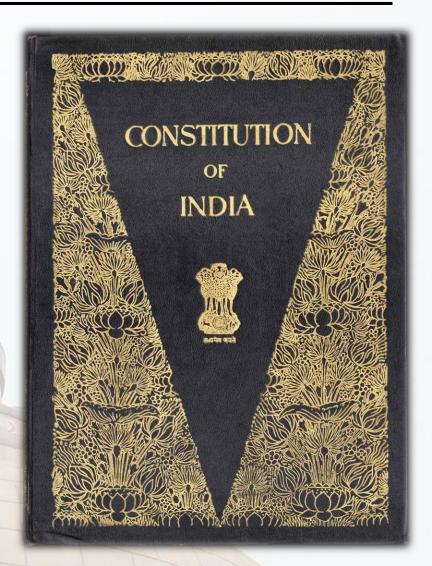# Unit – 1 Constitution of India – An Introduction

- Federal Republic, Rule of Law, Seperation of Powers;
- Sovereignty, Socialism, Democracy;
- Secularism and Sarva Dharma Sama Bhava

What do we mean by constitution

- A constitution is a fundamental and supreme legal document or set of principles that establishes the framework for the governance of a nation or an organization.

- It serves as the highest law within a particular jurisdiction and outlines the fundamental rules, structures, and procedures by which that entity is governed.

- Constitutions can vary widely in scope, complexity, and content, depending on the entity they govern.

Here are the key elements and functions associated with a constitution:

- Framework for Governance
- Rights and Freedoms
- Rule of Law
- Powers and Limitations
- Amendment Procedures
- Government Structure
- Sovereignty and Statehood
- Fundamental Principles
- Citizenship
- Dispute Resolution

Constitution of India

- The Constitution of India is the supreme law of the Republic of India, serving as the fundamental legal framework that governs the country.

- It was adopted on January 26, 1950, and it came into effect on that date, marking India's transition from a British colonial state to a sovereign, democratic, and republic nation.

1. Dr B R Ambedkar (*Chairman*)
2. N Gopalaswamy Ayyangar
3. Alladi Krishnaswamy Ayyar
4. Dr K M Munshi
5. Syed Mohammad Saadullah
6. N Madhava Rau (He replaced B L Mitter who resigned due to ill-health
7. T T Krishnamachari (He replaced D P Khaitan who died in 1948)

Major Committees

1. Union Powers Committee – Jawaharlal Nehru
2. Union Constitution Committee – Jawaharlal Nehru
3. Provincial Constitution Committee – Sardar Patel
4. Drafting Committee – Dr. B.R. Ambedkar
5. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Sardar Patel. This committee had the following five sub-committees:
    (a) Fundamental Rights Sub-Committee – J.B. Kripalani
    (b) Minorities Sub-Committee – H.C. Mukherjee
    (c) North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – Gopinath Bardoloi
    (d) Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee – A.V. Thakkar
    (e) North-West Frontier Tribal Areas Sub-Committee[8a]
6. Rules of Procedure Committee – Dr. Rajendra Prasad
7. States Committee (Committee for Negotiating with States) – Jawaharlal Nehru
8. Steering Committee – Dr. Rajendra Prasad

Constitution of India

SALIENT FEATURES OF THE CONSTITUTION of INDIA

- The salient features of the Constitution, as it stands today, are as follows:

- Lengthiest Written Constitution
- Drawn From Various Sources
- Blend of Rigidity and Flexibility
- Federal System with Unitary Bias
- Parliamentary Form of Government
- Synthesis of Parliamentary Sovereignty and Judicial Supremacy
- Integrated and Independent Judiciary
- Universal Adult Franchise
- Single Citizenship
- Emergency Provisions
- Three-tier Government

Borrowed Features of the Indian Constitution

Sources	Features Borrowed
Government of India Act, 1935	• Federal Scheme • Office of the Governor • Judiciary • Public Service Commissions • Emergency provisions and administrative details
British Constitution	• Parliamentary form of Government • Rule of law • Legislative procedure • Single Citizenship • Cabinet system
US Constitution	• Fundamental rights • Independent judiciary and judicial review • Impeachment of the President • Removal of Supreme Court and High Court judges • Post of Vice-President
Irish Constitution	• Directive Principles of State Policy • Nomination of Rajya Sabha members • Method of election of the President
Canadian Constitution	• Federation with a strong Centre • Vesting of residuary powers with the Centre • Appointment of state Governors by the Centre • Advisory jurisdiction of the Supreme Court

Australian Constitution	- Concurrent list - Freedom of trade - Commerce and inter-course - Joint sitting of the Upper and Lower House.
Weimar Constitution of Germany	- Suspension of Fundamental rights during Emergency
USSR	- Fundamental duties - Ideal of justice (social, economic and political)
French Constitution	- Republic - The ideals of liberty, equality and fraternity
South African Constitution	- Procedure for the amendment of the Constitution - Election of the members of the Upper House (Rajya Sabha)

- Constitution of India include:

  - **<u>Preamble</u>**: The Preamble of the Indian Constitution outlines the aspirations and objectives of the framers. It emphasizes justice, liberty, equality, and fraternity, among other values, and declares India to be a sovereign, socialist, secular, and democratic republic.

THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [1][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 [2][unity and integrity of the Nation];
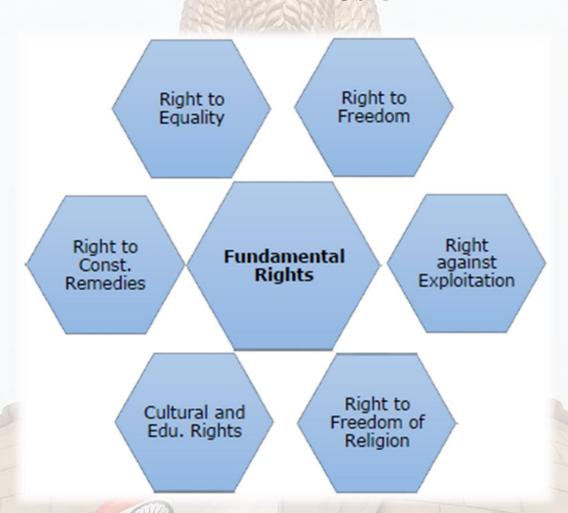
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for "Sovereign Democratic Republic" (w.e.f. 3.1.1977)
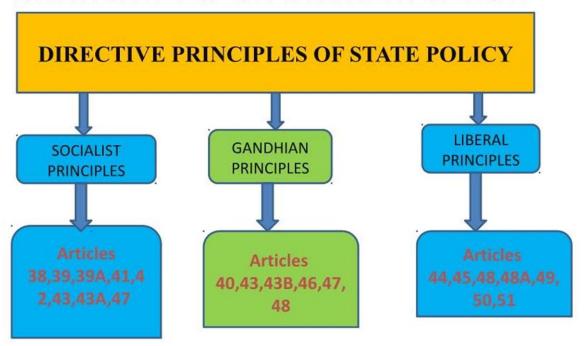2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for "Unity of the Nation" (w.e.f. 3.1.1977)

- **Fundamental Rights**: Part III of the Constitution enshrines the fundamental rights of Indian citizens, including the right to equality, freedom of speech and expression, freedom of religion, and the right to constitutional remedies. These rights are essential for protecting individual liberties and ensuring justice.

- **Directive Principles of State Policy**: Part IV of the Constitution contains Directive Principles of State Policy, which are guidelines for the government to promote the welfare of the people, reduce inequality, and ensure social and economic justice. These principles are not enforceable by courts but are considered fundamental in shaping government policy.

CLASSIFICATION OF DIRECTIVE PRINCIPLES OF STATE POLICY

DIRECTIVE PRINCIPLES OF STATE POLICY

SOCIALIST PRINCIPLES	GANDHIAN PRINCIPLES	LIBERAL PRINCIPLES
Articles 38,39,39A,41,42,43,43A,47	Articles 40,43,43B,46,47,48	Articles 44,45,48,48A,49,50,51

- **Fundamental Duties**: In 1976, the Constitution was amended to include a list of fundamental duties for citizens to uphold the integrity and sovereignty of the nation, among other responsibilities.

Fundamental Duties:

- To abide by the Constitution and respect the ideals and Institutions.
- To respect the National Flag and the National Anthem.
- To realize and follow the essential ideals of secularism, democracy and non-violence.
- To preserve the culture and heritage.
- To protect the Sovereignty, Unity and Integrity of the nation.
- To safeguard the public property.
- To defend the country even at the cost of our life.
- To protect natural resources.
- To avoid Dowry, Gambling, and other Social evils.
- To strive towards excellence in the respective spheres of activities of the individuals.

Territories & States

Emoluments

Affirmations & Oaths

Rajya Sabha Seat Allocation

Scheduled Areas

Other Tribal Areas

Federal List

Official Languages

Land Reforms

Defection (1985) 52nd Amend

Panchayats (1992) 73rd

Municipalities (1992) 74th

Lists of Powers		
Union	State	Concurrent
1. Defence	1. Agriculture	1. Education
2. Atomic Energy	2. Police	2. Transfer of Property other than Agricultural land
3. Foreign Affairs	3. Prison	3. Forests
4. War and Peace	4. Local Government	4. Trade Unions
5. Banking	5. Public Heath	5. Adulteration
6. Railways	6. Land	6. Adoption and Succession
7. Post and Telegraph	7. Liquor	
8. Airways	8. Trade and Commerce	
9. Ports	9. Livestock and Animal Husbandry	
10. Foreign Trade	10. State Public Services	
11. Currency & Coinage		

Federal Republic

- A Federal Republic is a form of government in which the country is both a federation and a republic. This means that the political system combines two key elements:

  - **Federalism**
  - **Republicanism**

- **Federalism**:

  - Federalism is a system of government in which power and authority are divided between a central (national) government and regional (state, provincial, or territorial) governments.

  - Each level of government has its own set of powers and responsibilities, and they coexist within the same country.

  - Typically, the central government deals with issues of national importance, such as defense and foreign affairs, while regional governments handle matters of local or regional concern, like education and healthcare.

  - Federal systems aim to balance centralized authority with regional autonomy.

- **Republicanism**:

  - A republic is a form of government in which the country is considered a public matter, and political power is vested in elected officials who represent the interests of the citizens.

  - In a republic, there is no hereditary monarchy or aristocracy. Instead, leaders are chosen through democratic processes, such as elections, and they are accountable to the people they serve.

  - Republics often have a constitution that outlines the framework for government and protects the rights and freedoms of citizens.

- When you combine federalism and republicanism, you get a Federal Republic. In a Federal Republic, the country's governance is characterized by:

  - A division of powers and responsibilities between the central government and regional entities (states, provinces, etc.). This division is often codified in a constitution.

  - Elected officials at various levels of government who represent the interests of the people.

  - A commitment to democratic principles, such as regular elections, the rule of law, and protection of individual rights.

  - Absence of hereditary monarchy or aristocracy, with leaders typically being elected or appointed through democratic means.

- Examples of Federal Republics include:

  - The United States: The United States is a Federal Republic where power is divided between the federal government and individual states. It has a republican form of government with elected officials, and its Constitution is the supreme law of the land.

  - Germany: Germany is a Federal Republic consisting of 16 federal states (Länder). It has a federal system of government, with a President as the head of state and a Chancellor as the head of government. Germany's Basic Law serves as its constitution.

- Federal Republics are known for their ability to accommodate diversity, promote regional autonomy, and ensure representation through democratic means while maintaining a unified national identity.

Is India a Federal Country or Union of States ?

- India is often described as a "Union of States" rather than a strictly federal country. While India has elements of federalism in its governance structure, it also maintains a strong unitary character, particularly in certain aspects.

- Here are some key characteristics that explain India's status as a "Union of States":

    - **Division of Powers**: India's Constitution divides powers and responsibilities between the central government (often referred to as the Union government) and individual states and union territories. Both levels of government have their respective areas of authority, which are outlined in the Constitution. The Seventh Schedule of the Indian Constitution contains three lists:
        Union List: Subjects on which only the central government can legislate.
        State List: Subjects on which only state governments can legislate.
        Concurrent List: Subjects on which both the central and state governments can legislate. In case of a conflict, the central law prevails.

- **Governors**: Each state has a Governor appointed by the President of India, who represents the central government's authority within the state.

- However, despite these federal characteristics, India also exhibits unitary features:

  - **Residuary Powers**: Any matter not specifically mentioned in the Union List, State List, or Concurrent List falls under the residuary powers of the central government. This grants the central government significant authority.

  - **Emergency Provisions**: The Indian Constitution provides for various emergency provisions, such as President's Rule (when the central government takes control of a state's administration), which can temporarily suspend federal features in times of crisis.

  - **Integrated Judiciary**: India has a unified and integrated judiciary that deals with both central and state matters. The Supreme Court of India is the highest court in the land and has jurisdiction over issues related to both central and state laws.

Rule of Law

- The Rule of Law is a foundational principle in the realm of governance and legal philosophy.

- The Rule of Law means no one is above the law, and individuals are governed by impartial laws rather than the personal rule of a single authority.

- In simpler terms, it means that no one is above the law, and every person's rights and obligations are determined by a set of just and impartial rules.

- The Rule of Law ensures that legal processes and decisions are fair, predictable, and consistent, providing a framework within which individuals can live their lives and interact with others while maintaining their rights and liberties.

- **Core Principles of the Rule of Law**

  - **Proper Notification**: Laws must be adequately communicated to citizens.

  - **Generality of Laws**: Laws should apply uniformly to all citizens.

  - **No Retroactive Laws**: Laws should not apply retrospectively.
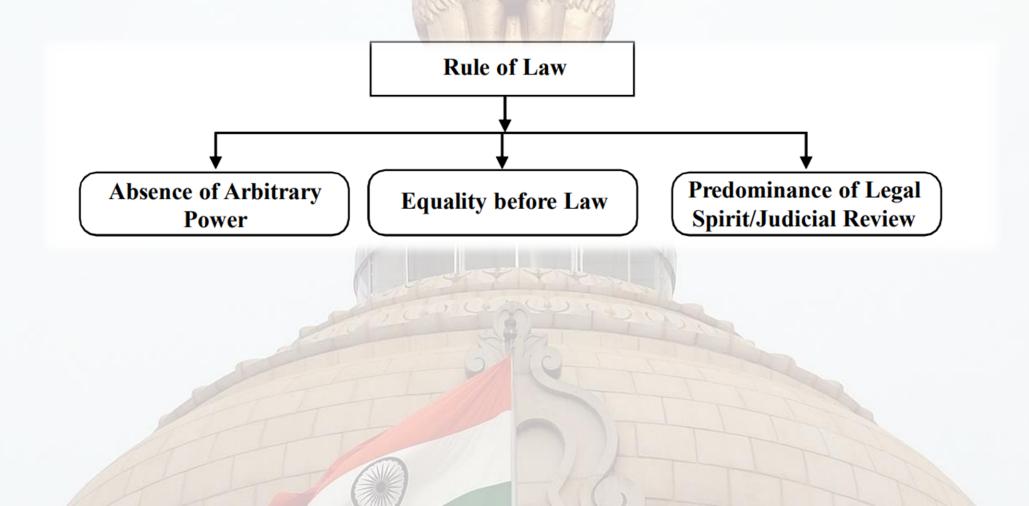
  - **Rule-Based Governance**: Government actions should adhere to legal procedures and principles.

- **Joseph Raz's Principles (1977)**

  - Prospective Laws: Laws should be forward-looking, not retroactive.

  - Stability: Laws should not change too frequently.

  - Clear Rules for Lawmaking: Transparent procedures for making laws.

  - Judicial Independence: Ensuring an independent judiciary.

  - Natural Justice: Upholding the right to a fair hearing.

  - Judicial Review: Courts should review the implementation of principles.

  - Accessibility to Justice: No one should be denied justice.

  - Limiting Discretion: Restricting law enforcement agencies' discretion.

A.V. Dicey on Rule of Law

- As per A.V. Dicey, the Rule of Law is based on three principles depicted in the following figure:

```
                    Rule of Law
                         |
        ┌────────────────┼────────────────┐
        ↓                ↓                 ↓
  Absence of Arbitrary   Equality before Law   Predominance of Legal
        Power                                  Spirit/Judicial Review
```

Absence of Arbitrary Power

Main features

- No person could be punished or made to suffer in body or property except for breach of law.

- The State cannot punish any person except for violation of law.

- Any wide discretionary power or arbitrary power vested in the State violates Rule of Law.

- In the most fundamental sense, this principle attempts to protect the citizens from arbitrary and abusive use of government's power.

- The authorities who are empowered to act must do so in accordance with the law.

- **Equality before the Law**

Main features

- All are equal before the law.

- Every person is liable for breach of law, irrespective of his/her status.

- No special treatment or privileges for government officials.

- Government officials are liable for breach of law, just like any ordinary citizen.

- No separate courts to deal with disputes between government and citizens.

- All disputes are subjected to the jurisdiction of the same courts.

- Courts must be independent of the Executive.

- **Supremacy of Law**

Main features

- All are equal before the law.

- Every person is liable for breach of law, irrespective of his/her status.

- No special treatment or privileges for government officials.

- Government officials are liable for breach of law, just like any ordinary citizen.

- No separate courts to deal with disputes between government and citizens.

- All disputes are subjected to the jurisdiction of the same courts.

- Courts must be independent of the Executive.

Rule of Law and the Constitution of India

- **Principles of Rule of Law in India:**

  - The Rule of Law is deeply embedded in the Indian Constitution.
  - It upholds the absence of arbitrary power, equality before the law, and the supremacy of the law.

- **Absence of Arbitrary Power:**

  - Article 14 of the Indian Constitution ensures the right to equality and safeguards against arbitrary use of government power.
  - The judiciary has affirmed that Article 14 embodies a guarantee against arbitrariness in government actions.

- **Right to Life and Personal Liberty:**

  - Article 21 requires the government to act justly, fairly, and reasonably in matters related to life and liberty.

- **<u>Distribution of Legislative Power:</u>**

  - Articles 245 and the Seventh Schedule of the Constitution define the distribution of legislative power between the Central and State governments.

- **<u>Equality Before Law:</u>**

  - The Preamble of the Constitution aims to secure equality of status and opportunity.
  - Articles 14 to 18 in Part III of the Constitution protect the fundamental right of equality, prohibiting discrimination based on various grounds.

- **<u>Basic Structure Doctrine:</u>**

  - The Supreme Court has held that the Right to Equality is a Basic Structure of the Constitution and cannot be abridged or amended.

- **Supremacy of the Law:**

  - Article 13 provides for judicial review over legislations, ensuring that no law should violate Part III of the Constitution.
  - Article 32 grants the Supreme Court the power to issue orders and grant relief for the violation of Fundamental Rights.
  - Article 226 confers similar jurisdiction on High Courts.

- **Protection of Fundamental Rights:**

  - The Constitution establishes a clear framework for the protection of Fundamental Rights, ensuring that no law or action goes against them.

- **Judicial Review:**

  - The Indian judiciary has the authority to review laws, rules, regulations, executive orders, and customs for their constitutionality.

DIVISION OF POWERS

- This concept has its origins in the Enlightenment era of the 17th and 18th centuries, where great political philosophers like Charles-Louis Montesquieu played a pivotal role in shaping political thought.

- Montesquieu, in his influential work "The Spirit of the Laws" (1748), articulated the idea of Separation of Powers as a means to prevent tyranny and protect individual liberties.

- He advocated for dividing the functions of government into distinct branches: the legislative, responsible for making laws; the executive, responsible for implementing laws; and the judicial, responsible for interpreting and applying laws.

- This groundbreaking idea of separating powers and ensuring they remain independent and balanced had a profound impact on political thinking worldwide. It found its way into the foundation of many modern democracies, including the United States and, of course, India.

Division of Power in the Constitution of India

- When the framers of the Indian Constitution were crafting our nation's guiding document, they drew inspiration from various sources, including the writings of Montesquieu and other political thinkers.

- In our Indian context, the legislative branch is represented by the Parliament, responsible for enacting laws.

- The executive branch includes the President, the Prime Minister, and the Council of Ministers, tasked with implementing these laws and managing the administration.

- Lastly, the judiciary, with the Supreme Court at its apex, is responsible for interpreting the laws and ensuring justice.

- The Indian Constitution meticulously defines the powers, functions, and interrelationships of these three branches, ensuring that they work independently yet harmoniously.

- This adaptation was necessary given the diverse and complex nature of our society and the need to accommodate various cultural, linguistic, and regional diversities.

- One of the cornerstones of the Indian Constitution is the intricate system of checks and balances designed to prevent any one branch of government from becoming too powerful. This system ensures that each branch acts as a check on the others, maintaining a delicate balance.

- Legislative Branch:

  - The legislative branch in India is embodied by the Parliament.

  - The Parliament is responsible for making and amending laws that govern our nation.

  - It consists of two houses: the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Members of the Lok Sabha are directly elected by the people, while the Rajya Sabha represents the states and is indirectly elected.

  - The Parliament not only formulates laws but also debates various issues, represents the interests of the people, and scrutinizes the executive's actions.

- Executive Branch:

  - The executive branch in India comprises the President, the Prime Minister, and the Council of Ministers.

  - The President is the ceremonial head of state, representing the unity and integrity of the nation. While the President's powers are largely symbolic, they play a crucial role in the functioning of government, including the appointment of key officials and signing bills into law.

  - The Prime Minister is the head of government and is usually the leader of the majority party in the Lok Sabha. The Prime Minister plays a central role in formulating policies, administering the government, and representing India on the international stage.

  - The Council of Ministers consists of various ministers responsible for different departments and ministries. They are collectively responsible for implementing laws and policies.

- Judiciary:

  - The judiciary is responsible for interpreting and upholding the laws of the land, ensuring justice and protecting the rights of citizens.

  - At the apex of the Indian judiciary is the Supreme Court, which has the authority to adjudicate disputes, interpret the Constitution, and review the actions of the executive and legislative branches.

  - Below the Supreme Court are the High Courts at the state level and various subordinate courts that handle a wide range of legal matters.

  - The principle of judicial review empowers the judiciary to ensure that the actions of the other branches are in accordance with the Constitution.

Residuary Powers of Legislation

- The Rule of Law is a foundational principle in the realm of governance and legal philosophy.

- At its core, it signifies a society in which the law is supreme, and all individuals, including those in power, are subject to and accountable under the law.

- In simpler terms, it means that no one is above the law, and every person's rights and obligations are determined by a set of just and impartial rules.

- The Rule of Law ensures that legal processes and decisions are fair, predictable, and consistent, providing a framework within which individuals can live their lives and interact with others while maintaining their rights and liberties.

Sovereignty

- **Basis of Modern Political Science**: Sovereignty is considered the foundation of modern political science. It is a fundamental concept that underlies the validity of all laws and international relations.

- **Definition of Sovereignty**: Sovereignty is the supreme authority within a state. It is vested in a person or a body of persons who create and enforce laws. These commands are referred to as laws, and they must be obeyed within the state.

- **Legal Limit to Sovereignty**: Sovereignty has no legal limits, as placing limits on it would imply the existence of a higher lawmaking body, which would, in turn, be sovereign. Therefore, the state is legally sovereign, and its power is virtually unlimited.

- **Internal and External Sovereignty**: There is a distinction between internal sovereignty, which relates to making and enforcing laws within the state, and external sovereignty, which deals with a state's relations with other states. External sovereignty can be seen as the freedom from control by other states.

- **Force and Consent**: Sovereignty can be based on either force or consent or a combination of both. While in despotic states, obedience is often driven by fear (force), in democratic states, consent plays a more significant role. Force may be necessary to compel those who refuse to obey.

- **Evolution of Sovereignty**: The concept of sovereignty has evolved over time. In the 18th and 19th centuries, legal sovereignty sufficed. However, in modern times, the state's authority is based on its ability to resolve conflicts, establish order, and serve the community's interests. Sovereignty now relies more on the will of the people to obey than on coercive power.

- **Liberal Understanding of Sovereignty**: The liberal perspective on sovereignty emphasizes the importance of public consent and the state's ability to address social and economic issues. While coercion may be used when necessary, sovereignty is largely based on the people's will.

- **Marxian View of Sovereignty**: The Marxist perspective views sovereignty as the power of an economically dominant class over society. According to Marxism, the capitalist state's sovereignty should be replaced by the sovereignty of the working class, leading to a classless society.

- **Pluralist Interpretations**: Some contemporary views on sovereignty, such as pluralism, emphasize power distribution among various groups and associations within society. In democratic societies, power is seen as shared among competing elite groups, and it is considered diffused rather than centralized.

Characteristics of Sovereignty

- **Absoluteness:**
  - Sovereignty is absolute, meaning there is no legal power within the state superior to it.
  - There can be no legal limit to the supreme law-making power of the state.
  - While practical limitations may exist, they are not considered legal restrictions, and the absolute nature of the state overcomes them.

- **Universality:**
  - The sovereignty of the state extends over every person and every association of persons within the state.
  - The only apparent exception is in the case of diplomatic representatives, which is an international courtesy and can be revoked by the state.

- **Permanence:**
  - Sovereignty continues as long as the state itself exists.
  - The individuals or institutions exercising sovereignty may change, and the state may undergo reorganization, but sovereignty endures.
  - Sovereignty can only be destroyed if the state itself ceases to exist.

- **<u>Indivisibility:</u>**
  - Sovereignty is indivisible, meaning there can be only one sovereignty in a state.
  - To divide sovereignty is to destroy it, and a divided sovereignty is a contradiction in terms.
  - The exercise of powers may be distributed among various governmental organs in a state, but sovereignty itself remains a unit.

DEVELOPMENT OF THE IDEA OF SOVEREIGNTY

- **Aristotle**: The concept of sovereignty can be traced back to Aristotle, who mentioned the "supreme power" of the state. He laid the early philosophical groundwork for the idea of supreme authority within a political entity.

- **Roman Lawyers and Medieval Writers**: During the Roman and medieval periods, the understanding of sovereignty was somewhat vague and confused. Feudalism dominated this era, and personal allegiance was the basis of governance. The state, in the modern sense, did not exist during this time.

- **Rise of National States**: The emergence of modern sovereign states can be attributed to the weakening of feudal nobles due to factors like the Crusades and internal conflicts. As the power of feudal lords waned, kings grew in importance and power within their territories. This shift marked a transition from a feudal system to the concept of centralized authority within a state.

- **Jean Bodin (16th Century)**: Jean Bodin is considered the first writer to extensively discuss the nature and characteristics of sovereignty. He articulated the idea that the state itself is supreme over all its citizens and is free from external compulsion. This marked a significant development in the modern doctrine of sovereignty.

- **Hobbes and Rousseau**: Philosophers like Thomas Hobbes and Jean-Jacques Rousseau further developed the concept of sovereignty. Hobbes justified the idea of absolute state power, emphasizing the need for strong, centralized authority. Rousseau, while locating sovereignty in the general will of the people, also recognized it as absolute and unlimited.

- **John Austin**: John Austin, a legal theorist, provided an elaborate analysis of the legal theory of sovereignty. He argued that within every state, there must be a determinate body possessing sovereign power, which is indivisible and legally unlimited. According to Austin, the commands of this sovereign body alone create law.

LEGAL AND POLITICAL SOVEREIGNTY

- **Legal Sovereignty**:
  - Represents sovereignty as the supreme law-making power, issuing the highest orders.

  - Is not bound by moral or natural laws; its laws must be obeyed compulsorily.

  - In some cases, legal sovereignty may not reside with the legislature. In federal states, powers are decentralized, and even in countries like the United Kingdom, where parliamentary supremacy traditionally exists, it is bound by public opinion and other considerations.

  - Legal sovereignty, in theory, is absolute and unlimited in its power to make laws.

  - The concept of legal sovereignty is most explicitly articulated in the Austinian theory of sovereignty.

- **<u>Political Sovereignty</u>**:
  - Exists as an unseen, underlying power behind legal sovereignty in every society.

  - Is expressed through public meetings, processions, demonstrations, and other forms of collective action.

  - Has the capacity to challenge and compel the legal sovereign to bow down when the laws of the legal sovereign are considered immoral or unacceptable.

  - Is often associated with the alert and conscious populace, and it can be revolutionary in nature.

  - Has historically been responsible for the overthrow of legal sovereigns, such as Czar Nicholas of Russia or Chiang Kai-Shek of China, in response to despotic regimes.

  - Serves as a check on the legal sovereign, keeping it in check and alert.

DE JURE AND DE FACTO SOVEREIGNTY

- **De Jure Sovereignty**:

  - De jure sovereignty refers to the type of sovereignty that is legally competent to issue the highest commands of the state.

  - It has the legal right to exercise sovereign power and commands obedience from the masses.

  - De jure sovereignty is the legitimate and recognized authority according to the existing legal framework.

- **De Facto Sovereignty**:

  - De facto sovereignty, on the other hand, represents the actual exercise of power and control, even if it is not legally recognized.

  - A de facto sovereign holds power through physical force and control and may not have a legal basis for their authority.

  - De facto sovereigns can emerge through various means, including coups, revolutions, or charismatic leadership.

- **Transition from De Facto to De Jure Sovereignty**:

  - A de facto sovereign often seeks to transition to de jure sovereignty, as actual power allows them to stake a claim to legitimacy.

  - The recognition of de facto sovereignty as de jure sovereignty may occur over time, especially when the de facto sovereign can maintain control and authority.

Concept of Socialism

- **Historical Roots**:
  - Socialism is a socio-economic doctrine with its roots in the 19th century.

  - The term "socialism" was coined by Saint Simon in the early 19th century in the Western world.

  - While attributes associated with socialism, such as social cooperation, uplifting weaker sections of society, and the pursuit of social justice, existed prior to the 19th century, the current understanding of socialism as a comprehensive socio-economic concept evolved during that century.

- **Two Interdependent Meanings**:
  - It denotes values, ethics, and principles such as liberty, equality, fraternity, social justice, classlessness, cooperation, abundance, and peace.

  - At the institutional level, socialism contrasts with the capitalist mode of economy by shifting from private ownership and control of production to public or collective ownership.

  - This shift is based on principles of social justice and equality.

- **<u>Defining Socialism</u>**:
  - Various social science scholars have defined socialism in different ways over time.

  - Narayan (1934) defined socialism as a "system of social reconstruction," involving reorganizing economic and social life through socialization, which includes the reorganization of means of production and promoting collective ownership while abolishing private ownership.

  - Russel (1938) defined socialism as "the advocacy of communal ownership of land and capital," referring to democratic ownership by the state for the common interest.

  - M.K. Gandhi (1951) characterized socialism as a society where "members of society are equal, none low, none high."

- **Key Principles**:
  - Socialism aims to produce goods to fulfill the needs of people, rather than for trade and profit, which is a characteristic of capitalism.

  - It involves a transition from competition to cooperation, eliminating disparities in society and providing equal opportunities for all.

GROWTH OF INDIA'S SOCIALISM

- **Historical Development**:
  - The socialist approach in India developed during the freedom movement, much like in other Asian countries.

  - Indian socialism took shape during the first and second world wars, within the specific social and political context of those times.

  - The growth of socialism in India faced challenges, including resentment toward the British colonial rulers and shifting approaches of the International Communist Party toward India's freedom movement.

- **Influence of Karl Marx**:
  - The radical ideas of Karl Marx attracted Indian nationalists who sought to expose the economic hardships brought about by British colonialism and wealth extraction.

  - They aimed to highlight the shortcomings of British rule and the economic exploitation of the Indian population.

- **Growth During the Gandhian Era**:
  - Socialism gained significant influence during the Gandhian era, particularly during the Satyagraha movement led by Mahatma Gandhi.

  - Other influential leaders in India, such as Swami Dayanand and Bankim Chandra, campaigned for equality and social justice.

  - The Gandhian model of socialism was rooted in ethical and reformist principles and emphasized non-violence.

  - Gandhi argued that Western democracy and communism lacked true freedom and were objectionable to Indians.

- **Contributions of Nationalist Thinkers**:
  - Nationalist thinkers played a crucial role in highlighting the economic difficulties in India.

  - While socialism often dealt with economic equality, other leaders, like Periyar and Bhagat Singh, focused on promoting social equality.

  - The economic challenges in India contributed to the growth of socialist ideology in the country.

Key Principles and Goals of Socialist Ideology

- **Emphasis on Society**:
  - Socialism places a strong emphasis on society rather than on individual interests.

  - The focus is on promoting the collective interests of society as a whole, and cooperation among its members.

  - Goods are produced based on the needs of society, with individuals free to contribute to production according to their abilities.

  - Socialism provides equal opportunities to all its members, ensuring that production aligns with the collective interests.

- **Elimination of Capitalism**:
  - Capitalism is seen as an obstacle to the ideals of social justice, as it often leads to subordination, class conflicts, unequal distribution, and other hindrances.

  - Socialism rejects the capitalist system and its patterns of ownership, emphasizing social justice, equality, freedom, collective interests, individual freedom, and cooperation.

- It aims to abolish capitalist practices such as profit-driven motives and the domination of the laboring class by the wealthy.

- **Promotion of Equality**:
  - Socialism seeks to eliminate various forms of inequality prevalent in capitalism, including income, wealth, rights, and profit inequalities.

  - In socialism, there is no competition or subordination, and the distinction between rich and poor is eliminated.

  - The relationship between the means of production and labor power is based on collective and common economic interests, leading to mutual dependence.

  - The system of production is controlled and regulated collectively, serving the interests of all members, making equality a fundamental aspect of socialism.

- **Abolition of Private Property Ownership**:
  - Private property ownership has been a significant issue in capitalist societies, leading to privilege based on social class.

  - Socialism abolishes private property ownership by transferring ownership of the means of production and distribution from capitalist ownership to social ownership.

  - This shift results in a fundamental change in ownership, making all members, regardless of their class, owners of property.

  - This transition promotes prosperity and creates an egalitarian mode of production within socialist society.

Concept of Democracy

- **Historical Origins**:
  - Democracy has ancient roots, dating back over 2500 years to its first appearance in Athens during the 5th century BC.
  - The term "democracy" is of Greek origin, derived from "demokratia," which combines "demos" (people) and "kratos" (power), reflecting the idea of rule by the people.

- **Contested Concept**:
  - Democracy is a contested concept in political science. While there is a general agreement on its meaning as rule by the people, the implementation of democracy can vary, leading to different types of democracies.

  - Questions and debates surround the extent of people's participation, the balance between liberty and equality, the protection of minority rights, and the prevention of the tyranny of the majority.

- **Balancing Liberty and Equality**:
  - A central challenge faced by democracies is how to strike a balance between liberty and equality.

  - The English liberal tradition places a stronger emphasis on individual liberty, while the French tradition prioritizes equality.

  - Negative liberty focuses on individual rights and limits on the state, while positive liberty calls for state intervention to achieve social and economic equality.

- **Advantages of Democracy**:
  - Democracy offers several advantages over other forms of government, such as preventing the rule of oppressors, fostering human development, protecting individual rights and freedoms, and reducing the likelihood of international conflicts between democratic nations.

  - J.S. Mill identified three advantages of democratic decision-making: it compels decision-makers to consider the interests, opinions, and rights of the majority; it brings diverse views into the decision-making process, allowing the selection of the best ideas; and it contributes to the character building of citizens by promoting qualities like rationality, autonomy, and independent thinking.

- **Inclusivity and Progressive Evolution**:
  - The concept of democracy has evolved over time to become more inclusive and equal.

  - Early democracies, such as the Greek model, were exclusive, excluding women, slaves, and immigrants.

  - Modern democracies, including France, Britain, and the United States, gradually expanded suffrage to previously excluded groups, such as women and African Americans.

  - India adopted universal adult franchise from its inception in 1950, while Saudi Arabia allowed women to vote more recently in 2015.

- **Waves of Democratization**:

  - Samuel P. Huntington's analysis of democratization identifies three waves and reverse waves.

  - The first wave occurred between 1828 and 1926, with 33 countries adopting democratic governments, influenced by events like the French and American Revolutions.

  - The second wave, between 1943 and 1962, saw the establishment of up to 52 democracies as a result of decolonization.

  - Reverse waves followed these waves, with a reduction in the number of democracies, influenced by factors like the Great Depression and the rise of authoritarian ideologies.

  - The third wave of democratization began in 1974, with 65 democratic countries as of 1989, associated with decolonization and the end of the Cold War.

  - Recent events, such as the "Arab Spring" in 2011, are considered the fourth wave of democratization, marking the fall of authoritarian governments in West Asia.

Types of Democracy

- **Direct Democracy**:

  - **Citizen Participation**: Direct democracy is characterized by direct and unmediated citizen participation in the process of government rule. This means that all adult citizens have the opportunity to participate in decision-making.

  - **No Government-Governed Distinction**: In direct democracy, the distinction between the government and the governed, as well as the state and civil society, is blurred. It implies a strong and active involvement of the entire citizenry in the decision-making process.

  - **Historical Examples**: Ancient Greece's city-state model is often cited as an example of direct democracy. In this model, citizens were physically present in assemblies to ensure their active participation.

- **Contemporary Examples**: In modern times, Switzerland's cantons are cited as examples of direct democracy. These cantons utilize methods like initiatives, recalls, and plebiscites to involve citizens in policy-making.

    - **Initiative**: Citizens can propose legislation to be discussed by the legislature.
    - **Recall**: Citizens can remove policy makers if they are dissatisfied with their performance.
    - **Plebiscite**: Important questions are put before citizens for their approval or disapproval.

- **Benefits**: Direct democracy offers a high level of legitimacy since people participate directly in decision-making. It also leads to a well-informed citizenry actively involved in the governance process.

- **Challenges**: Direct democracy is more feasible in smaller units like city-states. It becomes challenging in large modern nation-states due to differences in size, geography, and population.

- **Representative Democracy**:

  - **Limited and Indirect**: Representative democracy is characterized by indirect participation. Citizens do not directly exercise power; instead, they do so through elected representatives. Their direct involvement is typically limited to periodic voting.

  - **Development**: Representative democracy first emerged in northern Europe in the 18th century as a solution to the challenges of direct democracy in larger nation-states.

  - **Types**: There are two main types of representative democracies around the world:

    - **Presidential Democracy**: In this system, citizens elect both a president and a legislature separately. The president and the legislature often have distinct sources of authority.
    - **Parliamentary Democracy**: In a parliamentary system, citizens elect members of the legislature. The executive branch, often led by a prime minister, is drawn from the majority party in the legislature.

  - **Representation Levels**: While parliamentary democracies are more representative in terms of citizen participation, they can also be relatively less stable compared to presidential democracies.

Concept of Secularism

- **Central Issue - Religion**: Secularism's central concern is religion. It aims to ensure that the dominance of one religious community does not lead to discrimination or persecution of religious minorities.

- **Meanings of Secularism**:

  - *Relationship with Religion, State, and Institutions*: Secularism's meaning is influenced by its relationship with religion, the state, institutions, faith, democratic values, and ethical values.

  - *Applicability in India*: There are debates on the applicability of secularism in India, considering its diverse religious landscape.

  - *Equal Respect to All Religions (Sarva Dharma Sambhav)*: Another perspective emphasizes equal respect for all religions.

- **Success Factors According to Rajiv Bhargav**:

  - **Democracy and State Independence**: Success of secularism depends on democracy and the state's independence from societal pressures.

  - **Pacification of Politics**: Democracy relies on peaceful competition without violence.

  - **Values Linked with Democracy**: Secularism is associated with values like democracy, equal citizenship, truth, compassion, equality, freedom, courage, and responsibility.

- **Ethical Codes in a Secular Society**:

  - People from different faiths and atheists follow ethical codes.
  - Secular ideals include truth, compassion, equality, freedom, courage, and responsibility.
  - Truth is distinguished from belief, and there is no single custodian of truth.

- **DE Smith's Model of a Secular State**:
  - **Three Subjects for Identifying a Secular State**:
    - Exclusion of the state in the relationship between the individual and religion (religious liberty).
    - Relations between the individual and the state where religion is excluded (individual as citizen).
    - State neutrality.

- **Challenges in India's Secular State**:
  - Challenges include caste and community loyalties that could lead to communal rivalry and conflict.
  - Criticisms involve subsidies to religious schools, promotion of Hinduism, and compromises on secular credentials.

- **Akil Bilgrami's Perspective:**

  - Secularism as Political Doctrine: Secularism is a political doctrine, not merely state neutrality.
  - Emergence in Historical Contexts: Secularism emerges where there is a threat of majoritarianism, and it may not be limited to fully modernist contexts.
  - Different from Secular and Secularisation: Secularism is distinct from being secular or the process of secularisation. It is a political stance.
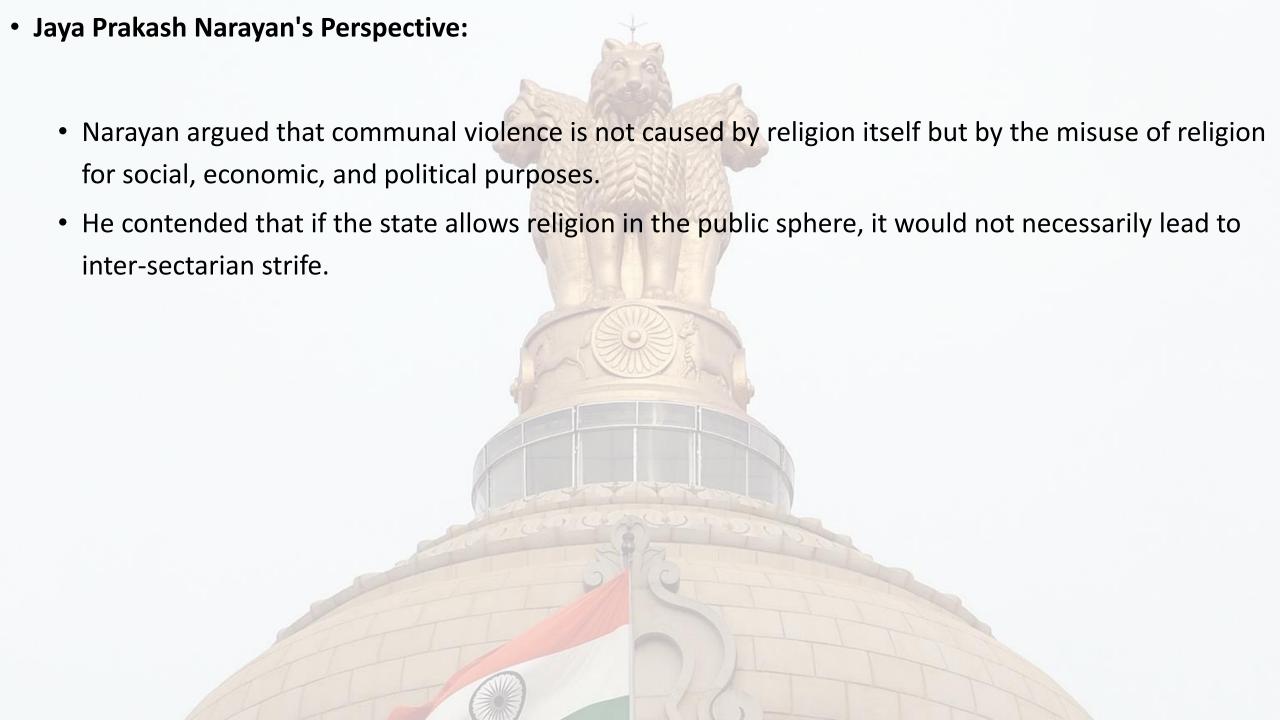
Secularism in Indian Constitution:

- **Secularism in the Constitution:**

  - The term "secularism" was not initially included in the Indian Constitution when it commenced in 1951.

  - The Constitution, however, implicitly reflected secularism as a cardinal principle due to India being established as a democracy.

  - Secularism was later incorporated into the Preamble through the 42nd Constitutional Amendment in 1976.

  - The Supreme Court, in the Bhommai judgment, affirmed that secularism is a basic feature of the Constitution.

- **Constitutional Provisions Related to Religious Minorities:**

  - Articles 25-30 of the Constitution, protecting the rights of religious minorities, are considered to signify values of secularism.

  - These provisions emerged from debates in the Constituent Assembly.

- **Debates in the Constituent Assembly (October 17, 1949):**
  - There were discussions on whether the word "secularism" should be included in the Constitution.

  - Questions about the type of secular state India needed to become were raised.

  - The issue of whether separation of state from religion testified to secularism was debated.

  - The Constituent Assembly decided not to include the word "secular" in the Preamble but agreed to establish India as a secular state.

- **Alternative Arguments on Secularism in the Constituent Assembly:**
  - No Concern Theory of Secularism: Religion should not be a concern of the state, and there should be a separation between religion as a private affair and the state as a public affair.

  - Opposite Separation Argument: Suggested that religion was a system of absolute truth, and its association with the state would demean religion. Majority whims should not influence a democratic state.

  - Equal Respect Theory of Secularism: Advocated by K.M. Munshi, this theory emphasized equal respect for all religions while maintaining a distance from them. Munshi argued for evolving an "Indian Secularism" that respects all religions.

- **Jaya Prakash Narayan's Perspective:**

  - Narayan argued that communal violence is not caused by religion itself but by the misuse of religion for social, economic, and political purposes.

  - He contended that if the state allows religion in the public sphere, it would not necessarily lead to inter-sectarian strife.

UNIT - II

Concept of Justice

- **Multi-Dimensional Character of Justice:**

  - Justice is multi-dimensional, and its interpretation changes with time.

  - Various perspectives include egalitarianism, libertarianism, divine views, hedonism, and harmonizing elements to achieve balance.

  - It involves individual rights and the social ordering of society, encompassing legal and moral dimensions.

- **Justice and Law:**

  - Roman lawyers integrated the ideas of natural justice with positive state law.

  - Both law and justice aim to sustain social order.

  - John Austin emphasizes that the law functions as an instrument of justice and as a means to suppress mischief.

- **Legal and Moral Aspects of Justice:**

  - The administration of justice is criticized legally if it fails to meet fairness standards set by legal procedures.
  - Morally, a law can be considered unjust if it doesn't align with moral ideas of justice, which goes beyond mere legality.
  - Justice is portrayed as blindfolded to symbolize impartiality, emphasizing no discrimination between extremes.

- **Social Harm and State Intervention:**

  - While law typically does not interfere in private instances of discrimination, state intervention may be justified if social harm is caused.
  - Dr. Ambedkar, for instance, advocated against separate facilities for Scheduled Castes, emphasizing the importance of equal rights and opportunities.

- **Justice and Discrimination:**

  - Plato and Aristotle propose "proportionate equality" and "righteousness" as essential to justice.

  - Aristotle suggests that injustice occurs when equals are treated unequally, implying that justice may require discrimination based on relevant differences.

  - Plato's theory involves functional specialization, where individuals and society benefit when people fill roles suited to their abilities.

  - Discrimination may be justified if it serves a functional purpose, but the state may intervene if it causes social harm, as seen in instances like untouchability.

Distributive justice

- **Aristotle's Influence on Distributive Justice:**

  - Aristotle's distinction between distributive and corrective justice forms the foundation of the doctrine of distributive justice.

  - Distributive justice involves the equal distribution of benefits among equals.

- **Marxist Perspective on Distributive Justice:**

  - Marx proposes the principle for distributive justice in a socialist society: "from each according to his ability, to each according to his work."

  - In a post-revolutionary socialist society, Marx envisions a system where individuals contribute according to their abilities and receive benefits based on their work.

- **J.W. Chapmen's Contribution:**

  - J.W. Chapmen integrates the idea of justice with economic principles such as the "economic rationality of man" and "consumer's sovereignty."

  - He emphasizes the distribution of benefits to maximize consumer sovereignty, while also stating that a system is unjust if the well-being of a few comes at the expense of many.

- **Distributive Justice and Economic Justice:**
  - Distributive justice is closely tied to economic justice, demanding a reshaping of the national economy to ensure benefits for the common man.

  - Economic justice involves providing employment, food, shelter, and clothing to every able-bodied citizen.

  - Liberals advocate for economic justice through state-provided welfare services, progressive taxation, and social security measures.

- **Marxist View of Justice and Economics:**
  - Marx contends that positive law is determined by the economic interests of the ruling class, which controls the means of production.

  - In a society where the working class controls the means of production, laws would reflect the interests of the working class.

  - Marx envisions a future stateless society where justice is not economically rooted.

- **Modern Liberal Perspectives on Redistributive Justice:**

  - Modern liberals, including J.W. Chapmen, John Rawls, and Arthur Okun, embrace redistributive justice.

  - Redistributive justice implies state intervention in the economy to promote justice and freedom for all.

  - This perspective contrasts with economic laissez-faire and emphasizes the role of the state in addressing economic inequalities.

Social Justice

- **Balancing Individual Rights and Community Interests:**
  - Social justice seeks to reconcile individual rights with the interests of the community.
  - In the context of social justice, community interest is considered paramount, and in cases of conflict, it is expected to prevail over individual concerns.
  - The concept of social justice has evolved with the decline of laissez-faire, emphasizing that individual rights should be reasonably restricted for the greater good of the community.

- **Components of Community Interest:**
  - Community interest, within the framework of social justice, extends beyond political matters to include social aspects (preventing discrimination) and economic dimensions (ensuring a fair distribution of income and wealth).
  - Social justice requires efforts to protect minority political rights, eliminate practices like untouchability, and address issues such as poverty.

- **Role of the State in Social Justice:**
  - In less developed countries, the idea of social justice mandates that the state actively work towards improving the conditions of marginalized and weaker sections of society.
  - Social justice, in this context, implies a responsibility for the state to undertake measures that uplift disadvantaged communities.

- **Reforms and Social Change:**
  - Social justice is closely associated with the notion of reformative justice, seeking to revise the social order for greater equity.
  - It emphasizes the need for changes in social structures to align with contemporary ideas of fairness.
  - The historical evolution of justice reflects shifts in societal expectations, with social justice demanding adaptations to ensure a more equitable society.

- **Evolution of State Responsibilities:**
  - Social justice has influenced the evolution of state responsibilities. For example, a century ago, charity was expected to address issues like unemployment.
  - In contemporary times, the concept of social justice has led to the recognition of the state's duty to take care of the unemployed and provide employment opportunities.

- **Dean Roscoe Pound's Illustration:**
  - Dean Roscoe Pound provides a six-fold illustration of social interest and outlines eight jural postulates to ensure social justice.
  - The idea of social justice, as presented by Pound, aims to promote the welfare of people by establishing a just social order.

Procedural Justice

- **Arbitrariness and Rule of Law:**
  - Procedural justice seeks to eliminate arbitrariness in human actions by emphasizing adherence to established rules and procedures.
  - The rule of law is a fundamental aspect of procedural justice, ensuring that individuals are treated fairly and consistently based on established norms.
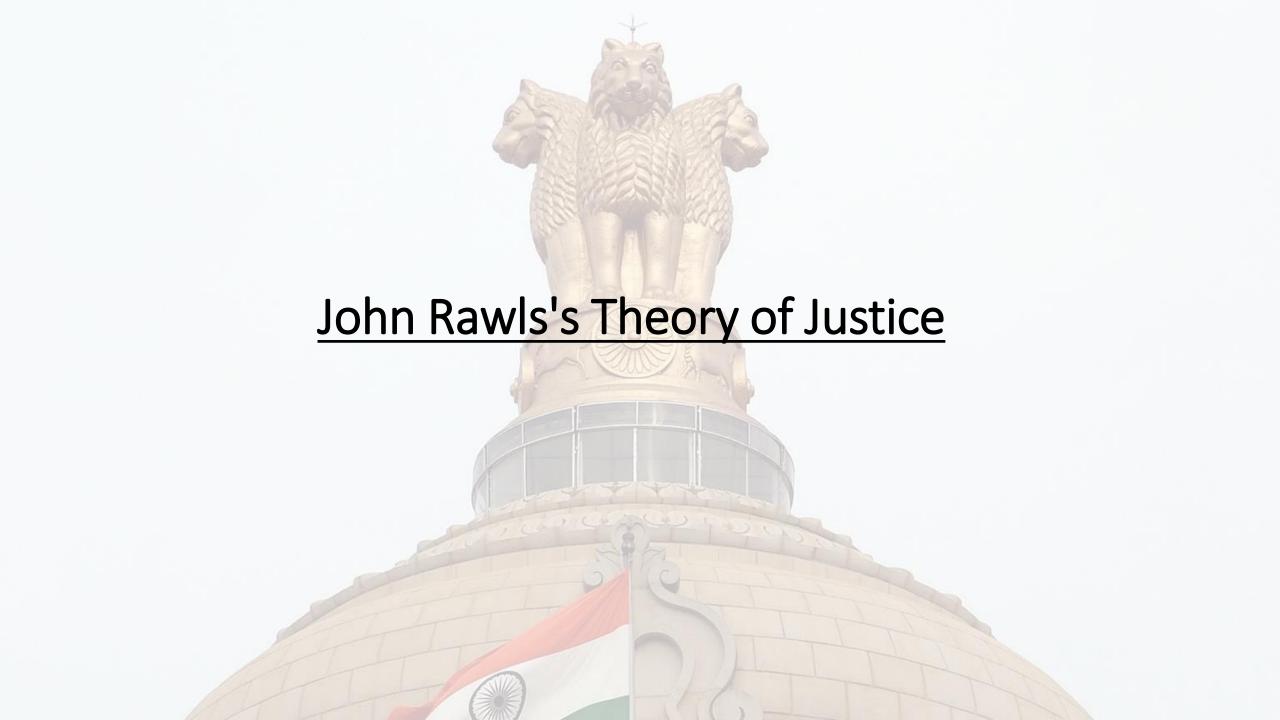
- **Individuals and Not Collectivities:**
  - Procedural justice primarily deals with individuals rather than entire collectivities or groups.
  - Unjust actions, according to procedural justice, include instances where individuals deviate from rules and procedures, such as jumping the queue or providing unfair advantages in competition.

- **Critique of Wealth Redistribution:**
  - Procedural theorists, like Hayek, argue against the imposition of criteria for the redistribution of wealth, expressing concerns about the potential consequences, such as leading to totalitarianism and sacrificing individual liberty.
  - They contend that constant state intervention to maintain a specific wealth distribution pattern infringes on individual freedom.

- **Concerns and Criticisms:**

  - Critics of procedural justice argue that simply following rules may not guarantee a just outcome, as the rules themselves may be biased in favor of certain groups.

  - The notion of free competition, as advocated by procedural theorists, may not always translate into fair competition, especially if the rules are inherently skewed.

  - Economic power imbalances can render a supposedly free market relationship coercive for individuals who lack such power, making the liberty of a free market meaningless for them.

John Rawls's Theory of Justice

- **Contractarian Tradition:**
  - Rawls's approach is rooted in the contractarian tradition of social philosophy, where moral principles are seen as agreements among individuals.
  - Unlike some contractarian views, Rawls insists that the conclusions of moral reasoning should be compared against intuitive moral notions.

- **Veil of Ignorance:**
  - Rawls places individuals behind a "veil of ignorance" in a hypothetical original position, where they lack knowledge of their personal characteristics, interests, and societal conflicts.
  - In this position, individuals possess a "sense of justice" and make decisions without knowing their specific situation.

- **Two Principles of Justice:**
  - Rawls argues that individuals in the original position would agree to two principles of justice in a lexical order.
  - The first is the equality principle, ensuring each person has an equal right to the most extensive liberty compatible with similar liberties for others.
  - The second is the difference principle, stating that inequalities are acceptable only if they benefit the least advantaged in society.

- **Constitutional Democracy and Economic Regulation:**
  - Rawls's concept of justice involves a "constitutional democracy," characterized by a government of laws that is restrained, responsible, and accountable.

  - He also advocates for the regulation of the free market in a way that ensures competition, full employment, wide distribution of property and wealth, and the maintenance of a social minimum.

- **Critique and Counterarguments:**
  - Critics, such as Mare F. Plattner, argue against Rawls's view. Plattner questions the consistency of Rawls's stance on equality and efficiency.

  - Plattner also argues that Rawls's theory undermines the moral foundations of private property by treating all produce as a common asset, potentially threatening the principles of liberal society.

Concept of Liberty

- **Historical Context:**
  - The idea of liberty emerged in modern Europe, emphasizing the rational individual capable of self-determination.
  - Liberty was seen as the absence of social, political, and economic constraints, allowing individuals to develop their capacities.

- **Individual Autonomy and Social Relationships:**
  - Liberty was grounded in the belief that individuals, as rational beings, could make reasoned decisions and should be free from various constraints.
  - The recognition of the autonomy of individuals coexisted with the need for a system of restraints and regulations for the common good.

- **Negative Notion of Liberty:**
  - Liberty as the absence of external constraints is described as "negative liberty."
  - This perspective sees law as a potential obstacle to freedom, and philosophers like Hobbes and Locke discussed the need to limit the law to protect individual liberty.

- **Freedom of Choice:**
  - Another aspect of negative liberty is the idea of "freedom of choice," as advocated by figures like Milton Friedman.
  - This perspective emphasizes the freedom of individuals to make voluntary choices in the marketplace.

- **Positive Notion of Liberty:**
  - Some critics argue for a positive notion of liberty, which goes beyond the absence of external constraints.
  - Positive liberty involves the existence of conditions that enable or facilitate individual freedom, such as economic opportunities and social legislation.

- **Distinction Between Freedom To and Freedom Of:**
  - The distinction between "freedom to do" something (absence of restraints) and "freedom of doing" (having the capacity to do something) is significant.
  - Positive liberty involves ensuring the conditions that make liberty worthwhile, not just removing external constraints.

- **Criticisms of Negative Liberty:**
  - Critics, including modern liberals, social democrats, and socialists, argue that negative liberty doesn't address issues of poverty, unemployment, and social inequalities.
  - Negative liberty is associated with laissez-faire economics and a minimal state, but its neutrality allows compatibility with various political perspectives.

- **Positive Liberty and Welfare State:**
  - Positive liberty has influenced the development of the welfare state, emphasizing freedom along with equality.
  - Thinkers like T.H. Green embraced positive liberty, defining freedom as the ability of people "to make the most and best of themselves."

- **Mill's Notion of Liberty:**
  - John Stuart Mill appears to endorse a negative conception of freedom, emphasizing individual control over the body and mind.
  - However, Mill's concept of "individuality" suggests a connection to a positive notion of liberty, focusing on the power to act and opportunities for individuals.

Marxist Concept of Freedom

- **Individual and Society in Marxist Perspective:**
  - Marxists reject the liberal notion that individuals exist in autonomous spaces with the freedom to make choices.
  - Individuals, according to Marxists, are bound together in mutual dependence and are socially embedded.

- **Rich Individuality and Social Embeddedness:**
  - Marxist freedom emphasizes the development of "rich individuality," highlighting the social embeddedness of individuals.
  - Creative excellence and the development of capacities are seen as achievable only in a society fostering the development of all its members.

- **Critique of Capitalist Society:**

  - Marxists argue that in capitalist societies, individuals are separated by self-interest and appear free while being bound by structures of exploitation.
  - Capitalism hinders the development of creative individuality and genuine freedom.

- **Engels on Freedom as a Transition:**
  - Friedrich Engels, in "Anti-Duhring," discusses freedom as a transition from necessity to freedom.
  - The realm of necessity involves subjection to another's will, and to achieve freedom, individuals must understand and change the forces of production.

- **Scientific Socialism and Freedom:**
  - Engels suggests that scientific socialism is necessary for humanity to move from the realm of necessity to freedom.
  - In a communist society without class exploitation, true freedom can be achieved.

- **Marx on Alienation and Dehumanization:**
  - Karl Marx, in his "Economic and Philosophic Manuscripts of 1844," critiques capitalist society as dehumanizing and alienating.
  - Capitalism alienates individuals from their true selves and the creative influences of society.

- **Transformation for Freedom:**
  - Marx argues that freedom can be restored by transforming the conditions causing alienation.
  - In a communist society with social ownership of the means of production and cooperative work, true freedom is achievable.

- **Positive Sense of Freedom:**
  - Marx's concept of freedom is positive, denoting self-fulfillment and the realization of one's true nature.
  - True freedom, for Marx, involves the development of freedom for its own sake.

- **Alienation and Unalienated Labour:**
  - Marx's notion of freedom is linked to the experience of unalienated labor, where individuals are not separated from their true nature.
  - Capitalist workers suffer from alienation, being separated from the product and process of labor, fellow human beings, and their true selves.

- **Personal Fulfillment and Unalienated Labour:**
  - Freedom, in Marx's view, is connected to personal fulfillment achievable through unalienated labor.
  - Unalienated labor, which brings about personal and social fulfillment, contrasts with the dehumanizing nature of capitalist labor.

Concept of Equality and Fraternity

- The concept of fraternity and equality, as enshrined in the Indian Constitution, reflects the influence of Western humanism and principles of social justice.

- Here are key points regarding the framing of the Indian Constitution, the influence of humanism, and the contestation between universal humanism and religious values:

- **Roots in Western Humanism:**
    - The framers of the Indian Constitution were influenced by Renaissance ideas of universal humanism.
    - Humanism, rooted in rational and scientific thinking, advocates for personal liberty, participatory democracy, and a universal faith in human dignity and rights.

- **Compassion for All Humans:**
    - Humanism emphasizes compassion for all humans and rejects discriminatory practices.
    - It stands against social evolution theories that view those unable to succeed as inferior.

- **Ambedkar's Vision:**
  - Dr. B.R. Ambedkar, a key architect of the Indian Constitution, envisioned a society based on equality, fraternity, and secularism.
  - Ambedkar, a Dalit who faced caste-based discrimination, drew inspiration from Western humanism and principles of social justice.

- **Principles of the Indian Constitution:**
  - The Indian Constitution emphasizes equality, fraternity, and secularism to sustain a plural society with justice and harmony.
  - It does not discriminate based on religion, faith, or cultural traits, promoting the idea that all individuals are equal before the law.

- **Caste Discrimination and Religion:**
  - Ambedkar's vision challenged the caste-based discriminations sanctioned by Hinduism.
  - While Hinduism, in its philosophical version, may not support discrimination, social practices often perpetuate inequalities.

- **Contestation Between Values:**
  - The contestation between universal humanism and religious values is rooted more in social discriminations disguised as religious practices.
  - Variations within religions, interpretations of plurality, and historical perceptions contribute to this contestation.

- **The Concept of Individual:**
  - The incorporation of the 'individual' as the basic unit in the Constitution reflects Western philosophical influences.
  - Viewing individuals as standalone units enables the possibility of equality irrespective of gender, caste, race, or class.

- **Humanism Definition:**
  - Humanism, as defined by the American Humanist Association, is a rational philosophy informed by science, inspired by art, and motivated by compassion.
  - It visualizes each individual as equal and upholds human dignity.

- **Mahatma Gandhi's Emphasis on Dignity:**
  - Mahatma Gandhi, while rooted in Indian culture, emphasized human dignity and worked to restore dignity to marginalized communities.

- **Diversity of Paths in Hinduism:**
  - Hinduism, being non-doctrinal, has various paths, including Bhakti and Tantric, that reject human inequality.
  - The Bhakti path, denouncing inequalities, emphasizes equality before the supreme power.

- **Indigenous Roots of Humanist Ideas:**
  - Liberal and humanist ideas are not exclusive to the West; indigenous cults in India, including Sufi traditions, had humanist roots.
  - Philosophies within Hinduism, such as Bhakti and Tantric paths, also reject human inequality.

The framing of the Indian Constitution reflects a synthesis of Western humanist principles and indigenous roots, challenging discriminatory practices and promoting equality and fraternity.

UNIT - III

Fundamental Duties

- The concept of Fundamental Duties reflects a moral and ethical commitment expected from citizens towards society and the nation. It signifies that individual rights are intertwined with corresponding responsibilities.

- The inclusion of Fundamental Duties in constitutions, including that of India, aims to foster a sense of civic duty and social responsibility. This introduction sheds light on the historical context and the interplay between Fundamental Rights and Duties.

- **Historical Perspective:**
    - The idea of duties has ancient roots, with philosophers like Cicero discussing duties based on wisdom, justice, courage, and temperance.
    - The concept gained constitutional significance in various countries, including the Soviet Union, People's Republic of China, India, and several others.

- **Interrelation with Fundamental Rights:**
  - The understanding is that Fundamental Rights and Fundamental Duties are interrelated and mutually reinforcing.
  - Proper performance of duties ensures the safeguarding of basic rights for all citizens.
  - The reciprocal nature implies that individuals in a society cannot enjoy their rights fully unless they fulfill their corresponding duties.

- **Moral Position and Social Contract:**
  - Fulfilling duties puts individuals in a moral position to claim their basic rights.
  - This concept aligns with the social contract theory, emphasizing the mutual obligations and responsibilities that citizens have towards each other and the state.

- **International Examples:**
  - Various countries, such as the erstwhile Soviet Union, People's Republic of China, India, and others, have incorporated Fundamental Duties in their constitutions.
  - The USSR holds the distinction of being the first country globally to adopt Fundamental Duties in its constitutional framework.

- **Role in Societal Harmony**:
    - Fundamental Duties serve as a moral compass for citizens, guiding their actions in a manner that contributes to societal well-being and harmony.
    - They instill a sense of citizenship beyond individual interests, fostering a collective responsibility for the nation's welfare.

- **Harmonizing Rights and Duties**:
    - The inclusion of Fundamental Duties harmonizes the exercise of individual rights with societal needs.
    - It emphasizes that the enjoyment of rights comes with a concomitant responsibility to contribute positively to the larger community.

In summary, Fundamental Duties encapsulate the moral and ethical obligations citizens have towards their nation and fellow citizens. This inclusion in constitutional frameworks signifies a commitment to fostering a responsible and engaged citizenry, essential for the overall progress and well-being of the society.

Entry of Fundamental Duties in the Constitution

- The incorporation of Fundamental Duties into the Indian Constitution was a transformative process that evolved through constitutional amendments.

- Initially, Article 33 provided for some fundamental duties applicable to the armed forces and police.

- However, the comprehensive inclusion of Fundamental Duties occurred through constitutional amendments, primarily the 42nd and 86th Constitutional Amendments.

- **Pre-Amendment Scenario:**
  - Before amendments, only Article 33 specified certain Fundamental Duties applicable to the armed forces and police.
  - The idea of comprehensive Fundamental Duties for all citizens was absent from the original constitutional framework.

- **42nd Constitutional Amendment (1976):**
  - Enacted during the Emergency period (1975-1977), the 42nd Amendment added a new section to the Article on Fundamental Duties (Article 51A).
  - It mandated that all citizens, not just those in the armed forces and police, perform specific Fundamental Duties.
  - Passed during a period of political turbulence, this amendment aimed to emphasize citizens' responsibilities during emergency rule.

- **86th Constitutional Amendment (2002):**
  - The 86th Amendment reinforced the concept of Fundamental Duties by making it obligatory for parents to provide education to their children aged 6-14.
  - This amendment also recognized the education of children as a Fundamental Right, aligning it with the importance of education in nation-building.

- **List of Fundamental Duties (Post-Amendments):**
  - After the 42nd and 86th Constitutional Amendments, Article 51A outlined 11 Fundamental Duties for citizens of India.
  - These duties encompass aspects such as upholding the constitution, cherishing noble ideals, protecting national sovereignty, promoting harmony, preserving the environment, and striving towards excellence.

- **Salient Features of Fundamental Duties:**
  - Fundamental Duties are both civic and moral, emphasizing Indian cultural values.
  - They are applicable only to Indian citizens and not enforceable on foreigners.
  - Clear distinctions exist between Fundamental Rights and Fundamental Duties.
  - Non-justiciable and non-enforceable, Fundamental Duties are considered voluntary obligations.

- **Swaran Singh Committee Recommendations:**
  - The Swaran Singh Committee, formed in 1976, played a significant role in recommending the inclusion of Fundamental Duties.
  - The committee suggested eight duties, including respecting the constitution, upholding national sovereignty, abjuring communalism, rendering assistance to the state, and paying taxes.

- **Government's Response:**
  - The recommendations of the Swaran Singh Committee were not entirely accepted by the then Congress government led by Prime Minister Indira Gandhi.
  - The 42nd Amendment incorporated some of the committee's suggestions, marking a pivotal moment in the constitutional history of India.

In conclusion, the entry of Fundamental Duties into the Indian Constitution was a result of constitutional amendments, responding to the need for emphasizing civic responsibilities during times of political changes and societal evolution. The amendments sought to instill a sense of duty and responsibility among Indian citizens, recognizing their role in nation-building and development.

FUNDAMENTAL DUTIES

arize
aspire to arise

1. Abide by the Constitution and respect national flag & National Anthem

2. Follow ideals of the freedom struggle

3. Protect sovereignty & integrity of India

4. Defend the country and render national services when called upon

5. Sprit of common brotherhood

6. Preserve composite culture

7. Preserve natural environment

8. Develop scientific temper

9. Safeguard public property

10. Strive for excellence

11. Duty for all parents/guardians to send their children in the age group of 6-14 years to school.

Non-Justiciability of the Fundamental Duties

- The Fundamental Duties outlined in Article 51A of the Indian Constitution are characterized by their non-enforceable and non-justiciable nature.

- This implies that citizens cannot be directly punished by a court for violating these duties. The non-justiciability of Fundamental Duties aligns them with the non-enforceable nature of Directive Principles of State Policy outlined in Part IV of the Constitution.

- Unlike Fundamental Rights in Part III, which are justiciable, Fundamental Duties are placed in Part IVA, which is non-justiciable.

- **Comparison with Other Countries:**
  - India's approach to Fundamental Duties is distinct from some other countries like the erstwhile USSR, Yugoslavia, and Albania, where the constitutions made duties legally enforceable.
  - The non-enforceable nature of Fundamental Duties in India has led to debates on the effectiveness of duties that are not legally binding.

- **Criticism and Advocacy for Enforcement:**
  - Critics, such as VKRV Rao, have argued that Fundamental Duties lack efficacy if not legally binding. Rao emphasized that without legal consequences for violation, people might lack the courage and willingness to adhere to duties.
  - The Supreme Court's notice in 1998 to the Government of India, inquiring about plans to teach Fundamental Duties, prompted the establishment of the Justice J S Verma Committee in 1999.

- **Verma Committee Recommendations:**
  - The Verma Committee aimed to examine operational aspects of Fundamental Duties and recommend steps to educate people about the need to obey them.
  - Recommendations included the importance of Fundamental Duties in raising citizen standards, promoting integrity in public office, and ensuring accountability.
  - The committee highlighted the role of leadership in setting an example for citizens to follow Fundamental Duties.

- **Existing Acts for Implementation**:
    - The Verma Committee identified existing acts that could facilitate the implementation of Fundamental Duties, including the Representation of People Act, Unlawful Activities Protection Act, Protection of Civil Rights Act, Wildlife Protection Act, Prevention of Insults to National Honour Act, and Forest Conservation Act.
    - These acts aimed at ensuring accountability, banning sectarian organizations, punishing untouchability, protecting wildlife, prohibiting insults to national symbols, and conserving forests.

- **Supreme Court's Directions**:
    - The Supreme Court directed the Central Government in 2003 to implement the recommendations of the National Commission to Review the Working of the Constitution (2000) and the Verma Committee (1999).
    - These directions aimed at creating a conducive environment for the effective fulfillment of Fundamental Duties.

- **Critique of Emphasis on Duties:**
  - Anupama Rao criticized the recommendations of the Justice Verma Committee, arguing that it places disproportionate emphasis on citizens' duties in relation to the state and nation.
  - The critique suggests that such an emphasis undermines the notion of citizens as equals and presents duty as a precondition for citizenship.

In conclusion, while Fundamental Duties are integral to the ethical and moral fabric of citizenship, the non-justiciable nature raises questions about their practical implementation and impact on citizens' behavior. Efforts to create awareness, education, and legal frameworks aim to bridge the gap between the aspirational nature of these duties and their effective realization in society.