suggested by M N Roy (a pioneer of communist movement in India) in 1934,

Note:MN roy

the Constitution, and is thus a key to the minds of the makers of the Constitution.

Note: KEY TO MINDS OF MAKERS

Despite this recognition of the significance of the Preamble, the Supreme Court specifically opined that Preamble is not a part of the Constitution.

Note:berubari union case:Preambe is key to minds of constituion makers;but it is not a part of constituion

In the Kesavananda Bharati case17 (1973), the Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution.

Note:in kNBharti case;SC declared that preamble is part of constituion

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

Note:KNBharti case : no basic features of constituion can be ammended 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.

Note:42nd amendment --> Only editing of preamble --> added three words

Moved by Nehru on December 13, 1946 and adopted by the Constituent Assembly on January 22, 1947.

Note:objective resolution or text of preamble

From August 15, 1947 to January 26, 1950, India’s political status was that of a dominion in the British Commonwealth of Nations. India ceased to be a British dominion on January 26, 1950, by declaring herself a sovereign republic.

India became a member of the UNO in 1945.

Atheistic State: The state is anti-religion and hence, condemns all religions. (b) Theocratic State: The state is pro-religion and hence, declares one particular religion as the state religion, as for example, Bangladesh, Burma, Sri Lanka, Pakistan, and so on. (c) Secular State: The state is neutral in the matter of religion and hence, does not uphold any particular religion as the state religion, as for example, USA and India. G S Pande,

The term ‘democracy’ is derived from two Greek words, namely, Demos and Kratia meaning ‘People’

and ‘rule’ respectively.

Referendum is a procedure whereby a proposed legislation is referred to the electorate for settlement by their direct votes.

Recall is a method by means of which the voters can remove a representative or an officer before the expiry of his term, when he fails to discharge his duties properly.

Plebiscite is a method of obtaining the opinion India’s of people on any issue of public importance. It is generally used to solve the territorial disputes.

Article 1 describes India, that is, Bharat as a ‘Union of States’ rather than a ‘Federation of States’.

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According to Article 1, the territory of India can be classified into three categories: 1. Territories of the states 2. Union territories 3. Territories that may be acquired by

2,210

the Government of India at any time.

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The names of states and union territories and their territorial extent are mentioned in the first schedule of the Constitution.

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the special provisions (under Part XXI) applicable to the States of Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunanchal Pradesh, Goa and Karnataka override the general provisions relating to the states as a class.

2,217

‘Territory of India’ is a wider expression than the ‘Union of India’ because the latter includes only states while the former includes not only the states but also union territories and territories that may be acquired by the Government of India at any future time.

2,225

Article 2 empowers the Parliament to ‘admit into the Union of India, or establish, new states on such terms and conditions as it thinks fit’. Thus, Article 2 grants two powers to the Parliament: (a) the power to admit into the Union of India new states; and (b) the power to establish new states. The first refers to the admission of states which are already in existence while the second refers to the establishment of states which were not in existence before. Notably, Article 2 relates to the admission or establishment of new states that are not part of the Union of India. Article 3, on the other hand, relates to the formation of or changes in the existing states of the Union of India.

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In other words, Article 3 deals with the internal re-adjustment inter se of the territories of the constituent states of the Union of India.

2,232

Article 3 authorises the Parliament to:

2,233

(a) form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state,

2,234

(b) increase the area of any state,

2,235

(c) diminish the area of any state,

2,236

(d) alter the boundaries of any state, and

2,236

(e) alter the name of any state.

2,237

a bill contemplating the above changes can be introduced in the Parliament only with the prior recommendation of the President;

Note:can be introduced in any house of parliament

2,238

President has to refer the same to the state legistature concerned for expressing its views within a specified period.

2,242

The President (or Parliament) is not bound by the views of the state legislature and may either accept or reject them, even if the views are received in time.

2,243

it is not necessary to make a fresh reference to the state legislature every time an amendment to the bill is moved and accepted in Parliament

2,244

In case of a union territory, no reference need be made to the concerned legislature to ascertain its views and the Parliament can itself take any action as it deems fit.

2,248

Hence, the territorial integrity or continued existence of any state is not guaranteed by the Constitution. Therefore, India is rightly described as ‘an indestructible union of destructible states’.

2,249

The Union government can destroy the states whereas the state governments cannot destroy the Union.

2,250

In USA, on the other hand, the territorial integrity or continued existence of a state is guaranteed by the Constitution. The American Federal government cannot form new states or alter the borders of existing states without the consent of the states concerned. That is why the USA is described as ‘an indestructible union of indestructible states.’

Note:comaprision with usa about nature of states

2,253

the Constitution (Article 4) itself declares that laws made for admission or establishment of new states (under Article 2) and formation of new states and alteration of areas, boundaries or names of existing states (under Articles 3) are not to be considered as amendments of the Constitution under Article 368. This means that such laws can be passed by a simple majority and by the ordinary legislative process.

Note:Simple majority is required for passing bill with respect to article 2 and article 3,It will not be a constitutional amendment

2,257

The decision of the Central government to cede part of a territory known as Berubari Union (west Bengal) to Pakistan

2,260

Hence, Indian territory can be ceded to a foreign state only by amending the Constitution under Article 368. Consequently, the 9th Constitutional Amendment Act (1960) was enacted to transfer the said territory to Pakistan.

Note:Berubari Union case constituional amendment required for ceding of area of INdia

2,262

settlement of a boundary dispute between India and another country does not require a constitutional amendment. It can be done by executive action as it does not involve cession of Indian territory to a foreign country.

Note:Boundary dispute do not require a constitutional amendment.It can be done by simple executive order

2,270

India and Bangladesh have a common land boundary of approximately

2,271

The India-East Pakistan land boundary was determined as per the Radcliffe Award of 1947.

2,286

At the time of independence, India comprised two categories of political units, namely, the British provinces (under the direct rule of British government) and the princely states

2,288

The Indian Independence Act (1947) created two independent and separate dominions of India and Pakistan

2,291

India—Hyderabad by means of police action, Junagarh by means of referendum and Kashmir by the Instrument of Accession.

2,292

Constitution contained a four-fold classification of the states of the Indian Union—Part A, Part B, Part C and Part D

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In all, they numbered 29.

2,293

Part-A states comprised nine erstwhile governor’s provinces of British India. Part-B states consisted of nine erstwhile princely states with legislatures. Part-C states consisted of erstwhile chief commissioner’s provinces of British India and some of the erstwhile princely states.

2,296

The Andaman and Nicobar Islands were kept as the solitary Part-D state.

2,318

Dhar Commission and JVP Committee

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June 1948, the Government of India appointed the Linguistic Provinces Commission under the chairmanship of S K Dhar to examine the feasibility of this. The commission submitted its report in December 1948 and recommended the reorganisation of states on the basis of administrative convenience rather than linguistic factor.

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Jawaharlal Nehru, Vallahbhai Patel and Pattabhi Sitaramayya and hence, was popularly known as JVP Committee

2,326

the first linguistic state, known as Andhra state,

2,331

a three-member States Reorganisation Commission under the chairmanship of Fazl Ali to re-examine the whole question. Its other two members were K M Panikkar and H N Kunzru.

2,334

It identified four major factors that can be taken into account in any scheme of reorganisation of states: (a) Preservation and strengthening of the unity and security of the country. (b) Linguistic and cultural homogeneity. (c) Financial, economic and administrative considerations. (d) Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.

2,339

abolition of the four-fold classification of states under the original Constitution and creation of 16 states and 3 centrally administered territories.

2,340

By the States Reorganisation Act (1956) and the 7th Constitutional Amendment Act (1956),

2,342

As a result, 14 states and 6 union territories were created on November 1, 1956.

2,363

the Patiala and East Punjab States Union (Pepsu) into that of Punjab state;

2,369

In 1960, the bilingual state of Bombay was divided8 into two separate states—Maharashtra for Marathi-speaking people and Gujarat for Gujarati-speaking people.

2,375

India acquired these three territories from the Portuguese by means of a police action in 1961.

2,378

The territory of Puducherry comprises the former French establishments in India known as Puducherry, Karaikal, Mahe and Yanam.

2,381

In 1963, the State of Nagaland was formed10 by taking the Naga Hills and Tuensang area out of the state of Assam.

2,383

Nagaland the status of the 16th state of the Indian Union,

2,387

This followed the demand for a separate ‘Sikh Homeland’ (Punjabi Subha) raised by the Akali Dal under the leadership of Master Tara Singh.

2,388

Shah Commission (1966), the punjabi-speaking areas were constituted into the unilingual state of Punjab, the Hindi-speaking areas were constituted into the State of Haryana and the hill areas were merged with the adjoining union territory of Himachal Pradesh.

2,390

In 1971, the union territory of Himachal Pradesh was elevated12 to the status of a state (18th state of the Indian Union).

2,396

Initially, the 22nd Constitutional Amendment Act (1969) created Meghalaya as an ‘autonomous state’ or ‘sub-state’ within the state of Assam with its own legislature and council of ministers.

2,399

Sikkim was an Indian princely state ruled by Chogyal. In 1947,

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Sikkim became a ‘protectorate’ of India, whereby the Indian Government assumed responsibility for the defence, external affairs and communications of Sikkim.

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Accordingly, the 35th Constitutional Amendment Act (1974) was enacted by the parliament. This amendment introduced a new class of statehood under the constitution by conferring on Sikkim the status of an ‘associate state’ of the Indian Union.

Note:Associate State of sikkim

2,404

For this purpose, a new Article 2A and a new schedule (Tenth Schedule containing the terms and conditions of association) were inserted in the Constitution.

2,406

in 1975, they voted for the abolition of the institution of Chogyal and Sikkim becoming an integral part of India.

2,411

In 1987, three new States of Mizoram,14 Arunachal Pradesh15 and Goa16 came into being as the 23rd, 24th and 25th states of the Indian Union respectively.

2,414

Mizoram was conferred the status of a full state as a sequel to the signing of a memorandum of settlement (Mizoram Peace Accord) in 1986 between the Central government and the Mizo National Front,

2,422

In 2014, the new state of Telangana came into existence as the 29th state of the Indian Union. It was carved out of the territories of Andhra Pradesh.

2,429

Hyderabad is made the joint capital for both the states for a period of 10 years.

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Similarly, the Andhra Pradesh High Court is renamed as the Hyderabad High Court (High Court of Judicature at Hyderabad)

2,436

Madras was renamed21 ‘Tamil Nadu’.

2,437

Mysore was renamed21 ‘Karnataka’. In the same year,

2,438

Laccadive, Minicoy and Amindivi Islands were renamed23 ‘Lakshadweep’.

2,439

Union Territory of Delhi was redesignated as the National Capital Territory of Delhi (without being conferred the status of a full-fledged state) by the 69th Constitutional Amendment Act, 1991.

2,443

In 2011, Orissa was renamed27 as ‘Odisha’.

2,532

India has two kinds of people—citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights.

2,535

Enemy aliens, on the other hand, are the subjects of that country that is at war with India. They enjoy lesser rights than the friendly aliens, eg, they do not enjoy protection against arrest and detention (Article 22).

Note:Enemy aliens not enjoy protection under preventive detection under article 22

2,548

In India both a citizen by birth as well as a naturalised citizen are eligible for the office of President while in USA, only a citizen by birth and not a naturalised citizen is eligible for the office of President.

Note:office of president

2,550

The Constitution deals with the citizenship from Articles 5 to 11 under Part II.

2,551

It only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950).

2,553

It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship. Accordingly, the Parliament has enacted the Citizenship Act, 1955,

Note:citizens act 1955

2,574

1. No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state (Article 9).

2,575

Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament (Article 10).

2,577

Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship (Article 11).

2,588

The Citizenship Act of 1955 prescribes five ways of acquiring citizenship, viz, birth, descent, registration, naturalisation and incorporation of territory:

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A person born in India on or after 26th January 1950 but before 1st July 1987 is a citizen of India by birth irrespective of the nationality of his parents.

2,592

A person born in India on or after 1st July 1987 is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth.

2,594

Further, those born in India on or after 3rd December 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth. The children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.

Note:Exceptions to citizen ship

2,602

From 3rd December 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period.

2,620

A person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th August, 1947.

2,626

The Central Government may, on an application, grant a certificate of naturalisation to any person (not being an illegal migrant)

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that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;

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(e) that he is of good character; (f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution3, and (g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or

2,639

under an international organisation of which India is a member or under a society, company or body of persons established in India.

2,640

the Government of India may waive all or any of the above conditions for

Note:exception for citizenship by naturalisation

2,645

when Pondicherry became a part of India, the Government of India issued the Citizenship (Pondicherry) Order, 1962,

2,647

special provisions as to citizenship of persons covered by the Assam Accord

2,649

All persons of Indian origin who came to Assam before the 1st January, 1966 from Bangladesh and who have been ordinarily residents in Assam since the date of their entry into Assam shall be deemed to be citizens of India as from the 1st January, 1966.

2,651

Every person of Indian origin who came to Assam on or after the 1st January, 1966 but before the 25th March, 1971 from Bangladesh and who has been ordinarily resident in Assam since the date of his entry into Assam and who has been detected to be a foreigner shall register himself.

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Such a registered person shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date of detection as a foreigner.

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But, in the intervening period of ten years, he shall have the same rights and obligations as a citizen of India, excepting the right to vote.

2,660

India. However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government.

2,662

Further, when a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship. However, when such a child attains the age of eighteen, he may resume Indian citizenship.

2,664

When an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically terminates. This provision, however, does not apply during a war in which India is engaged.

2,667

It is a compulsory termination of Indian citizenship by the Central government, if: (a) the citizen has obtained the citizenship by fraud: (b) the citizen has shown disloyalty to the Constitution of India: (c) the citizen has unlawfully traded or communicated with the enemy during a war; (d) the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years; and (e) the citizen has been ordinarily resident out of India for seven years continuously.

2,682

However, this general rule of absence of discrimination is subject to some exceptions, viz, 1. The Parliament (under Article 16) can prescribe residence within a state or union territory as a condition for certain employments or appointments in that state or union territory, or local authority or other authority within that state or union territory.

2,685

Employment (Requirement as to Residence) Act, 1957 and thereby authorised the Government of India to prescribe residential qualification only for appointment to non-Gazetted posts in Andhra Pradesh, Himachal Pradesh, Manipur and Tripura. As this Act expired in 1974, there is no such provision for any state except Andhra Pradesh5 and Telangana

2,691

This means that the state can provide special benefits or give preference to its residents in matters that do not come within the purview of the rights given by the Constitution to the Indian citizens. For example, a state may offer concession in fees for education to its residents.

2,693

The freedom of movement and residence (under Article 19) is subjected to the protection of interests of any schedule tribe. In other words, the right of outsiders to enter, reside and settle in tribal areas is restricted.

2,697

define the persons who are permanent residents of the state and confer any special rights and privileges in matters of employment under the state government, acquisition of immovable property in the state, settlement in the state and scholarships and such other forms of aid provided by the state government.

Note:J&K can define special citizen ship

2,700

The Constitution of India, like that of Canada, has introduced the system of single citizenship and provided uniform rights (except in few cases) for the people of India to promote the feeling of fraternity and unity among them and to build an integrated Indian nation.

2,705

High Level Committee on the Indian Diaspora under the Chairmanship of L.M. Singhvi.

Note:Dual citizen ship or Indian overseas citizens committee

Note | Location: 2,711

amended act for dual citizenship

2,712

Later, the Citizenship (Amendment) Act, 2005, expanded the scope of grant of OCI for PIOs of all countries except Pakistan and Bangladesh as long as their home countries all dual citizenship under their local laws. It must be noted here that the OCI is not actually a dual citizenships as the Indian Constitution forbids dual citizenship or dual nationality

2,715

Again, the Citizenship (Amendment) Act, 2015, has modified the provisions pertaining to the OCI in the Principal Act. It has introduced a new scheme called “Overseas Citizen of India Cardholder” by merging the PIO card scheme and the OCI card scheme. The PIO card scheme was introduced on 19-08-2002 and thereafter the OCI card scheme was introduced w.e.f. 01-12-2005. Both the schemes were running in parallel even though the OCI card scheme had become more popular.

2,723

The Citizenship (Amendment) Act, 2015, replaced the nomenclature of “Overseas Citizen of India” with that of “Overseas Citizen of India Cardholder”

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No person, who or either of whose parents or grandparents or great grandparents is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, specify, shall be eligible for registration as an Overseas Citizen of India Cardholder.

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An Overseas Citizen of India Cardholder shall not be entitled to the following rights (which are conferred on a citizen of India)— (a) He shall not be entitled to the right to equality of opportunity in matters of public employment. (b) He shall not be eligible for election as President. (c) He shall not be eligible for election as Vice-President. (d) He shall not be eligible for appointment as a Judge of the Supreme Court. (e) He shall not be eligible for appointment as a Judge of the High Court. (f) He shall not be entitled for registration as a voter.

2,752

He shall not be eligible for being a member of the House of the People or of the Council of States. (h) He shall not be eligible for being a member of the State Legislative Assembly or the States Legislative Council. (i) He shall not be eligible for appointment to public services and posts in connection with affairs of the Union or of any State except for appointment in such services and posts as the Central Government may specify.

2,919

Constitution of USA (i.e., Bill of Rights).

2,920

Part III of the Constitution is rightly described as the Magna Carta of India.1 It contains a very long and comprehensive list of ‘justiciable’ Fundamental Rights.

Note:Magna Carta of Indian constitution

2,924

They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.

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In short, they aim at establishing ‘a government of laws and not of men’.

2,928

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.

2,937

the right to property was deleted from the list of Fundamental Rights by the 44th Amendment Act, 1978.

Note:44th amendment of constituion

2,937

It is made a legal right under Article 300-A in Part XII of the Constitution.

2,939

Features of Fundamental Rights The Fundamental

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However, whether such restrictions are rea-sonable or not is to be decided by the courts.

2,946

When the rights that are available against the State’s action only are violated by the private individuals, there are no constitutional remedies but only ordinary legal remedies.

2,949

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

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Hence, the aggrieved person can directly go to the Supreme Court,

2,952

They are not sacrosanct or permanent. The Parliament can curtail or repeal them but only by a constitutional amendment act and not by an ordinary act.

Note:need the constitutional amendment for the amending the Fundamental rights

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Moreover, this can be done without affecting the ‘basic structure’ of the Constitution.

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They can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.

Note:the FR can be suspended during emergency except article 20 and article 21

2,956

the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency).

Note:article 19 rights are suspended only in external emergency not in internal emrgency

2,961

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

2,962

(Article 33).

2,963

Their application can be restricted while martial law is in force in any area. Martial law means ‘military rule’ imposed under abnormal

2,966

them. Such a law can be made only by the Parliament and not by state legislatures so that uniformity throughout the country is maintained (Article 35).

2,967

Definition of State

2,976

According to the Supreme Court, even a private body or an agency working as an instrument of the State falls within the meaning of the ‘State’ under Article 12.

2,978

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressively provides for the doctrine of judicial review.

Note:judicial review of laws can be expressed in terms of article 13 of constitution

2,980

This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

Note:both supreme court and high courts can adjudicate over the issues relate to FRights

2,986

Non-legislative sources of law, that is, custom or usage having the force of law.

Note:SC declaring tripple talak is constituional as article 13 provides for validating even non legislative law void if that custom has power of force

2,987

Thus, not only a legislation but any of the above can be challenged in the courts as violating a Fundamental Right and hence, can be declared as void.

2,989

the Kesavananda Bharati case2 (1973) that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the ‘basic structure’ of the Constitution and hence, can be declared as void.

Note:constitutional amendment can be challenge in SC under article 13

3,004

Right to elementary education (Article 21A).

Note:Right to education

3,042

person equality before the law or the equal protection of the laws within the territory of India.

3,043

Moreover, the word ‘person’ includes legal persons, viz, statutory corporations, companies, registered societies or any other type of legal person.

3,045

The concept of ‘equality before law’ is of British origin

3,045

the concept of ‘equal protection of laws’ has been taken from the American Constitution.

3,052

the like should be treated alike without any discrimination.

3,054

The Supreme Court held that where equals and unequals are treated differently, Article 14 does not apply.

Note:exception to article 14

3,055

it permits reasonable classification of persons, objects and transactions by the law. But the classification should not be arbitrary, artificial or evasive. Rather, it should be based on an intelligible differential and substantial distinction.

Note:exception article 14 -2

3,066

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.

Note:basic feature of constitution 1-->Rule of law

3,067

Exceptions to Equality

Note:exceptions to equality

3,070

The President or the Governor is not answerable to any court for the exercise and performance of the powers and duties of his office.

Note:exceptions to art 14-->3

3,071

No criminal proceedings shall be instituted or continued against the President or the Governor in any court during his term of office.

Note:exception to article 14-3

3,073

No process for the arrest or imprisonment of the President or the Governor shall be issued from any court during his term of office.

Note:exception to article 14-4

3,076

No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State (Article 361-A).

Note:article 14-media imunities

3,082

Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) or clause (c) of Article 39 cannot be challenged on the ground that they are violative of Article 14.

Note:exception to article 14-4

3,085

The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings. 7. The UNO and its agencies enjoy the diplomatic immunity.

Note:exception to article 14-6

3,090

The use of the word ‘only’ connotes that discrimination on other grounds is not prohibited.

Note:Art 15-exception --1 discrimination on other grounds permitted example education;residence;economic terms etc.discrimination is prohibited by both state and private

3,092

with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) 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. This provision prohibits discrimination both by the State and private individuals, while the former provision prohibits discrimination only by the State.

3,097

The state is permitted to make any special provision for women and children. For example, reservation

Note:Art 15-exception--2

3,097

seats for women in local bodies or provision of free education for children.

3,098

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 tribes4. For example, reservation of seats or fee concessions in public educational institutions.

Note:Art 15-exception-3

3,101

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.

Note:Art 15-exception 4

3,107

In April 2008, the Supreme Court upheld the validity of both, the Amendment Act and the OBC Quota Act. But, the Court directed the central government to exclude the ‘creamy layer’ (advanced sections) among the OBCs while implementing the law.

Note:Art 15-exception

3,127

Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.

Note:exception art 16--1 except andhraand telangana

3,131

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.

Note:Art 16-exception--2-based on proportion of servants in service

3,133

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.

Note:Art 16-exception--4

3,177

The term ‘untouchability’ has not been defined either in the Constitution or in the Act.

Note:untouchabiity not defined in constitution

3,181

Under the Protection of Civil Rights Act (1955), the offences committed on the ground of untouchability are punishable either by imprisonment up to six months or by fine upto 500 or both.

Note:art 17-law

3,183

The act declares the following acts as offences: (a) preventing any person from entering any place of public worship or from worshipping therein; (b) justifying untouchability on traditional, religious, philosophical or other grounds; (c) denying access to any shop, hotel or places of public entertainment; (d) insulting a person belonging to scheduled caste on the ground of untouchability;

Note:art 17 conditions of untouchability

3,190

Supreme Court held that the right under Article 17 is available against private individuals and it is the constitutional obligation of the State to take necessary action to ensure that this right is not violated.

Note:Art 17--untouchability even against private individuals

3,195

It prohibits a citizen of India from accepting any title from any foreign state. (c) A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president. (d) No citizen or foreigner holding any office of profit or trust under the State is to accept any present, emolument or office from or under any foreign State without the consent of the president.

Note:art--18 abolition of titles

3,202

Supreme Court upheld the constitutional validity of the National Awards—Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Sri. It ruled that these awards do not amount to ‘titles’ within the meaning of Article 18 that prohibits only hereditary titles of nobility.

Note:Art 18-->exceptions--1

3,216

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

Note:article 19 --amendment 44 removal of right to property

3,217

These six rights are protected against only state action and not private individuals.

Note:art 19 exception--1-only on state action

3,218

Moreover, these rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc.

Note:art 19 exception--3

3,231

Right to demonstration or picketing but not right to strike.

Note:article 19--no right to strike

3,239

Under Section 144 of Criminal Procedure Code (1973), a magistrate can restrain an assembly, meeting or procession if there is a risk of obstruction, annoyance or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or any affray. Under Section 141 of the Indian Penal Code, as assembly of five or more persons becomes unlawful if the object is (a) to resist the execution of any law or legal process; (b) to forcibly occupy the property of some person; (c) to commit any mischief or criminal trespass; (d) to force some person to do an

Note:law for art 19(b)

3,252

The Supreme Court held that the trade unions have no guaranteed right to effective bargaining or right to strike or right to declare a lock-out. The right to strike can be controlled by an appropriate industrial law.

Note:art 19 exception--freedom of association

3,257

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.

Note:art 19 exception--freedom of movement

3,260

Supreme Court held that the freedom of movement of prostitutes can be restricted on the ground of public health and in the interest of public morals. The Bombay High Court validated the restrictions on the movement of persons affected by AIDS.

Note:exception article 19--freedom of movement

3,262

The freedom of movement has two dimensions, viz, internal (right to move inside the country) and external (right to move out of the country and right to come back to the country). Article 19 protects only the first dimension. The second dimension is dealt by Article 21 (right to life and personal liberty).

Note:art 19 protect only movement inside Indian territory;external movement is protected under article 21

3,282

Thus, no objection can be made when the State carries on a trade, business, industry or service either as a monopoly (complete or partial) to the exclusion of citizens (all or some only) or in competition with any citizen.

Note:art 19--exception monopoly allowed by govt.

3,300

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.

Note:article 20--double jeopardy--exception

3,304

it extends only to criminal proceedings and not to civil proceedings or proceedings which are not of criminal nature.

Note:art 20-self incriminalisation

3,318

In other words, it has introduced the American expression ‘due process of law’. In effect, the protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action. Further, the court held that the ‘right to life’ as embodied in Article 21 is not merely confined to animal existence or survival but it includes within its ambit the right to live with human dignity and all those aspects of life which go to make a man’s life meaningful, complete and worth living. It also ruled that the expression ‘Personal Liberty’ in Article 21 is of the widest amplitude and it covers a variety of rights that go to constitute the personal liberties of a man.

Note:article 21--sc clarification

3,348

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.

Note:artile 21-A RTE

3,350

This provision was added by the 86th Constitutional Amendment Act of 2002.

Note:article 21-A-86 amendment

3,356

It also added a new fundamental duty under Article 51A that reads—‘It shall be the duty of every citizen of India to provide opportunities for education to his child or ward between the age of six and fourteen years’.

Note:art 21-A rte added new duty

3,378

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

Note:art 22--arrest rights

3,379

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

Note:article 22 exceptions 1

3,381

Supreme Court also ruled that the arrest and detention in the first part of Article 22 do not cover arrest under the orders of a court, civil arrest, arrest on failure to pay the income tax, and deportation of an alien. They apply only to an act of a criminal or quasi-criminal nature or some activity prejudicial to public interest.

Note:art 22-exceptions 2

3,385

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.

Note:art 22 advisory board

3,389

Article 22 also authorises the Parliament to prescribe (a) the circumstances and the classes of cases in which a person can be detained for more than three months under a preventive detention law without obtaining the opinion of an advisory board; (b) the maximum period for which a person can be detained in any classes of cases under a preventive detention law; and (c) the procedure to be followed by an advisory board in an inquiry.

Note:Art 22--power of parliament

3,394

The 44th Amendment Act of 1978 has reduced the period of detention without obtaining the opinion of an advisory board from three to two months.

Note:article 22 Pdetention reduced to 2 months in amendment but by law it is still 3 months

3,397

The Parliament has exclusive authority to make a law of preventive detention for reasons connected with defence, foreign affairs and the secu-rity of India.

Note:art 22-- center power

3,398

Both the Parliament as well as the state legislatures can concurrently make a law of preventive detention for reasons connected with the security of a state, the maintenance of public order and the maintenance of supplies and services essential to the community.

Note:art 22 concurrent power

3,408

It is unfortunate to know that no democratic country in the world has made preventive detention as an integral part of the Constitution as has been done in India.

Note:art 22 global comparision

3,410

In India, preventive detention existed even during the British rule. For example, the Bengal State Prisoners Regulation of 1818 and the Defence of India Act of 1939 provided for preventive detention.

Note:history of preventive detention

3,420

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.

Note:art 23 begar

3,423

The term ‘forced labour’ means compelling a person to work against his will. The word ‘force’ includes not only physical or legal force but also force arising from the compulsion of economic circumstances, that is, working for less than the minimum wage.

Note:art 23 forced labour

3,430

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.

Note:art 24 child labour

3,438

The Commissions for Protection of Child Rights Act, 2005 was enacted to provide for the establishment of a National Commission and State Commissions for Protection of Child Rights and Children’s Courts for providing speedy trial of offences against children or of violation of child rights.

Note:art 24 statutary institutions set up to prevent child labour

3,441

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.

Note:house labour also penalised

3,446

The Amendment Act prohibits the employment of children below 14 years in all occupations and processes. Earlier, this prohibition was applicable to 18 occupations and 65 processes. Further, the Amendment Act prohibits the employment of adolescents (14 to 18 years of age) in certain hazardous occupations and processes. The Amendment Act also introduces more stringent punishment for the offenders. It is an imprisonment of 6 months to 2 years, or a fine of 20,000 to 50,000, or both. In case of repeated offences, the imprisonment is of 1 year to 3 years.

Note:child labour amendment act 2016

3,463

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 as non-citizens.

Note:art 25 religious rights

3,468

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.

Note:Art 25-- exceptions

3,477

Article 26 guarantees rights of religious denominations or their sections.

Note:article 26

3,480

The Supreme Court held that a religious denomination must satisfy three conditions: (a) It should be a collection of individuals who have a system of beliefs (doctrines) which they regard as conducive to their spiritual well-being; (b) It should have a common organisation; and (c) It should be designated by a distinctive name. Under the above criteria, the Supreme Court held that the ‘Ramakrishna Mission’ and ‘Ananda Marga’ are religious denominations within the Hindu religion. It also held that Aurobindo Society is not a religious denomination.

Note:Art 26--rules for religious denominations

3,489

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.

Note:article 27--if want to spend tax oney spend on aall religions not on a specific

3,492

Thus, a fee can be levied on pilgrims to provide them some special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

Note:art 27--fee can be levied but no tax

3,495

However, this provision shall not apply to an educational institution administered by the State but established under any endowment or trust, requiring imparting of religious instruction in such institution.

Note:article 28--exception--1

3,497

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.

Note:article 29--rule 2

Thus, Article 28 distinguishes between four types of instituions:

1. Institutions wholly maintained by state
2. Institutions administered by the State but established under any
3. Institutions recognised by state
4. Institutions receiving aid from the state

3,503

In (a) religious instruction is completely prohibited while in

(b), religious instruction is permitted. In (c) and (d), religious instruction is permitted on a voluntary basis.

3,508

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.

3,512

However, the Supreme Court held that the scope of this article is not necessarily restricted to minorities only, as it is commonly assumed to be. This is because of the use of words ‘section of citizens’ in the Article that include minorities as well as majority.

Note:article 29--exception--1

3,514

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.

Note:article 29--exception--2

3,520

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). (c) In granting aid, the State shall not discriminate against any educational institution managed by a minority.

Note:article -30

3,525

term ‘minority’ has not been defined anywhere in the Constitution.

Note:article 30--minority has not been defined anywhere in constituion

3,526

The right under Article 30 also includes the right of a minority to impart education to its children in

its own language.

3,543

The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority.

3,546

The right to establish and administer educational institutions is not absolute.

3,559

Hence, Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen. In other words, the right to get the Fundamental Rights protected is in itself a fundamental right. This makes the fundamental rights real. That is why Dr Ambedkar called Article 32 as the most important article of the Constitution—‘an

Note:article 32--without which whole contituion will be nullity

The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it cannot be abridged or taken away even by way of an amendment to the Constitution.

Note:basic feature 2 constitutional remedies

3,569

Parliament can empower any other court to issue directions, orders and writs of all kinds. However, this can be done without prejudice to the above powers conferred on the Supreme Court. Any other court here does not include high courts because Article 226 has already conferred these powers on the high courts.

Note:article 32--power of parliament wrt writs

3,572

Thus the Constitution provides that the President can suspend the right to move any court for the enforcement of the fundamental rights during a national emergency (Article 359).

Note:article 32--exception--1

3,574

It has been vested with the ‘original’ and ‘wide’ powers for that purpose. Original, because an aggrieved citizen can directly go to the Supreme Court, not necessarily by way of appeal. Wide, because its power is not restricted to issuing of orders or directions but also writs of all kinds.

Note:article 32--original and wide power to SC

3,581

Article 32 cannot be invoked simply to determine the constitutionality of an executive order or a legislation unless it directly infringes any of the fundamental rights.

3,582

In case of the enforcement of Fundamental Rights, the jurisdiction of the Supreme Court is original but not exclusive. It is concurrent with the jurisdiction of the high court under Article 226.

Note:article 32--original jurisdiction not exclusive

3,588

the Supreme Court has ruled that where relief through high court is available under Article 226, the aggrieved party should first move the high court.

3,595

These writs are borrowed from English law where they are known as ‘prerogative writs’.

Note:article 32--derived from prerogative writs in Englang

3,598

The writ jurisdiction of the Supreme Court differs from that of a high court in three respects: 1. The Supreme Court can issue writs only for the enforcement of fundamental rights whereas a high court can issue writs not only for the enforcement of Fundamental Rights but also for any other purpose. The expression ‘for any other purpose’ refers to the enforcement of an ordinary legal right. Thus, the writ jurisdiction of the Supreme Court, in this respect, is narrower than that of high court. 2. The Supreme Court can issue writs against a person or government throughout the territory of India whereas a high court can issue writs against a person residing or against a government or authority located within its territorial jurisdiction only or outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction.15 Thus, the territorial jurisdiction of the Supreme Court for the purpose of issuing writs is wider than that of a high court. 3. A remedy under Article 32 is in itself a Fundamental Right and hence, the Supreme Court may not refuse to exercise its writ jurisdiction. On the other hand, a remedy under Article 226 is discretionary and hence, a high court may refuse to exercise its writ jurisdiction. Article 32 does not merely confer power on the Supreme Court as Article 226 does on a high court to issue writs for the enforcement of fundamental rights or other rights as part of its general jurisdiction. The Supreme Court is thus constituted as a defender and guarantor of the fundamental rights.

Note:article 32--difference in writ jurisdiction of supereme court and high court

Note | Location: 3,615

article 32-writs--habeas corpus-court examines legality of detention

3,616

The writ of habeas corpus can be issued against both public authorities as well as private individuals.

3,617

The writ, on the other hand, is not issued where the

3,618

(a) detention is lawful, (b) the proceeding is for contempt of a legislature or a court,

3,619

(c) detention is by a competent court, and (d) detention is outside the jurisdiction of the court.

Note:article 32-writs--habeas corpus--where it can be used

3,621

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.

Note:article 32-writs--Mandamus

3,622

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.

Note:article 32-writs--Mandamus--exceptions--and latest ruling in 2018---The writ of mandamus cannot be issued to the legislature to bring about an amendment in a legislation.

3,630

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.

Note:article 32--writs--Prohibition

3,632

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.

Note:article 32--writs--Prohibition--exceptions

3,635

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. 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.

Note:article 32--writs-Certiorary

3,640

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.

Note:article 32--writs-certiorari--exceptions

3,644

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.

Note:article 32--writs-quo-warranto

3,645

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.

Note:article 32--writs-quo-warranto--exceptions

3,649

Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces,

Note:article 33

3,652

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.

Note:article 33--power of parliament and exceptions

3,659

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.

Note:article 33-exceptions-override SC writs

3,671

It has no specific provision in the Constitution. It is implicit.

Note:article 34--martial law implicit not in constituion

3,674

Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India.

Note:article 34--FR restriction when martial law is applied

3,675

the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force. The Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Note:article 34--power of parliament

3,689

The Supreme Court held that the declaration of martial law does not ***ipso facto*** result in the suspension of the writ of habeas corpus

Note:article 34-- exceptions--1

3,694

Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state

Note:article 35--power of parliament in making law for FR

3,712

Article 35 extends the competence of the Parliament to make a law on the matters specified above, even though some of those matters may fall within the sphere of the state legislatures (i.e., State List).

Note:article 35--parliament power for state subjects

3,721

Right to Property has been the most controversial. It has caused confrontations between the Supreme Court and the Parliament. It has led to a number of Constitutional amendments, that is, 1st, 4th, 7th, 25th, 39th, 40th and 42nd Amendments. Through these amendments, Articles 31A, 31B and 31C have been added and modified from time to time to nullify the effect of Supreme Court judgements and to protect certain laws from being challenged on the grounds of contravention of Fundamental Rights.

Note:Right to property controversial

3,725

the 44th Amendment Act of 1978 abolished the right to property as a Fundamental Right by repealing Article 19(1)(f) and Article 31 from Part III. Instead, the Act inserted a new Article 300A in Part XII under the heading ‘Right to Property’. It provides that no person shall be deprived of his property except by authority of law. Thus, the right to property still remains a legal right or a constitutional right, though no longer a fundamental right. It is not a part of the basic structure of the Constitution.

Note:Right to property and 44th amendment and it is legal right or constituional right

3,737

These two cases where compensation has to be paid are: (a) When the State acquires the property of a minority educational institution (Article 30); and (b) When the State acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limits (Article 31 A). The first provision was added by the 44th Amendment Act (1978), while the second provision was added by the 17th Amendment Act (1964). Further, Articles 31A, 31B and 31C have been retained as exceptions to the fundamental rights.

Note:Right to property--exceptions--state obligation

3,745

Article 31A16 saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) and Article 19 (protection of six rights in respect of speech, assembly, movement, etc.).

Note:article 31A--FR exceptions

3,748

include the following: (a) Acquisition of estates17 and related rights by the State; (b) Taking over the management of properties by the State; (c) Amalgamation of corporations; (d) Extinguishment or modification of rights of directors or shareholders of corporations; and (e) Extinguishment or modification of mining leases.

Note:article 31A--rules;no law made for these categories can be invalidated on basis that they violate the FR 16;19

3,753

Article 31A does not immunise a state law from judicial review unless it has been reserved for the president’s consideration and has received his assent. This Article also provides for the payment of compensation at market value when the state acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limit.

Note:Article 31A --exceptions

3,757

Article 31B saves the acts and regulations included in the Ninth Schedule18 from being challenged and invalidated on the ground of contravention of any of the fundamental rights. Thus, the scope of Article 31B is wider than Article 31A. Article 31B immunises any law included in the Ninth Schedule from all the fundamental rights whether or not the law falls under any of the five categories specified in Article 31A.

Note:Article 31B

3,764

The court held that judicial review is a ‘basic feature’ of the constitution and it could not be taken away by putting a law under the Ninth Schedule. It said that the laws placed under the Ninth Schedule after April 24, 1973, are open to challenge in court if they violated fundamentals rights guaranteed under Articles 14, 15, 19 and 21 or the ‘basic structure’ of the constitution.

Note:Artilce 31B--laws in schedule 9 open to judicial review by SC

3,774

No law that seeks to implement the socialistic directive principles specified in Article 39(b)21 or (c)22 shall be void on the ground of contravention of the fundamental rights conferred by Article 14 (equality before law and equal protection of laws) or Article 19 (protection of six rights in respect of speech, assembly, movement, etc.) (b) No law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

Note:article 31C

3,779

In the Kesavananda Bharati case23 (1973), the Supreme Court declared the above second provision of Article 31C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away. However, the above first provision of Article 31C was held to be constitutional and valid.

Note:Article 31C --KNB case SC nullified 2nd part of 31C.

Rights Outside Part III

3,835

These rights are known as constitutional rights or legal rights or non-fundamental rights.

3,836

They are:

3,836

No tax shall be levied or collected except by authority of law (Article 265 in Part XII).

3,837

2. No person shall be deprived of his property save by authority of law (Article 300-A in Part XII).

3,839

3. Trade, commerce and intercourse throughout the territory of India shall be free (Article 301 in Part XIII).

3,840

4. The elections to the Lok Sabha and the State Legislative Assembly shall be on the basis of adult suffrage (Article 326 in Part XV).

Note:right to vote comes from this article so it is a constituional right,legal right but not a fundamental right

3,841

Even though the above rights are also equally justiciable, they are different from the Fundamental Rights.

The Directive Principles of State Policy are enumerated in Part IV of the Constitution from Articles 36 to 51

Note:DPSP

3,952

The framers of the Constitution borrowed this idea from the Irish Constitution of 1937, which had copied it from the Spanish Constitution

3,953

Dr B R Ambedkar described these principles as ‘novel features’ of the Indian Constitution.

3,955

Granville Austin has described the Directive Principles and the Fundamental Rights as the ‘Conscience of the Constitution’

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Features of the Directive Principles

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denotes the ideals that the State should keep in mind while formulating policies and enacting laws.

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These are the constitutional instructions or recommendations to the State in legislative, executive and administrative matters.

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The Directive Principles resemble the ‘Instrument of Instructions’ enumerated in the Government of India Act of 1935.

3,966

The Directive Principles constitute a very comprehensive economic, social and political programme for a modern democratic State.

3,967

They aim at realising the high ideals of justice, liberty, equality and fraternity as outlined in the Preamble to the Constitution.

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The Directive Principles are non-justiciable in nature,

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that is, they are not legally enforceable by the courts for their violation.

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(Central, state and local) cannot be compelled to implement them.

3,972

Nevertheless, the Constitution (Article 37) itself says that these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

3,974

help the courts in examining and determining the constitutional validity of a law.

3,979

direction, they can be classified into three broad categories, viz, socialistic, Gandhian and liberal–intellectual.

3,981

Socialistic Principles

3,983

1. To promote the welfare of the people by securing a social order

3,984

to minimise inequalities in income, status, facilities and opportunities4 (Article 38).

3,986

2. To secure (a) the right to adequate means of livelihood for all citizens;

3,986

(b) the equitable distribution of material resources of the community for the common good;

3,987

(c) prevention of concentration of wealth and means of production;

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(d) equal pay for equal work for men and women;

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(e) preservation of the health and strength of workers and children against forcible abuse;

3,988

(f) opportunities for healthy development of children5 (Article 39).

3,990

3. To promote equal justice and to provide free legal aid to the poor6 (Article 39 A).

3,991

4. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (Article 41).

3,993

5. To make provision for just and humane conditions of work and maternity relief (Article 42).

3,994

6. To secure a living wage7, a decent standard of life and social and cultural opportunities for all workers (Article 43).

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7. To take steps to secure the participation of workers in the management of industries8 (Article 43 A).

3,997

8. To raise the level of nutrition and the

3,997

standard of living of people and to improve public health (Article 47).

3,998

Gandhian Principles

4,000

In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles.

4,001

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).

4,003

2. To promote cottage industries on an individual or co-operation basis in rural areas (Article 43).

4,004

3. To promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies8a (Article 43B).

4,006

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).

4,008

5. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (Article 47).

4,009

6. To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (Article 48).

4,010

Liberal–Intellectual Principles

4,011

The principles included in this category represent the ideology of liberalism.

4,011

They direct the state:

4,012

1. To secure for all citizens a uniform civil code throughout the country (Article 44).

Note:Uniform civil code

4,013

2. To provide early childhood care and education for all children until they complete the age of six years9 (Article 45).

Note:RTE derived from here

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3. To organise agriculture and animal husbandry on modern and scientific lines (Article 48).

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4. To protect and improve the environment and to safeguard forests and wild life10 (Article 48 A).

Note | Location: 4,017

environment is important

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5. To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance (Article 49).

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6. To separate the judiciary from the executive in the public services of the State (Article 50).

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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).

Note:to follow international law

4,022

New Directive Principles

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

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1. To secure opportunities for healthy

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development of children (Article 39).

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2. To promote equal justice and to provide free legal aid to the poor (Article 39 A).

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3. To take steps to secure the participation of workers in the management of industries (Article 43 A).

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4. To protect and improve the environment and to safeguard forests and wild life (Article 48 A).

4,028

The 44th Amendment Act of 1978 added one more Directive Principle,

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which requires the State to minimise inequalities in income, status, facilities and opportunities (Article 38).

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The 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A.

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The 97th Amendment Act of 2011 added a new Directive Principle relating to co-operative societies.

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It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

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Sir B N Rau, the Constitutional Advisor to the Constituent Assembly,

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recommended that the rights of an individual should be divided into two categories—justiciable and non-justiciable,

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Consequently, the Fundamental Rights, which are justiciable in nature, are incorporated in Part III

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Principles, which are non-justiciable in nature, are incorporated in Part IV of the Constitution.

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Though the Directive Principles are non-justiciable, the Constitution (Article 37) makes it clear that ‘these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws’.

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As observed by Alladi Krishna Swamy Ayyar, ‘no ministry responsible to the people can afford light-heartedly to ignore the provisions in Part IV of the Constitution’.

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Similarly, Dr B R Ambedkar said in the Constituent Assembly that ‘a government which rests on popular vote can hardly ignore the Directive Principles while shaping its policy. If any government ignores them, it will certainly have to answer for that before the electorate at the election time.’

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Criticism of the Directive Principles

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1. No Legal Force The Directives have been criticised mainly because of their non-justiciable character.

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Illogically Arranged Critics opine that the Directives are not arranged in a logical manner based on a consistent philosophy.

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‘the Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions.

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Constitutional Conflict

4,074

K Santhanam has pointed out that the Directives lead to a constitutional conflict

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(a) between the Centre and the states, (b) between the President and the Prime Minister, and(c) between the governor and the chief minister.

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In the Kesavananda Bharati case24 (1973), the Supreme Court declared the above second provision of Article 31C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away.

Note:conflict between DPSP and FR

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In the Minerva Mills case (1980), the Supreme Court also held that ‘the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.

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They together constitute the core of commitment to social revolution. They are like two wheels of a chariot, one no less than the other.

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To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between the two is an essential feature of the basic structure of the Constitution.

Note:basic structure--

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Therefore, the present position is that the Fundamental Rights enjoy supremacy over the Directive Principles. Yet, this does not mean that the Directive Principles cannot be implemented.

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The Parliament can amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not damage or destroy the basic structure of the Constitution.

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Implementation of Directive Principles

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1. The Planning Commission was established in 1950 to take up the development of the country in a planned manner.

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In 2015, the Planning Commission was replaced by a new body called NITI Aayog (National Institution for Transforming India).

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2. Almost all the states have passed land reform laws to bring changes in the agrarian society and to improve the conditions of the rural masses.

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These measures include (a) abolition of intermediaries like zamindars, jagirdars, inamdars, etc; (b) tenancy reforms like security of tenure, fair rents, etc;

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(c) imposition of ceilings on land holdings;

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(d) distribution of surplus land among the landless labourers; and (e) cooperative farming.

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In 2016, the Child Labour Prohibition and Regulation Act (1986) was renamed as the Child and Adolescent Labour Prohibition and Regulation Act, 1986.

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9. The Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980,

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have been enacted to safeguard the wildlife and the forests respectively.

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Further, the Water and Air Acts have provided for the establishment of the Central and State Pollution Control Boards, which are engaged in the protection and improvement of environment.

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The National Forest Policy (1988) aims at the protection, conservation and development of forests.

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11. Three-tier panchayati raj system (at village, taluka and zila levels) has been introduced to translate into reality Gandhiji’s dream of every village being a republic.

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The 73rd Amendment Act (1992) has been enacted to provide constitutional status and protection to these panchayati raj institutions.

Note:panchayti raj constituional body

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12. Seats are reserved for SCs, STs and other weaker sections in educational institutions, government services and representative bodies.

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12a. Various national-level commissions have been established to promote and protect the social, educational and economic interests of the weaker sections of the society.

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These include the National Commission for Backward Classes (1993), the National Commission for Minorities (1993), the

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National Commission for Women (1992) and the National Commission for Protection of Child Rights (2007).

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13. The Criminal Procedure Code (1973) separated the judiciary from the executive in the public services of the state.

Note:separation of power

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Prior to this separation, the district authorities like the collector, the sub-divisional officer, the tehsildar and so on used to exercise judicial powers along with the traditional executive powers.

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After the separation, the judicial powers were taken away from these executive authorities and vested in the hands of district judicial magistrates who work under the direct control of the state high court.

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Directives Outside Part IV

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They are: 1. Claims of SCs and STs to Services:

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Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State (Article 335 in Part XVI).

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2. Instruction in mother tongue: It shall be the endeavour of every state and every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups (Article 350-A in Part XVII).

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3. Development of the Hindi Language: It shall be the duty of the Union to promote the spread of the Hindi

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to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India (Article 351 in Part XVII).

4,318

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

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Notably, none of the Constitutions of major democratic countries like USA, Canada, France, Germany, Australia and so on specifically contain a list of duties of citizens.

Japanese Constitution is, perhaps, the only democratic Constitution in world which contains a…

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Swaran Singh Committee…

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The committee recommended the inclusion of a separate chapter on fundamental duties

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It stressed that the citizens should become conscious that in addition to the enjoyment of rights, they also have duty towards the country

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the 42nd Constitutional Amendment Act in 1976. This amendment added a new part, namely, Part 4A

Note:$2nd amendment by congress added new part in constituion

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This new part consists of only one Article, that is, Article 51A which for the first time specified a code of ten duties

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the Swaran Singh Committee suggested the incorporation of eight Fundamental duties but 42nd amendment added 10 duties

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the 42nd Constitutional Amendment Act (1976) included ten

Note:at current they are 11, latets added in 2002

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certain recommendations of the Committee were not accepted

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These are

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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 duties

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 oher part of constituion

3. Duty to pay taxes should also be a Fundamental Duty.

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

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(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and anthen

Note:respect national anthem and flag

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(b) to cherish and follow the noble ideals that inspired the national freedom struggle

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(c) to uphold and protect the sovereignty, unity and integrity of the country

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(d) to defend the country and render national service when called upon to do

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(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 women’s dignity

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(f) to value and preserve the rich heritage of the country’s composite culture

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

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(h) to develop scientific temper, humanism and the spirit of enquiry and reform

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(i) to safeguard public property and to adjure violence

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

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(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 contituional amendment.**

Note | Location: 4,353

86th amendment

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Verma Committee Observations

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identified the existence of legal provisions for the implementation of some of the Fundamental Duties.

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1. The Prevention of Insults to National Honour Act (1971) prevents disrespect to the Constitution of India, the National Flag and the National Anthem.

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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.

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3. The Protection of Civil Rights Act4 (1955) provides for punishments for offences related to caste and religion.

4,409

The Indian Penal Code (IPC) declares the imputations and assertions prejudicial to national integration as punishable offences.

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5. The Unlawful Activities (Prevention) Act of 1967 provides for the declaration of a communal organisation as an unlawful association.

4,411

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,

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7. The Wildlife (Protection) Act of 1972 prohibits trade in rare and endangered species.

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8. The Forest (Conservation) Act of 1980

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checks indiscriminate deforestation and diversion of forest land for non-forest purposes.

4,439

the Indian Constitution is neither flexible nor rigid but a synthesis of both.

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Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure.

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However, the Parliament cannot amend those provisions which form the ‘basic structure’ of the Constitution.

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Procedure for Amendment

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The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

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1. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of

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Parliament and not in the state legislatures.

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2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.

Note:No permission of president required

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3. The bill must be passed in each House by a special majority,

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that is, a majority (that is, more than 50 per cent) of the total membership of the House

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and a majority of two-thirds of the members of the House present and voting.

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4. Each House must pass the bill separately.

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In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.

Note:No joint sitting in case of constituional amendment

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5. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority,

Note:simple majority in states required when federal featres are being amended

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that is, a majority of the members of the House present and voting.

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6. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.

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7. The president must give his assent to the bill.

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He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.

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8. After the president’s assent, the bill becomes an Act (i.e., a constitutional amendment act)

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Types of Amendments

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Article 368 provides for two types of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority.

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Therefore, the Constitution can be amended in three ways:

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(a) Amendment by simple majority of the Parliament,

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(b) Amendment by special majority of the Parliament, and

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(c) Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

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By Simple Majority of Parliament

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A number of provisions in the Constitution can be amended by a simple majority of the two Houses of Parliament outside the scope of Article 368.

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1. Admission or establishment of new states.

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2. Formation of new states and alteration of areas, boundaries or names of existing states.

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3. Abolition or creation of legislative

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councils in states.

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6. Salaries and allowances of the members of Parliament.

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9. Use of English language in Parliament.

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10. Number of puisne judges in the Supreme Court.

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12. Use of official language.

4,481

13. Citizenship—acquisition and termination.

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14. Elections to Parliament and state legislatures.

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15. Delimitation of constituencies.

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17. Fifth Schedule—administration of scheduled areas and scheduled tribes.

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By Special Majority of Parliament

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

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The expression ‘total membership’ means

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total number of members comprising the House irrespective of fact whether there are vacancies or absentees.

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By Special Majority of Parliament and Consent of States

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which are related to the federal structure of the polity can be amended by a special majority of the Parliament

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There is no time limit within which the states should give their consent to the bill.

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The following provisions can be amended in this way:

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1. Election of the President and its manner.

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2. Extent of the executive power of the Union and the states.

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3. Supreme Court and high courts.

4,502

4. Distribution of legislative powers between the Union and the states.

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5. Any of the lists in the Seventh Schedule.

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6. Representation of states in Parliament.

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7. Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

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Emergence of the Basic Structure

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The word ‘law’ in Article 13 includes only ordinary laws and not the constitutional amendment acts (constituent laws). Therefore,

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However, in the Kesavananda Bharati case3 (1973), the Supreme Court overruled its judgement in the Golak Nath case (1967). It upheld the validity of the 24th Amendment Act (1971) and stated that Parliament is empowered to abridge or take away any of the Fundamental Rights. At the same time, it laid down a new doctrine of the ‘basic structure’ (or ‘basic features’) of the Constitution. It ruled that the constituent power of Parliament under Article 368 does not enable it to alter the ‘basic structure’ of the Constitution. This means that the Parliament cannot abridge or take away a Fundamental Right that forms a part of the ‘basic structure’ of the Constitution.

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the Supreme Court in the Minerva Mills case4 (1980) invalidated this provision as it excluded judicial review which is a ‘basic feature’ of the Constitution. Applying the doctrine of ‘basic structure’ with respect to Article 368,

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The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the ‘basic structure’ of the Constitution.

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the ‘basic structure’ of the constitution:

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1. Supremacy of the Constitution

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2. Sovereign, democratic and republican nature of the Indian polity

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3. Secular character of the Constitution

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4. Separation of powers between the legislature, the executive and the judiciary

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5. Federal character of the Constitution 6. Unity and integrity of the nation

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8. Judicial review

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10. Parliamentary system

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11. Rule of law

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15. Independence of Judiciary

4,609

16. Limited power of Parliament to amend the Constitution