

Salient features of Indian Constitution, Preamble, Fundamental Rights: Right to Equality, Fundamental Freedoms to life and personal liberty, Right against exploitation, Freedom of Religion, Cultural & Educational Rights, Right to constitutional remedies, Directive Principles of State Policy, Fundamental Duties.

Salient features of Indian Constitution:

## Constitution of India – Major Features

The salient features of the Indian Constitution are listed and briefed below:

### 1. Longiest Written Constitution

- Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution.
- The Constitution of India has the distinction of being the lengthiest and most detailed constitutional document the world has so far produced. In other words, the Constitution of India is the lengthiest of all the written constitutions of the world.
- It is a very comprehensive, elaborate and detailed document.
- The factors that contributed to the elephantine size of the Indian Constitution are:
  - **Geographical factors**, that is, the vastness of the country and its diversity.
  - **Historical factors**, for instance, the influence of the Government of India Act of 1935, which was bulky.
  - Single constitution for both the Centre and the states.
  - The dominance of legal luminaries in the Constituent Assembly.
- The Constitution of India contains not only the fundamental principles of governance but also detailed administrative provisions.
- Both justiciable and non-justiciable rights are included in the Constitution.

### 2. Drawn from Various Sources

- The Constitution of India has borrowed most of its provisions from the constitutions of various other countries as well as from the Government of India Act of 1935 [About 250 provisions of the 1935 Act have been included in the Constitution].
- Dr B R Ambedkar proudly acclaimed that the Constitution of India has been framed after ‘ransacking all the known Constitutions of the world’.
- The **structural part** of the Constitution is, to a large extent, derived from the Government of India Act of 1935.
- The **philosophical part** of the Constitution (Fundamental Rights and the Directive Principles of State Policy) derive its inspiration from the American and Irish Constitutions respectively.
- The **political part** of the Constitution (the principle of Cabinet government and the relations between the executive and the legislature) has been largely drawn from the British Constitution.

### 3. Blend of Rigidity and Flexibility

- Constitutions are classified into **rigid** and **flexible**.
- A rigid constitution is one that requires a special procedure for its amendment, for example, the American Constitution.
- A flexible constitution is one that can be amended in the same manner as ordinary laws are made, for example, the British Constitution.
- The Indian Constitution is a unique example of a combination of rigidity and flexibility.
- A constitution may be called rigid or flexible on the basis of its amending procedure.
- The Indian Constitution provides for three types of amendments ranging from simple to most difficult procedures depending on the nature of the amendment.

Also read,

1. Constitutional Amendment Process in India
2. Important Amendments in the Indian Constitution

### 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, such as two governments, division of powers, written constitution, the supremacy of the constitution, the rigidity of the Constitution, independent judiciary and bicameralism.
- However, the Indian Constitution also contains a large number of unitary or non-federal features, such as a strong Centre, a single Constitution, the appointment of a state governor by the Centre, all-India services, an integrated judiciary, and so on.
- Moreover, the term 'Federation' has nowhere been used in the Constitution.
- Article 1 describes India as a '**Union of States**' which implies two things:
  - Indian Federation is not the result of an agreement by the states.
  - No state has the right to secede from the federation.
- Hence, the Indian Constitution has been variously described as 'federal in form but unitary in spirit', and 'quasi-federal' by K C Wheare.

### 5. Parliamentary Form of Government

- The Constitution of India has opted for the British Parliamentary System of Government rather than the American Presidential system of government.
- The parliamentary system is based on the principle of cooperation and coordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs.
- The parliamentary system is also known as the 'Westminster' model of government, responsible government and cabinet government.

- The Constitution establishes the parliamentary system not only at the Centre but also in the States.
- In a parliamentary system, the role of the Prime Minister has become so significant, and therefore it is called a 'Prime Ministerial Government'.

### **What are the features of parliamentary government in India?**

The features of parliamentary government in India are as follows:

- Presence of real and nominal executives
- Majority party rule
- Collective responsibility of the executive to the legislature
- Membership of the ministers in the legislature
- The leadership of the prime minister or the chief minister
- Dissolution of the lower house (Lok Sabha or Assembly)
- Indian Parliament is not a sovereign body like the British Parliament
- Parliamentary Government combined with an elected President at the head (Republic)

### **6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy**

- The doctrine of the sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court.
- Just as the Indian parliamentary system differs from the British system, the scope of judicial review power of the Supreme Court in India is narrower than that of what exists in the US.
- This is because the American Constitution provides for 'due process of law' against that of 'procedure established by law' contained in the Indian Constitution (Article 21).
- Therefore, the framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of Judicial supremacy.
- The Supreme Court can declare parliamentary laws unconstitutional through its power of judicial review.
- The Parliament can amend the major portion of the Constitution through its constituent power.

Also read:

1. Difference Between Procedure Established by Law and Due Process of Law
2. Judicial Review

### **7. Rule of Law**

- According to this axiom, people are ruled by law but not by men, that is, the basic truism that no man is infallible. The axiom is vital to a democracy.
- More important is the meaning that law is sovereign in democracy.

- The chief ingredient of law is custom which is nothing but the habitual practices and beliefs of common people over a long number of years.
- In the final analysis, the rule of law means the sovereignty of the common man's collective wisdom.
- Apart from this crucial meaning, the rule of law means a few more things like:
  - There is no room for arbitrariness
  - Each individual enjoys some fundamental rights, and
  - The highest judiciary is the final authority in maintaining the sanctity of the law of the land.
- The Constitution of India has incorporated this principle in Part III and in order to provide meaning to Article 14 (all are equal before the law and all enjoy equal protection of laws), the promotion of Lok Adalats and the venture of the Supreme Court known as "public interest litigation" have been implemented.
- Also, as per today's law of the land, any litigant can appeal to the presiding judicial authority to argue the case by himself or seek legal assistance with the help of the judiciary.

Also read:

1. Rule of Law
2. Difference between Rule of law and Rule by law
3. Lok Adalats
4. Public Interest Litigation

## 8. Integrated and Independent Judiciary

- India has a single integrated judicial system.
- Also, the Indian Constitution establishes Independent Judiciary by enabling the Indian judiciary to be free from the influence of the executive and the legislature.
- The Supreme Court stands as the apex court of the judicial system. Below the Supreme Court are the High Courts at the state level.
- Under a high court, there is a hierarchy of subordinate courts, that is district courts and the other lower courts.
- The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution. Hence, the Constitution has made various provisions to ensure its independence.

Also read,

1. Separation of Powers in the Indian Constitution
2. Judicial Activism

## 9. Fundamental Rights

- Part III of the Indian Constitution guarantees six fundamental rights to all Citizens.

- Fundamental Rights are one of the important features of the Indian Constitution.
- The Constitution contains the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend upon the will of any majority or minority.
- No majority has the right to abrogate such 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 **justiciable** in nature, that is, enforceable by the courts for their violation.

## 10. Directive Principles of State Policy

- According to Dr B R Ambedkar, the Directive Principles of State Policy is a ‘novel feature’ of the Indian Constitution.
- They are enumerated in Part IV of the Constitution.
- The Directive Principles were included in our Constitution in order to provide social and economic justice to our people.
- Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.
- They are non-justiciable in nature.
- In the Minerva Mills case (1980), the Supreme Court held that ‘the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles’.

Read further from:

1. Directive Principles of State Policy (DPSP)
2. Difference between Fundamental Rights and Directive Principles of State Policy (DPSP)

## 11. Fundamental Duties

- The original constitution did not provide for the fundamental duties of the citizens.
- Fundamental Duties were added to our Constitution by the 42nd Amendment Act of 1976 on the recommendation of the Swaran Singh Committee.
- It lays down a list of ten Fundamental Duties for all citizens of India.
- Later, the 86th Constitutional Amendment Act of 2002 added one more fundamental duty.
- While the rights are given as guarantees to the people, the duties are obligations that every citizen is expected to perform.
- However, like the Directive Principles of State Policy, the duties are also **non-justiciable** in nature.
- There is a total of 11 Fundamental duties altogether.

## 12. Indian Secularism

- The Constitution of India stands for a secular state.
- Hence, it does not uphold any particular religion as the official religion of the Indian State.
- The distinguishing features of a secular democracy contemplated by the Constitution of India are:
  - The State will not identify itself with or be controlled by any religion;
  - While the State guarantees everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an antagonist or an atheist), it will not accord preferential treatment to any of them;
  - No discrimination will be shown by the State against any person on account of his religion or faith; and
  - The right of every citizen, subject to any general condition, to enter any office under the state will be equal to that of fellow citizens. Political equality which entitles any Indian citizen to seek the highest office under the State is the heart and soul of secularism as envisaged by Constitution.
- The conception aims to establish a secular state. This does not mean that the State in India is anti-religious.
- The Western concept of secularism connotes a complete separation between religion and the state (negative concept of secularism).
- But, the Indian constitution embodies the **positive concept of secularism**, i.e., giving equal respect to all religions or protecting all religions equally.
- Moreover, the Constitution has also abolished the old system of communal representation. However, it provides for the temporary reservation of seats for the scheduled castes and scheduled tribes to ensure adequate representation to them.

To Read:

1. Secularism
2. Secularism in India and the United States – A Comparison

## 13. Universal Adult Franchise

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

## 14. Single Citizenship

- In a federal state usually, the citizens enjoy double citizenship as is the case in the USA.

- In India, there is only single citizenship.
- It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth.
- He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chattisgarh to which he/she may belong but remains a citizen of India.
- All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all parts of India.
- The Constitution makers deliberately opted for single citizenship to eliminate regionalism and other disintegrating tendencies.
- Single citizenship has undoubtedly forged a sense of unity among the people of India.

Read more:

1. [Citizenship in India](#)
2. [Citizenship Amendment Act 2019 \(CAA\)](#)

## **15. Independent Bodies**

- The Indian Constitution not only provides for the legislative, executive and judicial organs of the government (Central and state) but also establishes certain independent bodies.
- They are envisaged by the Constitution as the bulwarks of the democratic system of Government in India.

## **16. Emergency Provisions**

- The Constitution makers also foresaw that there could be situations when the government could not be run as in ordinary times.
- To cope with such situations, the Constitution elaborates on emergency provisions.
- There are three types of emergency
  - Emergency caused by war, external aggression or armed rebellion [Article 352]
  - Emergency arising out of the failure of constitutional machinery in states [Article 356 & 365]
  - Financial emergency [Article 360].
- The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- During an emergency, the central government becomes all-powerful and the states go into total control of the centre.
- This kind of transformation of the political system from federal (during normal times) to unitary (during an Emergency) is a unique feature of the Indian Constitution.

Read about emergency provisions in detail from the links provided below:

1. [Emergency – RSTV: In Depth](#)

2. Article 356 – President’s Rule
3. Financial Emergency [Article 360]

## **17. Three-tier Government**

- Originally, the Indian Constitution provided for a dual polity and contained provisions with regard to the organisation and powers of the Centre and the States.
- Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government (that is, Local Government), which is not found in any other Constitution of the world.
- The 73rd Amendment Act of 1992 gave constitutional recognition to the panchayats (rural local governments) by adding a new Part IX and a new Schedule 11 to the Constitution.
- Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local government) by adding a new Part IX-A and a new Schedule 12 to the Constitution.

To read:

1. Panchayati Raj in India
2. Municipalities [243P – 243ZG]

## **18. Co-operative Societies**

- The 97th Constitutional Amendment Act of 2011 gave constitutional status and protection of cooperative societies.
- In this context, it made the following three changes to the Constitution:
  - It made the right to form cooperative societies a fundamental right (Article 19).
  - It included a new Directive Principles of State Policy on the promotion of cooperative societies (Article 43-B).
  - It added a new Part IX-B in the Constitution which is entitled “The Co-operative Societies” [Articles 243-ZH to 243-ZT].
- The new Part IX-B contains various provisions to ensure that the cooperative societies in the country function in a democratic, professional, autonomous and economically sound manner.
- It empowers the Parliament in respect of multi-state cooperative societies and the state legislatures in respect of other cooperative societies to make the appropriate law.

## **Philosophy of Constitution**

- On January 22, 1947, the Constituent Assembly adopted the Objectives Resolution drafted by Jawaharlal Nehru. The Objectives Resolution contained the fundamental propositions of the Constitution and set forth the political ideas that should guide its deliberations.

The main principles of the resolution were:



- that India is to be an independent, sovereign republic ;
- that it is to be a democratic union with an equal level of self-government in all the constituent parts;
- that all power and the authority of the Union Government and governments of the constituent parts are derived from the people;
- that the constitution must strive to obtain and guarantee to the people justice-based upon social, economic and political equality, of opportunity and equality before the law;
- that there should be freedom of thought, expression, belief, faith, worship, vocation, association and action;
- that the constitution must provide just rights for minorities, and people from backward and tribal areas, etc. so that they can be equal participants of social, economic and political justice; and
- to frame a constitution that should secure for India, a due place in the community of nations.

To read more about the [Evolution and Framing of the Constitution](#), check the linked article.

The philosophy of a Constitution consists of the ideals for which the Constitution stands and the policies that the Constitution enjoins upon the rulers of the Community to follow. The Constitution of India reflects the impact of our ideology in the following spheres:

(i) **Secularism:** Secularism is the hallmark of the Indian Constitution. People professing different religions have the freedom of religious worship of their own choice. All religions have been treated alike. The fact appreciated in India was that all religions love humanity and uphold the truth. All the social reformers and political leaders of modern India have advocated religious tolerance, religious freedom and equal respect for all religions. This very principle has been adopted in the Constitution of India where all religions enjoy equal respect. However, the word ‘secularism’ was nowhere mentioned in the Constitution as adopted in 1949. The word ‘secularism’ has now been added to the Preamble to the Constitution through the 42nd Amendment passed in 1976.

(ii) **Democracy:** We have borrowed the modern form of democracy from the West. Under this system, democracy means the periodic responsibilities of the Government to go to the people. For this purpose; elections have been held every five-year to elect a government by the people. However, democracy covers even the economic and social aspects of life. This aspect of democracy is well-reflected in the Directive Principles of State Policy. They are aimed at human welfare, cooperation, international brotherhood and so on.

(iii) **Sarvodaya:** Sarvodaya refers to the welfare of all. It is different from the welfare of the majority. It seeks to achieve the welfare of all without exception. It is referred to as Ram Rajya. The concept of Sarvodaya was developed by Mahatma Gandhi Acharya Vinoba Bhave and J. Narayan under which the material, spiritual, moral and mental development of everyone is sought to be achieved. The Preamble to the Indian Constitution and the Directive Principles of State Policy represent this ideal.

(iv) **Socialism:** Socialism is not new to India. Vedanta's philosophy has socialism in it. The national struggle for freedom had this aim also in view. Jawaharlal Nehru referred to himself as a socialist and republican. Almost all the parties in India profess to promote democratic socialism. These principles are included in the Directive Principles of State Policy. However, to lay emphasis on this aspect, the word 'socialism' was specifically added to the Preamble to the Constitution through the 42nd Amendment.

(v) **Humanism:** Humanism is a salient feature of Indian ideology. Indian ideology regards the whole of humanity as one big family. It believes in resolving international disputes through mutual negotiations. This is what we find in the Directive Principles of State Policy.

(vi) **Decentralization:** Decentralization is another aspect of Sarvodaya. India has always practised decentralization through the Panchayat system. Mahatma Gandhi also advocated decentralization. It is on this account that he is regarded as a philosophical anarchist. We have introduced the Panchayati Raj system in India to achieve the objective of decentralisation. The concept of cottage industries as laid down in the Directive Principles of State Policy also refers to decentralization.

(vii) **Liberalism:** Liberalism does not refer to the Western concept of liberalism. It refers, in the Indian context, to self-government, secularism, nationalism, economic reforms, constitutional approach, representative institutions etc. All these concepts were advocated by modern Indian leaders.

(viii) **Mixed Economy:** Co-existence is a salient feature of our ideology. Co-existence has manifested itself through a mixed system of economy. In this system, we have allowed both the private and public sectors of the economy to work simultaneously. Large-scale and essential industries have been put in the public sector.

(ix) **Gandhism:** Gandhism represents an ethical and moral India. Mahatma Gandhi set a new example of fighting foreign rule through non-violence. He taught the importance of non-violence and truth. He advocated untouchability, cottage industry, prohibition, adult education and the uplift of villages. He wanted a society free of exploitation and decentralized in character. All these Gandhian principles have found an honourable place in the Constitution of India.

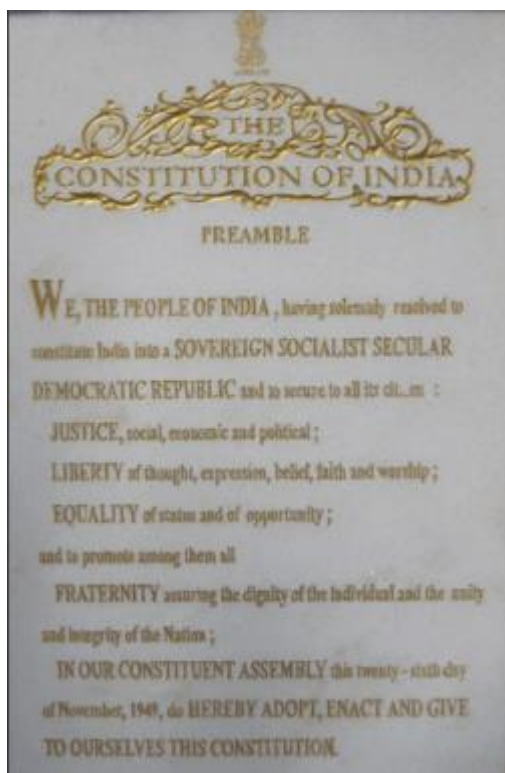
Preamble:

In 1946, Objective Resolution was moved by Jawaharlal Nehru, describing the constitutional structure. In 1947 (22nd January) it was adopted. It shaped the Constitution of India and its modified version is reflected in the Preamble of the Indian Constitution. The basic tenets that the objective resolution highlighted were:

- Constituent Assembly's resolve to see India as independent, sovereign and republic
- To draw a Constitution for India
- To make all territories of pre-independent India into united states of post-independent India

- To realize residual powers, autonomy on such states as the Constitution of India reflects
- To realize a union with a power which will be different from those given to such states
- The people of India to play the source of power and authority of the sovereignty, and independence
- To provide justice, social, economic and political equality of status of opportunity and, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality before the law
- To provide adequate safeguards to the minorities, tribal and backward areas and other depressed and backward classes
- To maintain the integrity of the Indian Republic's territory and its territorial rights on land, sea, and air according to the justice and law of the civilized nation
- To promote peace and welfare among the worldly nations.

### Preamble of India – Facts for UPSC



Is preamble a part of Indian Constitution?	Yes, it is a part of the Indian constitution, also emphasized in <u>Kesavananda Bharti Case</u> .
Who wrote the preamble of India?	The preamble of India contains tenets highlighted in the Objective Resolution drafted by Jawaharlal Nehru in 1946

How many preambles does the Indian Constitution have?	Only 1 preamble along with 25 parts and 12 schedules and 448 articles, Indian Constitution today exists
What is the most important word in the Preamble of India?	Though no particular word has been given more importance than others, however, ‘We, the people of India’ are the words which are termed as the most powerful in the Preamble to the Indian Constitution
Why do we need a Preamble?	It gives us fundamental values and highlights of the Constitution
In which case, did the <u>Supreme Court</u> declare passed a judgement that Preamble is not a part of Indian Constitution?	In Berubari Case (1960), SC declared Preamble not to be a part of Indian Constitution

The hopes and aspirations of the people, as well as the ideals before our nation, are described in the preamble in clear cut words. It may be considered as the soul of the Constitution. The preamble can be referred to as the preface which highlights the entire Constitution.

### Interesting Facts about Preamble of Indian Constitution

- It was enacted after the enactment of the entire Constitution of India
- The term ‘secular’ was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.
- The Preamble secures to all citizens of India liberty of belief, faith and worship
- Ideal of justice (social, economic and political) in the Preamble are borrowed from the Soviet Union (Russia) Constitution
- Republic and the ideals of liberty, equality and fraternity are borrowed from the French Constitution
- Preamble, in itself, has been first introduced through the American Constitution

Read more about [sources of Indian Constitution](#) from the linked article.

### Four Main Ingredients of the Indian Preamble

The source of the Indian Constitution, the nature of the Indian State, the objectives of the Constitution of India & the date of adoption of the Indian State, are four main ingredients of the Indian Preamble which you can read about in the table below:

Preamble to the Indian Constitution	
<b>Source of the Indian Constitution</b>	The People of India are revealed to be the source of the authority of the Indian Constitution. The words, 'We, the People of India' reflect the same.
<b>Nature of the Indian State</b>	The Preamble of India tags India as the sovereign, socialist, republic, secular and democratic nation
<b>Objective of the Indian Constitution</b>	Justice, Liberty, Equality and Fraternity are denoted as the objectives of the Preamble of India
<b>Adoption Date of the Constitution of India</b>	November 26, 1949 as the date when then the Indian Constitution

### Keywords in the Preamble of the Indian Constitution

There are some important keywords in the Preamble of India like:

1. Sovereign
2. Socialist
3. Secular
4. Democratic
5. Republic
6. Justice
7. Liberty
8. Equality
9. Fraternity

Aspirants can get Constitution questions of UPSC Mains GS 2 in the linked article.

### Preamble of India – UPSC Notes:-[Download PDF Hereth](#)

Aspirants can read the below-mentioned articles related to Indian Constitution:

### Frequently Asked Questions related to Preamble of Indian Constitution

Q1

**How many words are in the Preamble of the Indian Constitution?**

The Preamble of Indian Constitution has 73 words. The 73-word Preamble to the Constitution of India outlines the ideals that must guide Indian democracy. Together with the Directive Principles of State Policy, it provides the context in which the country can achieve the fundamental rights guaranteed by the Constitution.

Q2

### **What is Preamble Explain?**

A preamble is an introductory statement in a document that explains the document's philosophy and objectives. In a Constitution, it presents the intention of its framers, the history behind its creation, and the core values and principles of the nation. The ideals behind the Preamble to India's Constitution were laid down by Jawaharlal Nehru's Objectives Resolution, adopted by the Constituent Assembly on January 22, 1947. Although not enforceable in court, the Preamble states the objects of the Constitution, and acts as an aid during the interpretation of Articles when language is found ambiguous.

Q3

### **What are the beginning words in the Preamble to the Constitution of India?**

The preamble begins with the words "We the people of India..." thus clearly indicating the source of all authority of the constitution. It emphasizes the sovereignty of the people and the fact that all powers of government flow from the people. It is the people of India on whose authority the Constitution rests. The preamble surmises that it is the people of India who are the authors of the constitution. Thus the words "We, the people of India" declares in unambiguous terms that the Constitution has been adopted, enacted and given to themselves by the people of India.

Q4

### **Is the Preamble basic structure of the Constitution?**

Preamble is part of the Constitution. Preamble indicates the basic structure of the Constitution. Preamble is neither enforceable nor justifiable in a court of law. This implies that courts cannot pass orders against the government in India to implement the ideas in the Preamble. Preamble can be amended and it has been amended only once through the 42nd Constitutional Amendment Act 1976.

### **Fundamental Rights:**

Articles 12-35 of the Indian Constitution deal with Fundamental Rights. These human rights are conferred upon the citizens of India and the Constitution tells that these rights are inviolable. Right to Life, Right to Dignity, Right to Education, etc. all come under one of the six main fundamental rights.

### **Fundamental Rights Latest News**

In October 2023, a five-judge Constitution Bench of the Supreme Court unanimously declined to recognise same-sex marriages. The Bench also declined to permit 'civil unions' for same-sex couples. All the judges of the Bench, although in favour of civil unions, **ruled that there is no fundamental right to marry under the Indian Constitution.**

In this article, you can read all about the 6 fundamental rights of India:

1. **Right to Equality**
2. **Right to Freedom**
3. **Right against Exploitation**
4. **Right to Freedom of Religion**
5. **Cultural and Educational Rights**
6. **Right to Constitutional Remedies**

The significance and list of fundamental rights of India for the UPSC exam are also given in the article.

### **What are Fundamental Rights?**

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, **fundamental rights are enforceable by the courts**, subject to certain conditions.

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

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them.
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

How many Fundamental Rights are there in the Indian Constitution?

There are six fundamental rights in the Indian Constitution. They are mentioned below along with the constitutional articles related to them:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

### **6 Fundamental Rights of India**

In this section, we list the fundamental rights of India and briefly describe each of them.

#### **1. Right to Equality (Articles 14 – 18)**

The right to equality is one of the important fundamental rights of the Indian Constitution that guarantees equal rights for everyone, irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc. This right also includes the abolition of titles as well as untouchability.

Before knowing about the right to equality, aspirants should know the types of equality to get an idea of what it is. It is also mentioned in our Preamble. The types of equality are:

1. Natural
2. Social
3. Civil
4. Political
5. Economic
6. Legal

The Right to Equality is one of the Fundamental Rights enshrined in the Constitution of India. It is very important to understand what this right entails and includes. This topic is a basic topic in the polity and constitution segments of the UPSC Syllabus for the civil services exam.

Below we provide the associated articles of the Constitution under the right to equality.

### Right to Equality

Article	Brief description
Article 14	The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, on grounds of religion, race, caste, sex or place of birth
Article 15	The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
Article 16	There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
Article 17	Abolition of untouchability



Article 18	Abolition of all titles except military and academic
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### Equality before the law (Article 14)

Article 14 treats all people the same in the eyes of the law. Article 14 is described in two parts – which states and commands the State not to deny to any person ‘equality before the law’. Another part of it also commands the State not to deny the ‘equal protection of the laws’.

- This provision states that all citizens will be treated equally before the law and avoids any kind of discrimination.
- The law of the country protects everybody equally.
- Under the same circumstances, the law will treat people in the same manner.

### Prohibition of discrimination (Article 15)

This article prohibits discrimination in any manner. This article secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or of them.

- No citizen shall, on grounds only of race, religion, caste, place of birth, sex or any of them, be subject to any liability, disability, restriction or condition with respect to:
  - Access to public places
  - Use of tanks, wells, ghats, etc. that are maintained by the State or that are meant for the general public
- The article also mentions that special provisions can be made for women, children and the backward classes notwithstanding this article.

### Equality of opportunity in matters of public employment (Article 16)

Article 16 provides equal employment opportunities in State service for all citizens.

- No citizen shall be discriminated against in matters of public employment or appointment on the grounds of race, religion, caste, sex, place of birth, descent or residence.
- Exceptions to this can be made for providing special provisions for the backward classes.

### Abolition of untouchability (Article 17)

Article 17 prohibits the practice of untouchability.

- Untouchability is abolished in all forms.
- Any disability arising out of untouchability is made an offence.

## Abolition of titles (Article 18)

Article 18 abolishes titles.

- The State shall not confer any titles except those which are academic or military titles.
- The article also prohibits citizens of India from accepting any titles from a foreign State.
- The article abolishes the titles that were awarded by the British Empire such as Rai Bahadur, Khan Bahadur, etc.
- Awards like Padma Shri, Padma Bhushan, Padma Vibhushan, Bharat Ratna and military honours like Ashok Chakra, Param Vir Chakra do not belong to this category.

Q1

### **Is equality a basic human right?**

The right to equality and non-discrimination is a fundamental component of international human rights law.

Q2

### **What are the exceptions to the right of equality of opportunity in matters of public employment?**

Under Article 16, exceptions to the right of equality of opportunity in matters of public employment are provided for to protect the interests of the weaker and vulnerable sections of society such as women, children, the backward classes (SC/ST) and minorities. The Parliament may also pass a law to the effect that a certain post be filled only by people residing in a certain area, to fulfil the conditions of the post that warrant the knowledge of the locality and the local language. The article also mentions that there can be a law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution shall be a person professing a particular religion or belonging to a particular denomination.

Q3

### **What does the Constitution of India say about equality?**

The Constitution of India has granted the right to equality to all citizens. All are equal before the law and there can be no discrimination on the basis of religion, race, caste, gender, place of birth, etc.

## **2. Right to Freedom (Articles 19 – 22)**

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights such as:

- Freedom of speech
- Freedom of expression
- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to reside in any part of the country

The six fundamental rights enshrined in the Constitution are considered essential for the functioning of Indian democracy. The right to freedom gives citizens basic freedom with respect to speech and expression, form associations, freedom of personal liberty, freedom to live a life of dignity, etc. It is important to understand the scope of these provisions and any exceptions thereof.

## Right to Freedom

The right to freedom guarantees freedom for citizens to live a life of dignity among other things. These are given in Articles 19, 20, 21A and 22 of the Indian Constitution. We shall take up the articles one by one in this section.

Article	Brief description
Article 19	Protection of 6 rights concerning the freedom of: <ol style="list-style-type: none"> <li>1. Speech and expression</li> <li>2. Assembly</li> <li>3. Association</li> <li>4. Movement</li> <li>5. Residence</li> <li>6. Profession</li> </ol>
Article 20	Protection with respect to conviction for offences
Article 21	Right to life and personal liberty
Article 21A	Right to elementary education
Article 22	Protection against arrest and detention in certain cases

## Article 19 of Indian Constitution

Article 19 of Indian Constitution guarantees six freedoms. They are:

1. **Freedom of speech and expression:** The State guarantees freedom of speech and expression to every person of India. However, the State can impose restrictions on the freedom of speech and expression in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court. Read more about the **Freedom of Speech and Expression [here](#)**.
2. **Freedom to assemble:** The State guarantees every person the freedom to assemble peacefully without arms. However, as above, reasonable restrictions can be imposed in the interests of the sovereignty and integrity of the country and public order.
3. **Freedom to form associations/unions/cooperative societies:** Again, the State can impose restrictions in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court. This freedom gives workers the right to form trade union, which is thus a fundamental right.
  1. The Police Forces (Restriction of Rights) Act, 1966 prohibits police personnel from forming trade unions.
  2. The Constitution also allows the Parliament to pass a law restricting the right to form political associations to members of the armed forces, intelligence bureaus, persons employed with telecommunication system.
4. **Freedom to move freely:** A citizen of India can move freely throughout the territory of India. But this right can also be restricted on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.
5. **Freedom of residence:** Citizens of India have the right to reside in any part of the country. Although restrictions can be imposed on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.
6. **Freedom of profession:** All citizens have the right to carry on any trade or profession/occupation, provided the trade or occupation is not illegal or immoral. Also, the law does not prevent the State from making laws related to technical or professional qualifications required for practising the occupation or trade.

## Article 20

Article 20 deals with the protection of citizens in respect of conviction for offences. This provides for three types of protection of the individual against the State.

1. **Retrospective criminal legislation:** This is also known as ex-post-facto criminal legislation. Under this, a person cannot be convicted for an act that was committed at a time when the act had not been declared by law as an offence.
  1. This means that criminal legislation cannot be given a retrospective effect.
  2. This immunity cannot be used against the provision of preventive detention, and also does not cover the trial.
  3. The law also provides that a person cannot be subject to a punishment greater than what is prescribed by law for the offence committed.

2. **Double jeopardy:** This indicates that a person cannot be convicted for the same offence more than once.
3. **Prohibition against self-incrimination:** This implies that no person accused of an offence shall be compelled by the State to bear witness against himself.

## Article 21

Article 21 states that no person shall be deprived of his life and personal liberty by the State except as per the procedure established by law. This article has a wide scope and its interpretation has undergone many changes over the decades.

- The Supreme Court has interpreted the right to life as the right to a dignified life.
- This is the most important right in one sense, because, without this right to life, all other fundamental rights would be meaningless.
- It is this article that differentiates between a police state and a constitutional state.

## Article 21(A)

This article was introduced by the 86th Constitutional Amendment in 2002. It provides that the State shall provide free and compulsory education to all children between the ages of 6 and 14.

## Article 22

Article 22 deals with the protection against arrest and detention in certain cases.

- This article is applicable to both citizens and non-citizens.
- This provision extends certain procedural safeguards for individuals in case of an arrest.
- It comes into the picture after a person has been arrested. It is not a fundamental right against detention and arrest.
- The idea behind this right is to prevent arbitrary arrests and detention.
- The article provides the following safeguards:
  - Article 22(1) – Any person who is in custody has to be informed as to why he has been arrested. Further, he cannot be denied the right to consult an advocate.
  - Article 22(2) – The arrested individual should be produced before a judicial magistrate within 24 hours of his arrest.
  - Article 22(3) – No individual who has been arrested can be kept in custody for more than the period determined by the judicial magistrate.
- These safeguards are, however, not applicable to
  - Enemy aliens
  - People arrested under preventive detention laws

## What is Preventive Detention?

There are two types of detention:

1. Punitive
2. Preventive

Punitive detention is detention after a trial. Preventive detention is detention without trial. The idea behind this is to prevent an individual from committing a crime. This means that persons can be detained on grounds of suspicion. The rights of people arrested in this manner are governed by preventive detention laws.

### **3. Right against Exploitation (Articles 23 – 24)**

This right implies the prohibition of traffic in human beings, *begar*, and other forms of forced labour. It also implies the prohibition of employment of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

#### **Right against Exploitation**

There are two articles of the Constitution which guarantee the right against exploitation. They are described below:

#### **Article 23 – Prohibition of traffic in human beings and forced labour**

Article 23(1): Traffic in human beings and the beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

Article 23(2): Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

- Exploitation implies the misuse of others' services by force and/or labour without payment.
- There were many marginalized communities in India who were forced to engage in manual and agricultural labour without any payment.
- Labour without payment is known as *begar*.
- Article 23 forbids any form of exploitation.
- Also, one cannot be forced to engage in labour against his/her will even if remuneration is given.
- Forced labour is forbidden by the Constitution. It is considered forced labour if the less-than-minimum wage is paid.
- This article also makes 'bonded labour' unconstitutional.
- Bonded labour is when a person is forced to offer services out of a loan/debt that cannot be repaid.
- The Constitution makes coercion of any kind unconstitutional. Thus, forcing landless persons into labour and forcing helpless women into prostitution is unconstitutional.

- The Article also makes trafficking unconstitutional.
- Trafficking involves the buying and selling of men and women for illegal and immoral activities.
- Even though the Constitution does not explicitly ban ‘slavery’, Article 23 has a wide scope because of the inclusion of the terms ‘forced labour’ and ‘traffic’.
- **Article 23 protects citizens not only against the State but also from private citizens.**
- The State is obliged to protect citizens from these evils by taking punitive action against perpetrators of these acts (which are considered crimes), and also take positive actions to abolish these evils from society.
- Under Article 35 of the Constitution, the Parliament is authorized to enact laws to punish acts prohibited by Article 23.
- Clause 2 implies that compulsory services for public purposes (such as conscription to the armed forces) are not unconstitutional.
- Laws passed by the Parliament in pursuance of Article 23:
  - Suppression of Immoral Traffic in Women and Girls Act, 1956
  - Bonded Labour System (Abolition) Act, 1976

Article 24 – Prohibition of employment of children in factories, etc.

Article 24 says that “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

- This Article forbids the employment of children below the age of 14 in any hazardous industry or factories or mines, without exception.
- However, the employment of children in non-hazardous work is allowed.

**Laws that were passed in pursuance of Article 24 in India.**

### **The Factories Act, 1948**

This was the first act passed after independence to set a minimum age limit for the employment of children in factories. The Act set a minimum age of 14 years. In 1954, this Act was amended to provide that children below the age of 17 could not be employed at night.

### **The Mines Act of 1952**

This Act prohibits the employment of people under the age of 18 years in mines.

### **The Child Labour (Prohibition and Regulation) Act, 1986**

This was a landmark law enacted to curb the menace of child labour prevalent in India. It described where and how children could be employed and where and how this was forbidden. This Act designates a child as a person who has not completed his/her 14th year of age. The 1986 Act prohibits the employment of children in 13 occupations and 57 processes.

### **Child Labour (Prohibition & Regulation) Amendment Act, 2016**

This Act completely forbids the employment of children below 14 years of age. It also bans the employment of people between the ages of 14 and 18 in hazardous occupations and processes. Punishments to violators of this law were made stricter by this amendment act. This Act allows children to be employed in certain family occupations and also as artists.

#### **Child Labour (Prohibition and Regulation) Amendment Rules, 2017**

The government notified the above Rules in 2017 to provide a broad and specific framework for prevention, prohibition, rescue, and rehabilitation of child and adolescent workers. The Rules clarified on issues concerning the employment of family enterprises and also provides safeguards for artists in that the working hours and conditions are specified.

#### **4. Right to Freedom of Religion (Articles 25 – 28)**

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, and establish and maintain religious and charitable institutions.

##### **Right to Freedom of Religion**

The Constitution of India guarantees the right to freedom of religion to not only individuals but also religious groups in India. This is enshrined in Articles 25 to 28.

Article 25 (Freedom of conscience and free profession, practice, and propagation of religion)

Article 25 guarantees the freedom of conscience, the freedom to profess, practice, and propagate religion to all citizens.

- The above-mentioned freedoms are subject to public order, health, and morality.
- This article also gives a provision that the State can make laws:
  - That regulates and restricts any financial, economic, political, or other secular activity associated with any religious practice.
  - That provides for the social welfare and reform or opening up of Hindu religious institutions of a public character to all sections and classes of Hindus. Under this provision, Hindus are construed as including the people professing the Sikh, Jain, or Buddhist religions, and Hindu institutions shall also be construed accordingly.
- People of the Sikh faith wearing & carrying the *kirpan* shall be considered included in the profession of the Sikh religion.

Article 26 (Freedom to manage religious affairs)



This Article provides that every religious denomination has the following rights, subject to morality, health, and public order.

1. The right to form and maintain institutions for religious and charitable intents.
2. The right to manage its own affairs in the matter of religion.
3. The right to acquire the immovable and movable property.
4. The right to administer such property according to the law.

Article 27 (Freedom as to payment of taxes for promotion of any particular religion)

According to Article 27 of the Constitution, there can be no taxes, the proceeds of which are directly used for the promotion and/or maintenance of any particular religion/religious denomination.

Article 28 (Freedom as to attendance at religious instruction or religious worship in certain educational institutions)

This article permits educational institutions that are maintained by religious groups to disseminate religious instruction.

- This provides that no religious instruction shall be provided in State-run educational institutions.
- Educational institutions administered by the State but that were established under any endowment or trust which requires that religious instruction shall be imparted in such institutions are exempt from the above clause (that no religious instruction shall be provided).
- Any person who attends any educational institution recognized by the State or receiving State aid shall not be required to participate in any religious instruction that may be imparted in such institution, or also attend any religious worship in such institutions unless he/she has given consent for the same. In the case of minors, the guardians should have given consent for the same.

What is Secularism?

The word 'secularism' means separate from religion.

- It entails the separation of religion from the government, social, economic, and cultural aspects of life.
- Here religion is an entirely personal matter.
- India is a secular country with no state religion.
- However, this in India, also means that there is equal respect for all religions and faiths.
- The word is also a part of the Basic Structure of the Constitution. It was added by the 42nd Amendment to the Constitution.
- This concept enjoys high regard in Indian democracy.

- Secularism has also been an inalienable part of Indian culture as seen by the multitude of faiths that have co-existed in this country for centuries.
- All religious groups in India have the same powers without any discrimination.

### Indian and Western Models of Secularism

The term secularism, as explained above, indicates the separation of the State from religion. This concept, however, has slightly differing connotations in the Indian and the western polity. This is discussed below.

- In the Western model, secularism connotes the complete separation of the State from the Church. This owes its origin to the French Revolution where the revolution sought to establish a 'secular' government, one which did not influence the church or the clergy.
- Both the institutions (church and government) would not interfere in each other's domains.
- In India, however, the State and religion are not water-tight compartments.
- Even though the State has to maintain equal distance from all religions, the influence of the government does extend to religious affairs, albeit in a limited fashion.
- Unlike the Western model, where the State does not offer financial support to any religious institution, in India, the State has chosen a positive engagement model.
- The state provides religious minorities the right to establish their educational institutions, and in some cases, also extends assistance to these institutions.
- Many Hindu temples are directly governed by the State.
- The State has set up Boards for the administration of large temples and has also set up the Waqf Board, etc.
- In India, when talking about society and the community, the word pluralism is better suited than the word secularism.
- Western societies have largely been homogenous with minimal religious (and other) minority groups, until recently.
- In India, for centuries, many religious groups have shared spaces in all respects and thrived together.

### **5. Cultural and Educational Rights (Articles 29 – 30)**

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

#### Cultural and Educational Rights

Fundamental Rights guarantee basic rights to the citizens of India. There are six fundamental rights enshrined in the Constitution of India, and Articles 29 and 30 deal with the cultural and educational rights of Indian citizens.

1. This fundamental right intends to preserve the culture of minority groups in India.
2. Indian society is a composite heterogeneous one and its diversity is one of its strengths.
3. The Constitution guarantees these rights to minorities so that the diversity of this country is preserved and provides avenues for all groups including marginalized ones to protect, preserve, and propagate their culture.

## **Article 29 – Protection of Interests of Minorities**

This article is intended to protect the interests of minority groups.

**Article 29(1):** This provides any section of the citizens residing in India having a distinct culture, language, or script, the right to conserve their culture, language and script.

**Article 29(2):** The State shall not deny admission into educational institutes maintained by it or those that receive aid from it to any person based only on race, religion, caste, language, or any of them.

## **Article 30 – Right of Minorities to Establish and Administer Educational Institutions**

This right is given to minorities to form and govern their own educational institutions.

Article 30 is also called the “**Charter of Education Rights**”.

**Article 30(1):** All religious and linguistic minorities have the right to establish and administer educational institutions of their choice. (Read about Minority Protection in India in the linked article.)

**Article 30(2):** The State shall not, when granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

## **6. Right to Constitutional Remedies (32 – 35)**

The Constitution guarantees remedies if citizens’ fundamental rights are violated. The government cannot infringe upon or curb anyone’s rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.

Part III of the Constitution provides for legal remedies for the protection of these rights against their violation by the State or other institutions/individuals. It entitles the citizens of India to move the Supreme Court or High Courts for the enforcement of these rights. The State is forbidden from making any law that may conflict with the Fundamental Rights.

Fundamental rights are the rights that grant individuals equality in every aspect irrespective of race, colour, caste, religion, birthplace, or gender. These rights are mentioned under

Articles 12 to 35 of the Indian Constitution. There are pre-defined punishments in case of violation of these rights at the discretion of the judiciary.

## **What is a Writ?**

Writs are written orders issued by the Supreme Court of India to provide constitutional remedies to protect the fundamental rights of citizens from a violation.

## **Facts about writs in India**

- Article 32 also empowers Parliament to authorize any other court to issue these writs
- Before 1950, only the High Courts of Calcutta, Bombay, and Madras had the power to issue the writs
- Article 226 empowers all the high courts of India to issue the writs
- Writs of India are borrowed from English law where they are known as ‘Prerogative writs’

## **What is a Writ Petition?**

A writ petition is essentially a court petition for extraordinary review, asking a court to intervene in a lower court’s decision. Under the Indian legal system, jurisdiction to issue ‘prerogative writs’ is given to the Supreme Court and the High Courts of Judicature of all Indian states. Parts of the law relating to writs are outlined in the Constitution of India.

## **Type of Writs**

The Constitution empowers the Supreme Court and High Courts to issue orders or writs.

The types of writs are:

- Habeas Corpus
- Certiorari
- Prohibition
- Mandamus
- Quo Warranto

## **Habeas Corpus**

Habeas Corpus is a writ that is enforced to protect the fundamental right to liberty of an individual against unlawful detention. This writ commands a public official to deliver a detained person in front of the court and provide valid reasons for the detention. However, this writ cannot be issued in case the proceeding is for contempt of a legislature or a court.

## **Certiorari**

The writ of certiorari is issued to a lower court directing the transfer of a case for review, usually to overrule the judgment of the lower court. The Supreme Court issues the writ of Certiorari in case the decision passed by the lower court is challenged by the party. It is issued in case the higher court finds it a matter of overjurisdiction or lack of jurisdiction.

It is one of the mechanisms by which the fundamental rights of the citizens are upheld.

## **Prohibition**

Prohibition is a writ issued by a higher court to a lower court to enforce inactivity in the jurisdiction. It happens only in case the higher court is of the discretion that the case falls outside the jurisdiction of the lower court. Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.

## **Mandamus**

The writ of mandamus is issued to a subordinate court, an officer of the government, or a corporation or other institution commanding the performance of certain acts or duties.

Unlike Habeas Corpus, Mandamus cannot be issued against a private individual.

The writ of mandamus can be used to order the completion of a task or in other cases, it may require an activity to be ceased.

## **Quo-Warranto**

Quo warranto is issued against a person who claims or usurps a public office. Through this writ, the court inquires 'by what authority' the person supports his or her claim.

Through this writ, the court enquires into the legality of a claim of a person to a public office. This writ prevents the illegal assumption of a public office by an individual.

To know more about the [types of writs in India](#), refer to the linked article.

## **Suspension of Fundamental Rights**

- Fundamental rights can be suspended in the case of National Emergency as mentioned under article 352.
- The six fundamental rights under Article 19 are automatically suspended in the case National Emergency is imposed on grounds of war or external aggression which is stated under Article 358.
- Article 359 has a clause for suspension of other rights. In that case, a separate notification has to be issued by the President.
- The rights mentioned under Articles 20 and 21 can never be suspended.
- Constitutional emergency and financial emergency cannot affect Fundamental Rights.

## Status of Writs in Other Countries

1. The writs other than habeas corpus are discretionary remedies and have been known as prerogative orders in England and Wales since 1938.

The writs of quo warranto and procedendo are now obsolete. The modified names of certiorari, mandamus, and prohibition are mentioned under the new Civil Procedure Rules 1998 known as quashing orders, mandatory orders, and prohibiting orders respectively.

1. Mandamus has been replaced by injunction in the United States district courts.
2. The Supreme Court of the United States grants certiorari while the Supreme Court of other states grant review.

## Features of Fundamental Rights

- Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the SC bypassing the lower courts. He or she should first approach the lower courts.
- Some of the fundamental rights are available to all citizens while the rest are for all persons (citizens and foreigners).
- Fundamental rights are not absolute rights. They have reasonable restrictions, which means they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
- They are justiciable, implying they are enforceable by courts. People can approach the SC directly in case of violation of fundamental rights.
- Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.
- The Fundamental Rights of the Indian Constitution can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.
- The application of fundamental rights can be restricted in an area that has been placed under martial law or military rule.

Also, in the news:

- Conjugal Rights
- Right to be Forgotten

## Fundamental Rights Available Only to Citizens

The following is the list of fundamental rights in the Indian constitution that are available **only to citizens** (and not to foreigners):

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of freedom of: (Article 19)
  - Speech and expression
  - Association
  - Assembly
  - Movement
  - Residence
  - Profession
4. Protection of the culture, language and script of minorities (Article 29).
5. Right of minorities to establish and administer educational institutions (Article 30).

### Importance of Fundamental Rights

Fundamental rights are very important because they are like the backbone of the country. They are essential for safeguarding the people's interests.

According to Article 13, all laws that are violative of fundamental rights shall be void. Here, there is an express provision for judicial review. The SC and the High Courts can declare any law unconstitutional on the grounds that it is violative of fundamental rights. Article 13 talks about not just laws, but also ordinances, orders, regulations, notifications, etc.

### Amendability of Fundamental Rights

- Any changes to fundamental rights require a constitutional amendment that should be passed by both the Houses of Parliament. The amendment bill should be passed by a **special majority** of Parliament.
  - Read about the types of majorities in the Indian Parliament in the linked article.
- **As per the Constitution, Article 13(2) states that no laws can be made that take away fundamental rights.**
- The question is whether a constitutional amendment act can be termed law or not.
- In the Sajjan Singh case of 1965, the Supreme Court held that the Parliament can amend any part of the Constitution including fundamental rights.
- But in 1967, the SC reversed its stance taken earlier when in the verdict of the Golaknath case, it said that the fundamental rights cannot be amended.
- In 1973, a landmark judgement ensued in the **Kesavananda Bharati case**, where the SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment."
- This is the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the basic structure of the Constitution.
- In 1981, the Supreme Court reiterated the Basic Structure doctrine.

- It also drew a line of demarcation as April 24th, 1973 i.e., the date of the Kesavananda Bharati judgement, and held that it should not be applied retrospectively to reopen the validity of any amendment to the Constitution which took place prior to that date.

Aspirants can learn more about 25 important SC judgements for UPSC in the linked article.

### Doctrine of Severability

This is a doctrine that protects the fundamental rights enshrined in the Constitution.

- It is also known as the Doctrine of Separability.
- It is mentioned in Article 13, according to which all laws that were enforced in India before the commencement of the Constitution, inconsistent with the provisions of fundamental rights shall **to the extent of that inconsistency** be void.
- This implies that only the parts of the statute that are inconsistent shall be deemed void and not the whole statute. Only those provisions which are inconsistent with fundamental rights shall be void.

### Doctrine of Eclipse

- This doctrine states that any law that violates fundamental rights is not null or void ab initio, but is only non-enforceable, i.e., it is not dead but inactive.
- This implies that whenever a fundamental right (which was violated by the law) is struck down, the law becomes active again (is revived).
- Another point to note is that the doctrine of eclipse applies only to pre-constitutional laws (laws that were enacted before the Constitution came into force) and not to post-constitutional laws.
- This means that any post-constitutional law which is violative of a fundamental right is void ab initio.

Aspirants can also get details about the IAS Topper and take inspiration from their preparation strategy and excel in the upcoming UPSC CSE.

### Fundamental Rights and Duties Difference

Fundamental Rights are the rights available to the people of this country, while Fundamental Duties are the obligations on the part of the citizens. Fundamental Duties were added to the Indian Constitution by the 42nd Constitution Amendment Act 1976 by the Indira Gandhi Government.

Fundamental rights and duties are two important concepts of the Indian Constitution. While fundamental rights are the entitlements that individuals possess by virtue of being citizens of a particular country, fundamental duties are the responsibilities that citizens have towards their country and fellow citizens. Here are some key differences between the two:

1. **Nature:** Fundamental rights are legal rights that are enshrined in the constitution of a country. These rights are meant to protect the interests of individuals and provide them



with a sense of security and equality. On the other hand, fundamental duties are moral and ethical obligations expected of citizens towards their country and fellow citizens.

2. **Enforcement:** Fundamental rights are enforceable through the courts of law. If an individual's fundamental rights are violated, they can seek legal recourse and the courts can provide appropriate remedies. However, fundamental duties are not enforceable in the same way. While citizens are expected to fulfil their fundamental duties, there are no legal sanctions if they fail to do so.
3. **Goal:** The focus of fundamental rights is on protecting the interests of individuals and ensuring their well-being. Fundamental duties, on the other hand, are focused on promoting the collective good and ensuring that citizens contribute to the welfare of their country.

### **What are the 7 fundamental rights?**

There were 7 fundamental rights in the Constitution. Currently, there are only six as the 'Right to Property' was removed as a fundamental right. It is now only a legal right. The list of fundamental rights are:

Right to equality  
Right to freedom  
Right against exploitation  
Right to freedom of religion  
Cultural and educational rights  
Right to constitutional remedies

Q2

### **What are the 11 fundamental duties?**

There are 11 fundamental duties. They are described in the article linked below: For more details on [Fundamental Duties](#), visit the linked article.

Q3

### **What is Article 51A?**

Article 51A gives the list of fundamental duties prescribed for every Indian citizen.

Q4

### **Which is the most important fundamental right?**

The Right to Constitutional Remedies is considered to be the most important fundamental right because it ensures the protection of our fundamental rights.

Q5

### **When was Doctrine of Eclipse introduced?**

The first case where traces of the origin of this doctrine can be found is Keshava Madhavan Menon v State of Bombay. In this case, the appellant had a case against himself under the Indian Press (Emergency Powers) Act, 1931 with regards to a pamphlet published in 1949.

## Directive Principles of State Policy – Classification

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-

- **Socialistic Principles,**
- **Gandhian Principles** and,
- **Liberal-Intellectual Principles.**

The details of the three types of DPSPs are given below:

DPSP – Socialistic Principles	
<b>Definition:</b> They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:	
<b>Article 38</b>	Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities
<b>Article 39</b>	Secure citizens: <ul style="list-style-type: none"><li>• Right to adequate means of livelihood for all citizens</li><li>• Equitable distribution of material resources of the community for the common good</li><li>• Prevention of concentration of wealth and means of production</li><li>• Equal pay for equal work for men and women</li><li>• Preservation of the health and strength of workers and children against forcible abuse</li><li>• Opportunities for the healthy development of children</li></ul>
<b>Article 39A</b>	Promote equal justice and free legal aid to the poor
<b>Article 41</b>	In cases of unemployment, old age, sickness and disablement, secure citizens: <ul style="list-style-type: none"><li>• Right to work</li></ul>

	<ul style="list-style-type: none"> <li>• Right to education</li> <li>• Right to public assistance</li> </ul>
<b>Article 42</b>	Make provision for just and humane conditions of work and maternity relief
<b>Article 43</b>	Secure a living wage, a decent standard of living and social and cultural opportunities for all workers
<b>Article 43A</b>	Take steps to secure the participation of workers in the management of industries
<b>Article 47</b>	Raise the level of nutrition and the standard of living of people and to improve public health

### DPSP – Gandhian Principles

**Definition:** These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:

<b>Article 40</b>	Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
<b>Article 43</b>	Promote cottage industries on an individual or co-operation basis in rural areas
<b>Article 43B</b>	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
<b>Article 46</b>	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

<b>Article 47</b>	Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
<b>Article 48</b>	Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

### DPSP – Liberal-Intellectual Principles

**Definition:** These principles reflect the ideology of liberalism. Under various articles, they direct the state to:

<b>Article 44</b>	Secure for all citizens a <u>uniform civil code</u> throughout the country
<b>Article 45</b>	Provide early childhood care and education for all children until they complete the age of six years. (Note: 86th Amendment Act of 2002 changed the subject matter of this article and made elementary education a fundamental right under Article 21 A.)
<b>Article 48</b>	Organise agriculture and animal husbandry on modern and scientific lines
<b>Article 49</b>	Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance
<b>Article 50</b>	Separate the judiciary from the executive in the public services of the State
<b>Article 51</b>	<ul style="list-style-type: none"> <li>• Promote international peace and security and maintain just and honourable relations between nations</li> <li>• Foster respect for international law and treaty obligations</li> <li>• Encourage settlement of international disputes by arbitration</li> </ul>

Directive Principles of State Policy's notes about its classification is important for UPSC 2024 and aspirants should learn these with articles mentioned.

## What are the new DPSPs added by the 42nd Amendment Act, 1976?

42nd Amendment Act, 1976 added four new Directive Principles in the list:

S.No	Article	New DPSPs
1	<b>Article 39</b>	To secure opportunities for the healthy development of children
2	<b>Article 39A</b>	To promote equal justice and to provide free legal aid to the poor
3	<b>Article 43A</b>	To take steps to secure the participation of workers in the management of industries
4	<b>Article 48A</b>	To protect and improve the environment and to safeguard forests and wildlife

### Facts about Directive Principles of State Policy:

1. A new DPSP under **Article 38** was added by the 44th Amendment Act of 1978, which requires the State to minimise inequalities in income, status, facilities and opportunities.
2. The 86th Amendment Act of 2002 changed the subject-matter of **Article 45** and made elementary education a fundamental right under **Article 21A**. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of 14 years.
3. A new DPSP under **Article 43B** was added by the 97th Amendment Act of 2011 relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
4. The Indian Constitution under **Article 37** makes it clear that ‘DPSPs are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.’

### Criticism of Directive Principles of State Policy

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

1. It has no legal force
2. It is illogically arranged

3. It is conservative in nature
4. It may produce constitutional conflict between centre and state

### **What is the conflict between Fundamental Rights and DPSPs?**

With the help of four court cases given below, candidates can understand the relationship between Fundamental Rights and Directive Principles of State Policy:

#### **Champakam Dorairajan Case (1951)**

Supreme Court ruled that in any case of conflict between Fundamental Rights and DPSPs, the provisions of the former would prevail. DPSPs were regarded to run as a subsidiary to Fundamental Rights. SC also ruled that Parliament can amend Fundamental Rights through constitutional amendment act to implement DPSPs.

**Result:** Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.

#### **Golaknath Case (1967)**

Supreme Court ruled that Parliament cannot amend Fundamental Rights to implement Directive Principles of State Policy.

**Result:** Parliament enacted the 24th Amendment Act 1971 & 25th Amendment Act 1971 declaring that it has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. 25th Amendment Act inserted a new Article 31C containing two provisions:

- No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)22 and (c)23 shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property).
- No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

#### **Kesavananda Bharti Case (1973)**

Supreme Court ruled out the second provision of Article 31C added by the 25th Amendment Act during Golaknath Case of 1967. It termed the provision 'unconstitutional.' However, it held the first provision of Article 31C constitutional and valid.

**Result:** Through the 42nd amendment act, Parliament extended the scope of the first provision of Article 31C. It accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31.

#### **Minerva Mills Case (1980)**

Supreme Court held the extension of Article 31C made by the 42nd amendment act unconstitutional and invalid. It made DPSP subordinate to Fundamental Rights. Supreme Court also held that ‘**the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.**’

Supreme Court’s rulings following the case were:

- Fundamental Rights and DPSPs constitute the core of the commitment to social revolution.
- The harmony and balance between Fundamental Rights and Directive Principles of State Policy is an **essential feature of the basic structure** of the Constitution.
- The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights.

**Conclusion:** Today, Fundamental Rights enjoy supremacy over the Directive Principles. Yet, Directive Principles can be implemented. The Parliament can amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not damage or destroy the basic structure of the Constitution.

The Swaran Singh Committee in 1976 recommended Fundamental Duties, the necessity of which was felt during the internal emergency of 1975-77. The 42nd Amendment Act of 1976 added 10 Fundamental Duties to the Indian Constitution. The 86th Amendment Act 2002 later added the 11th Fundamental Duty to the list.

### **Fundamental Duties – Indian Polity Notes**

The fundamental duties which were added by the 42nd Amendment Act of the Constitution in 1976, in addition to creating and promoting culture, also strengthen the hands of the legislature in enforcing these duties vis-a-vis the fundamental rights.

The list of 11 Fundamental Duties under Article 51-A to be obeyed by every Indian citizen is given in the table below:

S.No	11 Fundamental Duties
1.	Abide by the <u>Indian Constitution</u> and respect its ideals and institutions, the National Flag and the National Anthem
2.	Cherish and follow the noble ideals that inspired the national struggle for freedom
3.	Uphold and protect the sovereignty, unity and integrity of India

4.	Defend the country and render national service when called upon to do so
5.	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
6.	Value and preserve the rich heritage of the country's composite culture
7.	Protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures
8.	Develop scientific temper, humanism and the spirit of inquiry and reform
9.	Safeguard public property and to abjure violence
10.	Strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement
11.	Provide opportunities for education to his child or ward between the age of six and fourteen years. <b>(This duty was added by the 86th Constitutional Amendment Act, 2002)</b>

The Fundamental Duties form an important topic for IAS Prelims as can be seen from the past years' question papers. Aspirants preparing for UPSC 2024 are advised to cover the topic with all facts and figures. The topic once understood can fetch you a great score in prelims and mains both.

### Importance of Fundamental Duties – Part IV-A

Fundamental Duties are an inalienable part of fundamental rights. The importance of these are given in the table below:

S.No	Importance of Fundamental Duties
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1.	They remind Indian Citizens of their duty towards their society, fellow citizens and the nation
2.	They warn citizens against anti-national and anti-social activities
3.	They inspire citizens & promote a sense of discipline and commitment among them
4.	They help the courts in examining and determining the constitutional validity of a law

### Criticism of Fundamental Duties

The Fundamental Duties mentioned in Part IVA of the Constitution have been criticized on the following grounds:

- They have been described by critics as a code of moral precepts due to their non-justiciable character. Their inclusion in the Constitution was described by the critics as superfluous. This is because the duties included in the Constitution as fundamental would be performed by the people even though they were not incorporated into the Constitution.
- Some of the duties are vague, ambiguous and difficult to be understood by the common man.
- The list of duties is not exhaustive as it does not cover other important duties like casting votes, paying taxes, family planning and so on. In fact, the duty to pay taxes was recommended by the Swaran Singh Committee.
- The critics said that the inclusion of fundamental duties as an appendage to Part IV of the Constitution has reduced their value and significance. They should have been added after Part III so as to keep them on par with Fundamental Rights.
- Swaran Singh's Committee recommended more than 10 Fundamental Duties, however, not all were included in the Constitution. Those duties recommended by the committee which were not accepted were:
  1. Citizens to be penalized/punished by the parliament for any non-compliance with or refusal to observe any of the duties.
  2. The punishments/penalties decided by the Parliament shall not be called in question in any court on the ground of infringement of any of Fundamental Rights or on the ground of repugnancy to any other provision of the Constitution.
  3. Duty to pay taxes.

### Facts about Fundamental Duties for UPSC:

- Fundamental Duties are categorized into two – Moral Duty & Civic Duty
  1. Moral Duty: cherishing noble ideals of freedom struggle
  2. Civic Duty: respecting the Constitution, National Flag and National Anthem
- They essentially contain just a codification of tasks integral to the Indian way of life.
- The Fundamental Duties are confined to Indian citizens only and do not extend to foreigners, unlike a few Fundamental Rights.
- They are also nonjusticiable similar to the Directive Principles of State Policy.
- There is no legal sanction against their violation