

CONSTITUTIONAL LAW -I

COURSE OBJECTIVES:

This course aims to comprehend the philosophy of the Indian Constitution, the Historical background of the Indian Constitution, objectives of the Indian Constitution through the Preamble and the provisions relating to fundamental rights and citizenship. The purpose of the course is to acquaint the students with the Basic Postulates of the Constitution like the Constitutional Supremacy, Rule of law, and Concept of Liberty. It further aspires to fathom the conceptually crafted Directive Principles of State Policy and Fundamental Duties. To develop amongst the student's practical understanding of Constitutional provisions and to augment critical thinking skills related to the Constitution and various authorities and to give them a picture of Constitutional Parameters regarding the organization, Powers and Functions of the various Organs of the Government. The emphasis is also on the study of the nature of federal structure and its functioning. A critical analysis of the significant judicial decisions is offered to highlight judicial restraint, judicial passivity, judicial activism and judicial balancing. The students will be able to articulate their independent views over contemporary crucial constitutional issues. The course intends to provide students with tools for identifying Constitutional issues that may arise so that the issues can be anticipated and averted through proper planning and legal recourse. The course will also rely upon the legal case study method as a learning strategy for understanding the key principles of constitutional law. The course deals with both interpretation and implementation of the Indian Constitution.

इस पाठ्यक्रम का उद्देश्य भारतीय संविधान के दर्शन, भारतीय संविधान की ऐतिहासिक पृष्ठभूमि, प्रस्तावना के माध्यम से भारतीय संविधान के उद्देश्यों और मौलिक अधिकारों और नागरिकता से संबंधित प्रावधानों को समझना है। पाठ्यक्रम का उद्देश्य छात्रों को संवैधानिक सर्वोच्चता, कानून के शासन और स्वतंत्रता की अवधारणा जैसे संविधान के मूल सिद्धांतों से परिचित कराना है। यह आगे राज्य के नीति और मौलिक कर्तव्यों के वैचारिक रूप से तैयार किए गए निर्देशक सिद्धांतों की थाह लेने की इच्छा रखता है। छात्रों में संवैधानिक प्रावधानों की व्यावहारिक समझ विकसित करना और संविधान और विभिन्न प्राधिकरणों से संबंधित महत्वपूर्ण सोच कौशल को बढ़ाना और उन्हें सरकार के विभिन्न अंगों के संगठन, शक्तियों और कार्यों के संबंध में संवैधानिक मापदंडों की तस्वीर देना। संघीय ढांचे की प्रकृति और उसकी कार्यप्रणाली के अध्ययन पर भी जोर दिया जाता है। न्यायिक संयम, न्यायिक निष्क्रियता, न्यायिक सक्रियता और न्यायिक संतुलन को उजागर करने के लिए महत्वपूर्ण न्यायिक निर्णयों का एक महत्वपूर्ण विश्लेषण प्रस्तुत किया गया है। छात्र समकालीन महत्वपूर्ण संवैधानिक मुद्दों पर अपने स्वतंत्र विचारों को स्पष्ट करने में सक्षम होंगे। पाठ्यक्रम का उद्देश्य छात्रों को संवैधानिक मुद्दों की पहचान के लिए उपकरण प्रदान करना है जो उत्पन्न हो सकते हैं ताकि उचित योजना और कानूनी सहायता के माध्यम से मुद्दों का अनुमान लगाया जा सके और उन्हें टाला जा सके। पाठ्यक्रम संवैधानिक कानून के प्रमुख सिद्धांतों को समझने के लिए सीखने की रणनीति के रूप में कानूनी केस स्टडी पद्धति पर भी निर्भर करेगा। पाठ्यक्रम भारतीय संविधान की व्याख्या और कार्यान्वयन दोनों से संबंधित है।

COURSE OUTCOMES:

After completing this course, the students will be able to understand:

1. The Historical background and salient features of the Indian Constitution.
2. Concepts of Federalism and Secularism.
3. The importance of Preamble and various concepts envisaged under the same.
4. The definition of State with special reference to Fundamental Rights.
5. The importance of Fundamental Rights, Directive Principles of State Policy and Fundamental Duties and their Justiciability and non- Justiciability.
6. Implementation of Fundamental Rights through Articles 32 and 226.

MODULE 1

1.1- Philosophy of Constitution.

- Constitution as a basic norm.
- Concept of Rule of Law and Constitutionalism.
- Constitution as a living document.
- Forms and Models of Constitution.

1.2- Historical background and framing of the Indian Constitution.

- Legal system during East India Company's Rule in India.
- Legal system during British Crown's Rule in India.
- Freedom Struggle- Simon's Commission, Communal Award, Civil disobedience movement.
- Mountbatten's Plan 1947 and Indian Independence Act 1947.
- Framing and drafting of Indian Constitution by Constituent assembly.

1.3- Preamble

- Socio-Legal Concepts under Preamble.
- Preamble as a tool to interpret the Constitution.
- Judicial Pronouncements on Preamble.

1.4- Salient Features of the Indian Constitution.

1.5- Provisions relating to Citizenship and Citizenship Act 1955 (Part II).

1.1- Philosophy of Constitution (संविधान का शास्त्र)

Indian constitution is a written and rigid constitution in nature. It was adopted by the constituent assembly on 26th November 1949 and was enacted on 26th January 1950. At that time it contained 395 articles, 8 schedules, and 22 parts. Later 4 schedules were added by amendment and at present time it has 12 schedules. There were 105 amendments made to the constitution till October 2021.

Philosophy of the Constitution:

The Constitution provides a framework of governance. It lays down the basic governing set of principles or essential rules of governance to establish the basic organs and structure, functions, composition, and powers of government.

The philosophical thought behind it was that for being a strong and independent country there must be a constitution that helps to frame the interrelationship between various organs and regulate their relations with people. In the form of certain rights, the relationship between the government and the people was generally given on the basis of fundamental political, economic, and religious views of the nation.

Philosophy of Constitution through Preamble:

The preamble is a brief introduction to the Constitution and it gives summarised knowledge of the legislative intent and policy. A preamble is a brief form of ideas and beliefs which the constitution wants to achieve. It states the marginal contents of the constitution that are in our constitution.

The preamble of the constitution is the core of the constitution which contains words that the constitution-makers want to achieve like '**we the people of India**' means 'by the people, for the people, and to the people.

1. Sovereign(सर्वभौम):

Sovereignty is one of the essential requirements of statehood. It is indicative of the fact that India is not subject to any foreign power from an internal or external perspective and the state is free to legislate on any subject in conformity with the constitution.

The Preamble uses the words 'we the people of India'; the idea behind this is that a constitution is a creation of all the people and not a group of individuals or some older law. The Preamble emanated from the constituent assembly which represented the Indian people though it was not an elected mass. So we can say that sovereignty lies with the people of India and not the Parliament. Nor even is the constitution sovereign; it is the main expression of the people's Sovereignty.

2. Socialist(समाजवादी):

Socialist word was not there when the constitution was made but later by the 42nd amendment, it was added to our constitution and the basic meaning of socialist is socialism which the constitution provides to safe and secure the Indian citizens from social endangerment.

The supreme court in the Delhi science forum vs Union of India held that the Constitution does not lay down any economic policies and Indian socialism is different from Marxist socialism. Socialism will continue to have a different meaning until a necessity arises to delete it. Most significantly the validity of socialism in the Preamble has not been challenged yet.

3. Secularism (धर्मनिरपेक्षता):

Being secular means the state is neutral in any matters related to religion and it means the constitution does not promote or deprive any religion. It was also added in the 42nd amendment. Unlike the West, Indian secularism is not the result of a conflict between church and state; very often in our common language, the term secularism is used simply as the opposite of communitarianism. Secular is a vague term to be defined. The dictionary defines it as '**not concerned with religion**' and it implies religious freedom and tolerance and respect for ideas of nationalism, materialism, Humanism, etc.

The definition of secularism has two aspects one is negative aspect which is a state not to interfere in any religion and the other is a positive aspect which is the state to take necessary steps for ensuring equality of religions thus, helping minority religions would not be unconstitutional.

4. Democratic(लोकतांत्रिक):

It indicates that the source of the power of the government is in its people. It is the Government of the people for the people and by the people. In **Indira Nehru Gandhi VS Raj Narain**, it was held that democracy is a basic feature of the Indian Constitution and free and fair elections are also impliedly a basic feature. Democracy is the People's power and State's power vest in the people which means democracy makes the people supreme.

5. Republic(गणतंत्र):

It means that the head of the nation is an elected representative. Republic is a government that derives its powers directly or indirectly from the great body of the people and is administered by people who hold office for pleasure, for a limited time, or for good conduct. Even India's membership of the Commonwealth of Nations does not detract it from its Republican character; that is an external arrangement and the queen has not been recognized as the head of the country.

The Constitution also includes the Rights of the People in the Preamble:

1. Justice:

Justice means the harmonization of interests between individuals and society. Justice has been given precedence over other concepts of Liberty, equality, and fraternity in the Preamble. Justice has three facets- (a) Social justice (b) Economic justice (c) Political justice.

- **Social justice** has been given precedence over economic and political justice whereas economic justice precedes political justice in the Preamble. Social justice implies equal treatment of citizens regardless of their social status. Articles 14, 15, and 38 express this aim in particular.
- **Economic justice** is the binding gap between the rich and poor. Article 39 of DPSP is the charter of economic justice; in fact, all the provisions of DPSP (article 36-51) carry forward the goals of economic and Social Justice.
- **Political justice** implies the equal participation of all in the political process. Articles 325 and 326 provide for equal rights to all citizens (adults) to participate in elections and to vote in elections.

2. Liberty:

In the western concept, liberty was largely a negative concept. It meant an absence of interference in individual action by the government. But in the Indian Constitution Liberty is a positive concept. These have been drafted as fundamental rights. Liberty would mean freedom to do what one

likes but it also means Liberty has to be regulated in the larger interest of the society; so the constitution by giving fundamental rights also contains regulatory provisions for them.

Liberty of thought, expression, belief, worship in the preamble is given under Articles 14 to 35 as fundamental rights.

3. Equality:

The preamble talks of **equality of status and opportunity**. It has got legal, social, political, and economic dimensions. The concept is drafted in articles 14 to 18.

4. Fraternity(बंधुता):

It means a feeling of brotherhood. The goal of the constitution is to subdue the division forces in India by fostering a feeling of brotherhood among the Indian despite their diversity. For assuring the fraternity the provisions are made like equality of treatment and other fundamental rights, single citizenship, Directive Principles of State Policy, Fundamental duties (duty to Foster fraternity).

The concept of fraternity goes beyond the concept of secularism which gives unity and solidarity to social life. An ancient Indian word "**Vasudeva Kutumbakam**" means the whole world is one family and Article 51 of the Directive Principles of State Policy (DPSP) elaborates on this principle.

As to '**dignity of individual**' the prime objective of the concept of fraternity is to preserve and promote the dignity of the individual. **Article 17** abolishes untouchability which is an affront to individual dignity. In case of infringement of fundamental rights, one can directly approach the supreme court and high court under article 32 or 226.

As to the **unity and integrity of the nation**, article 51-A makes it the duty of every citizen to hold and protect the sovereignty, unity, and integrity of the nation.

The Preamble represents the philosophy, ideals, or the soul of the entire constitution. Other parts of the constitution are the mere elaborations of the concepts envisaged in the Preamble. The constitution provides rights for the growth of the country and its citizens and it keeps the country united and secures the citizens of the country. It gives the spirit of brotherhood that everyone should understand that they are the children of the same motherland and they should stay with each other with a sense of compassion for others and cooperation. To maintain the rights and equality of citizens, the constitution provides fundamental rights and directive principles of state policy which set the regulations for the government.

*Constitution as a basic norm.

THE BASIC NORM OR GRUNDNORM (बुनियादी मानदंड)

- According to Kelsen every legal system is based on series of oughts or norms which derives their validity from some initial or fundamental 'ought or norm'. This is referred by him as Grundnorm or basic norm or fundamental norm. This Grundnorm is the highest norm in the society from which other norms emanate.
- He said that this norm may not be the same in every legal system; but it is always there in one or the other form.
- Every law derives their validity from some rule standing behind it, but the Grundnorm has no rule behind it.
- Kelsen said that the grundnorm is the justification for the rest of the legal system or justification for rest of the laws prevalent in the society.
- Kelsen said that grundnorm are always valid and its validity can be ascertained only on the principle of minimum of effectiveness which means that it must be accepted by a certain number of persons or a certain number of person are willing to abide by it. It must not be accepted universally. All that is necessary is that it should command a minimum of support. When a grundnorm ceases to derive minimum of support, it ceases to be a basic norm and it is replaced by some other grundnorm which obtains the support of the people. And this will bring revolution in the state.

For example: if a person commits a murder, he is to be punished. This is provided by the Indian Penal Code and which ultimately emanates from Article 21 of the Indian Constitution i.e., right to life and personal liberty. This Article 21 also emanates from the Constitution of India. So, here suppose if we apply Kelsen's concept of Grundnorm then the Constitution of India is a Grundnorm. It will be considered as Grundnorm as long as it gets minimum support of the people. The moment it fails to get the minimum support of the people, it ceases to be a Grundnorm and it will ultimately bring a change in the legal system. Now the question arises whether Constitutional Law of India is a Grundnorm or not in a true sense.

WHETHER CONSTITUTIONAL LAW IS A GRUNDNORM OR NOT

In the Indian context, laws need to be evaluated on basis of parameters of the Constitution in order to be declared as valid laws. The laws prevalent in India derive their validity from the Constitution and are consequently subordinate to it. Therefore, looking at glance to this structure we can rightly consider Constitution as Grundnorm. However, the very fact that the Constitution can be amended shows that it is possible to derogate from the authority of the Constitution itself. If a Constitutional provision is amended substantially, it can no longer confer validity upon the laws under it. Similar would be the effect, if, a provision of Constitution is repealed. Again, it can be asserted that the framers of the Indian Constitution framed the constitution on the basis on some other higher norms. Hence, it is based on some principles. Here, also the criteria of Kelsen's Grundnorm remain unfulfilled which says that there is no rule behind the Grundnorm and Grundnorm is the ultimate norm. Hence, the Constitution of India cannot be regarded as Grundnorm even though it the supreme law of the land.

Now the next question that comes to your mind is; what are those principles on the basis of which the framers of our Constitution constituted the Indian Constitution? In my opinion in the Indian context, the principle of justice, Liberty, Equality and fraternity as set out in the Preamble of the Constitution guided our framers while constituting our Constitution. Hence, these principles can be rightly called as Grundnorm because I believe that Constitution is based on these principles and every law is judged on the basis of these principles in India. Even the provisions of Constitution itself are judged on these principles. If its provisions are against these principles, they will be scrapped. So, the Constitution of India cannot be regarded as Grundnorm in its true sense.

BASIC STRUCTURE OF THE CONSTITUTION AS A GRUNDNORM

In Indian context, the "Basic Structure" of the Constitution can be regarded as the Grundnorm which is the ultimate source of a legal system as the laws in the Constitution derives validity from the set standards of the basic structure.

The Basic structure majorly includes: The supremacy of the Constitution, India as a sovereign socialist, secular democratic, republic as enshrined in the Preamble and a welfare state, federal character of the Constitution, the unity and the integrity of the nation, separation of power between the legislature, the executive and the judiciary, PART- III i.e. Fundamental Rights. Laws enacted and enforced in the country have to be consistent with the basic structure and acquire their legal sanction if they comply with it as the touchstone of validity.

However, the critics are of the opinion that there is no such term as basic structure and its use is illegitimate. This contention can be answered by the Doctrine of Implied Legislation. It is not necessary that in a written Constitution everything is expressly stated. Therefore, there exists some inherent and implied conditions, limitations, powers in the constitution which are un-violable and unamendable. It hence follows that doctrine of implied limitations forms the basis and supports the idea of basic structure. The idea of Constitutional morality states that one should consider the norms and rules of the Constitution as supreme and should obey them. It should be kept in mind that an act of an individual should not be arbitrary in nature so as to violate such norm or rule.

So it can be said that for a law to be valid it should be in conformity with the basic structure, which means that if the law is obeying the set parameters and standards of the Grundnorm the law will be valid. This approach was witnessed in the judgement of *Naz Foundation v. Government of NCT of Delhi 2010 Cri LJ 94*. In this case it has been argued that criminalization of homosexuality is justified on

the basis of morality. However, the ideal approach as suggested above and was also held in the instant case is the use of Constitutional morality. In the absence of compliance with Constitutional morality, laws such as these should be invalidated. Hence, reference to the Basic structure and hence, the grundnorm is the ideal method to avoid such contentions involving the question of morality.

The parliament has the power to amend the constitution but it is subjected to procedural and substantive limitations. Article 368 talks about procedural limitations and for the first time substantive limitation was pointed out in the case of *Kesavananda Bharati v. State of Kerala AIR 1973 SC 1461*, as the principle of basic structure. Basic structure means that sphere of the constitution with which the parliament cannot interfere. It is the core of ultimate rule of recognition. This case supported the claim of calling the basic structure as the validating authority of any law or norm.

Basic Structure concept was reaffirmed- In *Indira Nehru Gandhi v. Raj Narain AIR 1975 SC 2299*, the Supreme Court struck down Clause (4) of article 329-A, which was inserted by the 39th Amendment on the ground that it was beyond the amending power of the parliament as it destroyed the "basic feature" of the constitution.

In case of *L. Chandra Kumar v. Union of India AIR 1997 SC 1125*, a Bench of seven Judges declared "That the power of judicial review vested in the High Court under Article 226 and in the Supreme Court under Article 32 of the Constitution is an integral feature of the Constitution, constituting part of its basic structure". Therefore we can observe that every law that is enacted gets its legal sanction from the basic structure which is the unamendable part of Constitution. Its validity and effectiveness is the proof of its efficacy.

***Concept of Rule of Law and Constitutionalism**

Rule of law refers to the supremacy of law: that society is governed by law and this law applies equally to all persons, including government and state officials. Following basic principles of constitutionalism, common institutional provisions used to maintain the rule of law include the separation of powers, judicial review, the prohibition of retroactive legislation and habeas corpus. Genuine constitutionalism therefore provides a minimal guarantee of the justice of both the content and the form of law. On the other hand, constitutionalism is safeguarded by the rule of law. Only when the supremacy of the rule of law is established, can supremacy of the constitution exist. Constitutionalism additionally requires effective laws and their enforcement to provide structure to its framework.

***Constitution as a living document**

The Indian Constitution is considered as a living document because:

- From time to time, the Indian Constitution must be amended to accommodate necessary changes.
- A living document is one that is updated and modified on a regular basis.
- Just like a living human being, the Indian constitution grows and changes over time. The Constitution is therefore seen as a living document.
- At various times in our country, those who have been denied their rights or denied equality have pointed to the constitution to seek their rights as evident from the struggle of the Tawa Matsya Sangh.
- The Indian Constitution recognises everyone as equal and gives citizens the right to protest peacefully for their rights.

1.2- Historical background and framing of the Indian Constitution

Background of Indian Constitution

In 1928, the All Parties Conference convened a committee in Lucknow to prepare the Constitution of India, which was known as the Nehru Report.

Most of India was under direct British rule from 1857 to 1947. Upon independence it became clear an new constitution was need to be created. But for that the all of India needed to be bough into the union. This meant the the Princely States needed to be convinced to become a part of the Indian union.

Either by force or diplomacy. Sardar Vallabhai Patel and V.P Menon did this unenviable task. Until this happened India was still legally a dominion under the British, responsible for external security. Thus, the constitution of India repealed the Indian Independence Act 1947 and Government of India Act 1935 when it became effective on 26 January 1950. India ceased to be a dominion of the British Crown and became a sovereign democratic republic with the constitution.

Before 1947, India was divided into two main entities – The British India which consisted of 11 provinces and the Princely states ruled by Indian princes under subsidiary alliance policy. The two entities merged together to form the Indian Union, but many of the legacy systems in British India is followed even now. The historical underpinnings and evolution of the India Constitution can be traced to many regulations and acts passed before Indian Independence.

Indian System of Administration

Indian democracy is a Parliamentary form of democracy where the executive is responsible to the Parliament. The Parliament has two houses – Lok Sabha and Rajyasabha. Also, the type of governance is Federal, ie there is separate executive and legislature at Center and States. We also have self-governance at local government levels. All these systems owe their legacy to the British administration. Let us see the historical background of the Indian Constitution and its development through the years.

Regulating Act of 1773

- The first step was taken by the British Parliament to control and regulate the affairs of the East India Company in India.
- It designated the **Governor** of Bengal (Fort William) as the **Governor-General (of Bengal)**.
- Warren Hastings became the first Governor-General of Bengal.
- Executive Council of the Governor-General was established (Four members). There was no separate legislative council.
- It subordinated the Governors of Bombay and Madras to the Governor-General of Bengal.
- The Supreme Court was established at Fort William (Calcutta) as the Apex Court in 1774.
- It prohibited servants of the company from engaging in any private trade or accepting bribes from the natives.
- Court of Directors (the governing body of the company) should report its revenue.

Pitt's India Act of 1784

- Distinguished between commercial and political functions of the company.
- Court of Directors for Commercial functions and Board of Control for political affairs.
- Reduced the strength of the Governor General's council to three members.
- Placed the Indian affairs under the direct control of the British Government.
- The companies territories in India were called "the British possession in India".
- Governor's councils were established in Madras and Bombay.

Charter Act of 1813

- The Company's monopoly over Indian trade terminated; Trade with India open to all British subjects.

Charter Act of 1833

- **Governor-General (of Bengal)** became the Governor-General of India.
- First Governor-General of India was Lord William Bentick.
- This was the final step towards centralization in British India.
- Beginning of a Central legislature for India as the act also took away legislative powers of Bombay and Madras provinces.
- The Act ended the activities of the East India Company as a commercial body and it became a purely administrative body.

Charter Act of 1853

- **The legislative and executive functions of the Governor-General's Council were separated.**
- 6 members in Central legislative council. Four out of six members were appointed by the provisional governments of Madras, Bombay, Bengal and Agra.
- It introduced a system of open competition as the basis for the recruitment of civil servants of the Company (Indian Civil Service opened for all).

Government of India Act of 1858

- The rule of Company was replaced by the rule of the Crown in India.
- The powers of the British Crown were to be exercised by the Secretary of State for India
- He was assisted by the **Council of India**, having 15 members
- He was vested with complete authority and control over the Indian administration through the Viceroy as his agent
- The Governor-General was made the Viceroy of India.
- Lord Canning was the first Viceroy of India.
- Abolished Board of Control and Court of Directors.

Indian Councils Act of 1861

- It introduced for the first time Indian representation in the institutions like Viceroy's executive + legislative council (non-official). **3 Indians entered the Legislative council.**
- Legislative councils were established in Center and provinces.
- It provided that the Viceroy's Executive Council should have some Indians as the non-official members while transacting the legislative businesses.
- It accorded statutory recognition to the portfolio system.
- Initiated the process of decentralisation by restoring the legislative powers to the Bombay and the Madras Provinces.

India Council Act of 1892

- Introduced indirect elections (nomination).
- Enlarged the size of the legislative councils.
- Enlarged the functions of the Legislative Councils and gave them the power of discussing the Budget and addressing questions to the Executive.

Indian Councils Act of 1909

1. This Act is also known as the Morley- Minto Reforms.
2. Direct elections to legislative councils; first attempt at introducing a representative and popular element.
3. It changed the name of the Central Legislative Council to the Imperial Legislative Council.
4. The member of the Central Legislative Council was increased to 60 from 16.
5. Introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'.
6. **Indians for the first time in Viceroys executive council.** (Satyendra Prasanna Sinha, as the law member)

Government of India Act of 1919

- This Act is also known as the Montague-Chelmsford Reforms.
- The Central subjects were demarcated and separated from those of the Provincial subjects.
- The scheme of dual governance, 'Dyarchy', was introduced in the Provincial subjects.
- Under the dyarchy system, the provincial subjects were divided into two parts – transferred and reserved. On reserved subjects, Governor was not responsible to the Legislative council.
- The Act introduced, for the first time, **bicameralism at the center.**

- **Legislative Assembly** with 140 members and **Legislative council** with 60 members.
- Direct elections.
- The Act also required that the three of the six members of the Viceroy's Executive Council (other than Commander-in-Chief) were to be Indians.
- Provided for the establishment of the Public Service Commission.

Government of India Act of 1935

- The Act provided for the establishment of an All-India Federation consisting of the Provinces and the Princely States as units, though the envisaged federation never came into being.
- Three Lists: The Act divided the powers between the Centre and the units into items of three lists, namely the Federal List, the Provincial List and the Concurrent List.
- The Federal List for the Centre consisted of 59 items, the Provincial List for the provinces consisted of 54 items and the Concurrent List for both consisted of 36 items
- The residuary powers were vested with the Governor-General.
- The Act abolished the Dyarchy in the Provinces and introduced 'Provincial Autonomy'.
- It provided for the adoption of Dyarchy at the Centre.
- Introduced bicameralism in 6 out of 11 Provinces.
- These six Provinces were Assam, Bengal, Bombay, Bihar, Madras and the United Province.
- Provided for the establishment of Federal Court.
- Abolished the Council of India.

Indian Independence Act of 1947

- It declared India as an Independent and Sovereign State.
- Established responsible Governments at both the Centre and the Provinces.
- Designated the Viceroy India and the provincial Governors as the Constitutional (normal heads).
- It assigned dual functions (Constituent and Legislative) to the Constituent Assembly and declared this dominion legislature as a sovereign body.

Points to be noted

- Laws made before the Charter Act of 1833 were called **Regulations** and those made after are called **Acts**.
- Lord Warren Hastings created the office of District Collector in 1772, but judicial powers were separated from District collector later by Cornwallis.
- From the powerful authorities of unchecked executives, the Indian administration developed into a responsible government answerable to the legislature and people.
- The development of the portfolio system and budget points to the separation of power.
- Lord Mayo's resolution on financial decentralization visualized the development of local self-government institutions in India (1870).
- 1882: Lord Ripon's resolution was hailed as the 'Magna Carta' of local self-government. He is regarded as the 'Father of local self-government in India'.
- 1924: Railway Budget was separated from the General Budget based on the Acworth Committee report (1921).
- From 1773 to 1858, the British tried for the centralization of power. It was from the 1861 Councils act they shifted towards devolution of power with provinces.
- 1833 Charter act was the most important act before the act of 1909.
- Till 1947, the Government of India functioned under the provisions of the 1919 Act only. The provisions of the 1935 Act relating to Federation and Dyarchy were never implemented.
- The Executive Council provided by the 1919 Act continued to advise the Viceroy till 1947. The modern executive (Council of Ministers) owes its legacy to the executive council.
- The Legislative Council and Assembly developed into Rajyasabha and Loksabha after independence.

***Legal system during East India Company's Rule in India**

- The world economy and political map changed dramatically between the seventeenth and nineteenth centuries. Unprecedented trade linked the continents together and set off a European scramble to discover new resources and markets. European ships and merchants reached across the world, and their governments followed after them, inaugurating the modern eras of imperialism and colonialism.
- Merchant trading companies, exemplified by the English East India Company, were the agents of empire at the dawn of early modern capitalism. The East India Company was a monopoly trading company that linked the Eastern and Western worlds.
- During the sixteenth century, English merchants became increasingly interested in the possibility of capturing some of the lucrative ocean-going spice trade in the Indian Ocean, which Dutch and Portuguese companies were finding very profitable.
- In 1600, Queen Elizabeth-I granted a royal charter to the "Governor and Company of Merchants of London trading with the East Indies," soon thereafter known as the East India Company(EIC), which gave the merchants a monopoly on all trade.
- East India Company, also called English East India Company, formally (1600-1708) Governor and Company of Merchants of London Trading into the East Indies or (1708-1873) United Company of Merchants of England Trading to the East Indies i.e., English company formed for the exploitation of trade with East and Southeast Asia and India, was incorporated by royal charter on December 31, 1600.
- The first English factory was set up on the banks of the river Hugli in 1651. This was the base from which the Company's traders, known at that time as "factors", operated. The factory had a warehouse where goods for export were stored, and it had offices where Company officials sat.
- They also persuaded the Mughal emperor Aurangzeb to issue a Farman granting the Company the right to trade duty-free.
- Company rule in India refers to the rule or dominion of the British East India Company on the Indian subcontinent. This is variously taken to have commenced in 1757, after the Battle of Plassey, when the Nawab of Bengal surrendered his dominions to the Company, in 1765, when the Company was granted the Diwani, or the right to collect revenue, in Bengal and Bihar, or in 1773, when the Company established a capital in Calcutta, appointed its first Governor-General, Warren Hastings, and became directly involved in governance.
- The rule lasted until 1858, when, after the Indian rebellion of 1857 and due to the consequences of the Government of India Act 1858, the British government assumed the task of directly administering India in the new British Raj.
- Until Clive's victory at Plassey, the East India Company territories in India, which consisted largely of the presidency towns of Calcutta, Madras, and Bombay, were governed mostly by the autonomous and sporadically unmanageable town councils, all composed of merchants.
- The councils barely had enough powers for the effective management of their local affairs, and the ensuing lack of oversight of the overall Company operations in India led to some grave abuses by Company officers or their allies. Clive's victory, and the award of the Diwani of the rich region of Bengal, brought India into the public spotlight in Britain.

- After the Battle of Buxar (1764), the Company appointed Residents in Indian states. They were political or commercial agents and their job was to serve and further the interests of the Company.
- Through the Residents, the Company officials began interfering in the internal affairs of Indian states. They tried to decide who was to be the successor to the throne, and who was to be appointed in administrative posts. Sometimes the Company forced the states into a “subsidiary alliance”.
- According to the terms of this alliance, Indian rulers were not allowed to have their independent armed forces. They were to be protected by the Company, but had to pay for the “subsidiary forces” that the Company was supposed to maintain for the purpose of this protection. If the Indian rulers failed to make the payment, then the parts of their territory were taken away as a penalty.

For example, when Richard Wellesley was Governor-General (1798-1805), the Nawab of Awadh was forced to give over half of his territory to the Company in 1801, as he failed to pay for the “subsidiary forces”. Hyderabad was also forced to cede territories on similar grounds.

***Legal system during British Crown’s Rule in India**

The beginning of Indian common law is traced back to 1726 when a Mayor’s Court in Madras, Bombay, and Calcutta was established by the East India Company. This was the first sign of Company’s transformation from a trading company to a ruling power with the added flavour of new elements of the Judiciary.

The Judicial System in India was neither adopted proper procedures nor had the proper organisation of the law court from the ancient India to Mughal India. The process of litigation in Hindu was served either by the caste elder or village Panchayats or zamindars whereas for Muslim Qazi supervise the litigation issues. If there were a discrepancy, the Rajas and Badshahs were considered as the fountainhead of the justice.

The beginning of Indian codified common law is traced back to 1726 when a Mayor’s Court in Madras, Bombay and Calcutta was established by the East India Company. This was the first sign of Company’s transformation from a trading company to a ruling power with the added flavour of new elements of the Judiciary. The chronological development of the judiciary system during British India has been discussed below:

1. Reforms under Warren Hastings (1772-1785 AD)

Warren Hasting established, two court for resolving disputes –civil disputes for District Diwani Adalat and criminal disputes for District Fauzdari Adalats.

District Diwani Adalat: It was established in districts to resolve the civil disputes which were placed under the collector. In this court Hindu law was applicable for Hindus and Muslim law for Muslim. If people seek more justice then they can move to Sadar Diwani Adalat which was functioned under a president and two members of Supreme Council.

District Fauzdari Adalats: It was set up to resolved the criminal issues which were placed under an Indian officers assisted by Qazi and Muftis. The entire functioning of this court was administered by the collector. The Muslim law was administered in this court. But the approval of capital punishment and for the acquisition was given by the Sadar Nizamat Adalat which headed by a Deputy Nizam who was assisted by the chief Qazi and Chief Mufti.

The formation Supreme Court at Calcutta under the Regulating Act of 1773 AD had original and appellate jurisdiction.

2. Reforms under Cornwallis (1786-1793 AD)

Under Cornwallis, the District Fauzadari Court was abolished and Circuit Court was set at Calcutta, Decca, Murshidabad and Patna. It acts as a court of appeal for civil as well as criminal cases which was

functioned under the European judges. He shifted **Sadar Nizamat Adalat** to Calcutta and put it under the supervision of **Governor-General and the members of Supreme Council** who were assisted by **Chief Qazi and Chief Mufti**. The District Diwani Adalat was renamed as District, City or the Zila Court which was functioned under a district judge.

He also established gradation civil courts for both Hindu and Muslim such as Munsiff Court, Registrar Court, District Court, Sadar Diwani Adalat and King-in-Council. He is known for the establishment of sovereignty of law.

3. Reforms under William Bentinck

Under William Bentinck, the four Circuit Courts were abolished and transferred the functions of the abolished court to the collectors under the supervision of the commissioner of revenue and circuit. Sadar Diwani Adalat and Sadar Nizamat Adalat were established at Allahabad. He made the Persian and a Vernacular language for the court proceeding in lower court and made English language as official language for Supreme Court proceeding. During his reign, Law commission was set up by Macaulay which codified the Indian laws. On the basis of this commission, a civil Procedure Code of 1859, an Indian Penal Code of 1860, and a Criminal Procedure Code of 1861 were prepared.

4. Government of India Act 1935

The Government of India Act, 1935 changed the structure of the Indian Government from “unitary” to that of “federal” type. The distribution of powers between the Centre and the Provinces required the balance to avoid disputes, which would have arisen between the constituent units and the Federation. It also provided for the establishment of a Federal Court, which was set up in 1937 with appellate and advisory jurisdiction. Its appellate jurisdiction was extended to civil and criminal cases.

Hence, we can say that initially Indian law was guided by the custom and religious book which was over the time evolve to the secular legal systems and the common law. It is noteworthy that the entire evolution of Indian judiciary was influenced by the ruling classes. For example- from ancient legal literature to Delhi Sultanate arbitration, then move to Mughal arbitration and finally despotic English (British).

***Freedom Struggle- Simon’s Commission, Communal Award, Civil disobedience movement**

Simon’s Commission - In November 1927, the British government appointed the Indian Statutory Commission, popularly known as the Simon Commission to investigate the need for further constitutional reforms. The Commission was composed of seven British members of Parliament. It had no Indian member. This was seen as a violation of the principle of self-determination and a deliberate insult to the self-respect of the Indians. Hence, Indians boycotted the Commission.

Recommendations of the Simon Commission

Main recommendations of the Simon Commission were:

- i) Dyarchy should be abolished.
- ii) Provincial Legislative Councils should be enlarged.
- iii) Federal government at the Centre should embrace not only British India but also the Princely States.
- iv) The Governor-General should select and appoint members of his Cabinet.
- v) The Communal representation was to continue.

Communal Award

- The **Communal Award** (also known as MacDonal Award) was created by the British prime minister Ramsay MacDonald on 16 August 1932; and was announced after the Round Table Conference (1930–32)
- This was Britain’s unilateral attempt to resolve the various conflicts among India’s many communal interests

- The Communal Award, based on the findings of the **Indian Franchise Committee** (also called the **Lothian Committee**), established separate electorates and reserved seats for minorities, including the depressed classes which were granted seventy-eight reserved seats

Main Provisions of the Communal Award

- Muslims, Europeans, Sikhs, Indian Christians, Anglo- Indians, depressed classes, women, and even the Marathas were to get **separate electorates**. Such an arrangement for the depressed classes was to be made for a period of 20 years.
- In the **provincial legislatures**, the seats were to be distributed on communal basis.
- The existing seats of the provincial legislatures were to be **doubled**.
- The Muslims, wherever they were in minority, were to be granted a weightage.
- Except in the North West Frontier Province, 3 per cent seats were to be reserved for women in all provinces.
- The depressed classes to be declared/accorded the status of minority
- The depressed classes were to get 'double vote', one to be used through separate electorates and the other to be used in the general electorates
- Allocation of seats were to be made for labourers, landlords, traders and industrialists.
- In the province of Bombay, 7 seats were to be allocated for the Marathas.

Civil disobedience movement

Civil Disobedience Movement: A pivotal moment in the Indian Nationalist movement was the civil disobedience movement. The civil disobedience movement is credited with helping India achieve freedom in numerous ways. It was noteworthy in many respects because it was a movement that reached the cities and saw the involvement of women and people from lower castes. The Civil Disobedience Movement began with Gandhi's well-known Dandi March. Gandhi set out on foot from the Sabarmati Ashram in Ahmedabad on March 12, 1930, with 78 other Ashram members for Dandi, a village on India's western seacoast about 385 kilometres from Ahmedabad. On April 6, 1930, they arrived in Dandi.

What is Civil Disobedience Movement?

Mahatma Gandhi's Dandi March served as the catalyst for the start of the Civil Disobedience Movement. In March 1930, Gandhi and 78 other ashram members set off on foot for Dandi, a village on Gujarat's western seaboard, from the Sabarmati Ashram in Ahmadabad.

On April 6, 1930, they arrived in Dandi, where Gandhi violated and broke the Salt Law. Since salt production in India was a monopoly of the British Government, it was regarded as illegal. The Civil Disobedience Movement gained significant support thanks to the Salt Satyagraha, and the Salt March represented citizens' opposition to British government policy.

***Mountbatten's Plan 1947 and Indian Independence Act 1947**

Lord Mountbatten (India's last viceroy) proposed a plan in May 1947 according to which provinces were to be declared independent successor states with the power to choose whether to join the constituent assembly or not.

Mountbatten Plan Background

- Lord Mountbatten came to India as the last Viceroy and was assigned the task of a speedy transfer of power by the then British Prime Minister Clement Atlee.
- In May 1947, Mountbatten came up with a plan under which he proposed that the provinces be declared independent successor states and then be allowed to choose whether to join the constituent assembly or not. This plan was called the 'Dickie Bird Plan'.
- Jawaharlal Nehru (Born on November 14, 1889) when apprised of the plan, vehemently opposed it saying it would lead to Balkanisation of the country. Hence, this plan was also called Plan Balkan.
- Then, the viceroy came up with another plan called the June 3 Plan. This plan was the last plan for Indian independence. It is also called the Mountbatten Plan.

- The June 3 Plan included the principles of partition, autonomy, sovereignty to both nations, right to make their own constitution.
- Above all, the Princely States such as Jammu and Kashmir were given a choice to either join India or Pakistan. The consequences of these choices would affect the new nations for decades to come.
- This plan was accepted by both the Congress and the Muslim League. By then, the Congress had also accepted the inevitability of the partition.
- This plan was put into action by the **Indian Independence Act 1947** which was passed in the British Parliament and received the royal assent on 18 July 1947.

Provisions of the Mountbatten Plan

- British India was to be partitioned into two dominions – India and Pakistan.
- The constitution framed by the Constituent Assembly would not be applicable to the Muslim-majority areas (as these would become Pakistan). The question of a separate constituent assembly for the Muslim-majority areas would be decided by these provinces.
- As per the plan, the legislative assemblies of Bengal and Punjab met and voted for the partition. Accordingly, it was decided to partition these two provinces along religious lines.
- The legislative assembly of Sind would decide whether to join the Indian constituent assembly or not. It decided to go to Pakistan.
- A referendum was to be held on NWFP (North-Western Frontier Province) to decide which dominion to join. NWFP decided to join Pakistan while Khan Abdul Gaffar Khan boycotted and rejected the referendum.
- The date for the transfer of power was to be August 15, 1947.
- To fix the international boundaries between the two countries, the Boundary Commission was established chaired by Sir Cyril Radcliffe. The commission was to demarcate Bengal and Punjab into the two new countries.
- The princely states were given the choice to either remain independent or accede to India or Pakistan. The British suzerainty over these kingdoms was terminated.
- The British monarch would no longer use the title 'Emperor of India'.
- After the dominions were created, the British Parliament could not enact any law in the territories of the new dominions.
- Until the time the new constitutions came into existence, the Governor-General would assent any law passed by the constituent assemblies of the dominions in His Majesty's name. The Governor-General was made a constitutional head.

On the midnight of 14th and 15th August 1947, the dominions of Pakistan and India respectively came into existence. Lord Mountbatten was appointed the first Governor-General of independent India and M .A. Jinnah became the Governor-General of Pakistan.

*** Framing and drafting of Indian Constitution by Constituent assembly**

The process of **framing of Indian constitution** was initiated by M.N.Roy by introducing the thought of creating a Constituent Assembly in 1934. Roy was a trailblazer of the Indian communist movement. He also supported radical democratism. It was in 1935 that the Indian National Congress formally requested the formation of the Constituent Assembly to initiate the process of framing the Indian constitution.

Pt. Jawaharlal Nehru started the official process of framing of Indian constitution. He announced on behalf of the Indian National Congress in 1938 that the Indian constitution should be created, excluding any kind of foreign influence. Let us learn more about the framing and evolution of Indian Constitution.

Framing of Indian Constitution

Pt. Nehru, while announcing his desire to frame the Indian Constitution, also mentioned the creation of a Constituent Assembly, which would be elected based on the 'adult franchise'. The constituent Assembly was established under the Cabinet Mission Plan (1946). The Assembly had to further form 13 committees to accomplish the task of framing of Indian constitution.

It was only based on the recommendations of the committees that the draft of the constitution was prepared. This draft was prepared by a Drafting Committee of 7 members, appointed on 29th August 1947. The **chairman of the Drafting Committee was Dr B.R. Ambedkar**. Other committee members were K.M. Munshi, B.L. Mitter, Mohammad Saadulla, N. Gopalaswami, Alladi Krishnaswami Ayyar, and D.P. Khaitan.

Evolution of Indian Constitution

The Indian constitution is the lengthiest **written constitution** in the world, inspired by various countries. Due to the drafting committee's arduous efforts, the framing of Indian constitution could be done successfully. The ruling British government approved the demand for a constitution in a formal '**August offer**' in 1940. The steps of the evolution of Indian Constitution have been illustrated herein-

- The Constituent Assembly comprised 389 members who were the representatives of all the provinces and states.
- The first meeting of the Assembly was held on 9th December 1946.
- **Dr Sachhidannand Sinha**, the oldest member, was selected as the **Provisional President of the Constituent Assembly**.
- On 11th December 1946, **Dr Rajendra Prasad was appointed as the permanent Chairman of the Assembly**.
- The strength of the Constituent Assembly was also reduced to 299 from 389 members originally, also owing to the removal of the members of the Muslim league following the country's partition.
- After the 13 Committees were formed, the Drafting Committee presented the draft under Dr B.R. Ambedkar.
- The draft constitution was approved and further published in 1948 (January).
- The framing of Indian constitution was a long and tedious process that involved several discussions, meetings, and deliberations.
- The draft was the final result of the components picked from various **sources of Indian constitution from other countries**, which made it the lengthiest & best-suited at the same time.
- The evolution of Indian Constitution had to cover a long way to be the lengthiest written constitution in the world.

Framing of Indian Constitution and its Features

The process of framing of Indian constitution finally culminated in 1949 when the Constituent Assembly successfully adopted it. It is said that while most of the draft constitution became effective on 26th January 1950, certain provisions such as Citizenship, Elections, Provisional Parliament, and temporary and transitional provisions had already come into effect from 26th November 1949.

Complete care was taken during the process of **framing of Indian constitution** regards to while borrowing the special **features of the constitution** that necessary modifications are made to them.

Some of the features of the constitution that were borrowed from various sources are as follows:

- The **Parliamentary form of government** from the British constitution
- The **Federal system** was adopted from the constitution of Canada
- **Emergency provisions** were inspired by the Weimar constitution
- The **Directive Principles of State Policy** were influenced by the Republic of Ireland
- **Fundamental Rights** were borrowed from the US constitution

1.3- Preamble(प्रस्तावना)

Socio-Legal Concepts under Preamble

A preamble of a bill is an introductory part of the document which explains the purpose, rules, regulations, and philosophy of the document. A preamble gives a brief introduction of documents by highlighting the principles and fundamental values of the document. It shows the source of the authority of the document.

The preamble of the Constitution of India is an introduction of the Constitution which includes the sets of rules and regulations to guide the people of the country. The inspiration and the motto of the citizens are explained in it. The preamble can be considered as the beginning of the Constitution which highlights the base of the Constitution.

Historical Background of Indian Constitution

Before 1947, India was divided into two main parts – 11 provinces that were ruled by the Britishers and Princely states ruled by Indian princes under the command of Britishers. Combining these two units formed the Union of India. The preamble is based on the principles written by the Constituent Assembly.

It provides a way of life, which includes fraternity, liberty, and equality as the notion of a happy life and which can not be taken from each other. Liberty, equality, and fraternity and connected with each other and they can not be separated, which means without equality, liberty would produce the supremacy of the minority over the majority. Equality without liberty would kill individual perception. And fraternity helps liberty and equality in their course of action.

Who wrote the Preamble of India and Date of its Adoption

The Preamble of the Indian Constitution is primarily based on the 'Objective Resolution' written by Jawaharlal Nehru. He introduced his objective resolution on December 13, 1946, later it was accepted by the Constituent Assembly on 22 January 1947.

The drafting committee observed that the preamble must be limited in defining the important features of the new state and its socio-political objectives and other important matters should be refined further in the Constitution. The committee changed the motto from 'Sovereign Independent Republic' to 'Sovereign Democratic Republic' as it was mentioned in the 'Objective Resolution'.

The preamble can also be called the soul of the constitution as it has everything about the constitution. It was adopted on 26th November 1949 and it was started from 26th January 1950 also known as the Republic Day.

Components of Preamble of the Indian Constitution

The components of the preamble are:

1. The preamble shows that the people of India are the source of authority. It means power lies with the citizens to elect their representatives and they also have the right to criticize their representatives.
2. It comprises the date of its adoption which is November 26th, 1949.
3. It states the objectives of the Constitution of India, which are justice, liberty, equality, and fraternity to maintain the integrity and unity of the nation as well as the citizens.
4. It also justifies the nature of the Indian State, which is Sovereign, Socialist, Republic, Secular, and Democratic.

P.A. Inamdar v. the State of Maharashtra

In this case, the Supreme Court delivered a unanimous judgment declaring that the state can not impose any reservation policy on minority and non-minority unaided private colleges, including professional colleges.

This judgment was an attempt to clear the previous judgments of the Supreme Court on the case of T.M.A. Pai Foundation v. the State of Karnataka and Islamic Academy of Education v. the State of Karnataka.

The Supreme Court discussed some topics in this judgment related to minority and non-minority unaided higher education institutions:

•Reservation Policy

The Supreme Court stated that neither the policy of reservation nor any quota or percentage of admission can be enforced by the State in any minority or non-minority unaided educational institutions.

The institutions are free to admit students of their own choice including students of other communities and also the students of the same communities from different states in any manner the institution wants.

The State can not impose policies on reservation for giving admission on marks less than the criteria set by the Private Educational Institutions who do not ask for help from the state. Even if the state is providing minimum resources to the private educational institutions, that is no ground a state can implement its policies to force the institute on granting admissions to students with fewer marks than the given criteria.

•Admission Policy

The Supreme Court stated that the minority unaided educational institutions can enjoy total freedom until their undergraduate education. But there would be different provisions to apply for graduate and postgraduate level of education and also for technical and professional educational institutions.

In the minority educational institutions, transparency, and merit of the institute must be assured. The state is allowed to conduct common entrance tests to provide fair and merit-based admissions and removing the wrong administration.

The same candidate is allowed to appear in several tests. For every test, a merit list is created to identify the selected candidates who cleared the test and different institutions are allotted to the students depending on their marks and the admission is based on the score of the test and the options of the student filled in the admission form.

•Fee Structure

The Supreme Court stated that a reasonable fee structure is a very important component in the administration of the institution. It means that every institution is free to make its own fee structure but they can not abuse profits from the students and they can not charge capitation fees in any form.

The fees structure depends on certain factors which determine the reasonability of the fees:

1. The infrastructure and facilities available.
2. The investments made.
3. Salaries of the teachers and staff.
4. Future plans for expansion.

The Court held that the institutions must make a reasonable surplus which should not increase 15% for their future plans and betterment of the institution.

•Regulation and Control by the State

The judgment of the case established some rights to administer an institution:

- To admit students.
- To set up a reasonable fee structure.
- To constitute a governing body.
- To appoint staff (both teaching and non-teaching).
- To take action against problems.

It is an option for the minority educational institute to choose if they want to take help from the state or not. No institute can conduct any activity which violates the law in any way. So, the state can make provisions on the quality of the teachers and the minimum qualification of their course, but they can not interfere in their day-to-day administration. The main purpose of the management is to regulate the admission of students, recruiting staff and calculation of fee-structure which can not be controlled by the state.

•Role of Committees dealing with admissions and fees

The Supreme Court stated that non-minority unaided educational institutions must have certain restrictions that are in favor of the students. Professional education must be available to all eligible students on merit basis and nothing else.

So, committees must be established to regulate the admission procedure and to monitor the fee structure. Committees must look over the administration to avoid all the mal-practices which can be

created by the administration. If any committee misuses their power in any individual institute, the decision can be questioned by the administration as the committee is quasi-judicial in nature.

Objectives of the Indian Constitution

The main objective of the Indian Constitution is to promote harmony throughout the nation. As we know, the Constitution is the supreme law and it helps to maintain integrity in the society and to promote unity among the citizens to build a great nation. The factors which help in achieving this objective are:

Justice

The term 'Justice' comprises of three elements that complete the definition, which is social, economic, and political. Justice among the citizens is necessary to maintain order in society. Justice is promised through various provisions of Fundamental Rights and Directive Principles of State Policy provided by the Constitution of India.

- **Social Justice** – Social justice means that the Constitution wants to create a society without discrimination on any grounds like caste, creed, gender, religion, etc. Where people have equal social status by helping the less privileged people. The Constitution tries to eliminate all the exploitations which harm equality in the society.
- **Economic Justice** – Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. It means wealth must be distributed on the basis of their work, not with any other reason. Every person must be paid equally for an equal position and all people must get opportunities to earn for their living.
- **Political Justice** – Political Justice means all the people have an equal, free and fair right without any discrimination to participate in political opportunities. It means everyone has equal rights to access political offices and have equal participation in the processes of the government.

Equality

The term 'Equality' means no section of society has any special privileges and all the people have given equal opportunities for everything without any discriminations. It means removing all types of discriminations from society to build a healthy environment for the people to live in. Everyone is equal before the law.

Liberty

The term 'Liberty' means freedom for the people to choose their way of life, have political views and behavior in society. It means no unreasonable restrictions can be imposed on the citizens in terms of their thoughts, feelings, and views. But liberty does not mean freedom to do anything, a person can do anything but in the limit set by the law. Anything which can create public disorder can not come under liberty. These limits are set by the Constitution to avoid injuries in the name of liberty.

Fraternity

The term 'Fraternity' means a feeling of brotherhood and an emotional attachment with the country and all the people. It refers to a feeling which helps to believe everyone is the children of the same soil and are connected with each other. Brotherhood is above social norms or regulations, it is the relationship above caste, age, or gender. Fraternity helps to promote dignity and unity in the nation.

The preamble of the Indian Constitution does not grant any power or superiority to anyone while it gives direction and purpose to the Constitution. It only gives the fundamentals of the Constitution. It promotes equality by providing equal opportunities to the people without any discrimination. It helps in protecting all the people and maintaining the economic, social, and political justice among the citizens. Also, the preamble helps in explaining the facts which are needed to be explained.

Is Preamble a part of the Constitution?

This is a very controversial topic as there have been many discussions about the preamble being part of the Constitution. This question can only be answered by reading two cases.

Berubari Case

Berubari Case was used as a reference under Article 143(1) of the Constitution which was on the implementation of the Indo-Pakistan Agreement related to Berubari Union and in exchanging the enclaves which were decided for consideration by the bench consisting of eight judges. Through this case, the Court stated that 'Preamble is the key to open the mind of the makers' but it can not be considered as the part of the Constitution.

Kesavananda Bharati Case

This case created history as for the first time, a bench of 13 judges was assembled to hear a writ petition. The Court held that:

1. The Preamble of the Constitution will now be considered as part of the Constitution.
2. The Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.

So, it can be concluded that preamble is part of the introductory part of the Constitution.

Amendment of the Preamble

After the judgment of the Kesavanand Bharati case, it was accepted that the preamble is part of the Constitution. So, as a part of the Constitution, it can be amended under Article 368 of the Constitution, but the basic structure of the preamble can not be amended. Because the structure of the Constitution is based on the basic elements of the Preamble. As of now, the preamble is only amended once through the 42nd Amendment Act, 1976.

42nd Amendment Act, 1976

The 42nd Amendment Act, 1976 was the first act ever to amend the preamble of the Constitution. On December 18th, 1976, 'Socialist', 'Secular', and 'Integrity' were added to the preamble to protect economic justice and eliminate discrimination whatsoever. Through this amendment, 'socialist' and 'secular' were added between 'sovereign' and 'democratic', and 'Unity of the Nation' was changed to 'Unity and Integrity of the Nation'.

Interpretation by the Supreme Court

The preamble was added to the Constitution after the enactment of the Constitution. In the *Berubari Union Case*, the Supreme Court held that the preamble is not a part of the Constitution rather it was considered as the guiding principle for the provisions of the Constitution.

In the *Kesavananda Bharati case*, the Supreme Court changed its previous decision and accepted preamble as part of the Constitution which means it can be amended under Article 368 of the Constitution.

In the *LIC of India case*, the Supreme Court continued with its judgment on declaring preamble as part of the Constitution.

So, in the end, the preamble of the Constitution is considered a beautiful preface to the document as it contains all the basic information like the objective and philosophy of the Constitution.

Key Words in the Preamble

Sovereign

The preamble of the Constitution states that India is a Sovereign State. The term 'Sovereign' means the independent authority of the state. It means the state has control over every subject and no other authority or external power has control over it. So, the legislature of our country has the powers to make laws in the country with restrictions keeping in mind imposed by the Constitution.

Sovereignty, in general, has two types: External and internal. External sovereignty means the sovereignty in International Law which means the independence of the state against other states while internal sovereignty talks about the relationship between the state and the people living in it.

In the case of *Synthetic & Chemicals Ltd. v. the State of Uttar Pradesh*, the Supreme Court decided that the word 'sovereign' means that the state has the authority everything within the restrictions given by the Constitution. Sovereign means supreme or independence. This case helped in differentiating between external and internal sovereign. This case proposed that 'No country can have its own constitution unless it is not sovereign'.

Socialist

The term 'Socialist' was added after the 42nd Amendment, 1976, during the emergency. The term socialist denotes democratic socialism. It means a political-economic system that provides social, economic, and political justice.

Mrs. Indira Gandhi explained socialist as 'equality of opportunity' or 'better life for the people'. She said socialism is like democracy, everyone has their own set of interpretations but in India socialism is a way for the better life of the people.

- In the case of *Excel wear v. Union of India*, the Supreme Court found that with the addition of the word socialist, a portal is opened to lean the judgments in favor of nationalization and state ownership of the industry. But the principle of socialism and social justice can not ignore the interest of a different section of the society majorly the private owners.
- In the case of *D.S. Nakara v. Union of India*, the Court held that 'the basic purpose of socialism is to provide a decent standard of life to the people living in the country and to protect them from the day they are born till the day they die'.

Secular

The term 'Secular' was also added by the **42nd Amendment Act, 1976**, during the emergency. The Constitution states India as a secular state as the state has no official religion. The citizens have their own view of life and can choose their religion as they like. The state provides full freedom to the people to practice any religion of their choice. The state treats all religions equally, with equal respect and can not discriminate between them. The state has no right interfering with the people with their choice of religion, faith or idol of worship.

Important Components of Secularism are:

1. The right to equality is guaranteed by Article 14 of the Constitution.
2. Discrimination on any grounds such as religion, caste, etc is prohibited by Article 15 and 16 of the Constitution.
3. Article 19 and 21 of the Constitution discuss all the freedoms of the citizens, including freedom of speech and expression.
4. Article 24 to Article 28 covers the rights related to practice religion.
5. Article 44 of the Constitution abandoned the fundamental duty of the state to enact uniform civil laws treating all citizens as equal.

In the case of *S.R. Bommai v. Union of India*, the nine-judge bench of Apex Courts found the concept of secularism as the basic feature of the Constitution.

In the case of *Bal Patil v. Union of India*, the Court held that all religions and religious groups must be treated equally and with equal respect. India is a secular state where people have the right to choose their religion. But the state will have no specific religion.

In the case of *M.P. Gopalkrishnan Nair v. the State of Kerala*, the Court stated that the secular state is different than an atheist society, which means the state allows every religion and disrespect none.

Democratic

The term 'Democratic' is derived from the Greek words where 'demos' means 'people' and 'Kratos' means 'authority'. Which concludes that the government is constructed by the people. India is a democratic state as the people elect their government at all levels, that means, union, state, and local or ground level. Everyone has the right to vote irrespective of their caste, creed or gender. So, in a democratic form of government, every person has a direct or indirect share in administration.

In the case of *Mohan Lal v. District Magistrate of Rai Bareilly*, the Court stated that Democracy is a philosophical topic related to politics where the people elect their representatives to form a government, where the basic principle is to treat the minority the same way people treat the majority. Every citizen is equal before the law in the democratic form of government.

In the case of *Union of India v. Association of Democratic Reforms*, the Court states that the basic requirement of a successful democracy is awareness of the people. A democratic form of Government can

not survive without fair elections as fair elections are the soul of democracy. Democracy also improves the way of life by protecting human dignity, equality, and the rule of law.

Republic

India has a republic form of government as the head of state is elected and not a hereditary monarch like a king or queen. The term 'Republic' is obtained from 'res publica' that means public property or commonwealth. It means the power to elect the head of the state for a fixed term lies within the people. So, in conclusion, the word 'republic' shows a government where the head of state is elected by the people rather than any birthright.

15 Facts you didn't know about the Preamble

1. The original Constitution of India was written by Prem Bihari Narain Raizada in calligraphy with flowing italic style.
2. The original copies of the Indian Constitution written in both Hindi and English are present in special helium-filled cases, in the library of the Parliament of India.
3. The Indian Constitution consists of 25 parts with 448 articles and 12 schedules, which makes it the longest written constitution of any sovereign country in the world.
4. The Constituent Assembly took exactly 2 years, 11 months, and 18 days to complete the final draft of the Indian Constitution.
5. Around 2000 amendments were made before finalizing the Constitution.
6. The preamble of the Constitution of the United States of America also starts with 'We the people'.
7. The concept of fundamental rights came from the American Constitution as they had nine fundamental rights for the citizens.
8. The 44th amendment deleted the Right to Property as the fundamental right which was given under Article 31 of the Constitution as 'No person shall be deprived of his property save by authority of law'.
9. The Constitution of India is considered as the best Constitution as it tries to change the errors or mistakes in it. Because of this, the Constitution had more than 100 amendments in the past.
10. The page of the preamble along with all the other pages of the Constitution were designed and decorated by the renowned painter Beohar Rammanohar Sinha of Jabalpur.
11. The Constitution of India is a handwritten Constitution that was signed on 24th January 1950 by 284 members of the Constituent Assembly, where 15 of them were women came into force on 26th January, two days later from signing.
12. The final draft of the Constitution was completed on 26th November 1949 and it came into force after two months on 26th January 1950 known as Republic Day.
13. Many provisions are adopted from various Constitutions by our drafting committee while drafting the Constitution.
14. The concept of Directive Principles of State Policy (DPSP) is adopted from Ireland.
15. The concept of Liberty, Equality, and Fraternity in our Preamble was adopted from the French Motto of the French Revolution.

Conclusion

In conclusion, it will not be wrong to say that the preamble is an integral part of the Constitution because it contains the spirit and ideology of the Constitution. The preamble highlights the fundamental values and guiding principles of the Constitution. The preamble declares that the citizens of India accepted the Constitution on 26th November 1949, but the date of commencement of the Constitution was decided to be 26th January 1950.

Article 394 of the Constitution states that Articles 5, 6, 7, 8, 9, 60, 324, 367, 379 and 394 came into force since the adoption of the Constitution on 26th November 1949 and the rest of the provisions on 26th January 1950. The preamble of the Constitution of India is one of the best preambles ever drafted, not only in ideas but expressions as well. It contains the purpose of the constitution, to build an

independent nation that protects justice, liberty, equality, and fraternity which are the objectives of the Constitution.

***Preamble as a tool to interpret the Constitution**

The Indian Constitution in its Preamble provides as under
As per the Preamble of the Constitution, India is a **Sovereign, Socialist, Secular democratic** country so as to enable to the citizens of India the following:

- **Social, economic and political justice;**
- **Freedom/liberty** in idea, voicing opinions, faith, and devotion;
- **Equal** status and opportunity to everyone;
- And to promote among them all **fraternity** assuring the dignity of the individual and the **unity** and **integrity** of the Nation.

The preamble sets out principles which guide the people of our country, present the doctrines of our Constitution and sets out principles of the Indian Constitution.

The Indian Constitution was adopted on November 26th, 1949 and subsequently amended by 42nd Constitutional Amendment, 1976. The amendment so made signified India into a Sovereign, Socialist, Secular, and Democratic Republic. The preamble of our Constitution secures justice, liberty, equality for citizens of India and endorses brotherhood amongst the people of our nation.

The Preamble of the Constitution of India reflects the fundamental structure and the essence of the Constitution. The preamble operates as a channelizing device for the interpretation of the provisions of the constitution.

The preamble of the Constitution acts as the face of the Indian Constitution and lays down the idealistic philosophies.

The Preamble gives following objects for governance of India-

1. Justice comprising of social, economic and political justice;
2. Freedom of thoughts, expression, belief, faith, and worship;
3. Equality of status and opportunity;
4. And Brotherhood (Fraternity) assuring dignity to each individual and the unity and integrity of the country.

The Apex Court in the case of Kashi Prasad v. State of U.P observed that even though the preamble cannot be used to defeat the provisions of the legislation itself, but it can be used as a critical source for interpretation of legislation.

Meaning and Concept

The 'Preamble' of any legislation gives the introduction of a statute. It is also used to introduce a particular section of a statute or a particular group of sections of a statute. The term Preamble has been defined in various dictionaries.

A Preamble is a statement made by the legislature giving the reasons for passing a particular statute. It is useful in interpreting any lack of certainty within the statute to which it is prefixed.

The Preamble of the Indian Constitution was initially drafted by Sh. B. N. Rau by way of a memorandum dated May 30, 1947. It was subsequently reproduced in the Draft of October 7, 1947.

Scope of the Preamble

The Preamble gives guidance and states the purpose for which the Constitution of India is framed. It does not give any authority, but it encapsulates the fundamental objectives of the Constitution. The Preamble usually sets out the main aim which a particular legislation is intends to achieve. The whole objective of the preamble is to design and deliver specific facts which need to be explained and recited so as to understand the basic objective and purpose of a statute.

The Preamble of our Constitution explains all aspects of humanity and tolerance as it is required by human beings to survive with dignity and respect.

The majority bench of the Supreme Court in the case of A.K Gopalan v. State of Madras held that the word 'law' as used in Article 21 refers to state made law and not natural justice. It was further observed that this meaning of the language of Article 21 could not be modified with reference to the preamble. The contention before the Court was that the preamble to Indian constitution which seeks to give India a popular constitution should be a lead factor in its interpretation. It was further contended that any law made under Article 21 of the Constitution should be held as invalid if it offends the principles of natural justice and the basic rights to life and personal liberty would have no shield.

In the case of the Berubari Union case the Hon'ble Supreme Court observed that the preamble can never be regarded as the source of any independent power conferred on the government or on any of its departments. The Hon'ble court further observed that "what is true about the powers is equally true about the prohibitions and limitations". The Supreme Court further observed that the preamble has limited applicability and the help of Preamble should not be taken if the language of the provision in the constitution is clear.

In the case of Kesavananda Bharati, the main issue before the Supreme Court was in relation to the scope of amending power of the Union Parliament under Article 368 of the Indian Constitution. The Supreme Court, before answering the issue, tracked the history of the Preamble and observed that none of authority mentioned before the Court establish the propositions that what is correct about the forcefulness is true in the same manner about the embargo and restrictions. The Court said that limitations have been derived in some cases from the Preamble also. The preamble of our Constitution has extreme importance and it should be interpreted in the light of the purpose expressed in the preamble.

In the case of Union Government v. LIC of India the Supreme Court held that the Preamble forms an important part of the India Constitution. It specifies that the folks of India are the creator of the India Constitution. It is an act of the people, for the people and by the people. It declares the rights and freedom to be provided to the citizens of India.

Preamble forms an important element of Constitution of India and helps in interpreting the provisions of Indian Constitution.

Main Definitions of the Preamble

Sovereign

The Preamble states that India is a Sovereign State which implies the independent authority of India. India is not under the control of or dependent upon any other external power. The Parliament of India can enact laws in the country subject to certain restrictions imposed by the Constitution.

Socialist

The term 'Socialist' was introduced in the Preamble in the year 1976 through the 42nd Constitutional Amendment. By definition of the said term, it appears that it aims at the achievement of socialist ends through democratic means. By adopting 'Democratic Socialism' India maintains a belief in a heterogeneous economy where both individual and government sectors co-exist side by side. The aim is to achieve the end of destitution, ignorance, sickness, and inequity of opportunity.

Secular

The term 'Secular' was included in the Preamble in the year 1976 through the 42nd Constitutional Amendment. Usage of the term secular in the Constitution of India implies that all religions and religious communities in India get equal respect, protection and support from the state. Freedom of Religion is one of the Fundamental Right guaranteed through Articles 25 to 28 in Part III of the Constitution.

Democratic

The phrase Democratic implies a form of government that gets its authority from the will of the people through duly conducted election. The preamble of the constitution determines India to be a democratic country wherein the supreme power lies with the people of the country. The term democracy is used in the preamble of the Indian Constitution granting political, economic and social democracy. The features of Indian democracy are the accountable representative government, universal adult franchise, one vote one value, an independent judiciary, etc.

In the case of Mohan Lal v. District Magistrate of Rai Bareilly, it was held that Democracy is where the people elect their representatives to form a government and where the basic principle is to treat the minority in the same way the majority are being treated.

Republic

The word “Republic” denotes that the head of the state is nominated by the people either directly or indirectly. The President of India is the head of the state in India is elected indirectly by the people; through their spokesperson in the Legislature and the State Assemblies. In a republic nation, political autonomy is vested in the people rather than an emperor.

Justice

The term Justice used in the Preamble of the Indian Constitution embraces Social justice, economic justice, and political justice. The Justice so mentioned in the Preamble is secured through various Fundamental Rights and Directive Principles mentioned in the Constitution.

Through Social justice mentioned in the Preamble, the Constitution intends to create an equitable society founded on equal social status. Economic justice implies a balanced distribution of wealth among the individual members of society. This is to ensure that wealth is not concentrated in the hands of a few individuals only. Through political justice, the Constitution wishes to ensure that the citizens of India have equal rights in so far as participation in politics is concerned. Indian Constitution offers common adult suffrage and equal value for each vote.

Liberty

The term Liberty as given in the Preamble means the absence of restrictions or dominance on the activities of an individual. Few examples of Liberty include but is not limited to, freedom from slavery, imprisonment, repression, etc. The Preamble provides for the liberty of belief, communication, ideology and reverence.

Equality

Equality determines the absence of advantage against any segment of mankind. The Preamble provides for equitability of status and chance to all the people of the country. The Constitution strives to provide communal, economic and political equality in the country.

The Equality is secured by eliminating all differences and discriminations between a citizen of India on the ground of race, religion, caste sex, etc. The Equality is also ensured by opening ‘public places’ for all, by abolishing untouchability, by ensuring equal opportunity for all in relation to employment or appointment to any office under the state. The equality of law means that the law should deal equally with all in the similar category. Further, there should be equality of action for everyone under the same conditions. Equality means that likes should be treated alike.

Fraternity(बंधुता)

The term Fraternity used in the Indian Constitution means brotherhood. The Preamble seeks to encourage brotherhood amongst the citizens of India ensuring the dignity of a person and the solidarity and esteem of the nation.

It may be noted that the term “Fraternity” was inserted in the preamble of the Indian Constitution by a drafting committee of the constituent assembly due to variety within India which are based on ethnic group, religion, customs and traditions. The kinship is the strengthening factor of the intrinsic varieties.

Conclusion

The quintessence philosophy behind the Constitution of India is adequately manifested in its preamble and it forms the basis of our constitution which is an ultimate law of India. It emphasizes the fundamental values and guiding principles and forms the basis of our constitution.

***Judicial Pronouncements on Preamble**

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

JUSTICE, social, economic and political;

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

EQUALITY of status and of opportunity;

and to promote among them all

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

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

A preamble is a preliminary statement of the reasons which have made the passing of statute desirable and its position is located immediately after the title and date of issuing the presidential assent. A preamble is also used to introduce a particular section or group of sections.

Almost every modern constitution inaugurates with a preamble, which it begins with and which embodies the objectives or basic purposes which it has been adopted.

Apart from the enactment of the preamble of the constitution, the preamble of a statute sets out the main objectives which the legislation is intended to achieve. It is a sort of value-laden introduction to the statute and many a time, it is very helpful in understanding the policy and legislature. It expresses "what we had thought or dreamt for so long. The real value of constitution and law would, therefore, depends on the extent to which the stated objectives of the preamble have been achieved.

The preamble is of considerable legal significance in so far as it embodies an enacting clause. It cannot be resorted to as the basic in construing the various provisions of the constitution, which are couched in plain language. The preamble contains some expressions like justice, liberty, equality, and fraternity. The portion of the constitution which consists of merely temporary provisions designed to bridge over the transition from the old constitution to new.

In other words, preamble as such is widely accepted as the quintessence or soul and spirit of a constitution, as it embodies the fundamentals and the basic of the constitution as well as the vision and commitment of a newly liberated nation or people after its passing through the inevitable birth pangs of national independence from an oppressive and colonial regime.

The Importance of the Preamble

The wording of the Preamble highlights some of the fundamental values and guiding principles on which the Constitution of India is based. The Preamble serves as a guiding light for the Constitution and judges interpret the Constitution in its light. In a majority of decisions, the Supreme Court of India has ruled that neither it nor any of its content is legally enforceable. The Preamble plays a pivotal role when there is ambiguity in provisions of any Article or interpretation becomes confusing. This is when the spirit of the Preamble becomes the guiding factor. The Preamble is the stem, root and source of the constitution.

The preamble serves the following points:-

1. It indicates the sources from where the constitution has come viz. the people of India.
2. It contains the enacting clause which brings into force the constitution.
3. It declares the freedoms which the people of India intended to secure for all citizens and the basic type of government and polity which was to be established.

Explanation of some of the important words in the Preamble

Sovereign:-

The word sovereign means supreme or independent. India is internally and externally sovereign - externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people.

Socialist:-

The word socialist was added to the Preamble by the 42nd amendment act of 1976, during the Emergency. It implies social and economic equality. Social equality in this context means the absence of

discrimination on the grounds only of caste, colour, creed, sex, religion, or language. Under social equality, everyone has equal status and opportunities. Economic equality in this context means that the government will endeavor to make the distribution of wealth more equal and provide a decent standard of living for all. This is in effect emphasizing a commitment towards the formation of a welfare state. India has adopted a mixed economy and the government has framed many laws to achieve the aim.

Secular:-

The word secular was inserted into the Preamble by the 42nd amendment act of 1976, during the Emergency. It implies equality of all religions and [religious tolerance]. India therefore does not have an official state religion. Every person has the right to preach, practice and propagate any religion they choose. The government must not favor or discriminate against any religion. It must treat all religions with equal respect. All citizens, irrespective of their religious beliefs are equal in the eyes of law. No religious instruction is imparted in government or government-aided schools. Nevertheless, general information about all established world religions is imparted as part of the course in Sociology, without giving any importance to any one religion or the others. The content presents the basic/fundamental information with regards to the fundamental beliefs, social values and main practices and festivals of each established world religions. The Supreme Court in S.R Bommai v. Union of India held that secularism was an integral part of the basic structure of the constitution.

Democratic:-

India is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as 'One man one vote'. Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, religion or education.

Republic:-

As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The post of the President of India is not hereditary. Every citizen of India is eligible to become the President of the country.

Preamble:-A Part of The Constitution Or Not

The vexed question whether the Preamble is a part of the Constitution or not was dealt with in two leading cases on the subject:

1. Berubari case [1]
2. Kesavananda Bharti case [2]

On the answer to the primary question- whether the Preamble is a part of the Constitution, would depend the resolution of the next question, which follows as a corollary- whether the Preamble can be amended, if at all.

Berubari case was the Presidential Reference “Under Art. 143(1) of the Constitution of India on the implementation of the Indo-Pak agreement relating to Berubari union and exchange of enclaves” which come up for consideration by a bench consisting of eight judges headed by B.P.Sinha, C.J. Justice Gajendragadkar delivered the unanimous opinion of the court. Quoting story, the eminent Constitutional jurist, the court held that the Preamble to the Constitution containing the declaration made by the people

of India in exercise of their sovereign will, no doubt is “a key to open the minds of framers of the Constitution” which may show the general purposes for which they made the several provisions in the Constitution but nevertheless the Preamble is not a part of the Constitution.

The holdings in Berubari Case has been succinctly summed up later by Shela and Grover, JJ. In Kesavananda Bharti case as under:

1. A Preamble to the Constitution serves as a key to open the minds of the framers, and shows the general purpose for which they made the several provisions in the Constitution;
2. The Preamble is not a part of our Constitution;
3. It is not a source of the several powers conferred on government under the provisions of the Constitution;
4. Such powers embrace those expressly granted in the body of the Constitution and such as may be implied from those granted;
5. What is true about the powers is equally true about the prohibitions and limitations;
6. The Preamble did not indicate the assumptions that the first part of the Preamble postulates a very serious limitation on one of the very important attributes of sovereignty.

Berubari case was relied on in Golaknath case [3], Wanchoo, J. said- “On a parity of reasoning we are of the opinion that the Preamble cannot prohibit or control in any way or impose any implied prohibitions or limitations on the bar to amend the Constitution contained in Article 368”.

Bachawat, J. observed- “Moreover the Preamble cannot control the unambiguous language of the Articles of the Constitution”.

It is a matter of regret, yet the eminent Judges constituting the bench answering the presidential reference in Berubari Case overlooked a matter of record, that constitutional history. The motion adopted by the Constituent Assembly stated in so many words that the Preamble stands as a part of the Constitution. The error came to be corrected in Kesavananda Bharti case where the majority specifically ruled that the Preamble was as much a part of the constitution as any other provision therein. It would be interesting to note what some out of the thirteen Judges constituting the bench which decided Kesavananda Bharti case had to say about the preamble.

Kesavananda Bharati Case has created a history. For the first time, a bench of 13 Judges assembled and sat in its original jurisdiction hearing the writ petition. 13 Judges placed on record 11 separate opinions. It is not an easy task to find out the ratio of the holding of the court in the same case. It was held in this case:

- a. that the Preamble to the Constitution of India is a part of Constitution
- b. that the Preamble is not a source of power nor a source of limitations
- c. the Preamble has a significant role to play in the interpretation of statutes, also in the interpretation of provisions of the Constitution.

Moreover in Bommai case the majority of nine Judges laid down a new application of the Preamble under the Constitution, which is as follows:

1. The Preamble indicates the basic Structure of the Constitution
2. A Proclamation under Article 356(1) is open to judicial review on the ground of violating the basic structure of the Constitution.

3. It follows that a proclamation under Article 356(1), which violates any of the basic features, as summarized in the Preamble of the Constitution is liable to be struck down as unconstitutional.

4. A further extension of this innovation is that a political party, which appeals to religion in its election manifesto, acts in violation of the basic structure, and the President may impose President's Rule on a report of the Governor that a party has issued such a manifesto.

In the same case three of the nine Judges have opined that the word "secularism" in the Preamble of our Constitution.

A discussion on Preamble cannot be complete without making a reference of Mandal Commission case, which was decided by a larger bench of nine Judges. A rainbow of judicial thoughts reflecting the significance, value and message of the Preamble. B.P. Jeevan, J. held that the four folding objective of securing to its citizens justice, liberty, equality and fraternity displays statesmanship of the highest order – Constitution of India. The framers of the Constitution did not rest content with evolving the framework of the state; they also pointed out the goal as spelled out in the Preamble and the methodology for reaching that goal is elaborated in parts of the Constitution of India. In the opinion of R.M. Sahai, J. the preamble to the constitution is a turning point in history. The Preamble of the constitution has the sentiments and it is the key to the minds of the framers of the Constitution.

1.4- Salient Features of the Indian Constitution

Indian constitution, one of the utmost admired constitutions in the world was enacted after 'ransacking' all the known constitutions of the world at that time. This constitution that we have enacted has stood the test of times. Though provisions were borrowed from other constitutions, the constitution of India has several salient features that distinguish it from constitution of other countries

Some of its salient features are discussed below:

Longest written constitution

- Constitution can be classified into written constitution such as that of America or unwritten constitution such as that UK.
- The constitution of India is a written constitution which happens to be the longest written constitution in the world.
- It is comprehensive, elaborate and a detailed document
- The factors that have contributed to this phenomenon are: geographical factors (vastness of country and diversity), Historical factors (Influence of GoI, 1935), Single constitution for both centre and state and dominance of legal luminaries

Drawn from various sources

- It has borrowed most of its provisions from the constitution of various other countries as well as from the Government of India act, 1935. Ex: structural part from GoI, 1935, independence of judiciary from USA, Fundamental Rights from USA etc
- Though it is borrowed, the Indian constitution-makers made sure the borrowed features were made suitable to Indian conditions. Ex: Though we borrowed cabinet form of governance from UK, the cabinet is not all-supreme as in the case of UK.

Preamble of the constitution

- The Preamble consists of the ideals, objectives and basic principles of the Constitution.
- The salient features of the Constitution have developed directly and indirectly from these objectives which flow from the Preamble
- It asserts India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity the individual, and unity and integrity of the nation.

- The Preamble is the nature of Indian state and the objectives it is committed to secure for the people.

Democratic system

- The authority of the government rests upon the sovereignty of the people. The people enjoy equal political rights.
- Free fair and regular elections are held for electing governments

India is a republic

- The Preamble declares India to be a Republic.
- India is not ruled by a monarch or a nominated head of state. India has an elected head of state (President of India) who wields power for a fixed term of 5 years.
- After every 5 years, the people of India indirectly elect their President.

Union of states

- Article I of the Constitution declares, that “India that is Bharat is a Union of States.”

Fundamental Rights and duties:

- The Constitution of India grants and guarantees Fundamental Rights to its citizens.
- The constitution of India confirms the basic principle that every individual is permitted to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental right.
- The Six FR include- Right to Equality; Right to Freedom; Right Against Exploitation; Right to Freedom of Religion; Cultural and Educational Rights and Right to Constitutional Remedies (Art. 32).
- The fundamental rights are justiciable and are not absolute. Reasonable constraints can be imposed keeping in view the security-requirements of the state.
- A new part IV (A) after the Directive Principles of State Policy was combined in the constitution by the 42nd Amendment, 1976 for fundamental duties.

Directive Principles of State Policy:

- A unique aspect of the Constitution is that it comprises of a chapter in the Directive Principles of State Policy.
- These principles are in the nature of directives to the government to implement them to maintain social and economic democracy in the country.

Parliamentary System:

- The Constituent Assembly decided to espouse Parliamentary form of government both for the Centre and the states.
- In Indian parliamentary system, distinction is made between nominal and real executive head.
- The Council of Ministers is responsible before the Lok Sabha, The lower house of union parliament. There are close relations between executive and legislature.

Federal structure of government:

- A federal state is a state where a country is divided into smaller regions and the government is functioning at two levels
- The Indian Constitution has envisaged a federal structure for India considering the geographical vastness and the diversity of languages, region, religions, castes, etc.
- Written Constitution, supremacy of the Constitution, division of powers between Union and States, bicameral Legislature, independent Judiciary, etc. are the features of Indian federation.
- Scholars describe India as a ‘Quasi-Federation’ (K.C. Wheare) or as ‘a federation with a unitary bias, or even as ‘a Unitarian federation.’

Universal adult franchise

- All men and women enjoy an equal right to vote. Each adult man and woman above the age of 18 years has the right to vote.
- All registered voters get the opportunity to vote in elections.

Single integrated State with Single Citizenship:

- India is the single Independent and Sovereign integrated state.
- All citizens enjoy a common uniform citizenship.
- They are entitled to equal rights and freedoms, and equal protection of the state.

Integrated Judicial system

- The Constitution provides for a single integrated judicial system common for the Union and the states.
- The Supreme Court of India works at the apex level, High Courts at the state level and other courts work under the High Courts.

Independent Judiciary

- It is necessary to secure the philosophical foundations of the rule of law and democracy
- Firstly, the Constitution makers created a separate Judiciary independent of Legislature and Executive.
- Secondly, the Constitution has ensured complete independence of Judiciary in the matters of administration and finances.

Amending the Constitution of India:

- Amending the Constitution of India is the procedure of making modifications to the nation's fundamental law or supreme law.
- The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India.
- This procedure guarantees the sanctity of the Constitution of India and keeps a check on uninformed power of the Parliament of India.

Judicial Review:

- The judiciary has significant position in Indian Constitution and it is also made independent of the legislature and the executive.
- The Supreme Court of India stands at the peak of single integrated judicial system
- It operates as defender of fundamental rights of Indian citizens and guardian of the Constitution.

Basic Structure doctrine:

- The basic structure doctrine is an Indian judicial norm that the Constitution of India has certain basic features that cannot be changed or destroyed through amendments by the parliament.
- The basic features of the Constitution have not been openly defined by the Judiciary.
- At least, 20 features have been described as "basic" or "essential" by the Courts in numerous cases, and have been incorporated in the basic structure.
- In *Indira Gandhi v. Raj Narayan* case and also in the *Minerva Mills* case, it was witnessed that the claim of any particular feature of the Constitution to be a "basic" feature would be determined by the Court in each case that comes before it.

Secularism

- In no other country of the world so many religions co-exist as in India. In view of such diversity the Constitution guarantees complete freedom of religion to all.
- The citizens of our country are free to follow any religion and they enjoy equal rights without any distinction of caste, creed, religion or sex.
- The State does not discriminate against anyone on the ground of his religion, nor can the State compel anybody to pay taxes for the support of any particular religion.
- Everybody is equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- The Constitution regards religion as a private affair of individuals and prohibits the State from interfering with it. The Constitution also grants various cultural rights to minorities.

Independent bodies

- Constitution has setup various independent bodies and vested them with powers to ensure the constitutional provisions. Ex: Election Commission, CAG, Finance Commission
- These institutions have been provided with security of tenure, fixed service conditions etc to ensure that they are not susceptible to the whims of either the legislature or the executive.

Emergency provisions

- Indian constitution contains elaborate provisions to deal with those challenges that pose a threat to the country's security and unity (It will be discussed in detail in upcoming chapters)

Three-tier government

- Through 73rd and 74th amendment act, we have rural and urban local bodies as an additional constitutional tier of the government structure.
- This section fulfills the dream of Gandhi ji to see a self-functioning villages in India

1.5- Provisions relating to Citizenship and Citizenship Act 1955 (Part II)

The Citizenship Act, 1955 and its Amendments deal with the acquisition and termination of citizenship in India. Moreover, the Constitution has also provided citizenship rights for Overseas Citizen of India, Non-Resident Indians, and Persons of Indian Origin.

The term citizenship refers to the enjoyment of full membership of any community or state in which a citizen; enjoys civil and political rights. It can be defined as a legal relationship of an individual with a particular state which is expressed by pledging his loyalty towards state and by carrying out duties like paying taxes, serving in the army during need, respecting national principles and values etc.

Constitutional Provisions for Citizenship

The Constituent Assembly incorporated a generalized provision through Article 11 for the Parliament to regulate the citizenship by law. However, when it adopted the Constitution it brought into force Part 2 of Constitution for Citizenship with **Articles 5-11 dealing with it which states as follows:**

Article 5 states that “every person” who has a domicile in the territory of India and:

- Who was born in the territory of India or
- Either of whose parents were born in the territory of India or
- Who has been ordinarily resident in the territory of India for not less than 5 years immediately preceding such commencement shall be a citizen of India

Article 6: Rights of Citizenship of certain persons who have migrated to India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution

Article 7: Rights of Citizenship of certain migrants to Pakistan is a special provision for persons who have migrated to Pakistan after March 1, 1947, but returned to India subsequently.

Article 8: These are the Rights of Citizenship of certain persons of Indian origin residing outside India for the purpose of employment, education, and marriage

Article 9: Persons who voluntarily acquire citizenship of a foreign state will not be citizens of India.

Article 10: Every person who is a citizen of India under any provisions of this part will be subject to any law enacted by the Parliament.

Citizenship Act of 1955 and its Amendments

1. Citizenship Act of 1955 deals with the acquisition and termination of citizenship after the commencement of the Constitution. The provisions under it include:

- A person born in India after 26th January 1950 would-be citizen of India except those of children of diplomats and enemy aliens cannot be citizens of India by birth
- Any person born after 26th January 1950 would-be citizen of India subject to certain requirements, for example, either parent (mother or father) to be a citizen of India

- Certain categories of citizens can acquire citizenship by registration in the prescribed manner
 - Foreigners could acquire Indian citizenship by naturalization on certain conditions
 - If any territory becomes part of India, the Government of India could specify the conditions for them becoming citizens
 - Citizenship could be lost by termination, renunciation, deprivation on certain grounds
 - Citizen of a Commonwealth country would have the status of a Commonwealth citizen in India
2. The Citizenship (Amendment) Act of 1986: This act specifically deals with the citizenship of the state of Assam. It mentions those illegal migrants to get citizenship to need to be registered with the Indian consulate in the prescribed format.
 3. The Citizenship (Amendment) Act of 1992: According to this Act any person born outside India is considered a citizen of India by virtue of Citizenship by Descent if either of the parents was a citizen at the time of his birth.
 4. The Citizenship (Amendment) Act of 2003: This Act introduces several provisions for overseas citizens regarding their registration, rights in India etc.
 5. The Citizenship (Amendment) Act of 2005: This Act is based on the recommendations of the Parliamentary Standing Committee on Home Affairs. It provides for dual citizenship to PIO of 16 countries.

Modes of acquisition of Citizenship

1. By birth: The grant of citizenship under this clause is subject to changes according to amendments in place at that time.
2. By registration: Citizenship can be acquired by registering.
3. By Descent: Similar to citizenship by descent this provision also was subjected to changes from time to time
4. By naturalization.
5. By incorporation of territory.

Loss of Citizenship in India

The Citizenship Act of 1955 deals with the loss of citizenship also in addition to acquisition. Accordingly, it is carried by the following means:

1. By renunciation: Any person who has made a declaration stating his willingness to renounce the citizenship shall cease to be the citizen of India.
2. By termination: If a person voluntarily or knowingly becomes a citizen of any foreign country.
3. By deprivation.

Overseas Citizen of India (OCI)

According to the Citizenship (Amendment) Act of 2003, an overseas citizen of India includes a person: Of Indian origin being a citizen of a specified country

- Was citizen of India immediately becoming a citizen of other country and registered as OCI by the central government

Non-Resident Indian

An NRI is a citizen of India who holds an Indian passport and has temporarily immigrated to other countries either for employment or education or any other purpose.

Persons of Indian Origin

A PIO is a person of India origin whose parents or grandparents are citizens of India but he is not a citizen of India but of other countries.

The issue of citizenship plays a vital role in a democratic nation-state and hence citizenship is a significant principle of a democratic polity.

MODULE 2**2.1- Origin, Purpose and Significance of Fundamental Rights.**

- Article 12- Definition of State and concept of State Instrumentalities and agencies.
- Article 13 -Judicial Review, Pre-constitutional and Post Constitutional Laws, Doctrine of Ultra Virus, Doctrine of Eclipse, Doctrine of Severability and Doctrine of Waiver.

2.2- Article 14-18 – Right to Equality.**2.3- Article 19 – Six Fundamental Freedoms and Reasonable Restrictions.****2.4- Fundamental Rights under Articles 20 and 22.****2.5- Article 21 and 21A – Right to Life and Personal Liberty & Right to Education.****2.1- Origin, Purpose and Significance of Fundamental Rights****First demand of fundamental rights**

The first explicit demand for the fundamental rights came in the form of the “*Constitution of India Bill, 1895*” which was created under guidance of Bal Gangadhar Tilak. This bill popularly called “**Swaraj Bill 1895**” spoke about freedom of speech, right to privacy, right of franchise etc. After that numerous drafts had been created. In the Madras session of 1927, a resolution was adopted to draft a “Swaraj Constitution” for India. The Motilal Nehru Report of 1928 *demanded inalienable fundamental rights* for the people of India. It was basically inspired by the **American bill of rights**, which had a great impact on the thinking of Indian Leaders. The Nehru report was discarded by Simon Commission.

Advisory Committee on Fundamental Rights

The Constituent Assembly had appointed an advisory committee on fundamental rights headed by Sardar Vallabhbhai Patel on January 24, 1947. This advisory committee dealt with the rights of citizens, minorities, tribal and excluded areas.

Sapru Committee recommendations on Fundamental Rights

The Sapru committee report was published in 1945. This committee recommended that the Fundamental Rights “must” be included in the Constitution of India. This committee divided fundamental rights into two parts viz. Justifiable Rights and Non-justifiable rights. The **Justifiable rights** were those enforceable by a court of law. These enforceable rights were **incorporated in the Part III** of the Constitution. The non-justifiable rights were incorporated as a directive to the state to take all measures to provide those rights to individuals without any guarantee. They were incorporated in the part IV of the constitution and were called Directive Principles of State Policy.

Fundamental Rights are **not absolute rights**, these are **restricted rights**. Supreme Court in **A.K. Gopalan v/s State of Madras case (1950)**, said that there cannot be any such thing as **absolute** or **uncontrolled liberty** only freed from restraints as it may lead to **anarchy** and **disorder**.

The purpose of Fundamental Right is **to establish rule of law**. On the other hand, if state is given absolute power over the individual, the result would **tyranny** or **state terror**. Therefore, there shall be a **balance** between individual liberty and social needs.

As a result, parliament is empowered to impose **reasonable restrictions** on Fundamental Rights, Following are the grounds for reasonable restrictions on Fundamental Rights –

1. In the interest of Schedule Caste (SC’s/ST’s) and other weaker sections of the society including women and children.
2. Public order, decency and morality contempt of court, defamation.
3. Sovereignty and integrity of India.
4. Security of the state.
5. Friendly relations with foreign state.

Significance of Fundamental Rights

Fundamental rights, are the rights conferred by the Part III of the Indian Constitution from Article 12 to 35. Fundamental Rights, as the name suggests these are one of the most important sources for the protection and maintenance of human dignity and integrity, which also contributes towards the development of the society as a whole.

These are provided the status of being fundamental or elementary because of its absolute and restrictive nature, in other words, these rights are designed in such a manner that they cannot be amended, violated or interfered by any oppressive government or person, and as these are the guaranteed rights, any person can approach the Supreme court for the administration or enforcement of the rights that are violated or tampered by the other.

The Fundamental rights are well-established with a two-point system, the first point provides that, these justiciable rights of the people that are imposed by the court processes against the oppressive actions of the government. From the Second point of view, these rights are controlled with certain restrictions and limitations on actions of the government. Where accordingly, the government cannot take any measures may it be administrative or legislative in nature, as a result of which these rights are violated.

Classification of Fundamental Rights;

Right to property was also considered as a fundamental right earlier, but later on it was removed from the list of these rights, was bought Article 300 - A and currently there are 6 rights that are considered as basic, are as follows;

- Right to Equality (Article 14 to 18)
- Right to Freedom (Article 19 to 22)
- Right against Exploitation (Article 23 and 24)
- Right to Freedom of religion (Article 25 to 28)
- Cultural and Educational Right (Article 29 and 30)
- Right to Constitutional Remedy (32)

Significance of Fundamental Rights;

Fundamental rights are basically known as the basic human rights but these are regulated by the Constitution in India, and declared as special rights for the people. With these rights being cohesive in a society, the citizens are able to comprehend the importance of all the members of the society, co-operate and adjust themselves accordingly, hence, maintaining cordial relationships with one another. The Constitution also provides for enforcement of these rights hence, they not only have a legal value but also an educational value, assisted by the citizens to protect, respect, accept and fulfil the rule of law. They also uphold the equality and dignity of the individuals, keeping in mind the unity and integrity of the nation.

These not only ensure and guarantee the basic civil, political, social, economic rights and freedoms, but they also fulfil the important functions of safeguarding the minority communities, castes, classes and religious groups and removing the notion of discrimination of all kinds and ensuring equality amongst all. These rights are a part of the basic structure of the constitution and so they cannot be contravened, abridged or interfered by any constitutional laws, provisions or amendments, if this happens then that particular law will be declared as unconstitutional and void for being against the norms of the constitution.

Fundamental Rights are the individual rights or the basic rights, without which the modern constitutional democracy is meaningless, and so they entrenched with the understanding that these cannot be infringed or taken away by any ordinary law or provision. Not only for the advancement of the people and expansion of the societies, but these basic rights are also needed for protecting the people from violations or excesses of the state, as the state is considered to be a biggest violator of human rights.

Fundamental rights are always planned to protect and ensure not only the dignity of the individual but also, create some situations that can help every human being to develop their character to its

comprehensive extent. Despite they enforce an undesirable duty on the state, that is, of not encroaching on individual liberty in its various dimensions, it forms the base or root for the very concept of Human rights. They are most indispensable for any accomplishment by the individual for his exhaustive intellectual, moral and spiritual status.

The main aim for inclusion of the fundamental rights in the Indian constitution was to institute a government of laws and not of man, where under the rule of man the society would be unsystematic and unrestrained, but with the rule of law the peace and harmony will be maintained in the society, hence, assuring Justice and Equality. Fundamental Rights not only safeguard freedom but also guarantee the right to live a dignified life and personal liberty of the citizens against any incursion by the state, and henceforth, these liberties will play a crucial role in preventing or foiling the establishment of an authoritarian and undemocratic rule in the country and so, are are very essential for assuring an all-around burgeoning of individuals and the country.

***Article 12- Definition of State and concept of State Instrumentalities and agencies**

The constitution of India is the common law of the land. Justice, equality, and liberty is guaranteed by the constitution. The concept of the rule of law establishes “structure, procedures, powers, and duties of the government institution.” Similarly, the notion of limited government contains a set of fundamental rights, duties of citizens, and directive principle which shall apply for “welfare state”. The state cannot take any action which is detrimental to the fundamental rights of the people. Only the state’s actions can be challenged, and the remedies will be available only against them. However, in the present era, the developments in the field of privatisation and globalisation, there are many private entities which perform works related to public importance. The limited enforcement of fundamental rights involves serious implications and asks what would happen if private entities or non-state actors violate individuals fundamental rights.

Instruments of the state are those who perform any function through an entrusted authority. Though they are duty-bound to work in consonance with the constitution of India. In order to define instruments of state in an exhaustive manner, it shall be a strenuous task for the lawmakers, in response to this the responsibility is on the courts to extend the scope of instruments of state with relation to the constitution of India. However, the words used under the definition of article 12 are of wide amplitude, moreover are inclusive of comprehending authorities which have been formed under a statute and “functioning within the territory of India, or under the control of the government of India.”

State Action Doctrine And Functional Public Authority

The state action doctrine commonly “refers to state laws or is designed to solve a state problem but which have anticompetitive effects, and to acts by states or by private parties implementing laws or rules.” The onus to perform the work with values of “equal protection and due process” is on the government as it is the only body of the institution to perform the public functions. In various cases, the US Supreme Court has expanded the scope of the state action doctrine. Mainly, the cases were related to the exploitation and discrimination with Negros or Asian race from “occupying the property in real estate.”

However, in the Indian context, the present state action needs to be expanded since the government is transferring its functions to the private entities. In the age of globalisation and privatisation, private individuals or entities deal with the liberties of the people. If the courts take limited meaning to the state action, it will become difficult for individuals to enforce their liberties against private individuals or entities.

Definition of State: Perspective

The fundamental rights enshrined under part III can be enforced against the state action only or the action by “other authorities” who may come within the purview of article 12 of the constitution. Most of the fundamental rights are claimed against the state and its instrumentalities and not against private bodies. An extended significance has been given to the term ‘state’ under article 12. Article 12 elucidates

that the term 'state' occurring in article 13(2), or any other provision concerning fundamental rights, has an expansive meaning.

Scope and Purpose

The definition in article 12 cannot be used to interpret any provision outside part III, e.g., article 309,310,311 of the constitution. Therefore article 12 is only for the purpose of application of the provisions contained in the part III. Hence, if any body does not come within the scope of this article it could still be sued on the constitutional or non-constitutional grounds under article 226 whereas such body performs a public duty. The ambiguity arose regarding the wide interpretation of the term 'other authorities' as if this term should be construed with respect to the test being satisfied of 'within the territory of India' or being 'under the control of government of India.' Now it has been settled that the expression 'under the control of government of India' under article 12 does not qualify the word 'territory'; it qualifies 'other authorities'.

Doctrine of Instrumentality

Under article 12, the term "instrumentality or agency" has not been defined though it depends upon incessant judicial interpretation by the courts. There are certain tests which need to be satisfied before being recognised as the instrument of the state. Moreover, the term 'includes' indicates that the definition is not exhaustive in nature. It is possible that the instrumentalities or agencies may not be a part of a government department, but when there is a violation of fundamental rights, they shall be construed as a state under the definition e.g., government companies and public undertakings.

Test to Determine Instrumentality of the State

The Supreme Court laid down certain tests in the case of *Ajay Hasia v. Khalid Muji* to adjudge whether a body is an instrumentality of the government or not:

- The government holds the entire share capital of the body; it goes a long way towards indicating that the body is an instrumentality of the government.
- The entire expenditure of the body is dependent or incurred on the financial assistance provided by the government, it may indicate that the governmental character has been impregnated in the body.
- Monopoly status is one of the relevant factors where it has been conferred by the state.
- State may control the said body through deep and pervasive method which surely indicates that the body is state instrumentality.
- Moreover if the body performs such functions which are of public importance considering its relevancy with governmental functions, it may be a relevant factor in determining the state instrumentality.

Though the tests have been evolved in *Ajay Hasia* case but these tests cannot be considered as an exhaustive list. Further, it would not be sufficient in many cases to establish an "instrument or agency of the state or a company carrying on the functions of public nature." Meanwhile, it is tough to restrict the interpretation to a "close-ended category" of the bodies to be considered as the state within the meaning of article 12. The question of state instrumentality must be based on the merits of the cases including facts which may further include the criteria that the body is financially, administratively and functionally governed by or under the control of the government.

The concept of instrumentality or agency may be differentiated with "other authorities" on the terms of that "other authorities" is that authority must be an authority "sui juris" to fall within the meaning of "other authorities". In order to satisfy being an instrumentality of the state, a juridical entity may also qualify for that test and can be considered as an instrumentality of the state, but it is not necessary that an instrument of state may be considered as "other authorities".

The Functional And Structural Turn in the Instrumentality Or Agency Doctrine

Structuralism, as a method of constitutional interpretation, attempts to derive constitutional rules from the relationships and interactions between various constitutional 'structures' or institutions. The main focus of structuralism in the present scenario with respect to individual rights is on the structure of the government and its relationship with the individuals who are governed by this government. Mere regulatory control, over the body, would not suffice of being an instrument under article 12. To qualify for this domination, one must construe all three fronts: financially, functionally and administratively. However, this case has ruled out the "attribution of 'state' character" to autonomous authorities like Board of Control for Cricket in India (BCCI) which does not satisfy its onerous three-pronged standard. Though as a structural test, it has worked very well except where the judiciary has applied its discretion in interpreting the three tests as "disjunctive as opposed to conjunctive."

Functionalism, on the other hand, works on inductive method, developing the constitution and the policies related to it through "case by case application of the independent normative values that the law ought to promote." But this approach suffers from the amorphous situation which remains dissected from the constitutional texts. This results in the acceptability of the structural approach rather than a functional approach.

The seeds of "functionalism" in the Supreme Court's "interpretive approach" to Article 12 were sown by Mathew J's concurring opinion in *Sukhdev Singh v. Bhagat Ram*. Two conceptions of state has been evolved by him; "one, 'a coercive machinery wielding the thunderbolt of authority', and the other, a 'service corporation'." Meanwhile, he preferred the second one in order to set the demarcations of article 12. According to him, a body could qualify as the 'state' even if it has not been facilitated with any financial funding from the government if its functions were of "high public importance" and closely related to, or allied with, those of the government. The ratio followed by the Justice was based on "meta-analysis" that factored in the "totality of the circumstances" before branding an authority a 'state factor'.

***Article 13 -Judicial Review, Pre-constitutional and Post Constitutional Laws, Doctrine of Ultra Vires, Doctrine of Eclipse, Doctrine of Severability and Doctrine of Waiver**

Article 13 of the Indian Constitution is a crucial provision that deals with the fundamental rights of Indian citizens. It is an essential part of the Constitution, as it outlines the fundamental rights of the Indian people and defines the limitations of the government's power. In this article, we will discuss the history, provisions, and significance of Article 13 in detail.

History of Article 13 of Indian Constitution

The Indian Constitution was adopted on 26th January 1950, and it came into force on the same day. The Constitution consists of 395 articles and 12 schedules. The Constitution's primary objective is to establish a democratic and socialist society in which citizens have equal rights and opportunities.

Article 13 was introduced to the Constitution during its drafting, and it has been amended several times over the years. It was initially known as the 'Right to Property' provision, but it was later renamed to 'Laws inconsistent with or in derogation of the fundamental rights.'

Importance of Article 13 of Indian Constitution

The importance of Article 13 lies in its role in ensuring that laws made by the government do not infringe upon the fundamental rights of citizens. Fundamental rights are the cornerstone of a democracy and play a crucial role in ensuring that citizens are protected from arbitrary actions by the government. Article 13 provides a mechanism for citizens to challenge laws that are inconsistent with the Constitution and ensures that pre-existing laws are modified or repealed to align with the Constitution.

Furthermore, Article 13 provides for the protection of the directive principles of state policy. These principles guide the government in making laws and policies that ensure the social and economic welfare of citizens. While they are not enforceable in courts, they are still essential for the overall development of

the country. Article 13 ensures that the government can enact laws that implement these principles without infringing upon the fundamental rights of citizens.

Provisions of Article 13 of Indian Constitution

Article 13 is divided into four clauses, each of which outlines different provisions that are crucial to protecting the fundamental rights of Indian citizens.

Clause 1: Laws inconsistent with or in derogation of the fundamental rights

Clause 1 of Article 13 states that any law that is inconsistent with or in derogation of the fundamental rights mentioned in the Constitution shall be void. This provision is essential as it ensures that the government does not enact any laws that infringe upon the basic rights of citizens.

If any law violates a fundamental right, it will be deemed unconstitutional and will be struck down by the courts. This clause is an essential tool for Indian citizens to challenge any laws that they believe violate their fundamental rights.

Clause 2: Laws made before the commencement of the Constitution

Clause 2 of Article 13 states that any law that was enacted before the commencement of the Constitution and is inconsistent with or in derogation of the fundamental rights shall be void to the extent of such inconsistency. This means that if any pre-constitutional law violates a fundamental right, it will be deemed unconstitutional and will be struck down by the courts.

However, the government can amend such laws to make them consistent with the Constitution. This clause ensures that any pre-existing laws that are incompatible with the Constitution are modified or repealed, preventing any violation of fundamental rights.

Clause 3: State laws inconsistent with or in derogation of fundamental rights

Clause 3 of Article 13 states that any state law that is inconsistent with or in derogation of the fundamental rights shall be void. This clause is important as it prevents state governments from enacting any laws that violate fundamental rights.

If any state law infringes upon fundamental rights, it will be deemed unconstitutional and will be struck down by the courts. This clause is an essential tool for Indian citizens to challenge any state laws that they believe violate their fundamental rights.

Clause 4: Saving of laws giving effect to directive principles

Clause 4 of Article 13 states that any law that gives effect to the directive principles of state policy shall not be deemed void on the ground that it is inconsistent with or in derogation of the fundamental rights. This clause ensures that the government can enact laws that implement the directive principles of state policy, even if they are inconsistent with or derogatory to the fundamental rights.

Significance of Article 13 of Indian Constitution

Article 13 is significant because it ensures that the government does not enact any laws that infringe upon the basic rights of citizens. It provides citizens with an essential tool to challenge any laws that they believe violate their fundamental rights. It also ensures that any pre-existing laws that are incompatible with the Constitution are modified or repealed.

Furthermore, Article 13 is important as it protects citizens from state laws that may infringe upon their fundamental rights. It ensures that state governments cannot enact any laws that violate fundamental rights, and it provides a mechanism for citizens to challenge any such laws. This is particularly important in a country like India, where states have a significant degree of autonomy and can enact laws that are specific to their region.

Another important aspect of Article 13 is that it provides for the protection of the directive principles of state policy. These principles are a set of guidelines for the government to follow while making laws and policies. They are not enforceable in courts, unlike fundamental rights, but they are still essential for the overall development of the country.

Article 13 ensures that the government can enact laws that implement the directive principles of state policy, even if they are inconsistent with or derogatory to the fundamental rights. This ensures that

the government can work towards the social and economic welfare of the citizens while ensuring that their fundamental rights are protected.

Remedies in case of a breach of fundamental rights due to the enactment of a law

In case of a breach of fundamental rights due to the enactment of a law, Article 13 of the Indian Constitution provides for several remedies to be pursued by the aggrieved party. The appropriate remedy will depend on the nature of the breach and the specific circumstances of the case.

1. Writs

The Constitution provides for five types of writs – Habeas Corpus, Mandamus, Certiorari, Prohibition, and Quo Warranto. These writs can be filed in the Supreme Court or High Court to protect the fundamental rights of citizens.

Habeas Corpus is a writ that is used to protect personal liberty. Mandamus is used to enforce public duties. Certiorari is used to quash the decisions of inferior courts. Prohibition is used to prohibit an inferior court from continuing with a case beyond its jurisdiction. Quo Warranto is used to question the legal right of a person to hold a public office.

2. Public Interest Litigation (PIL)

A PIL can be filed in the High Court or Supreme Court on behalf of a group of people who are affected by the breach of fundamental rights. This is an effective remedy in cases where a large number of people are affected by the violation of fundamental rights.

3. Damages

In some cases, the courts may award damages to the aggrieved party to compensate for the loss suffered due to the breach of fundamental rights. This remedy is usually available in cases where the breach has caused financial or other quantifiable losses.

4. Injunction

The courts can issue an injunction to prevent the government from enforcing a law that violates fundamental rights. This remedy is available in cases where the law has not yet come into force, but there is a risk of infringement of fundamental rights.

5. Declaration

The courts can also issue a declaration that a particular law is unconstitutional and violates fundamental rights. This remedy is available in cases where the law has already come into force and is causing infringement of fundamental rights.

Conclusion

In conclusion, Article 13 of the Indian Constitution provides several remedies to protect fundamental rights in case of a breach. These remedies include writs, public interest litigation, damages, injunction, and declaration. The appropriate remedy will depend on the specific circumstances of the case. These remedies play a crucial role in ensuring that fundamental rights are protected and upheld in India.

Pre-constitutional laws

During India's existence under the British reign, there were various laws and acts passed by the British government. The Regulating Act of 1773 was seen as a foundation stone laid by the East India Company to ensure its smooth functioning in the Indian Sub-Continent. Further, the Indian Independence Act marked the end of British rule in India which was given effect on 15 August 1947.

•Regulating Act of 1773

As already discussed above, this step was considered to be the first step by the British to manage the affairs of the East India Company in India. The governor of Bengal was designated as the governor general. Warren Hastings became the first governor-general of Bengal. The executive council of governor-general was established, which comprised of 4 members and there existed no separate legislative council.

Supreme Court was established by the company at Fort William (Calcutta) as the apex court in 1774. The act prohibited the servants of the company from accepting bribes or indulging in any trade activities.

•**Pitt's India Act of 1784**

This act mainly draws a distinction between the commercial and political acts of the company. The court of directors was assigned the work to decide on the commercial activities and the board of control had to authorise the political affairs of the company. This act further reduced the strength of the council to 3 members. The act placed Indian Affairs directly under the control of the British Government. The Company's territory under India came to be known as "The British possession in India". Governor's council was established in Bombay and Madras.

•**Charter Act of 1813**

The Charter Act of 1813 terminated the company's monopoly which existed over the Indian trade, after the passing of this act, trade with India was open to all British subjects.

•**Charter Act of 1833**

The Governor-General of Bengal was upgraded to the post of Governor-General of India. Lord William Bentick became the first Governor-General of India. The Charter Act of 1833 was regarded as the first step towards centralisation in British India. The act took away the legislative powers of Bombay and Madras provinces and the central legislature was put in place. The Act brought an end to East India Company as a commercial body and transformed it into a purely administrative body.

•**Charter Act of 1853**

There was a separation brought in the Legislative and Executive powers of the Governor-General's council. 6 members comprised of the central legislative council, out of which 4 were appointed by the provisional government of Madras, Bombay, Bengal and Agra. It introduced open competition as a basis for recruitment of civil servants. Indian Civil Service opened for all.

•**Government of India Act 1858**

This act replaced the rule of company by the rule of crown. The powers which were embodied on the British Crown were to be exercised by the secretary of state of India. The secretary of State was further assisted by 15 members. Lord Canning became the first Viceroy of India.

•**Government of India Act 1913**

The act is popularly known as Montague-Chelmsford Reforms. The scheme of dual governance-Dyarchy was introduced. Under the Dyarchy system, the provisional subjects were divided into two parts – Reserved and Transferred. The Governor was not responsible to the legislative council over the reserved subjects. The act also introduced the Bicameral legislature at the centre. The Legislative Assembly had a strength of 140 members and the Legislative Council's strength was 60 members. The act also introduced direct elections.

•**Indian Independence Act of 1945**

This is considered to be the last act which was laid down in India under the British rule. It declared India as an independent and sovereign state. The act established responsible governments both at Centre and States. It assigned dual functions to the Constituent Assembly which were – Legislative and Constituent functions.

Points to Ponder

- The laws which were made before the Charter Act of 1833 were known as Regulations and the ones made after it was called Acts.
- The development of the Portfolio System and also the system of budget points to the separation of powers were introduced during this period.
- In the year 1921, the railway budget was separated from the general budget.
- Lord Mayo's Idea of decentralisation of powers brought into picture the local self-government.
- In the year 1882 Lord Rippon's resolution was hailed as Magna Carta of Local Self- Governance. He came to be regarded as the "Father of local Self-governance in India"

Post-Constitutional laws

Post-constitutional laws are the ones which were brought into effect after the enactment of the Constitution of India, 1950. All those acts which were given effect after January 26, 1950 fall under the ambit of Post-Constitutional Laws. There are laws which were brought into effect during the British era before the formation of the constitution and are still being followed in the same manner, like that of the Indian Penal Code, Police Act, 1861 and even the Societies Registration Act, 1860. These are few of the major acts which were enacted before the formation of the constitution and are still in practice with required amendments.

IPC – Indian Penal Code

The Indian Penal Code was drafted by the first law commission under the leadership of Lord Macaulay. Over a period of time, IPC has been one of the much-applauded legislative acts of India, even though it existed with several defects. In order to overcome the loopholes which existed in the law and further make it suitable with the changing aspects of the society, there have been various amendments which have been brought in IPC which will be looked into.

•Amendment in IPC – Information Technology Act 2000

The IT Act was passed in the budget session in the year 2000 and signed by president K R Narayan. The IT act was brought into effect with the advent of internet technology. Even after its enactment, the IT act went through various changes. In 2008 there was an expansion made in the definition of 'Communication Device' which included under its ambit mobile devices and placed owners of IP addresses responsible for disturbing content.

The major change in this act was the inclusion of section 66 which makes offensive messages illegal and also holds the owner of the server responsible for the content.

•Criminal Law Amendment Act 2013 – Nirbhaya Act

The act came into force on April 3rd 2013, following the gang rape in Delhi. The act made stalking and voyeurism liable to be punished with 7 years of imprisonment. It regarded certain acts as offensive which were dealt with separately and these offences included acid attack (Sec 326A), attempt to acid attack (Sec 326B), sexual harassment (Sec 354A), act with intention to disrobe a woman (Sec 354B), voyeurism (Sec 354C), and stalking (Sec 354D).

Many of the state governments even drafted bills making a convict liable of raping a girl of 12 years or less than that to be awarded death punishment.

•Criminal Law Amendment Bill 2018

The bill amended certain sections of IPC to increase the minimum punishment for rape of women from seven years to ten years. The gang-rape of girls who are below the age of 12 years would contain imprisonment for a period of 20 years and the same may even extend to the death sentence of the culprit. The amendment made it mandatory for the investigation into the rape of a minor child to be completed within 6 months and should not exceed the said time limit.

Difference between pre-constitutional and post-constitutional laws

Article 13(1) of the Indian Constitution states – “All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void”.

On the other hand sub-clause (2) of the Article 13 states “The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void”. From this, it can be concluded that Article 13(1) deals with the pre-constitutional laws and Article 13(2) deals with Post-Constitutional Laws.

•No Retrospective Effect

Article 13(1) of the constitution which relates to fundamental rights has no retrospective effect, which means all existing laws which are inconsistent, become void from the date of commencement of the Constitution. Therefore the acts which are committed before the commencement of the Constitution which are in contravention of the provisions of any law, become void after the commencement of the

Constitution because of the inconsistency with the fundamental rights and the same cannot be challenged in any court of law. But the same consists of certain exceptions which will be discussed in the latter part of the article.

In the case of Keshavan Madhava Menon v. State of Bombay, a person was being prosecuted under the law before the Constitution came into force. And once the constitution came into effect, the law under which the person was convicted became void. Hence, the Supreme Court held that the person cannot be convicted under the said act.

Intra-vires means “within the powers” and Ultra-vires means “beyond the powers”. The power to make laws, rules, and regulations and to legislate; are conferred with the legislative body. Over the years, the state functions have undergone many changes in the aspects of quantity and quality. So some of the legislative (law-making) functions are performed; by the executive body also. This type of legislation function by the executive body; is known as “delegated legislation”. The judicial review of such delegated legislation can be done at two stages; conferment stage and exercise stage.

In case, the discretionary power is exceeded then it will be considered as ultra vires. If the subordinate legislation falls outside the purview of the power conferred, then it is ultra vires to the constitution. If the action of the delegated legislation body affects the fundamental rights guaranteed to the people, then it is said to be ultra vires to the constitution. Ultra vires is an error apparent on the face of the record. The lack of jurisdiction of any delegated body forms the error on record. Some of the elements which are present in an ultra vires act:

- Error or excess of Initial jurisdiction
- Error or loss of jurisdiction on the way of proceedings or in the pending proceedings
- Mala fide intention or improper motive
- Mixed consideration or irrelevant considerations
- An error apparent on the face of the record

Doctrine of Ultra Vires

The doctrine of ultra vires is frequently used; in the constitutional law, administrative law, and corporate law. It is applied in cases where the government bodies exceed their limit; or when the subordinate legislation crosses their legal authority. Also, in companies when legal persons go beyond their legal capacity, then the doctrine of ultra vires comes into play. In this article, the author deals with the role played by doctrine of ultra vires in the Administrative law and the Constitutional law.

Abuse of Powers by the Authority

The courts have developed effective ways to control the abuse of administrative functions. If a law crosses the discretionary power then it is held ultra vires and unconstitutional as per Article 14, Article 19, and other relevant provisions. Then the control mechanism can be at the initial stage of delegation or during the exercise of discretion. An act can become ultra vires when there is mala fide intention or improper purpose.

Mala fide

When an authority exceeds the power conferred due to the mala fide intention, that is to have a dishonest or corrupt intention, then such an act is considered as ultra vires. It is difficult to point out the motive, so the courts generally term them in a broad sense as the abuse or improper exercise of power. Mala fide intention does not imply only moral turpitude as a matter of law, in other words, it is said that the power conferred is used for indirect purpose without any nexus to the objective to be achieved and is completely foreign to the stated law.[1]

In C.S. Rowjee v. Andhra Pradesh State Road Transport Corporation[2], schemes to nationalize certain transport routes were initiated by the corporation. The Chief Minister gave directions only to specific routes and other routes were not selected because of the vengeance towards his political opponents. In the absence of an affidavit from the minister, it was held by the court that there was mala fide intention present in the part of the act done by the Chief Minister.

Improper purpose/consideration:

When the power conferred is exercised with a different purpose deviating from the actual purpose, then it is considered invalid. The improper purpose is wider than mala fide. The question of good or bad intention is not questioned here, only the purpose of the action is questioned. In *Lal Kamal Das v. State of West Bengal*[3], it was held that the power of ordering prevention detention cannot be used for simple theft of railway property. There should be a proper purpose to prosecute such a person in the criminal court.

If an administrative power is exercised by improper/irrelevant or extraneous consideration then such action is ultra vires and it will be quashed. The general terms and conditions of the statute decide that the considerations are relevant or irrelevant. The court struck down the impugned order and held that the “law and order” concept is not the same as the “public order” concept.[4] Sometimes there can be mixed considerations, so the court should apply the principle clearly.

Judicial Control

In administrative law, the doctrine of ultra vires forms the base. It questions the authority exercised by the various authorities. The court has to decide whether the actions are within the limit or exceeds the limit. The first step in the control mechanism of power is judicial control. Various questions have to be answered before applying judicial control:

Questions

1. Whether there is any violation of fundamental rights or any procedural provision?
2. Whether; the provisions of the parent Act are satisfied or the parent act has been violated?
3. Whether the power of delegated legislation has been exceeded?
4. Where the action conforms with the said procedural provisions?
5. Whether the test of reasonableness is satisfied?
6. Whether the action by the authority is arbitrary?

Once, these questions are answered then the control can be applied in places where there is an excess of power. If a parent act or legislation is declared as void and unconstitutional, then the delegated legislation is also considered as void and unconstitutional. It is the court’s decision about the scope of powers given to the delegated legislation.

If it goes beyond the scope of the parent act, then it is ultra vires. Also, the sub-ordinate legislation can be questioned for their action based on unreasonableness.[5] The court fails to apply judicial control in cases where the powers of delegated authority are not clear. If there is no precise limit imposed for the authority and the power given is in a broad sense[6], then it becomes difficult to apply the doctrine of ultra vires as they turn into an uncontrolled authority.

Parent Act and Delegation.

Article 13(2) of the Indian Constitution states that a law made by the state is held void if it abridges or takes away the fundamental rights conferred under Part III of the constitution. This Article makes it clear that law includes order, ordinance, bye-law or ay regulation or notification, etc. Article 245 limits the extent of powers conferred by Parliament and legislatures of states to make laws.

The laws made under Article 245 are subject to other constitutional provisions. In *Chintaman Rao v. State of Madhya Pradesh*[7], it was held that the parent act was unconstitutional as it allowed the Deputy Commissioner to prohibit the manufacture of bidis in few areas, which was a violation of Article 19(1) (g) of the constitution. Therefore, the order was held to be ultra vires and it was struck down.

The Parent act cannot delegate the essential functions to the subordinated delegated legislation. The subordinate delegated legislation should not be inconsistent with the parent act. There should be no conflict between the delegated legislation and the enabling legislation. A rule made by the parent act for ensuring the safety of passengers in ferry does not confer the subordinate delegated legislation to frame a rule to prohibit all private ferries. Therefore the court held that the rule was out of the scope of powers conferred by applying the doctrine ultra vires and hence void.[8]

In *Tahir Hussain v. District Board Muzzaffar Nagar*[9], the parent law allowed the District Board to frame bye-laws for public health and safety. The board framed a bye-law prohibiting the cattle market.

The court held there was reasonable nexus and applying the ultra vires principle the scope of the delegation authority was exceeding the parent act.

The court held that the rule which imposed a bar on the people for enrollment in bar council of age 45 years as invalid and ultra vires.[10] A delegated body cannot sub-delegate further his power to another body as per the maxim “potestas non potest delegari”. Another important aspect is that a delegated legislation can be given a retrospective effect also. However, such power cannot be used in the cases of sovereign legislature[11], unless it is expressed by the State.

Case study on the Doctrine of Ultra Vires: Misuse of Section 144 of the Criminal Procedure Code

Many states are imposing Section 144 of the Criminal Procedure Code in the year 2020. Section 144 provides wide powers to the magistrate in issuing urgent emergency orders for restricting public gatherings. During the Delhi riots, the use of the provision was easily found.

The Delhi police have imposed orders under Section 144 without any powers conferred by law, they have misused the power beyond their limits. Most of the orders were issued by the Assistant Commissioner of Police (ACP) and Deputy Superintendent of Police (DCP). Under the Delhi Police Act or the Criminal Procedure Code, no power is vested on the ACP or DCP to pass such orders. The orders under 144 can be issued only by Magistrate or Commissioner under few circumstances.

The state of Delhi follows a commissionerate-system that identifies the police as a separate body, but the Criminal procedure code is not based on any such system. They are not under the supervision of a magistrate. Certain Magisterial Powers were conferred by the Delhi Police Act on the senior police officers. Section 20(5) and 70(1) confers the powers of the executive magistrate upon certain senior police officers.

The two main things to be noted are that the powers of the District Magistrate is conferred only upon the Commissioner of Police and not upon the ACP or DCP. The second thing to be noted is that none of the provisions of the Delhi Police Act is about the appointment of the executive magistrate, therefore only the powers of the executive magistrate are conferred.

A person appointed as an executive magistrate and a person; empowered with the powers of an executive magistrate is different. ACP and DCP are not appointed as an executive magistrate. They cannot pass an order under Section 144 of the Criminal procedure code. If they pass any orders under Section 144 of the Criminal Procedure Code without the inherent powers; then it is considered as ultra vires and illegal.

Doctrine of Severability

Doctrine of severability is also known as doctrine of separability. It helps in the protection of our fundamental rights. It is mentioned in clause (1) of Article 13 of the Constitution of India that all laws which were enforced in India, before the commencement of Constitution, in so far as they are inconsistent with the provisions of fundamental rights shall to the extent of that inconsistency be void. But the whole law or act would not be held invalid, only the provisions of the law or act which are not in consistent with the fundamental rights will be held as void. This whole hypothesis is known as the doctrine of severability. But the application of this doctrine is only possible if the part which is inconsistent with the law can be separated from the whole legislation. If both the valid and invalid part are so closely weaved with each other that it can't be separated, then, the whole law or act will be held as invalid. This doctrine can be better understood by help of case laws.

In A.K. Gopalan v. State of Madras^[1]The Supreme Court held that in case when a part of legislation is repugnant to the Constitution, only that repugnant provision of the impugned Act will be void and not the whole of the legislation, and every attempt should be made to save as much as possible of the act. If the omission of the invalid part will not change the nature or the structure of the object of the legislature, it is severable. In this case, the Apex Court, held that except Section 14 all other sections of the Preventive Detention Act, 1950 were valid, and since Section 14 could be severed from the rest of the Act, the detention of the petitioner was not illegal as the Preventive Detention Act, 1950 is not void.

In State of Bombay v. F.N. Balsara^[2], eight Sections of the Bombay Prohibition Act were declared invalid by the Apex Court, the Supreme Court said that the portion which was invalid to the extent of fundamental rights was separable from the rest of the act, and thus by the application of the doctrine of severability only those eight sections would be deleted from the code and the rest of the provisions of the code will remain the same.

In *R.M.D.C. v. Union of India*^[3], the Supreme Court of India, in this case laid down the guidelines for the application of doctrine of severability, they are as follows:

1. In ascertaining that whether the valid parts of a statute can be separated from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test which should be applied is whether the legislature would have enacted the valid part without the impugned part if it had known that the rest of the impugned part of statute was invalid.
2. If the valid and invalid provisions are so inexorably mixed up with each other that they cannot be separated from one another, then the invalidity of a portion would result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and independent that after striking out the invalid part, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become void in law.
3. Even when the provisions which are valid and distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole.
4. When the valid and invalid parts of a statute are independent of one another and do not form part of the same scheme but what is left after omitting the invalid portion is so thin and different from what it originally was when it emerged out of the legislature, then also the Act will be rejected in its entirety.
5. If after the invalid portion is repealed from the statute, but if the provisions which remain, cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, or else it will amount to judicial legislation.
6. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of legislation, its object, the title and preamble to it.

2. Doctrine of Eclipse

The doctrine of eclipse says that any law which is inconsistent with fundamental rights is not valid. Such a law is not totally dead but is overshadowed by the fundamental right. The inconsistency (conflict) between the impugned law and fundamental right can be removed by introducing constitutional amendment to the relevant fundamental right so that eclipse vanishes and the entire law becomes valid.

In other words, till the time a provision of law violates a fundamental right guaranteed by the Indian Constitution, it is dormant and inoperative. But if such fundamental right is amended by the Parliament and thereby, the law no more violates such fundamental right, then in such a situation the law becomes alive and operative.

These eclipsed laws exist for all post transactions and for the enforcement of the rights acquired and liabilities incurred before the commencement of the Constitution. It is only against the citizens of the country that they remain dormant and inoperative, but they remain in operation against the non-citizens who are not entitled to fundamental rights guaranteed by the Constitution.

In *Bhikhaji v. State of Madhya Pradesh*^[4], the provisions of C.P. and Berar Motor Vehicles (Amendment) Act 1948 authorized the State Government of M.P to take up the entire motor transport business in the Province to the exclusion of motor transport operators. This provision was valid when enacted, but became void when the Constitution in 1950 commenced as it violated Article 19(1)(g) of the Constitution. However, in 1951 Clause (6) of Article 19 of the Constitution was amended by the Constitution (1st Amendment) Act, which authorized the Government to monopolize any business. The

Supreme Court observed that the objective of the amendment was to remove the eclipse and to make the impugned Act free from any infirmity. It became enforceable against citizens as well as non-citizens after the constitutional impediment was removed.

In ***Keshava Madhava Menon v. State of Bombay***,^[5] the petitioner was prosecuted under a Press law for publishing a pamphlet without permission. While the prosecution was ongoing, the Constitution commenced and the petitioner challenged the act as unconstitutional. Issues arose

- whether sections 15(1) And 18(1) read with the definitions contained in sections 2(6) and 2(10) of the Indian Press (Emergency Powers) Act, 1931, were inconsistent with article 19(1)(a) read with clause (2) of that article?
- Assuming that they were inconsistent, whether the proceedings commenced under section 18(1) of that Act before the commencement of the Constitution could nevertheless be proceeded with?

The court held that the constitutional rights came from the date of commencement of the Constitution, so the question of the inconsistency between the existing laws and fundamental rights must necessarily arise on and from the date those rights came into being.

In ***Deep Chand v. State of Uttar Pradesh***,^[6] the Supreme Court held that a post- Constitutional law is void from its inception if it is found to be inconsistent with the Fundamental rights, but, a pre-Constitution law having been validly enacted earlier to the commencement of the Constitution would continue in force so far as non-citizens are concerned after the Constitution came into force. This is so because prior to commencement of constitution legislature had the competence to pass such act but after the commencement of the Constitution, the legislature does not have the competence to pass.

In ***Shankri Prasad v. Union of India***,^[7] the constitutional validity of Constitution (1st Amendment) Act, 1951, which curtailed the right to property, was challenged. The Court held that the power to amend the Constitution under Article 368 also included the power to amend fundamental rights enumerated in Part III of the Constitution and that the word “law” in Article 13(3) of the Constitution includes only an ordinary law made in exercise of the legislative powers and does not include Constitutional amendment which is made in exercise of constituent power. Therefore, a Constitutional amendment will be legally valid even if it abridges or takes any of the fundamental rights.

In ***Mahendra Lal Jaini v. State of U.P.***,^[8] the Court said that Article 13(1) of the Constitution recognizes the existence of pre-Constitutional laws which were valid when enacted, and therefore could be revived by the doctrine of eclipse and Article 13(2) provides for a direction to the State to not to make a law which takes away or abridges the rights conferred by Part III of the Constitution. The legislative power of Parliament of India and State Legislatures under Article 245 is subject to the other provisions of the Constitution and therefore, subject to Article 13(2).

3. Doctrine of Waiver

According to the doctrine of waiver, any person who is entitled to any right or privilege can waive off such a privilege, if he does so with his free will. This doctrine operates on the assumption that a man is the best judge of his interest under any legal liability, and that he has the knowledge of the consequences while intentionally giving up the privilege of such right.

But, the doctrine of waiver does not apply to fundamental rights of the people guaranteed under the Constitution of India. The fundamental rights were kept in the Constitution for the public at large and not merely for the individual’s benefit. Thus, the ‘doctrine of waiver’ cannot be used for giving up the fundamental rights.

In ***Bashesar Nath v. Commissioner of Income Tax***,^[9] a similar question arose whether a fundamental right may be waived off by the person who has it. In that case, the petitioner was found to conceal a large amount of his income under Section 5(1) of Taxation of Income (Investigation Commission) Act, 1947.

The petitioner to escape a heavy penalty agreed to enter into settlement under Section 8A with the Commissioner. In the meantime the Supreme Court in another case, held the Section 5(1) as ultra vires of the Constitution, and as a result it was struck down. Relying on this decision of the Court, the petitioner approached the Apex Court and contended that he is no longer liable to pay any penalty, due to absolution of Section 5(1) of the impugned act. The respondent on the other hand, contended that even if Section 5(1) was invalid, the petitioner, by making the settlement had waived his right under Article 14. It was held that Article 14 cannot be waived off as it is a public policy of the state. No person can relieve the state of this obligation.

In *Olga Tellis & Ors vs Bombay Municipal Corporation*,^[10] the pavement dwellers gave an undertaking to the MCD that they would not claim any fundamental right to put up huts on pavements and public roads, and also that they would not obstruct the demolition of the huts after a certain date. But, later when the huts were sought to be demolished after the specified date, the pavement dwellers pleaded that they are protected under Article 21 of the Constitution of India. The municipal corporation contended that the dwellers cannot raise any such plea in the view of their previous undertaking. The Supreme Court, overruled the objection of the municipal corporation saying fundamental rights cannot be waived off by any person. There can be no estoppel against the fundamental rights guaranteed under the Constitution.

Important Constitutional Amendments

After the enactment of the constitution in 1950, there have been numerous amendments made over the passage of time in order to bring the law in line with the changing aspects of society. Some of the important amendments have been discussed in this article.

1. Abolition of states according to classes and the introduction of Union Territories and reorganisation of states by language (1956)

This amendment organised the states with regard to the languages spoken in those territories. This systematic arrangement further lowered the complexity of the states and it even abolished the classification of states by progress and per-capita income of the states.

- The mini-constitution (42nd amendment) inserted Socialism and Secularism in the preamble, a provision on fundamental (1976)

The main contention behind the enactment of this act was to protect the interest of minorities and to restore their faith in the notion that the rich and the affluent strata of the society will not dominate over them. And the reason behind adding socialism in the amendment was to promote social as well as economic equality of the country.

- **Right to Property deleted from the list of fundamental rights (1978)**

This move was taken up in order to facilitate the reorganisation of land and also facilitate the land acquisition by the government of India for developmental purposes. Also, there was a need to bridge the gap between the affluent and the poor of the society which would be accomplished by the way of redistribution of land.

- **Voting age reduced from 21 to 18 (1989)**

During the governance of Rajiv Gandhi, the voting age was reduced from the age of 21 to 18 and according to the then government, this provision was laid down so that the youth could actively participate in the electoral purposes of the nation and this would eventually motivate them to become a part and parcel of the political process.

- **Free and compulsory education to children between 6 to 14 years (2002)**

This amendment is hailed to be one of the most important amendments of the Indian Constitution, it directed the private schools to grant 25% of the seats to the economically weaker and disadvantaged sections of the society through a process by the way of government funding. The onus behind taking up this initiative was to provide elementary education to the ones in need of it. In addition to this reservation, the amendment even provided free education for all the children aged between 6 to 14 years and there were measures taken up by the government for the implementation of the same.

- Introduction of the Goods and Services Tax (GST), to present the idea of One Nation, One Tax (2016)

This is one of the most recent amendments which includes both central government's tax as well as state government's tax. The NDA government has claimed that the introduction of GST has deterred the state governments from increasing tax unreasonably.

2.2- Article 14-18 – Right to Equality

The right to equality provides for the equal treatment of everyone before the law, prevents discrimination on various grounds, treats everybody as equals in matters of public employment, and abolishes untouchability, and titles (such as Sir, Rai Bahadur, etc.).

Before knowing about the right to equality, aspirants should know the types of equality to get an idea of what it is. It is also mentioned in our Preamble. The types of equality are:

1. Natural
2. Social
3. Civil
4. Political
5. Economic
6. Legal

The Right to Equality is one of the Fundamental Rights enshrined in the Constitution of India. It is very important to understand what this right entails and includes. This topic is a basic topic in the polity and constitution segments of the UPSC Syllabus for the civil services exam.

Below we provide the associated articles of the Constitution under the right to equality.

Right to Equality

Article	Brief description
Article 14	The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, on grounds of religion, race, caste, sex or place of birth
Article 15	The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
Article 16	There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
Article 17	Abolition of untouchability
Article 18	Abolition of all titles except military and academic

Equality before the law (Article 14)

Article 14 treats all people the same in the eyes of the law. This Article is described in two parts – which states and commands the State not to deny to any person 'equality before the law'. Another part of it also commands the State not to deny the 'equal protection of the laws'.

- This provision states that all citizens will be treated equally before the law and avoids any kind of discrimination.
- The law of the country protects everybody equally.
- Under the same circumstances, the law will treat people in the same manner.

Prohibition of discrimination (Article 15)

This article prohibits discrimination in any manner. This article secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or of them.

- No citizen shall, on grounds only of race, religion, caste, place of birth, sex or any of them, be subject to any liability, disability, restriction or condition with respect to:
 - Access to public places
 - Use of tanks, wells, ghats, etc. that are maintained by the State or that are meant for the general public

The article also mentions that special provisions can be made for women, children and the backward classes notwithstanding this article.

Equality of opportunity in matters of public employment (Article 16)

Article 16 provides equal employment opportunities in State service for all citizens.

- No citizen shall be discriminated against in matters of public employment or appointment on the grounds of race, religion, caste, sex, place of birth, descent or residence.
- Exceptions to this can be made for providing special provisions for the backward classes.

Abolition of untouchability (Article 17)

Article 17 prohibits the practice of untouchability.

- Untouchability is abolished in all forms.
- Any disability arising out of untouchability is made an offence.

Abolition of titles (Article 18)

Article 18 abolishes titles.

- The State shall not confer any titles except those which are academic or military titles.
- The article also prohibits citizens of India from accepting any titles from a foreign State.
- The article abolishes the titles that were awarded by the British Empire such as Rai Bahadur, Khan Bahadur, etc.
- Awards like Padma Shri, Padma Bhushan, Padma Vibhushan, Bharat Ratna and military honours like Ashok Chakra, Param Vir Chakra do not belong to this category.

2.3- Article 19 – Six Fundamental Freedoms and Reasonable Restrictions.

Article 19(1) of the Constitution of India guarantees six fundamental freedoms to every citizen of India, namely-

1. Freedom of speech and expression;
2. Freedom to assemble peacefully and without arms;
3. Freedom to form associations, unions or co-operative societies;
4. Freedom to move freely throughout the territory of India;
5. Freedom to reside and settle in any part of the territory of India, and
6. Freedom to practice any profession, or to carry on any occupation, trade or business.

These six fundamental freedoms are the natural and basic freedoms inherent in the status of a citizen. However, these freedoms are not absolute or uncontrolled but are subject to certain reasonable restrictions. In this article, the author will take you through the six fundamental freedoms provided under Article 19 along with the relevant case laws.

6 fundamental freedoms

Freedom of speech and expression [Article 19(1)(a) and 19(2)]

Article 19(1)(a) guarantees the freedom of speech and expression to all citizens. Freedom of speech and expression is the foundation of a democratic society and is one of the most cherished rights of a citizen. It is the first condition of liberty and plays an important role in forming public opinion.

Meaning of freedom of speech and expression

Freedom of speech and expression means the right to speak, and the right to express oneself through any medium-by words of mouth, writing, pictures, signs, internet etc. Every citizen has a right to hold an opinion and to be able to express it, including the right to receive and impart information. The expression 'freedom of speech and expression' has a wide connotation. It includes the freedom of the propagation of ideas, their publication and circulation.

Scope of freedom of speech and expression

There are various facets of the freedom of speech and expression which have been recognised by the courts. Some of those facets or rights that constitute the freedom of speech and expression are mentioned below:

1. **Freedom of the press:** Freedom of the press is perhaps the most important freedom under the right to free speech and expression. Freedom of the press does not find an explicit mention in the Constitution. However, it has been indisputably held to be an important aspect of the freedom of speech and expression and is implied under Article 19(1)(a). Freedom of press means:

- There can be no pre-censorship in the press;
- No-pre stoppage of publication in newspapers of articles or matters of public importance;
- Freedom of circulation;
- No excessive taxes on the press, etc.;

However, restrictions can be imposed in the interests of justice, but those restrictions must withstand the test of [Article 19\(2\)](#).

In *Bennett Coleman & Co v. Union of India(1972)*, the Hon'ble Supreme Court held that the freedom of the press embodies the right of the people to free speech and expression. It was held that "*Freedom of the press is both qualitative and quantitative. Freedom lies both in circulation and in content.*"

In the landmark case of ***Romesh Thappar v. The State Of Madras(1950)***, the Supreme Court observed that, "*freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible*". The Court in this case held that the freedom of circulation is as important as the freedom of publication.

2. **Right to know and to obtain information:** In the *State of U.P. v. Raj Narain (1975)*, the Supreme Court observed that the right to know is derived from the concept of freedom of speech. The Court further held that *the people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries*. It is a basic postulate of a democracy that every citizen must have a right to know about what the government is doing. It is only when the public is aware of the acts of government that transparency and accountability in governance can prevail. Thus, the right to obtain information and disseminate it is an important fundamental right. In India, we have the [Right to Information Act, 2005](#) which provides for the right of a citizen to secure access to information under the control of public authorities.
3. **Right to know the antecedents of the candidates at election:** In *Union of India v. Association For Democratic Reforms (2002)*, the Hon'ble Supreme Court held that the voters have a fundamental right to know the antecedents of the candidate contesting election including his/her criminal past.
4. **Right to reply:** In *LIC v. Prof. Manubhai D. Shah(1992)*, the Supreme Court ruled that the right to reply, including the right to get that reply published in the same news media in which something was published against or in relation to a citizen, is protected under Article 19(1)(a).
5. **Right to silence:** Right to speak includes the right to not speak or the right to remain silent. In *Bijoe Emmanuel v. State of Kerala (1986)*, the Supreme Court upheld the right to silence of three children who were expelled from school because they refused to sing the National

Anthem. The Court held that no person can be compelled to sing the National Anthem if he has genuine conscientious objections based on his religious belief. Hence, the right to speak and the right to express includes the right not to express and to be silent.

6. **Right to fly the national flag:** In the case of *Union of India v. Naveen Jindal (2004)*, the Supreme Court held that flying the National Flag with respect and dignity is an expression and manifestation of one's allegiance and feelings and sentiments of pride for the nation and therefore, is a fundamental right protected under Article 19(1)(a). However, the flying of the National Flag cannot be for commercial purposes or otherwise and can be subject to reasonable restrictions.

Reasonable restrictions on the right to free speech and expression

The right to free speech and expression is not an absolute right and is subject to reasonable restrictions. As per Article 19(2), restrictions can be imposed upon the freedom of speech and expression in the interests of:

1. sovereignty and integrity of India,
2. the security of the state,
3. friendly relations with foreign states,
4. public order, decency or morality, or
5. in relation to contempt of court,
6. defamation, or
7. Incitement to an offence.

Freedom of assembly [Article 19(1)(b) and 19(3)]

The object of holding an assembly or a meeting is the propagation of ideas and to educate the public. Hence, the right to assemble is a necessary corollary of the right to free speech and expression. Article 19(1)(b) provides for the right to assemble peaceably and without arms. This includes the right to hold public meetings, hunger strikes, and the right to take out processions. However, the assembly must be peaceful and without arms.

It is pertinent to note that there is no right to hold an assembly on government premises or private property belonging to others.

In *Himmat Lal v. Police Commissioner, Bombay (1972)*, the Supreme Court struck down a rule that empowered the police commissioner to impose a total ban on all public meetings and processions. It was held that the state could only make regulations in aid of the right of assembly of citizens and could impose reasonable restrictions in the interest of public order but no rule could be prescribed prohibiting all meetings or processions altogether.

Reasonable restrictions on right to freedom of assembly

According to Clause 3 of Article 19, the right to freedom of assembly could be restricted on the following grounds:

1. In the interests of the sovereignty and integrity of India, or
2. In the interests of public order.

Freedom to form associations, unions or co-operative societies [Article 19(1)(c) and 19(4)]

Article 19(1)(c) provides for the right to form associations, unions or cooperative societies. An association refers to a group of persons who have come together to achieve a certain objective which may be for the benefit of the members of the welfare of the general public or a scientific, charitable or any other purpose.

The right to form associations is considered as the lifeblood of democracy, as without such a right, the political parties critical to the functioning of a democracy cannot be formed.

The right to form associations and unions includes the right to form companies, societies, trade unions, partnership firms and clubs, etc. The right is not confined to the mere formation of an association but includes its establishment, administration and functioning as well.

Some of the facets of the right to form associations are as follows:

1. The right to form associations means the right to be a member of an association voluntarily. It also includes the right to continue to be or not to continue to be a member of the association.

In *Damyanti v. Union of India (1971)*, the Supreme Court upheld the right of the members of an association to continue the association with its composition as voluntarily agreed upon by the persons forming the association.

2. The right to form an association includes the right not to be a member of an association.
3. The right under Article 19(1)(c) does not prohibit the state from making reservations or nominating weaker sections into the cooperative societies and their managing committees.
4. No prior restraint can be imposed on the right to form an association.
5. There is no fundamental right of recognition of the association or union by the government.
6. The right to form an association includes no right to achieve the objects of the association.

Reasonable restrictions on right to form association

According to Article 19(4), reasonable restrictions can be imposed on the right to form associations, unions and co-operative societies, etc. on the following grounds:

1. In the interests of the sovereignty and integrity of India, or
2. In the interests of public order or morality.

Freedom of movement and residence [Article 19(1)(d), 19(1)(e) and 19(5)]

Article 19(1)(d) and (e) are complementary to each other and confer a right upon the citizens to move freely or/and to reside and settle in any part of the country.

Freedom of movement

Article 19(1)(d) provides for the right to move freely throughout the territory of India. This means the right to locomotion, i.e., the right to move as per one's own choice. This right includes the right to use roads and highways.

In *Chambara soy v. Union of India (2007)*, some unscrupulous elements had blocked the road due to which the petitioner was delayed in taking his ailing son to the hospital and his son died on arrival at the hospital. The Supreme Court held that the right of the petitioner to move freely under Article 19(1)(d) has been violated due to the road blockage. The Court held that the State is liable to pay the compensation for the death of the petitioner's son due to the inaction on the part of the State authorities in removing the aforesaid blockage.

Freedom of residence

Article 19(1)(e) states that it is the fundamental right of every citizen to reside and settle in any part of the territory of India.

In the case of *U.P. Avas Evam Vikas Parishad v. Friends Co-op. Housing Society Ltd. (1995)*, it was held by the Supreme Court that the right to residence under Article 19(1)(e) includes the right to shelter and to construct houses for that purpose.

Reasonable restrictions on right to freedom of movement and residence

As per Article 19(5), the right to freedom of movement and residence could be restricted on the following grounds:

1. In the interests of the general public, or
2. For the protection of the interests of any Scheduled Tribe.

Freedom of profession, occupation, trade or business [Article 19(1)(g) and 19(6)]

Article 19(1)(g) provides for the fundamental right of the citizens to practice any profession or to carry on any occupation, trade or business.

Scope: What's included and what's not

1. The right to carry on a business also includes the right to shut down the business.

In *Excel Wear v. Union of India (1978)*, the Supreme Court declared Section 25-O of the Industrial Disputes Act, 1947, which required an employer to take prior permission from the government for closure of his industrial undertaking, as unconstitutional and invalid on the ground that it violated Article 19(1)(g).

2. There is no right to hold a particular job of one's choice. For example, in the case of closure of an establishment, a man who has lost his job cannot say that his fundamental right to carry on an occupation is violated.
3. There is no right to carry on any dangerous activity or any antisocial or criminal activity.
4. No one can claim a right to carry on business with the government.
5. The right to trade does not include the right of protection from competition in trade. Thus, loss of income on account of competition does not violate the right to trade under Article 19(1)(g).

The Hon'ble Supreme Court in *Vishaka v. State of Rajasthan (1997)* has observed that the sexual harassment of working women in workplaces violates the fundamental right under Article 19(1)(g). In this case, comprehensive guidelines and binding directions were issued by the court to prevent the incidents of sexual harassment of women at workplaces in both public and private sectors.

Reasonable restrictions on freedom of profession, occupation, trade or business

Article 19(6) provides that the fundamental right under Article 19(1)(g) can be restricted in the following ways:

1. By imposing reasonable restrictions in the interest of the general public.
2. By state monopoly: Sub-clause (ii) of Article 19(6) enables the state to make laws for creating state monopolies either partially or completely in respect of any trade or business or industry or service. The right of a citizen to carry on trade is subordinated to the right of the state to create a monopoly in its favour.

Also, Sub-clause (i) of Article 19(6) empowers the state to lay down, by law, "*the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business*".

In *State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamat (2005)*, the Supreme Court has held that the expression 'in the interest of general public' in Article 19(6) is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution.

Test of Restrictions under Article 19(2) to 19(6)

The restrictions to be imposed on the fundamental freedoms under Article 19(2) to Article 19(6) must satisfy the following tests:

1. The restriction must be imposed by or under the authority of a law duly enacted by the appropriate legislature. The law authorising the restriction must be reasonable.
2. The restriction imposed must be for the particular purpose or object envisaged in the specific clauses, i.e., Article 19(2) to 19(6). There has to be a reasonable nexus between the restriction imposed and the objects mentioned in the respective clause.
3. The restriction must be reasonable.

Conclusion

In the landmark case of *Maneka Gandhi v. Union of India (1978)*, the Supreme Court said that *it is possible that a right does not find express mention in any clause of Article 19(1) and yet it may be covered by some clause of that Article*. This is true for freedom of the press is one such important fundamental right which, though not expressly mentioned, is implicit in Article 19(1)(a).

Lastly, it is noteworthy that earlier Article 19(1) provided for seven fundamental freedoms i.e. Clause(f) provided for the freedom to hold and acquire property which was deleted by the Constitution (Forty-Fourth Amendment) Act, 1978.

2.4- Fundamental Rights under Articles 20 and 22

Right to Freedom deals with the basic and the most vital rights of the Indian citizen. Article 19 to 22 of the Indian Constitution provides the right to freedom that aims to protect the fundamental freedoms of the Indian citizen, like freedom of personal life, freedom of speech and expression, freedom to live a dignified life, freedom to form associations and a lot more.

The right to freedom offers its citizens the independence to live with dignity. It is mentioned in **Articles 19, 20, 21A and 22 of the Indian Constitution**. This page will highlight facts about the right to freedom Articles from 19 to 22, their constitutional provisions, the freedom they provide, and their importance.

Right to Freedom

The **constitution of India** not only defines the law of the land & various organs of the government but also sets a limit on the powers of the government. The constitution, through **fundamental rights**, ensures a democratic state and assures that each individual has certain rights. The Fundamental Rights are so significant that the Constitution guarantees that the government does not violate them.

Right to Freedom Article 19 to 22 PDF

Fundamental Rights are mentioned in Part III of the constitution from Articles 12 to 35. Article 19 to 22 of the Indian constitution forms an integral part of the fundamental right and deals with the Right to freedom.

Right to Freedom (Article 19 to 22)

The right to freedom deals with the basic and the most vital rights of the Indian citizen. Article 19 to 22 of the Constitution of India (part 3) provides this right. Article 19 to 22 is considered the Constitution's heart. Here is a brief description of these articles:

- **Article 19:** It deals with protecting the rights to freedom for Assembly, Profession, Movement, Speech and expression, Association, and Residence.
- **Article 20:** It deals with the protection from a conviction for the offences.
- **Article 21:** Articles 21 and 21 (A) are responsible for the right to life, personal liberty, and elementary education.
- **Article 22:** Deals with protection against arrest and detention in some instances.

Article 19 of Indian Constitution: Right to Freedom of Speech and Expression

Originally, Article 19 of Indian constitution contained seven rights. The fundamental right was to 'acquire, possess, and maintain' property. Article 19 of Indian Constitution states that the Indian citizen has six freedoms, these are:

Freedom of speech and expression: According to Article 19(1)(a), every Indian citizen has the right to freedom of speech and expression. Because of this, the citizen has the liberty to express one's freely beliefs, opinions, and views orally, in writing, through the graphical mode, or any other with reasonable restrictions. It also accounts for freedom of the press, the right to information (later incorporated in the Right to Information Act, 2005), and the right to remain silent.

As per the **supreme court**, Freedom of Speech and Expression includes the following- right to propagate views, freedom of the press, freedom of commercial advertisement, right against tapping telephonic conversations, right to telecast, and Right against bandh by a political party or organisation, **right to information**, freedom of silence, and right to conduct demonstrations and picketing.

Freedom to Assemble

According to Article 19(1)(b) of the Constitution, every individual has the right to assemble in a group to conduct social, political, religious, or educational meetings and take out processions peacefully without arms.

However, there is just a restriction that the assembly must not be illegal. Such a case would fall under unlawful assembly (Section 141 of IPC). The state can restrict such activities under Section 129 of the **Code of Criminal Procedure**, Section 144 of the Code of Criminal Procedure, and the Prevention of Seditious Meetings Act of 1911.

Freedom to Form Unions, Associations, Cooperatives Society

As per Article 19 (1)(c), individuals can come together and form an association comprising companies, organisations, trade unions, clubs, and political parties. But, this is not applicable in a few cases.

According to the Police Forces Act of 1966, police personnel cannot form a trade union. Also, telecommunications employees, members of intelligence bureaus, and armed forces cannot form political associations.

Freedom of Movement

According to Article 19 (1)(d), any individual can move to any part of the country without any restrictions. However, the freedom of movement can be restricted on the grounds of proposed tribal interest, public order, or security.

Freedom of Residence

As per Article 19 (1)(e), all the citizens of India have the right to travel freely to any part of India and settle down without internal barriers. The state can also restrict this in the name of the security or interests of Scheduled Tribes.

Freedom of Profession

As per Article 19 (1) (g) of the Indian Constitution, individuals can opt for any occupation or profession or carry on any trade. But the state can alter the right by making specific laws required for practicing trade or occupation.

The six rights under article 19 of the Indian constitution are only protected against state action and not private individuals. The grounds for restriction to the right to freedom under Article 19 shall be in the public interest, such as:

- State Security
- International Relations
- Contempt of Court
- Public Order
- Decency or morality
- Defamation
- Incitement to an offence
- Sovereignty and integrity of India

Right to Freedom (Article 20 of Indian Constitution)

Article 20 of Indian Constitution guarantees the protection of conviction in some instances to Indian citizens, including double jeopardy, ex-post facto law, and self-incrimination. These are explained as:

- **Protection against double jeopardy:** As per Article 20 of the Indian Constitution, the person enjoys the right to freedom concerning conviction for offences, but he cannot be convicted of the same offence more than once.
- **Retrospective criminal legislation/ Prohibition of ex-post facto law:** If a person commits an act that was declared a crime/ offence later. This means that the legislation for criminal acts cannot be applied retrospectively. However, this protection is not applied to all crimes. Also, per this article, the criminal cannot be punished harder than the said law for the committed offence.
- **Protection against self-incrimination:** As per this Article, the Indian Constitution gives the right to the accused person he must not to be compelled to bear a witness against himself.

Right to Freedom (Article 21)

According to **Article 21 of the Indian Constitution**, no person shall be deprived of his life or personal liberty except according to the **procedure established by law**. According to this fundamental right, no person, whether Indian or foreigner, should be deprived of his life or personal liberty. This Article has a broad scope and has undergone many changes concerning its meaning.

- The term “personal liberty” scope changed after the Supreme Court adopted a broader connotation following the **Maneka Gandhi case**.
- It does not imply a purely animal nature or a life of struggle.
- It has a much broader scope that includes the right to live in dignity, the right to a livelihood, the right to health, and the right to clean air, among other things.

According to **Article 21 (A)**, the state is responsible for providing compulsory and free education to all children between 6 to 14 years of age. This Article was introduced into the Indian Constitution in 2002 by the 86th Amendment.

Right to Freedom Article 22

Article 22 of the Indian constitution protects against arrest, detention and post-arrest procedures (only in some instances). This Article provides the right to counsel the accused.

- As per Article 22(1), the accused has the right to be informed of the grounds for arrest.
- As per Article 22(2), one has the right to go to the nearest magistrate within 24 hours of arrest.
- Lastly, Article 22(3) states that an individual cannot be kept in custody for the period determined by the judicial **magistrate**.

However, this does not apply in the case of enemy aliens and to those who are arrested under the preventive detention laws. (**NOTE:** Preventive detention means the detention of an individual without any trial).

Importance of Right to Freedom

The **right to freedom is a fundamental human right**. Because of the foreign imperialist rule, Indians have to face a lot and fight against colonialism. After independence, various articles were introduced in the Indian constitution that protected certain fundamental rights of humans.

These rights aim to protect and promote the ideals of liberty per the **preamble**. It also seeks to remove the ideology of inequality among individuals so that everyone spends a dignified life.

Right to Information

After Article 19 (1) was introduced to the Indian constitution, the **right to information** was given a special status. As per Article 19, every Indian citizen enjoys the right to freedom of speech and expression. Additionally, any individual can know how the government works and its role.

However, it is up to the state if it wants to restrict the freedom of speech or not for the maintenance of the state’s security, sovereignty, and integrity or in case of incitement of an offence or defamation.

2.5- Article 21 and 21A – Right to Life and Personal Liberty & Right to Education

Article 21 states that “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” Thus, article 21 secures two rights:

- Right to life, and
- Right to personal liberty.

The Government of India Act, 1935 provided for the establishment of Article 21 of the Indian Constitution. It declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 21 comes under the Part III of the Indian constitution and is one of the fundamental rights guaranteed to all citizens of India. In this article, we will discuss various rights and liberties that are a part of Article 21.

Article 21 of Indian constitution

- Article 21 is a fundamental right and is included in Part-III of Indian Constitution.
- This right is available to all citizens as well as non-citizens alike.
- Supreme Court has described this right as the “heart of fundamental rights”
- According to Justice Bhagwati, Article 21 “embodies a constitutional value of supreme importance in a democratic society.”
- Article 21 secures two rights: The right to life and the Right to personal liberty.
- Article 21 cannot be suspended during an emergency.

Meaning and Scope of Article 21 of Indian Constitution

The right to life in Article 21 of Indian constitution does not mean animal existence or the mere act of breathing. It guarantees the right to a dignified life. Some of the rights that are currently included in the ambit of Article 21 includes (mentioned in Menaka Case):

- Right to live with human dignity.
- Right to the decent environment including pollution-free water and air and protection against hazardous industries.
- Right to livelihood.
- Right to privacy.
- Right to shelter.
- Right to health.
- Right to free education up to 14 years of age.
- Right to free legal aid.
- Right against solitary confinement.
- Right to a speedy trial.
- Right against handcuffing
- Right against inhuman treatment.
- Right against delayed execution.
- Right to travel abroad.
- Right against bonded labor.
- Right against custodial harassment.
- Right to emergency medical aid.
- Right to timely medical treatment in a government hospital.
- Right not to be driven out of a state.
- Right to a fair trial.
- Right of prisoner to have necessities of life.
- Right of women to be treated with decency and dignity
- Right against public hanging.
- Right to hearing.
- Right to information.
- Right to reputation.
- Right of appeal from a judgment of conviction
- Right to social security and protection of the family
- Right to social and economic justice and empowerment
- Right against bar fetters
- Right to appropriate life insurance policy
- Right to sleep
- Right to freedom from noise pollution
- Right to electricity

History Judgements Related To Article 21 of Indian Constitution

Now, let us look at some of the historic judgments that widened the scope of Article 21:

1. Kharak Singh vs. the State of UP and Others: Right to privacy was included in Article 21 by this case.
2. Sunil Batra vs. Delhi Administration: In this case, Supreme Court deemed the fatal handcuffs for the convicted persons as unconstitutional as it suggests inhuman behavior towards the prisoner. The court reiterated the clause “protection to the convicted and accused person” under Article 21.
3. Mohini Jain vs. the State of Karnataka, 1992 SC: The SC held that the Right to life also includes the Right to education.
4. Unni Krishnan vs. the State of Andhra Pradesh, 1993 SC: In this case, SC fixed the age that right to education is a fundamental right to the children for the age of 6-14 years.
5. Subhash Kumar vs. the State of Bihar: SC included the right to get pollution-free air in the ambit of the right to life.
6. Lachma Devi vs. Attorney General of India: In this case, SC made the execution of a death sentence at a public place unconstitutional.

Important Cases Related to Article 21 of the Indian Constitution

1. A.K Gopalan vs. the State of Madras, 1951: The Supreme court has taken a narrow interpretation of Article 21 in this case. It held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. This means that the state can deprive a person of the rights available in Article 21 based on a law.
2. Maneka Gandhi vs. UOI, 1978: In this case, the SC overruled its judgment of the Gopalan Case by taking a wider interpretation of Article 21. It ruled that the right to life and personal liberty of a person can be deprived by law on the condition that the procedure prescribed by that law is reasonable, fair, and just. Further, it clarified that the right to life does not merely mean animal existence. It held that all those aspects of life which go to make a man’s life meaningful, complete, and worth living will be included in this.

This is the basic overview of Article 21 of the Indian Constitution. Being one of the most important fundamental rights, it is one of the most frequently asked questions in the UPSC Exam and other government examinations.

Article 21A of the Indian Constitution

Human progress depends on education. Any nation’s future is dependent on the quality of its educational system. Even while the members of the Constituent Assembly understood the value of universal education, they were unable to guarantee it as a fundamental right because of a lack of funding, despite the fact that it was listed in the Directive Principles of State Policy. The Indian judicial system attempted to include the right to education as a component of the Right to Life in the 1993 case of *Unni Krishnan v. State of Andhra Pradesh*. Through a constitutional amendment that was passed in 2002, the Indian Parliament also gave its future inhabitants the right to an education.

On several occasions, both the judiciary and the Parliament had the chance to clearly explain the nature of this newly created fundamental right, particularly in light of the possibility that it might conflict with the fundamental right of minorities that already exists to create and run educational institutions of their choosing. There were a few crucial questions that needed to be addressed. Whether the Supreme Court’s decision in the afore-mentioned case to include the Right to Education in the purview of Article 21 and the insertion of this new right alongside the Right to Life has given the former any precedence over other related rights, remains an unanswered question.

Right to Education under the Indian Constitution

The Indian Constitution has several provisions and schedules that protect children's interests in education. There are various articles and guiding concepts in the Indian Constitution that protect and mandate the provision of education for its citizens. The Sergeant Commission, the last British education commission, predicted that universal education would be available in 40 years, or by 1985. The 42nd Amendment of 1976 to the Indian Constitution, made education a concurrent issue in order to expand basic education facilities, especially in underdeveloped areas thereby making education accessible to every individual by means of delivering it freely and mandatorily with priority for primary education.

Initially left out of the Constitution's list of fundamental rights, the Right to Education was added as a Directive Principle under Article 45, which mandated the State to make efforts to offer all children free and compulsory education until the age of 14. This was done within the first ten years of the Constitution's coming into effect. Article 45's directive covers all levels of education up to and including the age of 14 and is not just limited to elementary school.

As a result, this age group of children should have had free access to education. The Supreme Court implied the 'Right to Education' during this time from other constitutional provisions such as Articles 21, 24, 30(1), 39(e), and 39(f), in its decision-making concerning issues over the Right to Education. The Court has time and again highlighted that the state can fulfil its moral commitment under Article 45 to "*provide for free and compulsory education for children*" through government-run and aided schools, and that Article 45 does not mandate that this obligation be fulfilled at the expense of minority populations.

On August 4, 2009, the Indian Parliament passed the Right to Education Act, 2009, popularly known as the RTE Act, 2009. Article 21A of the Indian Constitution explains the necessity of free and mandatory education for children aged 6 to 14 in India. With the implementation of this Act on April 1, 2010, India joined the list of 135 nations that have made education a fundamental right for all children. It establishes basic standards for primary schools, outlaws the operation of unrecognised institutions, and opposes admissions fees and kid interviews during admission to government-aided schools. Through routine surveys, the Right to Education Act keeps an eye on every neighbourhood and identifies children who should have access to education but have not been provided with it. In India, there have long been significant educational issues at the national level as well as in the states. The RTE of 2009 outlines the tasks and obligations of the Central Government, each state, and all local governments in order to fulfil any gaps in the nation's educational system.

List of constitutional provisions promoting education as a right

1. **Article 21A:** The new Article 21A, which was inserted into the Indian Constitution by means of the 86th Constitutional Amendment, states that "*the state shall provide free and compulsory education to all children between the ages of 6 and 14 through a law that it may determine.*" In 2009, the Right to Education Act was passed in light of Article 21A.
2. **Article 15:** Discrimination based on grounds of religion, ethnicity, caste, sex, or place of birth is forbidden by Article 15 of the Indian Constitution. Article 15(3), however, says that nothing in this clause prevents the state from adopting any specific measures for women and children.
3. **Article 38:** Any social order that promotes the welfare of the people is secured by Article 38 of the Indian Constitution.
4. **Article 45:** Article 45 of the Indian Constitution endeavours to provide free and compulsory education to all children up to the age of 14 years.
5. **Article 29(2):** Article 29(2) of the Indian Constitution provides that no citizen shall be denied entrance to any state-maintained educational institution or be denied financial help from state funds on the basis of their religion, race, caste, language, or any combination of these.
6. **Article 30:** Minority linguistic and religious groups are protected by Article 30 of the Indian Constitution. They have the right to create and run any institution they want.

86th Constitutional Amendment Act, 2002

The 86th Amendment Act of 2002 adds three specific provisions to the Constitution to make it easier to understand that children between the ages of 6 and 14 have a fundamental right to free and compulsory education. This amendment was made with the intention of protecting citizens' rights to education and recognising India's educational challenges.

1. Every child has the right to a full-time elementary education of adequate and equitable quality in a formal school that complies with certain fundamental norms and standards, thanks to the addition of Article 21A in Part III of the Indian Constitution.
2. The language of Article 45 went through modification to Article 51 as it was replaced with the statement that the "*State shall work to ensure early childhood care and free and mandatory education for all children up to the age of six*".
3. The addition of a new clause to Article 51 A makes it explicitly mandatory for parents or guardians to provide opportunities for their children between the ages of 6 and 14 to receive an education [Article 51A (k)].

Reasons behind the enactment of the Right To Education Act, 2009

The reasons behind the enactment of the Right to Education Act, 2009 have been provided hereunder:

1. **1950:** Article 45 of the Indian Constitution lists it as one of the Directive Principles of State Policies.
2. **1968:** Dr. Kothari was put in charge of the First National Commission for Education, which submitted its reports concerning education as a right.
3. **1976:** The Constitution was amended to make education a concurrent issue that falls under both Central and state jurisdiction (42nd Amendment of the Indian Constitution).
4. **1986:** The Common School System (CSS) was supported by the National Policy on Education (NPE), which was developed but not put into practice.
5. **1993:** The Right to Education was recognised as a fundamental right that followed the Right to Life under Article 21 of the Indian Constitution, according to the Supreme Court's decision in the case of *Mohini Jain v. State of Karnataka* (1992) and *Unni Krishnan v. State of Andhra Pradesh* (1993).
6. **2002:** Article 21A was added to the Constitution as part of the 86th Amendment, which also altered Article 45 and added a new basic responsibility under Article 51A(k).
7. **2005:** The Central Advisory Board of Education (CABE) Committee report, which was formed to design the Right to Education Bill, had been submitted.
8. **2009:** The Right of Children to Free and Compulsory Education Act, 2009 came into the picture.

Right of Children to Free and Compulsory Education Act, 2009

To give effect to Article 21A of the Constitution, the Right of Children to Free and Compulsory Education Act, 2009, was passed. It said that the state would provide free and mandatory education to children between the ages of 6 and 14 years old, incorporating the right to primary education. In 2008, six years after the Indian Constitution underwent an amendment (86th Amendment, 2002), the Cabinet approved the Right to Education Bill. The Cabinet adopted the measure on July 2, 2009. The bill was approved by both the Rajya Sabha and Lok Sabha on July 20, 2009, and August 4, 2009, respectively. The Act was notified as legislation on September 3, 2009, after receiving the President's approval. With the exception of the state of Jammu and Kashmir, the law took effect on 1st April 2010 throughout the nation. The Act provides for the following:

1. Every child between the ages of 6 and 14 has a fundamental right to free, obligatory education in schools up to the completion of elementary education.
2. Children who have either quit school or have not shown up at any school will be enrolled in the schools, and no school will be able to refuse to accept them.

3. In order to admit pupils from economically disadvantaged and weaker sections of society to class one, private and independent educational institutions must set aside 25% of their seats.
4. A child's age must be established for admission to a school based on a certificate issued in accordance with the terms of the birth, death, and Marriage Registration Act of 1856 or on the basis of any other documents that may be required.
5. The Act's implementation will be supervised by the state commission and the National Commission for the Protection of Children's Rights (NCPCR).
6. School management committees of 75% of parents and guardians are required to oversee all schools, with the exception of private unaided institutions.
7. The mother tongue of the child will be used as the instruction medium, and a thorough and ongoing system of performance evaluation will be used.
8. A number of teachers for classes 1st to 5th:
 - Admitted children (up to 60): The number of teachers required is 2.
 - Children between (61-90): The number of teachers required is 3.
 - Children between (91-120): 4 teachers are required.
 - Above 150 children: 5 teachers + 1 head teacher.
9. The ratio of financial responsibilities between the Central Government and each state will be 55:45. For the northeastern state, it will be 90:10.
10. Building:
 - At least one classroom for every teacher and one office-cum-store-cum-head teacher's room.
 - Separate toilets for girls and boys.
 - A kitchen where a mid-day meal is prepared.
 - One playground.
 - Safe and adequate drinking water facility.
11. A minimum number of working days:
 - 200 working days for 1-5th class.
 - 220 working days for 6-8th class.
12. Instructional hours:
 - 800 Instructional hours per academic year for the 1st-5th class.
 - 1000 Instructional hours per academic year for the 6th-8th class.
13. The Act mandates the presence of libraries in each school, providing newspapers, magazines & books.
14. According to the RTE Act, children who live within "*the prescribed area or borders of neighbourhood*" should have access to primary schools:
 - Primary school within 1km.
 - Elementary schools within 3km.
15. The Act establishes the disabled population's Right to Education up to the age of 18.
16. The Act prohibits both physical and psychological abuse, procedures for screening youngsters who are being admitted, capitation costs, teachers providing private instruction and operating schools without authorisation.

Features of the Right to Education Act, 2009

Compulsory and free education for all

In India, the government is required to provide free and required primary education to each and every child, up to class 8, in a neighbourhood school within a 1 km radius. No child is required to pay any fees or other costs that would keep them from pursuing and finishing their elementary education. In order to lessen the financial burden of school expenses, free education also involves the distribution of textbooks, uniforms, stationery items, and special educational materials for students with disabilities.

Special provisions for special cases

According to the RTE Act, a child who is not enrolled in school must be accepted into a class for their age and get additional instruction to help them catch up to age-appropriate learning levels.

The benchmark mandate

The RTE Act establishes guidelines and requirements for classrooms, boys' and girls' restrooms, drinking water facilities, the number of school days, and working hours for teachers, among other things. This collection of requirements must be followed by each and every elementary school in India (primary + middle school) in order to uphold the minimum standards required under the Right to Education Act.

Quantity and quality of teachers

The RTE Act ensures that the necessary pupil-teacher ratio is maintained in every school without any urban-rural imbalance at all, allowing for the sensible deployment of teachers. Additionally, it requires the hiring of teachers who have the necessary academic and professional training.

Zero tolerance against discrimination and harassment

The RTE Act of 2009 outlaws all forms of corporal punishment and psychological abuse, as well as discrimination based on gender, caste, class, and religion, as well as capitation fees, private tutoring facilities, and the operation of unrecognized schools. Less than 10% of schools nationwide, according to the Right to Education (RTE) Forum's Stocktaking Report, 2014 adhere to all of the requirements of the Right to Education Act. Even if the Right to Education Act of 2009 brought about a lot of advances, worries about the privatisation of education still exist. Inequalities in education have persisted for a long time in India. Although the Right to Education Act represents the first step toward an inclusive education system in India, its successful implementation still presents difficulties.

Improving learning outcomes to minimise detention

No child is allowed to be held back or expelled from school until Class 8, as per the provisions of the Right to Education Act. In order to guarantee learning results that are acceptable for each grade in schools, the Continuous Comprehensive Evaluation (CCE) system was created in 2009 under the Right to Education Act. This approach was established in order to examine every area of the child while they were in school, allowing gaps to be found and addressed as soon as possible.

Monitoring compliance with RTE norms

School Management Committees (SMCs) are essential for enhancing governance and participatory democracy in primary education. All schools covered under the Right to Education Act of 2009 are required to form a School Management Committee made up of the principal, a local elected official, parents, and other community members. The committees have been given the authority to establish a school development plan and monitor how the schools are operating.

Ensuring all-round development of children

The Right to Education Act of 2009 calls for the creation of a curriculum that would guarantee each child's overall development. Develop a child's knowledge, abilities, and potential as a person.

Right to Education Act is justiciable

The Right to Education Act of 2009 is legally enforceable, and it is supported by a Grievance Redressal (GR) framework that enables anyone to take legal action against violations of its provisions. Oxfam India and JOSH filed a complaint with the Central Information Commission (CIC) in 2011 under Section 4 of the Right to Information Act, 2005 to ensure that all schools adhere to this requirement. All public authorities are required to share information with individuals about how they operate under Section 4 of the RTI Act, which is a proactive disclosure section. Since public authorities include schools, Section 4 compliance was required.

Creating inclusive spaces for all

All private schools must set aside 25% of their seats for children from socially and economically disadvantaged areas, according to the Right to Education Act of 2009. The Act's clause promoting social inclusion aims to create a more equitable and just society.

The conflict between Article 21A and Article 30(1) of the Indian Constitution

Articles 21A and 30(1) are both essentially about the Right to Education, although they take different approaches to that right. Every child has the right to the former as an individual whereas minorities only have the latter as a collective right. It is important to determine where the two pieces are complementary to one another, where they are competing with one another or contradicting one another, and to what extent.

In cases like *Re Kerala Education Bill (1958)*, *Saint Xavier College v. State of Gujarat (1974)*, *Saint Stephen's College v. University of Delhi (1991)*, *T.M.A. Pai Foundation v. State of Karnataka (2002)*, and *Islamic Academy of Education v. State of Karnataka (2003)*, the Supreme Court has discussed the nature of the right guaranteed by Article 30(1) on numerous occasions.

In *Pramati Educational and Cultural Trust v. Union of India (2014)*, the constitutional bench of the Supreme Court focused only on the issue of whether aided or unaided minority educational institutions are required to provide 'free and compulsory education' to 'all,' i.e., free education to 25% of the students in the nation. However, every time the issue was only related to the extent to which various government regulations may penetrate into the right to 'administer' minority educational institutions. However, the right to 'create' minority educational institutions was not addressed. How minority groups can create educational institutions has never received the amount of attention it deserves.

Every child in India, regardless of caste, class, creed, or religion, has the right to a primary education under Article 21A of the Indian Constitution. Each child has a right that cannot be waived since the idea of waiver does not often apply to fundamental rights. However, because minor children between the ages of 6 and 14 are the focus of Article 21A, the State has an even stronger obligation to uphold children's Right to an Education. The type of education guaranteed by Article 21A is elementary-level fundamental education and is the most significant feature of the Act of 2009 as well. It is not intended to be a religious or specialised education of any type.

The Supreme Court stipulated in *Re Kerala Education Bill (1958)* that Article 30(1) states and means that linguistic and religious minorities should be allowed to open educational institutions of their choice. The disciplines that can be taught in these educational facilities are not constrained in any way. Due to the fact that minorities will typically want to raise their children effectively, qualify them for higher education, and send them into the world with the intellectual skills necessary to enter the public sector, the educational institutions of their choice will inevitably include secular general educational institutions as well. In other words, the Article leaves it up to the minorities to choose educational institutions that will serve both ends, namely, the preservation of their religion, language, or culture, as well as the end of providing their children with a complete high-quality general education.

The next thing to keep in mind is that the Article explicitly grants two rights to all minorities, regardless of whether they are based on language or religion, namely, the right to create and the right to run educational institutions of their choice. It is abundantly obvious that the Constitution contains no specific limitations, but the legal interpretation of the document has not yet produced a binding ruling requiring minorities to establish institutions that might fulfill both objectives.

The Supreme Court made (2002) the assumption that most minorities would want their children to have both religion and modern education in order to raise respectable citizens. However, their comments fell out of line with reputable advice. This is the reason why the Supreme Court's directions have not been put into practice at the local level.

It is clear that up until recently, Madrassahs were regarded as educational institutions in Maharashtra by the Maharashtra government's order designating "*Madrassahs not teaching conventional courses*" as non-schools. Many other states, including West Bengal, Bihar, and Uttar Pradesh, are experiencing a similar predicament. Article 21A's goal of ensuring that children receive basic education is violated by the state's recognition of such educational facilities as schools. Every child has the right to get a fundamental education for at least 12 years to provide the groundwork for their personality and intelligence.

Numerous Islamic sects in India are operating these Madrassahs, which offer both secular education and religious instruction to students from all backgrounds. However, certain Islamic religious

groups in India claim that Madrassahs are closed to students from other groups because they are only intended to produce Islamic religious experts. These organisations receive financial assistance from the state as a result of their position as minority-run educational institutions. Article 29(2) of the Indian Constitution states that no citizen of India may be denied entrance to educational institutions managed by the state or that receive funding from the state, and such minority schools, therefore, are obviously operating in contravention of this provision.

The Supreme Court ruled in *Pramati Educational and Cultural Trust v. Union of India* in 2014 that the Right to Education Act of 2009 cannot force minority educational institutions to admit students from other communities in order to uphold the state's goal of providing 'free' and 'compelled' education to 'all.' The Court, however, reaffirmed that the state can use regulatory measures to affect all educational institutions, including aided and unaided minority educational institutions. In *Pramati's case*, the Supreme Court upheld its earlier rulings stating that institutions providing aided or unaided minority education can be subject to regulatory measures required to designate such an institution as an "educational institution".

The Supreme Court's views, which are summarised above, make it quite evident that the rights granted to religious minorities by Article 30(1) of the Indian Constitution are not unqualified. The fundamental and guiding ideals of our Constitution, such as equality and secularism, govern this right. Therefore, such regulatory measures are constitutionally permissible if they are implemented in schools that are associated with all religions in order to check the quality of religious instruction that is to be offered to the pupils. In this approach, it is possible to harmoniously interpret both the individual rights of children and the collective rights of the minority population, which may be advantageous for the entire nation. Thus, institutions of all religions that only offer religious instruction to children younger than 14 years of age, should be outlawed outright since they are violating Article 21A's guarantee that children have the right to basic education.

Need to support education for girls in India

According to a thorough investigation of the human capital theory, education significantly affects the productivity of the economy by raising factor production per worker. Plans for long-term economic development are centred on education and the development of human resources. Girls who feel unsafe and insecure also stop attending school. Boys attend school in the afternoon after girls do in the morning. Senior students frequently say that the boys follow them home after school while they are being teased. Due to the arousal of several complaints surrounding such events, police officers were appointed for patrolling, when the girls got out of school. However, as soon as there were fewer police officers, the boys kept harassing the girls. Because their parents thought it was no longer safe to send their daughters to school, many girls dropped out eventually. The issue still exists despite repeated reports to the police and SMC members.

A well-educated woman can give her children a better lifestyle and access to better healthcare by realising the value of education for future generations. In addition, educating girls will significantly lower the rates of infant and maternal mortality, child marriages, and domestic and sexual abuse in households. A girl with higher education is also more likely to take part in political debates, meetings, and decision-making that results in the creation of a more democratic and representative government.

New standards for the health, cleanliness, security and safety of kids in both private and public schools have been released by the NCPCR. The new recommendations stress that girls need to learn about menstrual hygiene and receive help so they don't skip class. Additionally, they state that schools must have a zero-tolerance policy for any issue involving child sexual abuse and that lawbreakers will face harsh punishment.

Does Article 21A guarantee the Right to Education in mother tongue

The Rajasthan High Court in a landmark decision of *School Development Management v. State of Rajasthan* (2022) while contemplating the Right to Free and Primary Education, observed that Article 21A of the Constitution does not "ensure" the right to obtain education in one's "mother tongue or home

language.” However, a single judge bench led by Justice Dinesh Mehta ruled that the Rajasthan government’s decision to convert Shri Hari Singh Government Senior Secondary School in Peelwa, Jodhpur district, to an English medium school in September 2021 is void because it violates Article 19 (1) (a) of the Constitution which guarantees the Freedom of Speech and Expression. The School Development Management Committee (SDMC) and the parents of the school’s children had petitioned before the Rajasthan High Court, which rendered its decision thereafter.

Facts of the case

It was argued before the Court that changing the educational medium in the middle of a session violated students’ fundamental rights and was against the Constitution. The parents insisted that they opposed “*full conversion of the present institution*,” which was thinking of keeping only English as the language of instruction. They claimed that the sudden change would force students to enrol in other schools during the academic session, which would have an impact on their academic performance.

The Rajasthan State Government insisted that pupils may simply enrol in the various government institutions offering Hindi as a second language nearby. The administration argued that such a decision was acceptable by citing the policy choice of one English-medium school in a community with a population of more than 5,000 people. However, after reviewing the relevant constitutional provisions, the High Court dismissed the argument.

However, the petitioners’ argument that Article 21A protects the right to obtain an education in Hindi was rejected by the Rajasthan High Court. The Court cited a 2014 Supreme Court decision (*State of Karnataka & Anr. v. Associated Management of English Medium Primary and Secondary Schools & Ors* (2022)) that had taken a similar tack in holding that the wording of the article is not absolute and permits the state to choose the medium of instruction ‘by law’. According to what has been granted under Article 21A of the Constitution, “*no child or parent can claim it as a matter of right, that he/his ward should be trained in a particular language or the mother tongue solely*,” is what the Court observed in the present case.

Decision and analysis by the Rajasthan High Court

1. The Right to Education is a part and parcel of Article 19(1) (a), which guarantees the Freedom of Speech and Expression, and the Court acknowledged that it could not be said that it is not protected by any of the fundamental rights. The bench then looked at the limitations imposed by Article 19(2), concluding that the State government’s decision in this matter, which was solely administrative, does not constitute a “*reasonable restriction*” as defined by Article 19(2).
2. According to the Court, clause (2) may only be used “*in the interest of the sovereignty and integrity of India, the security of the state, friendly relations with foreign nations, public order, decency or morality, or involving contempt of court, defamation, or instigation of a crime.*” Thus, the state government’s decision could not whittle down a child’s right to receive an education in Hindi under Article 19 (1)(a).
3. The Court also stated that it was against the law to “*scoop out 601 kids with one stroke of the pen under the confidence that they would be accommodated at neighbouring schools.*” The state government’s decision would also be in violation of Article 14, which guarantees the Right to Equality, as it was made without using any evidence or comprehensible standards. The Court also pointed out that the Concurrent List of the Constitution, which contains subject matters on which both the Centre and the state have the authority to legislate, encompassed education.
4. According to the Right to Education Act of 2009, “*the medium of teaching shall, to the extent practical, be in the mother tongue or the home language.*” Justice Mehta stated that in light of this, “*English as a language of instruction cannot be imposed on a child by state law, much less by a policy or administrative decision, as in the instance at hand.*”

He added that such a change would also be in violation of the RTI Act’s rules and the National Education Policy 2020. The SDMC held that the school may proceed with the transition in the following academic session provided a majority of the SDMC members approved of such a move, despite the fact that the policy decision itself was not contested and the SDMC had supported the decision in principle.

5. The Court denied the petition, describing the conversion to an English-medium school in the middle of the academic year as “*dehors the power of the State*” which means it is outside the power of the state.

The Indian judiciary and Article 21A of the Indian Constitution

The most important investment in human growth is education, which is also a tool for creating an equitable and just society and for fostering economic prosperity. The government has also established a number of national institutions for the promotion and defence of the citizens’ Right to Education. The dynamic process of education begins at birth. The foundation of socioeconomic progress and the mirror of society is education.

The foundational component of a successful democratic society and governance is education. It supplies the nation with a new vision and direction in order to eradicate the ills of society. Both a fundamental and human right, education encourages respect for basic freedoms alongside peace. Education is the primary factor in the development of human resources since it improves the skills, effectiveness, productivity, and general standard of living of those who get it. In light of this, universalising elementary education makes it necessary for the state to provide free and required education to all children aged 6 to 14.

The right to higher education is not specifically mentioned in the Indian Constitution. However, the Supreme Court of India has addressed the issue in a number of Public Interest Litigation cases that have arisen in recent years. *Unni Krishnan J. P. v. State of Andhra Pradesh* (1993) and *Mohini Jain v. State of Karnataka* (1992) are two of the most significant rulings concerning the right to education, that find its discussion hereunder. Despite the fact that Article 21A is still relatively new, there is already some limited court commentary on its scope and significance.

It is welcome to not search for a detailed analysis of the below-mentioned case, but instead a summarised version of the ratio of the case for understanding the application of Article 21A.

Mohini Jain v. State of Karnataka (1992)

In this instance, Miss Mohini Jain, a native of Meerut, applied for admission to the MBBS program at a private medical college in the state of Karnataka in the session commencing in 1991. The college administration required her to submit Rs. 60000 as the first year’s tuition fee as well as a bank guarantee for an amount equivalent to the charge for the following year. The management declined to admit Miss Jain to the medical college after hearing from her father that the requested sum was beyond his financial capabilities. The administration allegedly wanted an additional fee of Rs 450000/-, according to Miss Jain, who testified in Court, but the management had denied such a claim.

The Supreme Court ruled in this case that even though the Right to Education as such has not been protected by the Constitution as a fundamental right, it is obvious from the Preamble and the Directive Principles of the Constitution that the state was intended to provide education for its citizens. Additionally, they ruled that private educational institutions’ collection of capitation fees violated the Right to Education that is implied by the Rights to life, human dignity, and equal protection under the law.

Unni Krishnan, J.P & Ors v. State of Andhra Pradesh (1993)

The case challenged the constitutionality of state regulations governing capitation fees levied by some private professional educational institutes.

Through petitions made by private educational institutions to contest state laws, the case is given substance. The states of Tamil Nadu, Karnataka, Andhra Pradesh, and Maharashtra created this state legislation to control the capitation fee amounts. The laws stated that any additional fees received by management employees would be regarded as capitation fees. The Supreme Court has observed that it would be the responsibility of the state to offer the facilities and opportunities required by Article 39(e) and (f) of the Constitution and to avoid the exploitation of their infancy owing to destitution and squalor.

According to the Supreme Court, when read in connection with the Directive Principles particularly focusing on education, the fundamental Right to Life (Article 21) implies the right to a minimum level of education as well. The Court ruled that the scope of the right must be understood in light of the Directive Principles of State Policy, including Article 45, which mandates that the State must make every effort to provide free and mandatory education for all children under the age of 14. The Court determined that Article 21 does not establish a fundamental Right to Education leading to a professional degree. However, it was decided that the 44 years after the Constitution's enactment had effectively changed the non-enforceable right of children under 14 into a legal obligation, with respect to education. After turning fourteen, their Right to Education is restricted by the state's economic capacity and level of development (as per Article 41).

The Court cited Article 13 of the International Covenant on Economic, Social, and Cultural Rights when it stated that in order for the State to fulfil its duty to provide higher education, it must use all of its resources to the fullest extent possible in order to gradually realise each individual's right to education.

In Unni Krishnan's case, the Court disagreed with the ruling in *Mohini Jain v. State of Karnataka* (1992) that the Constitution guarantees the Right to Education at all levels. Following the Constitutional Bench's ruling in Unni Krishnan, the Supreme Court declared that Article 45 has now been elevated to the status of a fundamental right in the case of *M.C. Mehta v. State of Tamil Nadu & Ors* (1996).

The Court further ruled that a right need not be explicitly identified as a fundamental right in Part III of the Constitution in order to be treated as such by stating that "*the provisions of Part III and Part IV are supplemental and complementary to each other.*" The Court disagreed that the moral demands and aspirations expressed in Part IV are superior to the rights reflected in Part III's provisions.

Nine years after this pronouncement, the State responded by adding Article 21A to the Constitution, which guarantees children between the ages of six and fourteen the fundamental Right to Education. Additionally, legislation mandating basic education has been adopted by a number of Indian states. However, because of a number of administrative and financial restrictions, socioeconomic and cultural reasons, and other factors, these laws "*have not been enforced.*" Therefore, there is no national law requiring children to attend primary school.

Ashoka Kumar Thakur v. Union of India & Others (2008)

The opinion of Justice Bhandari in the *Ashoka Kumar Thakur case* (2008), possibly the most important affirmative action case decided by the Supreme Court of India in the recent decade or more, serves as the most notable example of discussing the Right to Education. On the surface, Ashoka Kumar Thakur doesn't seem to have much to do with elementary schooling. The main constitutional issue concerned was whether the constitutional guarantee of equality was violated by the reservation of seats in educational institutions for members of the Other Backward Classes (i.e., socially and educationally backward classes of Indian citizens).

The Petitioner's wide and all-encompassing challenge to the legitimacy and rationale of the Government's Education Policy, of which the subset of reservations was the particular cause of harm to them, appears to have provided the setting for the dicta on the Right to Basic Education. Justice Bhandari essentially concurred with the other judges in sustaining the contested affirmative action policies in his separate opinion in this case. In what he believed to be an inversion of constitutional principles, he was harshly critical of the government for placing higher education (and, in particular, affirmative action in higher education) ahead of basic education.

His opinion includes *obiter dicta* on Article 21A in this context. He planned for Article 21A to have two main components:

1. First, all children of the appropriate age must attend school, and
2. Second, the education they get must be of "quality."

This is a foreshadowing sign that the Supreme Court may be inclined to rule that a minimum education guarantee of quality is necessary for fulfilling the constitutional duty when the issue inevitably arises in the context of concrete claims under Article 21A.

Election Commission of India v. St. Mary's School (2008)

Laws or programs that blatantly obstruct the constitutional objective of universal primary education might be the subject of a constitutional challenge under Article 21A. *Election Commission of India v. St. Mary's School* (2008) is a great illustration of this strategy that the Supreme Court of India noted. In this case, the Supreme Court was debating the practice of ordering school employees to hold elections during regular school hours. How to resolve the conflict between two competing constitutional priorities was how the Court itself characterized the problem.

It acknowledged the crucial significance of free and fair elections in the Indian context, as well as the Election Commission of India's constitutional obligations in this regard. However, it ruled that this alternative constitutional objective could not take precedence over the fundamental right to free elementary education. The "deplorable status" of primary education in India was noted in this case. Taking the same into account, the Supreme Court had opined that only on holidays and other days when classes are not in session could teaching staff be deployed for election-related tasks. Thus, the deployment of teachers for the purpose of election tasks cannot take place on days they have duties in school to deliver education to the children.

It is interesting to note that Article 21 of the Constitution, which is at least textually interpreted as a negative procedural due process right defending life and personal liberty, was the main focus of the Supreme Court's reasoning in this case.

Avinash Mehrotra v. Union of India and Others (2009)

In this ruling, the Supreme Court of India expanded the definition of the Right to Education to include the right to a safe learning environment, and it required schools to abide by the specific fire safety requirements that had been laid down in this judgment.

In response to the fire that engulfed Lord Krishna Middle School in the Kumbakonam District, this public interest legal petition was filed. With about 900 pupils, Lord Krishna Middle School was a private institution. A nearby kitchen fire spread to the school building's thatched roof, which collapsed and killed 93 kids inside. The school was required by municipal building rules to be certified every two years, however, Lord Krishna Middle School was three years past due and had numerous significant code violations.

Justice Bhandari opined in the case of *Avinash Mehrotra v. Union of India and Others* (2009) that the liberal and inclusive interpretation given to other fundamental rights by the Supreme Court of India provided important direction for how Article 21A could be construed. The Court observed that more than "*a teacher and a blackboard, or a classroom and a book*" is needed to educate a child. Although Justice Bhandari acknowledged that the case at hand did not require (or possibly even permit) the Court to detail the full contours of Article 21A, he believed it was justified to conclude that where clearly unsafe structures were employed to house schools, this could not be construed as constituting compliance with the mandate of Article 21A.

While States have made an effort to develop and adhere to school building rules, the Supreme Court emphasised that not enough has been done. The Supreme Court established basic fire safety requirements for schools in accordance with its duties under Article 21A of the Constitution safeguarding children's fundamental Right to a Free and Compulsory Education.

MODULE 3

- 3.1- Article 23 and 24 – Right against Exploitation.
- 3.2- Article 25-28 – Right to Religion.
- 3.3- Article 29 and 30 – Rights of Minorities.
- 3.4- Article 32- Right to Constitutional Remedies and Public Interest Litigation.
- 3.5– Saving of Certain Laws - Article 31, 33, 34, 35.

3.1- Article 23 and 24 – Right against Exploitation.

The Right against Exploitation is enshrined in Articles 23 and 24 of the Indian Constitution. These are important Fundamental Rights that guarantee every citizen protection from any kind of forced labour.

Right against Exploitation

There are two articles of the Constitution which guarantee the right against exploitation. They are described below:

Article 23 – Prohibition of traffic in human beings and forced labour

Article 23(1): Traffic in human beings and the beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

Article 23(2): Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

- Exploitation implies the misuse of others' services by force and/or labour without payment.
- There were many marginalized communities in India who were forced to engage in manual and agricultural labour without any payment.
- Labour without payment is known as begar.
- Article 23 forbids any form of exploitation.
- Also, one cannot be forced to engage in labour against his/her will even if remuneration is given.
- Forced labour is forbidden by the Constitution. It is considered forced labour if the less-than-minimum wage is paid.
- This article also makes 'bonded labour' unconstitutional.
- Bonded labour is when a person is forced to offer services out of a loan/debt that cannot be repaid.
- The Constitution makes coercion of any kind unconstitutional. Thus, forcing landless persons into labour and forcing helpless women into prostitution is unconstitutional.
- The Article also makes trafficking unconstitutional.
- Trafficking involves the buying and selling of men and women for illegal and immoral activities.
- Even though the Constitution does not explicitly ban 'slavery', Article 23 has a wide scope because of the inclusion of the terms 'forced labour' and 'traffic'.

Article 23 protects citizens not only against the State but also from private citizens.

- The State is obliged to protect citizens from these evils by taking punitive action against perpetrators of these acts (which are considered crimes), and also take positive actions to abolish these evils from society.
- Under Article 35 of the Constitution, the Parliament is authorized to enact laws to punish acts prohibited by Article 23.
- Clause 2 implies that compulsory services for public purposes (such as conscription to the armed forces) are not unconstitutional.
- Laws passed by the Parliament in pursuance of Article 23:
 - Suppression of Immoral Traffic in Women and Girls Act, 1956
 - Bonded Labour System (Abolition) Act, 1976

Peoples Union for Democratic Rights v. Union of India, AIR 1982 SC1943.

In the case of Peoples Union for Democratic Rights v. Union of India, the petitioner was an organisation formed for the protection of democratic rights. It undertook efforts to investigate the conditions under which the workmen employed in various Asiad projects were working. This investigation found out that various labour laws were being violated and consequently public interest litigation was initiated. In the case issues like labourers not given the minimum remuneration as mentioned in the minimum wages act, 1948 and unequal income distribution among men and women were highlighted.

The Supreme Court interpreted the scope of article 23 in the case. The Court held that the word force within this article has a very wide meaning. It includes physical force, legal force and other economic factors which force a person to provide labour at a wage less than the minimum wage. Hence, if a person is forced to provide labour for less than the minimum wage, just because of poverty, want, destitution or hunger, it would be accounted for as forced labour.

The Court also clarified the meaning of “all similar forms of forced labour” as mentioned in article 23 of the Constitution of India. It said that not only begar, but all forms of forced labour are prohibited. This means that it would not matter if a person is given remuneration or not as long as he is forced to supply labour against his will.

Sanjit Roy v. State of Rajasthan, AIR 1983 SC 328.

In the case of Sanjit Roy v. State of Rajasthan, the state employed a large number of workers for the construction of a road to provide them relief from drought and scarcity conditions prevailing in their area. Their employment fell under the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964. The people employed for the work were paid less than the minimum wage, which was allowed in the Exemption Act.

The Court held that the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 is Constitutionally invalid as to the exclusion of the minimum wages act. This means that minimum wage must be paid to all the people employed by the state for any famine relief work, regardless of whether the person is affected by drought or scarcity or not. This is essential so that the state does not take advantage of the helpless condition of the people affected by famine, drought etc and upholds that they must be paid fairly for the work into which they put in effort and sweat, and which provides benefits to the state.

Deena v. Union of India, AIR 1983 SC 1155.

In the case of Deena @ Deena Dayal Etc. v Union of India And Others, it was held that if a prisoner is forced to do labour without giving him any remuneration, it is deemed to be forced labour and is violative of Article 23 of the Indian Constitution. This is because the prisoners are entitled to receive reasonable wages for the labour they did.

Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.

The petitioner, Bandhua Mukti Morcha is an organisation waging a battle against the horrendous system of bonded labour. In the case of Bandhua Mukti Morcha v. Union of India, the organisation sent a letter to Justice Bhagwati and the Court treated it as a Public Interest Litigation. The letter contained its observations based on a survey it conducted of some stone quarries in the Faridabad district where it was found that these contained a large number of workers working in “inhuman and intolerable conditions”, and many of them were forced labourers.

The Court laid down guidelines for determination of bonded labourers and also provided that it is the duty of the state government to identify, release and rehabilitate the bonded labourers. It was held that any person who is employed as a bonded labour is deprived of his liberty. Such a person becomes a slave and his freedom in the matter of employment is completely taken away and forced labour is thrust upon him. It was also held that whenever it is shown that a worker is engaged in forced labour, the Court would presume he is doing so in consideration of some economic consideration and is, therefore, a

bonded labour. This presumption can only be rebutted against by the employer and the state government if satisfactory evidence is provided for the same.

Kahason Tangkhul v. Simtri Shaili, AIR 1961 Manipur

Before independence, there was a tradition in Manipur wherein each of the house-holders had to offer one day's free labour to the headman or khullakpa of the village. In the case Miksha v State of Manipur, this practice was upheld as a custom which cannot be deemed to amount to forced labour. However, the appellant disagreed to give one day's free labour. Consequently, respondent came forward and filed a suit against the appellant stating that the appellant continued to ignore the custom even after the court had given directions for it to be followed.

In the case of Roweina Kahaosan Tangkhul v Ruiweinao Simirei Shailei Khullapka, the Court, however, allowed the appeal and held this customary practice to be violative of Article 23 of the Constitution. It said that when a Khullakpa insists on carrying on the custom, it led to forced labour as the villagers had to do it without receiving wages for it.

State v. Banwari, AIR 1951 All. 615

In the case of State through Gokul Chand v Banwari and Ors., the appellants including 5 barbers and 2 dhobis contested against Section 3 and Section 6 of U. P. Removal of Social Disabilities Act, 1947, under which they were convicted.

Section 3 of the act laid down that no person can refuse to render any service to another person on the ground that he belongs to a scheduled caste. Provided that such service lies in the ordinary course of business. The appellants contested that this Section was violative article 23 of the Constitution. But the Court disagreed and held that making it illegal for a person to refuse service to some person just because that person belongs to scheduled cases does not equate to begar.

Compulsory service for public purposes

Article 23, clause 2 of the Constitution states that this article does not prevent the state to impose compulsory services for public purposes. It also states that while doing this, the state must not make any discrimination on grounds of religion, race, caste, class or any of them.

Hence, though article 23 disallow any form of forced labour, it permits the state to engage in conscription (impose compulsory services upon people for public purposes). However, while imposing services upon people for state services the state must take care to not discriminate on grounds of religion, race, caste or class.

Dulal Samanta v. D.M., Howrah, AIR 1958 Cal. 365

In the case of Dulal Samanta v. D.M., Howrah, the petitioner was served with a notice appointing him as a special police officer for a period of three months. He complained that this violated his fundamental right as it results in "forced labour"

The Court disregarded his appeal and held that conscription for services of police cannot be considered as either:

- (i) beggar; or
- (ii) traffic in human beings; or
- (iii) any similar form of forced labour.

Hence, the notice given for the appointment of a person as a special police officer is not in prohibition to Article 23.

Article 24 – Prohibition of employment of children in factories, etc.

Article 24 says that "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

- This Article forbids the employment of children below the age of 14 in any hazardous industry or factories or mines, without exception.

- However, the employment of children in non-hazardous work is allowed.
- **Laws that were passed in pursuance of Article 24 in India.**
- **The Factories Act, 1948**
- This was the first act passed after independence to set a minimum age limit for the employment of children in factories. The Act set a minimum age of 14 years. In 1954, this Act was amended to provide that children below the age of 17 could not be employed at night.
- **The Mines Act of 1952**
- This Act prohibits the employment of people under the age of 18 years in mines.
- **The Child Labour (Prohibition and Regulation) Act, 1986**
- This was a landmark law enacted to curb the menace of child labour prevalent in India. It described where and how children could be employed and where and how this was forbidden. This Act designates a child as a person who has not completed his/her 14th year of age. The 1986 Act prohibits the employment of children in 13 occupations and 57 processes.
- **Child Labour (Prohibition & Regulation) Amendment Act, 2016**
- This Act completely forbids the employment of children below 14 years of age. It also bans the employment of people between the ages of 14 and 18 in hazardous occupations and processes. Punishments to violators of this law were made stricter by this amendment act. This Act allows children to be employed in certain family occupations and also as artists.
- **Child Labour (Prohibition and Regulation) Amendment Rules, 2017**
- The government notified the above Rules in 2017 to provide a broad and specific framework for prevention, prohibition, rescue, and rehabilitation of child and adolescent workers. The Rules clarified on issues concerning the employment of family enterprises and also provides safeguards for artists in that the working hours and conditions are specified.

People's Union for Democratic Rights v. Union of India, AIR 1983 SC 1473

In the case of People's Union for Democratic Rights v. Union of India, the petitioner observed the conditions in which the workers employed in various Asiad projects were working. It was observed that children under the age of fourteen had been employed. It was however contended that such employment was not against the Employment of Children Act, 1938 since the act did not list the construction industry as a hazardous industry.

The Court held that the construction work falls in the field of hazardous employment. Thus, children under the age of fourteen must not be employed in the construction work even though it has not been mentioned explicitly under the Employment of Children Act 1938. The Court also advised the state government to amend the schedule and change the omission to include the construction industry into the list of hazardous industries.

M.C. Mehta v. State of Tamil Nadu, AIR 1997 SC 699

In the case of M.C. Mehta v. State of Tamil Nadu, Shri MC Mehta undertook to invoke Article 32, enabling the Court to look into the violation of fundamental rights of children guaranteed to them under Article 24. Sivakasi was considered as a big offender who was employing many child labourers. It was engaged in the manufacturing process of matches and fireworks. This, the Court observed, qualified as a hazardous industry. Thus employing children under the age of 14 years in this industry is prohibited. The Court reaffirmed that children below the age of fourteen must not be employed in any hazardous industry and it must be seen that all children are given education till the age of 14 years. The Court also considered Article 39(e) which says that the tender age of children must not be abused and they must be given opportunities to develop in a healthy manner. In light of this, the Court held that the employer Sivakasi must pay a compensation of Rs. 20000 for employing children in contravention to Child Labour (Prohibition and Regulation) Act, 1986.

3.2- Article 25-28 – Right to Religion.

“India has a great heritage and it is a model for religious harmony where people of different religions live peacefully and in harmony.” Religion is a matter of belief or faith. The constitution of India recognizes the fact, how important religion is in the life of people of India and hence, provides for the right to freedom of religion under Articles 25 to Article 28. The Constitution of India envisages a secular model and provides that every person has the right and freedom to choose and practice his or her religion. In a number of cases, the Apex Court has held that secularism is the basic structure of the Constitution, the most important being the *Kesavananda Bharati* case. People in India mainly practice Islam, Hinduism, Jainism, Buddhism, Sikhism and, Christianity. In India, there are religion-specific laws and Goa is the only state to have a Uniform Civil Code known as the Goa Civil Code. The Constitution supports religious harmony which means the people of India show love and affection to different religions of the country.

Right to Freedom of Religion

The Constitution of India guarantees the right to freedom of religion to not only individuals but also religious groups in India. This is enshrined in Articles 25 to 28.

Constitutional Provisions relating to Right of Religion

- Article 25: Freedom of conscience and free profession, practice and propagation of religion.
- Article 26: Freedom to manage religious affairs.
- Article 27: Freedom as to payment of taxes for promotion of any particular religion.
- Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Article 25 (Freedom of conscience and free profession, practice, and propagation of religion)

Article 25 guarantees the freedom of conscience, the freedom to profess, practice, and propagate religion to all citizens.

- The above-mentioned freedoms are subject to public order, health, and morality.
- This article also gives a provision that the State can make laws:
 - That regulates and restricts any financial, economic, political, or other secular activity associated with any religious practice.
 - That provides for the social welfare and reform or opening up of Hindu religious institutions of a public character to all sections and classes of Hindus. Under this provision, Hindus are construed as including the people professing the Sikh, Jain, or Buddhist religions, and Hindu institutions shall also be construed accordingly.

People of the Sikh faith wearing & carrying the *kirpan* shall be considered as included in the profession of the Sikh religion.

Article 26 (Freedom to manage religious affairs)

This Article provides that every religious denomination has the following rights, subject to morality, health, and public order.

1. The right to form and maintain institutions for religious and charitable intents.
2. The right to manage its own affairs in the matter of religion.
3. The right to acquire the immovable and movable property.
4. The right to administer such property according to the law.

Article 27 (Freedom as to payment of taxes for promotion of any particular religion)

According to Article 27 of the Constitution, there can be no taxes, the proceeds of which are directly used for the promotion and/or maintenance of any particular religion/religious denomination.

Article 28 (Freedom as to attendance at religious instruction or religious worship in certain educational institutions)

This article permits educational institutions that are maintained by religious groups to disseminate religious instruction.

- This provides that no religious instruction shall be provided in State-run educational institutions.
- Educational institutions administered by the State but that were established under any endowment or trust which requires that religious instruction shall be imparted in such institutions are exempt from the above clause (that no religious instruction shall be provided).
- Any person who attends any educational institution recognized by the State or receiving State aid shall not be required to participate in any religious instruction that may be imparted in such institution, or also attend any religious worship in such institutions unless he/she has given consent for the same. In the case of minors, the guardians should have given consent for the same.

What is Secularism?

The word 'secularism' means separate from religion.

- It entails the separation of religion from the government, social, economic, and cultural aspects of life.
- Here religion is an entirely personal matter.
- India is a secular country with no state religion.
- However, this in India, also means that there is equal respect for all religions and faiths.
- The word is also a part of the Basic Structure of the Constitution. It was added by the 42nd Amendment to the Constitution.
- This concept enjoys high regard in Indian democracy.
- Secularism has also been an inalienable part of Indian culture as seen by the multitude of faiths that have co-existed in this country for centuries.
- All religious groups in India have the same powers without any discrimination.

Indian and Western Models of Secularism

The term secularism, as explained above, indicates the separation of the State from religion. This concept, however, has slightly differing connotations in the Indian and the western polity. This is discussed below.

- In the Western model, secularism connotes complete separation of the State from the Church. This owes its origin to the French Revolution where the revolution sought to establish a 'secular' government, one which did not influence the church or the clergy.
- Both the institutions (church and government) would not interfere in each other's domains.
- In India, however, the State and religion are not water-tight compartments.
- Even though the State has to maintain equal distance from all religions, the influence of the government does extend to religious affairs, albeit in a limited fashion.
- Unlike the western model, where the State does not offer financial support to any religious institution, in India, the State has chosen a positive engagement model.
- The state provides religious minorities the right to establish their educational institutions, and in some cases, also extends assistance to these institutions.
- Many Hindu temples are directly governed by the State.
- The State has set up Boards for the administration of large temples and has also set up the Waqf Board, etc.
- In India, when talking about society and the community, the word pluralism is better suited than the word secularism.
- Western societies have largely been homogenous with minimal religious (and other) minority groups, until recently.
- In India, for centuries, many religious groups have shared spaces in all respects and thrived together.

Saifuddin Saheb v. State of Bombay AIR 1962 SC 853

In this case, the State of Bombay passed the Bombay Prevention of Excommunication Act, 1949. Section 3 of this Act prevented the excommunication of the members of any community. The petitioner

(religious head of the Dawoodi-Bohra Community) challenged the Act on the ground of violation of their fundamental rights guaranteed under Article 25 and 26.

The Court observed that the power of Excommunication by the head formed the essential affairs of the community and the Act clearly violated the fundamental right under Article 25(1) of the Constitution. The Supreme Court held that the Act was violative of Articles 25 and 26 and was therefore void.

Taking over management of secular activities of the temple: *Bira Kishore Dev v. State of Orissa*, AIR 1964 SC 1501

In this case, The validity of the Shri Jagannath Temple Act, 1954 was challenged on the ground that the Act is discriminatory in nature and violates Article 26 (d) of the Constitution. It was contended by the petitioner (Raja of Puri) that the temple was his private property and he had the sole right over management as well as superintendence of the temple. The Act took away the sole management of the temple from the appellant and vested it with the Committee. Dismissing the appeal the Supreme Court held that there was no violation of the fundamental right of freedom of religion of the petitioner and the Act only dealt with the secular management of the institution.

Breaking of coconuts and performing Pooja, chanting Mantras and Sutras in State functions: **Atheist Society of India v. Government of A.P., AIR 1992 AP 310**

The petitioner (Atheist Society of India), in this case, prayed for the issuance of writ of Mandamus to direct the Government of Andhra Pradesh to give instruction to all the concerned departments to forbid the performance of religious practices such as breaking of coconuts, chanting mantras, etc at the State function on the ground that the performing of these practices is against secular policy of the constitution. The petitioner's prayers were rejected by the court on the grounds that it infringes upon the right to religion and if permitted it will be against the principle of secularism, which is the basic structure of our Constitution. It would lead to depriving of the right to freedom of thought, faith, worship.

Right to administer property owned by the denomination

Article 26 (d) says that a religious denomination has the right to administer its own property but it should be in accordance with Law. In *Durgah Committee Ajmer v. Syed Hussain Ali* the Supreme Court observed that if the religious denomination never had the right to administer property or if it has lost its right then such right cannot be created under Article 26 and therefore cannot be invoked.

The Supreme Court in the case of *State of Rajasthan v. Sajjanlal Panjawat* observed that even though the state has the power to administer or regulate the properties of a trust, but it cannot by law take away the right to administer such property and vest it in such other authority that does not even comprise the denomination. This would certainly amount to a violation of Article 26(d) of the Constitution.

Limitation of the Right

The right to religion under Article 26 is subject to certain limitations and not absolute and unfettered. If any religious practice is in contravention to any public order, morality or health then such religious practice cannot claim the protection of the state.

Freedom from taxes for promotion of any particular religion (Art. 27)

Article 27 of the Constitution prevents a person from being compelled to pay any taxes which are meant for the payment of the costs incurred for the promotion or maintenance of any religion or religious denomination.

In the case of *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, the Madras legislature enacted the Madras Hindu Religious and Charitable Endowment Act, 1951 and contributions were levied under the Act. It was contended by the petitioner that the contributions levied are taxes and not a fee and the state of madras is not competent to enact such a provision. It was held by the Supreme Court that though the contribution levied was tax but the object of it was for the proper administration of the religious institution.

Prohibition of religious instruction in the State-aided Institutions (Art. 28)

Article 28 prohibits:

- Providing religious instructions in any educational institutions that are maintained wholly out of the state funds.
- The above shall not apply to those educational institutions administered by the states but established under endowment or trust requiring religious instruction to be imparted in such institution.
- Any person attending state recognized or state-funded educational institution is not required to take part in religious instruction or attend any workshop conducted in such an institution or premises of such educational institution.

Teaching of Guru-Nanak: D.A.V. College v. State of Punjab, (1971) 2 SCC 368

In this case, Section 4 of the Guru Nanak University (Amritsar) Act, 1969 which provided that the state shall make provisions for the study of life and teachings of Guru Nanak Devji was questioned as being violative of Article 28 of the Constitution. The question that arose was that the Guru Nanak University is wholly maintained out of state funds and Section 4 infringes Article 28. The court rejecting this held that Section 4 provides for the academic study of the life and teachings of Guru Nanak and this cannot be considered as religious instruction.

Education for value development based on all religions: Aruna Roy v. Union of India, (2002) 7 SCC 368.

In this case, a PIL was filed under Article 32 wherein it was contended by the petitioner that the National Curriculum Framework for School Education (NCFSE) which was published by the National Council of Educational Research and Training is violative of the provisions of the constitution. It was also contended that it was anti-secular and was also without the consultation of the Central Advisory Board of Education and hence it should be set aside. NCFSE provided education for value development relating to basic human values, social justice, non-violence, self-discipline, compassion, etc. The court ruled that there is no violation of Article 28 and there is also no prohibition to study religious philosophy for having value-based life in a society.

3.3- Article 29 and 30 – Rights of Minorities

India is a dynamic constitutional democracy with a feature of accommodating pluralism in thought and language so as to preserve cohesiveness and unity in diversity. The meaning of diversity has different connotations such as geographical, religious, linguistic, racial and cultural. To say India is linguistically diverse is not an exaggeration or any subjective thing. According to the 8th Schedule of the Indian Constitution, it recognizes 22 languages, which are:

1. Assamese,
2. Bengali
3. Bodo
4. Dogri
5. Gujarati
6. Hindi
7. Kannada
8. Kashmiri
9. Konkani
10. Maithili
11. Malayalam
12. Manipuri
13. Marathi
14. Nepali
15. Odia
16. Punjabi

17. Sanskrit
18. Santhali
19. Sindhi
20. Tamil
21. Telugu
22. Urdu

A linguistic or religious minority community can conserve its language and culture through educational institutions but “no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them¹”. *Jamia Millia Islamia* and *Aligarh Muslim University* are the prominent examples of minority educational institutions.

The Scope of Article 29 and 30 of the Constitution

These two articles confer four distinct rights.

1. The Right of citizens to conserve its language, script or culture [Art.29(1)]¹– “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same”
2. The Right of a citizen not to be denied admission into state maintained and state-aided institution on the ground only of religion, race, caste, or language [Art.29(2)]²– “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them”
3. The Right of all the religious or linguistic minorities to establish and administer educational institutions of their own choice [Art.30(1)]³– “All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”
4. The Right of an educational institution not to be discriminated against in the matter of State aid on the ground that it is under the management of a minority [Art.30(2)]⁴– “The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.”

To preserve language, script, and culture

Article 29(1) extends to all the citizens irrespective of the fact whether they are in majority or minority, the only condition being that such section must have a distinct language, script or culture of its own.

It is an *absolute right* for the minorities to preserve its language and culture through educational institutions and cannot be subject to reasonable restrictions in the interest of the general public.

Restrictions on the ground of religion, race, caste or language

Article 29(2) is an individual right given to citizen and not to any community. The present clause gives an aggrieved person, who has been denied admission on the ground of his religion. If a person has the academic qualifications but is refused admission *only* on the grounds of religion, race, caste, language or any of them, then there is a clear breach of the fundamental right under this section.⁵

Right to Establish and Administer Educational Institution

Article 30(1) is further divided into two parts, that is:

Right to establish

To claim the benefit under article 30(1) it is *not* necessary-

1. That the institution must seek to conserve the language, script or culture of the minority community; what is necessary is its establishment by the minority community, it may impart religious or secular education wholly unconnected with language, script, and culture.
2. That admission into such institution must be confined exclusively to members of the minority community, and not a single member of the majority community or other minority communities should have its advantage.⁶

Case Study of Aligarh Muslim University (AMU) {*Azeez Basha v. Union of India*}

In the case of *Azeez Basha v. Union of India*⁷, the Supreme Court held that if an educational institution is not been established by the minority community then they have no right to administer it. The term “established” and “administered” have to be read in coordination. The University Grants Commission Act prohibits the formulation of “University” established by the educational institution unless and until it is governed by law.

1. *Wanchoo* clearly stated that the article cannot be read to mean that even if the minority institution had been established by any other authority (Act of Parliament), in this case, the religious minority cannot avail the services of the university because “establish” and “authority” are the terms which are complementary to each other.

In the case of *Dr. Naresh Agarwal v. Union of India*⁸, where 50% of the seats to be filled on the basis of entrance examination conducted by Aligarh Muslim University and the other 50% of the seats was reserved for Muslim Candidates. The petitioners in this case, who are Hindu by caste have been deprived of their right to participate in the process of admission against that 50%. The Allahabad High Court followed the judgment of *Azeez Basha v. Union of India* and held that AMU is not a minority institution and struck down the amendment which was made in the favor of Aligarh Muslim University.

Definition of Minority

The term ‘minority’ is not defined anywhere in the Constitution of India but the judges have interpreted the meaning in many different cases which are mentioned below:

•Re-Education Bill [9]

Supreme Court through *J. S.R Das* held that “minority” means a community which is numerically less than 50% of the total population.

A similar judgment was passed by the Kerala High Court in the case of *A.M Patroni v. Kesavan*¹⁰ in which it was held that “any religious or linguistic community which is less than 50% of the total population shall be considered as a “minority”.

•D.A.V College, Bathinda v. State of Punjab & Ors [11]

For the purpose of article 30(1) a community may constitute a minority based on language, even though they may not have a separate *script*; it would be enough if they have a separate spoken language.

Right to administer

The word “administer” under article 30(1) of the Constitution means the right to manage and conduct the affairs of the institution. It is open to a university to impose reasonable conditions upon a minority institution for maintaining the requisite educational standard and efficiency like-

1. Qualifications of teachers to be appointed in the institution;
2. Conditions of service e.g the age of superannuation of teachers;
3. Qualifications for entry of students;
4. Courses of study (subject to special subjects which the institution may seek to teach)
5. Hygiene and physical training of students.¹²

In *State of Bombay v. Bombay Education Society*¹³, it was held that “*Where.....A minority like the Anglo Indian community, which is based, inter-alia, on religion and language has the fundamental right to conserve its language, script and culture under Article 29(1) and has the right to establish and administer educational institution of their choice under Article 30(1) surely then there must be implicit in the fundamental right, the right to impart instruction in their own institutions to children of their own community in their own language.....such being the fundamental right the police power of the state to determine the medium of instruction must yield to the fundamental right to the extent it is necessary to give effect to it and can not be permitted to run counter to it*”

In *St. Xavier’s College v. The State of Gujarat*, the court held that the right to administer is the right to ‘conduct’ and ‘manage’ the affairs of the institution.

Admission Procedure in Minority Educational Institution

In *St. Stephen's College v. University of Delhi*¹⁴, the preference is given to Christian students by St. Stephen's College was challenged.

The Supreme Court by the majority of 1 to 4 held that the college is not bound to follow the university circulars as it will deprive the college of their minority character. The right to select students for admission is an important facet of administration. This power also can be regulated but the regulation must be reasonable and should be conducive to the minority institutions. The impugned directive of the university to select students on the uniform basis of marks secured in the qualifying examinations would deny the right to the college to admit students belonging to the Christian community. Unless some concession is provided to the Christian students¹⁵

The court decided the two categories for the selection process:

1. *Category I* – 50% of the seats reserved for the minority community.
2. *Category II* – remaining 50% are selected on the basis of merit.

But in *T.M.A Pai Foundation v. State of Karnataka* [16], it was held that “A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to maladministration. Even an unaided minority institution ought not to ignore the merit of the students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence”.

The court also overruled the decision in *St. Stephen's* case. The court has now granted the power to the state to fix quotas for minority students.

Role of National Commission for Minority Educational Institution – A boon for minority educational institution

The National Commission for Minority Educational Institution has the original jurisdiction to determine the minority status of any educational institution as held by the Hon'ble Supreme Court of India.

Justice Nariman, who authored the judgment, said the NCMEI Act grants the Commission to act upon all the queries relating to the status of a minority institution.

A power of cancellation was also vested in the NCMEI to cancel a certificate granted either by an authority or the NCMEI.¹⁷

Whether Jamia Millia Islamia is a minority institution?

On 22nd February 2011 National Commission for Minority Educational Institution (NCMEI) has declared Jamia Millia Islamia a religious minority institution and that the university will have the benefit of being a minority institution under article 29 and article 30 of the Constitution.

According to **Section 2 (o)** of the JMI Act says “University” means the educational institution known as “Jamia Millia Islamia” founded in 1920 during the Khilafat and Non-Co-operation movements in response to Gandhiji's call for a boycott of all Government-sponsored educational institutions, which was subsequently registered in 1939 as Jamia Millia Islamia Society, and declared in 1962 as an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956, and which is incorporated as a University under this Act.¹⁸

On 5th March 2018, an affidavit is filed by the incumbent Government in the Delhi High Court regarding the minority status of Jamia Millia Islamia where they cited the case of *Azeez Basha v. Union of India* to justify their stand, in which the apex court held that university incorporated under the act of parliament cannot be claimed as a minority institution.

The affidavit concludes that JMI is not a minority institution as it was set up by the Act of Parliament and funded by the central government and it was not set up by any minority sect.

3.4- Article 32- Right to Constitutional Remedies and Public Interest Litigation

Concept and Purpose

Article 32 of the Indian Constitution gives the right to individuals to move to the Supreme Court to seek justice when they feel that their right has been ‘unduly deprived’. The apex court is given the authority to issue directions or orders for the execution of any of the rights bestowed by the constitution as it is considered ‘the protector and guarantor of Fundamental Rights’.

Under Article 32, the parliament can also entrust any other court to exercise the power of the Supreme Court, provided that it is within its Jurisdiction. And unless there is some Constitutional amendment, the rights guaranteed by this Article cannot be suspended. Therefore, we can say that an assured right is guaranteed to individuals for enforcement of fundamental rights by this article as the law provides the right to an individual to directly approach the Supreme Court without following a lengthier process of moving to the lower courts first as the main purpose of Writ Jurisdiction under Article 32 is the enforcement of Fundamental Rights.

Dr Ambedkar stated that:

“If I was asked to name any particular article in this Constitution as the most important- an article without which this Constitution would be a nullity— I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realized its importance.”

To know more about right to constitutional remedies in brief, please refer to the video below:

Nature of Writ Jurisdiction

The nature of Writ Jurisdiction provided under this Article is discretionary. There are five important factors for guiding this discretion.

Factors Guiding the Discretion	Meaning
1. Locus Standi	Right to bring an action or to be heard before a court.
2. Alternative Relief	Remedies sought in a lawsuit in various or alternative forms.
3. Res Judicata	A case that has been decided.
4. Questions of the Fact	An issue that involves resolution of a factual dispute or controversy.
5. Laches	A defence to an equitable action, that bars recovery by the plaintiff because of the plaintiff’s undue delay in seeking relief.

Types of Writs

There are five types of Writs as provided under Article 32 of the Constitution:

1. Habeas Corpus

•Meaning

It is one of the important writs for personal liberty which says “You have the Body”. The main purpose of this writ is to seek relief from the unlawful detention of an individual. It is for the protection of the individual from being harmed by the administrative system and it is for safeguarding the freedom of the individual against arbitrary state action which violates Fundamental Rights under Articles 19, 21 & 22 of the Constitution. This writ provides immediate relief in case of unlawful detention.

•When Issued?

Writ of Habeas Corpus is issued if an individual is kept in jail or under a private care without any authority of law. A criminal who is convicted has the right to seek the assistance of the court by filing an application for “writ of Habeas Corpus” if he believes that he has been wrongfully imprisoned and the conditions in which he has been held falls below minimum legal standards for human treatment. The court issues an order against prison warden who is holding an individual in custody in order to deliver

that prisoner to the court so that a judge can decide whether or not the prisoner is lawfully imprisoned and if not then whether he should be released from custody.

• **Important judgments on Habeas Corpus**

The first Habeas Corpus case of India was that in Kerala where it was filed by the victims' father as the victim P. Rajan who was a college student was arrested by the Kerala police and being unable to bear the torture he died in police custody. So, his father Mr T.V. Eachara Warriar filed a writ of Habeas Corpus and it was proved that he died in police custody.

Then, in the case of *ADM Jabalpur v. Shivakant Shukla* [1] which is also known as the Habeas Corpus case, it was held that the writ of Habeas Corpus cannot be suspended even during an emergency (Article 359).

While deciding whether Habeas Corpus writs are civil or criminal in nature, it was held in *Narayan v. Ishwarlal* [2] that the court would rely on the way of the procedures in which the locale has been executed.

This writ has been extended to non-state authorities as well which is evident from two cases. One from the *Queen Bench's case of 1898 of Ex Parte Daisy Hopkins* in which the proctor of Cambridge University detained and arrested Hopkins without his jurisdiction and Hopkins was released. And in the case of *Somerset v. Stewart* wherein an African Slave whose master had moved to London was freed by the action of the Writ.

• **Circumstances when the writ of Habeas Corpus cannot be issued:**

1. The detention is lawful.
2. The case is being prosecuted for failure to comply with a legislative or judicial mandate.
3. A competent court authorized the detention.
4. The jurisdiction of the court on detention is ultra vires.

2. Quo Warranto

• **What does the writ of Quo Warranto mean?**

Writ of Quo Warranto implies thereby "By what means". This writ is invoked in cases of public offices and it is issued to restrain persons from acting in public office to which he is not entitled to. Although the term 'office' here is different from 'seat' in legislature but still a writ of Quo Warranto can lie with respect to the post of Chief Minister holding a office whereas a writ of quo warranto cannot be issued against a Chief Minister, if the petitioner fails to show that the minister is not properly appointed or that he is not qualified by law to hold the office. It cannot be issued against an Administrator who is appointed by the government to manage Municipal Corporation, after its dissolution. Appointment to public office can be challenged by any person irrespective of the fact whether his fundamental or any legal right has been infringed or not.

• **The court issues the Writ of Quo Warranto in the following cases:**

1. When the public office is in question and it is of a substantive nature. A petition against a private corporation cannot be filed.
2. The office is created by the State or the Constitution.
3. The claim should be asserted on the office by the public servant i.e. respondent.

• **Important Case Laws**

In the case of *Ashok Pandey v. Mayawati* [3], the writ of Quo Warranto was refused against Ms Mayawati (CM) and other ministers of her cabinet even though they were Rajya Sabha members.

Then in the case of *G.D. Karkare v. T.L. Shevde* [4], the High Court of Nagpur observed that "In proceedings for a writ of quo warranto, the applicant does not seek to enforce any right of his as such nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from that office."

The Writ of quo warranto was denied by the court in the case of *Jamalpur Arya Samaj v. Dr D. Ram* [5]. The writ was denied on the ground that writ of quo warranto cannot lie against an office of a private nature. And also it is necessary that office must be of substantive character. Whereas in the case of *R.V. Speyer* [6] the word 'substantive' was interpreted to mean an 'office independent to the title'. Also

in *H.S. Verma v. T.N. Singh* [7], the writ was refused as the appointment of a non-member of the state legislature as C.M. was found valid in view of Article 164(4) which allows such appointment for six months.

•Circumstances when the writ of Quo Warranto cannot be issued

1. The writ of Quo Warranto cannot be issued for any private organization or person.
2. The writ of Quo Warranto cannot be issued for any body or an organisation that does not fall under the definition of “State” as defined under Article 12.
3. Absence of alternative remedy cannot be a ground for issuing a writ of Quo Warranto.

In the case of *Bharati Reddy v. The State Of Karnataka* (2018), the Hon’ble Supreme Court held that a writ of quo warranto cannot be issued based on assumptions, inferences, or speculations concerning the fact of accomplishment of qualifying conditions. There must be an establishment of the fact that a public officer is abusing lawful powers not vested to him within the public authority.

3. Mandamus

•Writ of Mandamus

Writ of Mandamus means “We Command” in Latin. This writ is issued for the correct performance of mandatory and purely ministerial duties and is issued by a superior court to a lower court or government officer. However, this writ cannot be issued against the President and the Governor. Its main purpose is to ensure that the powers or duties are not misused by the administration or the executive and are fulfilled duly. Also, it safeguards the public from the misuse of authority by administrative bodies. The *mandamus* is “neither a writ of course nor a writ of right but that it will be granted if the duty is in nature of public duty and it especially affects the right of an individual, provided there is no more appropriate remedy” [8]. The person applying for mandamus must be sure that he has the legal right to compel the opponent to do or refrain from doing something.

•Conditions for issue of Mandamus

1. There must rest a legal right of the applicant for the performance of the legal duty.
2. The nature of the duty must be public.
3. On the date of the petition, the right which is sought to be enforced must be subsisting.
4. The writ of Mandamus is not issued for anticipatory injury.

•Limitations

The courts are unwilling to issue the writ of mandamus against high dignitaries like the President and the Governors. In the case of *S.P. Gupta v. Union of India* [9], judges were of the view that a writ cannot be issued against the President of India for fixing the number of judges in High Courts and filling vacancies. But in *Advocates on Records Association v. Gujarat* [10], the Supreme Court ruled that the judges’ issue is a justiciable issue and appropriate measures can be taken for that purpose including the issuance of mandamus. But in *C.G. Govindan v. State of Gujarat* [11], it was refused by the court to issue the writ of mandamus against the governor to approve the fixation of salaries of the court staff by the Chief Justice of High Court under Article 229. Hence, it is submitted that the Governor or the President means the state or the Union and therefore issuance of mandamus cannot take place.

•Important Judgements

In *Rashid Ahmad v. Municipal Board* [12], it was held that in relation to Fundamental Rights the availability of alternative remedy cannot be an absolute bar for the issue of writ though the fact may be taken into consideration.

Then, in the case of *Manjula Manjori v. Director of Public Instruction*, the publisher of a book had applied for the writ of mandamus against the Director of Public Instruction for the inclusion of his book in the list of books which were approved as text-books in schools. But the writ was not allowed as the matter was completely within the discretion of D.I.P and he was not bound to approve the book.

In the case of *Binny Ltd. & Anr v. V. Sadasivan & Ors* (2005), the Hon’ble Supreme Court laid down the scope of mandamus. It stated that a writ of mandamus is not applicable against any private wrong. It can

be issued only when any public authority exercises its duty unlawfully or refuses to perform its duty within the ambit of the law.

In the case of *Ramakrishna Mission v. Kago Kunya* (2019), The Supreme Court ruled that where a contract is of private nature or has no connection with any public authority, it does not fall within the purview of the writ of mandamus.

In the *Hari Krishna Mandir Trust v. State Of Maharashtra* (2020), the Hon'ble Supreme Court held that the High Courts are obligated by law to issue Writs of Mandamus in order to enforce a public duty.

4. Certiorari

•What does Writ of Certiorari mean?

Writ of Certiorari means to be certified. It is issued when there is a wrongful exercise of the jurisdiction and the decision of the case is based on it. The writ can be moved to higher courts like the High Court or the Supreme Court by the affected parties.

There are several grounds for the issue of Writ of Certiorari. Certiorari is not issued against purely administrative or ministerial orders and that it can only be issued against judicial or quasi-judicial orders.

•When is a writ of Certiorari issued?

It is issued to quasi-judicial or subordinate courts if they act in the following ways:

1. Either without any jurisdiction or in excess.
2. In violation of the principles of Natural Justice.
3. In opposition to the procedure established by law.
4. If there is an error in judgement on the face of it.

Writ of certiorari is issued after the passing of the order.

•Important Judgements on writ of Certiorari

In *Surya Dev Rai v. Ram Chander Rai & Ors.*, the Supreme Court has explained the meaning, ambit and scope of the writ of Certiorari. Also, in this it was explained that Certiorari is always available against inferior courts and not against equal or higher court, i.e., it cannot be issued by a High Court against any High Court or benches much less to the Supreme Court and any of its benches. Then in the case of *T.C. Basappa v. T. Nagappa & Anr.* [13], it was held by the constitution bench that certiorari maybe and is generally granted when a court has acted (i) without jurisdiction or (ii) in excess of its jurisdiction. In *Hari Bishnu Kamath v. Ahmad Ishaque* [14], the Supreme Court said that "the court issuing certiorari to quash, however, could not substitute its own decision on the merits or give directions to be complied with by the court or tribunal. Its work was destructive, it simply wiped out the order passed without jurisdiction, and left the matter there." In *Naresh S. Mirajkar v. State of Maharashtra* [15], it was said that High Court's judicial orders are open to being corrected by certiorari and that writ is not available against the High Court.

•Circumstances when the writ of Certiorari cannot be issued:

The writ of certiorari cannot be issued against:

1. An individual
2. A company
3. Any private authority
4. An association
5. To amend an Act or Ordinance
6. An aggrieved party who has an alternative remedy

In the case of *General Manager, Electrical Rengali Hydro Electric Project, Orissa and Others v. Giridhari Sahu and Ors.* (2019), the Hon'ble Supreme Court laid down the factors determining the validity of the writ of certiorari.

5. Prohibition

•What does Writ of Prohibition mean?

It is a writ directing a lower court to stop doing something which the law prohibits it from doing. Its main purpose is to prevent an inferior court from exceeding its jurisdiction or from acting contrary to the rules of Natural Justice.

•When is the writ of Prohibition issued?

It is issued to a lower or a subordinate court by the superior courts in order to refrain it from doing something which it is not supposed to do as per law. It is usually issued when the lower courts act in excess of their jurisdiction. Also, it can be issued if the court acts outside its jurisdiction. And after the writ is issued, the lower court is bound to stop its proceedings and should be issued before the lower court passes an order. Prohibition is a writ of preventive nature. The principle of this is 'Prevention is better than cure'.

•Important Case Laws

In case of *East India Commercial Co. Ltd v. Collector of Customs* [16], a writ of prohibition was passed directing an inferior Tribunal prohibiting it from continuing with the proceeding on the ground that the proceeding is without or in excess of jurisdiction or in contradiction with the laws of the land, statutes or otherwise. Then in the case of *Bengal Immunity Co. Ltd* [17], the Supreme Court pointed out that where an inferior tribunal is shown to have seized jurisdiction which does not belong to it then that consideration is irrelevant and the writ of Prohibition has to be issued as a right.

•Circumstances when the writ of Prohibition cannot be issued:

1. A writ of prohibition cannot be issued when a subordinate or a tribunal court is acting within the ambit of its jurisdiction.
2. A writ of prohibition cannot be issued in the situation of a mistake of a fact or law.
3. A writ of prohibition is not allowed for administrative authorities discharging administrative, executive or ministerial functions.

When can the Supreme Court dismiss a writ petition under Article 32 of Indian Constitution

Under Article 32, the Supreme Court can dismiss a writ petition in the following circumstances:

Non-filing of the writ in compliance with the court hierarchy

If a person files a writ petition in the Apex Court and the court dismisses his writ, the individual cannot file the writ petition again in another Court. But if a person files a writ petition in the high court and the court refuses his petition, he has the right to appeal against the decision of the Supreme Court under the principle of Natural Justice.

Principle of res judicata

Res Judicata is defined under Section 11 of the Civil Procedure Code, 1908. It is the Latin phrase for "a matter decided." It means that a subsequent suit cannot be filed on the same cause of action and the same dispute by the parties to the suit. The principle of Res Judicata is based on three maxims:

1. *Nemo debet lis vaxari pro eadem causa* (no man should be vexed twice for the same cause)
2. *Interest republicae ut sit finis litium* (it is in the interest of the state that there should be an end to litigation)
3. *Res judicata pro veritate occipitur* (a judicial decision must be accepted as correct)

In the case of *Daryao And Others vs The State Of U. P. And Others* (1961), the Supreme Court ruled that the principle of res judicata will be applicable and even though article 32 is a fundamental right, any legal provision that overrides any fundamental right or any provision under law shall be found unconstitutional.

Habeas Corpus is an exception to the principle of Res Judicata as held in the case of *Ghulam Sarwar v. Union of India* (1966)

Misrepresentation of facts

If the petitioner is found to have committed a substantial misrepresentation of key facts, the Supreme Court may dismiss the petition at any stage.

In the case of *Shri K. Jayaram & Others v. Bangalore Development Authority & Others* (2021), the Supreme Court held that the concealment of key information is a misuse of the legal process, depriving the appellant from the exceptional, equitable, and discretionary relief from Writ Courts.

Availability of alternative remedy

If the petitioner has another remedy, he must seek it rather than filing a writ petition. In the case of *State of U.P. & Anr v. U.P. Rajya Khanij Vikas Nigam S.S and Ors* (2008), The Hon'ble Supreme Court ruled that the petitioners must seek a suitable alternative remedy before filing a writ case.

Inordinate delay

In the case of *D. Gopinathan Pillai v. State Of Kerala & Anr* (2007), the Hon'ble Supreme Court held that inordinate delays cannot be accepted unless they are justified with reasonable, satisfactory, adequate, and suitable reason.

Malicious petition

If the petition submitted to the Supreme Court is found to be malicious or futile, the Supreme Court may dismiss it under Article 32.

The Hon'ble Supreme Court rejected the writ petition in *Shoukat Hussain Guru vs State (Nct) Delhi & Anr* (2008) because it lacked any rational grounds for it to be issued.

Against whom a writ can be issued

Part III of the Indian Constitution deals with fundamental rights. Article 32 is a fundamental right in itself. Violation of fundamental rights can be relieved by the filing of a writ petition under Article 32 to the Supreme Court or under Article 226 to the High Court. Writs are public law remedies. The rights granted to citizens through fundamental rights as outlined in Part III of the Constitution are a safeguard against state misconduct. Article 12 defines the word "State," which includes the following:

1. The Government and Parliament of India, i.e. the Union's Executive and Legislature.
2. Each state's government and legislature, i.e., the executive and legislative branches of government.
3. All local or other authorities in Indian territory.
4. All local and other authorities controlled by the Government of India.

In the case of *Ajay Hasia v. Khalid Mujib* (1981), under Article 12, the term "local authority" refers to a unit of local self-government such as a municipal committee or a village panchayat.

In the case of *Kishor Madhukar Pinglikar vs Automotive Research Association* (2022), the Hon'ble Supreme Court held that the presence of some aspect of public duty or function does not automatically constitute a body as a "state" under Article 12.

Suspension of fundamental rights

The six Fundamental Rights outlined in Article 19 are immediately suspended when a declaration of national emergency is made, in accordance with Article 358. The 44th Amendment Act of 1978 included two restrictions on the application of Article 358, namely:

1. When the national emergency is proclaimed owing to war or foreign invasion, rather than an armed rebellion and the six fundamental rights outlined in Article 19 be suspended.
2. At the times of emergency, Article 32 will be suspended.

The fundamental rights are merely suspended in their enforcement under Article 359, not their totality. During the emergency, the rights outlined in Articles 20 and 21 cannot be suspended.

Recent developments under Article 32 of Indian Constitution

The Supreme Court ruled in *Shashidhar M. v. Poornima C* (2019) that writ petitions for recalling directives in Special Leave Petition (SLP) are not maintainable.

In the case of *Skill Lotto Solutions Pvt Ltd. v. Union Of India* (2020), the Hon'ble Supreme Court held that "Article 32 is an important and integral part of the basic structure of the Constitution. Article 32 is

meant to ensure observance of rule of law. Article 32 provides for the enforcement of fundamental rights, which is the most potent weapon.”

In the case of *Mohammad Moin Faridullah Qureshi v. The State Of Maharashtra* (2020), the Hon’ble Supreme Court held that when a judgement is declared final under Article 32, it cannot be disputed. In the case of *Gayatri Prasad Prajapati v. State of Uttar Pradesh and Others* (2022), the Hon’ble Supreme Court held that writ petitions cannot be filed for quashing a criminal proceeding or a First Information Report (FIR).

In the case of *Sharad Zaveri vs Union Of India* (2022), the Hon’ble Supreme Court ruled that not all conflicts involving places of worship may be taken before the Supreme Court under Article 32. In the case of *Dharmraj Singh vs The State Of Bihar* (2022), the Hon’ble Supreme Court warned against submitting petitions pertaining to Section 482 of the Criminal Procedure Code, 1973 under the guise of Article 32.

Key differences between Article 32 and Article 226 : a tabular representation

Article 32	Article 226
1. Article 32 is a fundamental right in itself. The Supreme Court cannot refuse to consider any petition under Article 32.	1. Article 226 has discretionary powers to High Court within judicial principles to consider any petition.
2. Under Article 32, writ petitions are issued to enforce fundamental rights.	2. Under Article 226, writ petitions can be issued to enforce fundamental rights or for any other purpose.
3. During the time of emergency, Article 32 is suspended.	3. During the time of emergency, Article 226 cannot be suspended.
4. Orders passed under Article 32 will supplant orders passed under Article 226.	4. The orders passed under Article 226 cannot supplant orders under Article 32.
5. Article 32 has territorial jurisdiction over the entire country of India.	5. Article 226 has limited territorial jurisdiction.

Status of writs in other countries

United States

Writs are a residue of the English common law system in the United States. All Writs Act, a United States federal legislation that was first codified in the Judiciary Act of 1789 extends subject matter jurisdiction to U.S. federal courts as long as their issuance is necessary or appropriate in aid of the court’s respective jurisdictions and agreeable to the usages and principles of law. In the modern era, the All Writs Act is applied when a legislative scheme is incomplete or ambiguous, *casus omissus*. Prerogative writs also called extraordinary writs or extraordinary remedies are issued by a judge exercising uncommon or discretionary power. The writs of habeas corpus, certiorari, mandamus, quo warranto, and procedendo are forms of prerogative writs. There are several further types of writs, including writs of execution and body attachment. Writs, however, are no longer vital in criminal cases because there are other ways to get the same relief under the Federal Rules of Appellate Procedure. The Federal Rules of Civil Procedure have also abolished a number of writs, including the writ of error, in civil matters.

England and Wales

The writs are issued on behalf of the applicant in the name of the Crown, who is the nominal plaintiff. Besides from habeas corpus, prerogative writs are discretionary remedies that have been recognised in England and Wales since 1938. The amended Civil Procedure Rules of 1998 abolished the

writs of quo warranto and procedendo and renamed the certiorari as quashing orders, mandamus as mandatory orders, and prohibition as prohibiting orders.

3.5– Saving of Certain Laws - Article 31, 33, 34, 35

Article 31

In India, the first amendment was passed by the provisional parliament in 1951. This was elected than on the basis of a limited franchise. Under this amendment, the statement of reasons stated that there were many challenges related to law related to the land reform and were pending in courts.

Because of this large schemes of land legislation was held up and there was wasteful litigation. Some of the facts pertaining to the first amendment are:

1. This amendment inserted articles 31A and 31B.
2. Also, this amendment inserted the ninth schedule for the constitution to protect various land reforms. There were also other laws that were protected from the judicial review.
3. Thus, first, amendment set out the precedent to overcome these judicial pronouncements to implement the policies and programs of the government.
4. Furthermore, it also planned restrictions on various fundamental rights. Added three more grounds restrictions on speech like friendly relations with neighboring states and public order.

Implications of the First Amendment Act

Due to provisions made under article 31, laws that are placed in the ninth schedule is not available to challenge in any court of law. This is made on the ground that they were violated as a fundamental right of the citizens. Also, in this sense, article 31 B is retrospective in nature.

Thus, it means that even a statute that has been declared unconstitutional by the court of law is to there in the schedule. This will be deemed constitutionally valid from its inception date. Thus, it can be said that the judicial decision will become void whenever a statute is included in the schedule.

Because of article 31A, the state has enormous power with respect to the acquisition of the estates. Also, it can take over the management of any property that is corporate in public interest.

That is why it sought out to exclude such acquisitions from the scope of judicial review under articles 19 and 14. Such judicial review was noticed in the judgment of the Supreme Court for *kesavananda bharthi* in 1973 case.

Under the articles of 31 A, B, and C, it saved land reforms and thereby gave the priority to the implementation of direct principles. Furthermore, it has been noticed that the ninth amendment has been widely misused. There is more 250 legislation that is received under the ninth schedule.

Today it can be said that the ninth amendment has become a constitutional dustbin. It is a house for every controversial law that is passed by the government. When the first amendment was enacted, this situation was not envisaged.

Reasons for the Enactment of the First Amendment

The Indian citizens right to freedom of expression and speech has been held by some courts. It has been held comprehensive even if a person is culpable of murder or such heinous crime. The main objective behind the agenda was to insert the provision such that the constitutional validity is fully secured.

Article 32, 32A, 33, 34, 35 of the Constitution of India 1949 are under **Right to Constitutional Remedies of Part III** of the Constitution. Part III is titled '**FUNDAMENTAL RIGHTS**'.

Article 32 Indian Constitution 1949

Remedies for enforcement of rights conferred by this Part

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Article 32A Indian Constitution 1949

Constitutional validity of State laws not to be considered in proceedings under article 32

Omitted by the Constitution (Forty-third Amendment) Act, 1977, s. 3 (w.e.f. 13-4-1978).

Article 33 Indian Constitution 1949

Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

(a) the members of the Armed Forces; or

(b) the members of the Forces charged with the maintenance of public order; or

(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

Article 34 Indian Constitution 1949

Restriction on rights conferred by this Part while martial law is in force in any area

Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Article 35 Indian Constitution 1949

Legislation to give effect to the provisions of this Part

Notwithstanding anything in this Constitution,—

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and

(ii) for prescribing punishment for those acts which are declared to be offences under this Part, and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression “law in force” has the same meaning as in article 372.

Module 4

1. – Directive Principles of State Policy (राज्य नीति के निर्देशक सिद्धांत)
Relationship between Directive Principles of State Policy and Fundamental Rights
Judicial and Legislative trends on Directive Principles of State Policy.

The Directive Principles of State Policy (DPSP) has been taken from the **Irish constitution** and enumerated in Part IV of the Indian Constitution.

The concept behind the DPSP is to create a '**Welfare State**'. In other words, the motive behind the inclusion of DPSP is not establishing political democracy rather, it's about establishing social and economic democracy in the state. These are some basic principles or instructions or guidelines for the government while formulating laws/policies of the country and in executing them.

According to Dr B R Ambedkar, these principles are 'novel features' of the Constitution. DPSP acts as a guideline for the state and should be taken into consideration while coming up with some new policy or any law. But no one can compel the State to consider and follow all that which is mentioned in DPSP, as DPSP is not justiciable.

Part IV of the Indian Constitution

Part 4 of the Indian Constitution consists of all the DPSP (Directive Principles of State Policy). It covers the Articles from 36 to 51.

Article 36 of Part IV defines the term "**State**" as the one, who has to keep in mind all the DPSP before formulating any policy or law for the country. The definition of "State" in the part IV will be the same as that of Part III, unless the context otherwise requires a change in it. In Article 37 the nature of DPSP has been defined. DPSPs are non-justiciable.

Article 38 to 51 contains all the different DPSP's.
History

- The source of the concept of DPSP is the Spanish Constitution from which it came in the Irish Constitution. The makers of the Indian Constitution were very much influenced by the **Irish nationalist movement** and borrowed this concept of DPSP from the **Irish Constitution** in 1937.
- The Government of India Act also had some instructions related to this concept which became an important source of DPSP at that time.
- The Directive Principles of the Constitution of India have been greatly influenced by the Directive Principles of Social Policy.
- The Indians who were fighting for the independence of India from the British rule were greatly influenced by the movements and independence struggles of Ireland at that time, to free themselves from the British rule and move towards the development of their constitution.
- DPSP become an inspiration for independent India's government to tackle social, economic and various other challenges across a diverse nation like India.
- DPSP and fundamental rights have a common origin. The **Nehru Report** of 1928 contained the Swaraj Constitution of India which contained some of the fundamental rights and some other rights such as the right to education which were not enforceable at that time.
- Sapru Report** of 1945 divided fundamental rights into justifiable and non-justifiable rights.
- Justifiable rights**, the one which was enforceable in a court of law and included in Part III of the Constitution. On the other hand, **Non-justifiable rights** were listed as directive principles, which are just there to guide the state to work on the lines for making India a welfare state. They were included in part IV of the Constitution of India as Directive Principles of State Policy.
- The Constituent Assembly was given the task of making a constitution for India. The assembly composed of elected representatives and Dr. Rajendra Prasad was elected as its President.
- Both the Fundamental Rights and the DPSP were enlisted in all the drafts of the constitution (I, II and III) prepared by the Drafting Committee whose chairman was Dr. B.R. Ambedkar.

Sources

- The DPSP of the Indian Constitution was inspired by the Irish Constitution which took these details from Spain.
- Some Instruments of Instructions, which also became the immediate source of DPSP, have been taken from the Government of India Act, 1935.
- Another source was the Sapru Report, 1945 which gave us both Fundamental Rights (justiciable) and DPSP(s) (non-justiciable).

Reflection of Preamble

The Preamble is a brief introduction to the constitution and it contains all the objectives which were there in the mind of the drafters of the Indian Constitution.

According to some scholars, DPSP is **‘the kernel of the Indian Constitution’**.

The Directive Principles of the State Policy (DPSP) are the guidelines for the state which it must consider while formulating new laws and policies and it lay down all the objectives which the Constitution seeks to achieve.

The expression *“Justice – Social, economic and political”* that is mentioned in the preamble is the ultimate aim that has to be achieved through the formulation of the DPSP.

DPSP are enlisted to attain this ultimate aim as mentioned in the preamble i.e. *Justice, Liberty, Equality and fraternity* are also known as the four pillars of the Indian Constitution. It also enlists the idea of the welfare state which was absent under the colonial rule.

Features

- DPSP are not enforceable in a court of law.
- They were made non-justifiable considering that the State may not have enough resources to implement all of them or it may even come up with some better and progressive laws.
- It consists of all the ideals which the State should follow and keep in mind while formulating policies and enacting laws for the country.
- The DPSPs are like a collection of instructions and directions, which were issued under the Government of India Act, 1935, to the Governors of the colonies of India.
- It constitutes a very comprehensive economic, social and political guidelines or principles and tips for a modern democratic State that aimed towards inculcating the ideals of justice, liberty, equality and fraternity as given in the preamble. The Preamble consists of all the objectives that needs to be achieved through the Constitution.
- Adding DPSP was all about creating a “welfare state” which works for the individuals of the country which was absent during the colonial era.

List of Directive Principles of State Policy

Article	What it says
36	Defines the “state”.
37	Part IV of the Indian Constitution shall not be enforceable in any court of law.
38	Social, Political and Economic Justice.
39	Principles of Policy.
39A	Free Legal aid.
40	Organization of Panchayats.
41	Welfare Government.
42	Securing just and humane work and maternity relief.
43	Fair wages and a decent standard of life.
43-A	Workers’ participation in management.
43-B	Promotion of Cooperatives.

44	Uniform Civil Code.
45	Infant and Child Care.
46	Protection of SCs, STs and other weaker sections from exploitation.
47	Nutrition, Standard of living and public health.
48	Scientific agriculture and animal husbandry.
48-A	Environment and Wildlife Protection.
49	Protection of monuments and places and objects which have national importance.
50	Judiciary should be separate from the Executive.
51	The state shall promote international peace and security.

Article 36

- Article 36 contains the definition of **State**.
- Unless the context otherwise requires, the definition of “the State” is the same as it is given in Part III which covers Fundamental Rights.
- The definition given in Article 12 shall apply in this part as well which says that the State includes:
 - The Government of India
 - The Parliament of India
 - The Government of each of the States
 - The Legislature of each of the States
 - All the authorities whether local or any other which are the part of Indian territory or under the control of the government.

Article 37

- Article 37 mentions the two important characteristics of DPSP, and they are:
 - It is not enforceable in any court of Law.
 - And they are very basic and essential for the governance of the country.

The provisions mentioned in this part shall not be enforceable in any court and the principles laid down in this part are fundamental for the governance of the country. The State must make laws according to it because the ultimate aim of the State is the welfare of its citizens.

Socialist principles

- These principles follow the ideology of “**Socialism**” and lay down the framework of India.
- Its ultimate aim is to provide social and economic justice to all its citizens so that the state can fulfil the criteria required for a welfare state.
- The articles in DPSP which follows the socialist principles are – Article 38, Article 39, Article 39 A, Article 41, Article 42, Article 43, Article 43 A and Article 47.

Article 38

- Article 38 talks about **Social, Political and Economic Justice**.
- It directs that the State should secure a social order which provides social, political and economic justice to all its citizens.
- Article 38(2) says that state shall reduce the inequalities faced by the people on the grounds like income, status, facilities, opportunities, etc.

Article 39

- Article 39 mentions all the **Principles of policy** which must be followed by the State.

The State shall make its policies towards securing the following objectives—

- All the men, women and citizens should have the right to an adequate means of livelihood
- The ownership and control of the people over any material resources under the community should be distributed as it is for the common good of the public;
- The functioning of the economic system should be such that the concentration of wealth and the means of production don’t result in a loss common to all or which causes detriment to the citizens;

- There shall be no gender discrimination, both men and women should get equal pay for equal work.
- The health and strength possessed by any worker, men and women, and the tender age of children should not be abused and the citizens should not be forced to enter and indulge into any occupation or profession which is not suitable for their age or strength, not even out of any financial necessity or economic backwardness
- Children must be given enough opportunities and facilities so that they develop in a healthy manner and in such conditions where their freedom and dignity, including the fact that their childhood and youth remain protected, against any form of exploitation and against any sort of moral and material abandonment.

Article 39A

- Article 39A talks about **Free Legal aid**.
- It says that the State shall promote justice with the aim of administering Justice on the basis of equal opportunity, and shall provide free legal aid through any suitable legislation or schemes which State may think fit, or, in any other way, so that it could ensure that the opportunities for securing justice are not denied to any citizen because of economic backwardness or any other kind of disabilities.

Article 41

- Article 41 talks about **Welfare Government**.
- It says that state shall make some effective provisions for securing the right to work, etc. and in cases of unemployment, old age, disablement or any other cases acting in its economic capacity & development it shall provide public assistance. This article is employed as a tenet for numerous social sector schemes like social assistance program, right to food security, old-age pension scheme, MGNREGA, etc.

Article 42

- Article 42 talks about **Securing just and humane work and maternity relief**.
- It says that state shall create some provisions so that the citizens get easy, just and humane conditions for working. It shall also provide maternity relief for the women.

Article 43

- Article 43 talks about **Fair wages and a decent standard of life**.
- It says that the state can endeavor to secure by appropriate legislation or economic organization to all the workers employed in agricultural, industrial or otherwise, work, a living wage, conditions of work, ensuring a decent standard of life and enjoyment of leisure and social-cultural opportunities and promote cottage industries on an individual or cooperative basis in rural and remote areas of the country.

Article 47

- Article 47 talks about **Nutrition, Standard of living and public health**.
- It says that the State shall look into the matter of raising the level of nutrition and the standard of living of its people and it is the duty of the State to keep a check on the improvement of public health. The State shall also endeavor to prohibit the consumption of intoxicating drinks and drugs which are injurious for health, except for medicinal purposes. There are many social development programmes such as National Health Mission, Mid Day Meal Scheme, etc. which target the marginalized sections of the society i.e. women, children, weaker sections etc. are inspired by this DPSP.

Gandhian Principles

- These principles reflect the programme of reconstruction ideology propagated by Gandhi throughout the national movement. In order to fulfil his dreams, some of his concepts have been included in the form of DPSP.
- They direct the State through these articles – Article 40, Article 43, Article 43 B, Article 46, Article 47 and Article 48.

Article 40

- Article 40 deals with the **Organization of Panchayats**.
- It says that the state shall organize Panchayat system and should grant them such powers which would be necessary for the functioning as units of the self-government system.
- The 73rd and 74th amendments of the constitution which are related to Panchayati Raj and Municipal Corporations respectively, later ended up as the constitutionally backed framework for the principle mentioned in Part IV.

Article 43

- Article 43 talks about **Fair wages and a decent standard of life**.
- It says that the state can endeavor to secure, by appropriate legislation or economic organization, to all the workers employed in agricultural, industrial or otherwise, work, a living wage, conditions of work, a decent standard of life and enjoyment of leisure & social-cultural opportunities and promote cottage industries on an individual or cooperative basis in rural and remote areas of the country.

Article 43B

- Article 43B deals with the **promotion of cooperatives**.
- It was inserted by the 97th amendment act in 2011. It says that state shall endeavor to promote the management of the co-operative societies to help the people who are engaged in the same.

Article 46

- Article 46 deals with the **Protection of SCs, STs, weaker sections from exploitation**.
- The State shall promote with special care including the educational and economic interests of the weaker sections of the society i.e. the SCs and the STs and shall make provisions to protect them from all forms of exploitation which includes social injustice.

Article 47

- Article 47 talks about **Nutrition, Standard of living and public health**.
- It says that the State shall look into the matter of raising the level of nutrition and the standard of living of its people and it is the duty of the State to keep a check on the improvement of public health. The State shall endeavor to prohibit the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes.
- There are many social development programmes such as National Health Mission, Mid Day Meal Scheme, etc. which target the marginalized sections of the society i.e women, children, weaker sections etc. are inspired by this DPSP.

Article 48

- Article 48 talks about **Scientific agriculture and animal husbandry**.
- It says that the State shall endeavor to organize agriculture and animal husbandry using modern methods and scientific techniques which make people more advanced and helps in earning their livelihood easily and State shall take some progressive steps for preserving and improving the existing breeds and prohibiting the slaughter of cows and other cattle.

Liberal-intellectual Principles

- These principles follow the 'Liberalism' ideology.
- The articles which follow this approach in DPSP are – Article 44, Article 45, Article 48, Article 48 A, Article 49, Article 50 and Article 51.

Article 44

- Article 44 talks about the **Uniform Civil Code**.
- There should be a provision for the citizens to secure a **Uniform Civil Code** throughout the territory of India in order to simplify things and reduce ambiguity in the laws which makes it more complex than it actually is.

Article 45

- Article 45 contains the **Provision for free and compulsory education for the children** in the country.
- The State shall make laws to provide free and compulsory education for the children until they are 14 years old within a period of 10 years from the date of commencement of this provision in the Constitution.
- This provision was incorporated by the virtue of the 86th Amendment, 2002 in the Constitution of India.

Article 48

- Article 48 talks about **Organisation of agriculture and animal husbandry**.
- The State shall endeavour to organise agriculture and animal husbandry using modern and scientific technology which is prevalent in the present times and also take steps for preserving and improving the existing breeds and prohibiting the slaughter of cows and other cattle in the country for the development of agricultural related practices.

Article 48A

- Article 48A talks about the **Environment and Wildlife Protection**.
- The State shall endeavour to protect and improve the environment and surroundings. And to safeguard the forests and wildlife of the country to make the environment sustainable.

Article 49

- Article 49 talks about **Protection of monuments and places and objects of national importance**.
- It shall be the duty of the State to protect every monument or place or any object of historic or artistic interest which has some national importance, from any form of disfigurement, destruction, etc.

Article 50

- Article 50 talks about **Separation of Judiciary from the Executive**.
- There should be a line between the judiciary and the executive body of the Government in the public services of the State as it makes it easier if both do not interfere in each other's work and function independently.

Article 51

- Article 51 talks about **Promotion of international peace and security**.
- The State shall endeavour to —
 - Promote international peace and security;
 - maintain friendly and honourable relations between nations;

- foster respect for international law and treaty obligations in the dealings of one person with another for maintaining harmony between the nations and
- encourage settlement of international disputes by the method of arbitration.

42nd Amendment

Four Directive Principles which were added by the 42nd amendment are as follows:

- Article 39 – To secure opportunities for healthy development of children.
- Article 39A – It says that the State shall promote justice with the aim of administering it on the basis of equal opportunity, and shall provide free legal aid through any suitable legislation or the schemes which State may think fit or in any other way so that State can ensure that opportunities for securing justice are not denied to any citizen because of any economic or other disabilities.
- Article 43A – The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations.
- Article 48A – The State shall endeavour to protect and improve the environment and surroundings and to safeguard the forests and wildlife of the country to make its environment liveable.

44th Amendment

- The 44th Amendment Act of 1978 added Article 38(2) in the DPSP.
- **Article 38(2)** says that the state shall work to minimize the inequalities in income, and endeavour to eliminate inequalities in status, opportunities etc. not only amongst individuals but also amongst all the groups of people residing in different areas or engaged in different fields.

86th Amendment

- The 86th Amendment changed the subject of Article 45 in the DPSP and brought it within the ambit of the fundamental rights mentioned in Part III as Article 21-A has been made for the children between the age group of 6-14 years of age. The same article was previously a directive principle which says that the State should take care of the children who are below 6 years of age.

97th Amendment

- The 97th Amendment act of 2011 inserted Article 43-B in the list of DPSP. It says that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of the co-operative societies.

Enforceability of DPSP

DPSP were not made enforceable by the Constituent Assembly which was formed to draft the Indian Constitution. But the non-enforceability of the Principles does not mean that they are of no importance.

There are some arguments which are in favor of its enforceability and some are against the making of DPSP enforceable. Those who favor the enforcement of the Principles argue that enforceability of DPSPs will keep a check on the Government and would unite India. For instance, Article 44 of the Indian Constitution talks about the Uniform Civil Code which aims for uniform provisions of civil law for all the citizens of the country irrespective of their caste, creed, religion or beliefs.

People who are against the enforcement of the DPSPs are of the view that these principles need not be separately enforced as there are already many laws which indirectly implements the provisions mentioned in DPSP. For instance, Article 40 of the Constitution which deals with Panchayati Raj system was introduced through a constitutional amendment, and it is very evident that there are numerous panchayats exist in the country today.

Another argument against DPSP is that it imposes morals and values on the citizens of the country. It should not be clubbed with the law as it is really important to grasp that law and morals are two different things. If we impose one on the other that will generally impede the expansion and development of the society.

Importance of DPSP

DPSP covers the Articles 36-51 in Part IV of the constitution.

It mentions protection of women of the country, environmental conservation, rural growth and development, decentralisation of power, uniform civil code, etc. which are considered some of the essentials in making laws for a “welfare state”.

Although non-justiciable, they provide a set of guidelines for the Government for its functioning in the country.

Significance of DPSP

- Directive Principles are non-justiciable but these are backed by *vox populi* (voice of the people), which is the real sanction behind every law in reality.
- DPSP gives the philosophical foundations of a welfare system. These principles make it a responsibility of the State to secure it through welfare legislation.
- Their nature is more of moral ideals. They constitute a moral code for the State but this does not reduce their value as moral principles are very important and the absence of it may hamper the growth of a society. A state is run by its people and the Government is always formed and managed by them, so it's really important to have a set of standards for making laws in the country.
- Directive Principles act as a guide for the government which helps them in making policies and laws for the purpose of securing justice and welfare in the State.
- DPSP are like a source of continuity in the Governance of the country because in a democratic system, the Governments change after regular elections and every new government makes different policies and laws for the country. The presence of such guidelines is really important because it ensures that every Government will follow the set of principles in the form of DPSP while formulating its laws.
- Directive Principles can be called as the positive directions for the State which helps in securing social and economical dimensions of democracy. DPSP are supplementary to Fundamental Rights which offers political rights and other freedoms. They both are nothing without each other as one provides social and economic democracy and the other, political rights.
- Directive Principles of State Policy make it possible for people to measure the worth of a government and its working. A Government which doesn't consider these principles can be rejected on this ground by the people in favour of a government which gives due importance to the task of securing these Directive Principles in the state.
- The Directive Principles constitute a manifesto of a Nation. These reflect the ideas and views which were there in the mind of the drafters while drafting the constitution. These reflected the philosophy behind the making of the Constitution and hence provide useful information to the courts in interpreting the existing provisions in the Constitution and in coming up with better laws and policies.
- The Directive Principles do not seem to be very rigid in their meanings and this helps the State in interpreting and applying these principles in accordance with the situation prevailing at a given time.

Thus, the inclusion of Part IV which contains the Directive Principles of State Policy proved to be very useful for the country. The Directive Principles provide good foundations for welfare state. The securing of Directive Principles helped in completing the requirements of a democratic system. It supplemented the Fundamental Rights of the people and built a State characterized by these four pillars – **Justice**,

Liberty, Equality, and Fraternity.

Implementation of Directive Principles of State Policy

There are some acts and policies from 1950 onwards which had been implemented to give effect to these Directive Principles. They are as follows:

- The Minimum Wages Act (1948)
- Child Labour Prohibition and Regulation Act (1986)
- The Maternity Benefit Act (1961)
- Equal Remuneration Act (1976)
- Handloom Board, Handicrafts Board, Coir Board, Silk Board, etc. have been set up for the development of cottage industries in the country.
- Integrated Rural Development Programme (1978)
- Jawahar Rozgar Yojana (1989)
- Swarnajayanti Gram Swarozgar Yojana (1999)
- Sampoorna Gram Rozgar Yojana (2001)
- Mahatma Gandhi National Rural Employment Guarantee Programmes (2006)
- The National Forest Policy (1988)
- Article 21-A was inserted by the 86th amendment, making free education for children below the age of 14 compulsory.
- Prevention of Atrocities Act safeguarding the interests of SCs and STs.
- Several Land Reform Acts.

DPSP and Fundamental rights

Fundamental Rights are described as the basic rights guaranteed to every citizen of the country under the constitution. They are present in Part III of the Constitution which ensures some rights to all its citizens so that they can live their lives peacefully. They help in checking the activities of the Government so that it cannot curtail any of the basic rights granted by the Constitution in the form of Fundamental rights.

Fundamental Rights apply to all the citizens without any form of discrimination on the basis of race, caste, creed, sex, place of birth, etc. Violation of the fundamental rights may lead to punishment and can initiate proceedings against the government if it tries to curtail them.

The Indian Constitution recognizes 7 fundamental rights, they are as follows:

- Right to Equality
- Right to freedom
- Right to freedom of religion
- Right against exploitation
- Cultural and Educational Rights
- Right to constitutional remedies
- Right to privacy (recently added)

Directive Principles of State Policy are some important guidelines given to the government so that it can work accordingly and refer to them while formulating the laws and policies, and to build a just society.

These principles are mentioned in Part IV from Article 36 to 51 of the Constitution.

Directive Principles are non-justiciable. However, these are recognized as an important roleplayer in governing the State. These principles aim at creating such an environment, which can help the citizens to live a good life where peace and harmony prevails.

The directive principles conjointly gauge the performance of the state, in order to achieve the objectives stated in the preamble of the Indian Constitution.

Comparison between DPSP and Fundamental rights

BASIS FOR COMPARISON	FUNDAMENTAL RIGHTS	DIRECTIVE PRINCIPLES
Meaning	The essential or basic rights granted to all the citizens of the country.	The guidelines which are considered while formulating policies and laws.
Defined	In Part III of the Constitution.	In Part IV of the Constitution.
Nature	Negative	Positive
Enforceability	Legally enforceable.	Not enforceable.
Democracy	Political democracy.	Social and economic democracy.
Legislation	Not required.	Required.
Promotes	Individual welfare	Public welfare

The conflict between DPSP and fundamental rights

Fundamental Rights and the DPSP are supplementary to each other and are essential to meet the social and economic dimensions of a democratic government.

The conflict between Fundamental Rights and DPSP often arises as sometimes it has been seen, by various legislations, that DPSP have wider scope than the Fundamental Rights. The Fundamental Rights are the rights which are enforceable by the Courts and any law that is in contravention to the provisions mentioned in Part III are *ultra vires*.

On the other hand, the DPSP are not enforceable in any Court of Law and nothing can be declared as void merely because it is against the provisions given under the DPSP.

In the case of State of Madras v. Champakam, the Supreme Court held the Fundamental rights are superior to the DPSP saying that the Fundamental Rights under Part III prevails over DPSP in case of any conflict between them.

In the landmark judgment given by the Supreme Court in the Golak Nath case, it was held that the provisions mentioned under Part III as Fundamental Rights cannot be undermined just to implement the provisions given under Part IV which enlists some important guidelines for the State in the form of the DPSP.

The Constitution was amended in the year 1971 and through this amendment, Article 31C was incorporated in the Constitution. It confers wider importance on the DPSP.

In the Minerva Mills case, the Supreme Court restricted this wide scope which was conferred on the DPSP under Article 31C by making the following changes:

- It restored Article 31C to its pre-1976 position. A law would be protected by Article 31C only in the case if it has been made to implement the Article 39 (b) and Article 39 (c) of the DPSP and not any of the other directive included in Part IV.
- There is a fine balance in the Constitution between the DPSP and the Fundamental Rights, which should be adhered by the Courts without placing any of them as superior.

Criticism of Directive Principles of State Policy

- Some of its critics hold that these principles don't carry any importance as their violation can't be challenged in the courts.
- The Directive Principles are a mere declaration of the instructions which are to be observed and secured by the State at will. but the Constitution neither makes them justiciable nor it mentions any limit to what extent it can be secured.

- These are neither consistently explicit nor properly classified. These appear to be a collection of instructions which are only based on morals and a State can't rely merely on morals for its working.
- Several Directives lack clarity and they have been repeated at different places.
- The Directive to push international peace and friendly relations among all the nations is just a declaration but the real issue is the securing part of it for which nothing has been given.
- Part IV includes some directives which are not complete in actual observation. The ideal is to introduce prohibition but this ideal cannot be really and effectively realised. The states which introduced prohibition had to scrap it later on.
- Most of the Directive Principles are based on old and foreign philosophy which have lost its relevance now.
- Many critics hold that the Preamble should also enlists all these goals which are given under DPSP and their description in Part IV has made things more complicated and complex than it was before.
- Directive principles just create an impression about the usage of the legitimate power by the State and the motive is to gain support through promise-making and not through inaction .

Case study on Directive Principles of State Policy

The question that arises is whether Fundamental Rights precedes DPSPs or latter takes a higher position than the former, it has been a subject of argument for years.

There are some important judicial pronouncements which tried to give an answer to this question, they are as follows:

Kerala Education Bill [1]

The court said that if a conflict arises between Fundamental Right and DPSPs, the harmony between the two should not be disturbed, but if, even after applying the doctrines of interpretation the conflict doesn't resolves then the former should be upheld and given more importance over the other i.e. DPSP.

Madras vs Champakan [2]

If any law is in contravention to the provisions mentioned under Part III of the Indian Constitution, it would be held void but this is not applicable in case of DPSPs. This shows that Fundamental rights are on a higher pedestal than DPSPs as far as this case is concerned.

Venkataraman v. State of Madras [3]

The Court gave more importance to the Fundamental rights over DPSPs.

I. C. Golaknath & Ors vs State Of Punjab & Anr. [4]

The Court held that the Parliament cannot curtail the Fundamental rights in making any law or policy for the country. It also mentioned that if a law has been made to give effect to Article 39 (b) and Article 39 (c) of Part IV of the Constitution and in doing so if Article 14, Article 19 or Article 31 gets violated, then it cannot be declared as void merely on the ground of such contravention.

Keshavnanda Bharati vs the State of Kerala [5]

The Apex Court placed DPSPs on a higher position than Fundamental Rights.

After that, in the case of **Minerva Mills vs Union of India [6]**, the Court while deciding the case held that the harmony between the two should be maintained because neither of the two has any precedence over each other. Both are complementary to each other and they should be balanced anyhow for the proper functioning of the State.

Unnikrishnan vs State of Andhra Pradesh [7]

The Court was of the view that Fundamental Rights and Directive Principles are not exclusive but complementary to each other. The Court said that the Fundamental Rights are the ways through which the goals given in Part IV can be achieved.

2. – Historical Background of Fundamental Duties

Fundamental duties under the Constitution - 1. – Judiciary – Supreme Court, High Court (Part V, Chapter IV and Part VI Chapter V), 2. – Tribunals (Part XIV A), Official languages (Part VII), Miscellaneous Provisions (Part XIX) and Commencement, Authoritative Texts and Repeals Part XXII

As an Indian citizen, certain rights and duties are provided to us. The duty of every citizen is to abide by the laws and perform his/her legal obligations. A person should always be aware of his/her fundamental duties. 11 fundamental duties are laid down by the Indian Constitution.

Origin and scope of fundamental duties

Origin

On the recommendations of the **Swaran Singh Committee**, the fundamental duties were added by the 42nd Amendment, 1976 in our Indian Constitution. The fundamental duties were originally 10 in numbers but in 2002, the 86th Amendment increased its number to 11. The 11th duty made it compulsory for each and every parent and guardian to provide the educational opportunities to their child who is more than 6 years but less than 14 years of age. These duties are borrowed from the Constitution of Japan.

Scope

Neither there is a direct provision in the Constitution for the enforcement of these duties nor there is hardly any legal sanction in order to prevent violation of these duties. These duties are obligatory in nature. The following facts provide for the importance of fundamental duties:

1. A person should respect the fundamental rights and duties equally because in any case, if the court comes to know that a person who wants his/her rights to be enforced is careless about his/her duties then the court will not be lenient in his/her case.
2. Any ambiguous statute can be interpreted with the help of fundamental duties.
3. The court can consider the law reasonable if it gives effect to any of the fundamental duties. In this way, the court can save such law from being declared as unconstitutional.

Fundamental duties taken from

The fundamental duties are taken from the USSR (Russia) constitution. The addition of fundamental duties in our constitution have brought our constitution aligned with the Article 29(1) of the Universal Declaration of Human Rights and with various provisions of the modern constitution of other countries.

11 Fundamental duties

Only one Article that is Article -51A is there in Part-IV-A of the Indian Constitution that deals with fundamental duties. It was added to the Constitution by the 42nd Amendment Act, 1976. For the first time, a code of 11 fundamental duties was provided to the citizens of India. Article 51-A states that it is the duty of every citizen of India:

1. *To respect the Constitution, its ideals and institutions, the National Flag and National Anthem–* Ideals like liberty, justice, equality, fraternity and institution like executive, the legislature, and the judiciary must be respected by all the citizens of the country. No person should undergo any such practice which violates the spirit of the Constitution and should maintain its dignity. If any person shows disrespect to the National Anthem or to the National Flag then it will be a failure as a citizen of a sovereign nation.

2. *The noble ideas that inspire the national struggle to gain independence, one should cherish them*– Every citizen must admire and appreciate the noble ideas that inspired the struggle of independence. These ideas focus on making a just society, a united nation with freedom, equality, non-violence, brotherhood, and world peace. A citizen must remain committed to these ideas.
3. *One should protect and uphold the sovereignty, unity and integrity of India*– This is one of the basic duties that every citizen of India should perform. A united nation is not possible if the unity of the country is jeopardized. Sovereignty lies with the people. Article 19(2) of the Indian Constitution put reasonable restrictions on the freedom of speech and expression in order to safeguard the interest and integrity of India.
4. *One should respect the country and render national service when called upon*–Every citizen should defend the country against the enemies. All the citizens apart from those who belong to the army, navy etc should be ready to take up arms in order to protect themselves and the nation whenever the need arises.
5. *One should promote harmony as well as the spirit of common brotherhood amongst the citizens of India, transcending religious, linguistic, regional or sectional diversities and to renounce practices that are derogatory to the dignity of the women*– Presence of one flag and single citizenship not only reflects the spirit of brotherhood but also directs the citizen to leave behind all the differences and focus on collective activity in all spheres.
6. *One should value and preserve the heritage of our composite culture*– India’s culture is one of the richest heritages of the earth. So, it is compulsory for every citizen to protect the heritage and pass it on to future generations.
7. *One should protect and improve the natural environment including forests, lakes, rivers, wildlife and a citizen should have compassion for living creatures*– Under Article 48A this duty is provided as a constitutional provision also. The natural environment is very important and valuable for each and every country. So each and every citizen should make efforts in order to protect it.
8. *One should not only develop the scientific temperament and humanism but also the spirit of inquiry and reform*– For his/her own development it is necessary for a person to learn from the experiences of others and develop in this fast-changing environment. So one should always try to have a scientific temperament in order to adjust with these changes.
9. *One should always safeguard public property and abjure*– Due to unnecessary cases of violence that occurs in a country which preach for non-violence, a lot of harm has already been done to the public property. So, it is the duty of every citizen to protect the public property.
10. *One should always strive towards excellence in all spheres of life and also for the collective activity so that the nation continues with its endeavour and achievements*– In order to ensure that our country rises to a higher level of achievement, it is the basic duty of every citizen to do the work that is given to him/her with excellence. This will definitely lead the country towards the highest possible level of excellence.
11. *One should always provide the opportunity of education to his child or ward between the age of six to fourteen years*– Free and compulsory education must be provided to the children who belong to 6 to 14 years of age and this has to be ensured by the parents or guardian of such child. This was provided by the 86th Constitutional Amendment Act, 2002.

Features of Fundamental Duties

The features of Fundamental duties are as follows:

1. Both moral and civic duties have been laid down under the fundamental duties, like, “the Indian citizens should not only cherish the noble ideas that lead to the freedom struggle but they should also respect the Constitution, the National Flag and National Anthem”.
2. Fundamental rights can be applied to foreigners also but the fundamental duties are only restricted to the Indians citizens.

3. The fundamental duties are not enforceable in nature. No legal sanction can be enforced by the government in case of their violation.
4. These duties are also related to Hindu traditions or mythology like paying respect to the country or promoting the spirit of brotherhood.

Fundamental duties and Indian constitution

The Constitution was adopted in the year 1949, but it did not contain the provisions for fundamental duties. The Parliament of India not only realised the need to insert fundamental duties in the Indian Constitution but it also felt that everyone should perform such duties. A new part, that is Part IVA, was inserted by the 42nd Amendment Act, 1976 which provides for several fundamental duties that needs to be followed by the citizens of India.

These duties are considered as “directory” as these duties cannot be enforced through the writ of mandamus because they don’t cast any public duties. Fundamental duties are the basic reminder of our national goals and basic norms of political order. They inspire an individual to inculcate in himself/herself a sense of social responsibility. The Supreme Court said that the fundamental duties can be used to interpret any statute which is uncertain. These duties provide educational and psychological value to the citizens of India. These duties uphold the spirit of Democracy and patriotism.

In the case of Ramlila Maidan Incident[1], the court held that the word “fundamental” is used in two separate senses in our Indian Constitution. When this word is used for rights then it means that these rights are very essential and any law which will violate the fundamental rights will be declared as void. But when this word is used for the duties then it is used in a normative sense as it set certain goals before the state which the state should try to achieve.

42nd amendment 1976

The 42nd Amendment Act, 1976 was approved during the Emergency period. The Indian National Congress which was at that time headed by Indira Gandhi approved this amendment. This amendment was regarded as the most controversial amendment. The provisions that were provided by this amendment act came into force on different dates. Most of the provision came into force on 3 January while others came into force from 1 April 1977. This amendment is also known as “Mini-Constitution” or “Constitution of Indira” because wide changes were brought to the constitution. 11 Fundamental Duties were laid down by the 42nd Amendment.

86th amendment 2002

Only a few constitutions in the world provide the guidelines stating the obligations and duties of the citizens. To govern the rights and the duties of its citizens, Canada and Britain lay significance on the Common Law and its judicial decision. It is said that one should be taught to follow fundamental duties at a younger stage because if this will happen then it will not be important to list the duties in the Constitution as it will not affect its implementation.

The Unnikrishnan Judgement[2] provided that all the citizens who are below the age of 14 years have a right to free and compulsory education. Due to an increasing public demand for education, the government worked towards making education a fundamental right. In 2002, an amendment was inserted in Article 51A. Article 51(k) was added after Article 51(j) which stated that it is a fundamental duty of every citizen who is a parent or a guardian to provide opportunities for free and compulsory education to a child who is between 6 years to 14 years of age.

In M.C Mehta (2) vs. Union of India[3] the Supreme Court held the following:

1. It is compulsory for all the educational institutions to organise a teaching lesson of at least one hour a week on the protection and improvement of the natural environment.
2. It is the duty of the Central Government under Article 51-A (g) to introduce this lesson in all the educational institutions.

3. The Central Government should also distribute books free of cost on the same subject in all the institutes.
4. To give rise to the consciousness among the people towards a clean environment, the government should organise 'keep the city clean' week at least once in a year.

Fundamental duties committees

Swaran Singh Committee

The Chairperson of this committee was Sardar Swaran Singh who was given the responsibility to study the Indian Constitution during the National emergency. After declaring the emergency Indira Gandhi put the responsibility on this committee to study the Constitution and amend it keeping in mind the past experiences. Several changes were incorporated into the Constitution by the government based on the recommendations of the committee.

The need and necessity of fundamental duties was felt during the emergency period. So in 1976, a committee was set up who made the recommendation for the same. The recommendation was made for including a separate chapter in the Indian Constitution under the heading Fundamental Duties. Citizens will be aware of their duties while enjoying their fundamental rights. This suggestion was accepted by the government and a new article that is Article 51A was included in the Indian Constitution which had 10 fundamental duties in it earlier. The government also said that it was a mistake that was made by the original framers of the India Constitution to not to include the fundamental duties at that time. The committee suggested for 8 fundamental duties but the 42nd amendment had 10 duties. Out of all the recommendations, not every recommendation was accepted.

Some of the recommendations that were not accepted are:

1. In case of non-compliance with the fundamental duties, the Parliament can impose penalty or punishment.
2. In a court of law, such punishment or law won't be questioned.
3. Fundamental duties also include the duty to pay taxes which was rejected.

Justice Verma committee

In order to plan a strategy and methodology for working out a programme that was started worldwide for making the fundamental duties enforceable in every type of educational institution and to teach these duties in every school, Justice Verma Committee was established in 1998. The committee took this step because it was aware of the non-operationalization of the Fundamental duties. The committee found that the reason for non-operationalization was due to lack of strategy for its implementation rather than lack of concern.

The committee provided with the provisions like:

1. No person can disrespect the National flag, Constitution of India and the National Anthem under the Prevention of Insults to National Honour Act, 1971.
2. Various criminal laws have been enacted which provide punishment to the people who encourage enmity between people on the grounds of race, religion, language etc.
3. The Protection of Civil Rights Act (1955) provided for punishments in case of any offence related to caste and religion.
4. The imputations and assertions that are prejudicial to the nation's integrity and unity are considered as punishable offences under various sections of the Indian Penal Code, 1860.
5. In order to prevent a communal organisation to be declared as an unlawful association, the Unlawful Activities (Prevention) Act, 1967 was established.
6. If the members of the Parliament or the state legislature indulge in any corrupt practices like asking votes in the name of religion then they will be held liable under the Representation of the People Act, 1951.
7. The Wildlife (Protection) Act, 1972 protect and prohibit the trade in the case of rare and endangered animals.

8. The Forest (Conservation) Act, 1980 was implemented to make sure that Article 51A(g) was properly implemented.

Need for Fundamental Duties

Rights and duties are correlative. The fundamental duties serve as a constant reminder to every citizen while the Constitution specifically conferred on them certain fundamental rights. Certain basic norms of democratic conduct and democratic behaviour must be observed by the citizens. The then ruling party, Congress, claimed that what the framers of the Constitution failed to do is being done now. This omission was rectified by introducing a chapter on citizen's duties towards the nation. In India, people lay more emphasis on rights and not on duty.

This view was wrong. In this country, there has been a tradition of performance of one's duties even in partial disregard of one's rights and privileges. Since time immemorial emphasis was on individual's KARTAVYA which is the performance of one's duties towards society, his/her country and his/her parents. The Geeta and Ramayana also provide that people should perform their duties without caring for their rights.

Traditional duties have been given a constitutional sanction. If one clearly looks in the Constitution not only he/she will discover his/her rights but also the duties. A careful look at the Constitution will definitely solve the question of the people who claim that the Constitution only provides for the rights to the citizen and not the duties of the persons towards the society. The Fundamental Rights that are provided to all the citizens are present in the Preamble of the Indian Constitution like liberty of thought, expression, belief, faith and worship. These are not absolute rights as the state can put reasonable restrictions on them in the interest of society. The remaining Preamble put emphasis on the duties like justice, social, economic and political.

Importance of fundamental duties

The government in order to create a strong foundation with a strong national character introduced fundamental duties. It not only lay emphasis on human dignity but also creates a feeling of harmony in the community. Our society can only be uplifted if each and every citizen focuses on bridging the gaps that have been created in the society, by performing their duties towards the society. Judicial reforms help in enforcing such duties from time to time because there is no provision in the Indian Constitution for their enforcement. If every person wants their fundamental rights to be realized then everyone should fulfill their duties.

The importance of fundamental duties are as follows:

1. Fundamental duties act as a constant reminder that the citizens while enjoying their fundamental rights should not forget about their duties towards the nation.
2. These duties act as a warning signal for the people against any type of antisocial activities.
3. These duties gives a chance to the people to have an active participation in the society rather than being a spectator.
4. These duties promote a sense of discipline and commitment towards the society.
5. The courts can use fundamental duties for determining constitutionality of law. If any law is challenged in court for its constitutional validity and if that law is providing force to any of the fundamental duties then that law will be held reasonable.
6. If the fundamental rights are enforced by a law then in case of its violation the Parliament can impose penalty or punishment for the same.

The Supreme Court of India ordered cinema halls to play National Anthem while portraying the Nation Flag. This was a remarkable step taken by the Supreme Court while giving the importance to the fundamental duties.

Criticism of fundamental duties

There were various grounds for criticism for fundamental duties. These include:

1. Critics don't consider the list of fundamental duties as exhaustive. They feel that many more important duties like paying taxes, casting votes that were also suggested by the Swaran Singh Committee were not included in this list.
2. A common man cannot understand the complex words like composite culture that are present in the fundamental duties. Due to lack of understanding, the true meaning cannot be established. For him/her such words are difficult to understand. Moreover some duties are ambiguous in nature.
3. These duties cannot be enforced by a court of law so, critics feels that it is of no use to include these duties in the Constitution.
4. Some duties are of such a nature that they are being performed by the citizen in each and every case like paying respect to the National Flag and National Anthem. So there was no need to include these duties in the Constitution.
5. These duties are placed in Part IV-A of the Indian Constitution that is after the Directive Principles of the State Policy, that's why not much importance is given to them. According to the critics it should be placed in Part III after the Fundamental Rights.

Fundamental duties case laws

In the case of **Bijoe Emmanuel vs. State of Kerala**[4] which is popularly known as the National Anthem Case, on refusing to sing the National Anthem in the school, three children of the Jehovah's Witnesses were expelled from the school. There was a circular that was issued by the Director of Instructions, Kerala which made it compulsory for the school students to sing the National Anthem. These three children did not join the singing of the National Anthem but they stood up out of respect. They didn't sing the National Anthem because their religious faith didn't permit it and it was against their religious faith. They were expelled on the ground that they violated their fundamental duties and committed an offence under the Prevention of Insult to National Honours Act, 1971. The court reversed this decision of the High Court because they did not commit any offence and also they committed no crime under the Prevention of Insult to National Honours Act, 1971 as though they did not sing the National Anthem but they stood out of respect.

In **M.C.Mehta (2) vs. Union of India**[5], the Supreme Court held that it is compulsory for all the educational institute to organise a teaching lesson of at least one hour a week on the protection and improvement of the natural environment and it is the duty of the Central Government under Article 51A (g) to introduce this in all the educational institute. The Central Government should also distribute books free of cost on the same subject in all the institutes and also raise consciousness amongst people towards clean environment. The government should organise 'keep the city clean' week at least once in a year. In the case of **AIIMS Students Union vs. AIIMS**[6] the Supreme Court held that the fundamental duties are equally important like the fundamental rights so the Court strike down the institutional reservation of 33% in AIIMS which is also coupled with 50% reservation discipline-wise which was violative of Article 14 of the Indian Constitution. The court also said that just because they are duties they cannot be overlooked. They have the same importance which the fundamental rights hold.

In **Aruna Roy vs. Union of India**[7], the court upheld the validity of the National Curriculum Framework for School Education which was challenged on the ground that it violated the Article 28 of the Indian Constitution and it was anti-secular because it provided for value development education relating to the basics of all religions. The court said that the NCFSF does not mention anything related to imparting religious instruction which is prohibited under Article 28 and education neither violate Article 28 nor the concept of secularism.

In order to make a right balance between Fundamental Rights and Duties the petitioner in the case of **Hon'ble Shri Rangnath Mishra vs. Union of India**[8] wrote a letter to the President so that he can give directions to the State in order to educate citizens in the matter related to fundamental duties. This letter was treated as a writ petition by the Court. But by the time this matter would be heard a report was

submitted to the Government of India by the National Commission who was reviewing the Constitution at that time. Following suggestions were provided by the commission in the court:

1. In order to sensitise the people and to create general awareness regarding the fundamental duties, the State and the Union Government should take proper steps on the lines that were recommended by the Justice Verma Committee.
2. For generating awareness and consciousness of citizens related to fundamental duties, modes and manners needs to be adopted.

The court took into account the recommendations made by the National Commission and also directed the government to take necessary steps. The writ was disposed of.

In **Government of India vs. George Philip**[9], the compulsory retirement was challenged by the respondent from the service. Two years of leave was granted to him by the department to pursue advanced research training. After the repeated reminders he overstayed in foreign, so, an inquiry was instituted against him and the charge was proved. The High Court provided him with a remedy to join the service again on one clause that no back wages would be provided but the Supreme Court had set aside this order. The Supreme Court said that according to Article 51A(j) one should always strive towards excellence in all spheres of life of an individual and also for the collective activity so that the nation constantly rises to a higher level of endeavour, achievements and excellence could not be achieved unless discipline is maintained by the employees. The court also said that no order should be passed by the courts which destroy the essence of Article 51A and the order passed by the High Court, in this case, was destroying the essence of the Article.

The court in the case of **Dr. Dasarathi vs. State of Andhra Pradesh**[10], held that under Article 51(j) every citizen must abide by its duty to always strive towards excellence in all spheres of life and also for the collective activity so that the nation constantly rises to a higher level of endeavour and achievements. For this, the State can provide ways to achieve excellence according to the methods which are permitted by our Indian Constitution.

In the case of **Charu Khurana vs. Union of India**[11] the Supreme Court held that the State should provide for opportunities rather than curtailing it. The court also said that the duty of the citizen have also been extended to the collective duty of the state.

Enforcement of Fundamental Duties

The fundamental duties not only guide the citizen but also guides the legislative and executive actions of elected or non-elected institutions, organisations and municipal bodies. Duties are only observed by the citizens when either it is made compulsory by the law or under the influence of role models etc. So this makes it necessary to make suitable legislation whenever it is important for the citizens to observe the duties. These duties should be made operational only when the directions have been provided by the legislature and judiciary and still there is a violation of fundamental duties. But if the existing laws are inadequate and they cannot enforce the required discipline then the legislative vacuum needs to be filled.

The legal utility of fundamental duties and directive principles is the same. Fundamental duties are addressed to the citizens whereas directive principles address to the state and there is no legal sanction in case of their violation. If a person does not care about his/her fundamental duties then he/she does not deserve the fundamental rights. These duties are not legally enforceable but if any act is done by a citizen that is in violation of the fundamental duties then it would be considered as a reasonable restriction on the relevant fundamental rights.

The **42nd Amendment**, incorporated duties in the Constitution and these are statutory duties and shall be enforceable by law. If there will be a failure to fulfil those duties and obligations then the Parliament, by law can impose penalties. The success of this provision will solely depend upon the manner and the person against whom these duties would be enforced. If the duties are not known to all, then there would not be proper enforcement of these duties. Due to the illiteracy of the people, they are not politically conscious of what they owe to the society and country. Homes, universities, or any other place can be made the centers for imparting in the performance of their obligations.

Fundamental duties complement fundamental rights

The Constitution of India not only provide with the fundamental rights but also with the fundamental duties. Although the fundamental rights were introduced in the Constitution much before the fundamental duties and are also enforceable by the court. 42nd Amendment, 1976 introduced the fundamental duties. But these duties are not enforceable. These are the moral duties of a responsible citizen. The fundamental duties must be complementary to the fundamental rights.

Article 21 of the Indian Constitution provides for Right to education and Article 51A(k) provides that all parents and guardians must provide their children with free and compulsory education at the age of 6-14 years. This shows that fundamental rights and duties are complementary to each other.

But in today's time people only want their rights and don't want to perform their duties. There are many examples which shows that people while using their fundamental rights avoid their fundamental duties.

The recent example can be taken of what happened in JawaharLal Nehru University. People while exercising their fundamental right of Freedom of Speech and Expression raised anti India slogans in the campus of the university. While exercising this right they violated their fundamental duty that is laid down in Article 51A(c), that is the "power, unity, integrity of the country must be protected by its citizens".

Many political leaders often attract votes in the name of religion. While doing this they violate their fundamental duty that is provided in Article 51A(c) that is "the power, unity, integrity of the country" must be protected by its citizens. They divide the society into different religion and caste. Democracy cannot establish its deep roots in the society until and unless the citizens don't compliment their fundamental rights with their fundamental duties. While enforcing their fundamental rights they should fulfill their fundamental duties.

Relationship between the fundamental rights, directive principles and fundamental duties

The relationship between the fundamental rights, directive principles and fundamental duties are as follows:

In cases where there was a conflict between the constitutional validity of the legislation with the fundamental rights, then the Directive Principle of State Policy have been used to uphold the constitutional validity of such legislation. The 25th amendment in 1971 added Article 31C which states that any law enforced which was to give effect to the directive principles that were provided in Article 39(b)-(c) would not be held invalid on the grounds that they derogated from the fundamental rights that are present in the Articles 14, 19 and 31 of the Indian Constitution. The 42nd amendment proposes that Article 31C should be made applicable to all the Directive Principles. But the Supreme Court struck down this suggestion as it violates the basic structure of the Indian Constitution. For forming the basis of the legislation related to social welfare the fundamental rights and the directive principles have been used together.

The Supreme Court of India after the Kesavananda Bharati Case[12], adopted a view that fundamental rights and directive principles are not only complementary to each other but they both supplement each other by providing some goals to establish a welfare state by the means of social revolution.

The Supreme Court has also upheld the constitutional validity of various statutes which promote the objects that were laid down in the fundamental duties. These duties are not only obligatory for all the citizens but the Court can enforce them by making various laws. For this the Supreme Court has already given direction to the state in order to ensure effective implementation of these duties.

Fundamental duties are not enforceable through courts but fundamental rights are enforceable through the Supreme Court under Article 32 of the Constitution and the High Court has the power to issue writs for the enforcement of the fundamental rights under Article 226. The fundamental duties and the directive principles of the state policy that are provided in Part IV of the Indian Constitution are taken into account by the Courts while interpreting the fundamental rights or any restrictions that are imposed on such rights.

The court in the case of Javed vs. State of Haryana[13] held that the fundamental rights have to be read with fundamental duties which are provided in Article 51A of the Indian Constitution and with the directive principles of the state policy that are provided in Part IV of the Constitution. They cannot be read in isolation.

In the State of Gujarat vs. Mirzapur[14] the Supreme Court held while considering the provisions regarding Article 48, 48-A and Article 51(g) that the directive principles of state policy and fundamental duties that are provided in Article 51-A of the Indian Constitution plays a significant role while testing the constitutional validity of any statutory provision or of any executive act. The Court also said that the reasonableness of any restriction that is cast by the law on the fundamental rights in the form of regulation, control or prohibition can be tested by taking the fundamental duties and the directive principle of state policy into account.

The court in Ramlila Maidan Incident[15] held that a balance has to be maintained between the fundamental rights and restrictions on one hand and fundamental rights and fundamental duties on the other hand. There would be an imbalance if importance is given to only fundamental rights or to the fundamental duties. Duty is considered as a true source of right. The courts consider the fundamental duties that are present in Article 51A while examining the reasonableness of the legislative restriction on exercise of various freedoms. The court also said that duties like protecting the sovereignty, unity and integrity of the country, provide safeguard to public property etc. are not insignificant.

It was observed in N.K. Bajpai vs. Union of India[16] that there is a common thread which runs between Part III, IV and Part IV-A of the Indian Constitution. First part provides us with the fundamental rights while the second part provides us with the basic principle of governance of the state and the third part provides the fundamental duties of the citizens of India. The court should consider all the constitutional aspect of fundamental rights, fundamental duties and the directive principle of state policy while interpreting any provision.

The End