

# CONSTITUTIONAL LAW, CYBER LAW, IP LAW AND PROFESSIONAL ETHICS

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## Unit-1: Introduction to Constitution of India.

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# INTRODUCTION TO CONSTITUTION OF INDIA AND ROLE OF CONSTITUENT ASSEMBLY

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- Constitutional Law is a public law
- It is the source of power and exercise of power in itself
- All laws in a countries legal regime is structured within the limits of the Constitutional law of the country
- Constitution is a legal document(s) which has its roots based on the socio-political history of a nation which also impacts the future of the nation as well.
- There are two types of Constitution: (i) Written Constitution and (ii) Unwritten Constitution
- The Constitution of India came into force on 26<sup>th</sup> January 1950 but was adopted on 26<sup>th</sup> November 1949.

# INTRODUCTION TO CONSTITUTION OF INDIA AND ROLE OF CONSTITUENT ASSEMBLY

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## The role of Constituent Assembly

- Idea proposed by M.N. Roy in the year 1934
- In 1946 election to Constituent Assembly was conducted with 389 seats (292 provinces; 93 princely states and 4 chief commissioner provinces) called “United India”.
- Indian Independence Act, 1947 passed on 18<sup>th</sup> July 1947
- Two Nation Theory (Pakistan and Bangladesh)
- Previous Constituent Assembly was re-drawn and the it was reduced to ( 299 Delegates in Total)
- 2 years 11 Months and 18 days was taken to discuss and bring about Constitution of India.

# INTRODUCTION TO CONSTITUTION OF INDIA AND ROLE OF CONSTITUENT ASSEMBLY

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## Timeline of the Constituent Assembly is as follows:

- 9 December 1946: CA met for the first time
- 13 December 1946: Objective Resolution
- 22 July 1947: National flag adopted
- 29 August 1947: Drafting Committee appointed consisting of: (Dr. B. R. Ambedkar as the Chairman along with 6 members of the Committee: (K.M.Munshi, Muhammed Saadulah, Alladi Krishnaswamy Iyer, Gopala Swami Ayyangar, N. Madhava Rao, T. T. Krishnamachari)
- The concept of Constitutionalism exists in our country. Constitutionalism is the idea that government can and should be legally limited in its powers, and that its authority or legitimacy depends on its observing these limitations.

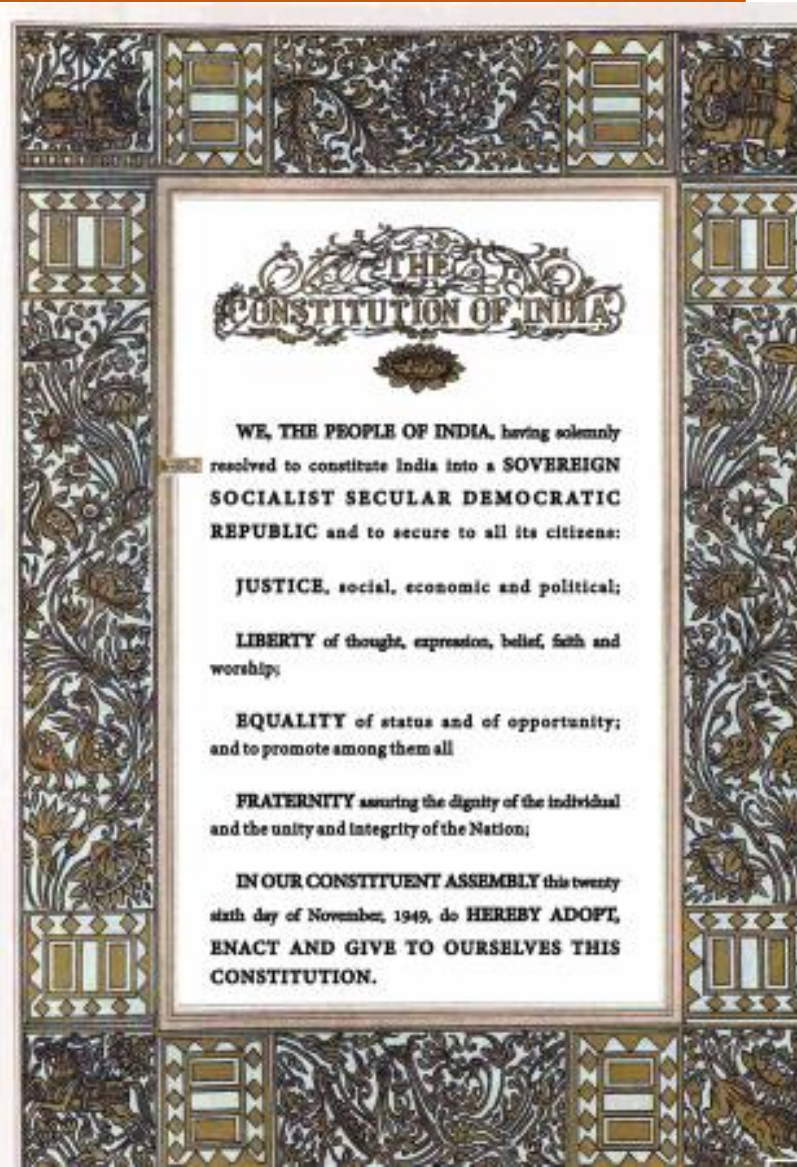
## SALIENT FEATURES OF THE CONSTITUTION – IN BRIEF

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- ☐ Written Constitution
- ☐ Separation of Powers
- ☐ Single Citizenship
- ☐ Supremacy of the Constitution
- ☐ Parliamentary Form of Government
- ☐ Single Judiciary
- ☐ Rigid Constitutional Amendment
- ☐ Rule of Law
- ☐ Secularism
- ☐ Federalism
- ☐ Universal Adult Suffrage

# PREAMBLE

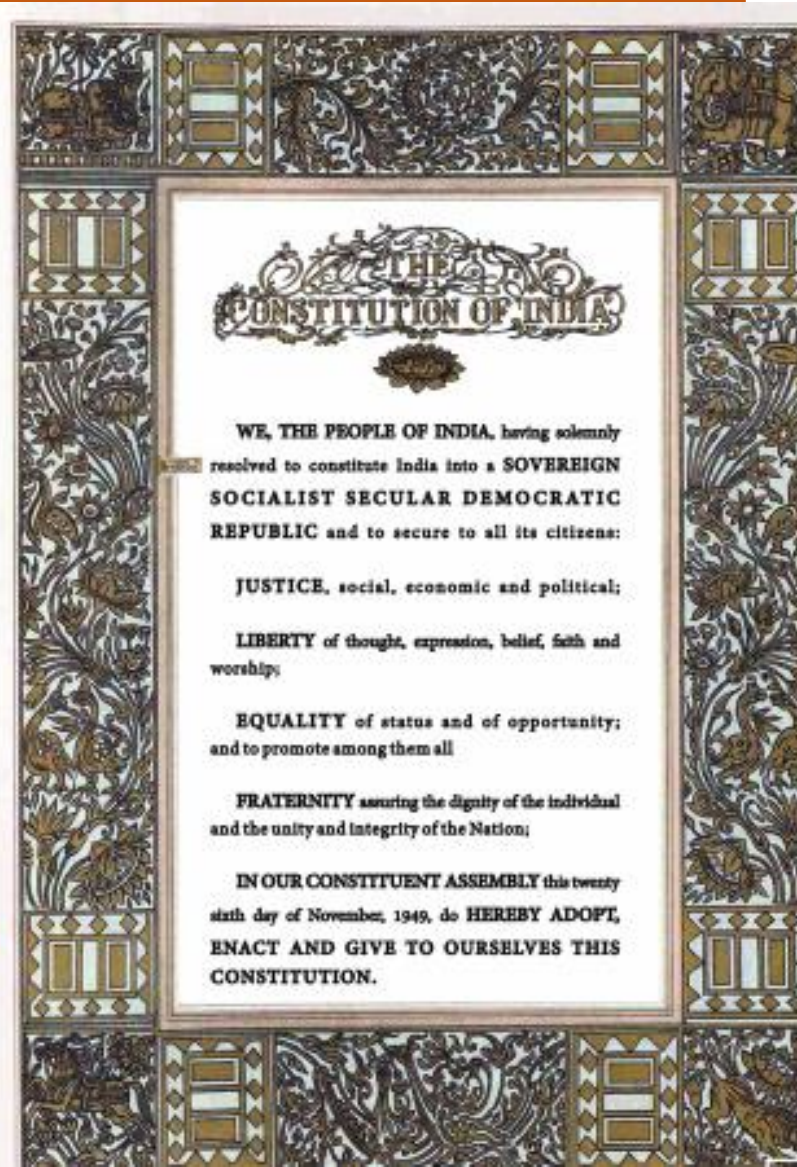
- Modified version of the Objective Resolution
  - 13<sup>TH</sup> December 1946
  - All objectives for CA
- Purpose of Preamble
  - Who made the Constitution?
  - What is its source ?
  - Ultimate Sanction
  - Nature of Polity
  - Goals & Objectives
- Three Parts of the Preamble





# PREAMBLE

- Union of the trinity
  - Liberty, Equality and Fraternity
- Preamble has no power
  - Guiding Principles only
- Whether Preamble part of Constitution or not?
  - In Re Beruberi AIR 1960 SC845 (Preamble not part of the constitution)
  - Kesavanada Bharati Case (It is part of the constitution)



## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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Rights specified for classes : Certain fundamental rights are exclusively for Citizens and some of the fundamental rights are also for the “PERSONS”.

Part III: 28 provisions : Eight Headings

**General:** Art. 12 & 13

**Right to Equality:** Art. 14, 15, 16, 17, 18

**Right to Freedom:** Art. 19, 20, 21, 21A, 22

**Right against Exploitation:** Art. 23, 24

**Right to Freedom of Religion:** Art. 25, 26, 27, 28

**Cultural and Education Right:** Art. 29, 30

**Saving of Certain Laws:** Art. 31A, 31B, 31C

**Right to Constitution Remedies:** Art. 32, 33, 34, 35



## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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### **Article 12: Definition: The “State” includes:**

- a) Government and Parliament of India
- b) Government and Legislature of State
- c) Local Authority (Municipalities, District Boards, Village Panchayats)
- d) All local or other authorities within the territory of India or under the control of the Government of India.

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### **Article 13:** It has 4 principles of Fundamental Rights:

- Article 13(1): Pre- Constitutional Laws
- Article 13(2) : Post- Constitutional Laws

## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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- Article 13(3) : What is Law? (Law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law) **(Exception : Administrative Direction and Personal Laws are NOT considered as LAW under this Article)**
- Article 13(4) : This article shall apply to any amendment of this Constitution made under Article 368.

**Article 14 : Equality before law:** Article 14 emphasizes on prohibition of unequal treatment (Equality before Law) and we have to demand laws which gives equal treatment to all.

(Equal Protection of Law) (Positive approach and Negative approach). No action of state to be arbitrary. Natural Justice and Rule of Law is basic crux.

## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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**Article 15:** No citizen on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to:

- access to shops, public restaurants, hotels and palaces of public entertainment; or
- the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
- Nothing will prevent State from making any special provision for women and children.

## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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- Nothing will prevent State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- **Article 15(5) was added in 93<sup>rd</sup> Amendment**, wherein it emphasized that state can make special provisions for advancement of SEBC, ST and SC in the educational sector and included reservation to be done in both private aided and unaided institutes.



## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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### **Article 16: Equality of opportunity in matters of public employment:**

- Equal opportunity for all the citizens in the matter of employment/ appointment to any office under the state must be given.
- No citizen shall be discriminated / made ineligible on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them in any employment or office under the State
- Parliament can make laws class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment
- The State has the power to make any provisions for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State

## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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- **Article 17 : Abolition of Untouchability:** Untouchability is abolished and its practice is **forbidden** in any form. It is an offence which is **punishable** in accordance with law. Protection of Civil Rights, 1955 has been implemented in India.
- **Article 18: Abolition of Titles (Rajabahudur, Diwan etc)**
- **Article 19:** Article 19 (It gives rights to the citizens and also gives restrictions that can be imposed by the state to the citizens). It is available only for citizens. Article 19 can be exercised against the state only. Article 19 (1) gives 6 freedoms to the citizens. Article 19(2) to 19(6) gives rights to the State to formulate restrictions against freedom granted to the citizens. It is considered as backbone of Part III of the Constitution.



## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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**Article 19(1) (a)** Freedom of Speech and Expression (Its not absolute curtailed by 8 restrictions)

- a) Sovereignty and Integrity of India
- b) Security of State
- c) Friendly relations with foreign states
- d) Public Order
- e) Decency/Morality
- f) Defamation
- g) Incitement to offence

**Article 19 1 (b) Freedom of Assembly**

**Article 19(1) (C): Freedom of Association**

**Article 19(1) (d): Freedom of Movement**

**Article 19 (1) (e) : Freedom of Residence**

**Article 19(1) (g): Freedom of Profession, Occupation, Trade or Business**

# SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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## Article 20 : Three Protection

- ☐ Protection against ex-post facto law
- ☐ Protection against double jeopardy
- ☐ Protection against self incrimination

## Article 21: Protection of life and personal liberty (Right to Life)

Personal Liberty: Maneka Gandhi case, wider meaning to personal liberty.  
Test of Reasonability(Just fair and reasonable).

**Life includes:** Environment, livelihood, health, dignity, privacy , education.

**Procedure established by law:** Any action which is arbitrary, executive and legislative action which are not just, fair and reasonable can be questioned under Article 21.

## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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### Article 22: Protection from arrest and detention

- ☐ **Article 22(1)** – Right to be informed the grounds of arrest and Right to consult a legal practitioner.
- ☐ **Article 22 (2)** – Right to be produced before a magistrate and No detention beyond 24 hours.
- ☐ **Article 22 (3)** : Preventive Action respect to (Defense, Foreign Affairs and Security of India can be done by the Central Government
- ☐ **Article 22(4)** : No detention more than 3 months, that can be done only if the advisory board has agreed and maximum time cannot be extended.
- ☐ **Article 22(5)** : Right to be informed and Right for representation (Preventive).
- ☐ Information which is against public interest that need not be given- **Article 22(6)**

## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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- **Article 23: Right against Exploitation:** Human Trafficking- Begging- Forced Labour
- **Article 24:** No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment
- **Article 25:** Freedom of conscience and free profession, practice and propagation of religion
- **Article 26:** Freedom to manage religious affairs
- **Article 27:** Freedom as to payment of taxes for promotion of any particular religion
- **Article 28:** Freedom as to attendance at religious instruction or religious worship in certain educational institutions

## SHORT OVERVIEW OF FUNDAMENTAL RIGHTS

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- **Article 29: Protection of interests of minorities**
- **Article 30: Right of minorities to establish and administer educational institutions**
- **Constitutional Remedies Art. 32:** Supreme Court can issue writs for enforcing fundamental rights (habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate)

# FUNDAMENTAL DUTIES

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- Every Right has a corresponding duty
- Right and duty relationship exists between two persons.
- Smooth functioning of the society both rights and duties is essential.
- Our Constitution has Part IV-A- Fundamental Duties only one article 51-A
- Inserted in 42<sup>nd</sup> Amendment Act, 1977
- Inspiration from USSR( Russia)
- Originally, there were only 10 fundamental duties, the 11th was added by the 86th Amendment in 2002. (Every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years)



## FUNDAMENTAL DUTIES

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- To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.
- To develop the scientific temper, humanism and the spirit of inquiry and reform.
- To safeguard public property and to abjure violence.
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises of higher Endeavour and achievement.



## FUNDAMENTAL DUTIES

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- To abide by constitution and respect its ideal and institution, the National flag and National Anthem.
- To cherish and follow the noble ideals which inspired our national struggle for freedom.
- To uphold and protect the sovereignty, unity and integrity of India.
- To defend the country and render national service when called upon do so.
- To promote harmony and spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.
- To value and preserve the bright heritage of our composite culture

## DIRECTIVE PRINCIPLES OF STATE POLICY.

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- ☐ The ideas of the welfare state in India are embedded in the Directive Principles of State Policy
- ☐ Essential guide-lines for the state as well as the citizens for establishing economic democracy in India.
- ☐ They are not Justifiable in Court of Law
- ☐ Part IV of the Constitution contains DPSP from Article 36-51
- ☐ Borrowed from Spanish Constitution. (Ireland)
  
- ☐ Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types:
  - ❖ Socialistic Principles,
  - ❖ Gandhian Principles and,
  - ❖ Liberal-Intellectual Principles.

# DIRECTIVE PRINCIPLES OF STATE POLICY.

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## DPSP- Socialistic Principles

**Article 38:** Promote the welfare of the people ( Justice- Social, Economic and Political)

**Article 39:** Secure citizens: (i) Livelihood for all citizens (ii) Equitable distribution of material resources (iii) Prevention of concentration of wealth and means of production (iv) Equal pay for equal work for men and women (v) Preservation of the health and strength of workers and children against forcible abuse and (vi) Opportunities for the healthy development of children

**Article 39A:** Promote equal justice and free legal aid to the poor.

**Article 41:** In cases of unemployment, old age, sickness and disablement, secure citizens: (i) Right to work (ii) Right to Education and (iii) Right to Public Assistance.

## DIRECTIVE PRINCIPLES OF STATE POLICY.

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**Article 42:** Make provision for just and humane conditions of work and maternity relief.

**Article 43:** Secure a living wage, a decent standard of living and social and cultural opportunities for all workers

**Article 43A:** Take steps to secure the participation of workers in the management of industries

**Article 47:** Raise the level of nutrition and the standard of living of people and to improve public health



# DIRECTIVE PRINCIPLES OF STATE POLICY.



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## DPSP- GANDIAN PRINCIPLES

**Article 40:** Organize village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government

**Article 43:** Promote cottage industries on an individual or co-operation basis in rural areas

**Article 43B:** Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies

**Article 46:** Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation

**Article 47:** Prohibit the consumption of intoxicating drinks and drugs which are injurious to health

## DIRECTIVE PRINCIPLES OF STATE POLICY.

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**Article 48:** Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

### DPSP- Liberal- Intellectual Principles

**Article 44:** Secure for all citizens a uniform civil code throughout the country

**Article 45:** Provide early childhood care and education for all children until they complete the age of six years

**Article 48:** Organize agriculture and animal husbandry on modern and scientific lines

**Article 48A:** To protect and improve the environment and to safeguard forests and wildlife



## DIRECTIVE PRINCIPLES OF STATE POLICY.

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**Article 49:** Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance

**Article 50:** Separate the judiciary from the executive in the public services of the State

**Article 51:** Promote international peace and security and maintain just and honorable relations between nations

### **Criticism of Directive Principles of State Policy:**

**As a point of debate, the following reasons are stated for the criticism of Directive Principles of State Policy:**

- 1.It has no legal force
- 2.It is illogically arranged
- 3.It is conservative in nature
- 4.It may produce constitutional conflict between Centre and State

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**THANK YOU**

**Faculty of Law**