

Introduction

The Constitution of India is the supreme law of India. It frames fundamental political principles, procedures, practices, rights, powers, and duties of the government. It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but, by a constituent assembly, and adopted by its people, with a declaration in its preamble. Parliament cannot override it.

The world's longest constitution is the Indian's constitution. At its commencement, it had 395 articles in 22 parts and 8 schedules. It consists of approximately 145,000 words, making it the second largest active constitution in the world. Currently, it has a preamble, 25 parts with 12 schedules, 5 appendices, 448 articles, and 101 amendments.

History

The constitution of India was adopted on the 26th of November, in the year 1949. However, it came to effect on the 26th of January, 1950. 26th of January is celebrated as the Republic Day of India.

It was adopted by the Constitution Assembly. Dr. B. R. Ambedkar, the chairman of the Drafting Committee, is widely considered to be the architect of the Constitution of India. After, the adoption of the constitution, The Union of India became the contemporary and modern Republic of India

What is Constitution in simple words?

The **basic** principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it. b : a written instrument embodying the rules of a political or social organization.

The 12 Salient Features of the Indian Constitution are as follows:

- Longthiest Written Constitution

- Single Citizenship
- Fundamental Rights
- Fundamental Duties
- Directive Principles of State Policy
- Unique Blend of Flexibility & Rigidity
- Adult Suffrage
- Independent Judiciary
- Sovereign, Socialist, Secular, Democratic, Republic
- Parliamentary System of Government
- Judicial Review
- Judicial Activism

INTRODUCTION

The Indian Constitution is the grundnorm in India. All the laws in India derive authority from it. It was originally written in both Hindi and English by Prem Behari Narain Raizada in flowing italics and was decorated by the artists of Shantiniketan.

Nevertheless, its formulation was a task which was one of its kind. Various constitutions around the world were referred while its formulation. May be that is why it is also called a 'Bag of Borrowings'. Our constitution makers picked up the best of the provisions for India from different parts of the world and molded the provisions to suit the Indian circumstances.

The Constitution of India was put together by the Constituent Assembly which took 2 years 11 months and 17 days to prepare the final draft, after several amendments. After several meetings and discussions, the Indian Constitution finally came into effect on 26th January, 1950.

SALIENT FEATURES OF THE INDIAN CONSTITUTION

1. **Longest Written Constitution:**

The most visible and important salient feature of the Indian constitution is that it is a unique and the lengthiest written constitution in the world. Originally, it had 395 articles, 22 parts and 8 schedules. As a result of various amendments over the passage of time, our Constitution contains 448 articles and 12 schedules at present.

Indian Constitution is a fully written document that incorporates various laws for proper management of the country. Indian constitution contains separate provisions for states and centers and their inter-relationship. The constituent assembly had borrowed various provisions from several other constitutions of the world, which made it very detailed. There are separate provisions for *scheduled castes, scheduled tribes, other backward classes*, children, and women.

2. Single Citizenship:

The Indian Constitution provides for single citizenship for all the citizens of India. An individual may belong to certain State or Union Territory, but that individual's citizenship remains Indian.

Under the Constitution, everyone is a citizen of India who on the 26th Of January, 1950 had domicile in India and who • Was born in India • Either of whose parents was born in India • Had been ordinarily resident in India for not less than 5 years All those citizens are further entitled to equal freedom, rights, and protection.

This is unlike the United States, where every individual is both an American Citizen and a citizen of the State in which they reside.

3. *Fundamental Rights*:

The Indian Constitution provides for Fundamental Rights to the Indian citizen which are guaranteed under *Part III C (Articles 12-35)*. It is also called the 'Indian Bill of Rights'.

After the 44th Amendment Act 1979, there are presently six *fundamental rights* in our constitution. It is to be noted that these fundamental rights are not absolute and are subject to certain limitations that are expressly mentioned in the constitution itself.

The six fundamental rights are as follows:

(i) Right to Equality

This fundamental right provides for equality before law and equality of opportunity. It also ends discrimination and abolishes untouchability and titles.

(ii) Right to Freedom

This fundamental right further includes six kinds of freedoms. These are:- • Freedom of speech and expression • Freedom to assemble peacefully without arms • Freedom to form associations • Freedom to move freely in India • Freedom to reside in any part of India • Freedom of adopting any profession, trade, or occupation.

(iii) Right to freedom of Religion

This fundamental rights, grants an individual, a right to believe, profess, or worship any religion. The State does not have a common religion. It also guarantees the right to establish and maintain any religious institution. No person can be compelled to follow a particular religion.

(iv) Cultural and Educational Rights

This fundamental right guarantees all the minorities a right to maintain, develop, and further teach their language and culture. It also provides them a right to establish, maintain and administer their own educational institutions.

(v) Right against Exploitation

This fundamental right prohibits forced labour, child labour, and human trafficking. It ensures protection to individuals against various human atrocities.

(vi) Right to Constitutional Remedies (Article 32)

This fundamental right is the heart and soul of all of the fundamental rights. It ensures effective enforcement of all the other fundamental rights and protection from violation of these rights. Under this article, the Supreme Court and Hight Court have to power to issue writs for enforcement of these rights.

4. *Fundamental Duties:*

Part IVA (Article 51 A) of the Constitution describes various Fundamental Duties of each citizen. Those fundamental duties are as follows:

- To abide by the Constitution and respect its ideals and institutions; as well as, respect the National Flag and the National Anthem
- To cherish the noble ideals of the freedom struggle
- To uphold and protect the unity, sovereignty, and integrity of India
- To defend the country and render national service when called upto to do so.
- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional, or sectional diversities; to renounce practices derogatory to the dignity of women
- To value and preserve the rich heritage of our exquisite culture
- To protect and improve the natural environment including forests, lakes, rivers, and wild life, and to have compassion for living creatures
- To develop the scientific temper, humanism, and the spirit of inquiry and reform
- To safeguard public property and to abjure violence
- 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.
- To provide opportunities for education by the parent or the guardian, to his child, or a ward between the age of 6-14 years as the case may be.

5. Directive Principles of State Policy:

Part IV of the Indian Constitution deals with the 'Directive Principles of State Policy'. This part of the Constitution mentions certain guidelines for the State with the objective of socio-economic development. All three governments of the country, Central, State, and Local are expected to frame welfare policies in accordance with this part of the Constitution. However, these policies are not enforceable in a Court of Law.

For example, some of the policies that the State is directed to make are to ensure fairer distribution of wealth, protection of women and children, old age pensions, local governments, adequate means of livelihood to people, etc.

6. Mixture of Rigidity and Flexibility:

The Constitution of India is said to be the perfect mixture of rigidity and flexibility. It is neither wholly rigid nor wholly flexible. It is because some provisions of the Constitution can be amended very easily while complex processes can only amend the others.

Article 368 of the Indian Constitution postulates that the Parliament can keep amending the constitution according to the need of the time in the future. As held by the *Apex Court*, every part of the constitution can be modified, except the “*basic structure*” of the Constitution. Any old or new law which violates the basic structure of the constitution is declared unconstitutional and invalid by the Courts.

7. Adult Suffrage: (Universal Adult Franchise)

Under Article 326 of the Indian Constitution, the elections to the House of People and the Legislative Assemblies of States should be done on the basis of adult suffrage. Which means that the citizens of India, of the age 18 years and above, have a right to vote and choose their representatives.

This part of the Constitution promotes the policy of ‘one person one vote’. In India, every individual of 18 years and above has a right to vote irrespective of their age, gender, race, colour, religion, etc.

8. India as a Democratic, Socialist, Sovereign, Secular, and Republic State:

India as a Democratic State:

India is a Democratic state means that the citizens of India have the power to elect their representatives in the government and thus, the government is responsible to the people.

India as a Socialist State:

India is a Socialist state because the 42nd Amendment of the Constitution states the achievement of socialist goals through democratic and non-violent means.

India as a Sovereign State:

Indian Constitution states that India is a Sovereign state because it is absolutely independent and it is not under the control of any other state. It manages all of its internal and external affairs freely without any external forces.

India as a Secular State:

India is a Secular state as the state has no specific religion of its own. Every citizen is free to follow, practice, and profess the religion of their choice. Moreover, the state cannot discriminate amongst its citizens on the basis of religion.

India as a Republic:

India is a Republic because it is not ruled by a hereditary monarch, whereas, the head of the state (the President) is elected by the people indirectly for a fixed period of 5 years.

9. Parliamentary system of government:

Indian Constitution provides for a parliamentary form of government. President is the nominal or Constitutional head of the state. He is indirectly elected by the citizens of India for a fixed period of 5 years.

While, the Prime Minister is the real or executive head of the state and is collectively responsible for the management of the Council of Ministers. The Prime Minister and his Council of Ministers are directly elected by the Indian citizens in their respective constituencies.

10. *Independent Judiciary:*

The Indian judiciary is free from interference from the other organs of the government (namely, the executive and the legislature). Some facts mentioned in the Constitution that further prove the independence of the judiciary are:-

1. Judges are appointed by the President,
2. Judges of Supreme Court cannot be removed from office except through an extremely complex process,

3. The salaries of judges are very high,
4. The Supreme Court has its own staff.

11. *Judicial Activism:*

Through the Public Interest Litigation system (PIL) and many other ways, the judiciary has been keeping an eye on the functioning of the legislature and the executive and if the judiciary feels that there is a need for some more effective policies or laws on a certain topic of public importance, the Judiciary can suggest or make temporary laws in the favor of those topics.

12. *Judicial Review:*

This part of the Constitution gives the judiciary a right to review each law and further declare them as unconstitutional or invalid according to the decisions.

SOME CASE LAWS RELATING TO SALIENT FEATURES OF THE INDIAN CONSTITUTION

In the case of **State of UP v. Rehmatullah**, it was held by the Court that the Central Government is authorized for taking any actions against the people who have residing in India despite having lost Indian citizenship by acquiring foreign citizenship.

In the case of **Kesavananda Bharti v. State of Kerala**, it was held that the Fundamental Rights were a part of the basic structure of the Indian Constitution and therefore they could not be abrogated even by a constitutional amendment.

In the case of **AIIMS Students Union v. AIIMS**, it was held by the Supreme Court that the Fundamental Duties are as important as the Fundamental Rights and that they cannot be overlooked.

In the case of **Olga Tellis v. Bombay Municipal Corporation**, it was held by the Supreme Court that the Directive Principles of State Policy are fundamental in the country's governance. Therefore, it should be given equal importance in understanding the Fundamental Rights.

In the case of **Shayara Bano v. UOI**, it was held by the Supreme Court that Judicial Review has to be exercised in line with the social values and must be supplemental to the changing of social needs.

S.R. Bommai v. Union of India- It was held that the Secularism is one of the basic features of the Indian Constitution and also mentioned that all religions are equal for the concept of Secularism.

Indira Nehru Gandhi v. Shri Raj Narain & Anr- It was held that State will not discriminate any citizen on the basis of the religion. Also, mentioned that Rule of law embodied in the Article 14 of the constitution.

Mohan Lal Tripathi v. District Magistrate- The meaning of the word "democracy" was discussed and in essence it was argued that "Democracy is a concept, a political philosophy developed by many culturally and politically mature nations through direct or indirect representation of democratically elected people."

Samantha v. State of Andhra Pradesh- "The term "socialist" is used to reduce income and status inequality and to provide equality of opportunity and amenities".

St. Stephen's college v. The University of Delhi- The state should provide equal legal protection to all citizens and non-citizens in the territory and no one should be denied such protection.

Chiranjit Lal Chowdri v. Union of India- "There is no doubt that Article 14 provides one of the most important and fundamental guarantees in the Constitution that should not be allowed to be reduced."

Maneka Gandhi v. Union of India- the Hon'ble Supreme Court established the Rule of Law that no one can be deprived of his life and personal liberty except the procedure establish by the law under Article 21 of the Indian Constitution.

Hussainara Khatoon v. the State of Bihar- It was held that the right to the speedy trial also comes under the ambit of Article 21 of the Indian Constitution.

Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh- The court banned all the mining activities in the Mussoorie hills as it was affecting the environment and ecological balance, as it is one of the fundamental duties guaranteed under Article 51 A.

Mumbai Kamgar Sabha v. Abdulbhai- If the constitutionality of the Act can be challenged then the fundamental duties under Article 51 A can also be taken into consideration.

Ram Prasad v. State of Uttar Pradesh- The fundamental duty of every citizen of India to strive towards excellence in all aspects of an individual and collective activity provided under Article 51A was discussed.

A.K. Gopalan v. the State of Madras- The law of preventive detention is subject to limited judicial review.

Sources of the Indian Constitution

Indian Constitution is an essential and fundamental document that forms the basis of the **Republic of India**. It is the origin of the state, the government, citizenship, rights, liberty & justice. However, it is often criticized for not being original per se, because many of its provisions are borrowed from other countries.

Regardless of criticism, the Constitution, because of its borrowed character, is like a bouquet with the best flowers picked up from different gardens. Different legal systems have evolved differently, giving rise to various legal principles as the fruit of evolution. The borrowings have been justified and well defended by the constitution-makers. As is widely quoted, **Dr. B.R. Ambedkar** said the following: **“Nobody holds any patent rights in the fundamental ideas of the Constitution.”**

Thus, borrowing provisions have helped the Constitution to build upon the collective learning of the humankind. Let us check the provisions which have been sourced from different legal systems:

i. The Government of India Act of 1935: This was an Act passed by the Parliament of Britain. It provided a framework for the government of India and was passed in the response to demands of the Indian leaders for democracy. The Constitution borrows from it the Federal Scheme of government, Office of Governor, the system of the

judiciary (establishing a supreme court), Public Service Commissions, and the Emergency provisions.



The Government of India Act, 1935

- Emergency provisions
- Public Service Commission
- Judiciary
- Federal Scheme
- Office of Governor



ii. British Constitution: Parliamentary system, Bicameralism, Rule of Law (Article 14), Legislative procedure, Single citizenship, Cabinet System, System Writs (Article 32 & 226), the rule of law



British Constitution

- Writs
- Parliamentary form of government
- Single Citizenship
- Parliamentary privileges



iii. US Constitution: Fundamental Rights (Part III), Post of Vice President, Judicial Review, Impeachment of the President, Removal of judges of Supreme Court and High Court (Article 124).



United States of America

- Fundamental Rights
- Judicial Review
- Impeachment of the President
- Removal of Supreme Court and High Court judge



iv. Irish Constitution: Directive Principles of State Policy (Part IV), the nomination of members to Rajya Sabha, and method of election of President.



Ireland

- Directive Principles of State Policy
- Method of Election of the president
- Members nomination to the Rajya Sabha by the President



v. Canadian Constitution: It is exciting that the same parliament (British) Which passed the Government of India Act 1935, made constitutional laws for Canada. Thus, borrowing from Canada means taking something from English Case law. The provisions regarding the Federation with a strong center, the appointment of governors by the center and advisory jurisdiction of the Supreme Court (Article 143), and the residuary powers with the center (Article 248) have been sourced from Canada.



Canada

- Federalism with strong central government
- Advisory jurisdiction of the Supreme Court
- Centre appoints the Governors of the states
- Residuary powers vest with the centre



vi. Australian Constitution: Freedom of trade and commerce, Concurrent List, joint sitting of the two Houses of Parliament.



Australia

- Concurrent List
- Freedom of trade and commerce
- Joint sitting of the two Houses of Parliament



vii. Weimar Constitution (Constitution of Germany): Suspension of Fundamental Rights during Emergency.



Germany (Weimar Constitution)

- Suspension of Fundamental Rights during Emergency



viii. Soviet Constitution: The Soviet Constitution is known for its socialism. India, being a welfare state, did borrow the principles like Fundamental duties and the ideals of social, economic and political justice (Found in the Preamble).



Soviet Union (USSR)

- Fundamental Duties
- The ideals of social, economic and political Justice



ix. French Constitution: Republic character of Constitution. The ideals of liberty, equality and fraternity in the Preamble.



France

- The ideals of Liberty, Equality, Fraternity and Republic



x. South African Constitution: Procedure for amendment, the Constitution and election of the members of Rajya Sabha.



South Africa

- Amendment of the Constitution
- Election of members of the Rajya Sabha



xi. Japanese Constitution: Procedure established by law.



Japan

- Procedure established by law



This, the above-mentioned provisions, are those which have been sourced from a foreign legal system. It must not be concluded from the above that it is a copy paste,

and hence constitutional provisions are hard to implement in India. These borrowed provisions are very basic provisions or the procedural provisions. Interpretation has been done in context of Indian society. For example, in addition to “equal protection of law” or the affirmative actions, Indian Constitution provides for reservation in employment. While concept of affirmative action finds its origin in the US constitution, reservations do not exist in the USA. Thus, the Indian Constitution presents the best ideas in the world with implementation and interpretation in a total Indian context.

What is a Preamble?

- A preamble is an introductory statement in a document that explains the document’s **philosophy and objectives**.
- In a Constitution, it presents the **intention of its framers**, the **history behind its creation**, and the **core values and principles of the nation**.
- The preamble basically gives idea of the following things/objects:
 - **Source of the Constitution**
 - **Nature of Indian State**
 - **Statement of its objectives**
 - **Date of its adoption**

History of the Preamble to Indian Constitution

- The ideals behind the Preamble to India’s Constitution were laid down by **Jawaharlal Nehru’s Objectives Resolution**, adopted by the Constituent Assembly on January 22, 1947.
- Although not enforceable in court, the Preamble states the objectives of the Constitution, and acts as an aid during the interpretation of Articles when language is found ambiguous.

Components of Preamble

- It is indicated by the Preamble that the **source of authority** of the Constitution lies with the **people of India**.
- Preamble declares India to be a **sovereign, socialist, secular and democratic republic**.

- The objectives stated by the Preamble are to **secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation.**
- The date is mentioned in the preamble when it was adopted i.e. **November 26, 1949.**

Key words in the Preamble

- **We, the people of India:** It indicates the **ultimate sovereignty of the people of India.** Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.
- **Sovereign:** The term means that India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.
- **Socialist:** The term means the **achievement of socialist ends through democratic** means. It holds faith in a mixed economy where both private and public sectors co-exist side by side.
 - It was added in the Preamble by 42nd Amendment, 1976.
- **Secular:** The term means that all the religions in India get equal respect, protection and support from the state.
 - It was incorporated in the Preamble by 42nd Constitutional Amendment, 1976.
- **Democratic:** The term implies that the Constitution of India has an established form of Constitution which gets its authority from the will of the people expressed in an election.
- **Republic:** The term indicates that the head of the state is elected by the people. In India, the President of India is the elected head of the state.

Objectives of the Indian Constitution

- The Constitution is the supreme law and it helps to **maintain integrity in the society** and to **promote unity among the citizens** to build a great nation.
 - The main objective of the Indian Constitution is to **promote harmony throughout the nation.**
- The factors which help in achieving this objective are:

- o **Justice:** It is necessary to maintain order in society that is promised through various provisions of **Fundamental Rights** and **Directive Principles of State Policy** provided by the Constitution of India. It comprises three elements, which is **social, economic, and political**.
 - **Social Justice** - Social justice means that the Constitution wants to create a society without discrimination on any grounds like caste, creed, gender, religion, etc.
 - **Economic Justice** - Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. Every person must be paid equally for an equal position and all people must get opportunities to earn for their living.
 - **Political Justice** - Political Justice means all the people have an equal, free and fair right without any discrimination to participate in political opportunities.
- o **Equality:** The term 'Equality' means no section of society has any special privileges and all the people have given equal opportunities for everything without any discriminations. Everyone is equal before the law.
- o **Liberty:** The term 'Liberty' means freedom for the people to choose their way of life, have political views and behavior in society. Liberty does not mean freedom to do anything, a person can do anything but in the limit set by the law.
- o **Fraternity:** The term 'Fraternity' means a feeling of brotherhood and an emotional attachment with the country and all the people. Fraternity helps to promote dignity and unity in the nation.
- **Importance of Objectives:** It provides a way of life. It includes **fraternity, liberty, and equality** as the notion of a happy life and which can not be taken from each other.
 - o Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity.
 - o Without equality, liberty would produce the supremacy of the few over the many.
 - o Equality without liberty would kill individual initiative.
 - o Without fraternity, liberty would produce the supremacy of the few over the many.
 - o Without fraternity, liberty and equality could not become a natural course of things.

Status of Preamble

- The preamble being part of the Constitution is discussed several times in the Supreme Court. It can be understood by reading the following two cases.
 - **Berubari Case:** It was used as a reference under **Article 143(1)** of the Constitution which was on the implementation of the Indo-Pakistan Agreement related to the Berubari Union and in exchanging the enclaves which were decided for consideration by the bench consisting of eight judges.
 - Through the **Berubari case**, the Court stated that 'Preamble is the key to open the mind of the makers' but it can not be considered as part of the Constitution. Therefore it is not enforceable in a court of law.
- **Kesavananda Bharati Case:** In this case, for the first time, a bench of 13 judges was assembled to hear a writ petition. The Court held that:
 - The **Preamble of the Constitution** will now be considered **as part of the Constitution**.
 - The Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.
 - So, it can be concluded that preamble is part of the introductory part of the Constitution.
- In the 1995 case of **Union Government Vs LIC of India** also, the Supreme Court has once again held that Preamble is the integral part of the Constitution but is not directly enforceable in a court of justice in India.

Amendment of the Preamble

- **42nd Amendment Act, 1976:** After the judgment of the Kesavanand Bharati case, it was accepted that the preamble is part of the Constitution.
 - As a part of the Constitution, preamble can be amended under **Article 368** of the Constitution, but the **basic structure** of the preamble can not be amended.
 - Because the structure of the Constitution is based on the basic elements of the Preamble. As of now, the preamble is only amended once through the **42nd Amendment Act, 1976**.
- The term 'Socialist', 'Secular', and 'Integrity' were added to the preamble through 42nd Amendment Act, 1976.

- o 'Socialist' and 'Secular' were added between 'Sovereign' and 'Democratic'.
- o 'Unity of the Nation' was changed to 'Unity and Integrity of the Nation'.

■

THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **¹[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC]** and to secure to all its citizens :

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

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

FRATERNITY assuring the dignity of the individual and the **²[unity and integrity of the Nation]**;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

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

Citizenship :

Citizenship is the status of a person recognized under law as being a legal member of a sovereign state or belonging to a nation. In India, Articles 5 – 11 of the Constitution deals with the concept of citizenship. The term citizenship entails the enjoyment of full membership of any State in which a citizen has civil and political rights.

This is a very important concept to be understood and read for the [IAS exam](#) polity and governance segments. With the recent Citizenship Amendment Bill in the news, the topic of citizenship assumes all the more importance.

First, we discuss all the articles in the Indian Constitution pertaining to citizenship.

Article 5: Citizenship at the commencement of the Constitution

This article talks about citizenship for people at the commencement of the Constitution, i.e., on November 26th, 1949. Under this, citizenship is conferred upon those **persons who have their domicile in Indian territory and –**

1. Who was born in Indian territory; or
2. Whose either parent was born in Indian territory; or
3. Who has ordinarily been a resident of India for not less than 5 years immediately preceding the commencement of the Constitution.

Article 6: Citizenship of certain persons who have migrated from Pakistan

Any person who has migrated from Pakistan shall be a citizen of India at the time of the commencement of the Constitution if –

1.
 1. He or either of his parents or any of his grandparents was born in India as given in the Government of India Act of 1935; and
 2. (a) in case such a person has migrated before July 19th, 1948 and has been ordinarily resident in India since his migration, or

(b) in case such as a person has migrated after July 19th, 1948 and he has been registered as a citizen of India by an officer appointed in that behalf by the government of the Dominion of India on an application made by him thereof to such an officer before the commencement of the Constitution, provided that no person shall be so registered unless he has been resident in India for at least 6 months immediately preceding the date of his application.

Article 7: Citizenship of certain migrants to Pakistan

This article deals with the rights of people who had migrated to Pakistan after March 1, 1947, but subsequently returned to India.

Article 8: Citizenship of certain persons of Indian origin residing outside India

This article deals with the rights of people of Indian origin residing outside India for purposes of employment, marriage, and education.

Article 9

People voluntarily acquiring citizenship of a foreign country will not be citizens of India.

Article 10

Any person who is considered a citizen of India under any of the provisions of this Part shall continue to be citizens and will also be subject to any law made by the Parliament.

Article 11: Parliament to regulate the right of citizenship by law

The Parliament has the right to make any provision concerning the acquisition and termination of citizenship and any other matter relating to citizenship.

Citizenship of India constitutional provisions

- Citizenship in India is governed by Articles 5 – 11 (Part II) of the Constitution.
- The Citizenship Act, 1955 is the legislation dealing with citizenship. This has been amended by the Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, and the Citizenship (Amendment) Act, 2005.
- Nationality in India mostly follows the jus sanguinis (citizenship by right of blood) and not jus soli (citizenship by right of birth within the territory)

Fundamental Rights

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

What are the Fundamental Rights?

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

Why are they called Fundamental Rights?

These rights are called fundamental rights because of two reasons:

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

List of Fundamental Rights

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

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

Why Right to Property is not a Fundamental Right?

There was one more fundamental right in the Constitution, i.e., the right to property.

However, this right was removed from the list of fundamental rights by the 44th Constitutional Amendment.

This was because this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth (property) equitably among the people.

Note: The right to property is now a legal right and not a fundamental right.

Introduction to Six Fundamental Rights (Articles 12 to 35)

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

1. Right to Equality (Articles 14 – 18)

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

Aspirants can read more about Right to Equality in the linked article.

2. Right to Freedom (Articles 19 – 22)

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

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

Read more on the Right to Freedom in the linked article.

Some of these rights are subject to certain conditions of state security, public morality and decency and friendly relations with foreign countries. This means that the State has the right to impose reasonable restrictions on them.

3. Right against Exploitation (Articles 23 – 24)

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

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

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

Read more on the Right to Freedom of Religion in the linked article.

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

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

Read more on Cultural and Educational Rights in the linked article.

6. Right to Constitutional Remedies (32 – 35)

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

Read more on Right to Constitutional Remedies (Article 32) in the linked article.

Features of Fundamental Rights

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

Fundamental Rights Available Only to Citizens

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

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

Importance of Fundamental Rights

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

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

Amendability of Fundamental Rights

Any changes to the fundamental rights require a constitutional amendment that should be passed by both the Houses of Parliament. The amendment bill should be passed by a **special majority** of Parliament.

Read about types of majorities in Indian Parliament in the linked article.

As per the Constitution, Article 13(2) states that no laws can be made that take away fundamental rights.

The question is whether a constitutional amendment act can be termed law or not.

In the Sajjan Singh case of 1965, the Supreme Court held that the Parliament can amend any part of the Constitution including fundamental rights.

But in 1967, the SC reversed its stance taken earlier when in the verdict of the Golaknath case, it said that the fundamental rights cannot be amended.

In 1973, a landmark judgement ensued in the **Kesavananda Bharati case**, where the SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment."

This is the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the basic structure of the Constitution.

In 1981, the Supreme Court reiterated the Basic Structure doctrine.

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

Doctrine of Severability

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

It is also known as the Doctrine of Separability.

It is mentioned in Article 13, according to which all laws that were enforced in India before the commencement of the Constitution, inconsistent with the provisions of fundamental rights shall **to the extent of that inconsistency** be void.

This implies that only the parts of the statute that is inconsistent shall be deemed void and not the whole statute. Only those provisions which are inconsistent with fundamental rights shall be void.

Doctrine of Eclipse

This doctrine states that any law that violates fundamental rights is not null or void ab initio, but is only non-enforceable, i.e., it is not dead but inactive.

This implies that whenever that fundamental right (which was violated by the law) is struck down, the law becomes active again (is revived).

Another point to note is that the doctrine of eclipse applies only to pre-constitutional laws (laws that were enacted before the Constitution came into force) and not to post-constitutional laws.

This means that any post-constitutional law which is violative of a fundamental right is void ab initio.

