

UNDERSTANDING INDIA

MODULE 1

The Journey of the Indian Constitution

- **Origins:** The Constitution's story begins pre-1946, tracing back to British colonial rule and the Mughal era.
- **Colonial Influence:** British governance began in 1858 post-Mutiny, establishing legal frameworks.
- **Early Acts:**
 - Indian Councils Act 1861: Introduced cabinet system but lacked Indian participation.
 - Indian Councils Act 1892: Increased legislative representation, laying foundations for democracy.
 - Government of India Act 1919: Proposed responsible government; limited Indian involvement.
 - Government of India Act 1935: Introduced federalism, but failed to unite states.
- **Constitution Drafting:**
 - Early drafts by Tilak (1895) and Annie Besant (1925) outlined rights.
 - Nehru Report (1928) emphasized written rights; Sau Report (1945) highlighted fundamental rights.
- **Constituent Assembly Formation:**
 - Demanded by Congress in 1934 for an Indian-led constitution.
 - Assembly convened post-World War II, with 299 members.
- **Constitution Features:**
 - Longhithiest constitution; 395 articles.
 - Establishes a sovereign, socialist, secular, democratic republic.
 - Enshrines fundamental rights and directive principles guiding governance.
 - Promotes universal adult suffrage and single citizenship.

- Judiciary: Independent judiciary established to uphold rights and resolve disputes.

Preamble of the Constitution of India

- Definition: The Preamble is an introductory statement outlining the Constitution's purpose and objectives.
- Historical Context: Introduced on November 26, 1949; effective January 26, 1950 (Republic Day).
- Key Amendments:
 - 42nd Amendment (1976) added "socialist" and "secular."
- Core Elements:
 - Sovereign: Independent authority of the state.
 - Socialist: Commitment to social and economic justice.
 - Secular: Equal treatment of all religions.
 - Democratic Republic: Elected head of state, not hereditary.
- Justice:
 - Social: Fair distribution of resources.
 - Economic: Fair wealth distribution.
 - Political: Equal participation in governance.
- Liberty: Fundamental freedoms (thought, expression, belief).
- Equality: Status and opportunity without discrimination.
- Fraternity: Promotes unity and dignity of individuals.
- Legal Status: Recognized as part of the Constitution; plays a key role in interpretation.

Citizenship and Rights of Citizens in India

- Definition: Citizenship is a legal and social status defining membership in a nation, encompassing rights and responsibilities.
- Constitutional Context: Articles 5-11 of the Indian Constitution detail citizenship conditions.

- Key Terms:
 - Persons: Basic rights for all individuals (e.g., right to equality).
 - Citizens: Rights against discrimination (Articles 15, 16, 19).
 - Minorities: Specific rights outlined in Articles 29 and 30.
- Acquisition of Citizenship:
 - By Birth: Criteria vary based on birth date and parental nationality (Articles 3-4).
 - Descent: Citizenship based on Indian parents for those born outside India.
 - Registration: Application process for various categories (Article 5).
 - Naturalization: Requirements for foreign individuals seeking Indian citizenship (Article 6).
 - Incorporation of Territory: Automatic citizenship for new territories.
- Loss of Citizenship: Can occur through renunciation, termination, or deprivation (Sections 8-10).
- Rights of Citizens: Include protection against discrimination, rights to employment, freedom of speech, cultural rights, voting, and holding public office.
- Dual Citizenship: Not permitted; India recognizes single citizenship only.
- Overseas Citizenship: Available for certain individuals with historical ties to India.
- Nationality vs. Citizenship: Nationality is a sociological concept; citizenship is a legal status with rights granted by the state.

MODULE 2

Understanding the Term “State” Under Article 12 of the Constitution of India

- Fundamental Rights: Based on human rights; the state must not violate these rights.
- Definition of State (Article 12): Includes the government, Parliament, state governments, local authorities, and “other authorities.”
- Interpretation Evolution: The Supreme Court has expanded “other authorities” over time:

- 1954: University of Madras case applied the rule of *ejusdem generis*.
- 1962: Ambai case shifted focus to statutory bodies.
- Sukdev Singh case: Introduced the term “instrumentalities of the government.”
- S Prash case: First time a company was considered an authority under Article 12.
- Tests for Instrumentality of State:
 - Entire share capital held by the government.
 - Significant state financial assistance.
 - Monopoly status conferred by the state.
 - Deep and pervasive state control.
 - Public functions closely related to government roles.
- Article 13 Overview: Addresses judicial review of laws inconsistent with fundamental rights.
 - Clause 1: Pre-constitutional laws void if inconsistent.
 - Doctrine of Eclipse: Pre-constitutional laws not completely invalid; may revive if in line with current rights.
 - Clause 2: Post-constitutional laws void *ab initio* if inconsistent.
 - Doctrine of Severability: Determines if parts of a law can stand independently after removing invalid sections.
- Basic Structure Doctrine:
 - Emerged from the conflict between Parliament's power to amend and protecting fundamental rights.
 - Key case: Kesavananda Bharati case established that the basic structure cannot be altered.
 - Basic structure includes supremacy of the Constitution, separation of powers, and more.

Right to Equality in the Constitution of India

- Articles 14-18: Guarantee the right to equality as a fundamental right.
- Article 14:
 - Equality before Law: No one is above the law; removes privileges.

- Equal Protection of Law: Allows for reasonable classification, recognizing social differences.
- Supreme Court View: Equality is dynamic; includes protection against arbitrariness.
- Article 15:
 - Prohibits discrimination based on religion, race, caste, sex, etc.
 - Allows special provisions for women and disadvantaged communities.
- Article 16:
 - Focuses on equal opportunity in public employment.
 - Permits reservations for underrepresented classes.
- Article 17: Abolishes untouchability as an offense.
- Article 18: Prohibits the granting of titles except for military and academic distinctions.

Article 19 of the Indian Constitution

- Article 19 guarantees fundamental freedoms but allows restrictions for public welfare.
- Key freedoms include:
 1. Freedom of Speech and Expression: Essential for democracy; includes the right to remain silent and express diverse viewpoints.
 2. Freedom to Assemble Peaceably: Important for protests; may face restrictions for public order.
 3. Freedom to Form Associations: Includes unions and societies; subject to laws regulating collective bargaining.
 4. Freedom of Movement: Citizens can move freely across India, subject to restrictions for public interest.
 5. Freedom to Reside and Settle: Citizens can live anywhere in India but face restrictions for public welfare.
 6. Freedom to Practice Professions: Citizens can choose occupations, with regulations ensuring public interest.

Article 20 Overview

- **Applies to**: Citizens and non-citizens
- **Protections**:
 1. **Clause 1**: Against Ex Post Facto laws
 2. **Clause 2**: Against Double Jeopardy
 3. **Clause 3**: Against Self-Incrimination

Article 20 Clause 1

- **Ex Post Facto Laws**: Prohibits retroactive criminal liability/enhancement.
- **Key Cases**:
 - **Karad v. State of West Bengal**: Enhanced punishment after trial began was unconstitutional.
 - **Ranal v. State of Punjab**: Accused under new law can benefit from reduced punishment.

Article 20 Clause 2

- **Double Jeopardy**: Cannot be punished more than once for the same offense.
- **Key Conditions**:
 1. Accused of an offense
 2. Prosecution in a court
 3. Previously prosecuted and punished
 4. Offense must be the same
- **Key Case**: **Makbul Hussein v. State of Bombay**: Customs authority not a judicial tribunal; no double jeopardy.

Article 20 Clause 3

- **Self-Incrimination**: No person compelled to witness against themselves.
- **Key Cases**:
 - **MP Sharma v. Satish Chandra**: Broad interpretation included various forms of evidence.
 - **State of Bombay v. Kati Kalu**: Only personal testimonial statements qualify.
 - **Seli v. State of Karnataka**: Narco analysis tests deemed testimonial compulsion.

Article 21 Overview

- **Right to Life and Liberty**: No deprivation except by procedure established by law.
- **Key Cases**:
 - **AK Gopalan v. State of Madras**: Narrow interpretation; preventive detention valid.
 - **Maneka Gandhi v. Union of India**: Liberal interpretation; freedom to travel included.

Article 21 Expansion

- **Post-Maneka Gandhi**: Article 21 expanded to include rights like speedy trial, education, etc.
- **Right to Education**: Article 21A mandates free education for children aged 6-14.

Article 22 Overview

- **Protection Against Arbitrary Arrest**: Divided into two parts:
 - **Clauses 1 & 2**: Rights for those arrested under ordinary law.
 - **Clauses 4-7**: Rights for those under preventive detention.
 - **Key Rights**:
 - Right to be informed of grounds of arrest.
 - Right to consult a lawyer.
 - Right to be produced before a magistrate within 24 hours.

Preventive Detention Rights

- **Key Cases**:
 - **Harisen v. State of Maharashtra**: Grounds must be clear for effective representation.
 - **AK Roy v. Union of India**: Guidelines to prevent harshness in detention.

Questions:

1. How do ex post facto laws impact the principle of justice in contemporary legal systems?
 2. In what ways can self-incrimination rights be balanced with the need for effective law enforcement?
 3. What are the implications of preventive detention laws on individual rights and freedoms in, India?
- Clause 3**: Protection against Self-Incrimination

Article 20 Clause 1: Ex Post Facto Laws

- **Definition**: Prohibits retroactive criminal laws.
- **Key Points**:
 - State cannot impose criminal liability retrospectively.
 - No retrospective enhancement of punishment.
- **Case Studies**:
 - **Karad v. State of West Bengal**: Supreme Court ruled against enhanced punishment post-commission of the crime.
 - **Ranal v. State of Punjab**: Accused can benefit from reduced punishment under new laws during trial.

Article 20 Clause 2: Double Jeopardy

- **Definition**: No person can be punished twice for the same offense.
- **Conditions for Protection**:
 1. Accused of an offense.
 2. Prosecution must occur in a court.
 3. Must have been previously prosecuted and punished.
 4. Offense must be the same.
- **Case Study**:

- **Makbul Hussein v. State of Bombay**: Customs authority's action not deemed a judicial tribunal; no violation of double jeopardy protection.

Article 20 Clause 3: Self-Incrimination

- **Definition**: No person can be compelled to witness against themselves.

- **Conditions**:

1. Accused of an offense.
2. Must be under compulsion.
3. Compulsion must be to testify against oneself.

- **Case Studies**:

- **MP Sharma v. Satish Chandra**: Broad interpretation includes all forms of evidence.
- **State of Bombay v. Kati Kalu**: Only personal testimonial statements are protected.
- **Seli v. State of Karnataka**: Narco analysis deemed testimonial compulsion.

Article 21 Overview

- **Right to Life and Liberty**: Guaranteed unless deprived through lawful procedure.

- **Key Points**:

- Must have a valid law and a procedure established by law.

- **Case Studies**:

- **AK Gopalan v. State of Madras**: Court interpreted personal liberty narrowly; preventive detention upheld.
- **Maneka Gandhi v. Union of India**: Established broader interpretation; emphasized fundamental rights.

Expansion of Article 21

- **Post-Maneka Gandhi**: Article 21 expanded to include rights such as:

- Right to speedy trial
- Right to education (Article 21A) mandates free education for children aged 6-14.

Article 22 Overview

- **Protection Against Arbitrary Arrest and Detention**: Divided into two parts.

- **Clauses 1 & 2**: Rights of persons arrested under ordinary law.
- **Clauses 4-7**: Rights of persons under preventive detention.

- **Key Rights**

- Right to know grounds of arrest.
- Right to consult a lawyer.
- Right to be presented before a magistrate within 24 hours.

Preventive Detention Rights

- **Conditions**:

- Detention cannot exceed 3 months unless approved by an advisory board.

- **Case Studies**:

- Harisen v. State of Maharashtra: Grounds for detention must be communicated clearly.
- AK Roy v. Union of India: Guidelines established to protect detainees' rights.

Rights Against Exploitation in India

- Rights against exploitation: Fundamental rights protect individuals from exploitation and ensure dignity.
- Historical context: India's colonial past highlights the importance of these rights.
- International instruments:
 - Article 4, UDHR (1948): Prohibits slavery and forced labor.
 - Article 23, UDHR (1948): Right to work, fair conditions, and equal pay.
 - Article 24, UDHR (1948): Right to rest and periodic holidays.
- Indian Constitution:
 - Article 23: Prohibits trafficking and forced labor; reflects commitment to dignity and rights.
 - Key clauses:
 - Prohibition of trafficking and forced labor.
 - Allows compulsory service for public purposes without discrimination.
- Legal implications: Violations are punishable by law.
- Exceptions: Discrimination permissible for compulsory services; exemptions for women in certain contexts.

Article 23 of the Indian Constitution

- Overview: Article 23 prohibits human trafficking and forced labor, emphasizing human dignity and individual liberty.
- Judicial Role: Indian Judiciary, particularly the Supreme Court, has expanded the interpretation of Article 23 over time.
- Key Cases:
 - People's Union for Democratic Rights vs. Union of India (1984): Extended definition of forced labor beyond physical restraint.

- Bhua Mukti Morcha vs. Union of India (1984): Included economic exploitation in forced labor.
- Vandu Gupta vs. State of UP (1996): Defined degrading work as forced labor.
- Cham Singh vs. State of UP (1996): Recognized begging as a form of forced labor, emphasizing rehabilitation.
- NMCMEA vs. State of Tamil Nadu (1997): Highlighted the need for child labor protections.
- Social Justice: The judiciary links Article 23 to broader social justice and human rights goals.
- Constitutional Morality: Courts emphasize aligning laws with the ethos of justice and dignity.
- Conclusion: Article 23 is a vital tool against exploitation; judicial interpretations safeguard human rights.

Article 24 of the Indian Constitution

- Focus: Prohibits employment of children in hazardous occupations.
- Significance: Protects children's rights and welfare.
- Age Limit: No employment for those under 14 in factories/mines.
- Education: Emphasizes the importance of education for holistic development.
- Legal Framework: Supported by the Child Labor Prohibition and Regulation Act.
- Challenges: Persistent issues in enforcement despite legal provisions.
- Exceptions: Non-hazardous work allowed if it doesn't affect education/health.
- Judicial Scrutiny: Ensures exceptions align with child protection goals.

Article 24 of the Indian Constitution

- Overview: Article 24 prohibits child labor in hazardous occupations for children below 14 years.
- Judicial Role: Supreme Court has significantly interpreted and enforced this article to protect children's rights.
- Key Cases:
 - MC Mehta vs. State of Tamil Nadu (1997): Guidelines for enforcing child labor laws.
 - People's Union for Democratic Rights vs. Union of India (1982): Addressed child labor as a constitutional issue.

- State of Karnataka vs. Uma Devi (2006): Emphasized the dignity of labor, indirectly related to child labor.
- Bachpan Bachao Andolan vs. Union of India (2011): Directed strict enforcement against child labor and rehabilitation measures.
- Impact: Article 24 reflects India's commitment to child welfare, aligning with international conventions on children's rights.

Article 25 of the Indian Constitution

- Right to Religion: Article 25 guarantees freedom of conscience, profession, practice, and propagation of religion.
- Key Elements:
 - Individuals can form their own beliefs.
 - State cannot impose religion.
 - Freedom to propagate beliefs, respecting public order and morality.
- Judicial Responses:
 - Sirur Mut Case (1954): Essential practices doctrine; only integral practices protected.
 - Sardar Tahar Safin Sahab Case (1962): State must not interfere in religious matters.
 - D. Committee Air Case (1961): Protection extends to essential practices, even if irrational to others.
 - Commissioner Hindu Religious Endowment Case (1954): State can regulate secular activities but not essential practices.
 - Mohammad Ismail Faruki Case (1994): Masque deemed non-essential for property rights.
 - Shayara Bano Case (2017): Personal laws violating fundamental rights can be struck down.
- Conclusion: Article 25 reflects India's commitment to religious freedom, balancing individual beliefs with societal good.

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Article 26 of the Indian Constitution

- Article 26 grants religious groups the right to manage their affairs, including establishing and maintaining religious institutions.
- It emphasizes autonomy for religious denominations, allowing them to govern their internal matters without state interference.
- Rights under Article 26 are subject to public order, morality, and health, allowing the state to regulate practices that threaten societal interests.
- Article 26 complements Article 25, which focuses on individual religious rights.

Article 26 of the Indian Constitution

Article 26: Rights for religious denominations to establish/manage institutions, manage internal affairs, and acquire property.

Key Cases:

SP Mittal vs. Union of India (1983): Defined religious denomination; emphasized common beliefs/practices.

Ismail Faruki vs. Union of India (1995): Upheld self-governance in religious matters.

Bal Patil vs. Union of India: Reinforced that government cannot take over temples without legal evidence.

Shabarimala Case (2017):

Concerned entry of menstruating women into the temple.

Supreme Court ruled restrictions unconstitutional; emphasized constitutional rights over religious practices.

Majority opinion: Exclusion based on menstruation is akin to untouchability, violating dignity and privacy.

Dissenting opinion: Argued for the petitioners' lack of standing and protection under Article 26.

Conclusion: The balance between religious freedoms and constitutional rights is complex; rights under Article 26 are not absolute.

Article 27 of the Indian Constitution

Overview: Article 27 prohibits state taxes for promoting or maintaining any specific religion.

Key Elements:

Person: Defined broadly (individuals, companies, associations).

Tax: Charge imposed by the government; defined under specific acts like the Income Tax Act.

Promotion/Maintenance: Focuses on intent behind fund usage.

Judicial Interpretation:

Supreme Court ruling against using public funds for religious promotion (1954 case).

Article 28 links, prohibiting religious instruction in government schools, emphasizing secularism.

Conclusion: Article 27 safeguards secular fiscal policies, balancing religious freedom with state funding ethics.

Article 28 of the Indian Constitution

Overview: Article 28 ensures freedom regarding religious instruction in state-funded educational institutions.

Clause 1: Prohibits religious instruction in institutions fully maintained by state funds.

Clause 2: Allows religious instruction in state-maintained institutions established under trusts requiring such instruction.

Clause 3: No individual shall be compelled to attend religious instruction or worship in recognized state institutions.

Applicability: Article 28 applies only to state-aided institutions; does not cover private institutions.

Court Precedents:

Gurunanak University Act 1969: Supreme Court upheld the act, clarifying academic study of religion is not religious instruction.

Aruna Roy Case: Clarified that Article 28 restricts indoctrination, not the study of religions.

Essential Religious Practices and the Right to Religion in India

Right to Religion: Enshrined in Article 25 of the Indian Constitution; includes freedom of conscience and practice.

Essentiality Test (ERP): A judicial framework to determine which religious practices are essential for constitutional protection.

Judicial Evolution: Supreme Court's interpretation influenced by cases like Shirur Mut and Ratilal Pant Gandhi.

Recent Case: Aisha Shifa vs. State of Karnataka (2022) addressed hijab in schools:

Findings:

Hijab not essential in Islam.

Classrooms have limited freedom of expression.

Ban not discriminatory under government order.

Historical Context: ERP rooted in B.R. Ambedkar's arguments; allows state to intervene in religious matters.

Significance: Supreme Court's rulings shape societal attitudes towards tolerance and coexistence.

Ongoing Debate: Future implications for ERP and individual rights amid evolving jurisprudence.

Articles 29 and 30 of the Indian Constitution

Introduction: Focus on cultural and educational rights for minorities.

Objectives:

Understand cultural and educational rights.

Examine constitutional safeguards for communities.

Analyze judicial approaches to these rights.

Key Articles:

Article 29: Protects distinct language, script, culture.

Article 30: Grants minorities the right to establish/manage educational institutions.

Minority Definition: Not explicitly defined; recognized by the National Commission for Minorities Act 1992.

Rights Overview:

Article 29:

Safeguards unique cultural identities.

Prohibits discrimination in educational admissions.

Article 30:

Establishment and administration of educational institutions.

Ensures institutions align with cultural values.

Judicial Approach: Courts interpret these rights to balance minority rights with public interest.

Conclusion: Articles 29 and 30 ensure diversity and inclusivity, protecting minority identities in education and culture.

Constitutional Remedies and Jurisdiction of Constitutional Courts

Jurisdiction Types:

Original Jurisdiction: Court hears a case for the first time.

Appellate Jurisdiction: Court reviews decisions made by lower courts.

Article 32 (Supreme Court):

Grants original jurisdiction for enforcing fundamental rights.

Court can issue directions, orders, or writs (e.g., habeas corpus, mandamus).
Article 226 (High Court):

Similar to Article 32 but territorially limited.
Can issue writs for non-fundamental rights violations too.
Writ Remedies:

Habeas Corpus: Challenges unlawful detention.
Mandamus: Orders public authorities to perform legal duties.
Quo Warranto: Questions the authority of a person holding a public office.
Certiorari: Quashes orders of lower courts exceeding jurisdiction.
Prohibition: Prevents lower courts from acting beyond their jurisdiction.
Non-Writ Remedies:

Include orders and directions not limited to named writs.

Fundamental Duties in India

- Fundamental Duties added via 42nd Amendment (1976).
- Inspired by USSR; aim: citizen responsibility.
- Article 51A outlines 11 duties.
- Duties foster national integrity and harmony.
- Not legally enforceable but vital for societal growth.

MODULE 3

Constitutional Framework of Legislatures in India

- Legislatures in India: Union and State levels; governed by the Seventh Schedule (Union, State, Concurrent Lists).
- Parliament Composition: Bicameral (Lok Sabha and Rajya Sabha); includes the President (Article 79).
- Lok Sabha (House of the People):
 - 530 members (530 states, 20 union territories).
 - Directly elected; 5-year term.
- Rajya Sabha (Council of States):

- Maximum 250 members (238 elected, 12 nominated).
 - Indirectly elected; 6-year term with staggered retirements.
- Election Process:
 - Rajya Sabha: Elected by State Legislative Assembly members using proportional representation.
 - Lok Sabha: Direct elections from constituencies.
- Qualifications:
 - Lok Sabha: 25 years; Rajya Sabha: 30 years; Indian citizenship required.
- Disqualifications: Include unsound mind, insolvency, office of profit, anti-defection law (10th Schedule).
- Parliamentary Privileges: Freedom of speech, immunity from court proceedings, collective and individual privileges (Article 105 & 194).

Legislative Process in India

- Bill Introduction: Can be by government or member; private member bills rarely pass.
- Types of Bills: Ordinary, Money, Finance.
- Ordinary Bill Procedure:
 - Introduced in either Lok Sabha or Rajya Sabha (Article 107).
 - Stages: Introduction (no discussion), Consideration (general discussion, amendments), Passing (vote).
 - After passing in both houses, sent for Presidential assent (Article 111).
- Deadlock Resolution: President can summon joint session (Article 108); no new amendments can be proposed.
- Money Bill: Defined under Article 110; involves taxes, borrowing, etc.
 - Requires Presidential recommendation & can only be introduced in Lok Sabha.
 - Rajya Sabha has a recommendatory role.
 - If not returned in 14 days, deemed passed.
- Finance Bill: Contains Money Bill provisions + other matters (Article 117); Rajya Sabha can amend.
- State Legislature:

- Majority single-house (Vidhan Sabha); some states have bicameral system.
- Composition includes Governor; elections from local bodies for upper house.
- Similar procedures and powers for Governor as President.

The President of India - Appointment, Impeachment, and Powers

- Role: Symbol of unity; head of the state.
- Appointment: Elected by an electoral college; no direct elections.
- Qualifications (Article 58):
 - Indian citizen, 35 years old, no profit-generating office.
- Term: 5 years; continues until a new election.

Powers:

1. Executive Powers:
 - Appoints Prime Minister and Council of Ministers.
 - Supreme Commander of Armed Forces.
 - Appoints key officials (CAG, Election Commissioners, etc.).
2. Legislative Powers:
 - Summons and prorogues Parliament (Article 85).
 - Addresses Parliament (Article 87).
 - Assent required for bills (Article 111).
3. Financial Powers:
 - Assent to money bills (Article 111); cannot withhold assent.
 - Controls contingency fund (Article 267).
 - Approves annual budget (Article 112).
4. Judicial Powers:
 - Appoints Supreme Court and High Court judges (Article 124).
 - Grants pardons (Article 72).
5. Diplomatic Powers:
 - Represents India internationally; enters treaties.

6. Emergency Powers:

- Can declare national emergencies.

7. Impeachment Process (Article 61):

- Requires notice, investigation, and special majority for removal.

Comparative Analysis:

- Differences in roles of presidents in India, USA, and UK due to political systems.

Governor's Role:

- Appointed by President; acts as state representative.
- Powers defined in Articles 153-167.

Prime Minister and Council of Ministers

- Executive Branch: Prime Minister (PM) & Council of Ministers (CoM).
- PM's Role: Leader, policy direction, administers government.
- Council of Ministers: Appointed by PM, oversees specific portfolios (e.g., Finance, Defense).
- Appointment: PM is appointed by the President; must be majority party leader or have confidence of Lok Sabha.
- Oath: PM swears to uphold the Constitution and maintain secrecy.
- Term: No fixed term; holds office as long as he has Lok Sabha's confidence.
- Powers: Policy formulation, legislative initiatives, foreign representation, crisis management, budget formulation.
- Cabinet Leadership: PM chairs cabinet meetings, coordinates among ministers.
- Articles Related: 74 (Council's role), 75 (Appointment process), 77 (Executive actions), 78 (Duties).
- Types of Ministers: Cabinet, State with independent charge, State, Deputy Ministers.
- Legislative Power: CoM plays a crucial role in legislative process; can lead to no-confidence votes.
- Emergency Powers: PM advises President during emergencies.

Chief Minister and Council of Ministers

- Definition: Chief Minister (CM) is the real executive head of the state, assisted by the Council of Ministers.
- Appointment:
 - Appointed by the Governor, usually the leader of the majority party.
 - No specific selection procedure in the Constitution.
 - If no majority, Governor has discretion to appoint.
- Eligibility:
 - Must be a citizen of India, at least 25 years old, and a member of the state legislature.
- Tenure:
 - Not fixed; serves at the Governor's discretion.
 - Can be dismissed by a no-confidence motion.
- Functions:
 - Council of Ministers: Recommends appointments, reshuffles portfolios, leads meetings.
 - Governor: Communicates council decisions and provides administrative information.
 - Legislature: Summons sessions, announces policies, and represents in legislative matters.
- Council of Ministers: Assists the CM, responsible for policy formulation, legislation, administration, and crisis management.
- Collective Responsibility: All ministers are accountable to the legislature; if a no-confidence motion passes, they must resign.

MODULE 4

Federal Structure and Division of Powers in India

- Federal Nature: Indian Constitution is federal in theory; combines central and state powers.
- Judiciary Role: Integrated judiciary adjudicates disputes; unique to India's federal system.
- Political Systems: Two classifications: unitary (central power) and federal (dual polity).
- Written Constitution: India's lengthy constitution defines power distribution.

- **Supremacy:** Constitution is supreme; laws must conform to it; rigid amendment process.
- **Dual Polity:** Central and state governments operate independently within their domains.
- **Legislative Division:** Articles 245 and 246 outline territorial and subject matter powers.
- **Centralizing Tendencies:** Strong central authority, especially during emergencies; criticisms of federalism.
- **Unique Features:** Single citizenship, emergency provisions, and integrated judiciary challenge federalism.
- **Judicial Interpretation:** Federalism considered part of the basic structure; independence of state powers emphasized.

Division of Legislative Powers in India

- **Legislative Powers:** Divided between center and states via Articles 245-255.
- **Categories:**
 - Legislative relations (Articles 245-255)
 - Administrative relations (Articles 256-263)
 - Financial relations (Articles 268-293)
- **Territorial Powers:**
 - Parliament can legislate for all of India; state laws are territorial.
 - States can legislate with sufficient connection (doctrine of territorial nexus).
- **Legislative Lists (7th Schedule):**
 - Union List (List I): 98 subjects (e.g., defense, currency).
 - State List (List II): 59 subjects (e.g., agriculture, public health).
 - Concurrent List (List III): 52 subjects (e.g., criminal law, education).
- **Residual Powers:**
 - Article 248: Parliament has power over unlisted subjects.
- **Hierarchy of Laws:**
 - Union laws prevail over state laws; concurrent laws prevail over state in conflict.
- **Exceptional Situations:**
 - Articles 249, 250, 252, 253, 356 allow Parliament to legislate on state matters under certain conditions.

- Significance of Federal Supremacy:
 - Ensures harmony and prevents conflicts between union and state laws.

Indian Judiciary

- Role of Judiciary: Interprets laws, adjudicates disputes, safeguards Constitution, and protects fundamental rights.
- Judicial Structure: Independent and integrated; includes Supreme Court, High Courts, and subordinate courts.
- Supreme Court: Highest court, guardian of the Constitution, interprets laws, maintains legal uniformity.
- Judges' Appointment: Appointed by the President after consultation; Chief Justice's consultation is obligatory.
- Removal of Judges: Impeachment possible for misbehavior/incapacity, requiring 2/3 parliamentary support.
- Supreme Court Powers: Original, appellate, advisory jurisdiction; can issue writs to enforce fundamental rights.
- High Courts: Established in each state, flexible number of judges; jurisdiction includes original, appellate, and administrative powers.

MODULE 5

Union Public Service Commission (UPSC)

- Introduction: UPSC is vital for India's governance, conducting the Civil Service exam.
- Importance:
 - Conducts various exams, primarily Civil Service.
 - Ensures transparent, merit-based selection.
 - Upholds constitutional values: Justice, Liberty, Equality, Fraternity.
- Historical Background:
 - East India Company nominated civil servants trained in London.

- 1854: Merit-based civil services established after Lord Macaulay's report.
- First Indian success in 1864: Satendra Nath Tagore.
- 1922: Civil Service exam held in India.
- Public Service Commission Genesis:
 - Established in 1926, first chairman: Sir Ross Barker.
 - Functions defined by 1926 rules; later became UPSC in 1950.
- Constitutional Bodies:
 - Derive authority from the Constitution; changes require amendments.
 - Examples: Finance Commission, Election Commission, UPSC.
 - State Public Service Commissions also play crucial roles.

The Union Public Service Commission

- Historical Context: Discussed in previous video; foundation of administrative system.
- Constitutional Provisions: Articles 315-323 detail UPSC's establishment and functioning.
 - Article 315: Establishes Public Service Commissions for Union and States.
 - Article 316: Regulates appointment and removal procedures.
 - Chairman: Appointed by President; can have acting chairman.
 - Members: 50% must have 10 years of public service; others can be non-officials.
- Tenure: Members serve 6 years or until age 65 (UPSC) or 62 (State PSC).
- Removal: Grounds include misbehavior, insolvency, and unfitness; requires Supreme Court inquiry.
- Independence: Members have job security; salary is charged on Consolidated Fund of India.

UPSC Functions and Limitations

- UPSC ensures impartiality in appointments/removals.
- Article 320 outlines UPSC's functions:
 - Conducts exams for Union and State services.
 - Assists states in joint recruitment.
 - Provides advisory functions on recruitment methods, appointments, promotions, etc.
- Advisory functions are non-binding; government must apply its judgment.

- Exceptions to consultation:
 - Reservations for backward classes (Article 16(4)).
 - Scheduled Caste and Tribe considerations (Article 335).
- UPSC's limitations:
 - Not consulted on temporary appointments or certain high-level posts.
 - Recommendations are advisory; government can reject them.

the Union Public Service Commission (UPSC)

- UPSC Overview: Key institution for maintaining merit-based systems in India's administration.
- Articles:
 - Article 322: Covers funding for salaries/allowances of UPSC staff from the Consolidated Fund.
 - Article 323: Mandates annual reports to the President/Governor on UPSC's work.
- State Public Service Commission (SPSC):
 - Similar structure to UPSC; governed by Articles 315-323.
 - Composition: Chairman and members appointed by the Governor; no specified strength.
 - Tenure: 6 years or until age 62; can resign anytime.
 - Removal: By the President only; similar grounds as UPSC.
- Independence of SPSC:
 - Security of tenure; conditions of service cannot be disadvantageous post-appointment.
 - Expenses charged on the state's Consolidated Fund.
- Joint State Public Service Commission:
 - Established for two or more states via parliamentary act; statutory, not constitutional.
 - Reports to state governors.

the Election Commission of India

- Overview: Established in 1950 to ensure free and fair elections post-independence.
- Constitutional Basis: Articles 324-329 define its powers and structure.
- Key Principles:
 - General electoral role for constituencies (Article 325).
 - Adult suffrage, eligible voters must be 18+ (Article 326).
- Historical Context: Evolved from a single-member to a three-member body since 1989 due to increased electoral needs.

the Structure and Composition of Election Commission

- Key Roles: Chief Election Commissioner (CEC), Election Commissioners, Regional Commissioners, State Election Commissions, Staff.
- Jurisdiction: All-India body per Article 324, overseeing elections for Parliament, State Legislatures, President, and Vice President.
- Purpose: Prevent state discrimination against outsiders in electoral roles.
- Composition: Initially single-member, now multi-member body (CEC + other Commissioners) as per Supreme Court rulings.
- Landmark Cases:
 - SS Danoia Case (1991): Supreme Court upheld multi-member structure, emphasizing checks on power.
 - TN Shashan Case (1995): Affirmed multi-member nature, clarifying decision-making roles within the Commission.
- Key Points: CEC has protections; other Commissioners do not share equal status.

Election Commission of India

- Supreme Court Preference: Multi-member Election Commission favored over single-member.
- Chief vs. Election Commissioners:

- Chief is chairman; can't be removed like a Supreme Court Judge.
- Election Commissioners can be removed on Chief's recommendation.
- Chief's service conditions cannot be worsened.
- Chief's position is permanent; Election Commissioners' appointments are optional.
- Appointment Process:
 - President appoints Election Commissioners.
 - Challenge in *Ano Baranwal vs. Union of India* (2023) for unconstitutionality.
 - Issues: Right to equality and free/fair elections.
- Court's Findings:
 - Election Commission's independence crucial; executive control compromises it.
- New Appointment Process:
 - March 2, 2023: 5-judge bench established a committee (PM, opposition leader, Chief Justice) to recommend appointments.

Offices Related to Election Commission

- Regional Commissioners: Appointed by the President under Article 324(4) before general/state elections to assist the Election Commission.
- Hierarchy: Election Commissioners are higher than Regional Commissioners; the latter are not members of the Commission.
- Staffing: No permanent staff due to intermittent elections; Central/State governments must provide necessary staff (Article 324(6)).
- State Election Commission: Established by state laws, lacks the independence of the Election Commission (Article 243K); supervises elections for panchayats and municipalities (Article 243ZA).
- Conclusion: Election Commission and related offices ensure democratic integrity and fairness in elections.

Functions and Powers of the Election Commission

- Greeting and Overview: Discussion on the functions and powers of the Election Commission of India.
- Responsibility: Conducts elections for President, Vice President, Parliament, and State Legislatures.
- Functions: Primarily administrative; also has judicial and legislative roles.
- Constitutional Basis: Article 324 provides the framework for the Election Commission's powers.
- Key Terms:
 - *Superintendence, Direction, Control*: Broad powers for effective elections, including voter education and reforms.
 - *Election*: Encompasses the entire electoral process.
- Powers: Includes countermanding elections and ordering fresh polls due to law and order issues.
- Judicial Review: Actions of the commission are subject to judicial oversight to ensure adherence to the rule of law.
- Landmark Cases:
 - *Election Commission vs. AIA DMK*: Supreme Court modified restrictions on loudspeaker use.
 - *Common Cause vs. Union of India*: Commission can mandate transparency in election expenditures.
 - *Union of India vs. Association of Democratic Reforms*: Candidates must disclose criminal records.
- Disqualification Management: Role in certifying disqualifications for candidates.

Adjudicative Functions of the Election Commission

- Introduction: Discussing the adjudicative functions of the Election Commission.
- Adjudication Definition: Ability to resolve disputes.
- Key Areas:
 - Allotment of electoral symbols.

- Inquiry into disqualification of members.
- Legal Framework:
 - Article 324 & Election Symbols Reservation Order, 1968.
 - Supreme Court ruling (Shilong vs. V. A. Shanga, 1977) on commission's judicial power.
- Quasi-Judicial Role: Advising the President/Governor on disqualification under Articles 103(2) and 192(2).
- Supreme Court Ruling: Brundaban Nyak vs. Election Commission of India (1965) emphasizes commission's binding opinion.
- Natural Justice Principles: Must avoid bias (Election Commission of India vs. Dr. Subramanyam Swamy, 1996).
- Case Example: Recusal of Chief Election Commissioner due to a conflict of interest.

Legislative Functions of the Election Commission

- Introduction: Overview of legislative functions regarding the Election Commission.
- Legislative Power: Election Commission lacks legislative power; Parliament holds authority on election matters (Article 327).
- Supreme Court Case: In *AC Joose vs. Shivan P (1984)*, the court ruled that the Election Commission cannot change voting systems; only Parliament can legislate.
- Article 324: Confers executive powers to the Commission, applicable when Parliament has not made provisions.
- Model Code of Conduct: Evolved by the Commission, has moral but not legal authority.
- Judicial Interpretation: *Mohindra Singh Gill vs. Chief Election Commissioner (1978)* clarified Article 324 as a power reserve for unregulated areas.
- Conclusion: The Election Commission is vital for democracy, ensuring free and fair elections.

Role of the Controller and Auditor General (CAG) in India

- Introduction: CAG is key in public finance oversight in India.
- Public Finance: Management of government funds; includes revenue generation, expenditure allocation, and fiscal policy.

- **Parliament's Role:** Approves government spending, ensuring accountability and alignment with national goals.
- **Budget:** Financial roadmap for the year, detailing expenditures and revenue.
- **Expenditure Categories:**
 - Charged on the consolidated fund (e.g., President's emoluments).
 - Granted by Parliament annually.
- **CAG's Functions:**
 - Audits government accounts to ensure efficient use of public funds.
 - Conducts performance, financial, and compliance audits.
- **Reporting:** Audit reports submitted to the President, highlighting financial irregularities.
- **Independence:** CAG operates independently, ensuring impartial assessments of public finance.
- **Accountability:** Works to enhance financial accountability through audits and oversight committees.

Origins of the CAG System in India

- **Historical Background:** CAG office established in India in 1860, inspired by the British system.
- **Primary Objective:** Ensure financial accountability in British India administration.
- **Early Functions:** Limited to auditing government accounts, focusing on expenditures and revenue collection.
- **Independence:** Initially independent from the executive branch; evolved to include performance audits.
- **Key Legislation:**
 - 1866 Act: Institutionalized CAG's role, making it accountable to Parliament.
 - 1919 Recognition: Auditor General became independent.
 - 1935 Act: Further solidified CAG's importance.
- **Post-Independence Changes:** Re-evaluation of role aligned with democratic principles; incorporated into Indian Constitution (Articles 148-151).

- Modernization: Adaptation to technology and governance changes to enhance auditing processes.

Role of Controller and Auditor General (CAG) in India

- CAG's role defined in Articles 148-151 of the Constitution.
- Appointed by the President; removal process akin to a Supreme Court judge.
- CAG maintains neutrality, devoid of political affiliation.
- CAG serves for 6 years or until age 65; no post-retirement government role.
- Article 149: CAG audits all expenditures from Consolidated Fund, public accounts, etc.
- Article 150: CAG advises the President on account maintenance.
- Article 151: CAG submits audit reports to the President and Governors for legislative scrutiny.
- CAG's office funded by the Consolidated Fund of India.
- CAG's functions ensure good governance, safeguarding citizen interests.

Independence of the CAG

- Introduction: CAG as guardian of public funds; ensures financial propriety.
- Constitutional Safeguards:
 - Article 148: Establishes office and appointment by the President.
 - Term of service protects against arbitrary changes.
 - Removal requires a resolution from both houses of Parliament.
- Financial Autonomy: Expenses charged on the Consolidated Fund of India; no external influence.
- Powers & Functions:
 - Audits union and state accounts; findings submitted to President.
 - Judicial review allowed; appeals to the Supreme Court.
- Accountability: Reports laid before Parliament for scrutiny.
- Comparative Analysis: CAG vs. other bodies (ECI, UPSC, NHRC):
 - CAG, ECI, UPSC: Fixed tenures; NHRC lacks this.
 - Removal procedures: CAG, ECI, UPSC have safeguards; NHRC lacks clarity.

- Financial independence varies: CAG, ECI, UPSC vs. NHRC

The Role of the CAG in Financial Accountability

- CAG Overview: CAG ensures financial accountability and efficiency in India.
- Authority: Derived from the Controller and Auditor General's Act of 1971.
- Duties:
 - Compilation and preservation of accounts.
 - Forensic audits of financial operations.
- Inspection Powers: CAG can scrutinize accounts from Union to state levels, summon documents, and engage in financial dialogue.
- Section 18: Mandates facilities for inspection and compliance for information requests.
- Audit Scope: Sections 13-24 detail responsibilities, including auditing funds from the Consolidated Fund of India.
- Types of Audits:
 - Regularity, propriety, efficiency, and performance audits.
- Performance Audit Components:
 - Economics: Resource acquisition and usage.
 - Efficiency: Optimizing resource output.
 - Effectiveness: Achieving program goals.
- Committees:
 - Estimates Committee: Ensures legal and proper fund usage.
 - Public Accounts Committee (PAC): Scrutinizes expenditures and CAG reports.
 - Committee on Public Undertakings (COPU): Focuses on public entity efficiency and adherence to standards.

Emergency Provisions in the Indian Constitution

- Emergency Definition: A constitutional feature allowing adaptation during critical situations.
- Types of Emergencies:
 - National (security threats)
 - State (breakdown of constitutional machinery)
 - Financial (extreme financial crisis)

- Impact: Disturbs normal constitutional fabric, affects citizens' fundamental rights.
- 44th Amendment: Restricted declaration grounds to avoid misuse; emphasized collective Cabinet decision for proclamations.
- Fundamental Rights: Article 19 rights automatically suspended during national emergencies, with specific restrictions post-44th Amendment.

Indian Federalism and Emergency Provisions

- Emergency Powers: Parliament gains authority to legislate on state matters during emergency (Article 250).
- Suspension of Rights: Article 359 allows rights suspension; however, Articles 20 & 21 remain enforceable.
- Duration of Laws: Laws made during emergency cease six months post-emergency.
- Legislative Powers: Central government can direct states during emergencies, extending to other states if security is threatened.
- Revenue Distribution: Emergency provisions can suspend revenue sharing; Parliament may levy taxes from state list.
- Lok Sabha Extension: Life of Lok Sabha can be extended during an emergency, up to six months after it ends.

Procedure for Declaring Emergency

- Emergency Declaration: President can declare during crises, advised by Cabinet.
- Overruling Constitution: President can suspend fundamental rights.
- Proclamation Duration: Initial period is 6 months, extendable by Parliament.
- Parliamentary Approval: Both Houses must pass resolutions for continuity.
- Review Opportunity: Ensures Parliament reviews necessity of the emergency.
- Accountability: Central government accountable to Parliament to prevent misuse.
- Max Duration: Proclamation can last up to 3 years under specific conditions.

National Emergency under Article 352

- Definition: President can declare a National Emergency if India's security is threatened by war, external aggression, or armed rebellion.

- Approval Process:
 - Must be approved by both Houses of Parliament within one month.
 - If Lok Sabha is dissolved, Rajya Sabha approval suffices.
- Duration:
 - Initial period is six months, can be extended with parliamentary approval.
 - Revocation can happen anytime by the President without parliamentary approval.
- Historical Instances:
 - Declared three times: 1962 (China), 1971 (Pakistan), and 1975 (internal issues).
- Legal Safeguards:
 - 44th Amendment Act of 1978 introduced stricter controls on emergency declarations.
 - Requires a two-thirds majority for resolution approving emergency continuation.

State Emergency and Constitutional Provisions

- Article 355: Central duty to protect states from external aggression/internal disturbances.
- State government must operate under the Constitution.
- Proclamation of state emergency requires parliamentary approval within two months.
- Article 356: Failure of constitutional machinery in a state leads to central intervention.
- Factors for declaring Article 356 include loss of majority, corruption, or severe law & order issues.
- President can assume state functions in such scenarios.
- Historical misuse of Article 356 (e.g., Nehru's government, 1959).
- Recommendations for sparing use of Article 356 from the Sarkaria Commission.
- Recent challenges in invoking Article 356 due to political dynamics.

Financial Emergency under Article 360 of the Indian Constitution

- Definition: Financial emergency can be proclaimed by the President under Article 360.
- Purpose: To address threats to financial stability and credit concerns in India.
- Approval: Must be approved by both Houses of Parliament within two months.

- Continuation: Survives until revoked; requires Rajya Sabha approval if Lok Sabha is dissolved.
- Amendments:
 - 38th Amendment (1975) emphasized state adherence to financial propriety.
 - Allows reduction of salaries for state personnel.
- Proclamation Validity: Can be revoked by subsequent proclamations; ceases after two months if not approved.
- Historical Context: Inspired by experiences from the USA, Canada, and Australia during the 1930s depression

Impact of Emergency on Fundamental Rights

- Emergencies can jeopardize fundamental rights in democracies.
- Historical context: India once lost independence; concerns about losing it again.
- Anxiety over internal divisions (castes, political parties) affecting unity.
- Article 359 allows suspension of rights during emergencies for greater good.
- Fundamental rights in Part III of the Constitution limit state authority.
- Article 13(2) invalidates laws restricting fundamental rights.
- Balancing state authority and individual rights during crises.
- India has experienced three national emergencies affecting fundamental rights.

Fundamental Rights under Emergency (Articles 358 & 359)

- Introduction: Discussion on fundamental rights during emergencies as per Indian Constitution.
- Article 359:
 - President can suspend rights in Part III during crises.
 - Right to approach courts for enforcement can be suspended.
- Key Rights:
 - Right to life and personal liberty (Articles 20 & 21) cannot be suspended.
 - Article 32 allows individuals to seek remedies.
- Article 358:

- Automatically suspends six rights under Article 19 during a National Emergency.
- Suspension does not require separate presidential decree.
- Emergency can be declared due to war or foreign aggression.
- 44th Amendment Act:
 - Limits presidential power to suspend rights.
 - Ensures Articles 20 & 21 cannot be suspended.
 - Laws enacted without emergency declaration cannot restrict rights.
- Historical Context:
 - Example: 1962 Indochina war led to a presidential order suspending certain rights.
 - Supreme Court rules on detention rights and the ability to seek habeas corpus.
- Conclusion: Understanding Articles 358 & 359 is crucial for grasping the scope of fundamental rights during emergencies.

Constitutional Amendments and Fundamental Rights

- 1977 Revision: Post-emergency government aimed to prevent authority misuse.
- 42nd & 44th Amendments: Key modifications in 1976 and 1978.
- Article 352: Changed from “internal disturbance” to “armed rebellion.”
- Articles 358 & 359: President can limit rights during emergencies, except Articles 20 & 21.
- Fundamental Rights: Right to life and liberty established as unalienable.
- Legality of Laws: Crisis laws must be fair, reasonable, and non-arbitrary.
- Habeas Corpus: Rulings no longer regarded as good law post-amendments.
- Emergency Impact: Rights can be curtailed for community safety, but guarantees exist.
- Judicial Recourse: Citizens can seek justice when rights are infringed.
- Political Maturation: Evolution from disregard for rights to recognition of unalienable rights.
- Democratic Principles: Government and judiciary commitment is crucial to uphold rights.

The Power of Parliament to Amend the Constitution of India

- Article 368: Governs parliamentary power to amend the Constitution.
- Basic Structure Doctrine: Established by the Supreme Court in Keshavananda Bharati case (1973); laws damaging the Constitution’s basic structure are unconstitutional.
- Amendment Definition: Modification or alteration in legislation.

- Two Modes of Amendment:
 1. Special Legislative Process: Requires 2/3 majority in both Houses.
 2. Extraordinary Process: Needs state ratification for specific matters (e.g., federal structure).
- Key Cases: Indira Gandhi vs. Raj Narain, Minerva Mills case, etc.
- Court's Role: Supreme Court has the power to review constitutional amendments.

Amendment of the Constitution - Article 368

- Article 368 defines Parliament's power to amend the Constitution.
- "Constituent Power" does not make Parliament the original constituent assembly.
- Fundamental Rights (Part III) can be amended; however, limitations apply.
- *Shang Prasad Dio Singh vs. Union of India*: Validity of First Amendment questioned. Court ruled amendments not included under Article 13(2).
- *Golak Nath vs. State of Punjab*: Fundamental Rights are outside the amendatory process if abridged.
- Constitution implies rights are not amendable by Parliament.
- Article 368 provides amendment procedure but not inherent power.
- Legislative authority includes amending power; thus, amendments are laws.
- Safeguards in the process do not alter amendment's legislative nature.

Basic Structure Doctrine in Constitutional Amendments

- Judicial Review: Confirmed as part of basic structure in *El Chandra Kumar*; recognized in earlier cases (*Koto hon vs Sailu C*).
- Democracy: Key feature includes free/fair elections, adult franchise, multi-party system.
- Secularism: Established as a basic feature in *SR Bomai vs Union of India*.
- Federalism: Acknowledged by some judges in *SR Bomai*.
- Rule of Law: Linked with reasonableness and judicial review.
- Independence of Judiciary: Essential for maintaining the Constitution's integrity.
- Unamendability: Certain features cannot be altered.
- Flexibility vs Rigidity: India's Constitution balances these aspects; amendments show this preservation.

