

**Module 1: INTRODUCTION TO INDIAN CONSTITUTION**

- 1.1. The Meaning & necessity of Indian constitution
- 1.2. The societies before and after Constitution.
- 1.3. Introduction to Indian Constitution.
- 1.4. The Making of Indian Constitution.
- 1.5. The Role of Constituent Assembly.
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- 1.7. The Preamble of Indian Constitution & its key concepts.

**1.1 The Meaning & necessity of Constitution / Indian constitution**

Constitution in general is a set of rules. We find rules in the life of human beings as well as of in birds and animals in nature. We call these rules by different names like norms, rules, guidelines, regulations etc. They are usually un written and sometime found written. Birds, animals have unwritten rules. During kings rule we had unwritten constitution. and while British ruled we had written constitution of theirs for us. Nations rule may be known as Constitution. Rules make our life systematic and comfortable one.

Constitution is like a Foundation for a beautiful Building. It is the bedrock of the entire National socio-economic as well as political life. Constitution is the fundamental document having basically three Components:

- i) It explains the formation and structure of the Government along with its powers and functions;
- ii) It explains the Rights and Duties of the Citizen and
- iii) the relationship of the Government and Governed.

Thus, a Constitution can rightly be considered the most significant and fully binding document. It is essentially in the form of a book. It is a cluster of rules and regulations which ought to be obliged by Head of the State, all Political and Administrative leaders as well as common citizens alike. No one, including the Judges of the Temple of Justice are allowed to trespass the stipulations of the Constitution while passing the verdicts.

The constitution serves as the backbone of the country. The constitution is the embodiment of fundamental regulations and principles according to which the county, state, and its people are supposed to work. **The term "Constitution" got its name as the word constitution means accumulation and gathering of various aspects.**

All the rules and principles that are to be established are worked up and wrote down in one place making all the things one single crafted manuscript. The Document formed after this whole procedure is known as the Constitution. It determines the Power relationship between the citizens of a country and between the governors and the governed. Constitution

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**Without constitution, a democracy can be turn often to dictatorship. Democracy is merely a form of Government and an answer for who should rule. But Constitution is must to get clarity on how to rule.**

### **1.2 The Necessity of the Constitution, Societies before & After it.**

Constitution is important because it protects individual freedom. The Constitution places the government's power in the hands of the citizens. A constitution is required to protect the rights of individuals and mainly to establish the principle of 'rule of law'.

Let's see its necessity, and societies before and after it.

Necessity for	Society before Constitution	Societies after Constitution
Law & order	No Law & order	Law & order
Equality	No Equality	Equality
Justice	No Justice	Justice
Education	No Education	Education
Progress	No Progress	Progress
Human rights	No Human rights	Human rights
Removal of Poverty	Poverty	Removal of Poverty
Less crime	crime	Less crime
Discipline	No Discipline	Disciplined society
Welfare Society	No Welfare Society	Welfare Society
Unity	No Unity	United society

Therefore, based on the above definitions, we can say that,

- ❖ The constitution is the fundamental law of the land.
- ❖ Constitution may be written or unwritten.
- ❖ The constitution deals with the structure and power of government.
- ❖ The constitution deals with the rights of citizens.
- ❖ It deals with the relationship between governments & people.
- ❖ The constitution is the supreme law that must be followed.

**Aristotle** says "**A Constitution is the way of life of a citizen-body**".

**Leacock**: says "**Constitution is the form of government**".

**Classification of constitution:**

1. Written and unwritten constitution
2. Rigid and flexible constitution

**Difference between written and unwritten constitution:**

<b>Written constitution</b>	<b>Unwritten constitution</b>
The written constitution is found in legal documents duly maintained in the form of law.	An unwritten constitution contains principles of government that have never been implemented as law.
It is precise, definite and systematic. It is the result of efforts made by the people conscious and deliberate	It is indefinite, unsystematic and unprecise. Such a constitution is not the result of the conscious and deliberate efforts of the people.
It is created by a representative body elected by the people at a particular period in history.	It is not created by a representative component assembly. So, it is sometimes called a developed or cumulative constitution.
It is always promulgated at a specific date in history.	It has no fixed date, as it has evolved over time.
The Constitution of India is the best example of a written constitution (announced on 26 January 1950).	The Constitution of England is the best example of an unwritten constitution.
A written constitution is generally rigid and its amendments require constitutional laws. In other words, the distinction between constitutional law and common law is maintained. The first is considered superior to the second.	The unwritten constitution is not rigid and its amendments do not require any law. In other words, the distinction between constitutional law and common law is not maintained.
A written constitution can also be called an enacted constitution.	An unwritten constitution can also be called an un-enacted constitution.

**Difference between rigid and flexible Constitution:**

<b>Rigid constitution</b>	<b>Flexible constitution</b>
A rigid constitution cannot be easily amended. It has very complex modification procedures.	A flexible constitution can be amended with the same ease as the general laws.
A rigid constitution cannot be accommodated according to the changing needs of society. No legislature can tamper with them, because they are superior to the common law.	A flexible constitution can be adjusted to suit the changing needs of people and society.
A rigid constitution is essentially a written constitution composed of experienced and learned people. Thus it is a symbol of national	A flexible constitution is very useful for a developing country because it will not be a hindrance to progress due to its adaptability

efficiency.	A rigid constitution does not develop and expand. People consider it as a sacred document and they are ready to work according to its provisions.	A flexible constitution grows and expands as nature matures.
A rigid constitution does not reflect the changing pulse of public opinion. In other words it represents the minds of experienced and learned people who initially implicated it.	A flexible constitution reflects the changing pulse of public opinion. In other words, it represents the mind of the people.	
Accordingly, legislatures should not have a constitution in their hands. So a rigid constitution is based on the assumption that it is the perfect constitution for all time	A flexible constitution is based on the sound assumption that there cannot be a right constitution is based on the assumption that it constitution for all time. is the perfect constitution for all time.	

### **Essentials of a good constitution**

According to the definition of constitution, good constitution should have the following essentials:

- ❖ **Clarity or definiteness:** Every sentence or clause written in the constitution should be in simple language. The meaning of each clause should be express clearly without leaving any scope for confusion.
- ❖ **Brevity:** The formation should not be too long. It should only include important things. But this brevity should not make a difference in the constitution except for a few issues.
- ❖ **Comprehensiveness:** The constitution should apply throughout the country. If it is a federation, it should demarcate the structure and power of the central and provincial governments.
- ❖ **Flexibility:** The constitution should not be too rigid to interrupt the amendment process when needed.
- ❖ **Declaration of rights:** People should have fundamental rights in a good constitution. Such declarations have been made in the constitution of countries like India, Russia, China, America and Japan.
- ❖ **Independence of judiciary:** The independence of the judiciary is another quality of a good constitution. The judiciary must act independently and act as a protector of the fundamental rights of the people without any fear.
- ❖ **Directive Principles of State Policy:** -Directive principles of state policy have to be mentioned in a good constitution as it helps in the creation of a welfare state.

## **The values of the Constitution which guide India and its people.**

- ❖ Human dignity, the achievement of equality, and the promotion of human rights and freedoms.
- ❖ Non-racialism and non-sexism - this means that there may be no discrimination on the grounds of race or sex.
- ❖ The rule of law and the constitution as the supreme law - this means everything must be done according to the law, and the constitution is the highest law.
- ❖ A vote for every adult citizen, one national voters' roll for all citizens, regular elections and a multi-party system of democratic government.
- ❖ These values guarantee our democracy and are common to many democracies all over the world.

### **1.3 Introduction to the Constitution of India:**

India is the largest democracy in the world on the basis of population of the Nation. Our Constitution too is rightly considered as the lengthiest Constitutional Document in the entire Family of Nations. The Constitution of India is the supreme law of India. It frames fundamental political principles, procedures, practices, rights, powers, and duties of the government. **It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but, by a constituent assembly, and adopted by its people, with a declaration in its preamble. Parliament cannot override it.**

**The world's longest written constitution is the Indian's constitution. At its commencement, it consists of approximately 1,45,000 words, making it the second largest active constitution in the world.**

Constitution of a nation is like a mother who distributes food to the children. It divides and distributes the powers between people and Government at the first instance. Then the Governmental Powers will be vertically like Central, State and Local level. Constitution is the source of so divided horizontally like Legislative, Executive and Judicial and then power which is based on the will of people.

Constitution is rightly deemed as the living organism and not a deadwood. As and when the national events revolve and generations do change, even the Constitution of the Nation must also remain amended. Politics is rightly deemed as a game. Every game has a set of rules so that game is to be played with sound principles and not through foul methods. In the same way, to see that **National Politics are to be played on correct principles and this is made possible only with the help of a Constitution.**

<b>Our Constitution</b>	<b>Articles</b>	<b>parts</b>	<b>Schedules</b>	<b>Appendices</b>	<b>Amendments</b>
on 26.01.1950	<b>375</b>	<b>22</b>	<b>8</b>		
<b>At present</b>	<b>448</b>	<b>25</b>	<b>12</b>	<b>5</b>	<b>106</b>

## **1.4 The Making (History) of the Indian Constitution**

Indian Constitution is not formed out of vacuum. On the other hand, our Constitution is the culmination of series of political incidents and accidents. This Constitutional history dates back to the advent of the British raj with the direct rule by the U.K. since 1857 to 1947. It includes the major Acts like that of 1909, 1919, 1935 Constitution, Cripps Mission Plan, Cabinet Mission Plan, August 3rd Plan of Mount Batten and Indian Independence Act 1947. All these have had their impacts on the preparation of the present Indian Constitution. A good number of methods like Historical Method, Comparative Method, Observation Method, Experimental Method etc. are used while preparing this Document.

After the First War of Independence, regions which were controlled by the East India Company comes under British rule after the Queen's proclamation of 1858 as British India. Since then, the British parliament was passing laws for British India. India was ruled based on the acts passed in Britain. At the end of the 19th century, the country demanded to be involved in government, and put an end to torture and oppression.

### **Points to remember in making of Indian constitution:**

- 1773:** During British rule through the Regulating Act they ruled Indians.
- 1919:** After the First World War, British Parliament introduced the **Government of India Act 1919**. (The Act lead to diarchy a dual form of governance in some large provinces. A few areas of governance like health, education, agriculture and supervision of local government were handed over to a set of Indian ministers who reported to the provincial council. However, military, defence, foreign affairs, and communications were under the direct control of the Viceroy. It was promised that the act would be reviewed after 10 years by a special Commission)
- 1930: Jan 26** Indian National Congress demanded Poorna Swaraj.
- 1934:** M.N. Roy was the first person to demand a separate constitution for India.
- 1935:** Government of India Act, 1935 and It officially came into enforcement on April 1, 1935.
- 1936:** The Indian National Congress had officially, for the first time, demanded Indian Constitution, for which a Constituent Assembly, the idea was the brainchild of M.N. Roy.
- 1938:** Pandit Jawaharlal Nehru also put forth the idea of our own constitution.

During second world war, our leaders demonstrated huge protests all across the nation for Indians' participation in the war without any discussion with any political party. At this time, the British announced an AUGUST OFFER plan in 1940. For the first time, the Britain parliament accepted the demand for Constitution. But it failed due to the conflict between Indian National Congress and Muslim League. August's offer was followed by CRIPPS MISSION in 1942 which was also rejected by both parties. In 1946, CABINET MISSION reached India consisting of Britain's parliament members. Finally, both parties accepted it and the provision to constitute a constituent assembly was announced.

**1946:** November, British agreed & made Indian Constituent Assembly.

**09.12.1946:** First meeting of Constituent Assembly and Sri. Sachidananda Sinha **the oldest member of the Constituent Assembly, was elected as the temporary President of the assembly**, becomes the adhoc Chairman.

**11.12.1946:** Dr. Babu Rajendra Prasad became the full-fledged President of the Constituent Assembly. (till the end of the process).

**13.12.1946:** Pandit Jawaharlal Nehru moved Objective Resolutions. It determined the basic structure and ideology of our constitution. Later it became the Preamble of our constitution.

**26.11.1949:** Draft Constitution has been finally adopted in the Assembly. (This day is known as Constitution Day)

**26.01.1950:** our Constitution has been inaugurated and (This day has been celebrated as the Republic Day. The day has been chosen deliberately because '**Poorna Swaraj**' has been declared as the only goal of freedom struggle during the Lahore session of Indian Congress on 26th January 1930.)

### **1.5 The Role of Constituent Assembly.**

Our Constitution is the product of history and not created out of vacuum. It is prepared by the Constituent Assembly. Not a single foreigner was present in the Constituent Assembly. Of course the idea of having an Indian Constitution was placed by M.N. Roy as early as 1934 and by Indian National Congress in 1936. But the decision of Indian Independence and partition of India by the British Government headed by Labour party Ministry of Clement Atlee, finally paved the path of having a new Constitution for independent India.

### **The Composition of the Constituent Assembly**

The decided total strength of the Constituent Assembly was 389. Out of these, 296 members were allotted to British-India and 93 to Princely states. The seats for British were divided among Muslims, Sikhs and General. The Constituent Assembly met for the first time in New Delhi on 9 December, 1946 in the Constitution Hall which is now known as the Central Hall of Parliament House with only 211 members. Princely states decided to stay away so their seats remained vacant.

### **Committees of the Constituent Assembly**

The Constituent Assembly appointed a total of 22 committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees. Benegal Narasimha Rao, became the General Secretary cum Advisor to the Constituent Assembly. Sardar Vallabhai Patel, Dr. ShyamprakashMukherji, MaulanaKalamAzad, Acharya Kripalani, H.N. Kunjuru, K.T.Shah, C. Rajgopalachari, Sarat Chandra Bose, Rafi Ahmed Kidwai, RajkumariAmrut Kaur, N.G.Ranga, P. Subbarayan, KailashnathKhatju, Rameshwar Prasad Sinha, Durgabai Deshmukh, Krishna ballabh Sahay and many other stalwarts have participated in the debates of the Constituent Assembly. **It is to be noted that Mahatma Gandhi was not the member of Constituent Assembly.**

## Principal/Major Committees (8)

No	Major Committees	Chairperson	Appointed on	Total Members	Worked till
1	Rules of Procedure Committee	Dr. Rajendra Prasad	11.12. 1946.	15	20.12.1946
2	Steering Committee	Dr. Rajendra Prasad	21.01. 1947.	19	the end.
3	States (Negotiating) Committee	Jawaharlal Nehru.	21.12. 1946.	6	05.06.1947
4	Advisory Committee on Fundamental Rights, Minorities, Tribal Areas and Excluded Areas	Sardar Vallabhbhai Patel.	24.01.1947.	57	26.05.1949
5	Union Powers Committee	Jawaharlal Nehru	25.01.1947	12	26.08.1947
6	Union Constitution Committee	Jawaharlal Nehru	04.05.1947	12	31.07.1947
7	Provincial Constitution Committee	Sardar Vallabhbhai Patel.	04.05.1947	21	21.07.1947
8	Drafting Committee	Dr. B.R. Ambedkar.	29.08.1947	8	17.11.1949

## Minor Committees (14)

1. <b>Staff and Finance Committee</b> (appointed on December 23, 1946. 11 members, Chairperson- Rajendra Prasad, ex-officio. Worked till the end.)
2. <b>Credentials Committee</b> (appointed on December 23, 1946, 5 members, Chairperson- A.K. Ayyar. Worked till the end.)
3. <b>Order of Business Committee</b> (appointed on January 25, 1947. 3 members, Chairperson- K.M. Munshi. Worked till July 14, 1947)
4. <b>Flag Committee</b> (appointed on June 23, 1947. 12 members, Chairperson- Rajendra Prasad, ex-officio. Worked till July 22, 1947)
5. <b>Special Committee</b> to examine the draft Constitution - Jawaharlal Nehru
6. <b>Ad-hoc Committee</b> on Citizenship (appointed on 30 April, 1947. 7 members, Chairperson- S. Varadachariar. Worked till 12 July. 1947)
7. <b>Committee on Chief Commissioner's Provinces</b> (appointed on 31 July, 1947. 7 members, Chairperson- N. Gopalaswami Ayyangar. Worked till 21 Oct. 1947)
8. <b>Experts Committee</b> on Financial Provisions of Constitution (appointed in Nov. 1947.3 members, Chairperson- N.R. Sarkar. Worked between 17 Nov.- 5 Dec. 1947)
9. <b>Sub-Committee on Minority safeguards for West Bengal and East Punjab</b> (appointed on 24 Feb. 1948. 5 members, Chairperson- Sardar Patel. Worked till 23 Nov., 1948.)
10. <b>House committee</b> Chairperson- B Pattabhi Sitaramaiah
11. <b>North-East Frontier Tribal Areas and Assam Excluded &amp; Partially Excluded Areas Sub-Committee</b> Chairperson- Gopinath Bordoloi
12. <b>Language committee</b> - Chairperson - Sri M Satyanarayana
13. <b>Press Gallery Committee</b> Chairperson- Usha Nath Sen
14. <b>Ad-hoc Committee</b> on Supreme Court Chairperson- S Varadachari

**Our Constitutional Document became ready after the consistent effort for 2 years 11 months and 18 days. Totally 11 sessions have been held for 165 days. As many as 7635 amendments have been placed before Constituent Assembly out of which 2473**

**amendments have been discussed and resolved. Total expenditure incurred for the preparation of this huge document was Rs. 6.4 crores. All the deliberations of Constitutional Assembly have been documented and printed in 5 volumes.**

- ✓ **Drafting Committee:** A lot of committees were made for making the constitution. Of all, the Drafting Committee was the most important one. It was headed by Dr B.R. Ambedkar. **He was known as the Father of the Indian Constitution and the Chief Architect of our constitution.**

It's members:

1. Dr. B. R. Ambedkar (Chairperson)
2. N. Gopalaswamy Ayyangar,
3. A. Krishnaswamy Ayyar
4. Dr. K. M. Munshi
5. Syed Mohammad Saadullah
6. N. Madhava Rau (Replaced B.L.Mitter)
7. T. T. Krishnamachari (Replaced D.P.Khaitan)

**The Constitution was adopted on November 26, 1949 contained a Preamble, 395 Articles and 8 Schedules and 22 parts and some provisions relating to Citizenship, Elections, provisional parliament, temporary & transitional provisions were given immediate effect. The constituent assembly took 2 years, 11 months and 18 days to frame the constitution.**

Rest of the **constitution came into force on 26 January 1950 because 26 January 1930 was marked as the "Poorna Swarajya "resolution of Indian National Congress under Jawaharlal Nehru and so the date was chosen in 1950 to be our republic day. India is celebrating 26 November of every year as "Constitution Day".**

#### **Other Functions Performed by the Drafting Committee**

- ❖ The Constituent Assembly drafted the Constitution and also:
- ❖ Ratified India's membership of the Commonwealth in May 1949. → Adopted the National Flag on July 22, 1947. It was designed by Pingali Venkiah.
- ❖ Adopted the National song on January 24, 1950.
- ❖ Adopted the National anthem on January 24, 1950.
- ❖ Elected Rajendra Prasad as the first President of India on January 24, 1950.

**Stages in the formation of Constitution:** The Constituent assembly's work had five stages in the formation of Constitution:

- Committees presented reports on issues.
- B.N. Rau prepared an initial draft based on the reports and his research into the constitutions of other nations.
- The drafting committee, chaired by Dr. B.R. Ambedkar presented a detailed draft Constitution which was published for public discussion.

- The draft constitution was discussed, and amendments proposed and enacted.
- The constitution was adopted, with a committee of experts led by the Congress Party (known as the Congress Assembly Party) played a pivotal role.

### **Factors of Constitution Formation**

*The factors that contributed to the making of Indian Constitution were - French Revolution; Parliamentary democracy in Britain; Bill of Rights in the US; and Socialist revolution in Russia*

- ✓ Every provision went through a number of discussions and arguments, when the majority accepts, it was enacted. We borrowed a lot of provisions from other countries because it was successful in implementation in their countries.
- ✓ 12 sessions and 166 days of sittings. 2473 amendments were made. More than 60 countries' constitutions were studied.
- ✓ But some of the provisions like Citizenship (Article- 5 to 11) and elections (Article- 324) were enacted on 26th November 1949. To commemorate this day, we celebrate Constitution Day.

**External Principles Adopted:** Our Indian Constitutional document has borrowed a good number of principles from other National Constitutions.

1. Our Constitution has adopted 1935 Constitution of British India which provided India the Blue print for the present one.
2. The Parliamentary System of United Kingdom has played the prominent role in shaping our Executive both of the Centre and State levels. All the principles of Cabinet system have been incorporated in the formation of Prime Ministerial system of the Union Level and making Chief Minister as the Central figure of State Administration.
3. The Directive principles of State Policy are influenced by the Irish Constitution which has got directive principles of social policy.
4. Federalism of Canada to a large extent and of Australia to some extent have had their influence on our unique Federal System.
5. The Concepts of Preamble, judicial System, Fundamental Rights, and Vice President etc. have been influenced by the Constitution of USA.
6. Emergency provision have been influenced by German Weimar Constitution.
7. Thus, our Constitutional document has mirrored many foreign concepts adopted to suit the Indian conditions. Since there are no separate Constitution for the States as in the case of United States of America, the size of our Constitution is very big indeed. As H.V. Kamath, one of the Constituent Assembly members, jocularly put it "the elephantine size of this

Constitution was not perhaps in tune with the symbol of Constituent Assembly i.e., elephant."

## **1.6 Salient features of the Constitution of India**

The Constitution of India is a unique written constitution. Our constitution is the largest written liberal democratic constitution of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity. Since its inauguration on 26th January 1950, the Constitution India has been successfully guiding the path and progress of India.

Indian Constitution is the fundamental law of the land. It has to be observed both by the Government of the day as well as the citizens of the Country. All the laws of our nation both at Union and the Units are to be Intune with the Constitution. Indian Constitution has got the following basic features or salient features:

- 1. A Written Constitution:** A written constitution is framed at a given time and comes into force on a fixed date as a document. Our constitution was framed in 2 years, 11 months and 18 days; it was adopted on 26th November, 1949 and inaugurated on January 26, 1950.
- 2. Lengthiest Constitution in the World:** At the time of the inauguration it contained a Preamble, 395 Articles and 8 schedules. At present it is having 448 Articles and 12 schedules which makes it the lengthiest written Constitution in the entire World. Of course some constitutional customs and paradoxes too have grown in the course of constitutional working. For instance, UK does not have any written Constitution, while there are just 7 Articles in the US Constitution.
- 3. Single Citizenship:** Our Constitution provides for single citizenship, that of entire nation. All the citizens are rightly deemed as Indian Citizens. Usually in a federal state the citizens enjoy double citizenship like in the USA. But in India there is only single citizenship which means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/ she is not a citizen of the Constituent State like Rajasthan, Uttarakhand or Chhattisgarh to which he/she may belong to. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of the nation.
- 4. Parliamentary Democracy:** India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the latter in this form of democracy, the Head of the State is nominal in India, and the President is the Head of the State. Constitutionally the President has numerous powers but in practice the Council of Ministers headed by the PM, exercises these powers. The President has to act on the advice of the Prime Minister and the Council of Ministers.

5) **Supremacy of the Constitution:** Indian Constitution is rightly deemed as the supreme, sacrosanct document. It is supreme to Parliament, President, Council of Ministers and even the Judicial System of our Country. Both the Government and the people should observe this national document. No law either at Central or State or Local level can be passed against the letter and spirit of the Constitutional prescriptions.

6. **Preamble:** Our National document is having a brief but highly meaningful Preamble as in the case of U.S. Constitution or of UNO philosophy, source, and even ever binding nature to have a sovereign Charter. It is the key to the Constitution which depicts the entire democratic, socialistic, secular republic. It highlights justice, liberty, equality, fraternity integrity and unity of the Nation.

7. **Universal Adult Franchise:** Indian democracy functions on the basis of 'one person one vote'. The Indian Constitution establishes political equality in India through the method of universal adult franchise. Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status.

8. **Mixture of Rigidity and Flexibility:** The Constitution of India is neither too rigid nor too flexible one. Article 368 explains both simple method of amendment with ordinary and simple majority but also absolute majority in the Parliament. As well as even ratification by more than half of the State legislatures are required for some provisions related to State matters.

Some of its provisions can be amended in a difficult way while others can be amended very easily.

Article 368, of the Constitution provides for two special methods of amendment: Most of the provisions of the Constitution can be amended by the Union Parliament by passing an Amendment Bill by a majority of total membership and 2/3rd majority of members present and voting in each of its two Houses.

For the amendment of some specified parts, a very rigid method has been provided. Under it, first the Union Parliament passes the Amendment Bill by a majority of total membership and 2/3rd majority of members present and voting in each house, and then it goes to the State Legislatures for ratification. The Amendment gets passed only when it is approved by not less than one half of the several states of the Union.

Thus the Constitution of India is partly rigid and partly flexible.

9. **Fundamental Rights:** The Constitution of India guarantees Fundamental rights. The Constitution provides for six Fundamental Rights which are justifiable and hence are protected by the judiciary. Indian democracy is meaningful only with the presence of liberty, equality and fraternity. Fundamental rights of the citizens enshrined in part III are rightly considered as sacrosanct and corner stone of our political edifice. There are 6 Fundamental Rights Right to Equality, Right to Freedom, Right against

Exploitation, Right Freedom of Religion and Right to Constitutional Remedies. Right Property has been deleted from part III, i.e. list of Fundamental through 44th Amendment of 1978.

**10. Fundamental Duties:** Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down **a list of 11 Fundamental Duties** for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform. Article 51(A) in part IV (A) contains 11 Fundamental Duties of every citizen of this Country. 42nd Amendment of 1976 inserted these duties which are the nature of moral obligations. For the implementation of the same, a good number of laws are framed with the penal clauses too. First 10 duties from 51, (a) to (j) are prescribed in the 42nd Amendment whereas 86th Amendment Act 2002 inserted 11th one. It is pertaining to parental duty to educate their children.

**11. Directive Principles of State Policy:** These have been adopted **from the Irish Constitution**, included in our Constitution to ensure social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.

This is another Outstanding features of Indian Constitution is part IV which contains 18 Directive Principles. These are in the form of formal guidelines for the governments of the day the Central, State and even Local levels. All these are aimed at the realisation of the goals of welfare state in India. Of course, they are not enforceable through Court of Law. Nonetheless, they are fundamental in the governance of the Country.

**12. Emergency Provisions:** Part XVIII of the Constitution deals with the Emergency Provisions. Article 352 empowers President of India to declare emergency when there is war or external aggression or internal disturbance. President can declare emergency in respect of the whole of India or of such part of the territory as may be specified in the Proclamation: Moreover, the same amendment further explains that President can declare it even before the actual occurrence of War or of any such aggression or rebellion. There is the provision to declare President's Rule for any state under Article 356 in case of failure of Constitutional machinery in any state. Under Article 360 there is provision for Financial Emergency.

**13. Drawn from Different Sources:** The Indian Constitution has been framed from multiple sources that include the Government of India Act of 1935, and Constitutions of other countries. Besides these, various provisions have also been adopted from the Constitutions of Canada, Australia, Germany, USSR, and France.

**14. Federal System with Unitary Features:** The Indian Constitution contains all the federal features of governance like dual system of government (centre and states), division of powers between the three organs of state (executive, judiciary and legislature), Supremacy of the Constitution, independent Judiciary and bicameralism (lower house and upper house).

In spite of this, the Indian Constitution is unique as it contains many unitary features like *a strong centre, All India Services common to the centre and the states, Emergency provisions that can modify the Constitution into a unitary one if the need arises, appointment of Governors by the President on the advice of the centre etc.*

**15. Balance between Parliamentary Sovereignty and Judicial Supremacy:** The Indian Constitution has struck a fine balance between Parliamentary sovereignty and Judicial supremacy. The Supreme Court is vested with the power of judicial review vide Articles 13, 32 and 136. It can strike down any Parliamentary law as unconstitutional through its power of judicial review.

The Parliament, on the other hand, being the representative of the will of the people is vested with the authority to make laws and it can also amend the major portion of the Constitution through its Amending powers vested vide Article 368.

**16. Single Integrated Judicial System:** India has a single integrated judicial system. Indian Constitution provides for independent, single judicial system throughout the Nation. Supreme Court of India is the apex court and it is called as the Court of Record. Its judgement prevails over all the courts of our Country. It is the Final Court of Appeal and all the appeals are finally to be made to the Supreme Court of India.

The Supreme Court is the apex court of the judicial system. Below it is the High Court's which control and supervise the lower courts. The Indian judiciary is like a pyramid with the lower courts as the base, High Courts in the middle and the Supreme Court at the top. Indian judiciary is independent and impartial. It is free from the influence of the executive as well as the legislature. Its judges are appointed on the basis of their qualifications and cannot be removed easily neither can their terms of office be altered to their disadvantage.

**17. Self-made and Enacted Constitution:** Indian Constitution is a constitution made by the people of India acting through their duly elected and representative body the Constituent Assembly that was organised in December 1946. Its first session was held on 9th December, 1946. It passed the Objectives Resolution on 22 January, 1947. Thereafter, it initiated the process of constitution-making in the right earnest and was in a position to finally pass and adopt the constitution on 26th November, 1949. The constitution became fully operational with effect from 26th January 1950. We celebrate this day as our Republic Day. The Constitution of India is thus a self-made and duly enacted constitution.

**18. System of Local Self Govt.:** is one of the most significant features in the governance structure of India. Indian Constitution through 11 and 12<sup>th</sup> schedules added with 73rd Amendment 1992 and 74th Amendment of 1992 have provided constitutional legitimacy status for Panchayat Raj system. These Schedules are encompassing rural and urban self-governmental system respectively. Article 40 also contains Directive Principle envisaging village Panchayats.

19. **Democracy:** Indian Constitution declares that our nation is wedded to democracy. All the kingships and alien rules of oligarchy have been relegated to history. The basic tenet of our Constitution is that it recommends democracy at all levels. Democratic means government get authority by the will of the people, they elect their rulers. Republican State signifies that there shall be an elected head of the state not like a hereditary monarch as in British Kingdom.

20. **Sovereignty:** Our Constitution upholds sovereignty of India both internally and externally. No external force can dictate terms on our Government and we are completely free in the World Family. Even our membership in the Commonwealth of Nations of which the Crown of UK is the head does not impair our sovereign power what so ever. Of course, we have to respect International Law as the honourable member of Comity of Nations.

21. **Socialism:** 42nd Constitutional Amendment 1976 clearly stipulates that all our national policies programmes shall be guided by the principles of socialism. Nation has to aim at an egalitarian society where economic justice prevails in all walks of life.

22. **Secularism:** Liberty of thought, expression, faith and worship are the illustrious thoughts our holy land from time immemorial. Those liberal religious dogmas have been upheld and given legal status by our Constitution. Secularism is firmly rooted in our culture. This social ethos is expressed as the most remarkable feature of our nation giving maximum freedom to all persons to profess, practice and even propagate religion.

23. **Republic:** Republicanism is rightly considered as another cornerstone of Indian Constitution. We have elected President who is head of the state. Hereditary principle has not been recognised by our Constitution. Periodical elections are recommended for all the legislative bodies and even the political executives are to be changed according to the will of the people based on majority principle.

24. **Multi-Party System:** In India, we have multi-party system. Constitution has originally not referred to party system of our country and left that arena as that of voluntary political organization. Later owing to serious governmental upheavals due to defections, 52nd Amendment has been passed in 1985. As per this, 10 schedule has been inserted along with Article 102(2) and 191(3). Thereby Anti-Defection rules are prescribed to disqualify the representatives who are defecting from one political party to another.

25. **Language Policy:** Our constitution has accepted 3 language formula - Hindi as national language, English as linking language and state language. 8th schedule of Indian Constitution contains a list of 22 languages. (as on 2020May) and they are recognized for the Governmental purposes.

**26. President of India:** Part V of the Constitution contains the description of the position, powers and functioning of the President of India. President is head of State and First Citizen of the Nation. He is having legislative, executive, judicial, financial and even emergency Powers. Of course, he is rightly considered as Nominal rather than Real executive of the Nation.

**27. Cooperative Institutions:** For furtherance of economy both rural and urban cooperative society plays a vital role. That is the reason 97th Amendment Act of 2011 has inserted part IX B in which 13 Articles from 243(ZH) to 243(ZT) are there to deal with cooperative societies all over India. They deal with the formation, functioning, financial management, auditing and such other provisions pertaining cooperative societies.

**28. Independent Regulatory Commissions:** There are provisions for the creation and functioning of Independent Regulatory Commissions on the lines of independent judiciary. Union Public Service Commission, Election Commission, Finance Commission, Comptroller and Auditor General of India. (our Constitution deals with the proper audit of the public accounts both at Union and State levels having Comptroller and Auditor General of India), Attorney General are some of the examples under such category.

These are the major highlights or chief characteristics of Indian Constitution.

### **Facts of Indian Constitution:**

*Indian Constitution is a fundamental set of rules and principles on the basis of which the people of this Country obliged to be governed by.*

**The Constitution is the supreme law of the land and the source of all the powers and authority of the government and its organs.** Likewise, the government not only derives its origins from the Constitution, but discharges its functions and responsibilities within the framework of the Constitution.

### **Why Indian Constitution is the longest written Constitution?**

The Constitution of India is the longest written constitution. It originally contained a Preamble, 375 Articles in 22 Parts, 8 Schedules (At present it contains **448 articles in 25 parts, 12 schedules, 5 appendices and 106 amendments**. Constitution of U.S.A. contains just 7 Articles, that of Canada 47 Articles and that of Australia 128.

It is a document of fundamental laws that define the nature of the political system and the structure and functioning of organs of the government. As the framers wanted to remove difficulties during the working of the Constitution, they incorporated several details to avoid loopholes and defects.

**The following factors have contributed to the bulk of the Constitution:**

1. The founding fathers of the Constitution had before them the accumulated experience from the working of all the known Constitutions of the world, and were aware of the difficulties faced in the working of those Constitutions. Thus **a number of provisions have been included to avoid some of the difficulties which were experienced** in the working of the other Constitutions.
2. It lays down the **structure not only of the Central Government but also of the States**. While Australian and American Constitutions left the aspect of drafting the provisions of governmental machinery to the States.
3. **The vastness of the country and the peculiar problems relating to language, scheduled caste and tribes and minorities have contributed to the bulk** of the Constitution.
4. Apart from laying down just the fundamental principles of governance as many of the Constitutions, do, **the Indian Constitution provides matters of administrative detail**.
5. More than half of it is based on the **Government of India Act, 1935 which itself was a hulky document**.
6. The **detailed provisions relating to Centre-State relations** including the emergency provisions
7. The **special status** given to Jammu & Kashmir and other States such as Nagaland, Mizoram Assam, Gujarat etc.
8. The **task of reconciling the Parliamentary form** of Government as taken from UK and the concept of Judicial Review as borrowed from the USA.
9. Sovereign, Socialist, Secular, Democratic, Republican nature of the State.

**Criticisms about our Constitution** are as follows:

1. The Members of the Constituent Assembly were not directly elected by the people of India on the basis of Universal adult franchise. But, however, it is to be noted that the critical historical juncture of Indian independence period that too soon after II World War was not apt for such election process to form the Constituent Assembly.
2. There was no referendum for the Constitution newly drafted for free India. Here also, it is to be satisfied that due to illiteracy, poverty, and short time schedule coupled with the alien rule, the Indian masses could not vote this voluminous legal document.

3. It is also observed that the Constitution of India was predominantly drawn by a single party i.e., Congress Party which had thumping Majority in the Constituent Assembly. Here also the sacrifice and Freedom Struggle has paved way for lion share to that Party in selfless political leadership given by Congress Party during the making of the Constitution.

4. There is also another criticism that our lengthy Indian Constitution is 'Lawyers Paradise'. It means that there is a lot of legal complexities and rigid framework. In spite of all these criticisms our Constitution is the Supreme document of country which is to be revered and followed by each and all".

### **The Important Sources of Our Constitution:**

*The Constitution is a set of laws and rules that set up the machinery of the Government of a state, and which defines and determines the relations between the different institutions and components of the government, the executives, the legislature, the judiciary, the central and the local government.*

*The Indian Constitution is unique in its contents and spirit. Although it had picked up many best features from other constitutions of the world. It has been formed after ransacking all the major constitutions of the world; however, at the same time, the framers have also considered the following factors -Historical perspective of India; Geographical diversity of India; and Cultural and traditional characteristics of India.*

The sources of various features in Indian Constitution

#### **Government of India Act 1935**

- Federal Scheme (also from constitution of Canada)
- Office of Governor
- Judiciary
- Public Service Commission
- Emergency Provisions
- Administrative Details

#### **British Constitution**

- Parliamentary form of government
- The idea of single citizenship
- The idea of the Rule of law
- Institution of Speaker and his role
- Law-making procedure
- Procedure established by Law

#### **United States Constitution**

- Preamble
- Fundamental Rights
- Federal structure of government
- Electoral College
- Independence of the judiciary and separation of powers among the three branches of the government

- Judicial review
- President as supreme commander of armed forces
- Equal Protection under law

### **Irish Constitution**

- Directive principles of state policy (Ireland itself borrowed it from Spain)

### **Australian Constitution**

- Freedom of trade and commerce within the country and between the states
- Power of the national legislature to make laws for implementing treaties, even on matters outside normal Federal jurisdiction
- Concurrent List

### **French Constitution**

- Ideals of Liberty, Equality and Fraternity

### **Canadian Constitution**

- A quasi-federal form of government a federal system with a strong central government
- Distribution of powers between the central government and state governments
- Residual powers retained by the central government

### **Constitution of the Soviet Union**

- Fundamental Duties

### **Other Constitutions**

- Emergency Provision Under article 356 Weimar Constitution(Germany)
- Amendment of Constitution, South Africa
- Due Procedure of Law, Japan

## **1.7 The Preamble of Indian Constitution & its key concepts.**

*The Preamble is called the introduction letter the Constitution.* And also it serves as an introduction to the Constitution. The preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose, principles and philosophy of the constitution. **The preamble of the Indian constitution was amended by the 42nd Constitutional Amendment Act in 1976, in which three new words Socialist, Secular, and Integrity were added.** It secures justice, liberty, equality to all the citizens of India and promotes fraternity among the people.

**It is the key, theme and cream of Indian Constitution. The Preamble to Indian Constitution is based on "Objective Resolution" of Nehru,** who introduced an objective resolution on December 13, 1946 and it was adopted by Constituent Assembly on 22 January, 1947. **The term 'Preamble' means the introduction to a statute. It is the introductory part of the Constitution.**

Initially, the Preamble was drafted by B. N. Rau. **The Preamble does not grant any power but it gives a direction and purpose to the Constitution. It outlines the objectives of the whole Constitution.** The Preamble contains the fundamentals of the Constitution.

#### **Text of the Preamble:**

"**WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY, of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity: and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."**

#### **Key words in the preamble:**

1. **Sovereign:** the term 'Sovereign' which is proclaimed by the Preamble means that India is both internally and externally sovereign externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people (India has its own independent authority) and makes laws that govern the people. No external power can dictate the government of India
2. **Socialist:** The term 'Socialist' was added in the Preamble by 42nd Amendment, 1976 which means the achievement of socialist ends through democratic means. It is basically a 'Democratic Socialism that holds faith in a mixed economy where both private and public sectors co-exist side by side. **Socialism as a social philosophy stresses more on societal equality.**
3. **Secular:** The term 'Secular' was incorporated in the Preamble by 42nd Constitutional Amendment, 1976 which means that all the religions in India get equal respect, protection and support from the state. Features of secularism as envisaged in the Preamble is to mean that the state will have no religion of its own and all persons will be equally entitled to the freedom of conscience and the right freely to profess, practice and propagate the religion of their choice.
4. **Democratic:** The term Democratic indicates that the Constitution has established a form of government that gets its authority from the will of the people expressed in an election of government resolves India to be a democratic country.
5. **Republic:** In a Republic, the head of the state is elected by the people directly or indirectly. In India, the President is the head of the state. The President of India is elected indirectly by the people that means, through their representatives in the Parliament and the State Assemblies. Moreover,

in a republic, political sovereignty is vested in the people rather than a monarch.

**6. Justice:** In the preamble, the term "**Justice**" **embraces three distinct forms: Social, economic and political**, and it has been secured through the various provisions of the Fundamental Rights and the Directive Principles.

Social justice in the Preamble means that the Constitution wants to create a more equitable society based on equal social status. Economic justice means equitable distribution of wealth among the individual members of the society so that wealth is not concentrated in a few hands. Political Justice means that all citizens have equal rights in political participation.

**7. Liberty:** Liberty implies the absence of restraints or domination on the activities of an individual such as **freedom from slavery, serfdom, imprisonment, despotism, etc.** The Preamble provides for the liberty of **thought, expression, belief, faith, and worship**. The grant of Fundamental Rights (Part III) including the right to freedom is designed to secure this objective. Liberty of faith and worship is designed to strengthen the spirit of secularism.

**8. Equality:** it means the absence of privileges or discrimination against any section of the society. The Preamble provides for equality of status and opportunity to all the people of the country. The Constitution strives to provide social, economic and political equality in the country. For securing the equality of status and opportunity, the Constitution of India grants and guarantees the fundamental Right to Equality.

**9. Fraternity:** Promotion of the Fraternity among the people is one of the important objective of the preamble is to promote Fraternity among all the people of India. **Fraternity means the inculcation of a strong feeling of spiritual and psychological unity among the people.** It is designed to secure dignity of the individual and unity and integrity of the nation.

### **Conclusion:**

The preamble is an integral part of the Constitution because it contains the spirit of the Constitution. The preamble highlights the fundamental values and guiding the Constitution. The preamble of the Indian Constitution is one of the best preambles ever drafted, not only in ideas but expressions as well. It contains the purpose of the constitution to build an independent nation that protects justice, liberty, equality, and fraternity which are the objectives of the Constitution.

**Some Facts:**

1. The original Constitution of India was written by Prem Bihari Narain Raizada calligraphy with flowing italic style.
2. The original copies of the Indian Constitution written in both Hindi and English are present in special helium-filled cases, in the library of the Parliament of India.
3. **The preamble of the Constitution of the United States of America also starts with 'We the people'.**
4. The concept of **fundamental rights came from the American Constitution** as they had nine fundamental rights for the citizens.
5. **The 44th amendment deleted the Right to Property** as the fundamental right which was given under Article 31 of the Constitution as 'No person shall be deprived of his property save by authority of law'.
6. The page of the preamble along with all the other pages of the Constitution were designed and decorated by the renowned painter Beohar Ramnanohar Sinha of Jabalpur.
7. The Constitution of India is a handwritten Constitution that was signed on 24th January 1950 by 284 members of the Constituent Assembly, where 15 of them were women came into force on 26th January, two days later from signing.
8. **The concept of Directive Principles of State Policy (DPSP) is adopted from man (Irish Constitution).**
9. The concept of **Liberty, Equality, and Fraternity in our Preamble was adopted from the French Motto of the French Revolution.**

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Chapter - 3

**Fundamental Rights (Articles 12-35)**

In the Constitution, India guarantees a set of rights considered essential for protecting human dignity which is known as Fundamental Rights. The Fundamental Rights, as embedded in the Indian Constitution, ensure equal and fair treatment of the citizens before the law. The rights that are basic to the advancement of the human race are called Fundamental Rights. All other rights are derived from these rights as direct implications or application of their principles.

Fundamental Rights are guaranteed in the Constitution in the form of six broad categories which are justiciable in the court of law. **Article 12 to 35**

**contained in Part III of the Constitution deals with Fundamental Rights.**

### **3.1 Why are they called Fundamental Rights?**

1. They are the clear measurement of how free we really are in the country/society.
2. They are enshrined in the Constitution which always guarantees them.
3. They are justiciable (enforceable by Courts). **In case of a violation, a person can directly approach Supreme Court.**
4. Fundamental rights are individual rights. Fundamental rights are different from ordinary legal rights in the manner in which they are enforced.
5. These fundamental rights are not absolute. During Emergency, they will be restricted. Our fundamental rights can be suspended during emergencies (like National emergency State emergencies and Economic emergency) except the article 20 and 21. The application of fundamental rights can be restricted in an area which has been placed under martial law or military rule. **However, article 17 and article 24 are absolute in nature and cannot be reasonably restricted.**
6. These fundamental rights are guaranteed by the Supreme Court of India and enforced by the law.
7. Fundamental rights can be amended by the parliament through the required proper constitutional amendments.

### **3.2 Six Fundamental Rights in the Indian Constitution:**

1. Right to equality (Articles 14-18)
2. Right to freedom (Articles 19-22)
3. Right against exploitation (Articles 23-24)
4. Right to freedom of religion (Articles 25-28)
5. Cultural and educational rights (Articles 29-30)
6. Right to constitutional remedies (Article 32-35)

Originally there were seven fundamental rights in India. However, the 7th fundamental right i.e. Right to property (Article 31) was removed from this list and made only a legal right by the 44th Amendment Act, 1978.

### **3.3 Fundamental Rights at a Glance (Articles from 12 to 35):**

#### **1. Right to equality (Articles 14-18)**

- (a) Equality before law and equal protection of laws (Article 14).
- (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).

- (c) Equality of opportunity in matters of public employment (Article 16).
- (d) Abolition of untouchability and prohibition of its practice (Article 17).
- (e) Abolition of titles except military and academic (Article 18).

## 2. **Right to freedom** (Articles 19-22)

- (a) Protection of six rights regarding freedom of: (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19).
- (b) *Protection in respect of conviction for offences (Article 20).*
- (c) *Protection of life and personal liberty (Article 21).*
- (d) Right to elementary education (Article 21A).
- (e) Protection against arrest and detention in certain cases (Article 22).

## 3. **Right against exploitation** (Articles 23-24)

- (a) Prohibition of traffic in human beings and forced labour (Article 23).
- (b) Prohibition of employment of children in factories, etc. (Article 24).

## 4. **Right to freedom of religion** (Article 25-28)

- (a) Freedom of conscience and free profession, practice and propagation of religion (Article 25).
- (b) Freedom to manage religious affairs (Article 26).
- (c) Freedom from payment of taxes for promotion of any religion (Article 27).
- (d) Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

## 5. **Cultural and educational rights** (Articles 29-30)

- (a) Protection of language, script and culture of minorities (Article 29).
- (b) Right of minorities to establish and administer educational institutions (Article 30).

## 6. **Right to constitutional remedies (Article 32-35)**

- (a) Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) habeas corpus, (ii) mandamus, (iii) prohibition, (iv) certiorari, and(v) quo-warranto (Article 32).
- (b) Constitutional validity of State laws not to be considered in proceedings under (Article 32A)
- (c) Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc. (Article 33).
- (d) Restriction on rights conferred by this Part while marital law is in force in any area. (Article 34).
- (e) Legislation to give effect to the provisions of this Part (Article 35).

### **About Article 32:**

Rights are meaningless if there is no mechanism to ensure their enforcement in case of violation. Article 32 provides such a mechanism to the citizens to approach the Supreme Court directly for the enforcement of their Fundamental Rights. For this reason, Dr B.R Ambedkar called Article 32 as the most important article of the Constitution 'an Article without which this constitution would be a nullity. **This article is the soul and heart of the Indian Constitution.** Remember....The operation of Article 32

can be suspended by a Presidential order during the operation of a National Emergency under Article 359.

### **IF Fundamental rights are violated...**

If someone violates someone's Fundamental Rights, then he/she can approach either High Court or directly the Supreme Court to get proper remedy. The Supreme Court or the High Court (as the case may be) can issue orders (**known as writs**) and give directives to the Government for the enforcement of Fundamental Rights.

**Article 32** of the Constitution guarantees the right to move the Supreme Court for the enforcement of all or any of the fundamental rights. Article 32(2) refers to 5 main writs which can be enforced by the Supreme Court as well as the High Court to protect them as well as for the proper enjoyment of fundamental rights.

Following are the five writs/orders issued by either the Supreme Court or High Courts to protect the fundamental rights:

- 1) **'Habeas Corpus'**- is one of the writs which means "protect the body". This writ will be issued to protect the illegal custody of any person either by the state authority or any individual. The court orders that the arrested person should be presented before the court. The court can also order to set free an arrested person if the manner and/or grounds of arrest are not lawful or satisfactory.
- 2) **'Mandamus'** -will be in the form command by the Court to do or not to do issued to any public servant which he is supposed to perform.
- 3) **'Quo-warranto'** -will be issued to inquire whether a person is lawfully possessing a position or not. It will be followed by removing the person from that particular office in question if he is not and install the person who has legitimacy to occupy the same.
- 4) **'Prohibition'**- This writ is issued by a higher Court (High Court or Supreme Court); when a lower Court has considered a case, which is going beyond its jurisdiction. It will be issued from a superior Court to the lower court to stop the proceedings and to have the same for the jurisdiction of itself.
- 5) **'Certiorari'** will be issued to stop the implementation of the lower court's decision. Under this writ, a higher Court orders a lower Court or another authority to transfer a matter pending before it to the higher authority or court.

### **Fundamental Rights and its Restriction and limitations in different Complex Situations:**

1. In the interest of Scheduled castes, tribes and other weaker sections of the society.
2. In the interest of women and children.
3. In employment and education.
4. Seats in busses and trains reserved for Senior Citizens.

5. Public order, decency and morality, contempt of court.
  6. Sovereignty and Integrity of India.
  7. Security of the State etc.
1. President or Governor of state is not answerable to court of law for exercising their executive powers.
  2. No criminal proceeding against President or Governor of state can be instituted or continued during their tenure in office.
  3. No civil proceeding in which there is a claim of compensation can be instituted against President or Governor of state except after the expiry of 2-month notice issued against them.
  4. MP, MLA is not liable for any proceedings for his statement in parliament and State Assembly respectively.
  5. Foreign diplomats on visit to India are not answerable to local courts as per international Law.

**Exception to right to equal opportunity**

1. Centre may pass a law declaring to offer certain job opportunities to certain people as they require the knowledge of locality and language.
2. State reserving certain posts to SCST to uplift them to main stream.
3. State may pass a law to restrict certain religious post only to the persons of that religion.

**Exception to right to freedom...**

1. The police officer is duty bound to inform the person (in case of his arrest), the reason/s of his arrest and detention and the person so arrested has the right to know the reason for his arrest.
2. It shall be the duty of the police officer to produce the arrested person before the nearest magistrate within a period of 24 hours of arrest.
3. The arrested person has the right to consult a lawyer of his choice for his defence.

**Exception to Right against Exploitation.**

1. Trafficking of human beings, i.e., the selling and buying of human beings, (generally. women and children are the victims of trafficking).
2. Forced labour or beggar in any form is illegal and is prohibited (beggar is work or service without remuneration, which is called as bonded labour if this practice runs through life of the worker).
3. Child labour is also prohibited. The children below 14 years of age, cannot be employed to work in any factory or mine or in any other hazardous work, such as railways and ports.

The Parliament of India has enacted laws to implement constitutional right that prohibits children below 14 years of age from working in hazardous

industries such as beedi making. Firecrackers and matches, printing, and dyeing.

#### **Exception to Right to Freedom of Religion:**

Fundamental right to freedom of religion is guaranteed under Articles 25, 26, 27 and 28 of Part III of the Indian Constitution. It is religious freedom in the background of a secular state. India is a secular state, which means the State has no official religion and India does not promote/ protect any one religion over the other religion. The Supreme Court of India has explained the secular character of the Indian Constitution thus:

"Secularism is neither anti-God nor pro-God, it treats alike the devout, the antagonistic and the atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion".

#### **Apart from the judiciary, some other bodies and mechanisms that protect an individual's right are:**

1. The National Commission on Minorities,
2. The National Commission on Women,
3. The National Commission on Scheduled Castes, etc.

However, NHRC does not have the power of prosecution. It can merely make recommendations to the government or recommend to the courts to initiate proceedings based on the inquiry that it conducted.

**Certain Fundamental Rights are available to only Indian citizens while the rest are available to both, citizens as well as foreigners.**

#### **Expansion and Scope of Fundamental Rights:**

After independence, the scope of Fundamental Rights has expanded greatly to include several other rights from time to time. The Fundamental Rights embedded in our constitution are the source of all rights, based on this, the Government of India enacted several laws, for example

1. Right to information
2. Right to freedom of press, and
3. Right to education

**Right to information:** The Parliament of India has amended the Constitution to include 'school education' as a Fundamental Right for the Indian citizens. Resultantly, now it is the duty and responsibility of the governments to provide free and compulsory education to all children up to the age of 14 years.

**Right to freedom of press:** The Parliament has enacted a law 'right to information act under the Fundamental Right to freedom of thought and

expression, which provides right to seek information from the government offices.

**Right to education:** The Supreme Court of India by explaining the Fundamental Rights has further expanded the scope and meaning of the Fundamental Rights, as it included 'right to food' in the 'right to life' section (i.e. Article 21).

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Module - 3

### **Directive Principles of State Policy (DPSP) - (Articles 36-51)**

The Directive Principles of State Policy are guidelines to the Central and State governments of India, to be kept in mind while framing laws and policies. These provisions, contained in Part IV of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. **The principles have been inspired by the Directive Principles given in the Constitution of Ireland and also by the principles of Gandhi's;** and relate to social justice, economic welfare, foreign policy, and legal and administrative matters.

The Constitution of India does not formally classify the Directive Principles of State Policy but for better understanding and on the basis of content and direction- they can be classified into three categories:

1. Socialistic Principles,
2. Gandhian Principles, and
3. Liberal-Intellectual Principles.

The Directive Principles of State Policies are guidelines to the Central and state governments of India, and are characterised with the aim to:

1. Create social and economic conditions under which the citizens can lead a good life.
2. Establish social and economic democracy through a welfare state.
3. Act as a check on the government, theorized as a yardstick in the hands of the people to measure the performance of the government and vote it out of power if it does not fulfil the promises made during the elections.
4. Promoting larger interest of the society, the courts shall favour of the DPSP.
5. Promote the welfare of the people by promoting a social order in which social economic and political justice is informed in all institutions of life.
6. Prevent concentration of wealth and means of production in al few lands and try to ensure that ownership and control of the and control of the material resources is distributed to best serve the common good.
7. Provide the right to work, to education and to public assistance in cases unemployment, old age, sickness and disablement, within the limits of economic capacity, as well as provide for just and humane conditions of work and maternity relief.

## **Directive Principles of State Policies at a Glance** (Articles from 36 to 51):

**Article 36: defines that the word ‘State’ refers to the entire political system of India.**

Article 37: Application of the Principles contained in this part to make laws.

Article 38: It authorizes the state to secure a social order for the promotion of the welfare of people.

Article 39: Certain principles of policies to be followed by the state.

Article 39A: Equal justice and free legal aid.

Article 40: Organization of village panchayats.

Article 41: Right to work, to education and to public assistance in certain cases.

Article 42: Provision for just and humane conditions of work and maternity leaves.

Article 43: Living wage etc. for workers.

Article 43-A: Participation of workers in management of industries.

Article 43-B: Promotion of cooperative societies.

Article 44: Uniform civil code for the citizens.

Article 45: Provision for early childhood care and education to children below the age of six years.

Article 46: Promotion of education and economic interests of SC, ST, and other weaker sections.

Article 47: Duty of the state to raise the level of nutrition and the standard of living and to improve public health.

Article 48: Organization of agriculture and animal husbandry,

Article 48-A: Protection and improvement of environment and safeguarding of forests and wildlife.

Article 49: Protection of monuments and places and objects of national importance.

Article 50: Separation of judiciary from the executive.

Article 51: Promotion of international peace and security.

**Socialistic Directive Principles:** Article 36,37,38,39, 39 A, 41,42,43,43 A, 47

**Gandhian Directive Principles: Article:** 40,43, 43-B,46,47,48

**Liberal-Intellectual Directive Principles:** 44,45,48,49,50,51

These principles reflect the ideology of liberalism. Under various Article

**42nd Amendment Act, 1976 added 4 new Directive Principles**

1. Article 39 (f): To secure opportunities for the healthy development of children

2. Article 39(A): To promote equal justice & provide free legal aid to the poor.

3. Article 43-A: To take steps to secure the participation of workers in the management of industries

4. Article 48-A: To protect and improve the environment and to safeguard forests and wildlife

**86th Amendment Act, 2002 added 1 new Directive Principle**

5. Article 45: early childhood care and education for all children.

**97th Amendment Act, 2011 added 1 new Directive Principles**

6. Article 43-B: To promote Cooperative societies.

**TOTALLY THERE ARE 18 DIRECTIVE PRINCIPLES.**

**DPSP and its Implementation:** Although the implementation of the **DPS Principles laid down in Part IV** are not directly visible yet there are large and excessive of laws and government policies which reflect the application of the principle.

Policies like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) get their authority from Article 39(a) which talks about the right to adequate means of livelihood. Laws such as the Child Labour (Prohibition and Regulation) Act 1986 bolster the canons of Article 39(g) which deals with the protection of children. Laws about the prohibition of slaughter of cows and bullocks get their sanctity from Article 48 which deals with the organization of agriculture and husbandry.

Laws such as Workmen Compensation Act, Minimum Wages Act, Industrial Employment (Standing Orders) Act,

The Factories Act and Maternity Benefit Act depict the implementation of Article 41, Article 42 and Article 43A.

There are some acts and policies from 1950 onwards which had been implemented to give effect to these Directive Principles. They are as follows:

1. The Minimum Wages Act
2. Child Labour Prohibition and Regulation Act (1986)
3. The Maternity Benefit Act (1961)
4. Equal Remuneration Act (1976)
5. Handloom Board, Handicrafts Board, Coir Board, Silk Board, etc. have been set up for the development of cottage industries in the country.
6. Integrated Rural Development Programme (1978)
7. Jawahar Rozgar Yojana (1989)
8. Swarnajayanti Gram Swarozgar Yojana (1999)
9. Sampoorna Gram Rozgar Yojana (2001)
10. Mahatma Gandhi National Rural Employment Guarantee Programmes (2006)
11. The National Forest Policy (1988)
12. Article 21-A was inserted by the 86th amendment, making free education for children below the age of 14 compulsories.
13. Prevention of Atrocities Act safeguarding the interests of SCs and STs.
14. Land Reform Acts.

#### 4.8 Comparison between DPSP and Fundamental Rights

Fundamental rights (FR)	Directive Principles of State Policy (DPSP)
The essential or basic rights granted to all the citizens of the country.	The guidelines given to states which are considered while formulating their policies and laws.
In Part III of the Constitution.	In Part IV of the Constitution.
Negative in nature	Positive in nature.
Legally enforceable in the court of law	Legally not enforceable in the court of law
For Political democracy.	For Social and economic democracy.
To promote Individual welfare	Public welfare Establishment of the Welfare State