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## CONSTITUTION OF INDIA

- (i) Explain the ideals and rights contained in Preamble  
(ii) Describe the right to freedom (Article 19-22) with the help of relevant case studies.

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### ① Preamble

#### IDEALS

- Sovereignty
- Socialism
- Secularism
- Democracy
- Republic

→ Preamble is

#### RIGHTS

- \* Justice
- \* Liberty
- \* Equality
- \* Fraternity
- \* Dignity of individual
- \* Unity and integrity of nation

→ Preamble is treated as the very soul of Indian constitution. It is regarded as the introduction of constitution of India and is also known as the key to open the minds of makers of the constitution.

(1) Sovereign state :- When the supreme power is vested ~~on~~ with the nation itself it is called a sovereign state. A sovereign state is totally independent both internally and externally also there is no superior authority to control it.

(ii) Socialist State : In a socialist state the means of production such as land, labor, capital and organisation will be fully or partially under the control of government and exploitation of workers will not be there.

(iii) Secular State : A nation which maintains a neutral attitude towards all religions is known as a secular state. There is no state religion in a secular state and all religions are treated equally with equal respect.

(iv) Democratic State : A democratic country is governed by a government which is elected by the people, composed of the people and functions for the people.

(v) Republic : In a republic the head of the nation will be an elected person and there will not be special privilege to anyone.

✓ Preamble also states the rights conferred by the constitution to the people of India.

- Justice : economic, social and political
- Liberty : of thought, expression, belief, faith and worship
- Equality : of status and opportunities
- Fraternity : assuming the dignity of the individual and the unity and integrity of the nation.



[11], Article 19 guarantees six fundamental freedoms to the citizens of India. The freedoms are incorporated in article 19(1) and can be claimed only by the citizens of India. The freedoms are not absolute. The state can impose reasonable restrictions on them.

→ case law connected with Article 19(1)(a)

→ *Bijoe Emmanuel v. State of Kerala* [National Anthem case]

Petitioner: *Bijoe Emmanuel*

Respondent: *State of Kerala*

Facts: Govt of Kerala made it mandatory to the students to sing national anthem for educational institutions. *Bijoe Emmanuel* and 2 other students who were followers of Jehovah's witnesses, a particular sect of Christianity, refused to sing national anthem as their religious belief prevented to do so. Students were expelled from the school alleging that they insulted the national anthem. Students approached High Court of Kerala but the court agreed to the expulsion. Then they preferred an appeal in S.C challenging the judgement of Kerala H.C. After considering the appeal, the Supreme court in its landmark judgement declared that freedom of speech and expression also includes freedom of silence. The apex court also observed that the expulsion order made by the school violated the student's fundamental rights.



> Article 20 - The rights available to an accused person

1> Protection against Ex-post facto law

Article 20(1) is about rights against ex-post facto law which means that the state cannot make criminal law with retrospective effect. According to this article an accused person ~~person~~ shall be punished for an offence committed by him, only in accordance with the law which was prevailing at the time of commission of the crime. A new criminal law or an increased punishment is not applicable for a past crime.

11> Protection against Double Jeopardy

Article 20(2) provides right against double jeopardy which says that person shall be prosecuted and punished for an offence committed by him only once. The grounds for claiming the defence of double jeopardy:

(I) There must be an accused person

(II) Prosecution must have been taken place against the person in a competent court

(III) The court must have convicted the person

If all the conditions are satisfied a second prosecution on the same offence is completely prohibited.

Protection against Self Incrimination

Article 20(3) protects the accused from self incrimination. According to this article a person shall not be compelled to become a witness against himself. The state cannot impose compulsion on an accused person to reveal information in his personal knowledge. However collecting the finger print, handwriting sample, photograph etc of an accused person will not amount to self incrimination.



### iii > Article 21 - Right to life and personal liberty

Article 21 guarantees right to life and personal liberty to citizens as well as foreigners.

Article 21 states that no person shall be deprived of his life and personal liberty except according to the procedure established by the law. According to this article the state can interfere with the life and personal liberty of people only on the following conditions.

- There should be law which permits such interference
- The law must provide a procedure which is just, reasonable and fair.

→ Important case laws pertaining to Article 21

> Maneka Gandhi v Union of India - The SC held that 'right to travel abroad is a fundamental right'

Petitioner: Maneka Gandhi

Respondent: Union of India

The petitioner in this case Maneka Gandhi was about to travel abroad and her passport got interrupted impounded by the passport authority, using the provisions of Indian act 1967. Maneka Gandhi requested the regional passport officer to inform about the reason for the impoundment, however they denied and refused to give her a reason. She filed a petition before SC, challenging the action of passport authority being violative of article 21.

The Supreme court held that the action of passport authority violated Article 21. The procedure adopted by the authority for impounding the passport was not reasonable and was against the principles of natural justice.

## IV Article 21-A - Right to education

Article 21-A was added through 86<sup>th</sup> amendment in 2002, which states that right to education is a fundamental right. It is the duty of the government to provide free and compulsory education to all children in India in between the ages of 6 to 14 years.

JP Unnikrishnan v State of Andhra Pradesh

Even before the incorporation of article 21-A into the constitution, Supreme court through its case said that 'right to education is a fundamental right'.