From District Courts to the High Court.
 - From High Courts to the Supreme Court.
- This system ensures that litigants have multiple levels of judicial redress and promotes consistency in interpretation of law.

6.5 Judicial Review & Judicial Activism in India

6.5.1 Concept and Scope of Judicial Review

- Judicial review is the power of the courts to examine laws and executive actions to ensure they conform to the Constitution.
- It is derived from the principle of constitutional supremacy.
- The Supreme Court and High Courts can strike down any law or executive order that violates fundamental rights or goes beyond constitutional provisions.

- Judicial review covers three main areas:
 - **Legislative Actions:** To check if laws made by Parliament or State legislatures are constitutional.
 - **Executive Actions:** To examine the legality and reasonableness of executive orders and decisions.
 - **Judicial Decisions:** Higher courts may review the decisions of lower courts.
- It ensures protection of fundamental rights, maintains federal balance, and upholds the rule of law.

6.5.2 Judicial Activism – Meaning and Development

- Judicial activism refers to the proactive role played by the judiciary in interpreting laws and the Constitution to expand rights and deliver justice, even in areas where the law is silent.
- It emerged strongly in India during the late 1970s and 1980s, particularly after the Emergency.
- Through **Public Interest Litigations (PILs)**, the judiciary began addressing issues related to the environment, human rights, corruption, and governance.
- Landmark cases like *Kesavananda Bharati v. State of Kerala (1973)* (basic structure doctrine) and *Vishaka v. State of Rajasthan (1997)* (guidelines against sexual harassment at workplace) highlight judicial activism.

6.5.3 Judicial Restraint vs. Judicial Overreach

- **Judicial Restraint:** The principle that judges should limit their role to interpreting laws, avoiding interference in the functions of the Legislature and Executive. It emphasizes respect for separation of powers.
- **Judicial Overreach:** When the judiciary exceeds its authority by interfering excessively in policy-making or administrative functions, it is termed overreach. Critics argue this weakens democratic processes.
- The balance between restraint and activism is essential to preserve both justice and democratic accountability.

6.5.4 Impact of Judicial Review and Activism on Indian Democracy

- **Strengthening of Fundamental Rights:** Judicial review ensures that no law or executive action can curtail citizens' constitutional rights.
- **Accountability of Government:** Judicial activism holds the Executive and Legislature accountable, preventing abuse of power.
- **Evolution of Law:** Courts have filled gaps in legislation through creative interpretations, thereby strengthening justice delivery.
- **Public Confidence:** The judiciary's active role has increased public trust in courts as protectors of rights.
- **Concerns:** Excessive judicial intervention in governance may undermine the separation of powers and create tension among organs of government.

This dual role of judicial review and judicial activism has been pivotal in shaping India's constitutional democracy, balancing governance with the protection of rights.

6.6 Landmark Case Law

6.6.1 Kesavananda Bharati v. State of Kerala (1973) – Basic Structure Doctrine

- This case arose when Kesavananda Bharati, a religious leader, challenged land reform laws in Kerala, claiming they violated his fundamental rights.
- The central issue was whether Parliament's power to amend the Constitution under **Article 368** was unlimited.
- The Supreme Court ruled that while Parliament has wide powers to amend the Constitution, it cannot alter its "**basic structure.**"
- The Court identified elements such as the supremacy of the Constitution, rule of law, judicial review, federalism, and separation of powers as part of the basic structure.
- This judgment established the **Basic Structure Doctrine**, which continues to act as a safeguard against constitutional amendments that could undermine democracy.

6.6.2 Indira Gandhi v. Raj Narain (1975) – Limits of Executive Power

- The case arose when Raj Narain, a political opponent, challenged Prime Minister Indira Gandhi's election to the Lok Sabha, alleging electoral malpractices.
- The Allahabad High Court invalidated Indira Gandhi's election, leading to a constitutional crisis.
- The case reached the Supreme Court, which upheld parts of the High Court's ruling, striking down the constitutional amendment that sought to place the Prime Minister's election beyond judicial scrutiny.
- The judgment reaffirmed the principle that **no one, not even the Prime Minister, is above the law.**
- It highlighted the judiciary's role in checking executive power and preserving democratic accountability.

6.6.3 Vishaka v. State of Rajasthan (1997) – Gender Justice & Guidelines on Sexual Harassment

- This case was filed after the brutal gang rape of Bhanwari Devi, a social worker in Rajasthan.
- In the absence of specific legislation on workplace sexual harassment, the Supreme Court framed binding **guidelines** to ensure gender justice and protect women's rights at work.
- Known as the **Vishaka Guidelines**, these directives required employers to set up complaints committees, provide a safe workplace, and ensure preventive measures.
- The Court relied on international conventions like CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) to expand constitutional protections under Articles 14, 15, 19, and 21.
- This case marked a turning point in the recognition of **gender equality and workplace rights** in India.

6.7 Summary

- ❖ The Indian Parliament consists of the Lok Sabha, Rajya Sabha, and the President.

- ❖ The Lok Sabha represents the people directly and has significant powers in legislation and financial control.
- ❖ The Rajya Sabha represents the states and functions as a revising chamber.
- ❖ The President is an integral part of Parliament, playing a key role in legislative processes.
- ❖ The Prime Minister is the real head of the Executive and leads the Council of Ministers.
- ❖ The Council of Ministers is collectively responsible to the Lok Sabha, ensuring accountability.
- ❖ Judicial independence is safeguarded by constitutional provisions, secure tenure, and protection against arbitrary removal.
- ❖ The Supreme Court is the apex court, followed by High Courts and Subordinate Courts forming a unified judicial system.
- ❖ Judicial review empowers courts to examine the constitutionality of laws and executive actions.
- ❖ Judicial activism expands the scope of justice delivery, especially through Public Interest Litigations.
- ❖ Landmark cases like *Kesavananda Bharati*, *Indira Gandhi v. Raj Narain*, and *Vishaka v. State of Rajasthan* have shaped Indian constitutional law.
- ❖ Checks and balances among Parliament, Executive, and Judiciary safeguard democracy and prevent misuse of power.
- ❖ The judiciary's role as guardian of the Constitution ensures protection of fundamental rights and the rule of law.

6.8 Key Terms

1. **Parliament** – The supreme legislative body consisting of the Lok Sabha, Rajya Sabha, and President.
2. **Lok Sabha** – Lower house of Parliament directly elected by the people.
3. **Rajya Sabha** – Upper house of Parliament representing the states.
4. **President** – The constitutional head of the State and part of the Parliament.
5. **Prime Minister** – The real head of the Executive and leader of the government.
6. **Council of Ministers** – Body of ministers headed by the Prime Minister to aid and advise the President.

7. **Collective Responsibility** – Principle that the Council of Ministers is jointly accountable to the Lok Sabha.
8. **Judicial Review** – Power of courts to examine the constitutionality of laws and executive actions.
9. **Judicial Activism** – Proactive role of the judiciary in expanding rights and delivering justice.
10. **Judicial Restraint** – Principle that courts should avoid interference in legislative and executive domains.
11. **Basic Structure Doctrine** – Judicial principle that Parliament cannot alter the fundamental framework of the Constitution.
12. **Writ Jurisdiction** – Authority of courts to issue writs for protection of fundamental rights.
13. **Separation of Powers** – Division of authority among Legislature, Executive, and Judiciary to prevent concentration of power.

6.9 Descriptive Questions

1. Explain the composition and powers of the Lok Sabha and highlight its role in the law-making process.
2. Discuss the structure and jurisdiction of the Rajya Sabha. How does it act as a revising chamber?
3. Evaluate the role and powers of the Prime Minister in India's parliamentary democracy.
4. Describe the composition and responsibilities of the Council of Ministers. How is collective responsibility ensured?
5. What constitutional provisions safeguard the independence of the Judiciary in India?
6. Discuss the structure of the Indian judicial system with special reference to the hierarchy of courts.
7. Explain the concept and scope of judicial review in India. Why is it considered essential for democracy?
8. Differentiate between judicial activism, judicial restraint, and judicial overreach with examples.
9. Examine the significance of landmark cases like *Kesavananda Bharati v. State of Kerala* and *Vishaka v. State of Rajasthan* in shaping Indian constitutional law.

6.10 References

1. The Constitution of India, 1950.
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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 Protection of Fundamental Rights during Emergency”

Introduction

The balance of power between Parliament, Executive, and Judiciary is central to India’s democratic framework. However, situations of crisis often test the strength of this balance. One such episode was the Emergency declared in 1975, which raised critical questions about constitutional rights, executive powers, and judicial independence. This case study examines how the Judiciary, through judicial review, responded to challenges during the Emergency and the lessons it offers for democratic governance.

Background

During the Emergency (1975–77), several fundamental rights, including the right to life and personal liberty under Article 21, were suspended. The Executive justified this suspension on grounds of maintaining national security and public order. Parliament supported the proclamation and amendments that curtailed rights. Citizens detained without trial approached the Supreme Court to challenge their detention. The court’s decision in *ADM Jabalpur v. Shivkant Shukla (1976)* became one of the most controversial judgments in Indian history.

Problem Statement 1: Suspension of Fundamental Rights

The government argued that during an Emergency, the right to move courts for enforcement of fundamental rights was suspended. Citizens had no legal remedy even against unlawful detention.

Solution

The Supreme Court, in a divided verdict, upheld the government’s stand, ruling that even the right to life could be suspended during an Emergency. This highlighted the need for stronger safeguards. Later constitutional amendments and judicial precedents clarified that the **basic structure of the Constitution**, including the right to life, cannot be taken away.

Problem Statement 2: Role of Judiciary in Times of Crisis

The judgment raised doubts about whether the Judiciary could act as an independent check when the Executive exercised extraordinary powers.

Solution

Post-Emergency, the Supreme Court revisited its stance in subsequent cases and reinforced its role as guardian of fundamental rights. It adopted a more activist approach through **Public Interest Litigations (PILs)**, ensuring greater protection of rights and preventing abuse of power.

Problem Statement 3: Maintaining Checks and Balances

The Emergency revealed the dangers of excessive concentration of power in the Executive. Without effective judicial oversight, Parliament and Executive actions could undermine democracy.

Solution

Through the *Kesavananda Bharati* case and later rulings, the Supreme Court strengthened the **Basic Structure Doctrine**, ensuring that essential constitutional principles like separation of powers, judicial review, and rule of law remain inviolable.

Case Questions

1. Why was the *ADM Jabalpur* case considered a setback for judicial independence?
2. How did the post-Emergency judiciary strengthen the protection of fundamental rights?
3. In what ways does the doctrine of basic structure act as a safeguard against misuse of power?

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
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7.0 Introductory Caselet

In 1971, the Indian Parliament passed the 24th and 25th Constitutional Amendments to assert its power to amend any part of the Constitution, including Fundamental Rights. This led to the historic *Kesavananda Bharati v. State of Kerala* (1973) case, where the Supreme Court had to decide whether Parliament’s amending power under Article 368 was unlimited.

The Court ruled that while Parliament has wide powers to amend the Constitution, it **cannot alter its “basic structure”**—principles such as the supremacy of the Constitution, rule of law, judicial review, and separation of powers. This judgment established the Basic Structure Doctrine, which continues to guide constitutional interpretation today.

Later, during the Emergency (1975–77), the Parliament passed amendments that attempted to curtail judicial review and place the Prime Minister’s election beyond scrutiny. However, in *Indira Gandhi v. Raj Narain* (1975), the Supreme Court struck down such provisions, reaffirming that even the highest executive authority is subject to constitutional limits.

These cases illustrate how constitutional amendments and judicial interventions have shaped India’s democracy, balancing the need for flexibility with the protection of core principles.

Critical Thinking Question

Do you think giving Parliament unrestricted power to amend the Constitution would strengthen or weaken democracy? How does the Basic Structure Doctrine strike a balance between flexibility and stability in governance?

7.1 Procedure for Constitutional Amendments (Article 368)

7.1.1 Types of Amendments: Simple Majority, Special Majority, Special Majority with State Ratification

(a) Amendment by Simple Majority

- Certain provisions can be amended like an ordinary law, by a simple majority of members present and voting in each House of Parliament.
- These amendments are not covered under Article 368 but fall under the legislative process.
- Areas amended through this method generally relate to **administrative or procedural aspects**, not core constitutional principles.
- **Examples include:**
 - Formation of new states or alteration of boundaries (Article 2, 3).
 - Creation or abolition of Legislative Councils in states (Article 169).
 - Changes in the representation of states in Parliament.
 - Delimitation of constituencies.

(b) Amendment by Special Majority

- This is the most widely used method and is covered under Article 368.
- Requires:
 - Approval by a majority of the total membership of each House, and
 - A two-thirds majority of members present and voting.
- This higher threshold ensures greater consensus on important changes.
- **Examples include:**
 - Amendments related to Fundamental Rights (Part III).
 - Directive Principles of State Policy (Part IV).
 - Powers of the Parliament and Union Judiciary (except those requiring state ratification).

(c) Amendment by Special Majority with State Ratification

- For changes affecting India’s **federal structure**, the consent of states is also necessary.
- In addition to passing by a special majority in both Houses of Parliament, the amendment must be ratified by at least **half of the state legislatures**.
- This requirement reflects the cooperative federal nature of India, ensuring that states have a say in key constitutional changes.
- **Examples include:**
 - Election of the President (Article 54, 55).
 - Extent of executive power of the Union and States (Articles 73, 162).
 - Distribution of legislative powers (Seventh Schedule).
 - Representation of states in Parliament.
 - Jurisdiction of the Supreme Court and High Courts.

Types of Amendments



Figure 7.1

7.1.2 Role of Parliament in the Amendment Process

- **Initiation:** Only Parliament can initiate a constitutional amendment. State legislatures have no power to propose or initiate amendments.

- **Introduction of Bill:** The amendment bill can be introduced in either House of Parliament. It may be introduced by a minister (government bill) or a private member (private bill).
- **Passage in Each House:** Both Lok Sabha and Rajya Sabha must pass the bill separately by the prescribed majority (simple, special, or special with state ratification, depending on the nature of amendment). There is no provision for a joint sitting in case of disagreement.
- **Role of the President:** After being passed by both Houses, the bill is presented to the President for assent. Unlike ordinary bills, the President has **no veto power** in this process. He must give assent, making the amendment part of the Constitution.
- **State Ratification (if required):** In cases involving federal provisions, the amendment must be approved by at least half of the state legislatures before being presented to the President.
- This procedure ensures that while Parliament plays the central role, certain amendments also require **state participation**, reflecting India's quasi-federal character.

7.1.3 Limitations on Amending Power

- Initially, Parliament claimed **unlimited power** to amend the Constitution under Article 368. However, judicial interpretation has placed significant restrictions.
- The most important limitation was laid down in *Kesavananda Bharati v. State of Kerala (1973)*, where the Supreme Court ruled that while Parliament may amend any provision of the Constitution, it cannot alter or destroy its **basic structure**.
- **Components of the Basic Structure include:**
 - Supremacy of the Constitution.
 - Sovereign, democratic, and republican form of government.
 - Secular character of the Constitution.
 - Federal system with unity and integrity of the nation.
 - Separation of powers among Legislature, Executive, and Judiciary.
 - Rule of law and judicial review.
 - Independence of the judiciary.

- This doctrine acts as a **permanent safeguard** against arbitrary or politically motivated amendments that could undermine democracy.
- Further, Parliament cannot use its amending power to:
 - Abolish fundamental rights.
 - Convert India from a democracy to a dictatorship.
 - Destroy the essence of federalism.
- The doctrine ensures that amendments strengthen and update the Constitution without damaging its core 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”

- Passed during the Emergency (1975–77) under Prime Minister Indira Gandhi’s government.
- Known as the “**Mini Constitution**” because of its wide-ranging and sweeping changes.

Key Provisions:

- Added the words “**Socialist,**” “**Secular,**” and “**Integrity**” to the Preamble.
- Made **Fundamental Duties** (Article 51A) part of the Constitution.
- Curtailed judicial review by limiting the power of courts to strike down laws.
- Increased the term of Lok Sabha and State Legislative Assemblies from **5 years to 6 years** (later reversed by the 44th Amendment).

- Shifted subjects like education, forests, and wildlife from the **State List to the Concurrent List**, increasing Union power.
- Empowered Parliament to amend any part of the Constitution, even Fundamental Rights.

7.2.2 44th Amendment (1978) – Safeguards after Emergency

- Enacted by the Janata Party government after the Emergency to restore democratic principles.

Key Provisions:

- Reduced the term of Lok Sabha and State Assemblies back to **5 years**.
- Restored the power of **judicial review** to the courts.
- Made the **Right to Life and Personal Liberty (Article 21)** non-suspendable even during an Emergency.
- Limited the power of the Executive to declare a National Emergency:
 - Emergency could only be declared on **written recommendation of the Cabinet**.
 - The proclamation had to be approved by Parliament within one month (instead of two months earlier).
- Strengthened protections for civil liberties and checked misuse of power by the Executive.

7.2.3 73rd Amendment (1992) – Panchayati Raj Institutions

- Gave **constitutional status** to Panchayati Raj Institutions (PRIs) to strengthen local self-governance in rural areas.

Key Features:

- Added **Part IX** (Articles 243–243O) and the **11th Schedule** to the Constitution.
- Created a **three-tier system** of Panchayati Raj:
 - **Village level** (Gram Panchayat).
 - **Intermediate level** (Panchayat Samiti).

- **District level** (Zila Parishad).
- Introduced **reservation of seats** for Scheduled Castes, Scheduled Tribes, and at least **one-third for women**.
- Provided for **regular elections every 5 years** by State Election Commissions.
- Established **State Finance Commissions** to recommend distribution of financial resources.
- Empowered Panchayats to prepare plans and implement schemes for economic development and social justice.

7.2.4 74th Amendment (1992) – Urban Local Bodies

- Strengthened local self-government in urban areas by giving **constitutional recognition** to municipalities.

Key Features:

- Added **Part IXA** (Articles 243P–243ZG) and the **12th Schedule**.
- Created three types of urban local bodies:
 - **Municipal Corporations** for large cities.
 - **Municipal Councils** for smaller towns.
 - **Nagar Panchayats** for transitional areas.
- Provided for **direct elections** to municipal bodies.
- Reserved seats for SCs, STs, and at least **one-third for women**.
- Mandated **State Finance Commissions** to allocate financial resources.
- Empowered municipalities to deal with **18 functions** listed in the 12th Schedule, including urban planning, regulation of land use, public health, and waste management.

7.2.5 101st Amendment (2016) – Goods and Services Tax (GST)

- Aimed to create a **unified indirect tax system** across the country.

Key Provisions:

- Introduced **Article 246A**, giving concurrent powers to Parliament and State Legislatures to legislate on GST.
- Established the **GST Council** (Article 279A) to recommend tax rates, exemptions, and model laws.
- Subsumed multiple indirect taxes like excise duty, VAT, and service tax into a single GST.
- Promoted the concept of “**One Nation, One Tax, One Market.**”
- Enhanced ease of doing business and improved revenue transparency.

7.2.6 103rd Amendment (2019) – EWS Reservation

- Introduced a new form of reservation based on **economic criteria**.

Key Provisions:

- Amended **Articles 15 and 16** to provide up to **10% reservation** in government jobs and educational institutions for **Economically Weaker Sections (EWS)**.
- Applied to people not covered under existing SC, ST, and OBC reservations.
- Defined eligibility criteria based on family income and property ownership.
- Marked a significant shift in affirmative action policies by recognizing **economic disadvantage** as a ground for reservation.
- Upheld by the Supreme Court in 2022, though debates continue about its effect 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

The doctrine developed through a series of landmark Supreme Court cases that defined the scope and limits of Parliament's power to amend the Constitution:

- **Shankari Prasad v. Union of India (1951)**
 - The Supreme Court upheld Parliament's power to amend Fundamental Rights under Article 368.
 - It ruled that "law" in Article 13 did not include constitutional amendments.
- **Sajjan Singh v. State of Rajasthan (1965)**
 - Reiterated the Shankari Prasad view and upheld Parliament's amending power.
 - However, some judges hinted at the need to preserve the essence of Fundamental Rights.

- **Golaknath v. State of Punjab (1967)**
 - A turning point where the Court held that Parliament **could not amend Fundamental Rights**.
 - The judgment declared Fundamental Rights as “transcendental” and beyond the reach of Parliament.
- **Kesavananda Bharati v. State of Kerala (1973)**
 - The largest-ever constitutional bench (13 judges) decided this case.
 - By a 7–6 majority, the Court held:
 - Parliament has wide powers to amend the Constitution under Article 368.
 - But it **cannot alter or destroy the basic structure** of the Constitution.
 - This case gave birth to the **Basic Structure Doctrine**, which has since become a cornerstone of Indian constitutional interpretation.
- **Subsequent Cases Reaffirming the Doctrine**
 - *Indira Gandhi v. Raj Narain (1975)*: Struck down an amendment that sought to place the Prime Minister’s election beyond judicial scrutiny. Judicial review and democracy were upheld as basic features.
 - *Minerva Mills v. Union of India (1980)*: Reiterated that limited amending power itself is part of the basic structure.
 - *Waman Rao (1981)*, *I.R. Coelho (2007)*: Strengthened the doctrine by applying it to laws placed in the Ninth Schedule after 1973.

7.3.2 Core Features Considered Part of Basic Structure

The Supreme Court has never given an exhaustive list of basic structure elements, but over time it has identified certain core principles:

- **Supremacy of the Constitution** – No organ is above the Constitution.

- **Sovereign, Democratic, and Republican Government** – India’s political identity cannot be changed.
- **Secular Character** – The state must remain neutral in matters of religion.
- **Rule of Law** – All are equal before the law; no one is above it.
- **Separation of Powers** – Each organ of the state (Legislature, Executive, Judiciary) must function within its domain.
- **Judicial Review and Independence of Judiciary** – Courts must remain free to check unconstitutional actions.
- **Federal Character of the Constitution** – Balance of power between Union and States must be maintained.
- **Free and Fair Elections** – Essential for sustaining democracy.
- **Parliamentary System of Government** – The executive must remain accountable to the legislature.
- **Fundamental Rights** – Core rights cannot be diluted or abolished.
- **Balance between Fundamental Rights and Directive Principles** – Neither can override the other completely.

These principles form the “spirit” of the Constitution and cannot be amended away.

7.3.3 Importance of Doctrine in Constitutional Interpretation

The **Basic Structure Doctrine** has immense importance in India’s constitutional history:

- **Limits Parliamentary Power**

Ensures Parliament cannot misuse Article 368 to rewrite the Constitution or destroy democracy. For example, it prevents a situation where Parliament could pass an amendment making India a dictatorship.

- **Judicial Safeguard Against Arbitrary Amendments**

The Supreme Court, as guardian of the Constitution, has the authority to strike down any amendment that damages the basic structure.

This gives stability to constitutional governance.

- **Preserves Core Democratic Values**

Ensures essential features like democracy, secularism, and federalism cannot be compromised, even by an overwhelming political majority.

- **Balance Between Flexibility and Rigidity**

While Parliament can amend many provisions to adapt to changing times, the doctrine protects the fundamental essence.

This ensures the Constitution evolves without losing its original identity.

- **Protection of Citizens' Rights**

Safeguards Fundamental Rights against attempts to dilute or abolish them through amendments.

Upholds the dignity, liberty, and equality of individuals.

7.4 Kesavananda Bharati Case (1973)

7.4.1 Background and Context of the Case

- **The Dispute:**

- Kesavananda Bharati was the head of a Hindu religious mutt (Edneer Mutt) in Kerala.
- He challenged the Kerala government's land reform legislation that sought to impose restrictions on the management of his mutt's property.

- **Larger Constitutional Question:**

- Though the dispute was about property rights, the case soon expanded into a much larger issue:
Does Parliament have unlimited power under Article 368 to amend the Constitution, including Fundamental Rights?

- **Conflicting Precedents:**

- *Shankari Prasad v. Union of India* (1951): Parliament could amend any part of the Constitution, including Fundamental Rights.
- *Sajjan Singh v. State of Rajasthan* (1965): Reiterated unlimited amending power.
- *Golaknath v. State of Punjab* (1967): Reversed earlier views; held that Parliament could **not** amend Fundamental Rights at all.

- **Political Context:**
 - The Indira Gandhi government, with a strong majority, passed several amendments expanding Parliament's powers.
 - This raised concerns about whether the Constitution could be changed beyond recognition by a ruling majority.
- **The Bench:**
 - The case was heard by the largest-ever bench in Indian history — **13 judges of the Supreme Court**.
 - Arguments lasted for 68 days, reflecting the importance of the issue.

7.4.2 Establishment of the Basic Structure Doctrine

- The case established the famous **Basic Structure Doctrine**, which is not mentioned in the Constitution's text but created by judicial interpretation.

Core features identified as part of the Basic Structure:

- Supremacy of the Constitution.
- Sovereign, democratic, and republican form of government.
- Secular character of the Constitution.
- Separation of powers between Legislature, Executive, and Judiciary.
- Judicial review and independence of the judiciary.
- Federal character of the Constitution.
- Rule of law.
- Later cases added further elements, such as free and fair elections, parliamentary system, and balance between Fundamental Rights and Directive Principles.

This doctrine became the **ultimate safeguard** to ensure that no political majority could undermine the Constitution's identity.

7.4.3 Long-term Impact on Indian Constitutional Law

- **Permanent Check on Parliament**
 - Prevented any ruling majority from rewriting the Constitution entirely.
 - Ensured that no amendment could convert India into a dictatorship or destroy core democratic values.
- **Strengthened Judicial Role**
 - Elevated the Supreme Court as the **guardian of the Constitution**.
 - Empowered courts to review and strike down constitutional amendments if they damaged the basic structure.
- **Preservation of Democracy**
 - Guaranteed that essential principles like secularism, rule of law, and judicial independence cannot be abolished.
 - Even during times of political dominance, the Constitution’s spirit remains protected.
- **Follow-up Cases Strengthening the Doctrine:**
 - *Indira Gandhi v. Raj Narain* (1975): Struck down a constitutional amendment that tried to immunize the Prime Minister’s election from judicial review.
 - *Minerva Mills v. Union of India* (1980): Reaffirmed that “limited amending power” is itself a basic feature.
 - *I.R. Coelho v. State of Tamil Nadu* (2007): Applied the doctrine to strike down laws in the Ninth Schedule (laws earlier shielded from judicial review).
- **Global Significance**
 - The Basic Structure Doctrine has been recognized internationally as a **unique Indian innovation** in constitutional law.
 - It balances **Parliamentary sovereignty** with **constitutional supremacy**, making India’s democracy resilient.

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

- The Judiciary is entrusted with the responsibility of acting as the **final interpreter** of the Constitution.
- Its role in reviewing amendments includes:
 - Ensuring amendments conform to constitutional provisions.
 - Protecting **Fundamental Rights** from being diluted or abolished.
 - Preventing the Legislature from altering the **basic identity** of the Constitution.
- Judicial review empowers the courts to **strike down amendments** that:
 - Undermine democracy, secularism, or federalism.
 - Curtail judicial independence.
 - Violate essential features like rule of law or free and fair elections.
- This role was especially significant during and after the Emergency (1975–77), when sweeping amendments sought to concentrate power in the Executive.

7.5.2 Balancing Flexibility with Rigidity in Constitutional Design

- The Indian Constitution is designed to be **flexible enough** to adapt to changing needs and **rigid enough** to preserve its core values.
- **Flexibility:**
 - Parliament can amend most provisions to address social, economic, and political challenges.

- Example: 73rd and 74th Amendments (1992) introduced Panchayati Raj and Urban Local Bodies, strengthening decentralization.
- **Rigidity:**
 - Judicial review ensures that foundational principles cannot be eroded.
 - Example: Parliament cannot amend the Constitution to abolish free elections or turn India into a dictatorship.
- This balance reflects the vision of the framers: a **living Constitution** that grows with time without losing its essence.

7.5.3 Cases Reinforcing Judicial Review of Amendments

Key Supreme Court rulings strengthened judicial review of amendments:

1. **Kesavananda Bharati v. State of Kerala (1973)**
 - Introduced the **Basic Structure Doctrine**.
 - Parliament can amend any part of the Constitution, but not its essential features.
2. **Indira Gandhi v. Raj Narain (1975)**
 - The 39th Amendment attempted to place the Prime Minister's election beyond judicial review.
 - The Supreme Court struck it down, holding that judicial review and free elections are part of the basic structure.
3. **Minerva Mills v. Union of India (1980)**
 - Struck down parts of the 42nd Amendment that gave unlimited amending power to Parliament.
 - Declared that "limited amending power" is itself part of the basic structure.
4. **I.R. Coelho v. State of Tamil Nadu (2007)**
 - Ruled that even laws placed in the **Ninth Schedule** (meant to protect them from judicial review) after 1973 are subject to review if they violate the basic structure.

These cases firmly established judicial review as a **permanent safeguard** in constitutional governance.

7.5.4 Criticism and Debates on Judicial Intervention

Criticism:

- Critics argue that judicial review allows **unelected judges** to overturn decisions made by elected representatives, undermining parliamentary sovereignty.
- Judicial intervention in political or policy matters is sometimes criticized as **judicial overreach**.
- Frequent use of judicial review may upset the balance between Legislature, Executive, and Judiciary.

Defense:

- Supporters see judicial review as essential to **protect democracy** from misuse of political power.
- It acts as a **safeguard against authoritarianism**, especially after the Emergency, when unchecked parliamentary power nearly dismantled fundamental rights.
- Judicial review ensures continuity of **rule of law, secularism, federalism, and citizens' freedoms**.
- It upholds the principle that Parliament is powerful, but **the Constitution is supreme**.

7.6 Summary

- ❖ Article 368 provides the procedure for amending the Constitution, ensuring both flexibility and stability.
- ❖ Amendments can be made by **simple majority, special majority, or special majority with state ratification**, depending on the subject matter.
- ❖ Parliament plays the central role in initiating and passing constitutional amendments.
- ❖ The **42nd Amendment (1976)**, called the “Mini Constitution,” expanded central power but weakened judicial review.
- ❖ The **44th Amendment (1978)** restored democratic safeguards and protected the right to life and liberty during Emergencies.
- ❖ The **73rd and 74th Amendments (1992)** gave constitutional status to rural and urban local bodies.

- ❖ The **101st Amendment (2016)** introduced the Goods and Services Tax (GST), creating a unified tax regime.
- ❖ The **103rd Amendment (2019)** provided 10% reservation for Economically Weaker Sections (EWS).
- ❖ The **Kesavananda Bharati Case (1973)** established the **Basic Structure Doctrine**, limiting Parliament's amending power.
- ❖ The doctrine includes features like democracy, secularism, judicial review, and rule of law.
- ❖ Judicial review ensures that Parliament cannot amend the Constitution in a way that destroys its core identity.
- ❖ Landmark cases like *Minerva Mills* (1980) and *I.R. Coelho* (2007) reaffirmed judicial review of amendments.
- ❖ The balance between parliamentary flexibility and judicial safeguards preserves both adaptability and constitutional permanence.

7.7 Key Terms

1. **Article 368** – Provision in the Constitution outlining the procedure for amendments.
2. **Simple Majority** – More than half of members present and voting in Parliament.
3. **Special Majority** – Majority of total membership plus two-thirds of members present and voting.
4. **State Ratification** – Approval of at least half of state legislatures for certain federal amendments.
5. **42nd Amendment** – Known as the “Mini Constitution,” passed during the Emergency.
6. **44th Amendment** – Restored democratic safeguards and judicial review after the Emergency.
7. **Basic Structure Doctrine** – Judicial principle that Parliament cannot alter the Constitution's essential framework.
8. **Judicial Review** – Power of courts to examine and strike down unconstitutional laws or amendments.
9. **Kesavananda Bharati Case** – 1973 judgment establishing the Basic Structure Doctrine.
10. **I.R. Coelho Case** – 2007 ruling that Ninth Schedule laws after 1973 are subject to basic structure review.

7.8 Descriptive Questions

1. Explain the procedure for constitutional amendments under Article 368. How do the three types of amendments differ from one another?
2. Discuss the significance of the 42nd Amendment Act (1976). Why is it called the “Mini Constitution”?
3. Analyze the 44th Amendment Act (1978) and its role in safeguarding democracy after the Emergency.
4. Evaluate the importance of the 73rd and 74th Amendments in strengthening local self-government in India.
5. Discuss the role of the 101st Amendment in implementing the Goods and Services Tax (GST). How has it impacted India’s economic structure?
6. Explain the constitutional changes introduced by the 103rd Amendment Act (2019). Why was it considered a major shift in reservation policy?
7. Describe the background, judgment, and significance of the Kesavananda Bharati v. State of Kerala (1973) case.
8. What is the Basic Structure Doctrine? Discuss its evolution through different Supreme Court judgments.
9. Critically examine the debates surrounding judicial review of amendments. Do you think it strengthens or weakens parliamentary democracy?

7.9 References

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Answers to Knowledge Check

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

The Basic Structure Doctrine and the Limits of Parliamentary Power

Introduction

The power of Parliament to amend the Constitution has been a subject of intense debate in India's constitutional history. While amendments are necessary to keep the Constitution dynamic, unchecked powers could threaten democracy itself. The turning point came with the Kesavananda Bharati v. State of Kerala (1973) case, where the Supreme Court laid down the Basic Structure Doctrine. This case study examines the struggle between Parliament's desire for flexibility and the Judiciary's duty to protect the Constitution's identity.

Background

In the early decades after independence, Parliament frequently amended the Constitution to pursue social and economic reforms. However, several amendments curtailed Fundamental Rights, raising questions about whether Parliament could alter even the most essential constitutional principles. The Kesavananda case, heard by a 13-judge bench, became the defining moment in resolving this conflict.

Problem Statement 1: Unlimited Amending Power of Parliament

Parliament claimed it had the authority to amend any part of the Constitution, including Fundamental Rights, under Article 368. Critics feared this could destroy democracy by allowing majorities to rewrite the Constitution.

Solution

The Supreme Court held that while Parliament could amend most provisions, it could not alter or destroy the **basic structure**. This ensured that core principles like democracy, secularism, and judicial independence remained protected.

MCQ

Which case introduced the Basic Structure Doctrine in India?

- a) Golaknath v. State of Punjab
- b) Shankari Prasad v. Union of India

- c) Kesavananda Bharati v. State of Kerala
- d) Minerva Mills v. Union of India

Answer: c) Kesavananda Bharati v. State of Kerala

Problem Statement 2: Judicial Review vs. Parliamentary Supremacy

The conflict arose over whether unelected judges should have the power to overturn amendments made by elected representatives of the people.

Solution

The Court clarified that it was not limiting democracy but protecting its essence. Judicial review became a safeguard to ensure that parliamentary supremacy operated within constitutional limits.

MCQ

Which principle was upheld in *Indira Gandhi v. Raj Narain* (1975)?

- a) Judicial Review as part of basic structure
- b) Unlimited amending power of Parliament
- c) Abolition of Fundamental Rights
- d) Absolute supremacy of the Executive

Answer: a) Judicial Review as part of basic structure

Problem Statement 3: Long-term Stability of the Constitution

Frequent amendments, especially during the Emergency, risked destabilizing the constitutional framework. Citizens feared the erosion of their rights.

Solution

The Supreme Court's ruling in *Kesavananda* and later in *Minerva Mills* (1980) ensured stability by balancing Parliament's power to amend with judicial protection of the Constitution's permanent values.

MCQ

Which amendment was partly struck down in *Minerva Mills v. Union of India* (1980) for violating the basic structure?

- a) 24th Amendment
- b) 39th Amendment

c) 42nd Amendment

d) 44th Amendment

Answer: c) 42nd Amendment

Conclusion

The Kesavananda case and the doctrine it established permanently changed Indian constitutional law. It preserved the adaptability of the Constitution while preventing its misuse. By recognizing limits on Parliament's amending power, the Judiciary safeguarded India's democratic fabric and ensured that the Constitution's spirit would remain unaltered for future generations.

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

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8.10 Case Study

8.0 Introductory Caselet

“Bridging the Gap – The Story of Asha’s Education”

Asha, a 15-year-old girl from a tribal-dominated rural village in central India, had always dreamed of becoming a teacher. However, her path was filled with challenges. Her parents, daily wage laborers, earned barely enough to put food on the table. Education was considered a “luxury,” especially for girls, and her family often debated whether sending her to school was worth the effort when she was needed to help with household chores and agricultural work.

In her community, social barriers were strong. Girls often dropped out of school by the age of 12, either to work, marry early, or because of the lack of resources. The nearest secondary school was five kilometers away, and without safe transportation, many parents feared sending their daughters that far.

The situation began to change when the government introduced a scholarship scheme for tribal students, along with free textbooks, uniforms, and bicycles for girls. At the same time, an NGO partnered with the local school to provide after-school learning centers and mentorship programs. These interventions reduced the financial burden on families and gave students extra academic support.

With these opportunities, Asha’s determination grew stronger. She not only continued her schooling but excelled, becoming the first girl in her village to pass the state-level board examinations with distinction. Her achievement brought pride to her family and inspired her community. Other parents, seeing her success, began to believe that education for girls could bring long-term benefits. Slowly, social attitudes started shifting, and more girls were enrolled in school.

Asha now dreams of becoming a teacher so she can return to her village and empower other children, especially girls, to break free from the cycle of poverty and marginalization.

Critical Thinking Question

In Asha’s story, both government policy and NGO intervention played vital roles in creating opportunities. To what extent do you think structural reforms (such as improving infrastructure, reducing gender bias, and creating employment opportunities) are necessary alongside such schemes to achieve true social justice for marginalized groups?

8.1 Constitutional Safeguards for SCs, STs, OBCs, and Minorities

8.1.1 Provisions for Scheduled Castes (SCs) and Scheduled Tribes (STs)

Scheduled Castes and Scheduled Tribes were among the most marginalized sections of Indian society. The Constitution made **special provisions** for their protection and advancement:

1. **Abolition of Untouchability (Article 17):**

- Outlawed the practice of untouchability, making it a punishable offense.
- Strengthened by the *Protection of Civil Rights Act (1955)* and *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989)*.

2. **Equality and Protective Discrimination:**

- Article 15(4) and 16(4): Allow reservation in education and employment.
- SCs and STs receive reserved seats in educational institutions and government jobs.

3. **Political Representation:**

- Articles 330 & 332: Reservation of seats in Lok Sabha and State Legislative Assemblies.
- Ensures political voice and representation in decision-making.

4. **Directive Principles (Article 46):**

- Directs the State to promote educational and economic interests of SCs/STs.

5. **Safeguards against Exploitation:**

- Article 23 & 24: Prohibit human trafficking, bonded labor, and child labor.

6. **Special Commissions:**

- **National Commission for Scheduled Castes (Article 338).**
- **National Commission for Scheduled Tribes (Article 338A).**
These bodies investigate complaints, monitor policies, and advise governments on welfare measures.

Example: Reservation of seats in IITs, IIMs, and Parliament has enabled SC and ST leaders and professionals to emerge, breaking traditional barriers.

Constitutional Safeguards for SCs, STs, OBCs, and Minorities

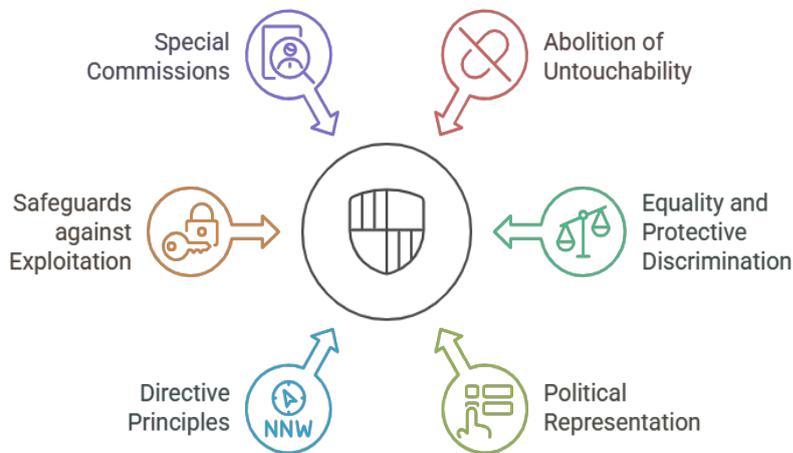


Figure 8.1

8.1.2 Safeguards for Other Backward Classes (OBCs)

OBCs are communities identified as socially and educationally backward, though not as historically oppressed as SCs/STs.

1. Constitutional Backing:

- Article 15(4) & 16(4): State can make special provisions for socially and educationally backward classes.

2. Mandal Commission & Reservation:

- The Mandal Commission (1979) recommended 27% reservation in central government jobs and higher education.
- Implemented in 1990, this remains a key step in empowering OBCs.

3. National Commission for Backward Classes (NCBC):

- Established in 1993, given **constitutional status in 2018** under Article 338B.
- Advises on welfare measures and monitors reservation benefits.

4. Supportive Measures:

- Scholarships, skill development, hostels, and coaching facilities to enhance opportunities.

Example: OBC reservations in civil services opened doors for first-generation learners and administrators from marginalized backgrounds.

8.1.3 Rights of Religious and Linguistic Minorities

India is a diverse country with many religions and languages. To preserve this diversity, the Constitution provides **special rights**:

1. Cultural & Educational Rights (Articles 29 & 30):

- Minorities have the right to conserve their culture, language, and script.
- Can establish and administer their own educational institutions (e.g., Aligarh Muslim University, St. Stephen's College).

2. Freedom of Religion (Articles 25–28):

- Right to profess, practice, and propagate religion.
- Freedom from compulsory religious instruction in state-funded institutions.

3. Linguistic Safeguards (Articles 350A & 350B):

- Children have a right to primary education in their mother tongue.
- Appointment of a Special Officer for linguistic minorities.

4. Non-Discrimination (Article 15):

- No discrimination by the State on grounds of religion, race, caste, sex, or place of birth.

Example: Minority schools like Christian missionary institutions and Madrasas enjoy the right to preserve their identity while contributing to national education.

8.1.4 Role of National Commissions (SC, ST, OBC, Minorities)

To ensure that safeguards are implemented, the Constitution provides for **independent commissions**:

1. National Commission for Scheduled Castes (Article 338):

- Investigates complaints of rights violations.
 - Recommends welfare policies to the government.
2. **National Commission for Scheduled Tribes (Article 338A):**
- Focuses on ST-specific issues such as land alienation, displacement, and forest rights.
3. **National Commission for Backward Classes (Article 338B):**
- Advises on OBC inclusion/exclusion from reservation lists.
 - Reviews the working of reservation policies.
4. **National Commission for Minorities (1992 Act):**
- Looks into issues of religious/linguistic minorities.
 - Ensures minority rights are not violated in education, employment, or cultural matters.

8.2 Reservation Policy

8.2.1 Historical Background of Reservation in India

The roots of reservation lie in the **deeply entrenched caste system** and the systematic exclusion of lower castes from education, property, and power structures.

1. Pre-Independence Developments:

- **Princely States:** Some rulers like those of Mysore and Kolhapur introduced early forms of caste-based reservations in jobs and education in the 19th–20th centuries.
- **Government of India Act, 1909:** Gave separate electorates to Muslims, marking the beginning of political reservations.
- **Communal Award (1932):** Proposed separate electorates for depressed classes (Dalits), which was later replaced by the **Poona Pact** between Dr. B.R. Ambedkar and Mahatma Gandhi. Under the Pact, Dalits received reserved seats in legislatures but within the Hindu electorate.

2. Post-Independence:

- The **Constitution of India (1950)** provided reservations for SCs and STs in legislatures, education, and government jobs.
- Initially intended for **10 years**, these provisions have been extended repeatedly due to persisting inequalities.

Key Idea: Reservation was framed not as charity, but as a tool for **justice and equality**, addressing centuries of social exclusion.

8.2.2 Mandal Commission Report and Its Impact

1. Formation of the Commission:

- In 1979, the Mandal Commission, headed by B.P. Mandal, was set up to identify “socially and educationally backward classes.”

2. Recommendations (1980 Report):

- Identified OBCs (Other Backward Classes) as disadvantaged groups.
- Recommended **27% reservation** in central government jobs and higher education for OBCs, in addition to the 22.5% already reserved for SCs and STs.

3. Implementation (1990):

- Prime Minister V.P. Singh announced OBC reservations in central services.
- Triggered widespread protests, including violent student agitations and self-immolations.

4. Impact:

- Politically empowered OBC communities, leading to a **shift in Indian politics** with the rise of regional OBC leaders.
- Socially expanded access to education and jobs, though challenges like the “**creamy layer**” exclusion (wealthier OBCs being ineligible) were introduced.
- Sparked debates on meritocracy versus social justice.

Example: In states like Bihar and Uttar Pradesh, OBC leaders such as Lalu Prasad Yadav and Mulayam Singh Yadav became powerful after the Mandal era.

8.2.3 93rd Constitutional Amendment – Reservation in Educational Institutions

1. Provision (2005):

- Inserted **Article 15(5)**: Empowered the State to make special provisions for SCs, STs, and OBCs in **private, unaided educational institutions** (except minority institutions under Article 30).

2. Purpose:

- Extended reservation benefits beyond government institutions, recognizing the growing role of private higher education.

3. Judicial Validation:

- *Ashoka Kumar Thakur v. Union of India (2008)*: Supreme Court upheld the constitutionality of OBC reservation in higher education, subject to **creamy layer exclusion** and **50% cap**.

Impact: Widened access to quality education for marginalized groups and reinforced education as a tool for empowerment.

8.2.4 103rd Constitutional Amendment – EWS Reservation

1. Provision (2019):

- Inserted **Articles 15(6) and 16(6)**.
- Introduced **10% reservation** for **Economically Weaker Sections (EWS)** of society in education and public employment.
- Benefited those from “forward” castes who were economically disadvantaged but not covered under SC, ST, or OBC quotas.

2. Significance:

- Marked a shift from purely **caste-based reservation** to **economic-based reservation**.

3. Judicial Endorsement:

- *Janhit Abhiyan v. Union of India (2022)*: Supreme Court upheld the amendment (3:2 verdict), validating EWS quota.

Debate: While it addressed demands of poor upper-caste groups, critics argued it diverted from the original aim of reservation — to correct historical oppression 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 remains one of India’s most **contested policies**.

Arguments in Favor

- Provides **representation and empowerment** for marginalized groups.
- Helps break **cycles of poverty, discrimination, and exclusion**.
- Ensures that diverse voices participate in governance and public services.

Arguments Against

- Seen as **eroding meritocracy** and encouraging dependency.
- Creates resentment among non-beneficiary groups, fueling **social tensions**.
- Politically exploited, with parties promising reservation to win votes.
- Implementation challenges: benefits often cornered by the **“creamy layer.”**

Contemporary Debates

- **Extension Demands:** Marathas, Jats, Patidars, Gujjars, and other communities have mobilized for inclusion in reservation lists.

- **Creamy Layer for SCs/STs?** – Debate continues whether affluent SCs/STs should also be excluded.
- **Future of Reservation:** Whether to move towards **needs-based (economic)** reservation, or continue with **caste-based (social justice)** model.

8.3 Rights of Women

8.3.1 Constitutional Provisions for Gender Equality

The Constitution lays a **strong foundation for gender equality** by integrating rights into both Fundamental Rights and Directive Principles.

1. **Equality before Law (Article 14):** Women are equal to men in the eyes of law.
2. **Non-discrimination (Article 15(1)):** Prohibits discrimination on the ground of sex.
3. **Protective Discrimination (Article 15(3)):** Permits special laws/programs for women and children (e.g., maternity benefits, reservations).
4. **Equal Opportunity (Article 16):** Equal access to public employment.
5. **Directive Principles:**
 - **Article 39(a):** Equal right to adequate livelihood.
 - **Article 39(d):** Equal pay for equal work.
 - **Article 39(e):** Protecting health of women workers.
 - **Article 42:** Maternity relief and humane work conditions.
6. **Fundamental Duties (Article 51A(e)):** Duty of citizens to renounce practices derogatory to women.

Illustration: Women's reservation in Panchayati Raj institutions (73rd Amendment, 1992) was possible because the Constitution allowed positive discrimination.

8.3.2 Protective Legislation and Reforms

Over time, several laws have been passed to **address gender injustice** and strengthen women's rights:

1. **Hindu Code Bills (1950s):** Modernized marriage, succession, adoption laws, giving Hindu women rights in property and inheritance.
2. **Dowry Prohibition Act (1961):** Criminalized dowry transactions, though enforcement remains weak.
3. **Equal Remuneration Act (1976):** Mandated equal pay for equal work.
4. **Maternity Benefit Act (1961, amended 2017):** Extended maternity leave to 26 weeks and provided crèche facilities at workplaces.
5. **Indecent Representation of Women (Prohibition) Act (1986):** Restricted indecent depiction of women in media.
6. **Protection of Women from Domestic Violence Act (2005):** Recognized domestic violence (physical, emotional, sexual, economic) as a punishable offense.
7. **Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act (2013):** Known as the POSH Act, mandated Internal Complaints Committees in organizations.
8. **Criminal Law (Amendments):**
 - **1983 & 2013 amendments** strengthened laws on rape, acid attacks, and harassment.
 - The 2013 amendment was a direct result of the Nirbhaya movement.

Impact: These laws created a framework for gender justice, though social attitudes and implementation remain challenges.

8.3.3 Vishaka v. State of Rajasthan (1997) – Sexual Harassment Guidelines

1. **Background:**
 - In 1992, **Bhanwari Devi**, a social worker in Rajasthan, was gang-raped by upper-caste men for preventing child marriage.
 - No law specifically addressed sexual harassment at the workplace at the time.
2. **The Case:**
 - Public Interest Litigation (PIL) filed by women's groups reached the Supreme Court.

- The Court held that sexual harassment violates **Articles 14, 19, and 21**.

3. **The Guidelines (Vishaka Guidelines):**

- Every workplace must have preventive steps against harassment.
- Formation of **Complaints Committees** with women members.
- Duty of employers to create safe environments.

4. **Significance:**

- First recognition of sexual harassment as a **violation of fundamental rights**.
- Remained the legal framework until the **POSH Act (2013)** was passed.

8.3.4 Recent Judicial Developments in Women's Rights

The judiciary has expanded the meaning of women's rights beyond just protection to include autonomy, dignity, and equality.

1. **Reproductive & Personal Autonomy**

- *Suchita Srivastava v. Chandigarh Administration* (2009): Women's right to reproductive choice upheld.
- *X v. Union of India* (2022): Unmarried women allowed abortion up to 24 weeks, bringing parity with married women.

2. **Workplace Equality**

- *Air India v. Nargesh Meerza* (1981): Struck down discriminatory rules that forced air hostesses to retire upon marriage/pregnancy.
- *Lt. Col. Nitisha v. Union of India* (2021): Permanent commission for women in armed forces, rejecting stereotypes of women's "inferiority."

3. **Cultural & Religious Equality**

- *Shayara Bano v. Union of India* (2017): Declared instant triple talaq unconstitutional.
- *Indian Young Lawyers Association v. State of Kerala* (2018): Allowed women entry into Sabarimala temple, challenging religious exclusion.

4. Political Representation

- Several states now provide 50% reservation for women in local bodies, strengthening women’s participation at the grassroots level. This has empowered many women to take leadership roles in panchayats and municipalities, thereby changing the political culture in rural and semi-urban India.
- The **Women’s Reservation Bill (2023)**, which seeks to reserve **33% of seats for women in the Lok Sabha and State Legislative Assemblies**, has been **legally passed by both Houses of Parliament**. This represents a historic step in advancing women’s representation in higher law-making bodies. However, the **implementation of the Bill is not immediate**. Its operationalization has been expressly linked to the **completion of the next census** and the **subsequent delimitation process**, which involves redrawing constituency boundaries. This means that although the legal framework now exists, women’s reservation in Parliament and State Assemblies will only become effective once these administrative and procedural requirements are carried out.

Trend: Courts increasingly emphasize constitutional morality over traditional practices when it comes to women’s rights.

“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 Constitution provides both **fundamental rights** and **directive principles** for children:

1. Right to Equality & Non-Discrimination

- **Article 14:** Equality before law for children as for adults.
- **Article 15(3):** Allows the State to make special provisions for children (e.g., free education, mid-day meals).

2. Right to Education & Development

- **Article 21A (86th Amendment, 2002):** Free and compulsory education for children 6–14 years.
- **Article 45:** State to provide early childhood care and education to children below 6 years.

3. Right to Protection from Exploitation

- **Article 23:** Prohibits human trafficking and forced labour.
- **Article 24:** Prohibits employment of children below 14 years in hazardous occupations (like factories, mines).

4. Directive Principles of State Policy

- **Article 39(e):** Protects children from abuse in employment.
- **Article 39(f):** Ensures childhood and youth are protected against exploitation and moral/physical abandonment.

Example: The **Anganwadi system** under ICDS (Integrated Child Development Services) flows from Article 45.

8.4.2 Right to Education Act (2009)

To give effect to **Article 21A**, Parliament enacted the **Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)**.

1. Key Provisions:

- Every child between 6–14 years has the **right to free and compulsory education**.
- **25% seats in private schools** reserved for children from economically weaker sections (EWS).
- Ban on physical punishment, mental harassment, screening procedures, and capitation fees.
- Prescribes minimum standards (pupil–teacher ratio, infrastructure, working days).

2. Significance:

- First law in India to make **education a fundamental right**.

- Ensures inclusion of disadvantaged children into mainstream schooling.

3. Judicial Support:

- *Society for Unaided Private Schools v. Union of India (2012)*: Supreme Court upheld RTE's validity and 25% private school reservation.

Impact: Improved enrollment, especially among poor and marginalized children, though challenges remain in quality of education and dropout rates.

8.4.3 Child Labour and Legal Safeguards

Child labour has historically been one of India's toughest social challenges. Despite constitutional bans, poverty often forces children into work.

1. Child Labour (Prohibition and Regulation) Act, 1986 (amended 2016):

- Prohibits employment of children below 14 years in all occupations, except **family enterprises and entertainment industry** (with safeguards).
- Prohibits adolescents (14–18 years) from hazardous work.

2. Juvenile Justice (Care and Protection of Children) Act, 2015:

- Special law for children in conflict with law and those in need of care.
- Provides adoption, foster care, and rehabilitation mechanisms.

3. Prohibition of Child Marriage Act, 2006:

- Declares child marriages voidable.
- Punishes those who promote or conduct child marriages.

4. Protection of Children from Sexual Offences (POCSO) Act, 2012:

- Special law for child sexual abuse, with **stringent punishment** and child-friendly procedures.

Example: NGOs like Bachpan Bachao Andolan have rescued thousands of children from bonded labour and trafficking, linking them to rehabilitation schemes.

8.4.4 Role of Judiciary in Protecting Children's Rights

The judiciary has played a **proactive and activist role** in safeguarding children's rights.

1. Right to Education:

- *Unnikrishnan v. State of Andhra Pradesh (1993)*: Declared education a fundamental right, paving way for Article 21A.

2. Child Labour & Exploitation:

- *M.C. Mehta v. State of Tamil Nadu (1996)*: Directed compensation and rehabilitation for children working in hazardous industries.

3. Children in Custody & Protection:

- *Sheela Barse v. Union of India (1986)*: Ordered humane treatment and release of children from jails.

4. Nutrition and Welfare Schemes:

- *People's Union for Civil Liberties v. Union of India (2001)*: Directed conversion of food schemes into legal entitlements, strengthening mid-day meals for children.

5. Child Sexual Abuse:

- Courts have insisted on child-friendly courts, speedy trials, and victim protection under POCSO.

Trend: The judiciary interprets child rights broadly — linking them to dignity, survival, development, and international obligations.

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 right to privacy was not explicitly mentioned in the original Constitution. For decades, Indian courts had delivered mixed opinions on whether privacy could be considered 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 held that privacy was not a fundamental right.
- This view became problematic as India entered the digital era where personal data, surveillance, and autonomy issues became increasingly significant.

- **Turning Point:**

- In 2012, while hearing petitions challenging the Aadhaar biometric identity scheme, the Supreme Court referred the question of privacy to a larger bench.

- A **nine-judge bench** in *Justice K.S. Puttaswamy v. Union of India (2017)* unanimously declared that **privacy is a fundamental right under Article 21**.

- **Key Principles Laid Down:**

- Privacy is intrinsic to life and liberty and cannot be denied.
- It covers personal choices, bodily integrity, family life, sexual orientation, health data, and information autonomy.
- Privacy is essential for dignity, democracy, and freedom of expression.

- **Importance:**

- It changed the way citizens' rights are viewed in the digital world.
- Provided the constitutional foundation for challenges to surveillance, data misuse, and even reproductive and sexual rights.
- Marked a historic expansion of fundamental rights in India.

8.5.2 LGBTQ+ Rights – *Navtej Singh Johar v. Union of India (2018)*

For over 150 years, Section 377 of the Indian Penal Code criminalized “carnal intercourse against the order of nature.” This colonial-era law was used to harass and stigmatize LGBTQ+ persons.

- **Background:**

- In 2009, the Delhi High Court in *Naz Foundation v. Government of NCT of Delhi* decriminalized homosexuality.
- However, in 2013, the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* reversed this, reinstating criminality and sparking nationwide protests.
- In 2016, petitions were filed by individuals including dancer Navtej Singh Johar, challenging Section 377 again.

- **Judgment:**

- In 2018, a **five-judge constitutional bench** unanimously struck down Section 377 insofar as it applied to **consensual same-sex relations between adults**.

- The Court held that LGBTQ+ persons are entitled to equality (Article 14), dignity and liberty (Article 21), and freedom of expression (Article 19).
- It affirmed that constitutional morality, not majoritarian morality, guides rights in India.
- **Impact:**
 - Decriminalization provided recognition and dignity to LGBTQ+ persons.
 - Opened new debates on same-sex marriage, inheritance, adoption rights, and anti-discrimination protections.
 - Symbolized a shift in Indian society toward inclusivity and acceptance, guided by constitutional values.

8.5.3 Other Contemporary Judicial Developments in Rights Discourse

Beyond privacy and LGBTQ+ rights, the Indian judiciary has broadened rights jurisprudence in several other areas. These reflect the **evolving concerns of modern society** and the commitment of the judiciary to uphold justice in new contexts.

1. Right to Die with Dignity:

- In *Common Cause v. Union of India (2018)*, the Supreme Court recognized the right to die with dignity as part of Article 21.
- Allowed passive euthanasia and legally recognized living wills, affirming autonomy over medical decisions at the end of life.

2. Decriminalization of Adultery:

- In *Joseph Shine v. Union of India (2018)*, the Court struck down Section 497 of the IPC, which criminalized adultery.
- The judgment emphasized dignity, equality, and autonomy, declaring that treating women as property of men is unconstitutional.

3. Women's Rights in Religious Spaces:

- In *Indian Young Lawyers Association v. State of Kerala (2018)* (Sabarimala case), the Court ruled that women of all ages should be allowed entry into the temple, holding that exclusion based on gender violated equality and dignity.

4. **Digital Rights and Internet Freedom:**

- In *Anuradha Bhasin v. Union of India (2020)*, the Court declared access to the internet as essential for freedom of speech and trade.
- Emphasized that restrictions on the internet must meet the tests of necessity and proportionality.

5. **Environmental Rights:**

- The right to a clean environment has been linked with Article 21 (Right to Life).
- Courts have recognized environmental protection as essential for health and dignity of present and future generations.

6. **Identity and Citizenship:**

- Aadhaar-related judgments balanced the need for welfare delivery with concerns of privacy and surveillance.
- The Court restricted the use of Aadhaar data, emphasizing that welfare schemes should not override dignity.

8.6 Summary

- ❖ The Indian Constitution ensures **equality and social justice** through special provisions for marginalized groups such as SCs, STs, OBCs, women, children, and minorities.
- ❖ **Constitutional safeguards** for SCs and STs include abolition of untouchability, reservation in politics, education, jobs, and protection from exploitation.
- ❖ **OBCs** benefit from reservations in jobs and education following the **Mandal Commission Report (1990)** and the establishment of NCBC.
- ❖ **Minority rights** ensure cultural, educational, and religious freedoms under Articles 29–30 and linguistic protections under Articles 350A & 350B.

- ❖ The **reservation policy** evolved historically from the Poona Pact (1932) to modern constitutional amendments like the 93rd (OBC in private education) and 103rd (EWS reservation).
- ❖ **Debates on reservation** revolve around balancing social justice with merit, addressing the creamy layer, and expanding criteria to economic disadvantage.
- ❖ **Women's rights** are secured through constitutional provisions (Articles 14–16, 39, 42) and protective laws like POSH Act, Domestic Violence Act, and Maternity Benefit Act.
- ❖ **Vishaka v. State of Rajasthan (1997)** recognized sexual harassment as a violation of fundamental rights, leading to workplace safety guidelines.
- ❖ **Recent judicial developments** have advanced women's rights in reproductive autonomy, triple talaq abolition, and temple entry rights.
- ❖ **Children's rights** are protected under Articles 21A, 23, and 24, the RTE Act (2009), POCSO Act (2012), and child labour laws.
- ❖ The judiciary has played a **proactive role** in child rights, ordering reforms in education, food security, child labour eradication, and protection in custody.
- ❖ **Emerging rights** such as right to privacy, LGBTQ+ rights, right to die with dignity, and digital rights demonstrate the Constitution's flexibility as a living document.

8.7 Key Terms

1. **Social Justice:** Principle of fairness ensuring equality and protection for disadvantaged groups.
2. **Reservation Policy:** Affirmative action providing reserved seats in education, jobs, and politics for marginalized groups.
3. **Mandal Commission:** A 1979 commission recommending 27% OBC reservation in education and government jobs.
4. **EWS Reservation:** 10% reservation for economically weaker sections introduced by the 103rd Constitutional Amendment (2019).
5. **POSH Act (2013):** Law to prevent and address sexual harassment at workplaces.
6. **RTE Act (2009):** Ensures free and compulsory education for children aged 6–14 years.

7. **POCSO Act (2012):** Protects children from sexual offences with stringent punishments and child-friendly procedures.
8. **Right to Privacy:** Declared a fundamental right under Article 21 by *Puttaswamy v. Union of India (2017)*.
9. **Section 377:** Colonial-era law criminalizing homosexuality, decriminalized in *Navtej Johar v. Union of India (2018)*.
10. **Constitutional Morality:** Principle that constitutional values of equality and dignity override social prejudices or traditions.

8.8 Descriptive Questions

1. Explain the constitutional safeguards provided for Scheduled Castes and Scheduled Tribes in India.
2. Discuss the recommendations of the Mandal Commission and analyze its impact on Indian society and politics.
3. Critically examine the 93rd and 103rd Constitutional Amendments in the context of the reservation policy.
4. Evaluate the role of the judiciary in advancing women's rights with reference to landmark cases.
5. Explain the significance of the Vishaka Guidelines (1997) in shaping workplace rights for women.
6. Analyze the Right to Education Act (2009) and its effectiveness in ensuring educational opportunities for children.
7. Discuss the problem of child labour in India and evaluate the legal measures adopted to combat it.
8. Examine the recognition of the Right to Privacy in *Justice K.S. Puttaswamy v. Union of India (2017)* and its wider implications.
9. Assess the importance of the *Navtej Singh Johar v. Union of India (2018)* judgment in expanding the scope 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

Social justice in India requires extending equal opportunities to communities that have been historically marginalized. Among these, **tribal groups** face multiple disadvantages such as poverty, geographical isolation, lack of schools, and social exclusion. Access to quality education for tribal children is not only a constitutional right but also a pathway to empowerment, dignity, and inclusion.

This case study explores the challenges in implementing educational rights for tribal children, highlights policy interventions, and suggests measures for ensuring that constitutional guarantees translate into meaningful opportunities.

Background

The Constitution provides safeguards under **Articles 15(4), 16(4), 46, and 338A** for Scheduled Tribes (STs), emphasizing educational and economic advancement. Despite these provisions, tribal children often drop out of schools due to inadequate infrastructure, language barriers, and poverty. Government schemes such as **Eklavya Model Residential Schools (EMRS)**, scholarships, and the **Right to Education Act (2009)** aim to address these gaps, but implementation challenges persist.

Problem Statement 1: Lack of Access to Quality Schools in Tribal Areas

Many tribal villages are located in remote areas with little or no access to proper schools. Distance, poor infrastructure, and absence of qualified teachers contribute to high dropout rates.

Solution: Establishing more **residential schools and mobile teaching units** in remote areas. Recruitment of teachers from local tribal communities can ensure better communication and cultural sensitivity.

Problem Statement 2: Language and Cultural Barriers

Most tribal children speak their **mother tongues**, while formal education is often in regional or national languages, leading to comprehension issues and alienation.

Solution: Introduction of **bilingual education models** in early schooling, where tribal languages are used alongside the regional language. This will reduce learning gaps and foster cultural pride.

Problem Statement 3: Poverty and Child Labour

Poverty forces tribal children into child labour, cutting short their educational journey. Parents often see education as a burden rather than an investment.

Solution: Expanding **scholarship schemes, mid-day meals, and conditional cash transfers** for tribal families to incentivize schooling. Linking education with skill development can make learning more meaningful.

Problem Statement 4: Weak Implementation of Policies

Despite multiple schemes, poor monitoring and corruption affect policy outcomes. Many schools sanctioned under tribal education schemes remain non-functional.

Solution: Strengthening **community monitoring mechanisms** and involving tribal leaders and NGOs in school management. Use of digital dashboards to track attendance, infrastructure, and fund utilization can enhance transparency.

Conclusion

Education is the cornerstone of empowerment for tribal communities. While the Constitution and government policies provide a robust framework, effective **implementation, cultural sensitivity, and community participation** are key to ensuring real social justice. By addressing access, language, poverty, and governance issues, India can create an inclusive education system that uplifts tribal children and promotes equality.

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

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9.10 Case Study

9.0 Introductory Caselet

“Privacy in the Digital Age – Ramesh’s Dilemma”

Ramesh, a 27-year-old IT professional from Bengaluru, was enthusiastic about the rapid growth of digital technology in India. Like many others, he relied heavily on mobile applications for banking, shopping, healthcare consultations, and even daily commuting. Convenience was at his fingertips—until one day he noticed something unusual.

After making an online purchase using a new payment app, Ramesh began receiving **personalized advertisements** on his social media accounts and frequent promotional calls from unknown numbers. The pattern was too precise to be coincidental. Gradually, he realized that his personal data—location details, shopping habits, and financial transactions—was being shared with third-party companies without his explicit consent.

Disturbed, Ramesh began reading about **data privacy** and learned that in *Justice K.S. Puttaswamy v. Union of India (2017)*, the Supreme Court had declared the **Right to Privacy a fundamental right** under Article 21. The judgment emphasized that privacy is central to human dignity and personal liberty, covering not only physical privacy but also informational and digital privacy.

However, Ramesh remained worried. He asked himself:

- If the Constitution guarantees him the right to privacy, why was his data still vulnerable?
- Does the existing legal framework adequately protect citizens in the age of artificial intelligence, social media, and mass surveillance?
- Should there be **new constitutional interpretations or fresh legislation** to secure the rights of citizens in the digital era?

His dilemma highlights how the Constitution, though framed in 1950, continues to remain **deeply relevant in contemporary issues**. The same principles of equality, liberty, and dignity are being tested

against modern challenges like data security, environmental sustainability, gender justice, and technological governance. The Constitution's **flexibility and dynamic interpretation** ensure that it remains not just a historical document, but a living guide to democratic values in present-day India.

Critical Thinking Question

In a rapidly digitalizing world, do you think the **constitutional recognition of privacy as a fundamental right** is enough to protect citizens, or must India adopt **comprehensive digital rights and data protection laws** to safeguard democracy in the 21st century?

9.1 Role of the Constitution in India Today

9.1.1 Constitution as the Foundation of Democracy

The Indian Constitution serves as the **bedrock of democratic governance** in the country. It defines India as a **Sovereign, Socialist, Secular, and Democratic Republic** (Preamble, amended in 1976).

- **Universal Adult Franchise:** The Constitution grants every citizen above 18 years the right to vote (Article 326). This was revolutionary in 1950, as many democracies introduced voting rights gradually. In India, it gave political voice to millions of marginalized citizens from day one.
- **Separation of Powers:** Through Articles 52–151, the Constitution distributes powers among the **Legislature (Parliament and State Assemblies)**, the **Executive (President, Prime Minister, Council of Ministers, Governors, Chief Ministers)**, and the **Judiciary (Supreme Court, High Courts, lower courts)**. This prevents concentration of authority and ensures checks and balances.
- **Accountability and Rule of Law:** No one, not even the Prime Minister or President, is above the law. The Constitution empowers courts to strike down unconstitutional laws and executive actions through **judicial review (Article 13, Article 32)**.
- **Example:** Peaceful transitions of power in general elections since 1952—despite political upheavals—demonstrate how the Constitution sustains democracy.

9.1.2 Role in Ensuring Secularism

Secularism in India means that the state **does not identify with or favor any particular religion** but instead ensures equal treatment for all faiths.

- **Freedom of Religion (Articles 25–28):** Citizens can profess, practice, and propagate any religion. The state cannot impose religious beliefs nor discriminate based on them.
- **Equality and Non-Discrimination:** Article 15 prohibits discrimination on grounds of religion, while Article 16 ensures equal employment opportunities.
- **Minority Rights:** Article 30 allows religious and linguistic minorities to establish and administer their own educational institutions.
- **Judicial Role:** In *S.R. Bommai v. Union of India (1994)*, the Supreme Court held that secularism is part of the **basic structure** of the Constitution and cannot be altered.

- **Example:** The state celebrates diverse festivals like Eid, Diwali, Christmas, and Guru Nanak Jayanti as national holidays, reflecting equal respect to all religions.

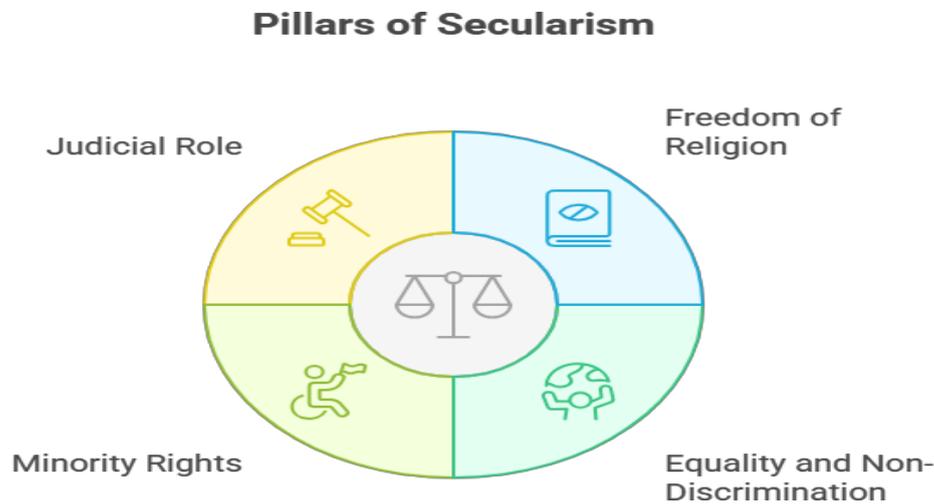


Figure 9.1

9.1.3 Promoting Pluralism and Diversity

India is one of the most diverse nations in the world, with over **1.4 billion people, 22 official languages (Eighth Schedule), thousands of dialects, numerous religions, and countless cultural practices.** The Constitution ensures that this diversity thrives within a unified national framework.

- **Cultural and Educational Rights (Articles 29–30):** Communities have the right to conserve their language, script, and culture, and to run their own institutions.
- **Federal Structure:** Articles 1–2 define India as a “Union of States,” giving space for regional identities within the national framework. States retain autonomy in subjects like education, law and order, and health under the **State List**.
- **Promotion of Languages:** The Eighth Schedule recognizes 22 languages, and Article 350A directs states to provide instruction in the mother tongue at the primary stage.
- **Pluralism in Practice:** India’s parliamentary debates, cultural festivals, regional cinema, and even its food habits highlight the coexistence of diversity under one Constitution.

- **Example:** The recognition of Tamil as a classical language, the preservation of tribal customs, and promotion of regional literature show how pluralism is safeguarded.

9.1.4 Safeguarding Rights and Freedoms in the 21st Century

The Constitution guarantees **Fundamental Rights (Part III, Articles 12–35)**, including equality, freedom of expression, protection from exploitation, and cultural rights. These provisions remain central to justice in the 21st century, but their scope has expanded through **judicial interpretation and constitutional amendments**.

- **Expansion of Rights:**
 - *Justice K.S. Puttaswamy v. Union of India (2017)*: Recognized the **Right to Privacy** under Article 21, protecting citizens in the digital age.
 - *Navtej Singh Johar v. Union of India (2018)*: Decriminalized homosexuality, affirming LGBTQ+ rights.
 - *Common Cause v. Union of India (2018)*: Recognized the right to die with dignity and passive euthanasia.
 - *Anuradha Bhasin v. Union of India (2020)*: Declared internet access integral to freedom of speech.
- **Contemporary Relevance:** These cases prove that the Constitution adapts to issues unforeseen by its framers—like data protection, gender justice, reproductive rights, and digital freedoms.
- **Example:** During the COVID-19 pandemic, Article 21 (Right to Life) was invoked to ensure availability of oxygen, healthcare, and vaccines, showing the Constitution’s living role in governance.

“Activity: Living the Constitution”

Divide students into small groups. Each group will be given a real-life scenario (e.g., internet shutdown, religious freedom, women’s rights, privacy issues). They must identify the **constitutional principle or article** involved and present how it ensures democracy, secularism, pluralism, or rights protection today.

9.2 Key Challenges

9.2.1 Federal Tensions and Centre–State Conflicts

India’s federalism is unique—it is not purely federal like the United States, nor purely unitary. The Constitution describes India as a “**Union of States**” (**Article 1**), where states cannot secede, and the Centre enjoys more powers than the states.

- **Nature of Federalism in India:**

- Distribution of powers is laid down in the **Union List, State List, and Concurrent List (Seventh Schedule)**.
- In times of emergency (Articles 352, 356, 360), the Centre can override state powers.
- Governors act as the link between the Centre and states, but this sometimes leads to accusations of political misuse.

- **Major Issues in Federal Relations:**

- **Financial disputes:** States argue they rely too much on the Centre for funds. The introduction of **GST (2017)** centralized taxation, increasing state dependence on compensation.
- **Political tensions:** When different parties rule at the Centre and states, conflicts intensify (e.g., Delhi’s tussle with the Union government on control over services).
- **Resource disputes:** Water-sharing conflicts like the **Cauvery dispute (Karnataka vs. Tamil Nadu)** or the **Krishna river dispute (Maharashtra, Karnataka, Andhra Pradesh, Telangana)**.
- **Central laws vs. state autonomy:** Laws like the **Farm Acts (2020, later repealed)** sparked protests as states argued agriculture is a State List subject.

- **Contemporary Relevance:**

For India’s unity and progress, **cooperative federalism** is essential—where Centre and states work together instead of clashing. Programs like **NITI Aayog** emphasize partnership, but true cooperation remains a work in progress.

9.2.2 Judicial Overreach and Concerns of Separation of Powers

The Constitution divides authority between the **legislature, executive, and judiciary** to prevent concentration of power. While judicial independence is a cornerstone of democracy, critics often argue that the judiciary sometimes steps into the roles of the legislature or executive, leading to **judicial overreach**.

- **Judicial Activism vs. Judicial Overreach:**

- **Judicial activism** is positive—it allows courts to protect rights and hold the government accountable when other branches fail.
- **Judicial overreach** occurs when courts start making policies or administrative decisions, undermining democratic accountability.

- **Examples of Judicial Activism:**

- *Kesavananda Bharati v. State of Kerala (1973)*: Introduced the **basic structure doctrine**, limiting Parliament's power to amend the Constitution.
- *Vishaka v. State of Rajasthan (1997)*: Laid down sexual harassment guidelines in the absence of a law.
- Environmental PILs: Ban on harmful industries near the Taj Mahal, prohibition of firecrackers in Delhi during pollution peaks.

- **Concerns of Overreach:**

- The judiciary sometimes issues orders on **policy matters** like price control, administrative appointments, or legislative deadlines.
- Critics argue that unelected judges must not undermine the authority of elected representatives.

- **Relevance Today:**

The challenge lies in balancing judicial activism that **protects citizens' rights** with restraint to prevent encroaching upon the domain of legislature and executive.

9.2.3 Concept of Constitutional Morality

The idea of **constitutional morality** goes beyond the letter of the law. It means respecting and upholding the **values, spirit, and principles of the Constitution**—justice, liberty, equality, fraternity—even when they conflict with social norms or majority opinion.

- **Origin of the Concept:**

- The term was first used by **Dr. B.R. Ambedkar**, who argued that in a diverse country like India, constitutional morality is essential to preserve democracy.

- **Judicial Application:**

- *Navtej Singh Johar v. Union of India (2018)*: Decriminalized homosexuality, stressing constitutional morality over conservative social morality.
- *Indian Young Lawyers Association v. State of Kerala (2018) (Sabarimala case)*: Allowed women entry into the temple, emphasizing equality and dignity over religious restrictions.
- *Shayara Bano v. Union of India (2017)*: Declared instant triple talaq unconstitutional, citing constitutional principles of gender justice.

- **Importance:**

Constitutional morality ensures that the **rights of individuals** are protected even when opposed by the majority or traditional practices.

- **Debates:**

Critics argue that over-reliance on constitutional morality gives too much power to judges to interpret morality subjectively. Supporters, however, view it as essential to uphold justice in a diverse and often divided society.

9.2.4 Balancing Tradition with Constitutional Ideals

India's rich cultural and religious traditions are centuries old. Many practices are deeply rooted in community identity. However, some traditions clash with constitutional values of equality, dignity, and justice, leading to **conflicts between law and custom**.

- **Areas of Conflict:**

- **Caste system vs. equality:** Despite Article 17 abolishing untouchability, caste-based discrimination persists in rural India.
- **Religious practices vs. gender rights:** Sabarimala temple entry ban on women of menstruating age; Parsi women losing rights after marrying outside the community.
- **Personal laws vs. gender equality:** Muslim women's fight against triple talaq, Hindu women demanding equal rights in property inheritance.
- **Customs vs. modern reforms:** Child marriage, dowry, and khap panchayat diktats continue despite legal prohibitions.
- **Judicial Interventions:**
 - *Shayara Bano (2017)*: Triple talaq abolished, upholding gender equality.
 - *Joseph Shine v. Union of India (2018)*: Decriminalized adultery, treating women as equal individuals.
 - Property rights for Hindu daughters upheld in *Vineeta Sharma v. Rakesh Sharma (2020)*.
- **Ongoing Debate:**

The challenge lies in respecting cultural traditions while ensuring that they do not undermine **fundamental rights**. A potential solution is a **Uniform Civil Code (Article 44)**, though it remains controversial due to India's diversity.

9.3 Role of Citizens in Upholding the Constitution

9.3.1 Constitutional Literacy and Awareness

Constitutional literacy means understanding **what the Constitution stands for and how it affects citizens' everyday lives**. Unfortunately, many people remain unaware of their rights and obligations, which weakens democracy.

- **Why It Matters:**

- Citizens cannot claim their **fundamental rights** (Articles 12–35) unless they know about them.
- Awareness ensures people can resist exploitation, demand accountability, and use constitutional remedies such as filing **Public Interest Litigations (PILs)** under Article 32.
- **Methods of Promoting Awareness:**
 - **Education:** Including constitutional studies in school and university curricula.
 - **Public Campaigns:** Election Commission’s awareness drives, legal literacy programs by the National Legal Services Authority.
 - **Digital Media:** Social media campaigns, podcasts, and apps spreading constitutional knowledge.
 - **Grassroots Efforts:** NGOs like PRS Legislative Research, Centre for Law and Policy Research (CLPR) conducting public awareness sessions.
- **Example:** Voter awareness campaigns like “No Voter Left Behind” emphasize not just the right but also the duty to vote.

9.3.2 Fundamental Duties of Citizens

The framers originally included only rights in the Constitution. However, during the **42nd Amendment (1976), Part IV-A was added, introducing Fundamental Duties under Article 51A**. The idea was that citizens should balance the enjoyment of rights with the performance of duties.

- **List of Duties (11 in total):**
 1. To abide by the Constitution and respect its ideals, the National Flag, and the National Anthem.
 2. To cherish the noble ideals of the freedom struggle.
 3. To uphold and protect sovereignty, unity, and integrity of India.
 4. To defend the country and render national service.
 5. To promote harmony and common brotherhood beyond caste, religion, and language.
 6. To renounce practices derogatory to women’s dignity.

7. To preserve the environment, forests, rivers, and wildlife.
8. To safeguard public property and abjure violence.
9. To strive for excellence in all spheres.
10. To provide opportunities for education to children (added by 86th Amendment, 2002).
11. To develop a spirit of scientific temper and humanism.

- **Importance:**

- Remind citizens that democracy is a two-way process.
- Create a sense of discipline, unity, and patriotism.
- Help build a society aligned with constitutional values.

- **Limitation:** Duties are **non-justiciable**—meaning citizens cannot be punished by courts for not following them. They remain moral and civic obligations.

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 Constitution empowers citizens to be **active participants in governance** rather than passive subjects. Civic responsibility ensures that democracy thrives beyond elections.

- **Forms of Civic Participation:**

- **Voting:** The most basic yet powerful form of participation. Higher voter turnout strengthens democracy.
- **Local Governance:** Participation in Gram Sabhas, municipal bodies, and Ward Committees.

- **Community Action:** Volunteering, neighborhood associations, and social service.
- **Digital Activism:** Online petitions, campaigns on rights (e.g., net neutrality, climate action).
- **Peaceful Protests:** Recognized under Article 19(1)(b) (right to assemble peacefully).
- **Examples:**
 - The **India Against Corruption movement (2011)** highlighted civic participation in demanding accountability.
 - Large-scale participation in **Swachh Bharat Abhiyan** reflected how civic responsibility aligns with constitutional ideals.
- **Relevance Today:**

Civic participation extends to ensuring **transparency and accountability** through mechanisms like **RTI (Right to Information Act, 2005)**. Citizens filing RTIs play a major role in fighting corruption.

9.3.4 Citizens as Guardians of Constitutional Values

Ultimately, citizens are the **true custodians of the Constitution**. Institutions may safeguard the law, but people safeguard its spirit.

- **Guarding Against Violations:**
 - Citizens must resist corruption, casteism, communalism, and authoritarian tendencies.
 - Public vigilance prevents the misuse of power.
- **Promoting Constitutional Morality:**
 - Citizens must embrace values like equality, dignity, liberty, and secularism in their everyday conduct.
 - Rejecting discriminatory practices and respecting diversity keeps democracy alive.
- **Contemporary Role:**
 - Whistleblowers expose corruption in public life.

- Youth movements demand climate action, gender justice, or internet freedom.
- Citizens engage in rights advocacy, ensuring democracy evolves with changing times.
- **Example:** The role of ordinary citizens in protesting unconstitutional laws or defending free speech reflects how public participation strengthens constitutional democracy.

9.4 Current Debates

9.4.1 Uniform Civil Code (UCC) Debate

- **Constitutional Basis:** Article 44 of the Directive Principles of State Policy directs the state to work toward a **Uniform Civil Code (UCC)**. This would replace personal laws based on religion or community with a single code governing marriage, divorce, succession, adoption, and inheritance.
- **Arguments in Favor of UCC:**
 - Promotes **gender equality** by eliminating discriminatory practices (e.g., polygamy, unequal inheritance, instant triple talaq).
 - Strengthens **national integration**, reducing divisions based on religious laws.
 - Reflects true **secularism**, where laws are common to all citizens, regardless of religion.
 - Provides **legal clarity and uniformity**, reducing conflicting judgments across personal laws.
- **Arguments Against UCC:**
 - Minority communities fear erosion of their **cultural and religious identity**.
 - Risk of imposing **majority cultural norms** as the “uniform” standard.
 - Practical difficulties in drafting a code acceptable to India’s diverse religious, linguistic, and tribal groups.
 - Seen by some as a politically motivated demand rather than a constitutional necessity.
- **Judicial Interventions:**

- *Shah Bano Case (1985)*: Supreme Court awarded maintenance to a divorced Muslim woman, sparking controversy and calls for UCC.
- *Sarla Mudgal v. Union of India (1995)*: The Court criticized misuse of personal laws for bigamy and reiterated the need for UCC.
- *Shayara Bano v. Union of India (2017)*: Triple talaq was declared unconstitutional, highlighting gender justice within personal law.
- **Contemporary Relevance**: The UCC remains one of the most debated constitutional questions, reflecting the tension between **cultural pluralism** and **uniform legal rights**.

9.4.2 Data Privacy and the Personal Data Protection Bill

- **Background**: In today’s digital era, data is considered the “new oil.” From social media to Aadhaar-linked services, citizens constantly share personal data, raising concerns about privacy, misuse, and surveillance.
- **Judicial Recognition**:
 - *Justice K.S. Puttaswamy v. Union of India (2017)*: A nine-judge bench of the Supreme Court declared **Right to Privacy a fundamental right** under Article 21.
 - Privacy includes bodily integrity, informational privacy, and protection from unwarranted surveillance.
- **Legislative Developments**:
 - **Personal Data Protection Bill (2019)**: Sought to regulate collection, storage, and processing of personal data by companies and government.
 - After debates and revisions, it was replaced by the **Digital Personal Data Protection Act (2023)**.
- **Debates Around Privacy Legislation**:
 - **For Strong Protections**: Safeguards citizens from corporate misuse and state surveillance.
 - **Concerns**: The 2023 Act grants wide exemptions to government agencies, raising fears of misuse.

- **Businesses:** Worry about compliance burdens, data localization, and restrictions on data transfers.
- **Citizens:** Demand stronger accountability mechanisms and data protection authorities.
- **Contemporary Relevance:** The debate reflects the challenge of balancing **individual liberty**, **national security**, and **digital innovation**. In an age of artificial intelligence and big data, constitutional rights must expand to safeguard digital freedoms.

9.4.3 Electoral Reforms – Transparency, Funding, and Technology

- **Importance of Electoral Integrity:** Free and fair elections are the **heart of Indian democracy**. However, issues of money power, criminalization of politics, and technological risks undermine trust in the electoral system.
- **Funding and Transparency:**
 - **Electoral Bonds (2018):** Introduced to curb black money, allowing anonymous donations to political parties through banks.
 - **Debate:** Critics argue bonds reduce transparency as voters cannot know who funds parties. Supporters say they formalize donations and reduce cash flow.
- **Technology in Elections:**
 - **EVMs (Electronic Voting Machines) and VVPATs (Voter Verified Paper Audit Trails):** Improve efficiency and reduce malpractice but face suspicion about tampering.
 - **Digital Campaigns:** Social media use in elections has raised concerns about fake news, foreign influence, and violation of spending limits.
- **Judicial and Institutional Efforts:**
 - *Association for Democratic Reforms v. Union of India (2002):* Supreme Court made disclosure of criminal, financial, and educational background of candidates mandatory.
 - Election Commission of India continues to propose reforms, including stricter spending audits and measures to decriminalize politics.
- **Contemporary Relevance:** The debate centers on whether electoral reforms can ensure **transparency, accountability, and public trust** while embracing technology responsibly.

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:**

- Article 368 provides the procedure for constitutional amendments. The process is neither too rigid (like the U.S. Constitution) nor too flexible (like the U.K. Constitution).
- Till now, India has passed **over 100 constitutional amendments**, ranging from minor technical changes to transformative reforms.
- **Examples of Dynamism:**
 - **42nd Amendment (1976):** Strengthened central powers during Emergency; added “Socialist” and “Secular” to the Preamble.
 - **73rd and 74th Amendments (1992):** Empowered local self-governments through Panchayati Raj and urban municipalities.
 - **86th Amendment (2002):** Introduced Article 21A, making education a fundamental right.
 - **101st Amendment (2016):** Brought GST, reshaping India’s economic federalism.
- **Relevance:** This ability to **adapt without breaking** ensures continuity of the Constitution while making it responsive to people’s needs.

9.5.2 Adapting to Socio-Economic Changes

Since independence, India has moved from being a **poor, agrarian economy** to an emerging global power. The Constitution has continuously adapted to these transformations:

- **Economic Justice:** Directive Principles of State Policy (Articles 38–39) emphasize equitable distribution of resources, protection of workers, and prevention of wealth concentration.
- **Right to Education:** Recognizing education as a driver of empowerment, the **86th Amendment** made it a fundamental right for children aged 6–14 years.
- **Right to Information (RTI Act, 2005):** Rooted in the principles of transparency and accountability, it empowers citizens to question authorities.
- **Environmental Protection:** Article 48A (Directive Principle) and Article 51A(g) (Fundamental Duty) encourage state and citizen responsibility for safeguarding the environment. Judicial rulings later linked **clean environment with Article 21 (Right to Life)**.

- **Welfare Schemes:** Initiatives like MGNREGA (2005) for employment and NFSA (2013) for food security show how constitutional principles of social and economic justice are translated into policy.
- **Illustration:** Expansion of rights such as food security, health, and digital access demonstrates that the Constitution grows to reflect **new socio-economic aspirations**.

9.5.3 Judicial Interpretations and Evolving Doctrines

The **judiciary acts as the interpreter and guardian** of the Constitution. Through its judgments, it has broadened the meaning of rights and developed doctrines that keep the Constitution alive.

- **Key Judicial Doctrines:**
 - **Basic Structure Doctrine (Kesavananda Bharati, 1973):** Parliament cannot amend the core features of the Constitution like democracy, secularism, or rule of law.
 - **Doctrine of Reasonableness (Maneka Gandhi v. Union of India, 1978):** Expanded Article 21 to include the right to live with dignity, not just mere existence.
 - **Right to Privacy (Puttaswamy, 2017):** Recognized informational and digital privacy as part of Article 21.
 - **Gender Justice (Shayara Bano, 2017; Navtej Johar, 2018):** Expanded equality and dignity to cover women's rights and LGBTQ+ rights.
 - **Environmental Jurisprudence (M.C. Mehta cases, 1980s onward):** Linked Article 21 with the right to clean air, water, and sustainable environment.
- **Relevance:** Judicial creativity ensures the Constitution responds to **new rights claims and societal transformations** without waiting for legislative action.

9.5.4 Globalisation and New Constitutional Challenges

Globalisation has connected India to the world economy, technology, and international human rights discourses. This has created **new challenges for constitutional governance**.

- **Digital Rights and Technology:**

- Issues like internet shutdowns, artificial intelligence, cybercrime, and data privacy test the scope of fundamental rights.
- *Anuradha Bhasin v. Union of India (2020)*: Declared internet access crucial for free expression.
- **Trade and Economy:**
 - India must balance commitments under WTO and global trade pacts with constitutional duties of protecting small industries and workers.
- **Climate Change and Environment:**
 - Courts have recognized intergenerational equity, linking environmental protection with the right to life.
 - Example: Supreme Court orders on pollution control in Delhi reflect global environmental concerns.
- **Human Rights and International Law:**
 - Courts often interpret rights in line with UN conventions (e.g., women’s rights, rights of the child).
 - Example: *Vishaka v. State of Rajasthan (1997)* drew upon international conventions to frame sexual harassment guidelines.
- **Contemporary Relevance:** Globalisation highlights the need for the Constitution to constantly evolve, balancing **national sovereignty with global obligations** while safeguarding citizens in an interconnected world.

9.6 Summary

- ❖ The Constitution of India remains relevant today as it provides the foundation of democracy, ensuring accountability, equality, and justice.
- ❖ It safeguards secularism and promotes pluralism and diversity, balancing cultural traditions with constitutional ideals.

- ❖ Fundamental rights have been expanded through judicial interpretations, including privacy, dignity, gender justice, and digital freedoms.
- ❖ Federal tensions and Centre–State conflicts highlight the need for cooperative federalism in modern governance.
- ❖ Concerns of judicial overreach raise debates about the balance of power between judiciary, legislature, and executive.
- ❖ The idea of constitutional morality emphasizes that constitutional values override social or majoritarian prejudices.
- ❖ Citizens play a vital role in upholding the Constitution through awareness, duties, civic participation, and activism.
- ❖ Current debates include Uniform Civil Code, data privacy, electoral reforms, and reservations, reflecting evolving challenges.

Conclusion

The conflict between privacy and freedom of expression represents one of the most delicate challenges in modern constitutional and human rights discourse. Both rights are fundamental to a democratic society. The right to privacy safeguards individual dignity, autonomy, and security, while freedom of expression ensures transparency, accountability, and vibrant public debate. However, neither right is absolute; they are subject to reasonable restrictions, and each must be exercised with sensitivity to the other. Courts and legislatures have increasingly emphasized a balanced approach, applying principles of proportionality and public interest. Ultimately, the goal is not to treat privacy and freedom of expression as mutually exclusive but to develop a harmonious framework where individual rights and constitutional democratic values can co-exist.

9.7 Key Terms

1. **Constitutional Morality** – Adherence to the values and spirit of the Constitution above societal or majority opinions.
2. **Uniform Civil Code (UCC)** – Proposal for common personal laws for all citizens regardless of religion.

3. **Right to Privacy** – Recognized as a fundamental right under Article 21 in *Puttaswamy v. Union of India (2017)*.
4. **Basic Structure Doctrine** – Principle that Parliament cannot amend the core features of the Constitution (*Kesavananda Bharati, 1973*).
5. **Electoral Bonds** – Financial instruments introduced in 2018 for political donations, raising debates on transparency.
6. **EWS Reservation** – 10% quota for Economically Weaker Sections introduced by the 103rd Constitutional Amendment (2019).
7. **Judicial Overreach** – When judiciary crosses into the domain of legislature or executive, raising separation of powers concerns.
8. **Constitutional Literacy** – Public awareness and understanding of constitutional rights, duties, and values.
9. **Living Document** – Concept that the Constitution evolves through amendments, judicial interpretations, and socio-political changes.

9.8 Descriptive Questions

1. Explain how the Constitution of India acts as the **foundation of democracy** in contemporary times.
2. Discuss the significance of **secularism and pluralism** in maintaining India's unity and diversity.
3. Critically examine the challenges of **Centre–State relations** in the federal structure of India.
4. What is meant by **judicial overreach**? Evaluate its impact on the principle of separation of powers.
5. Define **constitutional morality** and explain its importance with reference to recent Supreme Court judgments.
6. Examine the role of **citizens in upholding the Constitution** through constitutional literacy, duties, and civic participation.
7. Evaluate the **debates surrounding the Uniform Civil Code (UCC)** in India.
8. Analyze the relevance of the Constitution as a **living document** with examples of amendments and judicial interpretations.

9. Discuss the challenges posed by **globalisation and technology** to constitutional governance in India.

9.9 References

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8. Relevant Supreme Court Judgments: *Kesavananda Bharati (1973)*, *Vishaka (1997)*, *Puttaswamy (2017)*, *Navtej Johar (2018)*, *Common Cause (2018)*.
9. Articles and policy briefs from **PRS Legislative Research** and **NITI Aayog** on federalism, electoral reforms, and data privacy.

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

In the 21st century, technology has transformed how people interact, trade, and express themselves. With this progress comes a new challenge: **data privacy**. Citizens leave behind digital footprints through online shopping, social media, and financial transactions. Recently, debates around the “Right to be Forgotten” have gained attention in India, testing the flexibility of the Constitution to safeguard privacy in the digital era.

Background

The Constitution did not originally mention privacy. However, in *Justice K.S. Puttaswamy v. Union of India (2017)*, the Supreme Court declared **privacy a fundamental right under Article 21**. Despite this, digital companies continue to store and use personal data without adequate consent. Many citizens demand that outdated or irrelevant personal information—such as old court records or sensitive medical details—should be erased from public platforms, similar to the European Union’s data protection laws.

Problem Statement 1: Lack of Comprehensive Legislation

India has no clear, enforceable framework that guarantees citizens the right to erase personal data from public domains.

Solution: Enact a strong **data protection law** aligned with global standards, incorporating the Right to be Forgotten as a statutory right.

MCQ:

Which case recognized privacy as a fundamental right in India?

- a) Kesavananda Bharati v. State of Kerala
- b) Justice K.S. Puttaswamy v. Union of India
- c) Indra Sawhney v. Union of India
- d) Shah Bano v. Union of India

Answer: b) Justice K.S. Puttaswamy v. Union of India

Problem Statement 2: Conflict Between Privacy and Freedom of Expression

News portals and search engines argue that erasing information may affect **freedom of press and transparency**. For example, removing a criminal record may hide facts of public importance.

Solution: A **balanced legal test** must be developed where courts weigh individual privacy against public interest before erasing information.

MCQ:

What is the main challenge in implementing 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) Conflict with freedom of expression

Problem Statement 3: Weak Citizen Awareness

Most internet users in India are unaware of their digital rights. As a result, data misuse continues without accountability.

Solution: Launch nationwide **digital literacy campaigns** to educate citizens about privacy rights, cyber laws, and safe internet practices.

MCQ:

Which of the following can best protect citizens from digital data misuse?

- a) Digital literacy and strong laws
- b) Avoiding internet use completely
- c) Sharing passwords publicly
- d) Ignoring privacy issues

Answer: a) Digital literacy and strong laws

Conclusion

The debate on the **Right to be Forgotten** shows how the Constitution functions as a **living document**, adapting to new technological challenges. While privacy has been recognized as a fundamental right, translating this into effective protection requires strong legislation, judicial balancing, and active citizen participation. The future of constitutional rights will increasingly depend on how India responds to such digital-age dilemmas.