

### **The Preamble**

- ✓ The American Constitution was the first to begin with a Preamble. Many countries, including India, followed this practice. The term ‘preamble’ refers to the introduction or preface to the Constitution. It contains the summary or essence of the Constitution.
- ✓ N A Palkhivala, an eminent jurist and constitutional expert, called the Preamble as the 'identity card of the Constitution'.
- ✓ The Preamble to the Indian Constitution is based on the ‘Objectives Resolution’, drafted and moved by Pandit Nehru, and adopted by the Constituent Assembly.
- ✓ It has been amended by the 42<sup>nd</sup> Constitutional Amendment Act (1976), which added three new words—socialist, secular and integrity.

#### **TEXT OF THE PREAMBLE**

- ✓ The Preamble in its present form reads:
  - ❖ “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 of 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”.

#### **INGREDIENTS OF THE PREAMBLE**

- ✓ The Preamble reveals four ingredients or components:
  1. Source of authority of the Constitution: The Preamble states that the Constitution derives its authority from the people of India.



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2. Nature of Indian State: It declares India to be of a sovereign, socialist, secular democratic and republican polity.
3. Objectives of the Constitution: It specifies justice, liberty, equality and fraternity as the objectives.
4. Date of adoption of the Constitution: It stipulates November 26, 1949 as the date.

#### KEY WORDS IN THE PREAMBLE

##### NATURE OF STATE

- ✓ Certain key words—Sovereign, Socialist, Secular, Democratic, Republic, Justice, Liberty, Equality and Fraternity—are explained as follows:

##### OBJECTIVES OF STATE

#### 1. Sovereign

- ✓ The word ‘sovereign’ implies that India is neither a dependency nor a dominion of any other nation, but an independent state.
- ✓ There is no authority above it, and it is free to conduct its own affairs (both internal and external). Though in 1949, India declared the continuation of her full membership of the Commonwealth of Nations and accepted the British Crown as the head of the Commonwealth, this extra-constitutional declaration does not affect India’s sovereignty in any manner.
- ✓ Further, India’s membership of the United Nations Organisation (UNO) also in no way constitutes a limitation on her sovereignty.
- ✓ Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

#### 2. Socialist

- ✓ Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy.
- ✓ In other words, what was hitherto implicit in the Constitution has now been made explicit. Moreover, the Congress party itself adopted a resolution to establish a ‘socialistic pattern of society’ in its Avadi session as early as in 1955 and took measures accordingly.
- ✓ Notably, the Indian brand of socialism is a ‘democratic socialism’ and not a ‘communistic socialism (also known as ‘state socialism’) which involves the nationalisation of all means of production and distribution and the abolition of private property. Democratic socialism, on the



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other hand, holds faith in a ‘mixed economy’ where both public and private sectors co-exist side by side.

- ✓ As the Supreme Court says, ‘Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism. The new economic policy (1991) of liberalisation, privatisation and globalisation has, however, diluted the socialist credentials of the Indian State.

### 3. Secular

- ✓ The term ‘secular’ too was added by the 42nd Constitutional Amendment Act of 1976. However, as the Supreme Court said in 1974, although the words ‘secular state’ were not expressly mentioned in the Constitution, there can be no doubt that Constitution-makers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the fundamental right to freedom of religion) have been included in the constitution.
- ✓ The Indian Constitution embodies the positive concept of secularism ie, all religions in our country (irrespective of their strength) have the same status and support from the state.

### 4. Democratic One Person = One Vote. People of India hold the Supreme Power

- ✓ A democratic polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people.
- ✓ Democracy is of two types—direct and indirect.
- ✓ In direct democracy, the people exercise their supreme power directly as is the case in Switzerland. There are four devices of direct democracy, namely, **Referendum, Initiative, Recall and Plebiscite.**
- ✓ In indirect democracy, on the other hand, the representatives elected by the people exercise the supreme power and thus carry on the government and make the laws. This type of democracy, also known as representative democracy, is of two kinds—parliamentary and presidential.
- ✓ The Indian Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions.
- ✓ Universal adult franchise, periodic elections, rule of law, independence of judiciary, and absence of discrimination on certain grounds are the manifestations of the democratic character of the Indian polity.



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- ✓ The term ‘democratic’ is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy. This dimension was stressed by Bharat Ratna Dr. Ambedkar Sahab in his concluding speech in the Constituent Assembly on November 25, 1949, in the following way:
- ✓ “Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity.
- ✓ The principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy.
- ✓ Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty, would kill individual initiative”.
- ✓ In the same context, the Supreme Court observed in 1997 that: “The Constitution envisions to establish an egalitarian social order rendering to every citizen social, economic and political justice in a social and economic democracy of the Bharat Republic”.

## 5. Republic

- ✓ A democratic polity can be classified into two categories—monarchy and republic.
- ✓ In a monarchy the head of the state (usually king or queen) enjoys a hereditary position, that is, he comes into office through succession, eg, Britain.
- ✓ In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period, eg, USA.
- ✓ Therefore, the term ‘republic’ in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years.
- ✓ A republic also means two more things: one, vesting of political sovereignty in the people and not in a single individual like a king; second, the absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.

## 6. Justice

- ✓ The term ‘justice’ in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles.



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- ✓ Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs and OBCs) and women.
- ✓ Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring in-equalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as ‘distributive justice’.
- ✓ Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government. The ideal of justice—social, economic and political—has been taken from the Russian Revolution (1917).

## 7. Liberty

- ✓ The term ‘liberty’ means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.
- ✓ The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation.
- ✓ Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. However, liberty does not mean ‘license’ to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself.
- ✓ In brief, the liberty conceived by the Preamble or fundamental rights is not absolute but qualified. The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789–1799).

## 8. Equality

- ✓ The term ‘equality’ means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
- ✓ The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality—civic, political and economic. The following provisions of the chapter on Fundamental Rights ensure civic equality:
  - (a) Equality before the law (Article 14).



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- (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
- (c) Equality of opportunity in matters of public employment (Article 16).
- (d) Abolition of untouchability (Article 17).
- (e) Abolition of titles (Article 18).
- ✓ There are two provisions in the Constitution that seek to achieve political equality.
  - o One, no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article 325).
  - o Two, elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage (Article 326).
  - o The Directive Principles of State Policy (Article 39) secures to men and women equal right to an adequate means of livelihood and equal pay for equal work.

## 9. Fraternity

- ✓ Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Article 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities.
- ✓ The Preamble declares that fraternity has to assure two things—the dignity of the individual and the unity and integrity of the nation. The word ‘integrity’ has been added to the preamble by the 42<sup>nd</sup> Constitutional Amendment (1976).
- ✓ According to K M Munshi, a member of the Drafting Committee of the Constituent Assembly, the phrase ‘dignity of the individual’ signifies that the Constitution not only ensures material betterment and maintain a democratic set-up, but that it also recognises that the personality of every individual is sacred. This is highlighted through some of the provisions of the Fundamental Rights and Directive Principles of State Policy, which ensure the dignity of individuals.
- ✓ Further, the Fundamental Duties (Article 51A) also protect the dignity of women by stating that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of



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women, and also makes it the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.

- ✓ The phrase ‘unity and integrity of the nation’ embraces both the psychological and territorial dimensions of national integration.
- ✓ Article-1 of the Constitution describes India as a ‘Union of States’ to make it clear that the states have no right to secede from the Union, implying the indestructible nature of the Indian Union. It aims at overcoming hindrances to national integration like communalism, regionalism, casteism, linguist, secessionism and so on.

### SIGNIFICANCE OF THE PREAMBLE

- ✓ The Preamble embodies the basic philosophy and fundamental values—political, moral and religious —on which the Constitution is based. It contains the grand and noble vision of the Constituent Assembly, and reflects the dreams and aspirations of the founding fathers of the Constitution.
- ✓ In the words of Sir Alladi Krishnaswami Iyer, a member of the Constituent Assembly who played a significant role in making the Constitution, ‘The Preamble to our Constitution expresses what we had thought or dreamt so long’.
- ✓ According to K M Munshi, a member of the Drafting Committee of the Constituent Assembly, the Preamble is the ‘horoscope of our sovereign democratic republic’.
- ✓ Pandit Thakur Das Bhargava, another member of the Constituent Assembly, summed up the importance of the Preamble in the following words: ‘The Preamble is the most precious part of the Constitution’.
- ✓ It is the soul of the Constitution.
- ✓ It is a key to the Constitution.
- ✓ It is a jewel set in the Constitution.
- ✓ It is a proper yardstick with which one can measure the worth of the Constitution’.
- ✓ Sir Ernest Barker, a distinguished English political scientist, paid a glowing tribute to the political wisdom of the authors of the Preamble. He described the Preamble as the ‘key-note to the Constitution’. He was so moved by the text of the preamble that he quoted it at the opening of his popular book, *Principles of Social and Political Theory* (1951).



- ✓ M Hidayatullah, a former Chief Justice of India, observed, ‘Preamble resembles the Declaration of Independence of the United States of America, but is more than a declaration’. It is the soul of our Constitution, which lays down the pattern of our political society. It contains a solemn resolve, which nothing but a revolution can alter.

### PREAMBLE AS PART OF THE CONSTITUTION

- ✓ One of the controversies about the Preamble is as to whether it is a part of the Constitution or not.
- ✓ In the *Berubari Union case* (1960), the Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution, and is thus a key to the minds of the makers of the Constitution. Further, where the terms used in any article are ambiguous or capable of more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble. Despite this recognition of the significance of the Preamble, the Supreme Court specifically opined that Preamble is *not* a part of the Constitution.
- ✓ In the *Kesavananda Bharati case* (1973), the Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution. It observed that the Preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.
- ✓ In the *LIC of India case* (1995) also, the Supreme Court again held that the Preamble is an integral part of the Constitution.
- ✓ Like any other part of the Constitution, the Preamble was also enacted by the Constituent Assembly, but, after the rest of the Constitution was already enacted. The reason for inserting the Preamble at the end was to ensure that it was in conformity with the Constitution as adopted by the Constituent Assembly. While forwarding the Preamble for votes, the president of the Constituent Assembly said, ‘The question is that Preamble stands part of the Constitution’. The motion was then adopted. Hence, the current opinion held by the Supreme Court that the Preamble is a part of the Constitution, is in consonance with the opinion of the founding fathers of the Constitution. However, two things should be noted:
  - 1) The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.
  - 2) It is non-justiciable, that is, its provisions are not enforceable in courts of law.



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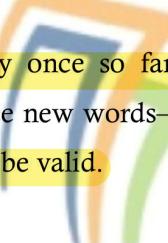
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## AMENDABILITY OF THE PREAMBLE

- ✓ The question as to whether the Preamble can be amended under Article 368 of the Constitution arose for the first time in the historic case of *Kesavananda Bharati* (1973). It was urged that the Preamble cannot be amended as it is not a part of the Constitution. The petitioner contended that the amending power in Article 368 cannot be used to destroy or damage the basic elements or the fundamental features of the Constitution, which are enshrined in the Preamble.
- ✓ The Supreme Court, however, held that the Preamble is a part of the Constitution. The Court stated that the opinion tendered by it in the *Berubari Union* (1960) in this regard was wrong, and held that the Preamble can be amended, subject to the condition that no amendment is done to the 'basic features'. In other words, the Court held that the basic elements or the fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 368.
- ✓ The Preamble has been amended only once so far, in 1976, by the 42nd Constitutional Amendment Act, which has added three new words—Socialist, Secular and Integrity—to the Preamble. This amendment was held to be valid.

  
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### **Part-III The Fundamental Rights (Article 12 to 35)**

- ✓ The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35.
  - ✓ In this regard, the framers of the Constitution derived inspiration from the Constitution of USA (i.e., Bill of Rights).
  - ✓ Part III of the Constitution is rightly described as the Magna Carta of India. It contains a very long and comprehensive list of ‘justiciable’ Fundamental Rights.
  - ✓ In fact, the Fundamental Rights in our Constitution are more elaborate than those found in the Constitution of any other country in the world, including the USA.
  - ✓ The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.
  - ✓ The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. In short, they aim at establishing ‘a government of laws and not of men’.
  - ✓ The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are ‘fundamental’ also in the sense that they are most essential for the all-round development (material, intellectual, moral and spiritual) of the individuals. Originally, the Constitution provided for seven Fundamental Rights viz,
1. Right to equality (Articles 14–18)
  2. Right to freedom (Articles 19–22)
  3. Right against exploitation (Articles 23–24)
  4. Right to freedom of religion (Articles 25–28)
  5. Cultural and educational rights (Articles 29–30)
  6. Right to property (Article 31)
  7. Right to constitutional remedies (Article 32)



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- ✓ However, the right to property was deleted from the list of Fundamental Rights by the 44<sup>th</sup> Amendment Act, 1978. It is made a legal right under Article 300-A in Part XII of the Constitution. So, at present, there are only six Fundamental Rights.

### Fundamental Rights at a Glance

#### 1. Right to equality (Articles 14–18)

##### (a) Equality before law and equal protection of laws (Article 14).

- 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.
- The Supreme Court held that the 'Rule of Law' as embodied in Article 14 is a 'basic feature' of the constitution. Hence, it cannot be destroyed even by an amendment. Exceptions to Equality The rule of equality before law is not absolute and there are constitutional and other exceptions to it. These are mentioned below:
  - The President of India and the Governor of States enjoy the following immunities (Article 361):
    - (i) The President or the Governor is not answerable to any court for the exercise and performance of the powers and duties of his office.
    - (ii) No criminal proceedings shall be instituted or continued against the President or the Governor in any court during his term of office.
    - (iii) No process for the arrest or imprisonment of the President or the Governor shall be issued from any court during his term of office.
    - (iv) No civil proceedings against the President or the Governor shall be instituted during his term of office in any court in respect of any act done by him in his personal capacity, whether before or after he entered upon his office, until the expiration of two months next after notice has been delivered to him.

##### (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).



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- ✓ Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
- ✓ The two crucial words in this provision are ‘discrimination’ and ‘only’. The word ‘discrimination’ means ‘to make an adverse distinction with regard to’ or ‘to distinguish unfavourably from others’.
- ✓ The second provision of Article 15 says that no citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, or place of birth with regard to access to shops, public restaurants, hotels and places of public entertainment; or the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly by State funds or dedicated to the use of general public.

There are three exceptions to this general rule of non-discrimination:

- 1) The state is permitted to make any special provision for women and children. For example, reservation of seats for women in local bodies or provision of free education for children.
- 2) The state is permitted to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes. For example, reservation of seats or fee concessions in public educational institutions.
- 3) The state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions.

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

- ✓ Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State. No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.
- ✓ There are three exceptions to this general rule of equality of opportunity in public employment:
  - 1) 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.5

- 2) 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.
- 3) 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.

**(d) Abolition of untouchability and prohibition of its practice (Article 17).**

- ✓ Article 17 abolishes ‘untouchability’ and forbids its practice in any form.
- ✓ The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.
- ✓ In 1976, the Untouchability (Offences) Act, 1955 has been comprehensively amended and renamed as the Protection of Civil Rights Act, 1955 to enlarge the scope and make penal provisions more stringent.
- ✓ The act defines civil right as any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution

**(e) Abolition of titles except military and academic (Article 18).**

- ✓ Article 18 abolishes titles and makes four provisions in that regard:
  - ❖ It prohibits the state from conferring any title (except a military or academic distinction) on anybody, whether a citizen or a foreigner.
  - ❖ It prohibits a citizen of India from accepting any title from any foreign state.
  - ❖ 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.
  - ❖ 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.

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

### **(a) Protection of six rights regarding freedom of: (Article-19)**

**(i) Speech and Expression** – It implies that every citizen has the right to express his views, opinions, belief and convictions freely by word of mouth, writing, printing, picturing or in any other manner

The Supreme Court held that the freedom of speech and expression includes the following:

- ✓ Right to propagate one's views as well as views of others.
- ✓ Freedom of the press.
- ✓ Freedom of commercial advertisements.
- ✓ Right against tapping of telephonic conversation.
- ✓ Right to telecast, that is, government has no monopoly on electronic media.
- ✓ Right against bundh called by a political party or organisation.
- ✓ Right to know about government activities.
- ✓ Freedom of silence.
- ✓ Right against imposition of pre-censorship on a newspaper.
- ✓ Right to demonstration or picketing but not right to strike. (Article 19)

**(ii) Assembly** - Every citizen has the right to assemble peaceably and without arms. It includes the right to hold public meetings, demonstrations and take out processions. This freedom can be exercised only on public land and the assembly must be peaceful and unarmed. This provision does not protect violent, disorderly, riotous assemblies, or one that causes breach of public peace or one that involves arms. This right does not include the right to strike. (Article 19)

**(iii) Association** – Freedom of Association All citizens have the right to form associations or unions or co-operative societies. It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions or anybody of persons. (Article 19)

**(iv) Movement** – This freedom entitles every citizen to move freely throughout the territory of the country. He can move freely from one state to another or from one place to another within a state. This right underline the idea that India is one unit so far as the citizens are concerned. The grounds of imposing reasonable restrictions on this freedom are two, namely, the interests of general public and the protection of interests of any scheduled tribe. (Article 19)

**(v) Residence** - Every citizen has the right to reside and settle in any part of the territory of the country. This right has two parts: (a) the right to reside in any part of the country, which means to stay at any place temporarily, and (b) the right to settle in any part of the country, which means to setup a home or domicile at any place permanently. (Article 19)

**(vi) profession** - All citizens are given the right to practise any profession or to carry on any occupation, trade or business. This right is very wide as it covers all the means of earning one's livelihood. (Article 19).

#### **(b) Protection in respect of conviction for offences (Article 20).**

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:

- ✓ **No ex-post-facto law:** No person shall be (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act. An ex-post-facto law is one that imposes penalties retrospectively (retroactively), that is, upon acts already done or which increases the penalties for such acts. The enactment of such a law is prohibited by the first provision of Article 20.
- ✓ **No double jeopardy:** No person shall be prosecuted and punished for the same offence more than once. The protection against double jeopardy is available only in proceedings before a court of law or a judicial tribunal. In other words, it is not available in proceedings before departmental or administrative authorities as they are not of judicial nature.
- ✓ **No self-incrimination:** No person accused of any offence shall be compelled to be a witness against himself. The protection against self-incrimination extends to both oral evidence and documentary evidence. However, it does not extend to (i) compulsory production of material objects, (ii) compulsion to give thumb impression, specimen signature, blood specimens, and (iii) compulsory exhibition of the body. Further, it extends only to criminal proceedings and not to civil proceedings or proceedings which are not of criminal nature.

### (c) Protection of life and personal liberty (Article 21).

Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens. The Supreme Court has reaffirmed its judgement in the Menaka case in the subsequent cases. It has declared the following rights as part of Article 21:

- ✓ Right to live with human dignity.
- ✓ Right to decent environment including pollution free water and air and protection against hazardous industries.
- ✓ Right to livelihood.
- ✓ Right to privacy.
- ✓ Right to shelter.
- ✓ Right to health.
- ✓ Right to free education up to 14 years of age.
- ✓ Right to free legal aid.
- ✓ Right against solitary confinement.
- ✓ Right to speedy trial.
- ✓ Right against handcuffing.
- ✓ Right against inhuman treatment.
- ✓ Right against delayed execution.
- ✓ Right to travel abroad.
- ✓ Right against bonded labour.
- ✓ Right against custodial harassment.
- ✓ Right to emergency medical aid.
- ✓ Right to timely medical treatment in government hospital.
- ✓ Right not to be driven out of a state.
- ✓ Right to fair trial.
- ✓ Right of prisoner to have necessities of life.
- ✓ Right of women to be treated with decency and dignity.
- ✓ Right against public hanging.
- ✓ Right to hearing.

- ✓ Right to information.
- ✓ Right to reputation.
- ❖ Article –20 & 21 can not be suspended during national emergency.

**(d) Right to elementary education (Article 21A).**

- ✓ Article 21 A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine. Thus, this provision makes only elementary education a Fundamental Right and not higher or professional education.
- ✓ In pursuance of Article 21A, the Parliament enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009.
- ✓ This Act seeks to provide that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards

**(e) Protection against arrest and detention in certain cases (Article 22).**

- ✓ Article 22 grants protection to persons who are arrested or detained. Detention is of two types, namely, punitive and preventive.
- ✓ Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court.
- ✓ Preventive detention, on the other hand, means detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from committing an offence in the near future. Thus, preventive detention is only a precautionary measure and based on suspicion.
- ✓ The Article 22 has two parts—the first part deals with the cases of ordinary law and the second part deals with the cases of preventive detention law.

(1) The first part of Article 22 confers the following rights on a person who is arrested or detained under an ordinary law:

- (i) Right to be informed of the grounds of arrest.
- (ii) Right to consult and be defended by a legal practitioner.

(iii) Right to be produced before a magistrate within 24 hours, excluding the journey time.

(iv) Right to be released after 24 hours unless the magistrate authorises further detention.

- ✓ These safeguards are not available to an alien or a person arrested or detained under a preventive detention law.

(2) The second part of Article 22 grants protection to persons who are arrested or detained under a preventive detention law. This protection is available to both citizens as well as aliens and includes the following:

(i) The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. The board is to consist of judges of a high court.

(ii) The grounds of detention should be communicated to the detenu. However, the facts considered to be against the public interest need not be disclosed.

(iii) The detenu should be afforded an opportunity to make a representation against the detention order.

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

#### **(a) Prohibition of traffic in human beings and forced labour (Article 23).**

- ✓ Article 23 prohibits traffic in human beings, begar (forced labour) and other similar forms of forced labour.
- ✓ Any contravention of this provision shall be an offence punishable in accordance with law. This right is available to both citizens and non-citizens.
- ✓ It protects the individual not only against the State but also against private persons.
- ✓ The expression ‘traffic in human beings’ include
  - (a) selling and buying of men, women and children like goods;
  - (b) immoral traffic in women and children, including prostitution;
  - (c) devadasis; and
  - (d) slavery.
- ✓ To punish these acts, the Parliament has made the Immoral Traffic (Prevention) Act, 1956. The term ‘begar’ means compulsory work without remuneration. It was a peculiar Indian system

under which the local zamindars sometimes used to force their tenants to render services without any payment.

- ✓ In addition to begar, the Article 23 prohibits other ‘similar forms of forced labour’ like ‘bonded labour’. The term ‘forced labour’ means compelling a person to work against his will.

#### **(b) Prohibition of employment of children in factories, etc. (Article 24).**

- ✓ Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway. But it does not prohibit their employment in any harmless or innocent work.
- ✓ The Child Labour (Prohibition and Regulation) Act, 1986, is the most important law in this direction.
- ✓ In 2006, the government banned the employment of children as domestic servants or workers in business establishments like hotels, dhabas, restaurants, shops, factories, resorts, spas, tea-shops and so on. It warned that anyone employing children below 14 years of age would be liable for prosecution and penal action.

#### **4. Right to freedom of religion (Article 25–28)**

##### **(a) Freedom of conscience and free profession, practice and propagation of religion (Article 25).**

- ✓ Article 25 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:
  - ❖ **Freedom of conscience:** Inner freedom of an individual to mould his relation with God or Creatures in whatever way he desires.
  - ❖ **Right to profess:** Declaration of one’s religious beliefs and faith openly and freely.
  - ❖ **Right to practice:** Performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.
  - ❖ **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. Forcible conversions impinge on the ‘freedom of conscience’ guaranteed to all the persons alike.
- ✓ From the above, it is clear that Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals). Moreover, these rights are available to all persons—citizens as well



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as non-citizens. However, these rights are subject to public order, morality, health and other provisions relating to fundamental rights. Further, the State is permitted to:

- ❖ regulate or restrict any economic, financial, political or other secular activity associated with religious practice; and
- ❖ provide for social welfare and reform or throw open Hindu religious institutions of a public character to all classes and sections of Hindus. Article 25 also contains two explanations: one, wearing and carrying of kirpans is to be included in the profession of the Sikh religion; and two, the Hindus, in this context, include Sikhs, Jains and Buddhists.

**(b) Freedom to manage religious affairs (Article 26).**

- ✓ According to Article 26, every religious denomination or any of its section shall have the following rights:
  - ❖ Right to establish and maintain institutions for religious and charitable purposes;
  - ❖ Right to manage its own affairs in matters of religion;
  - ❖ Right to own and acquire movable and immovable property; and
  - ❖ Right to administer such property in accordance with law.

**(c) Freedom from payment of taxes for promotion of any religion (Article 27).**

- ✓ Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the State should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion.
- ✓ This provision prohibits the State from favouring, patronising and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

**(d) Freedom from attending religious instruction or worship in certain educational institutions (Article 28).**

- ✓ Under 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



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

- ✓ Further, no person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to attend any religious instruction or worship in that institution without his consent. In case of a minor, the consent of his guardian is needed.

Thus, Article 28 distinguishes between four types of educational institutions:

- (i) Institutions wholly maintained by the State. (religious instruction is completely prohibited)
- (ii) Institutions administered by the State but established under any endowment or trust.  
(Religious instruction is permitted.)
- (iii) Institutions recognised by the State. (religious instruction is permitted on a voluntary basis)
- (iv) Institutions receiving aid from the State. (religious instruction is permitted on a voluntary basis)

## **5. Cultural and educational rights (Articles 29–30)**

### **(a) Protection of language, script and culture of minorities (Article 29).**

- ✓ Article 29 provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same. Further, no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, or language.
- ✓ The Supreme Court also held that the right to conserve the language includes the right to agitate for the protection of the language. Hence, the political speeches or promises made for the conservation of the language of a section of the citizens does not amount to corrupt practice under the Representation of the People Act, 1951.

### **(b) Right of minorities to establish and administer educational institutions (Article 30).**

- ✓ Article 30 grants the following rights to minorities, whether religious or linguistic:
  - ❖ All minorities shall have the right to establish and administer educational institutions of their choice.
  - ❖ The compensation amount fixed by the State for the compulsory acquisition of any property of a minority educational institution shall not restrict or abrogate the right guaranteed to

them. This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard. The Act deleted the right to property as a Fundamental Right (Article 31).

- ❖ In granting aid, the State shall not discriminate against any educational institution managed by a minority. Thus, the protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any section of citizens (as under Article 29). However, the term ‘minority’ has not been defined anywhere in the Constitution.
- ✓ The right under Article 30 also includes the right of a minority to impart education to its children in its own language.
- ✓ Minority educational institutions are of three types:
  - (i) institutions that seek recognition as well as aid from the State;
  - (ii) institutions that seek only recognition from the State and not aid; and
  - (iii) institutions that neither seek recognition nor aid from the State.

## **6. Right to constitutional remedies (Article 32)**

- ✓ Right to move the Supreme Court for the enforcement of fundamental rights including the writs of (i) habeas corpus, (ii) mandamus, (iii) prohibition, (iv) certiorari, and (v) quo warrento (Article 32).

## **WRITS—TYPES AND SCOPE**

- The Supreme Court (under Article 32) and the high courts (under Article 226) can issue the writs of habeas corpus, mandamus, prohibition, certiorari and quo-warranto.
- Further, the Parliament (under Article 32) can empower any other court to issue these writs. Since no such provision has been made so far, only the Supreme Court and the high courts can issue the writs and not any other court

### **Habeas Corpus: -**

- It is a Latin term which literally means ‘to have the body of’.
- It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it.



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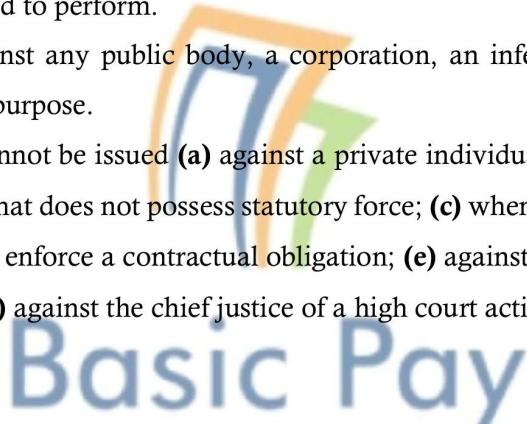
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- The court then examines the cause and legality of detention. It would set the detained person free, if the detention is found to be illegal. Thus, this writ is a bulwark of individual liberty against arbitrary detention. The writ of habeas corpus can be issued against both public authorities as well as private individuals.
- The writ, on the other hand, is not issued where the **(a)** detention is lawful, **(b)** the proceeding is for contempt of a legislature or a court, **(c)** detention is by a competent court, and **(d)** detention is outside the jurisdiction of the court.

#### **Mandamus: -**

- It literally means ‘we command’.
- It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform.
- It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.
- The writ of mandamus cannot be issued **(a)** against a private individual or body; **(b)** to enforce departmental instruction that does not possess statutory force; **(c)** when the duty is discretionary and not mandatory; **(d)** to enforce a contractual obligation; **(e)** against the president of India or the state governors; and **(f)** against the chief justice of a high court acting in judicial capacity.

#### **Prohibition: -**



- Literally, it means ‘to forbid’.
- It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. Thus, unlike mandamus that directs activity, the prohibition directs inactivity.
- The writ of prohibition can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

#### **Certiorari: -**

- In the literal sense, it means ‘to be certified’ or ‘to be informed’.
- It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case.



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- It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law.
- Thus, unlike prohibition, which is only preventive, certiorari is both preventive as well as curative.
- Till recently, the writ of certiorari could be issued only against judicial and quasi-judicial authorities and not against administrative authorities. However, in 1991, the Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting rights of individuals. Like prohibition, certiorari is also not available against legislative bodies and private individuals or bodies.

**Quo-Warranto: -**

- In the literal sense, it means 'by what authority or warrant'.
- It is issued by the court to enquire into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person.
- The writ can be issued only in case of a substantive public office of a permanent character created by a statute or by the Constitution. It cannot be issued in cases of ministerial office or private office. Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

**Fundamental Rights (FR) available only to Citizen not Foreigner**

1. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of six rights regarding freedom of : (i) speech and expression, (ii) assembly, (iii) association, (iv) movement, (v) residence, and (vi) profession (Article 19).
4. Protection of language, script and culture of minorities (Article 29).
5. Right of minorities to establish and administer educational institutions (Article – 30)

**Fundamental rights available to both citizens and foreigners (except enemy aliens)**

1. Equality before law and equal protection of laws (Article 14).
2. Protection in respect of conviction for offences (Article 20).
3. Protection of life and personal liberty (Article 21).
4. Right to elementary education (Article 21A).
5. Protection against arrest and detention in certain cases (Article 22).
6. Prohibition of traffic in human beings and forced labour (Article 23).
7. Prohibition of employment of children in factories etc., (Article 24).
8. Freedom of conscience and free profession, practice and propagation of religion (Article 25).
9. Freedom to manage religious affairs (Article 26).
10. Freedom from payment of taxes for promotion of any religion (Article 27).
11. Freedom from attending religious instruction or worship in certain educational institutions (Article 28).

**ARMED FORCES AND FUNDAMENTAL RIGHTS**

- ✓ Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces. The objective of this provision is to ensure the proper discharge of their duties and the maintenance of discipline among them.
- ✓ The power to make laws under Article 33 is conferred only on Parliament and not on state legislatures. Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights
- ✓ A parliamentary law enacted under Article 33 can also exclude the court martials (tribunals established under the military law) from the writ jurisdiction of the Supreme Court and the high courts, so far as the enforcement of Fundamental Rights is concerned.

### **Articles Related to Fundamental Rights at a Glance**

#### **General**

12. Definition of State
13. Laws inconsistent with or in derogation of the Fundamental Rights Right to Equality
14. Equality before law
15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
16. Equality of opportunity in matters of public employment
17. Abolition of untouchability
18. Abolition of titles

#### **Right to Freedom**

19. Protection of certain rights regarding freedom of speech, etc.
20. Protection in respect of conviction for offences
21. Protection of life and personal liberty
- 21A. Right to education
22. Protection against arrest and detention in certain cases

#### **Right against Exploitation**

23. Prohibition of traffic in human beings and forced labour
24. Prohibition of employment of children in factories, etc.

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

25. Freedom of conscience and free profession, practice and propagation of religion
26. Freedom to manage religious affairs
27. Freedom as to payment of taxes for promotion of any particular religion
28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

#### **Cultural and Educational Rights**

29. Protection of interests of minorities
30. Right of minorities to establish and administer educational institutions
31. Compulsory acquisition of property—(Repealed)

#### **Saving of Certain Laws**

- 31A. Saving of laws providing for acquisition of estates, etc.

- 31B. Validation of certain Acts and Regulations
- 31C. Saving of laws giving effect to certain directive principles
- 31D. Saving of laws in respect of anti-national activities—(Repealed)

**Right to Constitutional Remedies**

- 32. Remedies for enforcement of rights conferred by this part
- 32A. Constitutional validity of State laws not to be considered in proceedings under Article 32—(Repealed)
- 33. Power of Parliament to modify the rights conferred by this part in their application to forces, etc.
- 34. Restriction on rights conferred by this part while martial law is in force in any area
- 35. Legislation to give effect to the provisions of this part



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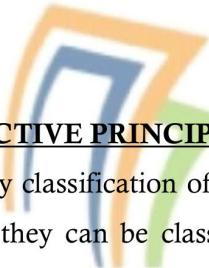
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## Part-IV The Directive Principles of State Policy (Article 36 to 51)

- ✓ The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51.
- ✓ The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution.
- ✓ Bharat Ratna Dr. B R Ambedkar Sahab described these principles as ‘novel features’ of the Indian Constitution.
- ✓ The Directive Principles along with the Fundamental Rights contain the philosophy of the Constitution and is the soul of the Constitution.
- ✓ Granville Austin has described the Directive Principles and the Fundamental Rights as the ‘Conscience of the Constitution’.



### **CLASSIFICATION OF THE DIRECTIVE PRINCIPLES**

The Constitution does not contain any classification of Directive Principles. However, on the basis of their content and direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal-intellectual.

#### **Socialistic Principles**

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- ✓ 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 minimise 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).



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- (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).

### **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 fulfil 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).

### **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 honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (Article 51).

### **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.



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- 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).

#### **Difference between Fundamental Rights and Directive Principle of State**

S.No.	Fundamental Rights	Directive Principle of State
1	These are negative as they prohibit the State from doing certain things.	These are positive as they require the State to do certain things.
2	These are justiciable, that is, they are legally enforceable by the courts in case of their violation.	These are non-justiciable, that is, they are not legally enforceable by the courts for their violation.
3	They aim at establishing political democracy in the country.	They aim at establishing social and economic democracy in the country.
4	These have legal sanctions.	These have moral and political sanctions
5	They promote the welfare of the individual. Hence, they are personal and individualistic.	They promote the welfare of the community. Hence, they are societarian and socialistic.
6	They do not require any legislation for their implementation. They are automatically enforced.	They require legislation for their implementation. They are not automatically enforced.
7	The courts are bound to declare a law violative of any of the Fundamental Rights as unconstitutional and invalid	The courts cannot declare a law violative of any of the Directive Principles as unconstitutional and invalid. However, they can uphold the validity of a law on the ground that it was enacted to give effect to a directive.



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### **Part-IV-A Fundamental Duties (Article-51 A)**

- ✓ Though the rights and duties of the citizens are correlative and inseparable, 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 Polity. 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.
- ✓ 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.
- ✓ Interestingly, certain recommendations of the Committee were not accepted by the Congress Party and hence, not incorporated in the Constitution. These include:
  - 1) 1. The Parliament may provide for the imposition of such penalty or punishment as may be considered appropriate for any non-compliance with or refusal to observe any of the duties.
  - 2) 2. No law imposing such penalty or punishment shall 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) 3. Duty to pay taxes should also be a Fundamental Duty 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

### **VERMA COMMITTEE OBSERVATIONS**

- ✓ The Verma Committee on Fundamental Duties of the Citizens (1999) identified the existence of legal provisions for the implementation of some of the Fundamental Duties. They are mentioned below:
  - 1) The Prevention of Insults to National Honour Act (1971) prevents disrespect to the Constitution of India, the National Flag and the National Anthem.
  - 2) The various criminal laws in force provide for punishments for encouraging enmity between different sections of people on grounds of language, race, place of birth, religion and so on.
  - 3) The Protection of Civil Rights Act (1955) provides for punishments for offences related to caste and religion.

- 4) The Indian Penal Code (IPC) declares the imputations and assertions prejudicial to national integration as punishable offences.
- 5) The Unlawful Activities (Prevention) Act of 1967 provides for the declaration of a communal organisation as an unlawful association.
- 6) The Representation of People Act (1951) provides for the disqualification of members of the Parliament or a state legislature for indulging in corrupt practice, that is, soliciting votes on the ground of religion or promoting enmity between different sections of people on grounds of caste, race, language, religion and so on.
- 7) The Wildlife (Protection) Act of 1972 prohibits trade in rare and endangered species.
- 8) The Forest (Conservation) Act of 1980 checks indiscriminate deforestation and diversion of forest land for non-forest purposes.



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### **Part-V Supreme Court of India (Article 124-147)**

- ✓ Unlike the American Constitution, the Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the high courts below it. Under a high court (and below the state level), there is a hierarchy of subordinate courts, that is, district courts and other lower courts.
- ✓ The Supreme Court of India was inaugurated on January 28, 1950. It was attended by the first Chief Justice of India, Harilal J. Kania. It succeeded the Federal Court of India, established under the Government of India Act of 1935. However, the jurisdiction of the Supreme Court is greater than that of its predecessor.
- ✓ Articles 124 to 147 in Part V of the Constitution deal with the organisation, independence, jurisdiction, powers, procedures and so on of the Supreme Court. The Parliament is also authorised to regulate them.

#### **ORGANISATION OF SUPREME COURT (Article 124)**

- ✓ At present, the Supreme Court consists of thirty-four judges (1- chief justice and 33- other judges). On 9<sup>th</sup> August 2019, the centre notified an increase in the number of Supreme Court judges from thirty-one to thirty-four, including the Chief Justice of India vide THE SUPREME COURT (NUMBER OF JUDGES) AMENDMENT ACT, 2019 (NO. 37 OF 2019).

#### **Appointment of Judges (Article 124 (2))**

- ✓ The judges of the Supreme Court are appointed by the president. The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary. The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary. The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.

#### **Qualifications of Judges (Article 124 (3))**

- ✓ A person to be appointed as a judge of the Supreme Court should have the following qualifications:
  1. He should be a citizen of India.



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2. (a) He should have been a judge of a High Court (or high courts in succession) for five years;  
or

(b) He should have been an advocate of a High Court (or High Courts in succession) for ten years;  
or

(c) He should be a distinguished jurist in the opinion of the president.

From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of the Supreme Court.

#### **Oath or Affirmation :- (Article 124 (6) )**

- ✓ A person appointed as a judge of the Supreme Court, before entering upon his Office, has to make and subscribe an oath or affirmation before the President, or some person appointed by him for this purpose. In his oath, a judge of the Supreme Court swears:
  - 1) to bear true faith and allegiance to the Constitution of India;
  - 2) to uphold the sovereignty and integrity of India;
  - 3) to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the Office without fear or favour, affection or ill-will; and
  - 4) to uphold the Constitution and the laws.

#### **Tenure of Judges: - (Article 124 (2) )**

- ✓ The Constitution has not fixed the tenure of a judge of the Supreme Court. However, it makes the following three provisions in this regard:
  - 1) He holds office until he attains the age of 65 years. Any question regarding his age is to be determined by such authority and in such manner as provided by Parliament.
  - 2) He can resign his office by writing to the president.
  - 3) He can be removed from his office by the President on the recommendation of the Parliament.

#### **Removal of Judges: -(Article 124 (4) )**

- ✓ A judge of the Supreme Court can be removed from his Office by an order of the president. The President can issue the removal order only after an address by Parliament has been presented to him in the same session for such removal. The address must be supported by a special majority

of each House of Parliament (i.e., a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two—proved misbehaviour or incapacity.

- ✓ The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of the Supreme Court by the process of impeachment:
  - 1) A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
  - 2) The Speaker/Chairman may admit the motion or refuse to admit it.
  - 3) If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
  - 4) The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
  - 5) If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
  - 6) After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
  - 7) Finally, the president passes an order removing the judge.
- ✓ It is interesting to know that no judge of the Supreme Court has been impeached so far. The first and the only case of impeachment is that of Justice V Ramaswami of the Supreme Court (1991–1993). Though the enquiry Committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting.

### **Salaries and Allowances: - (Article 125)**

- ✓ The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency.
- ✓ W.e.f. 01.01.2016, the salary of the chief justice is Rs.2,80,000/- per month and the salary of other judges is Rs.2,50,000/-. They are also paid HRA, furnishing allowance, sumptuary allowance and other facilities like medical, car, telephone, etc.

- ✓ The retired chief justice and judges are entitled to 50 per cent of their last drawn salary as monthly pension.

#### **Acting Chief Justice: - (Article 126)**

- ✓ The President can appoint a judge of the Supreme Court as an acting Chief Justice of India when:
  1. the office of Chief Justice of India is vacant; or
  2. the Chief Justice of India is temporarily absent; or
  3. the Chief Justice of India is unable to perform the duties of his office.

#### **Ad hoc Judge: - (Article 127)**

- ✓ When there is a lack of quorum of the permanent judges to hold or continue any session of the Supreme Court, the Chief Justice of India can appoint a judge of a High Court as an ad hoc judge of the Supreme Court for a temporary period. He can do so only after consultation with the chief justice of the High Court concerned and with the previous consent of the president. The judge so appointed should be qualified for appointment as a judge of the Supreme Court. It is the duty of the judge so appointed to attend the sittings of the Supreme Court, in priority to other duties of his office.

#### **PROCEDURE OF THE COURT: -**

- ✓ The Supreme Court can, with the approval of the president, make rules for regulating generally the practice and procedure of the Court. The Constitutional cases or references made by the President under Article 143 are decided by a Bench consisting of at least five judges.
- ✓ All other cases are usually decided by a bench consisting of not less than three judges. The judgements are delivered by the open court. All judgements are by majority vote but if differing, then judges can give dissenting judgements or opinions.

#### **INDEPENDENCE OF SUPREME COURT: -**

- ✓ The Supreme Court has been assigned a very significant role in the Indian democratic political system.

- ✓ It is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution.
- ✓ Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it.
- ✓ It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament). It should be allowed to do justice without fear or favour.
- ✓ The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court:

**1. Mode of Appointment:** - The judges of the Supreme Court are appointed by the President (which means the cabinet) in consultation with the members of the judiciary itself (ie, judges of the Supreme Court and the high courts). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

**2. Security of Tenure:** - The judges of the Supreme Court are provided with the Security of Tenure. They can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the President, though they are appointed by him. This is obvious from the fact that no judge of the Supreme Court has been removed (or impeached) so far.

**3. Fixed Service Conditions:** - The salaries, allowances, privileges, leave and pension of the judges of the Supreme Court are determined from time to time by the Parliament. They cannot be changed to their disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of the Supreme Court remain same during their term of Office.

**4. Expenses Charged on Consolidated Fund:** - The salaries, allowances and pensions of the judges and the staff as well as all the administrative expenses of the Supreme Court are charged on the Consolidated Fund of India. Thus, they are non-votable by the Parliament (though they can be discussed by it).

**5. Conduct of Judges cannot be Discussed:** - The Constitution prohibits any discussion in Parliament or in a State Legislature with respect to the conduct of the judges of the Supreme Court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

**6. Ban on Practice after Retirement:** - The retired judges of the Supreme Court are prohibited from pleading or acting in any Court or before any authority within the territory of India. This ensures that they do not favour anyone in the hope of future favour.

**7. Power to Punish for its Contempt:** - The Supreme Court can punish any person for its contempt. Thus, its actions and decisions cannot be criticised and opposed by anybody. This power is vested in the Supreme Court to maintain its authority, dignity and honour.

**8. Freedom to Appoint its Staff:** - The Chief Justice of India can appoint officers and servants of the Supreme Court without any interference from the executive. He can also prescribe their conditions of service.

**9. Its Jurisdiction cannot be Curtailed:** - The Parliament is not authorised to curtail the jurisdiction and powers of the Supreme Court. The Constitution has guaranteed to the Supreme Court, jurisdiction of various kinds. However, the Parliament can extend the same.

**10. Separation from Executive:** - The Constitution directs the State to take steps to separate the Judiciary from the Executive in the public services. This means that the executive authorities should not possess the judicial powers. Consequently, upon its implementation, the role of executive authorities in judicial administration came to an end.

#### **JURISDICTION AND POWERS OF SUPREME COURT: -**

- ✓ The Constitution has conferred a very extensive jurisdiction and vast powers on the Supreme Court. It is not only a Federal Court like the American Supreme Court but also a final court of appeal like the British House of Lords (the Upper House of the British Parliament).
- ✓ It is also the final interpreter and guardian of the Constitution and guarantor of the fundamental rights of the citizens.
- ✓ Further, it has advisory and supervisory powers. Therefore, Alladi Krishnaswamy Ayyar, a member of the Drafting Committee of the Constitution, rightly remarked: “The Supreme Court

of India has more powers than any other Supreme Court in any part of the world.” The jurisdiction and powers of the Supreme Court can be classified into the following:

1. Original Jurisdiction.
2. Writ Jurisdiction.
3. Appellate Jurisdiction.
4. Advisory Jurisdiction.
5. A Court of Record.
6. Power of Judicial Review.
7. Other Powers.

### **1. Original Jurisdiction (Article 131)**

- ✓ As a federal court, the Supreme Court decides the disputes between different units of the Indian Federation. More elaborately, any dispute between:
  - (a) the Centre and one or more states; or
  - (b) the Centre and any state or states on one side and one or more states on the other; or
  - (c) between two or more states.
- ✓ In the above federal disputes, the Supreme Court has exclusive original jurisdiction. Exclusive means, no other court can decide such disputes and original means, the power to hear such disputes in the first instance, not by way of appeal.
  - (a) Further, this jurisdiction of the Supreme Court does not extend to the following:
  - (b) A dispute arising out of any pre-Constitution treaty, agreement, covenant, engagement, or other similar instrument.
  - (c) A dispute arising out of any treaty, agreement, etc., which specifically provides that the said jurisdiction does not extent to such a dispute.
  - (d) Inter-state water disputes.
  - (e) Matters referred to the Finance Commission.

- (f) Adjustment of certain expenses and pensions between the Centre and the states.
- (g) Ordinary dispute of Commercial nature between the Centre and the states.
- (h) Recovery of damages by a state against the Centre.

## **2. Writ Jurisdiction (Article 32)**

- ✓ The Constitution has constituted the Supreme Court as the guarantor and defender of the fundamental rights of the citizens.
- ✓ The Supreme Court is empowered to issue writs including habeas corpus, mandamus, prohibition, quo-warrento and certiorari for the enforcement of the fundamental rights of an aggrieved citizen.
- ✓ In this regard, the Supreme Court has original jurisdiction in the sense that an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal.
- ✓ However, the writ jurisdiction of the Supreme Court is not exclusive. The high courts are also empowered to issue writs for the enforcement of the Fundamental Rights. It means, when the Fundamental Rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.
- ✓ The Supreme Court can issue writs only for the enforcement of the Fundamental Rights and not for other purposes. The high court, on the other hand, can issue writs not only for the enforcement of the fundamental rights but also for other purposes. It means that the writ jurisdiction of the high court is wider than that of the Supreme Court. But the Parliament can confer on the Supreme Court, the power to issue writs for other purposes also.

## **3. Appellate Jurisdiction: - (Article 132,133,134,136))**

- ✓ As mentioned earlier, the Supreme Court has not only succeeded the Federal Court of India but also replaced the British Privy Council as the highest court of appeal. The Supreme Court is primarily a court of appeal and hears appeals against the judgements of the lower courts. It enjoys a wide appellate jurisdiction which can be classified under four heads:
  - (a) Appeals in constitutional matters.
  - (b) Appeals in civil matters.
  - (c) Appeals in criminal matters.

(d) Appeals by special leave.

**(a) Constitutional Matters (Article 132):** - In the constitutional cases, an appeal can be made to the Supreme Court against the judgement of a high court if the high court certifies that the case involves a substantial question of law that requires the interpretation of the Constitution. Based on the certificate, the party in the case can appeal to the Supreme Court on the ground that the question has been wrongly decided.

**(b) Civil Matters (Article 133)::** - In civil cases, an appeal lies to the Supreme Court from any judgement of a high court if the high court certifies—

- (i) that the case involves a substantial question of law of general importance; and
- (ii) that the question needs to be decided by the Supreme Court.

**(c) Criminal Matters (Article 134)::** - The Supreme Court hears appeals against the judgement in a criminal proceeding of a high court if the high court—

- (i) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
- (ii) has taken before itself any case from any subordinate court and convicted the accused person and sentenced him to death; or
- (iii) certifies that the case is a fit one for appeal to the Supreme Court.

**(d) Appeal by Special Leave (Article 136)::** -

- ✓ The Supreme Court is authorised to grant in its discretion special leave to appeal from any judgement in any matter passed by any court or tribunal in the country (except military tribunal and court martial). This provision contains the four aspects as under:
  - (i) It is a discretionary power and hence, cannot be claimed as a matter of right.
  - (ii) It can be granted in any judgement whether final or interlocutory.
  - (iii) It may be related to any matter—constitutional, civil, criminal, income-tax, labour, revenue, advocates, etc.

(iv) It can be granted against any court or tribunal and not necessarily against a high court (of course, except a military court).

#### **4. Advisory Jurisdiction (Article 143):**

- ✓ The Constitution (Article 143) authorises the president to seek the opinion of the Supreme Court in the two categories of matters:
  - (i) On any question of law or fact of public importance which has arisen or which is likely to arise.
  - (ii) On any dispute arising out of any pre-constitution treaty, agreement, covenant, engagement or other similar instruments.
- ✓ In the first case, the Supreme Court may tender or may refuse to tender its opinion to the president. But, in the second case, the Supreme Court ‘must’ tender its opinion to the president. In both the cases, the opinion expressed by the Supreme Court is only advisory and not a judicial pronouncement. Hence, it is not binding on the president; he may follow or may not follow the opinion. However, it facilitates the government to have an authoritative legal opinion on a matter to be decided by it.

#### **5. A Court of Record (Article 129):**

As a Court of Record, the Supreme Court has two powers:

- (a) The judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any court. They are recognised as legal precedents and legal references.
- (b) It has power to punish for contempt of court, either with simple imprisonment for a term up to six months or with fine up to ₹2,000 or with both. In 1991, the Supreme Court has ruled that it has power to punish for contempt not only of itself but also of high courts, subordinate courts and tribunals functioning in the entire country.
- ✓ Contempt of court may be civil or criminal. Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which—
  - (i) scandalises or lowers the authority of a court; or

- (ii) prejudices or interferes with the due course of a judicial proceeding; or
- (iii) interferes or obstructs the administration of justice in any other manner.

#### **6. Power of Judicial Review (Article 137):**

- ✓ Judicial review is the power of the Supreme Court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the Supreme Court. Consequently, they cannot be enforced by the Government.
- ✓ Judicial review is needed for the following reasons:
  - (a) To uphold the principle of the supremacy of the Constitution.
  - (b) To maintain federal equilibrium (balance between Centre and states).
  - (c) To protect the fundamental rights of the citizens.

#### **7. Other Powers: -**

Besides the above, the Supreme Court has numerous other powers:

- (a) It decides the disputes regarding the election of the president and the vice-president. In this regard, it has the original, exclusive and final authority.
- (b) It enquires into the conduct and behaviour of the chairman and members of the Union Public Service Commission on a reference made by the president. If it finds them guilty of misbehaviour, it can recommend to the president for their removal. The advice tendered by the Supreme Court in this regard is binding on the President.
- (c) It has power to review its own judgement or order. Thus, it is not bound by its previous decision and can depart from it in the interest of justice or community welfare. In brief, the Supreme Court is a self-correcting agency. For example, in the Kesavananda Bharati case (1973), the Supreme Court departed from its previous judgement in the Golak Nath case (1967).
- (d) It is authorised to withdraw the cases pending before the high courts and dispose them by itself. It can also transfer a case or appeal pending before one high court to another high court.

- (e) Its law is binding on all courts in India. Its decree or order is enforceable throughout the country. All authorities (civil and judicial) in the country should act in aid of the Supreme Court.
- (f) It is the ultimate interpreter of the Constitution. It can give final version to the spirit and content of the provisions of the Constitution and the verbiage used in the Constitution.
- (g) It has power of judicial superintendence and control over all the courts and tribunals functioning in the entire territory of the country.

The Supreme Court's jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament. Further, its jurisdiction and powers with respect to other matters can be enlarged by a special agreement of the Centre and the states.

#### **Articles Related to Supreme Court at a Glance**

- 124. Establishment and Constitution of Supreme Court
- 125. Salaries, etc., of Judges
- 126. Appointment of acting Chief Justice
- 127. Appointment of ad hoc Judges
- 128. Attendance of retired Judges at sittings of the Supreme Court
- 129. Supreme Court to be a court of record
- 130. Seat of Supreme Court
- 131. Original jurisdiction of the Supreme Court
- 131A. Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central Laws (Repealed)
- 132. Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases
- 133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters
- 134. Appellate jurisdiction of Supreme Court in regard to criminal matters

- 134A. Certificate for appeal to the Supreme Court
- 135. Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court
- 136. Special leave to appeal by the Supreme Court
- 137. Review of judgments or orders by the Supreme Court
- 138. Enlargement of the jurisdiction of the Supreme Court
- 139. Conferment on the Supreme Court of powers to issue certain writs
- 139A. Transfer of certain cases
- 140. Ancillary powers of Supreme Court
- 141. Law declared by Supreme Court to be binding on all courts
- 142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
- 143. Power of President to consult Supreme Court
- 144. Civil and judicial authorities to act in aid of the Supreme Court
- 144A. Special provisions as to disposal of questions relating to constitutional validity of laws  
(Repealed)
- 145. Rules of court, etc.
- 146. Officers and servants and the expenses of the Supreme Court
- 147. Interpretation

## Part-VI - High Court (Article 214 to 232)

- ✓ In the Indian single integrated judicial system, the high court operates below the Supreme Court but above the subordinate courts.
- ✓ The judiciary in a state consists of a high court and a hierarchy of subordinate courts.
- ✓ The high court occupies the top position in the judicial administration of a state.
- ✓ The institution of high court originated in India in 1862 when the high courts were set up at Calcutta, Bombay and Madras.
- ✓ In 1866, a fourth high court was established at Allahabad. In the course of time, each province in British India came to have its own high court. After 1950, a high court existing in a province became the high court for the corresponding state.
- ✓ The Constitution of India provides for a high court for each state, but the Seventh Amendment Act of 1956 authorised the Parliament to establish a common high court for two or more states or for two or more states and a union territory.
- ✓ At present, there are **25 high courts** in the country. Out of them, three are common high courts. **Delhi and Jammu & Kashmir are the union territory that has a high court of its own (since 1966).** The other union territories fall under the jurisdiction of different state high courts.
- ✓ Three common high courts in India are the Punjab and Haryana High Court (serving Punjab, Haryana, and Chandigarh), the Bombay High Court (serving Maharashtra, Goa, Daman and Diu, and Dadra and Nagar Haveli), and the Guwahati High Court (serving Assam, Arunachal Pradesh, Nagaland, and Mizoram).
- ✓ The Parliament can extend the jurisdiction of a high court to any union territory or exclude the jurisdiction of a high court from any union territory.

## ORGANISATION OF HIGH COURT (Article - 214)

- ✓ Every high court (whether exclusive or common) consists of a chief justice and such other judges as the president may from time to time deem necessary to appoint. Thus, the Constitution does not specify the strength of a high court and leaves it to the discretion of the president.
- ✓ Accordingly, the President determines the strength of a high court from time to time depending upon its workload.

### Judges (Article - 217)

- ✓ Appointment of Judges The judges of a high court are appointed by the President. The chief justice is appointed by the President after consultation with the chief justice of India and the governor of the state concerned.
- ✓ For appointment of other judges, the chief justice of the concerned high court is also consulted. In case of a common high court for two or more states, the governors of all the states concerned are consulted by the president.

### Qualifications of Judges: -(Article - 217)

- ✓ A person to be appointed as a judge of a high court, should have the following qualifications:
  - 1) He should be a citizen of India.
  - 2) (a) He should have held a judicial office in the territory of India for ten years; or  
(b) He should have been an advocate of a high court (or high courts in succession) for ten years. From the above, it is clear that the Constitution has not prescribed a minimum age for appointment as a judge of a high court. Moreover, unlike in the case of the Supreme Court, the Constitution makes no provision for appointment of a distinguished jurist as a judge of a high court.

### Oath or Affirmation: -(Article - 219)

- ✓ A person appointed as a judge of a high court, before entering upon his office, has to make and subscribe an oath or affirmation before the governor of the state or some person appointed by him for this purpose. In his oath, a judge of a high court swears:
  - 1) to bear true faith and allegiance to the Constitution of India;
  - 2) to uphold the sovereignty and integrity of India;
  - 3) to duly and faithfully and to the best of his ability, knowledge and judgement perform the duties of the office without fear or favour, affection or ill-will; and
  - 4) to uphold the Constitution and the laws.

### Tenure of Judges: - (Article - 217)

- ✓ The Constitution has not fixed the tenure of a judge of a high court. However, it makes the following four provisions in this regard:

- 1) He holds office until he attains the age of 62 years. Any questions regarding his age is to be decided by the president after consultation with the chief justice of India and the decision of the president is final.
- 2) He can resign his office by writing to the president.
- 3) He can be removed from his office by the President on the recommendation of the Parliament. He vacates his office when he is appointed as a judge of the Supreme Court or when he is transferred to another high court.

#### **Removal of Judges: - (Article - 217)**

- ✓ A judge of a high court can be removed from his office by an order of the President. The President can issue the removal order only after an address by the Parliament has been presented to him in the same session for such removal. The address must be supported by a special majority of each House of Parliament (i.e., a majority of the total membership of that House and majority of not less than two-thirds of the members of that House present and voting). The grounds of removal are two—proved misbehaviour or incapacity. Thus, a judge of a high court can be removed in the same manner and on the same grounds as a judge of the Supreme Court.
- ✓ The Judges Enquiry Act (1968) regulates the procedure relating to the removal of a judge of a high court by the process of impeachment:
  - 1) A removal motion signed by 100 members (in the case of Lok Sabha) or 50 members (in the case of Rajya Sabha) is to be given to the Speaker/Chairman.
  - 2) The Speaker/Chairman may admit the motion or refuse to admit it.
  - 3) If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
  - 4) The committee should consist of (a) the chief justice or a judge of the Supreme Court, (b) a chief justice of a high court, and (c) a distinguished jurist.
  - 5) If the committee finds the judge to be guilty of misbehaviour or suffering from an incapacity, the House can take up the consideration of the motion.
  - 6) After the motion is passed by each House of Parliament by special majority, an address is presented to the president for removal of the judge.
  - 7) Finally, the president passes an order removing the judge.

- 8) From the above, it is clear that the procedure for the impeachment of a judge of a high court is the same as that for a judge of the Supreme Court.
- 9) It is interesting to know that no judge of a high court has been impeached so far.

#### **Salaries and Allowances (Article - 221)**

- ✓ The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. They cannot be varied to their disadvantage after their appointment except during a financial emergency. W.e.f. 01.01.2016, the salary of the chief justice is Rs.2,50,000/- per month and the salary of other judges is Rs.2,25,000/- per month. They are also paid HRA, furnishing allowance, sumptuary allowance and other facilities like medical, car, telephone, etc.
- ✓ The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

#### **Transfer of Judges (Article - 222)**

- ✓ The President can transfer a judge from one high court to another after consulting the Chief Justice of India. On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.

#### **Acting Chief Justice (Article - 223)**

- ✓ The President can appoint a judge of a high court as an acting chief justice of the high court when:
  - 1) the office of chief justice of the high court is vacant; or
  - 2) the chief justice of the high court is temporarily absent; or
  - 3) the chief justice of the high court is unable to perform the duties of his office.

#### **Additional and Acting Judges (Article - 224)**

- ✓ The President can appoint duly qualified persons as additional judges of a high court for a temporary period not exceeding two years when:
  - 1) there is a temporary increase in the business of the high court; or
  - 2) there are arrears of work in the high court.

- ✓ The President can also appoint a duly qualified person as an acting judge of a high court when a judge of that high court (other than the chief justice) is:
  - 1) unable to perform the duties of his office due to absence or any other reason; or
  - 2) appointed to act temporarily as chief justice of that high court.
- ✓ An acting judge holds office until the permanent judge resumes his office. However, both the additional or acting judge cannot hold office after attaining the age of 62 years.

## INDEPENDENCE OF HIGH COURT

- ✓ The independence of a high court is very essential for the effective discharge of the duties assigned to it. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the legislature. It should be allowed to do justice without fear or favour. The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a high court.

### 1. Mode of Appointment

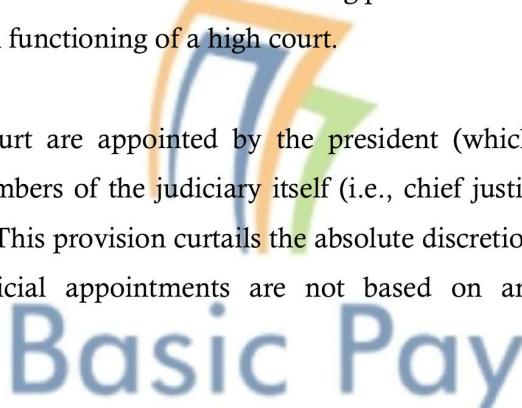
- ✓ The judges of a high court are appointed by the president (which means the cabinet) in consultation with the members of the judiciary itself (i.e., chief justice of India and the chief justice of the high court). This provision curtails the absolute discretion of the executive as well as ensures that the judicial appointments are not based on any political or practical considerations.

### 2. Security of Tenure

- ✓ The judges of a high court are provided with the security of tenure. They can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution. This means that they do not hold their office during the pleasure of the president, though they are appointed by him. This is obvious from the fact that no judge of a high court has been removed (or impeached) so far.

### 3. Fixed Service Conditions

- ✓ The salaries, allowances, privileges, leave and pension of the judges of a high court are determined from time to time by the Parliament. But, they cannot be changed to their

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disadvantage after their appointment except during a financial emergency. Thus, the conditions of service of the judges of a high court remain same during their term of office.

#### **4. Expenses Charged on Consolidated Fund**

- ✓ The salaries and allowances of the judges, the salaries, allowances and pensions of the staff as well as the administrative expenses of a high court are charged on the consolidated fund of the state. Thus, they are non-votable by the state legislature (though they can be discussed by it). It should be noted here that the pension of a high court judge is charged on the Consolidated Fund of India and not the state.

#### **5. Conduct of Judges cannot be Discussed: -**

- ✓ The Constitution prohibits any discussion in Parliament or in a state legislature with respect to the conduct of the judges of a high court in the discharge of their duties, except when an impeachment motion is under consideration of the Parliament.

#### **6. Ban on Practice after Retirement: -**

- ✓ The retired permanent judges of a high court are prohibited from pleading or acting in any court or before any authority in India except the Supreme Court and the other high courts. This ensures that they do not favour any one in the hope of future favour.

#### **7. Power to Punish for its Contempt: -**

- ✓ A high court can punish any person for its contempt. Thus, its actions and decisions cannot be criticized and opposed by anybody. This power is vested in a high court to maintain its authority, dignity and honour.

#### **8. Freedom to Appoint its Staff: -**

- ✓ The chief justice of a high court can appoint officers and servants of the high court without any interference from the executive. He can also prescribe their conditions of service.

#### **9. Its Jurisdiction cannot be Curtailed: -**

- ✓ The jurisdiction and powers of a high court in so far as they are specified in the Constitution cannot be curtailed both by the Parliament and the state legislature. But, in other respects, the

jurisdiction and powers of a high court can be changed both by the parliament and the state legislature.

#### **10. Separation from Executive: -**

- ✓ The Constitution directs the state to take steps to separate the judiciary from the executive in public services. This means that the executive authorities should not possess the judicial powers. Consequent upon its implementation, the role of executive authorities in judicial administration came to an end.

#### **JURISDICTION AND POWERS OF HIGH COURT (Article - 225)**

- ✓ Like the Supreme Court, the high court has been vested with quite extensive and effective powers. It is the highest court of appeal in the state. It is the protector of the Fundamental Rights of the citizens. It is vested with the power to interpret the Constitution. Besides, it has supervisory and consultative roles.
- ✓ However, the Constitution does not contain detailed provisions with regard to the jurisdiction and powers of a high court. It only lays down that the jurisdiction and powers of a high court are to be the same as immediately before the commencement of the Constitution. But, there is one addition, that is, the Constitution gives a high court jurisdiction over revenue matters (which it did not enjoy in the pre-constitution era). The Constitution also confers (by other provisions) some more additional powers on a high court like writ jurisdiction, power of superintendence, consultative power, etc. Moreover, it empowers the Parliament and the state legislature to change the jurisdiction and powers of a high court.

At present, a high court enjoys the following jurisdiction and powers:

1. Original jurisdiction.
2. Writ jurisdiction.
3. Appellate jurisdiction.
4. Supervisory jurisdiction.
5. Control over subordinate courts.
6. A court of record.

7. Power of judicial review.

### **1. Original Jurisdiction (Article-225)**

- ✓ It means the power of a high court to hear disputes in the first instance, not by way of appeal. It extends to the following:
  - 1) Matters of admiralty, will, marriage, divorce, company laws and contempt of court.
  - 2) Disputes relating to the election of members of Parliament and state legislatures.
  - 3) Regarding revenue matter or an act ordered or done in revenue collection.
  - 4) Enforcement of fundamental rights of citizens.
  - 5) Cases ordered to be transferred from a subordinate court involving the interpretation of the Constitution to its own file.
  - 6) The four high courts (i.e., Calcutta, Bombay, Madras and Delhi High Courts) have original civil jurisdiction in cases of higher value.

### **2. Writ Jurisdiction (Article - 226)**

- ✓ Article 226 of the Constitution empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo-warranto for the enforcement of the fundamental rights of the citizens and for any other purpose. The phrase 'for any other purpose' refers to the enforcement of an ordinary legal right.
- ✓ The high court can issue writs to any person, authority and government not only within its territorial jurisdiction but also outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction
- ✓ The writ jurisdiction of the high court (under Article 226) is not exclusive but concurrent with the writ jurisdiction of the Supreme Court (under Article 32). It means, when the fundamental rights of a citizen are violated, the aggrieved party has the option of moving either the high court or the Supreme Court directly.
- ✓ However, the writ jurisdiction of the high court is wider than that of the Supreme Court. This is because, the Supreme Court can issue writs only for the enforcement of fundamental rights and not for any other purpose, that is, it does not extend to a case where the breach of an ordinary legal right is alleged.

### 3. Appellate Jurisdiction (Article-227)

- ✓ A high court is primarily a court of appeal. It hears appeals against the judgements of subordinate courts functioning in its territorial jurisdiction. It has appellate jurisdiction in both civil and criminal matters. Hence, the appellate jurisdiction of a high court is wider than its original jurisdiction.

#### (a) Civil Matters - The civil appellate jurisdiction of a high court is as follows:

- (i) First, appeals from the orders and judgements of the district courts, additional district courts and other subordinate courts lie directly to the high court, on both questions of law and fact, if the amount exceeds the stipulated limit.
- (ii) Second, appeals from the orders and judgements of the district court or other subordinate courts lie to the high court in the cases involving questions of law only (and not question of fact).
- (iii) The High Courts have provision for intra-court appeals. When a single judge of the high court has decided a case (either under the original or appellate jurisdiction of the high court), an appeal from such a decision lies to the division bench of the same high court.
- (iv) Appeals from the decisions of the administrative and other tribunals lie to the division bench of the state high court. In 1997, the Supreme Court ruled that the tribunals are subject to the writ jurisdiction of the high courts. Consequently, it is not possible for an aggrieved person to approach the Supreme Court directly against the decisions of the tribunals, without first going to the high courts.

#### (b) Criminal Matters - The criminal appellate jurisdiction of a high court is as follows:

- (i) Appeals from the judgements of sessions court and additional sessions court lie to the high court if the sentence is one of imprisonment for more than seven years. It should also be noted here that a death sentence (popularly known as capital punishment) awarded by a sessions court or an additional sessions court should be confirmed by the high court before it can be executed, whether there is an appeal by the convicted person or not.



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(ii) In some cases specified in various provisions of the Bhartiya Nagarik Suraksha Sanhita (2023), the appeals from the judgements of the assistant sessions judge, metropolitan magistrate or other magistrates (judicial) lie to the high court.

#### **4. Supervisory Jurisdiction (Article - 227)**

- ✓ A high court has the power of superintendence over all courts and tribunals functioning in its territorial jurisdiction (except military courts or tribunals). Thus, it may—
  - (a) call for returns from them;
  - (b) make and issue, general rules and prescribe forms for regulating the practice and proceedings of them;
  - (c) prescribe forms in which books, entries and accounts are to be kept by them; and
  - (d) settle the fees payable to the sheriff, clerks, officers and legal practitioners of them.
- ✓ However, this power does not vest the high court with any unlimited authority over the subordinate courts and tribunals. It is an extraordinary power and hence has to be used most sparingly and only in appropriate cases. Usually, it is limited to, (i) excess of jurisdiction, (ii) gross violation of natural justice, (iii) error of law, (iv) disregard to the law of superior courts, (v) perverse findings, and (vi) manifest injustice.

#### **5. Control over Subordinate Courts (Article - 227)**

- ✓ In addition to its appellate jurisdiction and supervisory jurisdiction over the subordinate courts as mentioned above, a high court has an administrative control and other powers over them. These include the following:
  - (a) It is consulted by the governor in the matters of appointment, posting and promotion of district judges and in the appointments of persons to the judicial service of the state (other than district judges).
  - (b) It deals with the matters of posting, promotion, grant of leave, transfers and discipline of the members of the judicial service of the state (other than district judges).
  - (c) It can withdraw a case pending in a subordinate court if it involves a substantial question of law that require the interpretation of the Constitution. It can then either dispose of the case itself or determine the question of law and return the case to the subordinate court with its judgement.

(d) Its law is binding on all subordinate courts functioning within its territorial jurisdiction in the same sense as the law declared by the Supreme Court is binding on all courts in India.

#### **6. A Court of Record (Article - 215): -**

- ✓ As a court of record, a high court has two powers:
  - (a) The judgements, proceedings and acts of the high courts are recorded for perpetual memory and testimony. These records are admitted to be of evidentiary value and cannot be questioned when produced before any subordinate court. They are recognised as legal precedents and legal references.
  - (b) It has power to punish for contempt of court, either with simple imprisonment or with fine or with both.
- ✓ The expression ‘contempt of court’ has not been defined by the Constitution. However, the expression has been defined by the Contempt of Court Act of 1971. Under this, contempt of court may be civil or criminal. Civil contempt means wilful disobedience to any judgement, order, writ or other process of a court or wilful breach of an undertaking given to a court. Criminal contempt means the publication of any matter or doing an act which—(i) scandalises or lowers the authority of a court; or (ii) prejudices or interferes with the due course of a judicial proceeding; or (iii) interferes or obstructs the administration of justice in any other manner.

#### **7. Power of Judicial Review (Article – 13 & 226)**

- ✓ Judicial review is the power of a high court to examine the constitutionality of legislative enactments and executive orders of both the Central and state governments. On examination, if they are found to be violative of the Constitution (ultra-vires), they can be declared as illegal, unconstitutional and invalid (null and void) by the high court. Consequently, they cannot be enforced by the government.
- ✓ Though the phrase ‘judicial review’ has no where been used in the Constitution, the provisions of Articles 13 and 226 explicitly confer the power of judicial review on a high court.
- ✓ The constitutional validity of a legislative enactment or an executive order can be challenged in a high court on the following three grounds:
  - (a) it infringes the fundamental rights (Part III),
  - (b) it is outside the competence of the authority which has framed it, and

- (c) it is repugnant to the constitutional provisions.
- ✓ The 42nd Amendment Act of 1976 curtailed the judicial review power of high court. It debarred the high courts from considering the constitutional validity of any central law. However, the 43<sup>rd</sup> Amendment Act of 1977 restored the original position.

#### **Articles Related to High Courts at a Glance**

- 214. High Courts for states
- 215. High Courts to be courts of record
- 216. Constitution of High Courts
- 217. Appointment and conditions of the office of a Judge of a High Court
- 218. Application of certain provisions relating to Supreme Court to High Courts
- 219. Oath or affirmation by judges of High Courts
- 220. Restriction on practice after being a permanent judge
- 221. Salaries etc., of judges
- 222. Transfer of a judge from one High Court to another
- 223. Appointment of acting Chief Justice
- 224. Appointment of additional and acting judges
- 224A. Appointment of retired judges at sittings of High Courts
- 225. Jurisdiction of existing High Courts
- 226. Power of High Courts to issue certain writs
- 226A. Constitutional validity of Central laws not to be considered in proceedings under Article 226 (Repealed)
- 227. Power of superintendence over all courts by the High Court
- 228. Transfer of certain cases to High Court
- 228A. Special provisions as to disposal of questions relating to constitutional validity of state laws (Repealed)
- 229. Officers and servants and the expenses of High Courts
- 230. Extension of jurisdiction of High Courts to union territories
- 231. Establishment of a common High Court for two or more states
- 232. Interpretation (Repealed)

## Article – 311 Safeguards to Civil Servants

- ✓ Article 311 places two restriction on the ‘doctrine of pleasure’. In other words, it provides two safeguards to civil servants against any arbitrary dismissal from their posts:
  - (a) A civil servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed.
  - (b) A civil servant cannot be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
- ✓ *Doctrine of Pleasure - According to Article 310, members of the defence services, the civil services of the Centre and the all-India services or persons holding military posts or civil posts under the Centre, hold office during the pleasure of the president. Similarly, members of the civil services of a state or persons holding civil posts under a state, hold office during the pleasure of the governor of the state.*
- ✓ The above two safeguards are available only to the members of the civil services of the Centre, the all-India services, the civil services of a state or to persons holding civil posts under the Centre or a state and not to the members of defence services or persons holding military posts. However, the second safeguard (holding inquiry) is not available in the following three cases:
  - (a) Where a civil servant is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
  - (b) Where the authority empowered to dismiss or remove a civil servant or to reduce him in rank is satisfied that for some reason (to be recorded in writing), it is not reasonably practicable to hold such inquiry; or
  - (c) Where the president or the governor is satisfied that in the interest of the security of the state, it is not expedient to hold such inquiry.
- ✓ Originally, the opportunity of being heard was given to a civil servant at two stages—at the inquiry stage, and at the punishment stage. But, the 42nd Amendment Act of 1976 abolished the provision for second opportunity (that is, the right of a civil servant to make representation against the punishment proposed as a result of the findings of the inquiry). Hence, the present position is that where it is proposed (after inquiry) to impose upon a civil servant the punishment of dismissal, removal or reduction in rank, it may be imposed on the basis of the evidence

adduced at the inquiry without giving him any opportunity of making representation on the penalty proposed.

- ✓ The Supreme Court held that the expression ‘reasonable opportunity of being heard’ envisaged to a civil servant (in the second safeguard mentioned above) includes:
  - (a) an opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
  - (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and
  - (c) the disciplinary authority must supply a copy of the inquiry officer’s report to the delinquent civil servant for observations and comments before the disciplinary authority considers the report.



### **Article – 338 The National Commission for Scheduled Castes (SCs)**

- ✓ The National Commission for Scheduled Castes (SCs) is a constitutional body in the sense that it is directly established by Article 338 of the Constitution.

#### **EVOLUTION OF THE COMMISSION**

- ✓ The National Commission for SCs and STs came into being consequent upon passing of the 65<sup>th</sup> Constitutional Amendment Act of 1990. The Commission was established under Article 338 of the Constitution with the objective of monitoring all the safeguards provided for the SCs and STs under the Constitution or other laws.
- ✓ Article 338 of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs) to investigate all matters relating to the constitutional safeguards for the SCs and STs and to report to the President on their working. He was designated as the Commissioner for SCs and STs and assigned the said duty.
- ✓ Again, the 89th Constitutional Amendment Act of 2003 bifurcated the combined National Commission for SCs and STs into two separate bodies, namely, National Commission for Scheduled Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).
- ✓ The separate National Commission for SCs came into existence in 19th Feb, 2004.
- ✓ It consists of a chairperson (Rank-Cabinet Minister), a vice-chairperson (Rank-Minister of State), three other members (Rank – equivalent to Secretary in Govt. of India), and a Secretary/Joint-Secretary/Deputy Secretary/Under Secretary.
- ✓ Tenure of Chairperson, Vice-Chairperson and Members will be 3 years.
- ✓ They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

#### **FUNCTIONS OF THE COMMISSION**

- ✓ The functions of the Commission are:
  - (a) To investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working;
  - (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs;

- (c) To participate and advise on the planning process of socio-economic development of the SCs and to evaluate the progress of their development under the Union or a state;
- (d) To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
- (e) To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SCs; and
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the SCs as the president may specify.

## **REPORT OF THE COMMISSION**

- ✓ The commission presents an annual report to the president. It can also submit a report as and when it thinks necessary.
- ✓ The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.
- ✓ The President also forwards any report of the Commission pertaining to a state government to the state governor. The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

## **POWERS OF THE COMMISSION**

- ✓ The Commission is vested with the power to regulate its own procedure.
- ✓ The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
  - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - (b) requiring the discovery and production of any document;
  - (c) receiving evidence on affidavits;
  - (d) requisitioning any public record from any court or office;

- (e) issuing summons for the examination of witnesses and documents; and
- (f) any other matter which the President may determine.

### **Article 338-A - National Commission for Scheduled Tribes (STs)**

- ✓ Like the National Commission for Schedules Castes (SCs), the National Commission for Scheduled Tribes (STs) is also a constitutional body in the sense that it is directly established by Article 338-A of the Constitution.
- ✓ Geographically and culturally, the STs are different from the SCs and their problems are also different from those of SCs. In 1999, a new Ministry of Tribal Affairs was created to provide a sharp focus to the welfare and development of the STs. It was felt necessary that the Ministry of Tribal Affairs should co-ordinate all activities relating to the STs as it would not be administratively feasible for the Ministry of Social Justice and Empowerment to perform this role.
- ✓ Hence, in order to safeguard the interests of the STs more effectively, it was proposed to set up a separate National Commission for STs by bifurcating the existing combined National Commission for SCs and STs. This was done by passing the 89th Constitutional Amendment Act of 2003. This Act further amended Article 338 and inserted a new Article 338-A in the Constitution.
- ✓ The separate National Commission for STs came into existence in 19<sup>th</sup> Feb 2004.
- ✓ It consists of a chairperson (Rank-Cabinet Minister), a vice-chairperson (Rank-Minister of State), three other members (Rank – equivalent to Secretary in Govt. of India), and a Secretary/Joint-Secretary/Deputy Secretary/Under Secretary.
- ✓ Tenure of Chairperson, Vice-Chairperson and Members will be 3 years.
- ✓ They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

### **FUNCTIONS OF THE COMMISSION**

The functions of the Commission are:

- (a) To investigate and monitor all matters relating to the constitutional and other legal safeguards for the STs and to evaluate their working;
- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs;
- (c) To participate and advise on the planning process of socio-economic development of the STs and to evaluate the progress of their development under the Union or a state;
- (d) To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
- (e) To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the STs; and
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the STs as the President may specify.

### **OTHER FUNCTIONS OF THE COMMISSION**

- ✓ In 2005, the President specified the following other functions of the Commission in relation to the protection, welfare and development and advancement of the STs:
  - (i) Measures to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas
  - (ii) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc., as per law
  - (iii) Measures to be taken for the development of tribals and to work for more viable livelihood strategies
  - (iv) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects
  - (v) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place
  - (vi) Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation
  - (vii) Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996

(viii) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment

## **REPORT OF THE COMMISSION**

- ✓ The Commission presents an annual report to the President. It can also submit a report as and when it thinks necessary.
- ✓ The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.
- ✓ The President also forwards any report of the Commission pertaining to a state government to the state governor. The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

## **POWERS OF THE COMMISSION**

- ✓ The Commission is vested with the power to regulate its own procedure. The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:
  - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - (b) requiring the discovery and production of any document;
  - (c) receiving evidence on affidavits;
  - (d) requisitioning any public record from any court or office;
  - (e) issuing summons for the examination of witnesses and documents; and
  - (f) any other matter which the President may determine.

The Central government and the state governments are required to consult the Commission on all major policy matters affecting the STs

### **Article – 338 (B) National Commission on Backward Classes**

- ✓ National Commission for Backward Classes (NCBC) was initially constituted by the Central Govt under the National Commission for Backward Classes Act, 1993.
- ✓ However, the Constitution (One Hundred and Second Amendment) Act, 2018 gave NCBC constitutional status and inserted Article 338 (B) in the Indian Constitution **w.e.f. 11.08.2018**
- ✓ Article 338 (B) establishes National Commission for Backward Classes (NCBC) and provides it the authority to examine complaints and welfare measures regarding socially and educationally backward classes (SEBCs).
- ✓ Accordingly, the Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes.
- ✓ Constitution 102<sup>nd</sup> Amendment also repealed the National Commission for Backward Classes Act, 1993. The Amendment states that the President may specify the socially and educationally backward classes in the various states and union territories. He may do this in consultation with the Governor of the concerned state. However, a law of Parliament will be required if the list of backward classes is to be amended.
- ✓ It consists of a chairperson (Rank-Cabinet Minister), a vice-chairperson (Rank-Minister of State), three other members (Rank – equivalent to Secretary in Govt. of India), and a Secretary/Joint-Secretary/Deputy Secretary/Under Secretary.
- ✓ Tenure of Chairperson, Vice-Chairperson and Members will be 3 years.

#### **Functions of the NCBC:**

- ✓ Investigate and Monitor matters relating to Safeguards provided for Socially and Educationally Backward Classes (SEBCs) under this Constitution or any law or government order.
- ✓ Evaluate the working of such legal safeguards provided for the socially and educationally backward classes.
- ✓ Inquire into specific complaints with respect to the deprivation of rights and safeguards of SEBCs.
- ✓ Participate and advise on the socio-economic development of SEBCs and to evaluate the progress of their development under the Union and any State.

- ✓ Suggest measures to be taken by Union or states for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of SEBCS.
- ✓ Presents annual reports.

**Power of NCBC:**

- ✓ For investigation and Inquiry into matters related to safeguards provided to SEBCS the Commission is vested with powers of a Civil Court having authority to –
  - Summon and enforce attendance of any person
  - Discovery & production of any documents.
  - Receive evidence on affidavits
  - Requisition any public record or copy thereof from any court or office.
  - Issue Commissions for examination of witnesses and documents.



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