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Indian Constitution 24ICO17

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Mod 1: Constitution- Definition, Making of the Constitution, Salient Features, Preamble

Meaning & Definition of Constitution

Constitution is a set of basic laws or principles for a country that describe the rights and duties of its citizens and the way in which it is governed. It is fundamentally a body of rules and regulations. A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. These rules together make up, i.e. *constitute*, what the entity is. When these principles are written down into a single document or set of legal documents, those documents may be said to embody a *written* constitution; if they are written down in a single comprehensive document, it is said to embody a *codified* constitution.

Constitutions concern different levels of organizations, from sovereign states to companies and unincorporated associations. A treaty which establishes an international organization is also its constitution, in that it would define how that organization is constituted. Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made and by whom. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights. An example is the constitution of the United States of America.

The Constitution of India is the longest written constitution of any sovereign country in the world, containing **465 articles in 25 parts, 12 schedules and 118 amendments, with 117,369**

Indian constitution

words in its English-language translation, while the United States Constitution is the shortest written constitution, containing seven articles and 27 amendments, and a total of 4,400 words.

Indian constitution is a document having a special legal sanctity which sets out the framework and the principal function of the organs of the governing and declares the principles governing the operation of those organs.

All constitutions are the heirs of the past as well as testators of the future. The very fact that the Indian constitution is not a product of political revolution but of the research and deliberations of a body of eminent representative of the people who sought to improve the existing administration

systems makes the study of constitutional development indispensable for proper understanding of our constitution.

Brief Historical evolution of Indian constitution

The freedom struggle which initially stressed on getting legislative measures to address the grievances of Indian, later foresees on having a own Constitutional: Hence the evolution of the Indian constitutional can be traced back to the British rule.

The various important legislations were introduced by the British government.

The sequence of events which led to the framing of for constitution is given below

- The Regulating Act of 1773
- Pitts Indian Act of 1784
- Charter act of 1833
- Charter Act of 1853
- Indian council Act of 1861, 1892 and 1909
- Government of Indian Act 1919, 1935

1922: All Indian parties Conference: - Motilal Nehru submitted a report on priority of constitution of India. In this report, he stress on “fundamental rights” to the people assuring in the country. The Government of India Act 1935 is the basis of our constitution

1940: August Offer: The British government accepted to frame the constitution of India.

1942: Gipps Proposal:

Indian Constitution to be framed by a body of Indian elected representations i.e. Constituent Assembly.

Constitution would provide a domination state for India.

However, this proposal was opposed by the Muslim league and hence this proposal was not successful.

1946: Cabinet Mission Plan:

Under this plan the constition assembly was framed to draft the constitution. First elections were held throughout the country and there was a union of British India and other Princely states. Members to this body were partially and partly nominated.

The strength of the constituent assembly was to be 389 out of which, 296 representatives were from British India and 93 representatives were from Princely states. After the partition of the country, the members were reduced to 299.

Making of the constitution

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by **M. N. Roy**, a pioneer of communist movement in India and an advocate of radical democratism. In 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India. In 1938, Jawaharlal Nehru, on behalf the INC declared that ‘the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise’.

The demand was finally accepted in principle by the British Government in what is known as the ‘August Offer’ of 1940. In 1942, Sir Stafford Cripps, a member of the cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the World War II. The Cripps Proposals were rejected by the Muslim League which wanted India to be divided into two autonomous states with two separate Constituent Assemblies. Finally, a Cabi-net Mission was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

Do you know?

The Constituent Assembly also performed the following functions:

- ➔ It adopted the Indian National Flag on July 22, 1947.
- ➔ It adopted the National Anthem on January 24, 1950.
- ➔ It adopted the National song on January 24, 1950.
- ➔ It elected Dr. Rajendra Prasad as the first president of India on January 24, 1950.
- ➔ It ratified the India’s membership of the common wealth in May 1949.

On the 9th December 1946: The constitution assembly held its first meeting. The Muslim league boycotted the meeting and insisted on a separate state Pakistan. The meeting was attended by 211

members. Where in **Dr. Sachidanand Sinha** was elected as temporary president of constituent Assembly following the French practice.

Working of the constituent assembly

On the 11th December 1946, Dr. Rajendra Prasad was elected as the chairman, H.C. Mukherjee as the vice- president. Sir B.N. Rau chaired the Advisory committee. On 13th Dec, “Objective Resolution was moved by Jawaharlal Nehru which outlined the nature of Indian constitution & declared India to be sovereign, Democratic, Republic. The objective Resolution was later modified and co-opted as the preamble of the constitution.

The constituent Assembly split into various committees like steering committee, Finance & staff committee, House committee, auditing committee, Fundamental Rights committee and very significant one was the drafting committee and headed by Dr. B. R. Ambedkar. The Drafting committee adopted various provisions from the constitutions of other countries with suitable modifications and the draft copy was prepared. This draft was discussed, debated and several amendments were made and finally the document **was adopted on 26th November 1949**. It was a full fledged democratic exercise.

The constituent Assembly took 2 year 11 months and 18 days to frame the constitution.

The total expenditure incurred on making the constitution amounted to Rs. 64 lakh.

The Drafting committee had seven members

1. Dr. B R. Ambedkar- (chairman)
2. Alladi Krishnaswamy Ayyar
3. Dr. K.M.Munshi
4. T.T. Krishnamachari
5. N. Madhava Rao
6. N. Gopalaswamy Ayyangar and
7. Sir. Syed Mohammad Saadulla.

The constitution came into force on 26th January 1950. The final form of the constitution had 395 Articles 22 parts 8 schedules and a Preamble.

Facts to Know:

At present the [Constitution of India](#) is the longest written constitution in the world, containing **465 articles in 25 parts, 12 schedules, a Preamble and 118 amendments, with 117,369 words** in its [English-language](#) translation,

a. Features of the Indian constitution

The constitution of India though prepared after “ransacking all the known constitutions of the world” is remarkable for its distinguishing features. The credit goes to the framers for gathering the best features from escorting constitutions, modifying them in working and adapting to the escorting constitution, of the country. So even though our constitution is a patchwork is indeed a beautiful patchwork.

Adding to this, many of the features of our original constitution is substantially modified by several amendments.

The salient features of our constitution are

1. **Longiest written Constitution:**— Constitutions are classified into written or unwritten. The Indian constitution has the distinction of being the most lengthy and detailed of the all the written constitutions in the world. while the American constitution originally consistence of only seven articles, Australian constitution consists 128 Articles, Canadian constitution consists 147 Articles, the Indian constitution originally contained 395 Article divided into 22 parts and 8 schedules to which additions were made by subsequent amendments and inspire repealing of several provisions. At present the constitution conations 465 Articles divided into 25 part 12 schedules and a Preamble.

The bulkiness of the constitution is due to the following reasons.

- a. Incorporates the accumulated experience of working of different constitutions.
 - b. Vastness of the country and peculiar problems like language, backward classes, emergency provisions etc.
 - c. Detailed administrative provisions.
 - d. Lays down the structure of union and the states with same fullness and precision.
 - e. Federal relations (is relationship between the center and the state and the states under-5 are elaborately dealt with.
 - f. Both justifiable (fundamental rights) an non-justifiable rights (directive principles of state policy and fundamental duties) are included.
2. **Unique blend of rigidity and flexibility:** - Constitutions are also classified into rigid and flexible. A rigid Constitution is one that requires a special procedure for its amendment, as for example, the American Constitution. A flexible constitution, on the other hand, is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution. The Constitution of India is neither rigid nor flexible but a synthesis of both. Article 368 provides for two types of amendments:
 - (a) Some provisions can be amended by a special majority of the Parliament, i.e., a two-third

majority of the members of each House present and voting, and a majority (that is, more than 50 per cent), of the total membership of each House.

(b) Some other provisions can be amended by a special majority of the Parliament and with the ratification by half of the total states.

At the same time, some provisions of the Constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. Notably, these amendments do not come

3. **Parliamentary form of government (Under Article 368):**– The constitution of Indian establishes a parliamentary form of government both at the center and at the states which very similar to the British model as against the American presidential form of govt. The absence of this form of government is its responsibility to legislature, The president is the constitutional head of the state and the real executive powers are vested in the hands of ministers headed by the prime minister who are collectively responsible to the lower houses (Lok Sabha). The parliamentary system is also known as the “Westminster” model of government, responsible government and cabinet government.
4. **Federal System with Unitary Bias:-** The Constitution of India establishes a federal system of government. It contains all the usual features of a federation, viz., two government, division of powers, written Constitution, super-macy of Constitution, rigidity of Constitution, independent judiciary and bicameralism. However, the Indian Constitution also contains a large number of unitary or non-federal features, viz., a strong Centre, single Constitution, single citizenship, flexibility of Constitution, integrated judiciary, appointment of state governor by the Centre, all-India services, emergency provisions, and so on.. Thus Indian constitution is mainly federal with unitary features to safeguarding and enforcing national unity and growth.
5. **Sovereign, socialist, secular democratic republic state-**The preamble of the constitution declares India to be a sovereign, socialist secular, democratic and Republic state, Sovereign-emphasizes that India is no more dependent on any outside authority-Both internally and externally it is supreme. Socialist-means a way of organizing a society in which major industries are owned and controlled by the government rather than by individual people and companies. Secular-means a state which treats all religions equally. Democratic-indicates form of which the state gets its authority from the will of the people. India has adopted both direct and indirect democracy.

Republic – signifies that the elected head of the state will be the chief executive head. The president of India unlike the British... is not a hereditary monarch but an elected person chosen for a limited period.

6. **Fundamental rights:** The Fundamental Rights are meant for promoting the idea of political democracy. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. They are justifiable in nature, that is, they are enforceable by the courts for their violation. The aggrieved person can directly go to the Supreme Court which can issue the writs of *habeas corpus*, *mandamus*, *prohibition*, *certiorari* and *quo warranto* for the restoration of his rights. However, the Fundamental Rights are not absolute and subject to reasonable restrictions. Further, they are not sacrosanct and can be curtailed or repealed by the Parliament through a constitutional amendment act. They can also be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.

Part III of the Indian Constitution guarantees six fundamental rights to all the citizens:

- (a) Right to Equality (Articles 14–18),
- (b) Right to Freedom (Articles 19–22),
- (c) Right against Exploitation (Articles 23–24),
- (d) Right to Freedom of Religion (Articles 25–28),
- (e) Cultural and Educational Rights (Articles 29–30), and
- (f) Right to Constitutional Remedies (Article 32).

7. **Directive principles of state policy:** They are borrowed from the constitution of Ireland. They are the “**novel feature**” of the Indian Constitution. They are mentioned in **Part IV** of the constitution. They can be classified into three broad categories viz... Socialist, Gandhian and Liberal-intellectual. The Directive principles are meant for promoting the ideal of social and economic democracy. They seek to establish a welfare state in India. Unlike Fundamental rights the directive principles are non-justifiable in nature.

8. **Fundamental duties:** The original constitution did not provide for the fundamental duties of the citizens. These were added during 42nd Constitutional Amendment Act 1976 based on Swaran Singh Committee recommendation. The fundamental duties are mentioned in Part IV – A of the constitution containing only one article is 51A enlisting 10 Fundamental Duties The 11th Fundamental Duty was added through the 86th amendment (2002). The Fundamental Duties were added to remind the citizens that while the constitution has conferred certain

rights on the people, it expects the citizens to follow certain basic norms of democratic conduct and behaviors.

9. **Single citizenship:** Though the constitution provides for dual government is center and the states, it provides only for a single citizenship for the whole of India. USA provides dual citizenship to its people. Each person is not only a citizen of USA but also a citizen of the particular state to which he belongs.

10. **Adult suffrage:** The old system of communal elaborate system has been established and the universal Adult suffrage system is adopted which gives every citizen above 18 years the right to choose the representatives (right to vote) irrespective of caste creed, religion, sex, etc. The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act.

11. **Independent and Integrated judiciary:** The Indian Constitution establishes a judicial system that is integrated as well as independent. The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are high courts at the state level. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts enforces both the central laws as well as the state laws.

12. Emergency Provision:- The Constitution envisages three types of emergencies, namely:

(a) **National emergency** on the ground of war or external aggression or armed rebellion (Article 352);

(b) **State emergency** (President's Rule) on the ground of failure of Constitutional machinery in the states (Article 356) or failure to comply with the directions of the Centre (Article 365); and

(c) **Financial emergency** on the ground of threat to the financial stability or credit of India (Article 360).

During an emergency, the Central Government becomes all-powerful and the states go into the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

Module 2: Preamble and Fundamental Rights

Preamble

The term Preamble refers to the introduction to the constitution. It contains the summary of the constitution. The American Constitution was the first to begin with a Preamble. Many countries including India followed this practice.

The Preamble to the Indian constitution is based on the “Objective Resolution”, which was drafted and moved by Pandit Nehru and adopted by the constitution assembly. It has been amended by the 42nd Amendment Act (1976), which added three new words – Socialist, Secular and Integrity.

Text of the Preamble

“We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens:

Justice-Social, economic and political;

Liberty of thought, expression, belief, faith and worship.

Equality of status and opportunity and to promote among them all;

Fraternity assuring the dignity of the individual and the unity and integrity of the nation.

IN OUR CONSTITUENT ASSEMBLY, this twenty sixth day of November, 1949 do hereby adopt, enact and give to ourselves this constitution”.

1. **Source:** The people of India are the ultimate.... Of our constitution which is evident through the beginning words ‘we the people of India.
2. **Types of government to be established:**
 - a. **Sovereign:** Which means absolute, uncontrolled and independent.

- b. Socialist: Control over means of production and distribution (economy)
 - c. Secular: Freedom of religion. State does not recognize any religion as national..
 - d. Democratic: A form of government which gets its authority from the will of the people.
 - e. Republic: Head of the state is not a hereditary monarch but a person elected by the people for a fixed term.
3. **Goals to be attained:** Assuring to all its citizen, justice, social, economic and political, social justice- no discrimination, upliftment of downtrodden.
- a. Economic justice: bridge the gap between the rich and poor; minimize the concentration of wealth in the hands of few.
 - b. Political justice: Right to take part in the political system.
 - c. Liberty of thought, expression, belief, faith and worship.
 - d. Equality of status and of opportunity are to promote among them all
 - e. Fraternity (a feeling of oneness/universal brotherhood)
 - f. Assuring the dignity of an individual unity and Integrity of the nation.
4. **Enactment clause:** Preamble at last mentions the day of adopting, enrooting the constitution in the constituent Assembly is 26th November 1949.

Can the Preamble be amended?

This question was raised before the supreme court in the historic case of *Keshavand Bharati v/s, State of Kerala* where in court ruled that since the preamble is a part of the constitution it could be amended like any other provisions of the constitution provided it does not destroy or damage the fundamental features of our constitution.

42nd Constitutional Amendment Act 1976: The preamble till now has undergone amendment only once so far, in 1976, by the 42nd amendment. Through this amendment three new words were added i.e. Socialist, secular, and Integrity. Through these concepts were already implicit; the amendment merely spells out clearly these concepts in the preamble.

Significance: The preamble of an Act lays down the main objectives which the legislation which intending to achieve it is a kind of introduction to the Act and helps to understand the policy and legislative intent. The constitution makers gave the preamble the place of pride whenever a controversy arises over constitution law or where there is any ambiguity regarding the meaning of any of the constitution provision the judges refer to the preamble to find out the intentions of the framers of the constitution.

Fundamental Rights

Fundamental rights are enumerated in **Part III, Article 12 to 35** of the constitution. They are a set of human rights or basic rights which are most essential for moral, spiritual and intellectual development of an individual. If such elementary rights like right to life, liberty, freedom of speech,.....etc. are not assured the moral and spiritual life gets stunted and potentialities will remain undeveloped .

Origin: Part III of the constitution contains a long list of Fundamental Rights. The concept of Fundamental Rights is not of recent origin. Its development is as follows.

1. King John of England in 1214 assured a set of liberties to his people which was documented and called Magna Carta.
2. The Bill of rights in 1689 consolidated all important rights and liberties of the English people
3. The France declaration of rights of man and the citizen in 1789 declared the natural, inalienable and sacred rights of man.
4. The Americans incorporated the Bill of rights their constitution in line with the Magna Carta, The Bill of Rights of England and the France Declaration rights of man and the citizen. They were the first to give bill of rights a V status.
5. Indian constitution makers were inspired with the American Bill of rights and they adopted the same with suitable modification and incorporated a full chapter in part III dealing with fundamental rights in the Indian constitution. This chapter is the most elaborate and comprehensively framed.

Features of Fundamental Rights

The Fundamental Rights guaranteed by the Constitution are characterized by the following:

1. Some of them are available only to the citizens while others are available to all persons whether citizens, foreigners or legal persons like corporations or companies.
2. They are not absolute but qualified. The state can impose reasonable restrictions on them. However, whether such restrictions are reasonable or not is to be decided by the courts. Thus,

they strike a balance between the rights of the individual and those of the society as a whole, between individual liberty and social control.

3. Most of them are available against the arbitrary action of the State, with a few exceptions like those against the State's action and against the action of private individuals. When the rights that are available against the State's action only are violated by the private individuals, there are no constitutional remedies but only ordinary legal remedies.

4. Some of them are negative in character, that is, place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.

5. They are justifiable, allowing persons to move the courts for their enforcement, if and when they are violated.

6. They are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgment of the high courts.

7. They are not sacrosanct or permanent. The Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act. Moreover, this can be done without affecting the 'basic structure' of the Constitution. (The amendability of fundamental rights is explained in detail in Chapter 11).

8. They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency).

9. Their scope of operation is limited by Article 31A (saving of laws providing for acquisition of estates, etc.), Article 31B (validation of certain acts and regulations included in the 9th Schedule) and Article 31C (saving of laws giving effect to certain directive principles).

10. Their application to the members of armed forces, para-military forces, police forces, intelligence agencies and analogous services can be restricted or abrogated by the Parliament (Article 33).

11. Their application can be restricted while martial law is in force in any area. Martial law means 'military rule' imposed under abnormal circumstances to restore order (Article 34). It is different from the imposition of national emergency.

12. Most of them are directly enforceable (self-executory) while a few of them can be enforced on the basis of a law made for giving effect to them. Such a law can be made only by the Parliament and not by state legislatures so that uniformity throughout the country is maintained (Article 35).

The significance of Fundamental Rights is explained through Article 13 which provides that:

1. Laws in force in India immediately before the commencement of the constitution shall be declared void if they are inconsistent with Part III is Fundamental Rights of the constitution.
2. The state shall not make any law which takes away or abridges the Fundamental Rights shall be void to the extent of contravention.
3. Laws include any ordinance, order, bye, law, rule, regulation, notification, custom or usage having the force of law.

Classification of Fundamental Rights:

The Fundamental Rights as assured in the constitution can be classified as follows

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

DO You Know?

- ➔ The 44th Amendment Act of 1978 abolished the ***right to property (Article 31)*** as a fundamental right.
- ➔ The ***right to property*** only remains as a legal right but not a fundamental right.

1. Right to Equality (Article 14 to 18):

- ➔ **Article 14** says that the State shall not deny to any person **equality before the law** or the **equal protection of the laws** within the territory of India. This provision confers rights on all persons whether citizens or foreigners. Moreover, the word ‘person’ includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.
- ➔ **Article 15** states that the state shall **not discriminate** against any citizen on the grounds of caste, creed, religion gender, place of birth on any of them. However in order to protect and uplift weaker sections of society i.e. women children and backward classes special provisions can be made. This is known as protective discrimination.

- ➔ **Article 16** assures equality of opportunity in matters of **public employment**. Irrespective of caste, creed, religion, gender, place of birth, residence, descent all shall be given equal opportunities in public employment.

There are three exceptions to this general rule of equality of opportunity in public employment:

- (a) Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority. As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh.
- (b) The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.
- (c) A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.

Indra swamy V, Union of India, also called the **Mandal Commision** case laid down the guidelines with respect to reserving few posts to the socially and economically backward class. The Supreme Court through this case laid down that the creamy layer should be identified and they should not get the benefits of reservation.

- ➔ **Article 17 provides for abolition of untouchable:** Practicing untouchability in any form is forbidden by law and to ensure this the protection of civil rights act is passed.

- ➔ **Article 18 -Abolition of Titles:** Article 18 abolishes titles and makes four provisions in that regard:

- (a) It prohibits the state from conferring any title (except a military or academic distinction) on anybody, whether a citizen or a foreigner.
- (b) It prohibits a citizen of India from accepting any title from any foreign state.
- (c) A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president.
- (d) No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument or office from or under any foreign State without the consent of the president.

Facts to Know
<ul style="list-style-type: none">The hereditary titles of nobility like Maharaja, Raj Bahadur, Rai Bahadur, Rai Saheb, Dewan Bahadur, etc, which were conferred by colonial States are banned by Article 18 as these are against the principle of equal status of all.The Supreme Court in the year 1960 upheld the constitutional validity of the National Awards i.e. Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri. It ruled that these awards do not amount to ‘titles’ within the meaning of Article 18 that prohibits only hereditary titles of nobility. Therefore, they are not violative of Article 18 as the theory of equality does not mandate that merit should not be recognised. However, it

also ruled that they should not be used as suffixes or prefixes to the names of awardees. Otherwise, they should forfeit the awards.

2. Right to Freedom, (Article 19 to 22)

Personal liberty is the most important of all Fundamental Right.

➔ **Article 19:** assure six basic freedoms to its citizens: These are:

- (i) Right to freedom of speech and expression.
- (ii) Right to assemble peaceably and without arms.
- (iii) Right to form associations or unions or co-operative societies.10a
- (iv) Right to move freely throughout the territory of India.
- (v) Right to reside and settle in any part of the territory of India.
- (vi) Right to practice any profession or to carry on any occupation, trade or business.

Originally,

Article 19 contained seven rights. But, the right to acquire hold and dispose of property was deleted by the 44th Amendment Act of 1978.

➔ **Article 20:** Provides protection with respect to conviction for offences.

Article 20 grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation. It contains three provisions in that direction:

- a. **Protection against ex post facts law:** which means criminal laws cannot be retrospective in nature.
- b. **Protection against double Jeopardy:** No person should be persecuted and punished for the same offence more than once.
- c. **Protection against self-incrimination:** No person shall be forced to be a witness against himself.

Article 21: No person shall be deprived of his **right to life and personal liberty** except records to the procedure established by law.

This article provides that every person has the right to live with dignity and privacy which can be chambered only if any law prescribes for it (Menaka case 1978) right to life is not more existence it includes everything required to lead a dignity life is right to livelihood.

The Supreme Court has declared the following rights as part of Article 21.

- Right to privacy
- Right to medical assistance

- Right free legal aid
- Right to Speedy trial
- Right to against handcuffing
- Right against delayed execution
- Right to live with human dignity
- Right to livelihood
- Right to travel abroad
- Right of women to be treated with decency and dignity.

Facts to Know:
Right to life does not include Right to die; Hence Right to die is not a Fundamental Right. Right to life is incomplete without Right to education . Right to education was demarcated as a separate right under Article 21 (A) through the 86th Constitutional Amendment Act 2002 . This Article provides for free and compulsory education to all children up to the age of 14 years .

➔ **Article 22:** Provides for safeguards against arbitrary **arrest and detention**.

Rights of an arrested person.

- Right to know the grounds of his arrest.
- Right to have a legal representative.
- Right to be produced before a magistrate within 24 hours of his arrest
- Freedom from detention beyond the said period except by the order of the Magistrate.

Rights of a detainee

- Communication of grounds of detention to detainee
- Right of representation
- Review by advisory board.

A person can be detained if there is likelihood of he/she committing some offence. The parliament of India has passed a number of **Preventive detention laws** such as the National security Act (NSA) Maintenance of Internal security Act (MISA) conservation of Foreign exchange and prevention of smuggling activities Act (COFEPOSA) etc.

3. Right against exploitation, (Article 23 -24)

➔ **Article 23:** prohibition of traffic in human beings beggar and other of forced labour.

In pursuance of this article parliament has passed the suspension of immoral traffic in women and girls.

➔ **Article 24:** provides that no child below the age of 14 years should be allowed to work in any factory or mine or other hazardous employment.

Facts to Know.
The child labor prohibition and regulation act provides for abolition of child labor. Proper Compensation/ employment to the parents/guardians of child labour, education of the child will be taken care by the government.

4. Right to freedom of religion, (Article 25 to 28)

➔ **Article 25:** This says that all persons are equally entitled to **freedom of conscience and the right to freely profess, practice and propagate religion**. The implications of these are:

(a) *Freedom of conscience:* Inner freedom of an individual to mould his relation with God or Creatures in whatever way he desires.

(b) *Right to profess:* Declaration of one's religious beliefs and faith openly and freely.

(c) *Right to practice:* Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.

(d) *Right to propagate:* Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But, it does not include a right to convert another person to one's own religion.

➔ **Article 26:** According to Article 26, every religious denomination or any of its section shall have the following

rights:

(a) Right to establish and maintain institutions for religious and charitable purposes;

(b) Right to manage its own affairs in matters of religion;

(c) Right to own and acquire movable and immovable property; and

(d) Right to administer such property in accordance with law.

Article 25 guarantees rights of individuals, while Article 26 guarantees rights of religious denominations or their sections. In other words, Article 26 protects collective freedom of religion. Like the rights under Article 25, the rights under Article 26 are also subject to public order, morality and health but not subject to other provisions relating to the Fundamental Rights.

➔ **Article 27:** The state shall not compel to any citizens to **pay any taxes for the promotion** of any particular religion or religious institutions.

➔ **Article 28:** No religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, this provision shall not apply to an educational

institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

The above articles justify the secular nature of our country.

5. Cultural and educational Rights, (Article 29 – 30)

These set of rights aim at preserving the cultural and educational rights of the minorities.

Article 29: Any class of citizens having a distinct language, script or culture shall have the right to preserve it.

Article 30: All religions and linguistic minorities of the country shall have the right to establish and administer educational institutions of their choice.

6. Right to constitutional remedies (Article 32)

Dr. B. R Ambedkar considered this article as the soul of heart to our constitution. Here declaration of Fundamental Rights are meaningless unless these are an effective machinery for the enrolment of the rights.

Article 32 empowers the Supreme Court to give remedy in the form of writs whenever Fundamental Rights are abridged. The constitution recognized 5 kinds of writs.

- a. **Habeas corpus:** Which literally means “**you may have the body**” this writ is issued directing the concerns authorities to look for the missing person and physically produce him before the court. This write is the hallmark of personal liberty.
- b. **Mandamus:** It is a “**command**” or an “**order**” issued to a public officer to discharge his public duty. It is an awakening call given to public offices.
- c. **Prohibition:** Literally means ‘**to forbid**’ It is issued by the higher court to the lower to Prevents the lower courts from exceeding its jurisdiction that it does not possess.
- d. **Certiorari:** It means ‘**to be certified**’. It is issued by a higher court to a lower court to transfer the case pending.
- e. Quo-Warranto: This **questions the ‘authority’ of a public officer**. It is a powerful instrument for safeguarding against the usurpation of public offices.

Fundamental Duties

The original constitution contained only the fundamental rights and not the fundamental duties. In other words, the framers of the Constitution did not feel it necessary to incorporate the fundamental duties of the citizens in the Constitution. However, they incorporated the duties of the State in the Constitution in the form of Directive Principles of State Policy. Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.

The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR.

In 1976, the Congress Party set up the Sardar Swaran Singh Committee to make recommendations about fundamental duties, the need and necessity of which was felt during the operation of the internal emergency (1975–1977). The committee recommended the inclusion of a separate chapter on fundamental duties in the Constitution. It stressed that the citizens should become conscious that in addition to the enjoyment of rights, they also have certain duties to perform as well. The Congress Government at Centre accepted these recommendations and enacted the 42nd Constitutional Amendment Act in 1976. This amendment added a new part, namely, **Part IVA** to the Constitution. This new part consists of only one Article, that is, **Article 51A** which for the first time specified a code of **ten fundamental duties** of the citizens.

List of Fundamental Duties

According to Article 51 A, it shall be the duty of every citizen of India:

- (a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) To cherish and follow the noble ideals that inspired the national struggle for freedom;
- (c) To uphold and protect the sovereignty, unity and integrity of India;
- (d) To defend the country and render national service when called upon to do so;
- (e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce

practices derogatory to the dignity of women;

(f) To value and preserve the rich heritage of the country's composite culture;

(g) To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;

(h) To develop scientific temper, humanism and the spirit of inquiry and reform;

(i) To safeguard public property and to abjure violence;

(j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and

(k) To provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

Features of the Fundamental Duties

Following points can be noted with regard to the characteristics of the Fundamental Duties:

1. Few duties are moral duties while others are civic duties
2. The duties essentially contain just a codification of tasks integral to the Indian way of life.
3. Unlike some of the Fundamental Rights which extend to all persons whether citizens or foreigners, the Fundamental Duties are confined to citizens only and do not extend to foreigners.
4. Like the Directive Principles, the fundamental duties are also non-justiciable. The Constitution does not provide for their direct enforcement by the courts. Moreover, there is not legal sanction against their violation. However, the Parliament is free to enforce them by suitable legislation.

Significance of Fundamental Duties

The fundamental duties are considered significant from the following viewpoints:

1. They serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.
2. They serve as a warning against the anti-national and antisocial activities like burning the national flag, destroying public property and so on.
3. They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are not mere spectators but active participants in the realisation of national goals.
4. They help the courts in examining and determining the constitutional validity of a law. In 1992, the Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a fundamental duty, it may consider such

law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.

5. They are enforceable by law. Hence, the Parliament can provide for the imposition of appropriate penalty or punishment for failure to fulfill any of them.

Directive Principles of State Policy

Fundamental Rights are to the people of our country and Directive Principles of State Policy (DPSP) are for the state. The constitution makers have laid down a set of guidelines/introductions/directions to the state in order to attain the goals of our constitution.

These are enumerated in Part IV of the constitution from Article 36 to 51. Dr. B.R Ambedkar describes these principles as '*novel features*' of the Indian constitution

The transformation of all the modern states from a more police state (protecting the life and property of the people) to a welfare state (wherein the state aims at satisfying the need of the people) has laid more emphasis on DPSP.

The DPSP are the ideals which the union and state governments must keep in mind while they pass any law or formulate a policy. They lay down certain social economic and political principles suitable to peculiar conditions prevailing in India. Sri G N Joshi defined it as a Comprehensive political social and economic program for a modern democratic state.

This novel feature of the constitution **is borrowed from the constitution of Ireland** which was influenced by the Spanish constitution.

The Directive principles of state policies resemble the '*Instrument of Instructions*' enumerated in the Government of India Act 1935.

Art 37 provides that these guidelines through fundamental in the governance of the country nevertheless they are non-justifiable or non-enforceable. Dr. B.R. Ambedkar observes in the constituent Assembly if any government ignores them, they will certainly have to answer for them before the electorate at the election time.

Classification of the Directive Principles

On the ground of their content and direction, the Directive principles can be classified into three broad categories:

- I. Socialistic Principles
- II. Gandhian Principles

III. liberal-intellectual Principles

I. Socialistic Principles

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state.

They direct the state:

1. To promote the welfare of the people by securing a social order permeated by justice— social, economic and political—and to minimize inequalities in income, status, facilities and opportunities (Article 38).
2. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children (Article 39).
3. To promote equal justice and to provide free legal aid to the poor (Article 39 A).
4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).
5. To make provision for just and humane conditions for work and maternity relief (Article 42).
6. To secure a living wage, a decent standard of life and social and cultural opportunities for all workers (Article 43).
7. To take steps to secure the participation of workers in the management of industries (Article 43 A).
8. To raise the level of nutrition and the standard of living of people and to improve public health (Article 47).

II. Gandhian Principles

These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfill the dreams of Gandhi, some of his ideas were included as Directive Principles. They require the State:

1. To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (Article 40).
2. To promote cottage industries on an individual or co-operation basis in rural areas (Article 43).

3. To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).
4. To promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation (Article 46).
5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47).
6. To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).

III. Liberal–Intellectual Principles

The principles included in this category represent the ideology of liberalism. They direct the state:

1. To secure for all citizens a uniform civil code throughout the country (Article 44).
2. To provide early childhood care and education for all children until they complete the age of six years (Article 45).
3. To organise agriculture and animal husbandry on modern and scientific lines (Article 48).
4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).
5. To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).
6. To separate the judiciary from the executive in the public services of the State (Article 50).
7. To promote international peace and security and maintain just and honorable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

IV. New Directive Principles

The 42nd Amendment Act of 1976 added four new Directive Principles to the original list. They require the State:

1. To secure opportunities for healthy development of children (Article 39).
2. To promote equal justice and to provide free legal aid to the poor (Article 39 A).
3. To take steps to secure the participation of workers in the management of industries (Article 43 A).
4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).

The 44th Amendment Act of 1978 added one more Directive Principle, which requires the State to minimise inequalities in income, status, facilities and opportunities (Article 38).

Again, the 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.

The 97th Amendment Act of 2011 added a new Directive Principle relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).