

\* CONSTITUTION:

Set of principles or rules relating to the basic law of the land.

kinds of constitutions

→ written / unwritten

→ Enacted / Evolved (enact - make laws)

→ Rigid / Flexible (Tough amendment - rigid, simple - flexible)  
(Indian constitution is semi rigid / semi flexible)

→ Unitary / Federal (federal - division of powers as state & centre)  
(India is quasi-federal) (Quasi - similar to)

\* Historical Importance:

- The Government of India Act - 1858 (unitary)

Secretary of State of India

Governor general / Viceroy

This abolished the East India company.

- British India was divided into provinces

Province



Lieutenant

→ accountable to Governor General  
(executive)

Governor



Council (no Indians were involved consisted on the officials)

- Indian Councils Act 1861 and 1892.

Indians were introduced to the councils but were considered to be non officials and had no powers.

- 1909

Lord Morley - Secretary of State for India

Lord Minto - Viceroy

Indian Councils Act of 1909

- More control of budgets.
- Non official members: public administration
- Viceroy - foreign affairs, military
- 1919:

Lord Montagu - Secretary of State for India

Lord Chelmsford - Viceroy

Nominated Indians in their favour.

Government of India Act 1919

- Dyarchy in the provinces (dual government)  
ie: Transferred Subjects under provinces control  
Reserved Subjects under central control
- Elections were included
- Relaxation of control in provinces
- Indian representation at the centre (Bicameral legislature)

Legislative Assembly - 144 members (First House)

Council of States - 60 members (Second House)

The Government of India Act - 1935: (Basis of Indian Constitution)

- Diarchy was introduced at the centre

(Indians were included in the centre and the Viceroy had to act according to Council of Ministers consisting both Indians and British)

- Distribution of power between centre and provinces (central list, provincial list, concurrent list)

Provincial Autonomy

complete freedom to have laws made by provinces

Dominion state status - Maximum freedom from British

⇒ During 1919 elections they introduced communal award creating differences among people based on religion.

By 1935 all electorates were given separate representation based on religion which led to communal clashes.

### - Cripps Mission:

Lord Cripps came to India in 1942 March.

- constituent assembly will be elected by Indians
- India will be given ~~to~~ Dominion State status
- One India union comprising all the states of India to be established as British colony.
- Any Indian province that wanted to remain independent can remain independent and will be directly accountable to the British (Jammu - Kashmir).
- Indian union will have freedom to frame their own laws.

This failed due to the struggle for self rule (swaraj) by the congress.

### - Partition

9 Dec 1946 - First meeting of undivided constituent assembly

26 July 1947 - Separate constituent assembly for muslims  
Indian Independence Act

14 Aug 1947 - Second meeting of divided constituent assembly

14th - Pakistan Independence

15th - Indian Independence

Both the assemblies decided to make their own separate laws. India declared democracy.

People were elected based on the population of the state.

14 Nov 1949 - Third meeting of constituent assembly of India.

Drafting committee - Headed by BR Ambedkar.

26 Nov 1949 - Appointed day (completion of draft)

Citizenship, elections, provisional parliament and other transitional provisions came into force immediately

26 Jan 1950 - Enforcement of constitution.

22 Jan 1947 - Objectives Resolution by Jawahar Lal Nehru

<sup>1</sup> → Constituent assembly declared India as independent

sovereign republic.

2 → The territories which were British India and the princely states are all to be constituted as one union of sovereign independent India.

3 → All these territories shall possess and retain a status of autonomous units and exercise all powers of government and administration except those powers which are assigned to the union.

4 → All the power and authority of sovereign independent India are derived from the people.

5 → All people of India shall be guaranteed and secured justice, social, economic and political equality of states and opportunities, freedom of thought, expression, belief, faith and worship and vocation, association and action, subject to law and public morality.

6 → Adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes.

7 → The integrity of the territory of the republic and its sovereign rights on land, sea and air shall be maintained according to justice and the law of civilised nations.

8 → This ancient land shall attain its rightful and honoured place in the world and make its full and willing contribution to the promotion of World peace and welfare of mankind.

\* PREAMBLE: (pre-before amble-law)

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:

[After 42nd amendment of constitution the words  
\*SOCIALIST, SECULAR were added in 1976.]

Justice, social, economic and political;  
Liberty of thought, expression, belief, faith and worship;  
Equality of status and of opportunity; and to promote  
them all;

Fraternity assuring the dignity of the individual  
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.

- Sovereign - Independent authority.
- Democratic - People's rule and power.
- Republic - State headed by President -elected by people.
- Socialist - Distribution of all resources and wealth to  
all people so that those who contribute towards the  
contribution of wealth should benefit from it.
- Secularism - A state which is neutral to any religion, it  
does not uphold any one religion as state religion but it  
protects all religions equally and treats all religions equally.

OBJECTIVES:

- Justice: It is giving every individual what he deserves.  
Social justice: providing for a mechanism to remove  
social imbalance by protecting the interest of different  
groups or individuals in the social structure so that

it is possible to build up a welfare state.

Economic Justice: Removing poverty not by distributing the wealth of the rich among the poor but by multiplication of national wealth and resources among all people, distributing these resources and establishing economic democracy.

Political Justice: Every person in the territory of India, irrespective of his property or educational qualification should be allowed to participate in the political system so that every citizen is allowed to vote based on Universal Adult Franchise, and every citizen is allowed to contest in elections.

— Liberty: Our constitution mentions fundamental freedoms of citizens, i.e., freedom of thought, expression, faith, belief and worship.

— Equality:

Equality of Status: Every person without discrimination on grounds of religion, race, caste, sex or place of birth.

Equality of Opportunity: Law should be made to ensure equal opportunity for developing the best of himself to every individual.

— Fraternity: It means brotherhood, i.e., all communal or sectional differences should be abolished and any anti social feelings which stand in the way of unity and integrity of India must be abolished. spirit of brotherhood must be promoted among all citizens of India.

## SALIENT FEATURES OF INDIAN CONSTITUTION:

1. Longest Constitution in the world.  
It consists of 395 articles originally, and after amendments 445 articles. It has 12 schedules.
2. Our constitution is a semi rigid or semi flexible constitution
3. Our constitution is Quasi-Federal
4. Our constitution has adopted a Parliamentary Democracy
5. It has a Bicameral Parliament at the Centre and either Bicameral or Unicameral at the States.
6. Our constitution is a written and enacted constitution and not evolved constitution.
7. Our constitution declares India to be a Sovereign, Democratic, socialist and secular state and a Republic.
8. Our constitution includes Fundamental Rights in Part III of the constitution.
9. Our constitution includes Directive Principles of State Policy in Part IV.
10. Our constitution includes Fundamental Duties of citizens in Part IV A
11. Our constitution declares special provisions for minorities, backward classes and other depressed classes.
12. Our constitution declares single citizenship.
13. Our constitution contains Emergency Provisions
14. Our constitution provides All India Services
15. Our constitution makes special provision for the language of the Union and regional languages in the 8th schedule of the constitution.
16. Our constitution provides for an Independent Judiciary.
17. Our constitution declares Universal Adult Suffrage.

## constitution

PART 1: India and its territories

- Powers of parliament.
- Alteration in territories is done by the centre.

PART 2: Citizenship

- A person even with any one Indian parent gains Indian citizenship.
- Once a person is entitled with other country's citizenship loses Indian citizenship.

PART 3: FUNDAMENTAL RIGHTS:

UN Declaration of Human Rights 1948 is the source for our fundamental rights in the constitution.

Fundamental rights: It is fundamental right inherent in all persons.

Article 12 - Article 32 (Fundamental Rights)

Fundamental rights are those rights which are listed in the bill of rights in the constitution. In India, Fundamental Rights is listed in part III. These rights are inherent rights of persons and if the state violates any of the Fundamental rights of its people, there can be a fundamental right to approach the supreme court for remedies.

Characteristics of Fundamental Rights:

- 1) They are available to persons against state action but some of the rights are available against private individuals.
- 2) Fundamental rights are ~~granted~~ <sup>guaranteed</sup> to the people as a check upon arbitrary action by the government.
- 3) Fundamental rights may be negative or positive, i.e., when they are negative they prohibit the state from doing certain acts. The positive rights confer privileges upon the individuals.
- 4) They are higher in status than ordinary legal rights. No law can be made taking away fundamental rights.

5) Fundamental rights are justiciable rights.

#### - Classification of Fundamental Rights:

1. Right to Equality (Article 14 to 18)
2. Right to Particular Freedoms (Article 19 to 22)
3. Right against Exploitation (Article 23 to 24)
4. Right to Freedom of Religion (Article 25 to 28)
5. Cultural and Educational Rights (Article 29 to 30)
6. Right to Property (Article 31) (Now not a fundamental right)
7. Right to constitutional Remedies (Article 32)

#### \* ARTICLE 12: Definition of State

State includes -

- i) The Parliament of India and the legislatures of the states.
- ii) The Government of India and Governments of the states.
- iii) All local authorities within the territory of India.
- iv) All other authorities within the territory of India or under the control of Government of India.

#### \* ARTICLE 13:

The state shall not make any law which takes away or abridges any of the Fundamental rights guaranteed under this part, any law made in contravention of this clause shall, to the extent of such contravention be void.

All laws in force at the time of commencement of this constitution shall not take away or abridge any of the rights in Part III and if the law contains anything which takes away rights in Part III to that extent, such a law shall be void.

Sub clause 13(3), law includes, any statute, any rule,

Ordinance, bye-law, circular, order, notification or any other custom or usage which has the force of law within the territory of India.

#### \* ARTICLE 14: Right to Equality

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

Equality before the law means that no man is above the law of the land whatever is his status or whatever is his position in society, every person is subject to the ordinary jurisdiction of the courts. This is based on the principle by A V Dicey (study of the constitution - England)

Equal protection of the law is made by the state must be equally must be administered between equals and likes should be treated alike. Those who are placed in equal circumstances have a right to equal treatment while those who are unequal must be protected by providing facilities and opportunities.

Article 14 permits reasonable classification it doesn't prohibit classification in order to give every person an opportunity for development.

Air India vs Nargeesh Mirza (A woman having a child)

-Reasonable classification test

1. The classification must be based on intelligible differentiation.

2. The differentiation must have a reasonable nexus (connection) with the purpose of the statute.

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## \* ARTICLE 15:

Subclause 15(1): The state shall not discriminate against any citizens on grounds only on religion, race, caste, sex, place of birth or any of them.

Subclause 15(2): No citizen shall not discriminated on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, condition or restriction with regard to:

- a) access to shops, public restaurants, hotels and places of public entertainment. or
- b) use of wells, tanks, bathing ghats, road or places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public

Subclause 15(3): Nothing in this article shall prevent the state from making any special provision for women and children. (protective discrimination)

Subclause 15(4): Nothing in this article shall prevent the state from making any special provision for the advancement of socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.

## \* ARTICLE 16: Prohibition of Discrimination and Equal Opportunity in matters of Public Employment:

Subclause 16(1): There shall be equality of opportunity for all citizens in matters of employment and or appointment for any office under the state.

Subclause 16(2): No citizen shall on grounds only of religion, race, caste, sex, descent or place of birth, residence or any of them be ineligible for or discriminated against in respect of any employment or office under the state.

~~Explanatory~~

Sub Clause 16(3): Nothing in this article shall prevent parliament from making any law, prescribing in regard to a class or classes of employment or appointment, employment to an office under the government or any local or other authority within the state or union territory, any requirement has to residence within that state or union territory prior to such employment.

Sub Clause 16(4): Nothing in this article shall prevent the state from making any provisions for the reservation or appointment or posts in favour of any backward class of citizens which in the opinion of the state is not adequately represented in the services of that state.

### Balaji versus State of Mysore

- Supreme court said that reservation policy must be reasonable and a balance must be struck in the matter of reservation by creating opportunities for reserved classes and also for other members of unreserved category.
- Reservations must not go beyond 50%.

### Indra Sawhney versus Union of India (1993)

- Supreme court said reservation should be limited to the maximum of 50%.
- Reservation should be given on the basis of socially and educationally backward classes according to article 35. Those who have improved their social status must be removed as creamy layer and should be given to those who deserve it. Socially and economically backward must be the criteria for reservation.

- If a reserved seat is not filled during that year it should be carried forward for only 3 years and later should be considered to general category.
- Reservation must not be given in promotions.

- When a job requires technical or professional skills then reservation must not be given.

<sup>44th amendment (1995)</sup> 16(4a): Nothing in this article shall prevent the state from making any provisions for reservations in matters of consequential seniority to any class of services or posts under the state in favour of SC or ST which is the opinion of the state are not adequately represented in the <sup>(2000)</sup> services under the state

<sup>81st amendment</sup> 16(4b): Nothing in this article shall prevent the state from considering any unfilled vacancies which are reserved in that year as a separate class of vacancies to be filled up in the succeeding years and such vacancies shall not be considered together with that year's vacancies for determining the ceiling of 50% of total vacancies during that year.

Subclause 16(5): Nothing in this article shall affect the operation of any law which provides that incumbent of an office in connection with 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 religious denomination.

#### \* ARTICLE 17: Abolishment 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 offense punishable in accordance with the law.

The Civil Rights Act 1955: Protection not only against the state but also against any person practicing untouchability.

\* state of Karnataka versus Appa Balu Ingla:

Drawing water from a well.

\* ARTICLE 18: Abolition of Titles:

Subclause 18(1): No title, not being a military or academic distinction shall be conferred by the state.

Subclause 18(2): No citizen of India shall accept any title from any foreign state.

Subclause 18(3): No person who is not a citizen of India shall, while he holds any office of profit or trust under the state, shall without the consent of the president accept any title from any foreign state.

Subclause 18(4): No person holding any office of profit or trust under the state, shall accept without the consent of the President, any present, emolument or office of any kind from or under any foreign state.

Balaji Raghavan versus Union of India

National awards like Padma Shree, Padmavibhushan, Bharat Ratna are awarded by Government of India. These are not titles as they do not run in the family but awarded to a particular individual for special performance in the field of art, science, literature or social service.

\* ARTICLE 19: Right to Particular Freedom:

Subclause 19(i): All citizens shall have the right

- a. to freedom of speech and expression (freedom of press included)
- b. to assemble peacefully and without arms.
- c. to form associations and unions
- d. to move freely throughout the territory of India
- e. to reside and settle anywhere within the territory of India

i. to hold, acquire and dispose of property.  
 (Removed by 44<sup>th</sup> amendment)

g. to carry on any occupation, trade or business and practice any profession.

All these freedoms are subjected to reasonable restriction because one freedom can be absolute as absolute freedom tends to be misused.

~~restrictions~~ — Subclause 19(2): Restriction on freedom of speech and expression

1. In the interest of sovereignty and integrity of India.

2. In the security of the state.

3. Friendly relations with foreign states.

4. Public order

5. Decency and morality

6. contempt of Court

7. Defamation (defaming a person in the eyes of the society)

8. Incitement to an offence (Promoting to commit offence)

— Subclause 19(3): Restriction of freedom of assembly.

1. In the interest of the sovereignty and integrity of India.

2. Public order.

— Subclause 19(4): Restriction to form associations and unions

1. In the interests of sovereignty and Integrity of India

2. Public order.

3. Morality.

— Subclause 19(5): Restriction on freedom of movement

1. In the interest of general public

2. In the interest of the scheduled tribes or for the protection of their interest.

— Subclause 19(6): Restriction on freedom of residence.

1. In the interest of general public

2. In the interest of the scheduled tribes or for the protection of their interest

(g) Subclause 19(1): Restriction on freedom of profession, trade.  
Maneka Gandhi versus Union of India

This right to practice any profession and carry on any occupation, trade or business can be restricted by the state by imposing reasonable restriction under article 19 subclause 1 ~~and clause~~.

1. In the interest of general public
2. The state can prescribe any professional or technical qualification necessary to practice that profession or carry on that trade, occupation or business.
3. The state can itself carry on any trade or business exclusively and prevent the citizens from carrying on that trade or business if it is necessary in the interest of the general public.

RC Cooper versus Union of India

\* ARTICLE 20:

• Protection in respect of conviction for offences.

Subclause 20(1): Protection against ex Post Facto laws

Subclause 20(2): Protection against Double jeopardy

Subclause 20(3): Protection against self incrimination.

20(1): (After the offense if the law is put in force)

No person shall be convicted of any offence except for the violation of a law in force at the time of conviction of any 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.

20(2):

No person shall be prosecuted and punished for the same offence more than once.

20(3):

~~20(3):~~ No person accused of any offence shall be compelled to be a witness against himself.

by INP \*

ARTICLE 21: Right to Life: (cannot be suspended even during emergency)

Marginal Note: Protection of Life and Personal Liberty:  
"No person shall be deprived of his life or personal liberty except according to the procedure established by law."

Francis Coralie versus Delhi Administration 1981

Similar to an American case: Munn vs state of Illinois

Right to life doesn't mean just to exist, it means a right to live with human dignity.

(A convict was not looked after properly in jail)

Hussainara Khatoon versus State of Bihar

Right to life includes right to speedy trial for prisoners

(Her husband suffered custodial death due to delayed trial).

Sunil Batra versus Delhi Administration

- Right to life includes right to live with human dignity even if the person is in prison.
- Right to life includes right to a speedy trial of the case.
- Right to life includes right to be protected against solitary confinement in jails.

(Directions to treatment of prisoners were given after this case) (Solitary confinement can be given of for 15 days).

Premchand versus State of Haryana

Right to life includes right to protection against handcuffs.

(He was arrested with handcuff's and was paraded on roads)

Bandhu Mukhi Morcha versus Union of India

Right to life includes right to be protected against bonded labour and right to live with a human dignity  
(treatment of workers in mines)

M.C. Mehta versus Union of India (1984)

(Sriram Fertilizers company : gas leakage)

Right to life includes right to free and pure environment and the person who endangers the environment and causes damage to others is liable absolutely to compensate the harm that he has done.

(Kanpur Tanneries case) - (waste released to the river)

Right to life includes right to pure environment

Maneka Gandhi versus Union of India

Article 14, Article 19, Article 21 were challenged.

Right to life includes right to travel abroad, right to gender equality and right to live with human dignity which cannot be taken away except according to procedure established by law.

The procedure established by law must not be any ordinary procedure but it should be just, fair and reasonable procedure.

Karak Singh versus State of Uttar Pradesh

(convict who returned home for his parents' illness)

Right to privacy was questioned

Rathinam versus State of Bombay: (attempt to suicide)Gyan Kaur versus State of Punjab:Olga Tellis versus State of Bombay:

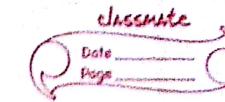
Right to life includes right to earn livelihood.  
(pavement dwellers' livelihood were taken away)

Vishakha versus State of Rajasthan:

(sexual harassment case)

Article 14, Article 15 and Article 21 were questioned.

Right to life includes right to be protected against sexual harassment and gender equality and right to



work with dignity is a basic human right recognised under Article 21 of the constitution.

Supreme court defined what is sexual harassment and laid down guidelines and directions to be followed by all employers and organisation who employ women in their organisation.

Vellore Citizens Welfare Forum versus Union of India

Right to life includes right to a free and pure environment and it is the duty of the state to keep the sea shore free from pollution.

Unnikrishnan versus State of Andhra Pradesh - 1993

Right to life includes right to education to all children upto 14 years.

- Article 21(a): It was introduced by an amendment in the year 2002 that is the 86<sup>th</sup> amendment.

Right to Education

The state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may by law determine.

\* ARTICLE 22: Protection to accused and arrested / and detained persons :

Subclause 22(1): No person who is arrested shall be detained in custody without being informed as soon as maybe of the grounds for such arrest nor shall he be denied the right to consult and defended by a legal practitioner of his choice.

Subclause 22(2): Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest excluding the time necessary for journey

from the place of arrest to the court of magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Subclause 22(3): Nothing in clause 1 and 2 shall apply: a) to any person who for the time being in an enemy alien.

b) to any person who is arrested or detained under any law providing for preventive detention.

Subclause 22(4): If a person is detained under preventive detention law, such law shall not authorise the detention for a longer period of 3 months unless a) An advisory board consisting of persons who are qualified to be judges of the high court has reported before the 3 months that in its opinion there is sufficient cause for detention for beyond the said 3 months. But such person shall not be detained beyond the maximum period prescribed by any law made by parliament.

b) Such person is detained according to any provision made by parliament.

Subclause 22(5): When such person is detained in pursuance of any order made under the law providing for preventive detention. The authority making that order shall as soon as maybe, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity to make a representation against such order.

Subclause 22(6): Nothing in clause 5 shall require the authority making such order to disclose facts which such authority considers to be against public

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interest to disclose.

Subclause 22(7): Parliament may by law prescribe :

- a) The circumstances under which and classes of cases in which a person may be detained for a period longer than 3 months under any law providing for preventive detention without obtaining the opinion of an advisory board according to clause 4.
- b) The maximum period for which such person may be detained under any law providing for preventive detention.
- c) The procedure to be followed by an advisory board in an enquiry under clause 4a.

#### RIGHT AGAINST EXPLOITATION:

ARTICLE 23: Prohibition of Trafficking in Human Beings and Forced labour.

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

(Prevention of immoral trafficking act) 1946

(Bonded Labour System Abolition Law) 1976

Subclause 23(2): Nothing in this article can 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.

\* ARTICLE 24: Prohibition of Employment of children in Factories etc

No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment  
(Prohibition of Child Labour Act) 1986.

RIGHT TO FREEDOM OF RELIGION:

(Individual rights)

\* ARTICLE 25: Freedom of Conscience:

Subclause 25(1): Subject to Public Order, morality and health and to other provisions of this part, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.

profess - follow

Subclause 25(2): Nothing in this article shall affect the operation of any existing law or prevent the state from making any law

propagate - spread  
profess - declare

a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious activities.

b) providing for social welfare and reform or the throwing open of Hindu religious institution of a particular character to all classes and sections of Hindus. (Prohibition of Sathi system).

(Collective rights)

\* ARTICLE 26: Right of religious denomination:

Subject to public order, morality and health every religious denomination or any section thereof shall have the right:

1. to establish and maintain institutions for religious

and charitable purpose.

2. to manage its own affairs in matters of religion.

3. to own and acquire moveable and immovable property.

4. to administer such property in accordance with law.

\* ARTICLE 27: Right to freedom to not pay taxes:

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

\* ARTICLE 28: Right of free religious instruction at Educational Institutions

Subclause 28(1): No religious instruction shall be provided in any educational institution wholly maintained out of state funds.

Subclause 28(2): Nothing in clause 1 shall apply to any 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.

Subclause 28(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 such person is a minor his guardian has given his consent there to.

Bijoe Emmanuel versus state of kerala:

(A school boy refused to sing the national anthem, because they believed to pray in conscious and not pray out loud - Jehovah's witnesses is the community).

The supreme court approved it as it was their belief of their community.

Fundamental duty-1 and article 25 was questioned  
(respect the national anthem)

### CULTURAL AND EDUCATIONAL RIGHTS:

(only to citizens of India)

#### \* ARTICLE 29: Protection of interests of minorities

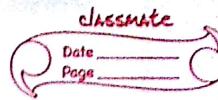
Subclause 29(1): Any section of citizens residing in the territory of India or any other part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Subclause 29(2): No citizen shall be denied admission into any educational institution maintained by the state or receiving aid of state funds on grounds only of religion, race, caste, language or any of them.

#### \* ARTICLE 30: Rights of minorities to establish and administer educational institutions.

Subclause 30(1): All minorities based on religion or language shall have the right to establish and administer education institutions of their choice.

1(a): In making any law providing for compulsory acquisition of any property of any 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



acquisition of such property in which such as would not restrict or abrogate the right guaranteed under that clause.

Subclause 3(a2): 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.

#### \* ARTICLE 31: Right to Property (No more a fundamental right)

Keshvananda Bharrathi versus State of Kerala - 1973

Power of amendment under 368 is provided under the constitution, therefore any part can be amended. But the amendment should not take away basic structure of the constitution.

The preamble is a key to open the minds of the maker of the constitution and therefore whatever is stated in the preamble is the basic structure, hence cannot be amended.

In 1978 - 44th amendment, article 31 was removed from Part 3 and was added to Part 12 as article 300(a). Therefore right to property is removed as a fundamental right but it is a legal right.

#### \* ARTICLE 32: Remedies for Enforcement of Rights conferred by Part 3: (soul of constitution)

Subclause 32(1): The right to move the supreme court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

Subclause 32(2): The Supreme court has power to issue directions or orders or writs, including writs in the

nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari, which ever may be appropriate for the enforcement of any of the rights conferred by this part.

Subclause 32(3): Without prejudice the power conferred on the Supreme court by clause 1 and 2 parliament may empower any other court to exercise within the local limits and its jurisdiction or all any of the power exercisable by the Supreme court in clauses the right guaranteed by this article shall not be suspended except as otherwise provided by the constitution.

#### WRITS:

##### Habeas Corpus: 'Bring me the body'

A writ of habeas corpus is an order by the court calling upon the person who has detained another person illegally to produce that person before the court. Habeas corpus means to have the body. It is a direction of the Supreme court or high court to a person who is detaining another, commanding him to bring that person in body in front of the court. The court asks to know on what ground he has been confined and if there is no legal justification for imprisonment of that person, the court will set him free immediately. This writ is a very effective method to protect a person from illegal detention. This writ is available to any person who approaches the court on behalf of the other person.

##### Mandamus: 'To command'

This is a writ which is an order of the court commanding a person who is in public authority to

do that work which he has a duty to do or not to do that work which is not his duty. The person whose right is injured himself has to approach the Supreme court or the High court for mandamus.

#### Essentials of Mandamus.

- Public servant: 1) The person should be a public servant or public authority. 2) The person must have asked him to do his duty and must have refused. 3) The person who approaches must have a legal right.  
4) The public authority must refuse to do his duty.

#### - Prohibition: 'To stop'

This is a writ issued by the Supreme court or High court to the subordinate court, forbidding the subordinate court to continue the proceedings in a particular matter where it has crossed the jurisdiction.

This writ is issued to prevent judiciary or local bodies from taking up that matter in excess of their judicial jurisdiction or abusing their jurisdiction against the laws of the land.

#### - Certiorari - 'To certify'

This is a writ in the form of an order which removes a case from the inferior court to a superior court so that the inferior court does not exceed or abuse its jurisdiction and the case is tried by the proper court. Prohibition stops the case from being proceeded further by certiorari certifies which is the proper court to be tried and removes the case from the existing court to the proper court.

#### - Quo-warranto - 'what is your authority'

When a person occupies a public office which he does not have the right to occupy then the person

classmate

Date \_\_\_\_\_

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who is entitled to that office can approach the Supreme court or the High court. The Supreme court and High court issues the writ of quo-warranto asking that person who is occupying that office to explain in what authority he is holding that public office. If the court finds that he is occupying the office illegally or he is unauthorised, the court may oust him from that occupation of public office and ask the deserving person to occupy that office.

## PART IV - Directive Principles of State Policy

### PART IVA - Fundamental Duties

The fundamental duties were introduced after 42<sup>nd</sup> amendment in 1976.

#### \* Directive Principles:

Directive Principles are general directions or instructions to the state. It provides the objectives which the union or state legislature must keep in mind while framing laws for the citizens of the country.

#### \* ARTICLE 37:

The provisions in this part shall not be enforceable by any court but the principles laid down are fundamental in the governance of the country and it shall be the duty of the state to apply these principles while making laws.

etc

#### - Classification

1. Gandhian Principles
2. liberal Principles / General Principles
3. socialistic / welfare Principles

#### Gandhian Principles

Gandhian Principles refer to those directive principles of state which aim at giving a shape to Mahatma Gandhi's ideas. (Articles 40, 43, 46, 47)

#### General Principles / liberal Principles

liberal principles means those principles which aim

at securing liberal legal provisions. General principles refer to principles general nature.

Liberal principles (Article 44, 45, 51)

General principles (Article 48A, 49, 51)

### Socialistic / Welfare Principles

They are those principles which aim at securing a welfare socialistic state in India (Articles 38, 39, 41, 42, 43)

Directive principles are not justiciable