

Fundamentals of Indian Constituion - 22HSI17/27

UNIT I:

“Indian Constitution- Necessity of Constitution, Societies before and after the constitution adoption, Introduction to Indian Constitution, Making of the constitution, Role of constituent assembly, Salient features of Indian Constitution ,Preamble to the Indian Constitution and key concept of preamble. Fundamental Rights and its restrictions”.

The 26th of January, 1950 was a red-letter day in the long history of India. As it was that day when the present Constitution of India was brought into force by the Constituent Assembly, making India a new independent Sovereign Democratic Republic nation which is ruled by the ‘People’. It is a document having a legal sanctity that laid down new ideals and objectives of the new constitution and embarked upon the framework of all the organs at every level of the Government. Independence is not given in inheritance, our freedom fighters have struggled for it for so many years, launched several movements, and sacrificed their lives to make the country free from British Raj which ruled for around 100 years. Independence brought a large number of dreams not just to an individual but to society as a whole. It embarked on the ray of fundamental transformation of a traditional, political, economic and social society to a modern stable, equalitarian, effective, and efficient society.

The famous quote of B.R. Ambedkar, ‘Our is a battle; Not for wealth, nor for power, our is battle; for freedom; for reclamation of human personality’ summarizes the significance and reason of all the struggle and wars fought for independence. It is true that modernization came into existence since the British Rule as traders in the form of East Indian Company in the country but with the main interest to exploit Indians in several ways such as:

Imposing a lower import tariff on the goods manufactured outside the jurisdiction of the country. Imposing higher export tariffs on the goods manufactured in the country. Destruction of huge industries like textiles, steel etc. Shutting down all handicraft markets and promoting machine-made goods. Imposing heavy arrears on the farmers and threatening them that if they don’t pay the arrears they will be put in jail.

This was all done to reduce the supremacy of the Indian goods globally, devastate the country economically, and seek a monopoly of the British goods in the country. But India’s Independence was itself a turning point in the history of the transformation of constitutional modernization in the country. Pandit Jawaharlal Nehru was the first-ever Prime Minister of an Independent India. He has taken numerous constitutional changes and emphasized effective and efficient development in respect to the industrialization and modernization in the country and to achieve the dream of making India a Better India. Several measures and effective steps were taken by the Nehru government to make a modernized economy. Various policies have been implemented to achieve several measures such as follows:

Adoption of the Principle of Universal Adult Suffrage. Establishment of the various Educational Institutions. Abolition of the Zamindari system. Reservation Policies for the benefit of the economically backward lower classes. Special protective policies in relation to women and children. Emphasis upon the infrastructural development in the rural areas. Establishment of numerous Employment opportunities in all the sectors, etc.

During the British rule, the voting rights were confined only to a very few people and that was also based on certain barriers such as caste, gender (only men were allowed to cast vote), color, qualifications, etc. But right after the enforcement of the Indian Constitution, elections in the country are held on Universal Adult Franchise, implying no discrimination is done to anyone irrespective of caste, race, gender, wealth, etc. The Constitution laid down the foundations of modern India. Everyone is not the same and so they have their individuality and opinions and through voting, they put forward their opinion by choosing the candidate of their choice. Each vote matters and Nehru always believed that an ordinary citizen has the potential to bring a change in the country.

Since the enforcement of the Constitution, the shift towards modernization to a large extent began in the country. India has a rich and diverse culture. It is distinct in languages, food, region, religion, etc. It was important to hold all the citizens together and preserve the country's unity, cultural values, and traditions with resilience. From the beginning of the Constitution, many principles were adopted for the welfare of the citizens. One of the foremost principles is 'Secularism'. All the religions including Hindu, Muslim, Sikh, Parsi, etc. are treated equally. In fact, the Right to freedom of Religion is one of the fundamental rights enshrined in the Constitution which is guaranteed to every citizen of the country. The country has no religion of its own.

Another important principle is 'Equality before the law'. As we know that social discrimination was done against untouchables and to the people who belonged from the weaker sections of the society. So, to remove this barrier of inequality, the concept of Equality before the law was recognized after the independence and it ensured that all opportunities are applied equally without any discrimination. Also, extra policies and strategies have been implemented to provide social justice to the unprivileged people belonging to the weaker sections.

Other major initiatives like production of the latest means of technologies, transportation facilities, communication tools, administration of justice through a legal process, etc. have been emerging since the introduction of independence. Education was made compulsory for all citizens. Schools all over the country were set up to ensure free and compulsory education to the primary students, intensive measures to eradicate poverty and illiteracy and structural transformation all over the country, etc. were put in action. Agricultural reforms were revolutionized by adopting innovations such as fertilizers, water pumps, etc. Laws and procedures relating to Hindu marriages, Succession, and transfer of properties were envisaged. These all are integral components to the process of modern India.

Conclusion:

The Constitution is the Supreme Law of this sovereign unified country. It lays down the rule of law which is same for everyone and is not arbitrary or vague. It implies no one is above the law which strengthened the nation. The country has been civilizing and modernizing in every field whether it is entertainment, education, sports, technology, etc. since it achieved freedom. It gave complete power in the hands of common people. Thus, the contribution of Constitution in the process of making India a uniform platform of modernization and civilization is magnificent

CONSTITUTION FRAMEWORK

Political system and history

Present day India is a federal state with 28 federated entities divided among seven unions. Its system of government is parliamentary and based on the Westminster model. India first came into contact with the west in the early 18th century when it was annexed by the British East India Company. In the mid 19th century, it fell under British colonial rule. The colonial administration in British India or British Raj – as it was also called - was headed by a Viceroy who also cumulated the title of Governor General until 1947 when a struggle for independence, marked by a widespread non violent resistance movement resulted in independence from the British Colonial Empire.

Constitutional history and development

Prior to the constituent assembly that convened in 1948 to draft the Indian constitution adopted in 1950 and still in force to date, the fundamental law of India was mostly embodied in a series of statutes enacted by the British Parliament. Key among them was the Government of India Acts of 1919 and 1935.

The Government of India Act of 1919

Passed as a measure of gratitude for India's role in world war one, the primary purpose of this act was to expand native participation in the government. Key reforms of the Act were the establishment of a dual form of government with limited powers for the major provinces. The imperial legislative council was transformed into a bicameral legislature for all India. Finally, the Act established the position of a High Commissioner with residence in London to Represent India in the United Kingdom.

The Government of India Act of 1935

This Act was adopted in response to opposition and criticisms from the National Congress of India to the 1919 Act for doing too little in terms of granting autonomy. Its key provisions included:

- Abolition of the dual form of government or diarchy and the granting of a larger degree of autonomy for the provinces
- Establishment of a Federation of India (which never came into force though)
- Introduction of direct suffrage and extension of the franchise to 37 million people from the original 5 million

- Membership of the provincial assemblies was altered so as to include more elected Indian representatives, who were now able to form majorities and be appointed to form governments
- The establishment of a Federal Court

The Constituent Assembly of 1948 and the Constitution of 1950

In 1946, the British decided to examine the possibility of granting independence to India. As a result, a British cabinet mission was despatched to India to (1) hold discussions with the representatives of British India and the Indian States in order to agree on the framework for writing a constitution, and (2), set up a constituent body and an executive council. Following this mission and the ensuing negotiations, a Constituent Assembly was indirectly elected by the provincial legislatures comprising 278 representatives and 15 women. Parties represented in the CA were the Congress Party which had a majority, Muslim League, Scheduled Caste Federation, the Indian Communist Party and the Union Party. The CA met for the first time in December 1946 and by November 1949 the draft constitution was approved. The constitution went into effect in January 1950 and the CA was transformed into a Provisional Parliament.

The Constitution which is still in force has been amended over 90 times making it one of the most frequently amended constitutions in the world. It is also known to be one of the longest and most detailed in the world with 395 articles and 10 appendixes called schedules.

Extensively modeled on western legal and constitutional practice, its key features include:

- The establishment of a federal system with residual powers in a central government
- A list of fundamental rights
- A Westminster style parliamentary system of government

Key timelines in the 1948 constitutional process

1946	Britain decides on to grant independence to India and cabinet mission is dispatched to India to discuss modalities for transfer of power
14 August 1947	Proposal for creation of committees is tabled
29 August 1947	Drafting committee is established
6 December 1947	Constituent Assembly formally convenes for the first time, following elections, to start the process of writing a constitution.
4 November 1947	Draft is finalized and submitted
1948 – 1949	Constituent Assembly meets in sessions open to the public
26 November 1949	Constituent Assembly adopts final draft making it official
26 January 1950	Entry into force of the new constitution

Background of the Constituent Assembly of India

The following table lists the trail of the development of the constituent assembly of India:

Constituent Assembly of India – Background

• In 1934, M N Roy first proposed the idea of a constituent assembly.
• The demand was taken up by the Congress Party in 1935 as an official demand
• The British accepted this in the August Offer of 1940
• Under the Cabinet Mission plan of 1946, elections were held for the formation of the constituent assembly
• The members of this assembly were elected indirectly, i.e., by the members of the provincial assemblies by the method of a single transferable vote of proportional representation
• The constituent assembly was formed for the purpose of writing a constitution for independent India

Composition of Constituent Assembly

- Initially, the number of members was 389. After partition, some of the members went to Pakistan and the number came down to 299. Out of this, 229 were from the British provinces and 70 were nominated from the princely states.
- Dr. Sachchidananda Sinha was the first temporary chairman of the Constituent Assembly. Later, Dr. Rajendra Prasad was elected as the President and its Vice President was Harendra Coomar Mookerjee. BN Rau was the constitutional advisor.

Key Facts Related to the Constituent Assembly of India for IAS Exam

Constituent Assembly of India – Key Facts for UPSC Exam	
When did the constituent assembly first meet?	The assembly first met on 9 December 1946
Was there any role of the Muslim League in the formation of the Constitution of India	No, there was no role played by the Muslim League in the constituent assembly as it had boycotted this meeting citing their demand for partition
What is ‘Objective Resolution’ concerned with the constituent assembly of India?	Objective Resolution enshrined the aspirations and values of the constitution-makers. Under this, the people of India were guaranteed social, economic and political justice, equality and fundamental freedoms. This resolution was unanimously adopted on 22 January 1947 and the Preamble to the Constitution is based on it.
When was Objective Resolution moved and by who?	On 13 December 1946, Jawaharlal Nehru moved the ‘Objective Resolution’.
When was National Flag of Union adopted?	The National Flag of the Union was adopted on 22 July 1947

For how many days, the constituent assembly assembled to frame the constitution?	The time is taken by the assembly to frame the constitution: 2 years, 11 months and 17 days. Money spent in framing the constitution: Rs.64 lakhs
When was Jana Gana Mana adopted as our national anthem?	On 24 January 1950, 'Jana Gana Mana' was adopted as the national anthem
How many articles our final constitution has?	The final document had 22 parts, 395 articles and 8 schedules.
What was the total number of sessions constituent assembly had?	The assembly had met for 11 sessions
When was the draft of the Indian Constitution published?	The draft was published in January 1948 and the country's people were asked for their feedback and inputs within 8 months
What is the date of the last session?	The last session was held during 14 – 26 November 1949. The constitution was passed and adopted by the assembly on 26 November 1949
When did the constitution of India come into force?	The constitution came into force on 26 January 1950 (which is celebrated as Republic Day)

Committees of Constituent Assembly of India with their Chairmen

There were eight committees, mentioned below:

Committees of Constituent Assembly of India	
Drafting Committee	Dr. B R Ambedkar
Union Constitution Committee	Jawaharlal Nehru
Union Powers Committee	Jawaharlal Nehru
States Committee	Jawaharlal Nehru
Steering Committee	Dr. Rajendra Prasad
Rules of Procedure Committee	Dr. Rajendra Prasad
Provincial Constitution Committee	Sardar Vallabhbhai Patel
Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas:	<ul style="list-style-type: none"> • Fundamental Rights Sub-Committee: Acharya Kripalani • Minorities Sub-Committee: H C Mookerjee • Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee: A V Thakkar

	<ul style="list-style-type: none"> North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas <p>Sub-Committee: GopinathBardoloi</p>
--	---

Criticism of the Constituent Assembly

- It was not a representative body since the members were not directly elected by adult franchise. However, the leaders did enjoy popular support from the people. Direct elections by the universal adult franchise at that time when the country was on the brink of partition and amidst communal riots would have been impractical.
- It is said that the makers took a long time in framing the constitution. However, keeping in mind the complexity and the peculiarities of the diverse and large Indian nation, this can be understood.
- The constituent assembly was not a sovereign body since it was created by the British. However, it worked as a fully independent and sovereign body.
- The language of the constitution was criticised for being literary and complicated.
- The assembly was dominated by the Congress Party. But the party dominated the provincial assemblies and this was natural. Moreover, it was a heterogeneous party with members from almost all sections of Indian society.
- It was alleged that the assembly had Hindu dominance. This was again because of proportional representation from communities.

Salient features of India Constitution

▪ The Lengthiest Constitution of the World

The Indian Constitution is one of the lengthiest constitutions in the world and it is also very detailed. There are 12 schedules and 448 articles in our Constitution. The Indian Constitution has incorporated various articles by taking inspiration from the various constitutions around the world. As we all know, India is a very diverse country and it was necessary to draft a long Constitution incorporating various provisions in order to accommodate various differences. The parent document for drafting the Indian Constitution was the Government of India Act 1935, and that document itself was very lengthy.

▪ Establishment of a Sovereign, Socialist, Secular, Democratic Republic

The Preamble of our Constitution provides India to be a Sovereign, Socialist, Secular, Democratic and Republic Country. There are also various other terms in the Preamble which ensure equality and protect people. The various other terms are Justice, Liberty, Equality, and Fraternity.

▪ Parliamentary form of Government

The Bicameral Legislature system is followed in our country. The Unicameral legislature system is followed in countries like Norway. The law making procedure is easy in the unicameral legislature but the bicameral legislature is effective as there would be a lot of discussions and deliberations before making legislation. A parliamentary system of government means that the executive branch of government has the direct or indirect support

of the parliament. ... The head of government is the prime minister, who has the real power. The head of state may be an elected president or, in the case of a constitutional monarchy, hereditary.

Parliamentary v. Presidential System

The Presidential form of Government is followed in countries like the United States of America. The President is the head of the State in the Presidential System of Government. The Parliamentary system is preferred over the Presidential system as it ensures the equal distribution of power and also power is not within the hands of a single person. The drafters of our constitution did not prefer the presidential system as the executive and legislatures would become independent of each other. The makers felt that this would be an issue afterwards.

- A unique blend of rigidity and flexibility

The Indian Constitution is neither rigid nor flexible, this is also one of the reasons for its length. The famous example of the rigid constitution is the Constitution of the U.S., and it is known as a rigid constitution as the amendment process is very difficult. The Indian Constitution is not very difficult to amend, as the Constitution of The U.S.A. It has gone through 103 amendments so far but there are certain steps to be satisfied before bringing in the amendment. Thus the Indian Constitution is a unique blend of rigidity and flexibility.

- Fundamental Rights

Fundamental rights in India are the rights guaranteed under Part III (Articles 12-35) of the Constitution of India. There are six fundamental rights (Article 12 - 35) recognised by the Indian constitution : the right to equality (Articles 14-18), the right to freedom (Articles 19-22), the right against exploitation (Articles 23-24), the right to freedom of religion (Articles 25-28), cultural and educational rights (Articles 29-30) and the right to constitutional remedies (Article 32 and 226).

Fundamental rights for Indians have also been aimed at overturning the inequalities of preindependence social practices. Specifically, they have also been used to abolish untouchability and thus prohibit discrimination on the grounds of religion, race, caste, gender or place of birth. They also forbid trafficking of human beings and forced labour (a crime). They also protect cultural and educational rights of religious establishments. Right to property was changed from fundamental right to legal right.

- Directive Principles of State Policy

Part IV of the Indian Constitution deals with the Directive Principles of State Policy. Directive Principles of State Policy aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state. It is the duty of every State to apply these principles while making any new legislation. The Directive Principles of State Policy is similar to the ‘Instrument of Instructions’ that is in the Government of India Act 1935. They are basically instructions to the legislature and executive that has to be followed while framing new legislation by the State. There are various directive principles like. The State shall promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

- A Federation with a strong centralising tendency

The famous salient feature of our Indian Constitution is that it is a federation with a strong centralising tendency. The constitution of India is neither federal nor unitary. The reasons for calling the Indian Government unitary is that,

- The division of powers is not equal. The centre has more powers than the state that is evident from the fact that the Union list contains more matters than the State list.
- The federations like the U.S.A have rights to frame their own constitution, which is not possible in India as the entire country follows the Single constitution.
- During the time of emergency, the states come under the control of the Centre.
- There is a single system of Courts which enforces both the Central and State laws.
- There is no equal representation of States in the houses of Parliament which is not the same in federations like the U.S.A.

The Indian Constitution is considered as federal for various reasons like:

- There is a written Constitution which is an essential feature of every country following the federal system.
- The supremacy of the constitution is always protected.

Thus the Indian Constitution can be described as quasi-federal or a federation with a strong centralizing tendency.

□ Adult suffrage

The concept of Adult suffrage allows every citizen of our country who is above eighteen years has the right to vote in the elections. Any adult who is eligible to vote should not be discriminated on any basis like gender, caste and religion. This provision was added in the sixty-first amendment which is also known as the Constitution Act, 1988. The accepted age for voting was twenty-one before this amendment afterwards it was changed to 18 years of age. Article 326 of the Indian Constitution guarantees this right. There are also certain disqualifications provided under Article like:

- Non-residence;
- Unsound mind;
- Criminals who are indulged in the corrupt and illegal practice.

The persons with these disqualifications are not accepted as a registered voter and they are not allowed to cast votes in the election.

□ An Independent Judiciary

The Judiciary ensures the proper functioning of the constitution and the enforcement of various provisions of the Constitution. The Constitution makers ensured that Judiciary has to be independent so that it will not be biased. The Supreme court is considered as the watchdog of democracy. There are various provisions in the Article which ensures the independence of the judiciary,

- The appointment of Judges is independent and there is no involvement of any executive authorities;
- The tenure of Judges is secured;
- The removal of judges from the tenure must be also based on the constitutional provisions.

□ A Secular State

The term Secular State means that there is no separate religion for the State and every religion is respected equally in the State. The Preamble of the Indian Constitution itself states

that India has to be a secular state. The Fundamental rights provide the citizens' freedom to follow their own religion and religious practices and no one can be forced to follow any religion. The proposal of developing a uniform civil code is also provided in the directive principles of State policy in order to resolve the differences between various religions, though it is not implemented still. Article 26 also provides the right to manage their own religion in order to prevent any intrusion.

□ Single Citizenship

There is no separate citizenship for the States and the Centre like in various federal countries like the U.S.A. There is single citizenship provided to our citizens. Part 2 of the Indian Constitution, i.e. Article 5 to Article 11 of the Indian Constitution deals with citizenship. The Citizenship Act, 1955 which was amended recently in 2019 also deals with citizenship. Single citizenship allows the persons to enjoy equal rights in various aspects across the country. According to Article 5, it is clearly mentioned that the persons will be considered as citizens of the territory of India, which ensures that there would be only single citizenship.

▪ Fundamental Duties

Article 51A of the Indian Constitution provides various fundamental duties. There are no specific provisions to enforce fundamental duties in the Courts like the fundamental rights but it is also necessary to follow the fundamental duties. The fundamental duties are equally important as the fundamental rights. There are various duties provided to a citizen like:

- To respect the Constitution and its ideals and to abide by the provisions of the Constitution.
- To cherish and follow the noble ideals which inspired our national struggle for freedom.
- To value the rich heritage of our country.
- To defend our country when there is a necessity and to render national service when called upon.
- To protect the environment and carry out measures to improve them.
- To safeguard the public property.
- To promote harmony and the spirit of a common brotherhood etc.,
- Judicial Review

The concept of judicial review is an essential feature of the Constitution which helps the constitution to work properly. The judiciary is considered to be the guardian of the constitution, thus it is the duty of the judiciary to check the actions that are violative of various articles in the Constitution. The actions of various organs of the government like executive and legislature can be questioned by the judiciary using the judicial review. The judicial review is an important check and balances in the separation of powers. The court that is authorized with the power of judicial review can invalidate any act that is violative of the various basic features of the Constitution. Article 32 and Article 136 of the Indian

Constitution are the articles related to the Judicial review in the Supreme Court. Article 226 and Article 227 are related to the judicial review in the High Court. The scope of judicial review is limited to three grounds:

- Unreasonableness and irrationality;
- Illegality;
- Procedural impropriety.

It is also a settled principle that there should be no judicial review in policy matters, that the policy decision taken by the State or its authorities is beyond the scope of judicial review unless the decision is found to be arbitrary, unreasonable or it is in contravention of the statutory provisions or if it violates the rights of individuals guaranteed under the statute. The policy decision cannot be in contravention of the statutory provisions because if the Legislature in its knowledge provides for a particular right, the authority making a decision regarding the policy cannot nullify the same. The same principle was also stated in the case of *Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation*. In this case, it was said that the court will not interfere in the matter of administrative action or changes.

Preamble to the Constitution of India

A preamble is an introductory statement in a document that explains the document's philosophy and objectives. In a Constitution, it presents the intention of its framers, the history behind its creation, and the core values and principles of the nation. The Preamble to Constitution of India is guidelines to guide people of the nation, to present the principles of the Constitution, to indicate the source from which the document derives its authority, and meaning. It reflects the hopes and aspirations of the people. The preamble can be referred to as the preface which highlights the entire Constitution. It was adopted on 26 November 1949 by the Constituent Assembly and came into effect on 26 January 1950, celebrated as the Republic day in India. Preamble was made in 1947 but adopted in 1949.

The Preamble reads:

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

□ JUSTICE, social, economic and political;

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

□ EQUALITY of status and of opportunity;

□ and to promote among them all

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

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

FUNDAMENTAL RIGHTS Article 13-32

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

(1) 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

(2) 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

(3) In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368

Right of Equality

14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

17. Abolition of Untouchability Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

18. Abolition of titles No title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign State. No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State. No person holding any office of profit or trust under the State shall, without the consent of the President, accept any pension, emolument, or office of any kind from or under any foreign State.

19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

- a) to freedom of speech and expression;
- b) to assemble peaceably and without arms;
- c) to form associations or unions;
- d) to move freely throughout the territory of India;
- e) to reside and settle in any part of the territory of India; and
- f) omitted
- g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the

general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

- i. the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- ii. the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

20. Protection in respect of conviction for offences

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) No person accused of any offence shall be compelled to be a witness against himself

21. Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law

22. Protection against arrest and detention in certain cases

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate

(3) Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose

(7) Parliament may by law prescribe

- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause (4);
 - (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
 - (c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4)
- Right against Exploitation**

23. Prohibition of traffic in human beings and forced labour

- (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law
- (2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them

24. Prohibition of employment of children in factories, etc: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment Provided that nothing in this sub clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub clauses (a) and (b) of clause (7)

25. Freedom of conscience and free profession, practice and propagation of religion

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion
 - (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
 - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus
- Explanation I** The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion
- Explanation II** In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

26. Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- a) to establish and maintain institutions for religious and charitable purposes;
- b) to manage its own affairs in matters of religion;
- c) to own and acquire movable and immovable property; and

- d) to administer such property in accordance with law

27. Freedom as to payment of taxes for promotion of any particular religion No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religions denomination

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions

(1) No religion instruction shall be provided in any educational institution wholly maintained out of State funds

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto Cultural and Educational Rights

29. Protection of interests of minorities

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them

30. Right of minorities to establish and administer educational institutions

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause

(2) 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

31A. Saving of laws providing for acquisition of estates, etc (1) Notwithstanding anything contained in Article 13, no law providing for

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19: Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent: Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof

31B. Validation of certain Acts and Regulations Without prejudice to the generality of the provisions contained in Article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force

31C. Saving of laws giving effect to certain directive principles Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent

32. 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 clause (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.

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

1. Habeas Corpus 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.

2. Quo Warranto 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.

3. 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.

4. Certiorari 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.

5. Prohibition 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. 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.

