

# CONSTITUTIONAL VALUES AND FUNDAMENTAL DUTIES

**ALL UG COURSES**

**SEMESTER- I to IV**

**VALUE ADDITION COURSE (VAC) - POLITICAL SCIENCE**

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# SYLLABUS

## Constitutional Values and Fundamental Duties

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# UNIT 1

## CONSTITUTION OF INDIA: AN INTRODUCTION

NOTES

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### **Structure**

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*Self-Instructional  
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- 1.12 Answers to In-Text Questions
- 1.13 Self-Assessment Questions
- 1.14 References/Suggested Readings

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**1.1 LEARNING OBJECTIVES**

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After reading this unit, students should be able to:

- Understand the Constituent Assembly and making of the Constitution
- Explain the salient features of the Indian Constitution
- Discuss the meaning of Preamble and the philosophy of the Constitution
- Describe the process of amendment to the Constitution
- Examine the concepts such as sovereignty, socialism, democracy, secularism, and *sarva dharma sambhava*
- Summarise the rule of law and the meaning of federal republic

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**1.2 INTRODUCTION**

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The Indian Constitution, which came into effect on January 26, 1950, embodies several core values that form the foundation of the nation's democratic framework. These constitutional values include sovereignty, socialism, secularism and *sarva dharma samabhava*, democracy, federal republic, justice, liberty, equality and fraternity, rule of law, fundamental rights, and directive principles of state policy and fundamental duties.

In this unit, you will learn about different concepts such as federal republic, the rule of law, separation of powers, sovereignty, socialism, democracy, secularism, and *sarva dharma samabhava*. As per our Constitution, India is a federal republic. The federal structure of the country is designed



to balance the separation of powers between the central government and the states while also maintaining a strong central authority. The rule of law is a cornerstone of the Indian Constitution, which ensures that all actions by the government are conducted within the bounds of law. Sovereignty means our country is independent and free from external control. The state is committed to reducing economic inequality and ensuring a fair distribution of wealth (socialist character). We are a democracy in the sense that our government is elected by the people, ensuring that the ultimate power rests with the citizens of the respective country. Secularism and the concept of *sarva dharma sambhava* (equal respect for all religions) are integral to the Indian Constitution. The concepts reflect the country's commitment to religious pluralism and harmony.

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### 1.3 CONSTITUENT ASSEMBLY AND MAKING OF THE CONSTITUTION

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Let us discuss the various aspects of the Constitution.

#### **Constitution and elections**

The Constituent Assembly began its first session with 207 members attending on 9th December 1946. The Assembly approved the draft of the Constitution on 26th November 1949. On 26th January, 1950, the Constitution took effect in India and India was proclaimed as a Republic. The Constituent Assembly became the provisional Parliament of India which continued till the first elections took place in 1952.

#### **Organisation**

On 9 December 1946 Dr. Sachchidananda Sinha was made the pro-term chairman of the Constituent Assembly. After that, Dr. Rajendra Prasad became the President of the Constituent Assembly. Sir Benegal Narsing Rau was the one to prepare the original draft of the Constitution. B.R. Ambedkar later became the chairman of the drafting committee of the Constitution.



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The Assembly's work was organised into five stages:

- A report was asked to be presented by the committee on basic issues.
- B.N. Rau prepared an initial draft on the basis of the report presented by the committee as well as the research done by himself about the constitutions of other countries.
- B.R. Ambedkar presented a detailed draft of the Constitution that was published for public discussion and comments and later became the chairman of the drafting committee.
- The Constitution that was drafted was then discussed and amendments were made as per requirement before enactment.
- Lastly, the Constitution was adopted. A committee called the Congress Assembly Party played a critical role in its adoption.

**1.3.1 Composition of the Constituent Assembly**

The idea of making the Constitution cannot be attributed to the Constituent Assembly alone. It needs to be seen from the evolutionary perspective. The adoption of the famous Motilal Nehru Resolution in 1924 and 1925, on national demand, was a historic event. It is because the central legislature had, for the first time, lent its support to the growing demand for the future Constitution of India. It also agreed to the opinion that the Constitution of India should be framed by Indians themselves. In November 1927, the Simon Commission was appointed without any Indians represented in it. Therefore, all-party meetings, held at Allahabad (now Prayagraj), voiced the demand for the right to participate in the making of the Constitution of the country.

Earlier on 17 May 1927, at the Bombay session of the Congress, Motilal Nehru had moved a resolution. The resolution called upon the Congress Working Committee to frame a Constitution for India in consultation with the elected members of the central and provincial legislatures, and the leaders of political parties. Adopted by an overwhelming majority with amendments,



it was this resolution on the Swaraj Constitution which was later restated by Jawaharlal Nehru in a resolution passed by the Madras Session of the Congress on 28 December 1927.

In the all-party conference in Bombay on 19 May 1929, a committee was appointed under the chairmanship of Motilal Nehru. The committee established the principles of the Constitution of India. The report of the committee, which was submitted on 10 August 1928, later became famous as the Nehru Report. It was the first attempt by Indians to frame the Constitution for their country.

The report depicted the perception of modern nationalists. It also provided an outline of the Constitution of India. The outline was based on the principles of dominion status and it suggested that the government should be made on the parliamentary pattern. The report asserted the principle that sovereignty belongs to Indians. It laid down a set of fundamental rights and provided for a federal system with maximum autonomy granted to the units. The residuary powers were given to the central government.

A broad parliamentary system with a government responsible to the Parliament, a chapter on justiciable fundamental rights and rights of minorities envisaged in the Nehru Report of 1928 largely embodied the Constitution of the independent India.

The Third Round Table Conference issued a White Paper outlining the British Government's proposal for Constitutional reforms in India. However, the joint parliamentary committees, which examined this proposal, observed that 'a specific grant of constituent power to authorities in India is not at the moment a practicable proposition'. In its response, the Congress Working Committee in June 1934 declared that the only satisfactory alternative to the White Paper was that the Constitution must be drawn up by the Constituent Assembly. They demanded that the members of the Constituent Assembly must be elected on the basis of adult suffrage. Significantly, this was the first time that a definite demand for a Constituent Assembly was formally put forward.



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The failure of the Simon Commission and the Round Table Conference gave rise to the approval of the Government of India Act, 1935. The Congress in its Lucknow Session in April 1936 adopted a resolution in which it declared that no Constitution imposed by an outside authority shall be acceptable to India. The resolution asserted that it has to be framed by an Indian Constituent Assembly elected by the people of India on the basis of adult franchise. On 18 March 1937, the Congress adopted another resolution in Delhi which asserted these demands.

After the outbreak of the Second World War in 1939, the demand for a Constituent Assembly was reiterated in a long statement issued by the Congress Working Committee on 14 September 1939. Gandhi wrote an article about the *Harijan* on 19 November 1939, in which he expressed the view that the Constituent Assembly alone can produce a constitution for the country which truly and completely represents the will of Indians. It declared that the Constituent Assembly was the only way out to arrive at the solution of communal and other problems of the country. The demand was partially considered by the British Government in the 'August Offer of 1940'.

In March 1942, the British Government sent the Cripps Mission to India with a draft declaration which needed to be implemented at the end of the Second World War. The main proposals of the Mission were: (i) the Constitution of India was to be framed by an elected Constituent Assembly of the Indian people; (ii) the Constitution should give dominion status to India, i.e., equal partnership of the British Commonwealth of Nations; (iii) there should be an Indian union, comprising all the provinces and Indian states; and (iv) any province or Indian state, which was not prepared to accept the Constitution would be free to retain its constitutional position existing at that time. With such provinces, the British Government could enter into separate constitutional arrangements.

However, the Cripps Mission was a failure and no steps were taken for the formation of the Constituent Assembly until the World War in Europe came to an end in May 1945. In July, when the new labour government came



to power in England, Lord Wavell affirmed that His Majesty's intention was to convene a constitution - making body as soon as possible.

In 1946, the British Cabinet sent three members, including Cripps to make another serious attempt to solve the problem. However, the Cabinet delegation rejected the claim for a separate Constituent Assembly and a separate state for the Muslims. It forwarded the following proposals:

- (i) There would be a Union of India, comprising both British India and states, and having jurisdiction over the subjects of foreign affairs, defence, and communications. All residuary powers would belong to the provinces and the states.
- (ii) The Union should comprise an executive and a legislature having representatives from the provinces and states.

To explain the actual meaning of the clauses of the proposals of the Cabinet Mission, the British Government published the following statement: On 6 December 1946 'Should a Constitution come to be framed by the Constituent Assembly in which large section of the Indian population had not been represented? His Majesty's government would not consider imposing such a Constitution upon any restrictive part of the country.'

The British Government for the first time pondered over the likelihood of forming two constituent assemblies and two states. The Cabinet Mission recommended a basic framework for the Constitution and laid down a detailed procedure to be followed by the constitution - making body. In the election for the 296 seats, the Congress won 208 seats including all the general seats except nine. The Muslim League won 73 seats.

With the partition and independence of the country on 14 and 15 August 1947, the Constituent Assembly of India was said to have become free from the restraints of the Cabinet Mission Plan. Following the acceptance of the plan of 3 June, the members of the Muslim League from the Indian dominion also took their seats in the Assembly. The representatives of some of the Indian states had already entered the Assembly on 28 April 1947. By 15 August



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1947, most of the states were represented in the Assembly and the remaining states also sent their representatives in due course. The Constituent Assembly, thus, became a body fully representative of the states and provinces in India, free from external authority. It could change any law made by the British Parliament.

The Constituent Assembly was first held on 9 December 1946. It included provinces comprising Pakistan and Bangladesh, and represented the princely states of India as well. Further, the delegations from provinces of Sind, East Bengal, West Punjab, Baluchistan, and the North West Frontier Province in June 1947 formed the Constituent Assembly of Pakistan in Karachi. After India became independent, the Constituent Assembly became the Parliament of India. The Constituent Assembly was indirectly elected by the Provincial Legislative Assembly members (Lower House only), as per the scheme of the Cabinet Delegations. The prime features of the scheme were as follows:

- Every Indian state or group of states and the province were allotted a specific number of seats relative to their populations respectively. Due to this, the provinces were needed to elect 292 members and the Indian states were assigned a minimum number of 93 seats.
- Each provincial seat was distributed amongst three major communities—Muslim, Sikh and General proportional to their respective populations.
- Within the Provincial Legislative Assembly, each community member elected his own representatives through proportional reorientation with single transferable vote.
- The selection method for Indian representatives had to be determined through consultation.

In all, the Constituent Assembly was to have 389 members but the Muslim League boycotted the Assembly. Only 211 members attended its first meeting on 9 December 1946. Apart from that, the Partition Plan of 3 June 1947 gave rise to the setting up of a separate Constituent Assembly for Pakistan. The representatives of Bengal, Punjab, Sind, North Western Frontier



Province, Baluchistan, and the Sylhet district of Assam had to join Pakistan. Due to this, on 31 October 1947, when the Constituent Assembly reassembled, the house membership was lessened to 299. Out of these, 284 members were actually present on 26 November 1949 and signed the Indian Constitution to regard it as finally passed.

The Constituent Assembly was held when India was under British Rule and negotiations were made between the leaders and members in the Cabinet Mission of 1946. The Constituent Assembly consisted of 217 representatives, inclusive of 15 women.

In June 1947, when the partition of India seemed inevitable, delegations from the various provinces of Sindh, East Bengal, Baluchistan, and west Punjab withdrew in order to form the Constituent Assembly of Pakistan for which the meeting was held in Karachi.

### **1.3.2 Committees to Draft the Constitution**

Let us discuss about the committees of Constitution Assembly in this section. The salient principles of the proposed Constitution were outlined by various committees of the Assembly. There were twenty-two major committees formed by the Constituent Assembly to handle different tasks of the making of the Constitution. Out of these, ten focused on procedural affairs and twelve on substantive affairs. The reports of these committees created the basis for the first draft of the Indian Constitution.

#### **1. Committees on Procedural Affairs**

The committees on procedure affairs were:

- (i) The Steering Committee (Chairman: Dr K.M. Munshi)
- (ii) The Rules of Procedure Committee (Chairman: Dr Rajendra Prasad)
- (iii) The House Committee
- (iv) The Hindi-translation Committee



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- (v) The Urdu-translation Committee
- (vi) The Finance and Staff Committee
- (vii) The Press Gallery Committee
- (viii) The Committee based on the Indian Independence Act of 1947
- (ix) The Order of Business Committee
- (x) The Credential Committee

**2. Committees on Substantial Affairs**

The committees on substantial affairs were:

- (i) The Drafting Committee (Chairman: B. R. Ambedkar)
- (ii) The Committee for negotiating with States (Chairman: Dr Rajendra Prasad)
- (iii) The Union Constitution Committee (Chairman: Jawaharlal Nehru)
- (iv) The Provincial Constitution Committee (Chairman: Sardar Patel)
- (v) A Special Committee to examine the Draft Constitution (Chairman: Sir Alladi Krishnaswamy Iyer)
- (vi) The Union Powers Committee (Chairman: Jawaharlal Nehru)
- (vii) The Committee on Fundamental Rights and Minorities (Chairman: Sardar Patel)
- (viii) The Committee on Chief Commissioners Provinces
- (ix) The Commission of Linguistic Provinces
- (x) An Expert Committee on Financial Provisions
- (xi) Ad-hoc Committee on National Flag
- (xii) Ad-hoc Committee on the Supreme Court

During its entire sitting, the Constituent Assembly had 11 sessions and 165 days of actual work. After three years of efforts, the historic document,



i.e., the Constitution of the free India was adopted by the Assembly on 26 November 1949. It came into force on 26 January 1950.

The Draft Constitution had 315 Articles and 13 Schedules. The final form of the Constitution, as it was originally passed in 1949, had 395 Articles and 8 Schedules. This shows that the original draft had undergone considerable changes. In fact, there were over 7000 amendments which were proposed to be made in the Draft Constitution. Of these 2473, were actually moved, debated and disposed of. It was indeed a great democratic exercise as discussion, debates and deliberation were encouraged. There was also a great tolerance of criticism. It was truly a full-fledged democratic procedure which helped in the making of the Constitution.

### **1.3.3 Enactment of the Constitution**

The Constitution of India was made by the Constituent Assembly which represented nearly all shades of opinions existing at that time in the country. The first session of the Constituent Assembly was held on 9 December 1946 and the Assembly finally passed the Constitution on 26 November 1949. However, the Constitution was adopted only on 26 January 1950, which was the twentieth anniversary of the day on which the Indian National Congress adopted the Resolution on *Purna Swaraj* and had ever since become the Republic Day of India.

Most members of the Constituent Assembly (e.g., Jawaharlal Nehru, Patel, Azad, Ambedkar, Sitaramayya, Ayyar, N. G. Ayyangar, etc.) belonged to an extremely small, westernised professional middle-class, moulded by the 19th century English education system and sustained a radical social perspective based largely on the European experience in the 20th century. This was particularly true of those 20 member core group that comprised the most influential members of the Constituent Assembly. The ideology of the members of the Assembly clearly reflected on the Constitution of India. A study of the Constitution shows that it embodies the liberal-democratic



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ideology to a very large extent. However, the Constitution also depicts slight socialist and Gandhian leanings.

The members of the Assembly drafted the Constitution that expressed the aspirations of the nation. They skillfully selected and modified the provisions that they borrowed from other Constitutions, helped by the experts. The Assembly members also applied two wholly Indian concepts, consensus and accommodation to their great effectiveness. Accommodation was applied to the principles to be embodied in the Constitution. For example, India's membership in the Commonwealth reconciled the incompatibles of republicanism and monarchy. Consensus was the aim of the decision-making process, the single most important source of the Assembly's effectiveness.

**In-Text Questions**

1. What is Nehru Report?
2. What were the main proposals of the Cripps Mission, 1942?

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**1.4 SALIENT FEATURES OF INDIAN CONSTITUTION**

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The salient features of the Constitution of the Republic of India are as follows:

**1. Living Document**

The Constitution is a living document, an instrument which makes the governmental system work. Unlike many other developing countries that became independent after the Second World War, it has survived as a living document with necessary amendments.

**2. Written Constitution**

The Constitution of the Republic of India is written. As originally passed, it had 395 Articles and 8 Schedules. The written Constitution is very essential



for a federal state so that whenever there is any dispute between the federal government and the federating units, it becomes the basis to resolve these disputes. In sheer physical terms, the Indian Constitution is definitely the largest and most detailed Constitution in the world. The Constitution of the USA contains only 7 Articles, Canada has 147 Articles and Australia has 128 Articles.

The framers of the Constitution tried to provide the solution for all the possible problems of administration and governance of the country. Even those matters which are taken as conventions in other countries have been put to writing in the Indian Constitution.

### **3. Sovereign Democratic Republic**

The Indian Independence Act, 1947 declared India a dominion with the Queen of England as the Head of the State. The Governor-General was appointed by the Queen and acted as her representative in India. The authors of the Constitution decided that Dominion status was not in conformity with the dignity of the nation. The Preamble of the Constitution, therefore, declared India as a Sovereign Democratic Republic. It means that India as a nation does not owe allegiance to any foreign power, is independent in her dealings with foreign countries and enjoys equal status in the world community with other independent sovereign states.

India is a democracy. It means that sovereignty rests with the people of India. They govern themselves through their representatives elected on the basis of universal adult franchise. Besides, the Constitution confers on Indian citizens some fundamental rights which are considered to be the essence of a democratic system.

### **4. Parliamentary Form of Government**

The Constitution provides for a parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the executive of the Union is the President. As per Article 79 of the Constitution of India, the Council of the Parliament of the Union consists of the President



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and two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President, who shall exercise his functions in accordance with the Prime Minister's advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head.

The Council of Ministers is collectively responsible to the House of the People (Lok Sabha). Every State has a Legislative Assembly. Certain states have an upper House also called State Legislative Council. There is a Governor for each State who is appointed by the President. The Governor is the head of the State and the executive power of the State is vested in him. The Council of Ministers with the Chief Minister as its head advises the Governor in the discharge of executive functions. The Council of Ministers of a State is collectively responsible to the Legislative Assembly of the State.

The Constitution distributes legislative powers between Parliament and State legislatures as per the lists of entries in the Seventh Schedule to the Constitution. The residuary powers are vested in Parliament. The centrally administered territories are called union territories.

**5. A Federal System with Unitary Bias**

The Constitution is federal in nature but the term 'Federation' has not been used in our Constitution. India has been described as a Union of States according to Article 1 of the Constitution. There are twenty-eight states in the union, each one with a separate executive, legislature and Judiciary. Powers have been divided between the Union Government on the one hand and the States on the other by the Constitution itself. The Constitution is sovereign and there is a provision for judicial review.

The most remarkable feature of the Indian Constitution is to confer upon a federal system the strength of a unitary government. Though normally the system of government is federal, during an emergency; the Constitution enables the federation to transform into a unitary State.



## 6. Adult Franchise

At the time when the Constitution was made, the vast majority of Indian people were illiterate. The framers of the Constitution took the bold step of conferring the right to vote on every adult citizen of India irrespective of the differences of education, property or sex. Every citizen who was 21 years of age was given the right to vote. It has been reduced to 18 years now. This makes the Constitution democratic in the real sense of the term.

## 7. Rigid and Flexible

The Constitution is rigid in the sense that most of its parts cannot be amended by the ordinary law-making process. However, it provided for amendments and therefore it is flexible. The Indian Constituent Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution as in Canada or by making the amendment of the Constitution subject to the fulfillment of extraordinary terms and conditions as in America or Australia. In its place, it has provided a most facile procedure for amending the Constitution.

It is only the amendment of few of the provisions of the Constitution that requires ratification by the State legislatures and even then ratification by only half of them is sufficient.

The rest of the Constitution can be amended by the special majority of the union Parliament, i.e., a majority of not less than two-thirds of the members of each House present and voting, which again must be a majority of the total membership of the House.

Within a period of 74 years, the Constitution has been amended 106 times. It proves that the Constitution is flexible. The procedure laid down by the Constitution for its amendment is neither very easy, as in England, nor very rigid as in the United States.

## 8. Independence of Judiciary

The framers of the Constitution were aware that democratic freedoms were meaningless in the absence of an independent machinery to safeguard them.



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No subordinate or agent of the government could be trusted to be just and impartial in judging the merits of a conflict in which the Government itself was a party. Similarly, a judiciary subordinates either to the Centre or the States could not be trusted as an impartial arbiter of conflicts and controversies between the Centre and the States.

These were the compelling reasons for the creation of an independent judiciary as an integral part of the Constitution and for the adoption of judicial independence as a basic principle of the Constitution.

**9. Supreme Court and Judicial Review**

The Supreme Court is a necessary element in a federal polity and accordingly, the Indian Constitution has established the Supreme Court of India. The Court has both original and appellate jurisdiction. It has the power of judicial review. It can declare any Legislative enactment or administrative act as unconstitutional if it is deemed to be in conflict with the provisions of the Constitution. Besides, the Supreme Court is a court of record.

**10. Single Citizenship**

The Constitution of India grants only one citizenship to all the citizens. In a federation sometimes, a citizen gets double citizenship, one of the Union and the other of the State in which that person lives.

**11. Detailed Administrative Provisions**

As Dr B.R. Ambedkar observed, it is perfectly possible to pervert the Constitution without changing the form of administration. To prevent such subversion of the Constitution, detailed administrative provisions were included in it.

We have, in the Indian Constitution, detailed provisions about the organisation of the judiciary, the services, the Public Service Commission, Election and about the division of powers between the Union and the States.



## 12. Constitution of the Units

The Constitution of a federal State usually deals only with the federal Government and leaves the federating units to draw their own constitutions. This practice was followed in the framing of the constitutions of the USA, the USSR, Canada and other Federal States. However, the Indian Constitution provides the Constitutions of both the Union and the States. This has contributed to the bulk of the Indian Constitution.

## 13. Secular State

India is a secular State. It means that the State does not recognise, establish or endow any church or religious organisation. It is guided in the discharge of its functions by the considerations of secular or the worldly welfare of the people. It does not seek to promote the spiritual or religious welfare of the people. It allows freedom of religion. The Constitution guarantees freedom of worship, faith and conscience. It does not discriminate in matters of government employment on the basis of religion. The term 'secular' did not occur in any part of the original Constitution. It was incorporated in the Preamble by the Forty-second Constitutional Amendment in 1976.

## 14. Welfare State

The Preamble of the Constitution describes India as a socialist state. The term was added to the Preamble of the Constitution by the Forty-second Constitutional Amendment Act of 1976 by the then government. However, it is to be noted that 'Socialism' envisaged by the Constitution is not the usual State socialism seen in Russia or China which entailed the nationalisation of all the means of production, distribution, communication, etc. Just nationalisation is not our type of socialism.' Socialism in the Indian context means that the government endeavors to make the distribution of wealth more equal, provides a decent standard of living for all and is committed towards the formation of a welfare state.



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**15. Liberal Constitution**

Liberalism is a political philosophy that is centered on the freedom of an individual. The Indian Constitution contains many features that make it liberal in nature, the most important being the section on fundamental rights.

The Constitution of India recognises six fundamental rights. These are discussed as follows:

- (i) Right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles.
- (ii) Right to freedom which includes speech and expression, Assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation, right to life and liberty, right to education, protection in respect to conviction in offences and protection against arrest and detention in certain cases.
- (iii) Right against exploitation, prohibiting all forms of forced labour, child labour and traffic in human beings.
- (iv) Right to freedom of religion, including freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.
- (v) Cultural and educational rights preserving the right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.
- (vi) Right to constitutional remedies for enforcement of Fundamental Rights.

These six fundamental rights guaranteed in the Indian Constitution are comparable to features seen in liberal constitutions around the world including the Bill of Rights in the American Constitution. Along with the



fundamental rights, the remedies for enforcing the rights, namely, the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* are also guaranteed by the Constitution under Article 32. However, unlike other liberal constitutions around the world, the Indian Constitution today does not recognise the right to property as a fundamental right. Although originally a part of the Indian Constitution, the right to property was deleted from the list of fundamental rights after the 44th Amendment to the Constitution in 1978. However, at the same time, in another part of the Constitution, Article 300 'A' was inserted to affirm that no person shall be deprived of his or her property save by authority of law. Thus, today the right to property in India is a legal and not a fundamental right.

### **16. Fundamental Duties**

Part IVA on fundamental duties was incorporated in the Constitution by the Forty-second Amendment Act. Article 51A of the Constitution enumerates ten fundamental duties of the citizens of India: to respect and abide by the Constitution and the laws; to uphold the sovereignty of the nation; to respect the democratic institutions enshrined in the Constitution; to abjure communalism and violence, etc. However, unlike the fundamental rights, the fundamental duties are not enforceable in the courts.

### **17. Directive Principles of State Policy**

A distinctive feature of the Constitution is that it contains Chapter IV on the Directive Principles of the State Policy. These Directives relate mostly to social and economic justice, such as adequate means of livelihood for all, distribution of wealth so as to serve the common good, equal pay for equal work, protection of adult and child labour, free and compulsory primary education, etc. These are the guiding principles of State policy. The authors of the Constitution did not make the Directive Principles justiciable.

The Directive Principles are not enforceable by the courts, i.e., if the government of the day fails to carry out these objects no court can make the government ensure them. Still the principles have been declared to be



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fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

**18. Drawn from Different Sources**

A distinguishing feature of the Indian Constitution is that it was prepared after carefully looking at all the known constitutions of the world at that time. The first meeting of the Constituent Assembly of India took place in the Constitution Hall, New Delhi on 9 December 1946. It was chaired by Dr Sachchidananda Sinha. In his address, Dr Sinha referred to several constitutions that were in existence at that time and said:

As a matter of fact, the French Constitution-makers, who met in 1789 at the first Constituent Assembly of their country, were themselves largely influenced by the work done but a couple of years earlier in 1787, by the historic Constitutional Convention held at Philadelphia by the American Constitution-makers, for their country. Having thrown off their allegiance to the British King in Parliament, they met and drew up what had been regarded, and justly so, as the soundest, and most practical and workable republican Constitution in existence. It is this great Constitution, which had been naturally taken as the model for all subsequent constitutions not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia, and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of the American Constitution than to those of any other.

The parliamentary system has been borrowed from England, the concept of independent judiciary and judicial review and fundamental rights from the US Constitution, the federal features from Canada and the Directive Principles from Ireland. Many provisions related to administration have been taken from the Government of India Act, 1935.

These borrowings were not blind as the framers of the Constitution modified them with a view to avoid the faults that have emerged in practice and adapted to the existing conditions and needs of the country. India's



religious and ethnic diversity, caste inequalities and widespread illiteracy and poverty demanded these unique provisions. The Constituent Assembly members were equal to this task, debating and discussing the clauses of the Draft Constitution threadbare.

### **19. Reservation in Legislatures and Services for Backward Classes**

A distinctive feature of the Indian Constitution is that there is reservation of seats for the Scheduled Castes and Scheduled Tribes in the House of the People and in the State Assemblies. The Indian Constitution also lays down that the claims of the Scheduled Castes and Scheduled Tribes shall be taken into consideration in making appointments to services in connection with the affairs of the Union or a State.

There is also reservation of the seats for Anglo-Indian community in the House of the People and in some State Assemblies.

### **20. Official Language of India**

A provision was made in the Indian Constitution to declare Hindi in the Devanagari script as the official language of India. Till that time English was to continue as the official language. Over a period of time, 22 languages along with English have been added (from initial 14) to the list of scheduled languages.

### **21. Basic Structure**

Article 368 of the Indian Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. However, the Supreme Court has acted as an arbiter to the legislative enthusiasm of Parliament ever since independence. With the intention of preserving the original ideals envisioned by the Constitution-makers, the apex court pronounced that Parliament could not distort, damage or alter the basic features of the Constitution under the pretext of amending it.



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Though the phrase ‘basic structure’ itself is not found in the Indian Constitution, the Supreme Court recognised this concept for the first time in the historic Kesavananda Bharati case in 1973. Since then the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by the Parliament. However, the final word on the issue of the basic structure of the Constitution has not been pronounced by the Supreme Court yet. The sovereign, democratic, and secular character of the polity, rule of law, independence of the judiciary, and fundamental rights of citizens are some of the essential features of the Indian Constitution that have appeared time and again in the apex court’s pronouncements.

**In-Text Questions**

3. What do you understand by the federal system in the Indian Constitution?
4. When was the term ‘secular’ added to the Indian Constitution?

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## **1.5 PREAMBLE: PHILOSOPHY OF THE CONSTITUTION**

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The Preamble to the Indian Constitution was formulated in the light of the ‘Objectives Resolution’ which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947. Also, the drafting committee of the Constituent Assembly, after a lot of deliberations, decided that the Preamble ‘stands part of the Constitution’.

### **Preamble**

The Preamble to the Constitution of India reads:

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



JUSTICE, social, economic and political;  
LIBERTY of thought, expression, belief, faith and worship;  
EQUALITY of status and of opportunity; and to promote them all  
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR Constituent Assembly this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS Constitution.

The wordings of the Preamble make it clear that the basic tasks which the Constitution makers envisaged for the Indian state were to achieve the goals of justice, liberty, equality, and fraternity. These objectives help us to decode the messages and mandates of our Constitution in terms of our contemporary needs and futuristic perspectives.

### **Amendment to the Preamble**

By Section 2 of the Constitution (Forty-second Amendment Act, 1976), two amendments were made in the Preamble.

- (a) Instead of 'Sovereign Democratic Republic' India was declared 'Sovereign Socialist Secular Democratic Republic'.
- (b) For the words 'Unity of the Nation', the words 'Unity and Integrity of the Nation' were inserted.

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## **1.6 AMENDMENT TO THE INDIAN CONSTITUTION**

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Let us discuss the procedure to amend the Indian Constitution.

Article 368, Power of Parliament to amend the Constitution and Procedure therefore—



**NOTES**

- (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- (2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:
- Provided that if such amendment seeks to make any change in—
- (a) Article 54, Article 55, Article 73, Article 162, Article 241, or
  - (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
  - (c) any of the Lists in the Seventh Schedule, or
  - (d) the representation of States in Parliament, or
  - (e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
- (3) Nothing in Article 13 shall apply to any amendment made under this article.
- \* (4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment Act, 1976) shall be called in question in any court on any ground.



(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation, or repeal the provisions of this Constitution under this article.

\* Cls. (4) and (5) were ins. “in Article 368 by s. 55 of the Constitution (Forty-second Amendment) Act, 1976). This section has been declared invalid by the Supreme Court in *Minerva Mills Ltd. and Others Vs. Union of India and Others* (1980) 2 S.C.C. 591.

### Types

Although Article 368 essentially provides for two types of amendments to the Indian Constitution, that is, by a special parliamentary majority as well as through ratification by half of the Indian states through a simple majority. However, some articles do provide amendment of certain provisions of the Constitution through a simple majority of Parliament. However, such amendments are not considered to be amendments according to Article 368.

The Indian Constitution can be amended in three ways. They are discussed as follows:

**(i) Amendment by Simple Majority of Parliament:** There are a number of provisions of the Constitution that can be amended by a simple majority of both Houses of Parliament. These provisions include:

- Admission or establishment of new states.
- Abolition or creation of legislative councils in states.
- Allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Conferment of more jurisdiction on the Supreme Court.



**NOTES**

- Citizenship-acquisition and termination.
- Elections to Parliament and state legislatures.
- Delimitation of constituencies.

**(ii) Amendment by Special Majority of Parliament:** A special majority in Parliament means a majority that is, more than 50 percent of the total membership of each House and a majority of two-thirds of the members of each House present and voting. Through this special majority of Parliament, the following provisions can be amended:

- Fundamental Rights
- Directive Principles of State Policy
- All other provisions which are not covered by the first and third categories

**(iii) Amendment by Special Majority of Parliament and Consent of States:** The provisions related to the federal structure of the Indian Constitution can be amended by a special majority of Parliament and also with the consent of half of the state legislatures by a simple majority. The provisions that can be amended through provision include:

- Election of the President and its manner
- Extent of the executive power of the union and the states
- Supreme court and high courts
- Distribution of legislative powers between the Union and the states
- Any of the lists in the Seventh Schedule
- Representation of states in Parliament
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself)



### **Criticisms of the Amendment Procedure**

Some of the criticisms of the amendment procedure of the Indian Constitution are as follows:

1. In India, no provision for a special body like the Constitutional Convention like in the United States exists for amending the Constitution. In India, the constituent power is vested in Parliament and only in a few cases, in the state legislatures.
2. The power to initiate an amendment to the Constitution lies with Parliament only and not with any state legislature. In addition, a major part of the Constitution can be amended without taking into account state legislature. Only in a few cases is the consent of the legislature in the states required.
3. The process of amendment to the Constitution is the same as the passage of ordinary bills. At the same time, unlike ordinary bills, no provision exists for a joint session of Parliament in case there is a deadlock over a constitutional amendment bill.

### **Review of the Working of the Indian Constitution**

The National Commission to review the working of the Constitution was set up by the Government of India through a resolution dated 22 February, 2000. The terms of reference stated that the commission would examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs for the efficient, smooth, and effective system of governance and socio-economic development of modern India within the framework of parliamentary democracy, and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features. The commission was required to complete its work and make recommendations within one year. The tenure of the commission was extended from time to time upto 31st March, 2002. The commission submitted its report in two volumes to the government on 31st March, 2002.



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This commission recommended a long list of amendments and tried to touch almost all the issues. It recommended on fundamental rights, directive principles, fundamental duties, legislatures, electoral process, political parties, executive and public administration, the judiciary, centre-state relations, trade commerce and intercourse, resolution of disputes and the executive.

**In-Text Questions**

5. Why was the Preamble to the Indian Constitution formulated?
6. How does Article 368 provide for two types of amendments?

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**1.7 SOVEREIGNTY, SOCIALISM, DEMOCRACY, SECULARISM AND *SARVA DHARMA SAMBHAVA***

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The Preamble also discusses the nature of the Indian political system. The Indian polity is sovereign, socialist, secular, and democratic republic.

**1.7.1 Sovereignty**

By declaring us as a sovereign entity, the Preamble emphasises complete political freedom. It implies that our state is internally powerful and externally free. She is free to determine for herself without any external interference. There is no one within her to challenge her authority. Only this attribute of sovereignty has made her a member of the unity of nations. Without sovereignty, she has no essence. If a state cannot freely determine what it wants and how to achieve it, it loses the rationale to exist. Further, sovereignty gives the state the dignity of existence. It would not receive respect from within as well from outside if it did not possess sovereign status. This suggests that sovereignty is one of the most important values of a state. Therefore, the government is duty-bound to defend its sovereignty by preventing any kind of threat to it coming from any entity and direction.



Though our Constitution does not specify where the sovereign authority lies but by mentioning the source of our Constitution as ‘We the people of India’ it announces to the world that the ultimate sovereignty rests with the people of India as a whole. Political sovereignty is the hinge of our polity. Accordingly, it is implied that the constitutional authorities and organs of government derive their power only from the people. Therefore, our political system should ensure the support and approval of the people. Article-51A(c), on the other hand, says that it shall be the duty of every citizen to uphold and protect the sovereignty, unity and integrity of India.

### **1.7.2 Socialism**

The word ‘socialist’ was added to the Preamble by the 42nd Amendment Act of 1976, however, several articles of our Constitution were already there giving credence to the ideal. The fathers of our Constitution had a wider vision of social transformation. Despite all social, economic and political inequality present and inherent in Indian traditional society, our Constitution started a crusade against that order. The Constitution has deliberately imposed on us the ideal of a socialist pattern of society—a kind of Indian model of socialism to suit to our needs and temperament. It stands to end all forms of exploitation in all spheres of our existence. Our Constitution directs the state to ensure a planned and coordinated social advance in all fields while preventing the concentration of wealth and power in a few hands. Our Constitution supports land reforms, promotes the well-being of the working class and advocates for social control of all important natural resources and means of production for the well-being of all sections. To ensure a basic minimum to all has been the crux of many of our public policies today. The Government of India has adopted a mixed economy, introduced five-year plans and has framed many such laws to achieve the value of socialism in a democratic set-up. To achieve the objective of socialism, Part-IV of our Constitution has outlined the principles to be followed.



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**1.7.3 Secularism and *Sarva Dharama Samabhava***

India is home to almost all major religions in the world. To keep the followers of all these religions together, secularism has been found to be a convenient formula. The idea of secularism in Indian context implies that our country is not guided by any religion or any religious considerations. However, our polity is not against religions. It allows all its citizens to profess, preach and practice any religion of their liking. Articles 25 to 28 ensure freedom of religion to all its citizens. The Constitution strictly prohibits any discrimination on the ground of religion. All minority communities are granted the right to conserve their distinctive culture and the right to administer their educational institutions. The Supreme Court in *S.R. Bommai vs Union of India* held that secularism was an integral part of the basic structure of the Constitution. Secularism thus is a value in the sense that it supports to our plural society. It aims at promoting cohesion among different communities living in India.

**1.7.4 Democracy**

India is a democracy. We have adopted parliamentary democracy to ensure a responsible and stable government. As a form of government, it derives its authority from the will of the people. The people elect the rulers of the country and the latter remain accountable to the people. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as ‘One man one vote’. Elections are held periodically to ensure the approval of the people to the governments at different levels. All citizens without any discrimination on the basis of caste, creed, colour, sex, religion or education are allowed freedom of speech, thought and expression and also association. Democracy contributes to stability in the society and it secures peaceful change of rulers. It allows dissent and encourages tolerance. It rules by persuasion, not by coercion. It stands for a constitutional government, rule of law, inalienable rights of



citizens, independence of judiciary, free and fair elections and freedom of press, etc. Therefore, developing a democratic political culture has been an important objective.

### **1.7.5 Republic**

As opposed to a monarchy, our Constitution prefers to remain a republic. The office of the head of the state is elective. This idea strengthens and substantiates democracy that every citizen of India (barring some who are constitutionally disqualified) after attaining a particular age is equally eligible to become the head of the state if he/she is elected as such. Political equality is its chief message. Any sort of hereditary rule is thus regarded as a disvalue in India.

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## **1.8 RULE OF LAW**

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The concept of the rule of law is a fundamental principle that underpins modern democratic societies and legal systems. It refers to the idea that all individuals and institutions, including government officials, are bound by and subject to the law. No one is above the law, and everyone should be treated equally before it. The rule of law ensures that the exercise of power is constrained and guided by established laws and procedures rather than being arbitrary or driven by the whims of those in authority.

The key aspects of the rule of law concern supremacy of law, equality and fairness, predictability, separation of powers, among others.

The law is the supreme authority in society, and all actions of individuals, organizations, and the government must be in accordance with the law. All individuals are equal before the law, and no one should be given preferential treatment or discriminated against based on their social status, wealth, or any other characteristic. The law should be clear, accessible, and predictable, so people can understand their rights and obligations, and plan their conduct accordingly.



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People have the right to a fair and impartial legal process if they are accused of a crime or facing legal proceedings. This includes the right to be heard, to legal representation, and to challenge evidence against them. The rule of law often goes hand in hand with the principle of the separation of powers. It means that the government is divided into different branches (typically legislative, executive, and judicial) that have distinct functions and serve as checks on each other's power.

Government actions and decisions should be transparent, and public officials should be accountable for their actions, ensuring that they can be held responsible for any abuses of power. The rule of law is closely linked to the protection and promotion of human rights, ensuring that individuals' fundamental rights are respected and upheld.

The rule of law is essential for creating a just and stable society where people can live with confidence in the legal system, economic stability, and the protection of their rights and freedoms. It provides the framework within which rights and obligations are defined, disputes are resolved, and the overall functioning of society is maintained. It is considered a crucial element for promoting democracy, protecting individual liberties, and fostering a favourable environment for economic and social development.

**Debate on Extraordinary Laws**

Extraordinary laws have played a crucial role in the management and administration of the Indian government. As their name suggests, these extraordinary laws are legal regulations that are formulated to empower the state in dealing with exceptional emergencies, particularly those related to terrorism. These laws exhibit notable distinctions from regular legislation in both their content and how they are implemented. Over the years, the Indian government has enacted numerous extraordinary laws to address specific circumstances prevalent at different times.



To grasp the intricate details of security concerns in the 21st century, it becomes paramount to underscore the profound impact that the terrorist attacks on the United States in 2001 had. These devastating incidents, namely the destruction of the World Trade Centre and the targeted strike on the Pentagon, served as a wake-up call for nation-states across the globe, compelling them to reevaluate and reconfigure their understanding of security in its entirety. It is widely argued that the heightened and ever-evolving threat posed by terrorism demands a collaborative and synchronised endeavour to fortify the existing security apparatus. However, it is crucial to acknowledge that this perspective, while undoubtedly significant, does not offer a complete and exhaustive explanation. It is essential to subject this viewpoint to perform comprehensive scrutiny, examine its validity considering various contextual factors and acknowledge its potential limitations.

By delving into the specificities of the post-9/11 security landscape, we can gain a deeper comprehension of the multifaceted nature of contemporary security concerns. This entails exploring security's physical and tangible aspects, such as border control and counterterrorism measures, and the increasingly pertinent dimensions of cybersecurity, intelligence sharing, and socio-political resilience. The complexity of security challenges in the 21st century necessitates a holistic and nuanced approach encompassing diverse strategies and frameworks. This includes engaging in international cooperation, leveraging technological advancements, fostering interdisciplinary collaboration, and empowering local communities to actively participate in safeguarding their security.

Countries worldwide increasingly adopt security measures by strengthening anti-terrorism laws and bolstering their military capabilities. In the Indian context, many international organisations and institutions have criticised the Prevention of Terrorism Bill 2000, stating that it could be misused, like the The Terrorist and Disruptive Activities (Prevention) Act (TADA) and Maintenance of Internal Security Act (MISA) acts. Various reports have argued that existing laws were enough to address terrorism and



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highlight how anti-terrorism laws compromised people's fundamental rights, shifted the burden of proof onto the accused, allowed for subjective analysis of legal procedures, and silenced dissenting voices in the political system.

It is imperative to analyse the rationale behind the Indian State's anti-terror and extraordinary law enactment. According to reports such as the Second Administrative Reforms Commission Report (2008), the State argues that these laws are primarily implemented to address the threats posed by terrorism. The Indian State faces numerous challenges to internal security, for which a legal framework is deemed necessary. Moreover, in line with international norms, Security Council Resolutions, and anti-terror laws enacted by other States, the Indian State has formulated its own set of anti-terror rules. Acknowledging the significant loss of soldiers' lives and the impact on citizens and property resulting from terror attacks is crucial.

The Second Administrative Reforms Commission Report (2008) has questioned the constitutional validity of anti-terror laws. The Supreme Court, in its assertion, upheld the fact of such laws, deeming a robust legal framework imperative in countering the looming threats posed by terrorism. The Supreme Court's judgment on the 1987 challenge to the Terrorist and Disruptive Activities (Prevention) Act (TADA) confirmed the law's legitimacy, albeit with a simultaneous plea to the government to provide safeguards against potential misuse. The report extensively examines extraordinary laws enacted before their inception, meticulously scrutinising their provisions, and presenting recommendations. A critical proposal within the report emphasises the indispensability of crafting a comprehensive legal framework to address the multifaceted dimensions of terrorism, thereby warranting its incorporation into the National Security Act of 1980. The report contends that a precise definition of terrorism and terrorist acts should encompass the deliberate use of explosives to cause harm to life and property, assassinations of public officials, acts intended to compromise the security and sovereignty of the Indian State, detentions designed to exert pressure on the government, and any acts facilitating terrorist activities. Additionally, the report posits that



empowering the police with the authority to thoroughly investigate individuals suspected of engaging in terrorist activities while simultaneously tightening the criteria for granting bail would significantly expedite these endeavours. Lastly, the report advocates for rigorous measures to prevent the misuse of anti-terror legislation.

The Indian State has enacted extraordinary laws over time, responding to changing socio-political contexts. Consequently, the provisions within these legislations have experienced modifications. Therefore, examining the evolving patterns present in these extraordinary laws is imperative. They argue that analysing each law should not only be limited to its provisions but should also encompass its political and ideological dimensions, and its discursive practices. Gaining a comprehensive understanding of the extraordinary law necessitates analysing the provisions mentioned in the laws alongside the practices that envelop their implementation.

To conclude, it is essential to emphasise the promulgation of anti-terror laws and their role in supporting the State's counterterrorism efforts. However, it is crucial to acknowledge that these laws offer temporary solutions rather than permanent resolutions. Terrorism, to register dissent against the State, necessitates an understanding of the underlying socio-economic and political grievances. Addressing these issues effectively requires strengthening democratic values globally, engaging in the struggle for State accountability regarding internal security decisions and international actions, and preventing excessive centralisation of power. It is essential to avoid compromising public responsibility by endorsing arbitrary State surveillance. Balancing national security with preserving individual and community rights assumes critical significance. Furthermore, upholding constitutional norms must remain non-negotiable. The extraordinary laws have far-reaching ramifications for individuals' lives, political institutions, the rule of law, and democratic functioning. Additionally, the laws seamlessly assimilate into state practices, embodying dominant political power and ideology configurations.



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**In-Text Questions**

7. How can one say that the Indian Constitution has political sovereignty?
8. What is meant by the rule of law?

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**1.9 FEDERAL REPUBLIC**

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Federalism stands for a union or association of states resulting in the formation of a composite state with a separate and distinct government at the Centre. The government at the Centre and the governments in the States share, on an agreed basis, the totality of governmental power. There is, however, no rigid formula for such sharing of power. Hence, the federal form of government is an elastic form of government depending on the manner in which power is shared between the Centre and the States. The basic objective of federalism—unity in diversity, devolution in authority and decentralisation in administration—is clearly evident in every one of them.

The Government of India Act, 1935, was the first legal document which envisaged the system of federal states under the ‘Crown’ uniting both the British India and the Indian States. But the proposal was never implemented. The Union Powers Committee formed by the Constituent Assembly under the Chairmanship of Pandit Jawaharlal Nehru, recommended a weak Centre since it had to function under the limitations of the Cabinet Mission Plan, though Pandit Nehru himself had always advocated for a great deal of unitary control in federal India. With the passing of the Indian Independence Act and the actual partition of the country, the complexion of the Constituent Assembly changed and the earlier compulsions that called for a federal India with a high degree of autonomy to the states no longer existed. There emerged, particularly in the wake of the events preceding the partition, then, a unanimous demand in the Constituent Assembly for a strong centre.



The Constitution of India seeks and defines India to be a ‘Union of States’ with a federal structure. Although the term ‘federal’ does not appear in the Constitution, it often arose in Constituent Assembly debates. The founding fathers based their logic on pragmatic considerations and wanted the Constitution to be federal if necessary but not necessarily federal. Indian federation, according to experts, approaches most closely to what has been called ‘co-operative federalism’. The Indian Constitution reflects a very complicated idea of a powerful federal union. It vests exclusive powers in terms of legislative initiative and executive controls in the Central Government. Exercising these powers can transform the polity. However, these powers are subject to different extents of federal agreement, with a constitutional device of checks and balances, and parliamentary accountability. Indian federalism gains prominence in terms of differential loadings and wide-ranging arrangements of distribution of power. The Seventh Schedule of the Constitution categorises and distributes competence. However, the States are treated on an egalitarian basis. Articles 370, 371, and 371A-G further modify this generality in order to provide for special arrangements of power distribution between the Central Government and a particular category of States.

### **1.9.1 Features of Indian Federalism**

India is a big country characterised by cultural, regional, linguistic, and geographical diversities. Such a diverse and vast country cannot be administered and ruled from a single centre. The Constitution makers of India opted for the federal form of government.

The Constitution of India displays the following federal features:

- The Constitution of India makes the provision for the organisation of two types of governments—the Union Government and the State Government. The governments at both levels are organised on the basis of the Parliamentary System as per the provisions of the Constitution.



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- The Seventh Schedule of the Constitution makes provision for the division of powers between the Union and the States. It contains the following three lists:
  - (a) The Union List, which has 97 subjects (now 100 subjects) of national importance, and the Union Parliament has the power to enact laws with respect to these subjects.
  - (b) The State List, which contains 66 subjects (now 61 subjects) of local importance, and the State Legislatures have the power to enact laws with respect to these subjects;
  - (c) The Concurrent List, which contains 47 subjects (now 52 subjects) and both the Parliament and State Legislatures can legislate on them. The idea of the Concurrent List is inspired by the Constitution of Australia.
- Unenumerated residuary power vests with the central government.
- As per the requirement of the federal system, the Indian Constitution is a written document. It is a rigid constitution as far as the amendment of federal provisions is concerned.
- The Indian Constitution makes provision for an independent and federal judiciary. The Supreme Court of India acts as a federal court. It has the power to decide the disputes arising either between the Union and the States or between the two or more States under its Original Jurisdiction as mentioned in Article 131 of the Constitution. The Constitution makes various provisions to ensure the independence of judiciary from both, the Executive and the Legislature.

**1.9.2 Centre-State Relations: Separation of Powers**

As per the Constitution, India has dual polity: the Union at the Centre and the states at the periphery. The Union as well as the states have some powers, as



mentioned in the Constitution, which they can exercise in the area assigned to them. The clear-cut division of powers between the Union and the states is one of the salient features of our Constitution. The basic principle of the federation is that the legislative executive and financial authority are divided between the Centre and the states not by any law passed by the Centre, but by the Constitution itself. Part XI and Part XII of the Constitution (Articles 245 to 263) explain the relation between the Union and the states. Part XI discusses the legislative and administrative relations between the Union and the states, while Part XII explains the financial relations between them.

Let us now discuss the legislative, executive, financial, and political relations between the Centre and the states in detail.

### **(I) Legislative Relations**

Chapter I of Part XI of the Constitution deals with legislative relations (distribution of legislative powers between the Union and the states). The Constitution of India follows the Canadian model, which divides various subjects into three lists – the Dominion List, the Provincial List, and the Concurrent List. Further, it vests the residuary powers with the Centre. The Indian Constitution also divides various subjects into three lists – the Union List, the State List, and the Concurrent List.

As already mentioned, the Union List consists of subjects on which the Union Parliament can pass laws. Some of the subjects of the Union Lists are defence, foreign affairs, banking, currency, coinage, citizenship, post, and telegraph. The State List enumerates the subjects on which each State Legislature can legislate, and such laws operate within the territory of the concerned state. It includes subjects like public order and police, local government, public health and sanitation, agriculture, justice, and irrigation. The Union Parliament as well as the State Legislature have the power to legislate over the subjects listed in the Concurrent List. The main subjects in the list include criminal law, criminal procedure, preventive detention, marriage and divorce, and administration of justice.



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The residuary power is mentioned in Article 248 of the Constitution, which is given to the Union Legislature. The Parliament has the power to make laws with respect to matters which are not enumerated in the Concurrent List or the State List.

The Constitution seems to favour the Union in many ways. It is evident from some provisions, such as:

- (i) The Union List consists of subjects which are of national and paramount importance.
- (ii) The Union Laws have primacy over the State Laws with respect to the concurrent subjects.
- (iii) The residuary powers are with the Union Parliament.
- (iv) In certain circumstances, the Union Parliament has the rights to make laws related to the subjects which are given in the State List like:
  - (a) If the Rajya Sabha takes a decision on issues related to national interest
  - (b) During national emergency
  - (c) In case of treaties and international agreements
  - (d) In case of failure of the constitutional machinery in a state
  - (e) For introduction of some state bills with Presidential permission and reservation of certain state bills for Presidential assent
- (v) Superior status is given to the Union Laws in case of conflict between the Union Law and the State Law.
- (vi) The Parliament has the power to establish or abolish the State Legislative Councils.
- (vii) The Parliament has the power to determine or change the boundaries of the state.
- (viii) The Parliament has the power to legislate for the union territories.



## **(II) Administrative (Executive) Relations**

Chapter II of Part XI of the Constitution lays down the administrative relations between the Union and the states. In the sphere of administrative relations as well, the Constitution shows a distinct leaning in favour of the Union. The principal features of administrative relations between the Centre and the states are as follows:

- According to Article 256 of the Constitution, the executive powers of the state should be exercised in such a manner that it does not impede the executive power of the Union.
- If the state does not comply with the directives of the Centre, the latter may, under Article 356, take over the administration of the state (President Rule).
- Under Article 258 (2), the Parliament is given the power to use the state machinery to enforce the Union laws.
- The Central Government can deploy military and para-military forces in a state even against the wishes of the government of that state.
- In case of disputes related to the waters of the inter-state rivers or river valleys, the Parliament has the power to pass judgement (Article 262).
- For coordination between the states, the President is empowered, under Article 263, to constitute a Council to resolve disputes and/or to discuss subjects of common interests between the states, and between the states and the Union.

## **(III) Financial Relations**

The Constitution of India in its Part XII, Chapter I explains the financial relations between the Union and the states. Some of its salient features are as follows:

- The Constitution exclusively assigns certain items of revenues to the Union. Taxes on any item covered in the Union List such as customs



**NOTES**

and export duties, income tax, and excise duties on tobacco and jute are assigned to the Union.

- There are certain items of revenue which fall under the exclusive jurisdiction of the state. These are land revenue, stamp duty except on documents included in the Union List, succession duty, and estate duty in respect of agricultural land and others.
- The revenues from the following items are collected and used by the states:
  - (a) Stamp duties on bills of exchange, cheques, promissory notes, etc.
  - (b) Excise duties on medicinal and toilet preparations which contain alcohol and opium.
- Taxes on railway fares, terminal taxes, and estate duty in respect of property other than agricultural land are collected by the Union but are given to the states.
- Some taxes are levied and collected by the Union but are distributed between the Union and the states. These include items like tax on income other than agricultural income, and excise duties on items other than medicinal and toilet preparation.
- Under Article 275, the Centre needs to provide grants-in-aid to the states.
- The states of the Union cannot raise foreign loans without the consent of the Union.
- Under Article 360, the Centre can declare a financial emergency. After this, the President can suspend the provisions which are related to the division of revenue between the Union and the states. He/she can also suspend grant-in-aid to the states.
- Under Article 280, the President can appoint a Finance Commission which makes recommendations for the distribution of income (from taxes) between the Union and the states.



- The Centre has control over the states due to the system of centralised planning mentioned in the Constitution.

In all three dimensions – Legislative, Administrative, and Financial – the Union-State relations reflect unitarianism as a key component of the Indian Federal System. The working of the federal system during the past shows a tendency towards centralism. This has given rise to a number of conflicts. Thus, it is important to make our system a cooperative federalism.

#### **(IV) Political Relations**

Despite the fact that there is a division of powers between the Centre and the states, the states are dissatisfied because they feel that the balance of powers is heavily in favour of the Centre. They also feel that the Centre uses its powers in such a way that there is no autonomy left to them even in matters mentioned in the State List.

The Union–State relations in India took a new turn after the Fourth General Elections (1967). Until 1967, the Congress party dominated the Centre and the state governments. During this phase, the Union–State conflicts were internal problems of the Congress party and were resolved at the party level only. The post-1967 political scenario saw the emergence of non-Congress governments in the states as well as in the Centre. Now, the internal mechanism of the Congress Party could not resolve the conflicts, which not only came to the surface but also became increasingly intensive.

The major conflict areas between the Union and the states can be broadly classified into three categories of issues:

- (i) The political dimension
- (ii) The administrative dimension
- (iii) The economic and financial dimensions

Let us discuss them in detail.



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**(a) The Political Dimension**

There is a tendency in our country to view politics through the legal mechanism of the Constitution. Thus, political parties are free to suggest amendments to resolve political problems. The constitutional framework is stable while the political context keeps changing. The four aspects of the political dimension of Centre-State relations are as follows:

**1. Dynamics of political parties:** As long as the same political party was ruling over the Centre and the states, only intra-party factors were important in determining the Centre-State relations. However, in an emerging multi-party system, at least a few of the state governments are under parties which are different from the party ruling at the Centre. Therefore, inter-party factors determine the Centre-State relations. In such a case, the state governments can be divided into three types, from the viewpoint of the Central government:

- Identical, i.e., of the same party
- Congenial, i.e., where ideological and/or interest gap is low
- Hostile, i.e., where the party in power at the state level is radically different in its ideological and political orientation

In cases when the state government is identical or congenial, the conflicts can be resolved with the help of some discussions. However, if the state government is hostile, it becomes extremely difficult to resolve issues.

**2. Politics of coalition:** The Indian party system has had considerable experience with coalition governments. If the ruling party at the state level and central level is the same, the relations between state and Central governments are friendly. The Central government may even tolerate the decisions taken by the state government. On the other hand, if the ruling party in the state is different from the party ruling at the Centre, the state government may be considered hostile. In this situation, the Central government would like to use its power to undermine the state government.



- 3. President's Rule (Debate over Article 356):** One of the widely used instruments used by the Centre over the states is the provision for President's Rule under Article 356. This was meant as a 'safety valve' in the political system to prevent an authority vacuum in case of a breakdown of the constitutional machinery in a particular state. However, in practice, this article has been used so frequently that it has become a poison for our political system.

President's Rule can be imposed either on the recommendation of the Governor or if the President deems it necessary. From 1950 to 1989, there were seventy-nine Presidential/Central interventions in the state. The dissolution of nine State Assemblies and proclamation of President's Rule in 1977 and 1980 was a blow to the federal democratic structure of the country.

The use of Article 356 declined in the 1990s. It was in 1997 that for the first time, the President openly asked the Prime Minister and his cabinet to reconsider the proposal for the dismissal of the UP (Uttar Pradesh) state government before signing the proclamation.

- 4. Integrity of the states:** One of the first tests of a federal system is that the federating units have a distinct territorial identity and their integrity is maintained. In this respect, the states in the Indian political system are severely handicapped because the Constitution does not protect their identity and integrity.

Thus, there have been persistent demands for statehood by the union territories and sub-regional groups. Since the Centre alone has the power to create new states, it becomes difficult to maintain good Centre-State relations if the Centre refuses to comply with the demand for statehood.

#### **(b) The Administrative Dimensions**

Though the relations between the Centre and the states are essentially political, its operational aspects can be studied separately under the administrative dimension:



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1. ***The partisan role of the Governor:*** The Governor of a state is appointed by the President on the advice of the Central government for a five-year term but holds his/her office until the pleasure of the President (Article 156).

The role of the Governor has become one of the controversial issues. The main issues of controversy relate to the appointment of the Governor by the Centre, and his/her partisan role in the formation and dismissal of state government at the will of the Centre. The Governorship is now treated as a reward for political loyalists who could not be accommodated in the cabinet. This has reduced the Governor to the level of a mere rubber stamp or an agent of the Centre.

On many occasions, the Governors have dismissed the Chief Ministers when the matter should have been decided by the State Legislature.

Apart from this, the Governors have also been interfering in the daily affairs of the states in the name of discretionary powers. Such interference by the Governors in state governments' affairs and abuse of their powers for partisan reasons has been giving rise to a feeling of insecurity among the states.

2. ***Bureaucracy:*** Bureaucracy is another area of friction between the Central government and the state. The points of issue are impartiality in services and formation of new All India Services. The states criticise the Centre for its discriminatory use of All India Services. The state governments do not have adequate control over these services as far as their developmental responsibilities are concerned. It is being alleged by many state governments that the bureaucrats, appointed by the Centre, do not show loyalty towards the implementation of state government's policies, if the political party at the Centre and the state are hostile to each other.

Another issue is the formation of All India Services and the opposition to such formation on the part of the states. The state opposes



this formation because All India Services encroach upon the autonomy of the states and involve a lot of expenditure because of high salaries of these bureaucrats.

3. **Misuse of mass media by the Centre:** The misuse of mass media for political purposes has also been an area of tension between the Centre and the states. It has been alleged that the media are the 'mouthpiece' of the Union government. However, with the establishment of numerous satellite channels, the scenario has changed to a great extent.
4. **Law and order problem in the states and the role of the Centre:** The maintenance of law and order is primarily a responsibility of the states. They have their own agencies and organisations to achieve this goal. Besides this, there are agencies of the Central government to ensure law and order, such as Central Reserve Police Force (CRPF), Border Security Force (BSF), Central Industrial Security Force (CISF), etc. The maintenance of 'parallel' agencies by the Central government is an 'unusual' feature of the Indian Federal System. The states argue that since public order is the responsibility of the state, thus, setting up of Central police forces is an encroachment on their jurisdiction.
5. **Inter-State disputes:** In India, there are two types of inter-state disputes, viz., inter-state water disputes and inter-state boundary disputes. Examples of inter-state water dispute are the Cauvery water dispute among Karnataka, Kerala, Puducherry and Tamil Nadu; and the Narmada water dispute among Gujarat, Madhya Pradesh, Maharashtra and Rajasthan.

Inter-state boundary disputes represent the unsettled issues of reorganisation of the states. Such disputes still exist between Karnataka and Maharashtra, Punjab and Haryana, and Assam and Nagaland.

The Centre's involvement in such disputes is like that of an intermediary; thus, it gets caught in inter-state cross fires.



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**(c) The Economic and Financial Dimensions**

The financial weakness of the states has been a major area of tension between the Centre and the states. From the state's point of view, the allocation of financial resources between the Centre and the states is faulty. The state's resources in raising the finances are meagre but they have been assigned a wide range of responsibilities of social welfare, education, rural development, etc. However, with the advent of the process of globalisation, the states are now able to attract MNCs (Multi-National Companies) and private investors, and are able to generate funds for themselves. Earlier, the states could not take up any major project on their own. Also, the Centre used to adopt a discriminatory attitude, based on political reasons, in the allocation of grants-in-aid to the states.

**1.9.3 Federal Asymmetries and Accommodation of Diversities**

The multifaceted nature of India's democracy calls for a deep understanding of the historical, cultural, and social dynamics that shape our nation. India's geographical expanse reflects its rich biodiversity and natural beauty, from the majestic Himalayas to the pristine beaches of the southern coast. Our nation's diversity extends beyond its physical landscapes, encompassing many traditions, festivals, and cuisines, each contributing to the vibrant tapestry of Indian culture. India's federal structure in politics acknowledges the need for regional autonomy while maintaining a strong central authority. This arrangement recognises the unique challenges different states face and enables them to address local concerns within a broader national framework. Within this framework, the aspirations and identities of various communities find expression, fostering a sense of belonging and unity amidst diversity.

India's fiscal policies also play a pivotal role in promoting inclusive growth and development. With a focus on reducing economic disparities and uplifting marginalised sections of society, the government endeavours to create an enabling environment for all citizens to thrive. As we commemorate 76 years of Independence, reflecting upon the challenges ahead is crucial.



Ensuring equitable access to education, healthcare, and basic amenities for every citizen remains a pressing priority. Additionally, fostering sustainable development practices and addressing environmental concerns is vital to preserve our natural heritage for future generations.

India's journey towards progress and prosperity requires concerted efforts from all stakeholders. It calls for a collaborative approach transcending political affiliations, religious differences, and social barriers. By upholding the principles enshrined in our Constitution and embracing the diversity that defines our nation, we can build a stronger and more inclusive India that cherishes its past, celebrates its present, and works towards a brighter future for all its citizens.

Asymmetric federalism, a concept rooted in the principles of unequal powers and relationships, forms the basis of political, administrative, and fiscal arrangements within a federation. It encompasses a multifaceted dynamic entity observed from two distinct perspectives: vertical and horizontal asymmetry. Vertical asymmetry, the first facet, pertains to the power differentials and arrangements between the central governing authority and the constituent units of the federation, commonly known as states. This dimension encapsulates the varying degrees of control, autonomy, and decision-making powers allocated to the central government and the individual states. It highlights the intricate interplay between the federal and state-level entities, shaping the nature of governance and policy implementation within the federation.

Asymmetric federalism encompasses horizontal asymmetry, which focuses on the disparities and variations among the constituent states. It recognises that forms within a federation often possess diverse characteristics, such as variations in size, population, economic strength, cultural heritage, and historical background. Consequently, these disparities influence the distribution of powers, resources, and decision-making authority among the states, further shaping the dynamics and governance structures within the federation.



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Acknowledging vertical and horizontal asymmetry, the notion of asymmetric federalism recognises the nuanced nature of federations, accounting for the intricate web of relationships and power dynamics within and between the central authority and constituent units. It acknowledges that federations are not homogenous entities but rather complex systems that navigate the delicate balance between unity and diversity, aiming to accommodate regional differences and maintain a cohesive national identity.

The concept of asymmetrical federalism plays a vital role in recognising and respecting the cultural differences within a country while allowing for self-rule within the framework of shared governance. This approach finds significant relevance in the multicultural and multinational nation of India. In India, asymmetrical federalism operates through *de facto* and *de jure* forms of asymmetry. *De facto* asymmetry is abundant, while *de jure* asymmetry is limited. This arrangement highlights the indispensability of an asymmetrical constitutional set-up to safeguard the rights of communities and minorities in a diverse country like India.

Moreover, such a constitutional framework enables the accommodation of multiple identities that complement each other. Ronald Watts distinguishes between political and constitutional asymmetry, which coexist in India. Political asymmetry is determined by constituent units' territorial and demographic sizes, while constitutional asymmetry involves the extension of legislative and executive powers to these units.

Additionally, the creation of Autonomous District Councils under the Sixth Schedule recognises the socio-cultural, political, and historical rights of Northeast tribes, allowing for self-rule within the framework of shared governance. Furthermore, India's asymmetrical setup has expanded to include Union Territories (UTs), unique federating units established on multiple occasions. The establishment of UTs aligns with the spirit of federal asymmetry. One remarkable example of asymmetrical federalism is the case of



Delhi, where the President of India appoints the Chief Minister based on the recommendation of the Lieutenant Governor (LG). This provision reflects the special status of Delhi as the National Capital Territory (NCT). The concept of asymmetrical federalism in India recognises and embraces the distinctive cultural differences within the country while allowing for self-rule within a shared governance structure. This approach, characterised by *de facto* and *de jure* asymmetry, is crucial in protecting the rights of diverse communities and minorities and accommodating their unique identities.

The provisions enshrined within our Constitution and the intricacies of our administration exemplify the meticulous arrangements that reflect the inherent asymmetrical nature of our nation. It is imperative to remember that the notion and implementation of asymmetrical power-sharing can evoke a sense of unease if not harnessed judiciously. These distinctive features embedded within our Constitution hold a significance that extends far beyond mere marginal or transitory measures. Instead, they permeate many States, pivotal in curbing the secessionist inclinations within our immensely diverse society.

As India progresses, asymmetrical federalism will continue to retain relevance, as it serves as the gateway to fostering cooperative federalism. This approach enables us to accommodate and empower diverse groups, ensuring their participation in the governance of our great nation. By embracing this framework, we strike a harmonious balance between unity and diversity, fostering an environment conducive to the equitable progress of all.

**In-Text Questions**

9. What were the major conflict areas between the Union and the states in 1967?
10. Why is asymmetrical federalism important?



**NOTES**

**1.10 SUMMARY**

- The Constituent Assembly began its first session with 207 members attending on 9th December 1946.
- On 9 December, 1946 Dr. Sachchidananda Sinha was made the pro-term chairman of the constituent assembly.
- The adoption of the famous Motilal Nehru Resolution in 1924 and 1925, on national demand, was a historic event.
- In the all-party conference in Bombay on 19 May 1929, a committee was appointed under the chairmanship of Motilal Nehru. The committee established the principles of the constitution of India.
- The Third Round Table Conference issued a White Paper outlining the British Government's proposal for Constitutional reforms in India.
- The failure of the Simon Commission and the Round Table Conference gave rise to the approval of the Government of India Act, 1935.
- After the outbreak of the Second World War in 1939, the demand for a Constituent Assembly was reiterated in a long statement issued by the Congress Working Committee on 14 September 1939.
- In March 1942, the British Government sent the Cripps Mission to India with a draft declaration which needed to be implemented at the end of the Second World War.
- In 1946, the British Cabinet sent three members, including Cripps to make another serious attempt to solve the problem.
- The Cabinet Mission recommended a basic framework for the Constitution and laid down a detailed procedure to be followed by the constitution-making body.
- With the partition and independence of the country on 14 and 15 August 1947, the Constituent Assembly of India was said to have become free from the restraints of the Cabinet Mission Plan.



- The Constituent Assembly was first held on 9 December 1946.
- After India became independent, the Constituent Assembly became the Parliament of India. The Constituent Assembly was indirectly elected by the Provincial Legislative Assembly members (Lower House only), as per the scheme of the Cabinet Delegations.
- There were twenty-two major committees formed by the Constituent Assembly to handle different tasks of the making of the Constitution.
- The final form of the Constitution, as it was originally passed in 1949, had 395 Articles and eight Schedules.
- The members of the Assembly drafted the Constitution that expressed the aspirations of the nation. They skillfully selected and modified the provisions that they borrowed from other Constitutions, helped by the experts.
- The Preamble to the Indian Constitution was formulated in the light of the ‘Objectives Resolution’ which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947.
- By declaring us as a sovereign entity, the Preamble emphasises complete political freedom. It implies that our state is internally powerful and externally free.
- The word ‘socialist’ was added to the Preamble by the 42nd Amendment Act of 1976, however, several articles of our Constitution were already there giving credence to the ideal.
- Articles 25 to 28 ensure freedom of religion to all its citizens. The Constitution strictly prohibits any discrimination on the ground of religion.
- India is a democracy. We have adopted parliamentary democracy to ensure a responsible and stable government. As a form of government, it derives its authority from the will of the people.
- As opposed to a monarchy, our Constitution prefers to remain a republic. The office of the head of the state is elective.



**NOTES**

- The concept of the rule of law is a fundamental principle that underpins modern democratic societies and legal systems. It refers to the idea that all individuals and institutions, including government officials, are bound by and subject to the law.
- Countries worldwide increasingly adopt security measures by strengthening anti-terrorism laws and bolstering their military capabilities.
- Federalism stands for a union or association of states resulting in the formation of a composite state with a separate and distinct government at the Centre.
- The Government of India Act, 1935, was the first legal document which envisaged the system of federal states under the ‘Crown’ uniting both the British India and the Indian States.
- India is a big country characterised by cultural, regional, linguistic, and geographical diversities. Such a diverse and vast country cannot be administered and ruled from a single centre.
- As per the Constitution, India has dual polity: the Union at the Centre and the states at the periphery.
- Chapter I of Part XI of the Constitution deals with legislative relations (distribution of legislative powers between the Union and the states). The Constitution of India follows the Canadian model, which divides various subjects into three lists – the Dominion List, the Provincial List, and the Concurrent List.
- Chapter II of Part XI of the Constitution lays down the administrative relations between the Union and the states. In the sphere of administrative relations as well, the Constitution shows a distinct leaning in favour of the Union.
- The Constitution of India in its Part XII, Chapter I explains the financial relations between the Union and the states.
- Despite the fact that there is a division of powers between the Centre and the states, the states are dissatisfied because they feel that the balance of powers is heavily in favour of the Centre.



- The multifaceted nature of India’s democracy calls for a deep understanding of the historical, cultural, and social dynamics that shape our nation.
- India’s fiscal policies also play a pivotal role in promoting inclusive growth and development. With a focus on reducing economic disparities and uplifting marginalised sections of society, the government endeavours to create an enabling environment for all citizens to thrive.
- India’s journey towards progress and prosperity requires concerted efforts from all stakeholders.
- Acknowledging vertical and horizontal asymmetry, the notion of asymmetric federalism recognises the nuanced nature of federations, accounting for the intricate web of relationships and power dynamics within and between the central authority and constituent units.
- The concept of asymmetrical federalism plays a vital role in recognising and respecting the cultural differences within a country while allowing for self-rule within the framework of shared governance.

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## 1.11 GLOSSARY

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- **Federal System:** It is a system of government in which the same territory is controlled by two levels of government.
- **Residuary Power:** It is a power retained by a governmental authority after certain powers have been delegated to other authorities. These are special powers entrusted by the Constitution, to the Union Government.
- **Political Autonomy:** It exists when a group of persons or a territory are self-governing, thus not under the control of a higher level of government.
- **Adult Suffrage:** It defines the right to vote which is given to all people irrespective of their caste, creed, religion, sex, or economic status, etc.



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**1.12 ANSWERS TO IN-TEXT QUESTIONS**

1. In all-party conference in Bombay on 19 May 1929, a committee was appointed under the chairmanship of Motilal Nehru. The committee established the principles of the Constitution of India. The report of the committee, which was submitted on 10 August 1928, later became famous as the Nehru Report. It was the first attempt by Indians to frame the Constitution for their country.
2. The main proposals of the Cripps Mission were: (i) the Constitution of India was to be framed by an elected Constituent Assembly of the Indian people; (ii) the Constitution should give dominion status to India, i.e., equal partnership of the British Commonwealth of Nations; (iii) there should be an Indian union, comprising all the provinces and Indian states; and (iv) any province or Indian state, which was not prepared to accept the Constitution would be free to retain its constitutional position existing at that time.
3. The Constitution is federal in nature but the term 'Federation' has not been used in our Constitution. India has been described as a Union of States according to Article 1 of the Constitution. There are twenty-eight states in the union, each one with a separate Executive, Legislature and Judiciary. Powers have been divided between the Union Government on the one hand and the States on the other by the Constitution itself. The Constitution is sovereign and there is provision for judicial review.
4. The term 'Secular' did not occur in any part of the original Constitution. It was incorporated in the preamble by the Forty-second Constitutional Amendment in 1976.
5. The Preamble to the Indian Constitution was formulated in the light of the 'Objectives Resolution' which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947.



6. Article 368 essentially provides for two types of amendments to the Indian Constitution, that is, by a special parliamentary majority as well as through ratification by half of the Indian states through simple majority.
7. The Constitution does not specify where the sovereign authority lies but by mentioning the source of our Constitution as 'We the people of India' it announces to the world that the ultimate sovereignty rests with the people of India as a whole. Thus, political sovereignty is the hinge of Indian polity.
8. The concept of the rule of law is a fundamental principle that underpins modern democratic societies and legal systems. It refers to the idea that all individuals and institutions, including government officials, are bound by and subject to the law.
9. The major conflict areas between the Union and the states can be broadly classified into three categories of issues:
  - (i) The political dimension
  - (ii) The administrative dimension
  - (iii) The economic and financial dimensions
10. The concept of asymmetrical federalism plays a vital role in recognising and respecting the cultural differences within a country while allowing for self-rule within the framework of shared governance. This arrangement highlights the indispensability of an asymmetrical constitutional set-up to safeguard the rights of communities and minorities in a diverse country like India.

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### **1.13 SELF-ASSESSMENT QUESTIONS**

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1. How was the Constituent Assembly formed?
2. Why do the state and the centre involve in issues due to constitutional rights?



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3. What are the salient features of the Indian Constitution?
4. Discuss the procedure of amendments in the Indian Constitution.
5. Explain in detail the concepts of sovereignty and socialism.
6. Describe the features and issues in Indian Federalism.

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## **UNIT 2**

# **CONSTITUTIONAL VALUES**

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### **Structure**

- 2.1 Learning Objectives
- 2.2 Introduction
- 2.3 Values of the Constitution
  - 2.3.1 Justice: Social, Political and Economic
  - 2.3.2 Liberty: Thought, Expression, Belief, Faith and Worship
  - 2.3.3 Equality: Equality before Law and Equal Application of Law
  - 2.3.4 Fraternity: Dignity, Unity and Integrity
- 2.4 Fundamental Rights
  - 2.4.1 Right to Equality (Articles 14–18)
  - 2.4.2 Right to Freedom (Articles 19–22)
  - 2.4.3 Right against Exploitation (Articles 23 and 24)
  - 2.4.4 Right to Freedom of Religion (Articles 25–28)
  - 2.4.5 Cultural and Educational Rights (Articles 29–30)
  - 2.4.6 Right to Constitutional Remedies (Articles 32-35)
- 2.5 Directive Principles of State Policy
  - 2.5.1 Relationship between Fundamental Rights and Directive Principles
- 2.6 Summary
- 2.7 Glossary
- 2.8 Answers to In-Text Questions
- 2.9 Self-Assessment Questions
- 2.10 References/Suggested Readings



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## **2.1 LEARNING OBJECTIVES**

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After reading this unit, students should be able to:

- Understand the core constitutional values such as justice, liberty, equality, and fraternity
- Discuss the different types of fundamental rights given to the people
- Explain the directive principles of state policy

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## **2.2 INTRODUCTION**

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The Indian Constitution, hailed as a beacon of democracy and social justice, is founded upon the cardinal principles of justice, liberty, equality, and fraternity. Enshrined in its preamble, these values serve as the guiding lights illuminating the path towards a fair, free, and harmonious society. Justice, both social and economic, forms the cornerstone of this constitutional edifice, ensuring that every individual enjoys equitable access to rights, opportunities, and resources. Liberty, cherished as a fundamental right, empowers citizens to exercise their freedoms without undue interference, fostering a culture of individual autonomy and self-expression. Equality, in its myriad dimensions, lies at the heart of India's constitutional ethos, guaranteeing equal treatment and protection under the law regardless of caste, creed, gender, or socio-economic status and fraternity, the spirit of brotherhood and solidarity, binds the diverse fabric of Indian society, promoting mutual respect, empathy, and unity in diversity. Together, these principles embody the soul of the Indian Constitution, guiding the nation towards a future where justice, liberty, equality, and fraternity are not mere ideals but lived realities for all its citizens.

In this unit, constitutional values, fundamental rights, and directive principle of state policy are discussed. These values are the fundamental principles and ideals enshrined in a country's Constitution that shape its legal and political framework. These values serve as the foundation upon which



laws are made, institutions are established, and governance is conducted. Constitutional values are meant to guide the behaviour of individuals, governments, and institutions, ensuring that they uphold the rights and dignity of citizens while promoting the overall welfare of society. The topics discussed in the unit often reflect the historical, cultural, and social contexts of a nation and are essential for maintaining the legitimacy, stability, and progress of a constitutional democracy.

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## **2.3 VALUES OF THE CONSTITUTION**

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The values expressed in the Preamble to the Indian Constitution include sovereignty, socialism, secularism, democracy, the republican character of the Indian state, justice, liberty, equality, fraternity, and human dignity, unity, and integrity of the nation. The concepts of sovereignty, socialism, secularism, democracy, the republican character of the Indian State have already been discussed in Unit 1. Let us discuss the remaining constitutional values in the following section:

### **2.3.1 Justice: Social, Political and Economic**

Justice is called a total value. The fathers of our Constitution knew that political freedom would not automatically solve the socio-economic problems which have been deep-rooted. Therefore, they stressed that the positive constructive aspect of political freedom has to be instrumental in the creation of a new social order, based on the doctrine of socio-economic justice. The message of socio-economic justice mentioned in the Preamble to our Constitution has been translated into several articles enshrined in part-III and part- IV of the Constitution. A number of practical measures have been taken over the years to create more favourable social conditions for the millions of downtrodden. These include several developmental policies to provide safeguards to minorities, backward, depressed and tribal people. Our Constitution abolishes untouchability; prohibits exploitation of women, children, and weak, and advocates for the reservation to raise the standard of the people oppressed



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over ages. Whenever our government undertakes any developmental project it always adds a human face to it. Therefore, this ideal of a just and egalitarian society remains as one of the foremost objectives.

**2.3.2 Liberty: Thought, Expression, Belief, Faith and Worship**

The blessings of freedom have been preserved and ensured to our citizens through a set of fundamental rights. It was well understood by the fathers of our Constitution that the ideal of democracy was unattainable without the presence of certain minimal rights which are essential for a free and civilized existence. Therefore, the Preamble mentions these essential individual rights such as freedom of thought, expression, belief, faith, and worship which are assured to every member of the community against all the authorities of States by Part-III of the Constitution. There are, however, less number of success stories. Unless all dissenting voice is heard and tolerated and their problems are addressed, so liberty will be a distant dream.

**2.3.3 Equality: Equality before Law and Equal Application of Law**

Every citizen of India is entitled to equality before law and equal protection of law. As a human being everybody has a dignified self. To ensure its full enjoyment inequality in all forms present in our social structure has been prohibited. Our Constitution assures equality of status and opportunity to every citizen for his development. Political equality though is given in terms of vote but it is not found in all spheres of politics and power. 'Equality before law' in order to be effective requires some economic and educational base or grounding. Equality substantiates democracy and justice. It is, therefore, held as an important value.

**2.3.4 Fraternity: Dignity, Unity and Integrity**

Fraternity stands for the spirit of common brotherhood. In the absence of that, a plural society like India stands divided. Therefore, to give meaning



to all ideals like justice, liberty, and equality, our Constitution places ample stress on fraternity. Democracy has been given the responsibility to generate this spirit of brotherhood amongst all sections of people. This has been a foremost objective to achieve in a country composed of so many races, religions, languages, and cultures. Article 51A (e) therefore, declares it as a duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities. Article 51A (f) further asks each citizen to value and preserve the rich heritage of our composite culture. However, Justice D.D. Basu believes that, ‘Fraternity will be achieved not only by abolishing untouchability amongst the different sects of the same community but by abolishing all communal or sectional or even local or provincial anti-social feelings which stand in the way of unity of India.’

### **Dignity of the Individual**

Fraternity and dignity of individuals have a close link. Fraternity is only achievable when the dignity of the individual is secured and promoted. Therefore, the founding fathers of our Constitution attached supreme importance to it. Our Constitution therefore directs the state through the Directives enshrined in the Part-IV of our Constitution to ensure the development of the quality of life to all sections of people. Our Constitution acknowledges that all citizens, men and women equally, have the right to an adequate means of livelihood (Art. 39 a) and just and humane conditions of work (Art. 42). Article 17 has abolished the practice of untouchability by declaring it as a punishable offence. The Constitution directs the state to take steps to put an end to exploitation and poverty.

### **Unity and Integrity of the Nation**

To maintain the independence of the country intact and enduring, unity and integrity of the nation is very essential. Therefore, the stress has been given to the ideal of fraternity which would foster unity amongst the inhabitants. Without a spirit of brotherhood amongst the people the ideals of unity and



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integration of people and nation seem unattainable. Our Constitution expects from all the citizens of India to uphold and protect the unity and integrity of India as a matter of duty.

**In-Text Questions**

1. Why did the fathers of the Constitution of India introduce socio-economic justice?
2. What is the importance of fraternity in the Constitution of India?

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**2.4 FUNDAMENTAL RIGHTS**

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Laski had rightly remarked that every state is known by the rights that it maintains. The Constitution of India, assuring the dignity of the individual, provided for the deepest meaning and essence and for the greatest motivation to incorporate ‘fundamental rights’. As Granville Austin observed:

The fundamental rights, therefore, were to foster the social revolution by creating a society egalitarian to the extent that all citizens were to be equally free from coercion or restriction by the state or by society privately. Liberty was no longer to be the privilege of the few.

The inclusion of a chapter on fundamental rights in the Constitution was symbolic of the great aspirations of the Indian people. In fact, it is these rights that offer the main justification for the existence of a state. The demand for a Charter of Rights in the Indian Constitution had its deep-seated roots in the Indian National Movement. It was most implicit in the formation of the Indian National Congress in 1885 that aimed at ensuring the same rights and privileges for the India that the British enjoyed in their own country. However, the first explicit and systematic demand for fundamental rights appeared in the Constitution of India Bill, 1895. This bill was also known as the Swaraj Bill of 1895. A series of Congress resolutions that was adopted between 1917 and 1919 repeated the demands and claims for civil rights and equity



of status. Following this, the drafting of seven fundamental rights under the Commonwealth of India Bill, 1925 took place.

The Congress also passed a resolution in Madras in 1927 that declared that the basis of the future the Constitution of India must be a declaration of fundamental rights. This demand was further reiterated in the Nehru Report of 1928. In March 1931, Congress once again adopted a resolution on fundamental rights and economic and social changes. However, the Simon Commission had considered the question but rejected it. The Government of India Act, 1935 did not contain any document pertaining to the declaration of rights. The next major document on rights was the Sapru Report of 1945. On the side of the British, the various British Constitutional experts like K.H. Wheare, Dicey, Jennings and even Laski did not favour the idea. It was only the Cabinet Mission Plan that conceded to the Indian demand for a Bill of Rights for the first time. The inclusion of rights in the Constitution vested on the following three major reasons:

- (a) To keep a check on the arbitrary action of the executive
- (b) To reach the desired goal of socio-economic justice
- (c) To ensure security to minority groups in India

The final shape to the fundamental rights was given by the Advisory Committee for reporting on minorities, fundamental rights, and the tribal and excluded areas, under the chairmanship of Sardar Patel. The Constituent Assembly accepted and adopted to make it Part III of the Constitution. There are other rights as well that are important and even justifiable, for example, the Right to Vote under Article 325. The justification goes that the rights in Part III are listed as follows:

- (a) More in consonance with the natural rights
- (b) Gifts of the state
- (c) Gifts of the Constituent Assembly



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The Constitution of India contained seven fundamental rights originally. But the Right to Property was revoked in 1978 by the Forty-Fourth Constitutional Amendment and made a legal right under Article 300A Bill. These fundamental rights constitute the soul of the Constitution and thereby provide it a dimension of permanence. These rights enjoy an esteemed position as all legislations have to conform to the provisions of Part III of the Constitution. Not only this, its remarkable feature is that these rights encompass all those rights which human ingenuity has found to be essential for the development and growth of human beings.

The salient features of the fundamental rights are:

- Fundamental rights are an integral part of the Constitution and hence cannot be altered or taken away by ordinary legislation. Any law passed by any legislature in the country would be declared null and void to the extent it is derogatory to the rights guaranteed by the Constitution.
- The chapter on fundamental rights in the Constitution is the most comprehensive and detailed one. It not only enumerates the fundamental rights guaranteed to the Indian citizens, but also provides comprehensive details of each right.
- Fundamental rights as embodied in our Constitution can be divided into two broad categories. The first category include those which impose restrictions of negative character on the state without conferring special titles on the citizens. There are positive rights, which confer privileges on the people, e.g., Article 18 desires the State not to confer any special titles on the citizens. Similarly, Article 17 abolishes untouchability. These can be easily categorised in the former category. Right to liberty, equality, or freedom to express, or worship come under the second category.
- As being justifiable, if any of these rights are violated, the affected individual is entitled to move the court for the protection and enforcement of his rights. The Supreme Court may declare a law passed by the Parliament or a State Legislature in India or the orders issued



by any executive authority as null and void, if these are found to be inconsistent with the rights.

- The Indian Constitution does not formulate fundamental rights in absolute terms. Every right is permitted under certain limitations; and reasonable restrictions can be imposed at any time in the larger interests of the community. In some cases, restrictions have been imposed by the Constitution itself. Article 19, for example, guarantees to all citizens, freedom of speech and expression.
- During the operation of an Emergency, the President may suspend all or any of the fundamental rights and may also suspend the right of the people to move the High Courts and the Supreme Court for the enforcement of the fundamental rights. When a National Emergency is declared under Article 352 on account of war or external aggression, fundamental right to freedom guaranteed under Article 19 stands automatically suspended under Article 358. The President is also empowered under Article 359 to suspend, by order, the enforcement of other fundamental rights also, during the period of an Emergency.
- Some of these fundamental rights are only guaranteed to the citizens of India, while the rights relating to the protection of life, freedom or religion, and right against exploitation are guaranteed to every person whether he/she is a citizen or an alien to the country. This means that our Constitution draws a distinction between citizens and aliens in the matter of enjoyment of fundamental rights.
- The chapter on fundamental rights is not based on the theory of natural or unenumerated rights. The Indian Courts cannot enquire into any fundamental right that is not enumerated in the Constitution.
- The fundamental rights can be amended but they cannot be abrogated because that will violate the basic structure of the Constitution.
- They expressly seek to strike a balance between a written guarantee of individual rights and the collective interests of the community.



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The Constitution classifies fundamental rights into six categories:

- Right to Equality (Articles 14–18)
- Right to Freedom (Articles 19–22)
- Right against Exploitation (Articles 25–28)
- Right to Freedom of Religion (Articles 25–28)
- Cultural and Educational rights (Articles 29–30)
- Right to Constitutional Remedies (Article 32)

**2.4.1 Right to Equality (Articles 14–18)**

Articles 14 to 18 are discussed as follows:

**(i) Article 14**

Article 14 declares that the state shall not deny any person equality before the law or the equal protection of laws within the territory of India. As interpreted by the courts, it means that though the state shall not deny to any person equality before law or the equal protection of law, it shall have the right to classify citizens, provided that such a classification is rational and is related to the object sought to be achieved by the law.

**Equality before law:** Equality before law does not mean an absolute equality of men which is physically impossible. It means the absence of special privileges on grounds of birth, creed or the like in favour of any individual. It also states that individuals are equally subjected to the ordinary laws of the land.

**Equal protection of laws:** This clause has been taken verbatim from the XIV amendment to the American Constitution. Equal protection means the right to equal treatment in similar circumstances both with regard to the legal privileges and liabilities. In other words, there should be no discrimination between one person and another, if their position is the same with regard to the subject matter of legislation. The principle of equal protection does not



mean that every law must have a universal application for all persons, who are not by nature, circumstance or attainments (knowledge, virtue or money) in the same position as others. Varying needs of different classes or persons require separate treatment and a law enacted with this object in view is not considered to be a violation of equal protection. The Constitution, however, does not stand for absolute equality. The state may classify persons for the purpose of legislation. But this classification should be on reasonable grounds. Equal protection has reference to the persons who have the same nature, attainments, qualifications or circumstances. It means that the state is debarred from discriminating between or amongst the same class of persons in so far as special protection, privileges or liabilities are concerned. Thus, equal protection does not require that every law must be all-embracing, all-inclusive and universally applicable.

**(ii) Prohibition of Discrimination (Article 15)**

Article 15(1) prohibits discrimination on certain grounds. It declares, ‘The state shall not discriminate against any citizen on ground of religion, race, caste, sex, place of birth or any of them.’ This discrimination is prohibited with regard to ‘(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public’. Article 15 has, however, notable exceptions in its application. The first of these exceptions permits the state to make special provisions for the benefit of women and children. The second allows the state to make any special provision for the advancement of any socially and educationally backward class of citizens or for scheduled castes and scheduled tribes. The special treatment meted out to women and children is in the larger and long-term interest of the community itself. The second exception was not in the original Constitution, but was later on added to it as a result of the First Amendment of the Constitution in 1951. While freedom contained in Article 14 is available to all persons, that in Article 15 is available only to the citizens and, therefore, it cannot be invoked by non-citizens.



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Article 15(2) proclaims that no citizen shall, on grounds only of religion, race, caste, sex and place of birth, be subject to any disability, liability, restriction or condition with regard to:

- Access to shops, public restaurants, hotels and places of public entertainment
- The use of wells, tanks, bathing ghats, roads and places of public resort, maintained wholly or partly out of state funds or dedicated to the use of the general public

The prohibition in this clause is levelled not only against the state but also against private persons.

Article 15(3) provides that the state shall be free to make any special provision for women and children. This sub-article is in the nature of an exception in favour of women and children. Thus, the provision for free education for children up to a certain age or the provision of special maternity leave for women workers is not discrimination. However, discrimination in favour of women in respect of political rights is not justified, as women are not regarded as a backward class in comparison to men for special political representation.

Article 15(4) allows the state to make special provisions for the advancement of any socially and educationally backward classes of citizens, including the scheduled castes and the scheduled tribes. The state is, therefore, free to reserve seats for them in the legislature and the services. This Article only allows the state to make special provisions for these classes. Inserted under the 93rd Constitutional Amendment Act, this clause conferred on the state the power to make any special provision by law for the advancement of any socially and educationally backward class or for the scheduled castes or the scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions.



**(iii) Equality of Opportunity (Article 16)**

Article 16(1) reads: ‘There shall be equality of opportunity for all citizens in matters relating to employment to any office under the state.’ It confers on every citizen, a right to equality of economic opportunity, and subsequently provides that no citizen shall be discriminated against in this respect on grounds only of religion, race, caste, descent, place of birth, or any of them. However, equality of opportunity is only between equals, i.e. between persons who are either seeking the same employment or have obtained the same employment. In other words, equality means equality between members of the same class or employees, and not between members of different classes.

Article 16(2) reads: ‘No citizen shall, on grounds only of religion, race, caste, sex, descent, place or birth, residence or any one of them be ineligible for or discriminated against in respect of any employment or office under the state.’

Article 16(3) says that the President is competent to allow states to make residency as a necessary qualification in certain services for ensuring efficiently of work.

Article 16(4) allows the state to reserve appointments in favour of a backward class of citizens which in its opinion is not adequately represented in the services under the state. The Supreme Court had held that such reservation should generally be less than 50 per cent of the total number of seats in a particular service. Over and above the minimum number of reserved seats members of backward classes are free to compete with others and be appointed to non-reserved seats, otherwise, they are eligible on merit.

Article 16(5) allows the state to provide that in case of appointment to religious offices, or offices in religious institutions, the candidates shall possess such additional qualifications or be members of that religious institution. This is an exception to the general rule that the state shall not discriminate on the ground of religion in providing equal economic opportunities to the citizens.



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Although Article 16 guarantees equality of opportunity in matters of public employment for all citizens and is expected to provide a barricade against considerations of caste, community and religion, the result so far has been far from satisfactory.

**(iv) Social Equality by Abolition of Untouchability (Article 17)**

The complete abolition of untouchability was one of the items in Mahatma Gandhi's programme for social reform. The present Article adopts the Gandhian ideal without any qualification in abolishing untouchability and forbidding its practice. It also declares that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

The practice of untouchability is a denial of human equality in an acute form. In pursuance of Article 17, the Parliament enacted the Untouchability Offences Act, 1955, which was later amended in 1976. It prescribes punishment for the practice of untouchability, in any form, up to a fine of Rs. 500 or an imprisonment of 6 months or both, depending upon the seriousness of the crime.

**(v) Social Equality by Abolition of Titles (Article 18)**

Article 18 is a radical application of the principle of equality it seeks to prevent the power of the state to confer titles from being abused or misused for corrupting the public life, by creating unnecessary class divisions in the society. The object of the Article is to prevent the growth of any nobility in India. The creation of privileged classes is contrary to the equality of status promised to all citizens by the Preamble to the Constitution.

Article 18(1) declares: 'No title, not being a military or academic distinction shall be conferred by the state'. It means that no authority in India is competent to confer any title on any person, excepting the academic title, or military titles of General, Major, or Captain. Article 18(2) prohibits the citizens of India from receiving any title from any foreign state. This is an absolute



bar. On the other hand, Article 18(3) prohibits the citizens from accepting any title from any foreign state without the consent of the President of India, if and so long they are holding any office of profit or trust under the state and, Article 18(4) prohibits both the citizens and aliens, who are holding any office of profit or trust under the state from accepting any present, emolument or office of any kind, from or under any foreign State.

Article 18, however, does not prohibit institutions other than the state from conferring titles of honour by way of honouring their leaders or men of merit.

#### **2.4.2 Right to Freedom (Articles 19–22)**

Article 19 to 22 are discussed as follows:

##### **(i) Article 19**

Article 19 of the Constitution guarantees seven civil freedoms to the citizens as a matter of their rights. Included in Clause 1 of Article 19, these freedoms are:

- Freedom of speech and expression
- Right to assemble peacefully and without arms
- Right to form associations or unions
- Right to move freely throughout the territory of India
- Right to reside and settle in any part of the territory of India
- Right to practice any profession, or to carry on any occupation, trade or business

##### **Freedom of Speech and Expression**

The safeguarding of the freedom of speech and expression is essential to allow men to speak as they think on matters vital to them, and also to expose falsehood. Freedoms of speech and expression lie at the foundation



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of all democratic organisations, for without political discussion, no political education is possible.

Freedom of expression in this clause means the right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or any other manner addressed to the eyes or ears. It, thus, includes not only the freedom of the press but also the expression of one's ideas in any other form.

Freedom of speech and expression also includes the freedom not to speak. Thus, the freedom to remain silent is included in this freedom. However, an individual is not free from the obligation of giving evidence in the judicial proceedings subject to Constitutional and statutory provisions.

As amended by the First and the Sixteenth Amendment Acts, Clause 2 of Article 19(1)(a) entitles the state to impose restrictions on any one or more of the following grounds:

- Sovereignty and integrity of India
- Security of the state
- Friendly relations with foreign states
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

**Right of Peaceful Unarmed Assembly**

Article 19 (1)(b) guarantees to every citizen the right to assemble peaceably and without arms. This right is subject to the following limitations:

- Assembly must be peaceful.
- Assembly must be unarmed.
- One must not violate public order.



### **Freedom of Association and Unions [Articles 19 (1) and (4)]**

Article 19(1)(c) guarantees all citizens the right to form associations and unions, the formation of which is vital to democracy. If free discussion is essential to democracy, no less essential is the freedom to form political parties to discuss questions of public importance. They are essential as much as they present to the government alternative solutions to political problems. Freedom of association is necessary not only for the political purpose but also for the maintenance and enjoyment of the other rights conferred by the Constitution.

In short, freedom of association includes the right to form an association for any lawful purpose. It also includes the right to form trade union with the object of negotiating better conditions of service for the employees.

Clause 4 of Article 19 empowers the state to make reasonable restrictions upon this right on grounds only of:

- Sovereignty and integrity of India
- Public order
- Morality

### **Freedom of Movement and Residence**

Articles 19(1)(d) and (e) guarantee all citizens the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. These freedoms are aimed at the removal of all hindrances in the enjoyment of these rights.

The freedom of movement of a citizen has three aspects:

- Freedom to move from any part of his country to any other part
- Freedom to move out of his country
- Freedom to return to his country from abroad

The second of these provisions is not guaranteed by our Constitution as a fundamental right and has been left to be determined by Parliament as per law.



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Freedom of movement and residence is subject to restrictions only on the following grounds:

- In the interest of any scheduled tribes
- In the interest of the general public, i.e. public order morality and health

**Freedom of Profession**

Article 19(1)(f) guarantees to all citizens right to practice any profession or to carry on any occupation, trade or business. The freedom of profession, trade or business means that every citizen has the right to choose his own employment, or take up any trade, subject only to the limitations mentioned in Clause (6).

The right is subject to reasonable restrictions, which may be imposed by the state in the interest of general public. The state may prescribe professional or technical qualifications necessary for carrying on any business, trade, or occupation. It also has the right itself, or through a corporation, to carry on any occupation, trade or business to the complete or partial exclusion or private citizens.

**(ii) Protection in Criminal Convictions (Article 20)**

Article 20 (1) declares that ‘a person cannot be convicted for an offence that was not a violation of law in force at the time of the commission of the act., nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.’ Clause 2 declares: ‘No person shall be prosecuted and punished for the same offence more than once,’ and Clause 3 says that ‘no person accused of any offence shall be compelled to be a witness against himself.’

**(iii) Right to Life and Personal Liberty (Article 21)**

Article 21 says that no person shall be deprived of his life or personal liberty, except according to procedure established by law. The object of this Article is to serve as a restraint upon the executive, so that it may not proceed against the



life or personal liberty of the individual, except under the authority of some law and in conformity with the procedure laid down therein. This Article can be invoked only if a person is detained by or under the authority of the state. Violation of the right to personal liberty is not enforceable when it is violated by a private individual, and then the remedy lies in the Constitutional law.

Furthermore, the Supreme Court on various occasions ruled that the expression 'life' in Article 21 does not connote merely physical or animal existence, but includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life.

### **Right to Information**

As interpreted by the Supreme Court, the right to information flows from Article 19(1)(a) of the Constitution. Concerned Bill, however, was introduced in the Parliament as Freedom of Information Bill, 2002 which along with certain restrictions made it mandatory for the government to provide information pertaining to the public sphere. This right of information was further illustrated by the Supreme Court, which held that 'a voter has a fundamental right to know the antecedents of a candidate'. Accordingly, the Supreme Court struck down some parts of the Representation of People (Amendment) Act, 2002 by making a clear distinction between the Constitutional right of a voter and his rights under general laws. The Court declared that a voter's fundamental right to know the antecedents of a candidate is independent of statutory right under election law.

### **Right to Education (Article 21(a))**

Under the Eighty-Sixth Amendment Act 2002, the right to Education was provided. For this purpose, a new Article in Part III was inserted and two Articles in Part IV were amended. The newly inserted Article 21(a) declared that 'The state shall provide free compulsory education to all children of the age of 6–14 years in such manner as the state may, by law, determine.'



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**(iv) Protection against Arrest and Detention (Article 22)**

Article 22 has two parts: Part I consists of Clauses 1 and 2, and deals with the rights of persons arrested under the ordinary criminal law. Part II consists of Clauses 3–7 and deals with the rights of persons who are detained under the law of preventive detention.

Clauses 1 and 2 of this Article recognise the following rights of the persons arrested under ordinary criminal law:

- The arrested person shall, as soon as possible, be informed of the grounds of his arrest. The arrested person will be in a position to make an application to the appropriate court for bail, or move to the High Court, for the grant of the writ of habeas corpus.
- The second protection granted by Clause 1 is that the arrested person shall be given the opportunity of consulting and of being defended by the legal practitioner of his choice. This clause confers only the right to engage a lawyer. It does not guarantee the right to be supplied with a lawyer, free of charge, nor does it guarantee the right to engage a lawyer who has been disqualified to practice under the law.
- Clause 2 declares that the arrested person shall be produced before the nearest magistrate within 24 hours of his arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate.

**Preventive Detention**

Clause 3 of Article 22 constitutes an exception to Clauses 1 and 2. The result is that enemy aliens (i.e., foreigners belonging to the countries which are the enemies of the state) and other persons who are detained under the law of preventive detention have neither the right to consult nor to be defended by a legal practitioner.



Clause 4 requires that a person may be detained under the Preventive Detention Act for 3 months. If a person is to be detained for more than 3 months, it can be only in the following cases:

- Where the opinion of an Advisory Board, constituted for the purpose has been obtained within 10 weeks from the date of detention
- Where the person is detained under law made by the Parliament for this Clause 5 considers two things, namely:
  - o That the detainee should be supplied with the grounds of the order of detention.
  - o That the detainee should be provided with the opportunity of making representation against that order to the detaining authority for the consideration of the Advisory Board.

Clause 6 declares that the detainee cannot insist on the supply of all the facts, which means evidence and which the government may not consider in public interest. In this context, the Supreme Court has held that an order of detention is mala fide, if it is made for a purpose other than what has been permitted by the legislature.

Clause 7 of this Article gives exclusive power to Parliament to:

- Prescribe the circumstances under which and the cases in which a person may be detained for more than 3 months without obtaining the opinion of an Advisory Board
- The period of such detention (which it has determined to be not more than twelve months)
- The procedure to be followed by an Advisory Board

The Preventive Detention Act, 1950 was passed by the Parliament, which initially constituted the law of Preventive Detention in India. The Act was amended 7 times, each for a period of 3 years. The revival of anarchist forces obliged Parliament to enact a new Act, named the Maintenance of Internal Security Act (MISA) in 1971, having provision broadly similar to



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those of Preventive Detention Act of 1950. In 1974, Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) as an economic adjunct of the MISA. MISA was repealed in 1978, but COFEPOSA still remains in force. Further, in 1980, the National Security Act (NSA) was enacted. According to the NSA, the maximum period for which a person may be detained shall be 6 months from the date of detention. Next in the series was the Essential Services Maintenance Act (ESMA), 1980, and also the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 which empowered the government to ban strikes, lockouts and lay-offs and gave powers to dismiss strikers and erring employees, arrest them without warrant, try them summarily, impose fine and imprison them. An upsurge in terrorist activities, further, compelled the government to enact the Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985, which, in fact, empowered the executive for the suppression of all kinds of dissent and was widely criticised for being undemocratic.

**2.4.3 Right against Exploitation (Articles 23 and 24)**

Clause 1 of **Article 23** prohibits traffic of human beings, beggars, and other similar forms of forced labour, and makes the contravention of this prohibition an offence punishable in accordance with law. In this context, ‘traffic in human beings,’ includes the institutions of slavery and prostitution. ‘Beggars’ means involuntary or forced work without payment, e.g., tenants being required to render certain free services to their landlords.

Under Clause 2 of this Article, the state has been allowed to require compulsory service for public purposes, viz. national defiance, removal of illiteracy or the smooth running of public utility services like water, electricity, postage, rail, and air services. In matters like this, the interests of the community are directly and vitally concerned and if the government did not have this power, the entire life would come to a standstill. In making any service compulsory for public purposes, the state has, however, been debarred



from making discrimination on grounds only of religion, race, caste, class, or any of them.

**Article 24** provides that no child below the age of 14 years shall be employed to work in any factory or mine, or engaged in any other hazardous employment. Our Constitution goes in advance of the American Constitution in laying down a constitutional prohibition against employment of children below the age of 14 in factories, mines, or other difficult employments, e.g. railways or transport services. Our Parliament has passed necessary legislation and made it a punishable offence.

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

In pursuance of the goal of liberty of belief, faith, and worship enshrined in the Preamble to the Constitution, Articles 25–28 underline the secular aspects of the Indian state.

**Article 25(1)** grants all persons the freedom of conscience, and the right to freely profess, practice, and propagate religion. This Article secures to every person, a freedom not only to subscribe to the religion of his choice, but also to execute his belief in such outward acts as he thinks proper. He is also free to propagate his ideas to others.

Clause 2 of this Article allows the state to make law for the purpose of regulating economic, financial, or other activities of religious institutions. At the same time, it allows the state to provide from, and carry on social welfare programmes, especially by throwing open the Hindu religious institutions of a public character to all classes and sections of Hindus, including the Sikhs, the Jains, and the Buddhists.

The Parliament enacted the Untouchability Offences Act, 1955, which prescribes punishment for enforcing religious disabilities on any Hindu simply because he belongs to a low caste. The purpose of this reform is to overcome the evils of the Hindu religion.



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Explanation 1 to Article 25 declares that the wearing or carrying of *kirpan* (sword) by the Sikhs shall be deemed to be included in the profession of Sikh religion. Basu points out that this right is granted subject to the condition that no Sikh will carry more than one sword without obtaining a licence.

**Article 26** guarantees to every religious denomination the following rights:

- To establish and maintain institutions for religious and charitable purposes
- To manage its own affairs in matters of religion
- To own and acquire movable and immovable property
- To administer such property in accordance with law

While rights guaranteed by Article 25 are available only to individuals and not to their groups, those under Article 26 are conferred on religious institutions and not on individuals. In this Article, religious denomination means a religious sect or body having a common faith and organisation and designated by a distinctive name. This was the definition accepted by the Supreme Court. This Article grants a religious denomination complete autonomy in deciding what rites and ceremonies are essential according to the tenets of a religion. No outside authority has any jurisdiction to interfere in its decisions in such matters.

**Article 27** declares that ‘No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination’.

This Article secures that the public funds raised by taxes shall not be utilised for the benefit of any particular religion or religious denomination. Thus, a local authority which raises taxes from persons of all communities who reside within its jurisdiction would not be entitled to give aid to those educational institutions which provide instructions relating to any particular religion. In other words, an educational institution, which provides compulsory instructions relating to a particular religion is not entitled to any financial aid from the state.



**Article 28** is confined to educational institutions, maintained, aided or recognised by the state. Clause 1 of this Article relates to educational institutions that are wholly maintained out of the state funds. It completely bans the imparting of religious instructions in such institutions. Clause 2 relates to educational institutions which are administered by the state under some endowment or trust, like the Banaras Hindu University. In such institutions religious instructions may be given.

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

The object of **Article 29** is to give protection to religious and linguistic minorities. Clause 1 of Article 29 declares that any section of the Indian citizens, having a distinct language, script or culture of its own, shall have the right to conserve the same. The right to conserve or protect a language includes the right to agitate for the protection of that language. It also means that every minority group shall have the right to impart instructions to the children of their own community in their own languages.

Clause 2 of Article 29 is a counterpart of Article 15. It says that there should be no discrimination against children on grounds only of religion, race, caste or language, in the matters of admission into any educational institution maintained or aided by the state. Thus, this clause gives to an aggrieved minority of citizens, the protection in matters of admission to educational institutions against discrimination on any of these grounds. The persons belonging to Scheduled Castes or Tribes are in any case to be given special protection in matters of admission to educational institutions.

The Supreme Court observed that preference in admission given by institutions, established and administered by minority communities, to candidates belonging to their own community in their institutions on grounds of religion alone is violation of Article 29(2). Minorities are not entitled to establish and administer educational institutions for their exclusive benefit.

Clause 1 of **Article 30** is a counterpart of Article 26, and guarantees the right to all linguistic or religious minorities to establish and administer



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educational institutions of their choice. It entitles the minority community to impart instructions to the children of their community in their own language.

The right to establish educational institutions of their choice amounts to the establishment of institutions which will serve the needs of the minority community, whether linguistic or religious. When such institutions are established and seek aid from the state, it cannot be denied to them simply on the ground that they are under the management of a linguistic or religious minority.

**2.4.6 Right to Constitutional Remedies (Articles 32-35)**

A declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The Constitution accords a concurrent jurisdiction for this purpose on the Supreme Court under **Article 32**, and on the state High Courts under Article 226. An individual who complains about the violation of his fundamental rights can move the Supreme Court or the state High Court for the restoration of his fundamental rights.

Article 32(1) declares that the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights included in Part III of the Constitution is guaranteed. Clause 1, thus, guarantees the right to move the Supreme Court for the enforcement of fundamental rights. In other words, the right to move the Supreme Court for the violation of fundamental rights is itself a fundamental right.

Article 32(2) empowers the Supreme Court to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto or certiorari, whichever may be appropriate for the enforcement of any of the fundamental rights.

**Habeas corpus:** The writ of habeas corpus literally means 'have the body'. It is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention. Thus, habeas corpus is the citizen's guarantee against arbitrary arrest or detention. By



virtue of this writ, the Supreme Court or the High Court can have any detained person produced before it for examining whether he has been lawfully detained or not, and for dealing with the case in accordance with the Constitution and the laws in force at that time.

**Mandamus:** The writ of mandamus means ‘we command’. It is an order directing a person, or body, to do his/its legal duty. It lies against a person, holding a public office or a corporation or an inferior court, for it is to ask them to perform their legal duties. They are under legal obligation not to act contrary to law, without the authority of law, or in excess of authority conferred by law. As such, mandamus is available in the following cases:

- To compel the performance of obligatory duties imposed by law
- To restrain action which is taken without the authority of law, contrary to law, in excess of law

**Certiorari:** The writ of certiorari means ‘to be more fully informed of’. It is issued by a superior court to an inferior court requesting the latter to submit the record of a case pending before it. It lies not only against the inferior courts but also to any person, body, or authority, having the duty to act judicially. It may be issued to the Union government, the state governments, municipalities or other local bodies, universities, statutory bodies, individual ministers, public officials and departments of the state. It is not available against private persons for the enforcement of fundamental rights because these rights are available only against the state.

**Prohibition:** The writ of prohibition is issued by a superior court to an inferior court preventing it from dealing with a matter over which it has no jurisdiction. It is generally issued to transfer a case from a lower to a higher court. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom proceedings have been taken can move the superior court for the writ of prohibition. If the request is guaranteed by the superior court, the inferior court is stopped from continuing the proceedings in that case, and the case is transferred to another court to secure justice.



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**Quo warranto:** The writ of quo warranto is issued to stop the irregular and unlawful assumption of any public position by any person. Through this writ, the courts may grant an injunction to restrain a person from acting in any office to which he is not entitled, and may also declare the office vacant.

Article 32(3) provides that, without prejudice to the powers conferred on the Supreme Court by Articles 32(1) and (2), the Parliament may by law empower any court to issue these writs for the purpose of the enforcement of the fundamental rights.

Article 32(4) provides that fundamental rights guaranteed by Article 32(1) shall not be suspended except as otherwise provided by this Constitution.

**Article 33** of the Indian Constitution plays a crucial role in maintaining the delicate balance between ensuring the fundamental rights of individuals and safeguarding national security. This provision grants Parliament the authority to restrict or abrogate the application of fundamental rights to members of the Armed Forces, paramilitary forces, police forces, and intelligence agencies, aiming to ensure the proper discharge of their duties and the maintenance of discipline.

**Article 33** empowers Parliament to enact laws that modify or restrict the application of fundamental rights in Part III of the Constitution to:

- Members of the Armed Forces.
- Members of the Forces charged with the maintenance of public order (such as the police).
- Personnel employed in intelligence or counterintelligence services.
- Persons employed in any bureau or organisation established by the state for the purposes of intelligence, counterintelligence, or ensuring public order.

The essence of Article 33 is to enable the enactment of specific laws that tailor the application of fundamental rights to these groups, ensuring that their functioning is not impeded by the general application of these rights. For example, the right to freedom of speech and expression (Article 19) might be restricted for



military personnel to prevent unauthorised disclosure of sensitive information or to maintain discipline.

**Article 33** highlights the constitutional balance between individual rights and collective responsibilities. It acknowledges that while fundamental rights are essential, their unrestricted application could potentially hinder the performance of critical duties by those in the security sector. By empowering Parliament to legislate restrictions, Article 33 ensures that the fundamental rights framework remains flexible enough to accommodate the special requirements of national security and public order.

**Article 34** of the Indian Constitution addresses the suspension of fundamental rights during the imposition of martial law in any part of India. It grants Parliament the power to indemnify any act done under martial law, acknowledging the extraordinary circumstances under which martial law may be declared. This provision is crucial in maintaining the balance between the enforcement of public order and the protection of fundamental rights in times of extreme national emergency.

**Article 34 states:**

“Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force.”

Article 34 has several key aspects:

- **Indemnification:** Parliament is empowered to pass laws indemnifying individuals for acts done in connection with the maintenance or restoration of order during the period when martial law was in force. Indemnification means protecting these individuals from legal consequences for actions taken during martial law.
- **Scope:** The indemnification covers any person in the service of the Union or a State, as well as any other person who acted to restore or maintain order under martial law conditions.



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- **Supersession of Fundamental Rights:** Article 34 explicitly overrides other provisions in Part III of the Constitution, which contains fundamental rights, acknowledging that certain rights may be suspended under the exceptional conditions of martial law.

While martial law signifies an extreme departure from normalcy, Article 34 provides a legal framework to address actions taken during such periods. It recognises the necessity of extraordinary measures to restore order but also emphasises the temporary nature of such measures. The indemnification clause aims to protect individuals who acted under duress and in service of public order, acknowledging that their actions were taken in exceptional circumstances. Article 34 grants Parliament the authority to enact laws related to indemnification, ensuring that there is a democratic check on the use of martial law. Additionally, the judiciary plays a critical role in reviewing the laws passed under Article 34, ensuring they conform to constitutional principles and do not exceed the intended scope.

**Article 35** of the Indian Constitution specifies the power of Parliament to make laws to give effect to certain specified fundamental rights. This article ensures that the central authority retains the ability to legislate on critical matters related to the enforcement of fundamental rights, thereby maintaining a uniform legal framework across the country. The primary purpose of Article 35 is to centralise the legislative competence concerning certain fundamental rights to avoid inconsistencies across different states. This centralisation ensures uniformity and coherence in the legal framework related to fundamental rights, which is crucial for maintaining national integrity and unity.

By vesting exclusive legislative power in Parliament, Article 35 aims to:

- Ensure a consistent and uniform application of laws related to fundamental rights across all states.
- Prevent a scenario where different states enact contradictory laws affecting fundamental rights, which could lead to legal confusion and inequality.
- Strengthen the enforcement mechanisms for fundamental rights by centralising the authority to legislate on these matters.



**In-Text Questions**

3. When did the first demand for fundamental rights appear in the Constitution?
4. Which right was evoked in 1978 by the Forty-Fourth Constitutional Amendment Bill?
5. State the classification of fundamental rights.
6. What powers does the state have under Article 19 Clause 4?

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**2.5 DIRECTIVE PRINCIPLES OF STATE POLICY**

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Directive principles depict the social and economic aspects of human rights. The Directive Principles of State Policy, included in Part IV of our Constitution seek to realise the high ideals of justice, liberty, equality and fraternity, enshrined in the Preamble to the Constitution. These principles reflect Gandhi's constructive programme for socio-economic welfare of the people of India. These principles constitute an instrument of instructions to the legislatures and the executives at all levels as to how they should exercise their respective powers and aim at attaining the economic, educational and social welfare of the people. Behind them is the sanction of public opinion which is stronger, and more effective than even the sanction of the courts.

Incorporating most of these principles, the framers of the Constitution were primarily influenced by the identical provisions in the Irish Constitution which, in turn, had drawn inspiration from the Spanish Constitution. They were also, to a great extent, influenced by the Charter of the United Nations and the Charter of Human Rights. No less was the inspiration drawn by them from the Constitutions of socialist democracies, particularly that of the USSR.

These directives relate to specific socio-economic objectives, calling upon the state to strive to promote the welfare of the people in all fields, especially in social, economic, and political. These directives lay down the lines on which the machinery of the government should function under this Constitution.



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These directives fall into three main categories:

- The ideals, especially economic, which the framers of the Constitution directed the state to strive for
- The instructions and directions to the future legislatures and executives as to the manner in which they should exercise their respective powers
- The economic and educational rights which the citizens are authorized to expect from their duly constituted legislatures and executives

The Directive Principles of State Policy, as included in Part IV of the Constitution, have been enumerated under Articles 36 to 51.

These principles aim at the establishment of a welfare state in India committed to the realisation of the ideals proclaimed in the Preamble to the Constitution.

**Article 36** defines the term ‘state’ and declares that it has the same meaning in Part IV as it has in Part III. This means that the Constitution directs not only the legislatures and executives of the Union and the states but also the local authorities, like district boards and village panchayats, to implement these principles through their laws, policies and programmes.

**Article 37** describes the nature of these principles as follows:

- That these principles shall not be enforceable by any law
- That these principles shall be fundamental in the governance of the country
- That it shall be the duty of the state to apply these principles in making laws

**Article 38** declares ‘The state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life’.



It declares that the social order envisaged for Indian people would be assured not only in the political field, but also in the social and economic fields. As a matter of fact, the state is charged to frame its policies in such a way as to provide necessary elements of growth and adjustment which are essential for a progressive society.

**Article 39** describes that the state is directed to ensure various economic rights to the citizens. In the first place, it is to ensure that the citizens, both men and women, should have the right to an adequate means of livelihood.

Secondly, the state is required to distribute the ownership and control of the material resources of the community so as to sub-serve the common good. It is to ensure the operation of the economic system that does not result in the concentration of wealth and means of production in the hands of a few. The objective is to prevent the growth of an economic system which may be detrimental to the interest of the community as a whole.

The state is also to secure 'equal pay for both men and women'. The inclusion of this provision was inspired by a similar provision contained in Article 41 of the International Labour Organisation and the Seventh Principle of the Universal Declaration of Human Rights Article 122. The purpose of this clause is to ensure economic equality with regard to the equal proportion of wages within the work.

The state should ensure that the health and strength of workers, men and women, and tender-aged children are not abused. The state is to ensure that the citizens are not forced by economic necessity to take up jobs which are unsuited to their age and strength. The state is also to protect children and youth against exploitation and against moral and material abandonment.

Article 39(A) has been inserted to enjoin the state to provide 'free' aid to the poor and to take other steps to ensure equal justice to all, which is offered by the Preamble.

**Article 40** directs the state to organise village panchayats and vest them with such powers and authority as may be necessary to enable them to function as



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units of self-government. For the implementation of the provisions of this Article, the Seventy-Third Amendment Act of 1992 was passed vesting various degrees of power of self-government and civil and criminal justice in the hands of the panchayats. Owing to the lack of proper education, narrow-mindedness and local politics, the system of panchayat administration has not been a big success.

**Article 41** deals with the economic and educational rights of the citizen. It directs the state to ensure them the right to work, the right to education and the right to public assistance in case of unemployment, old age, sickness or disablement.

**Article 42** directs the state to make provisions for securing just and human conditions of work, and for maternity relief. Adequate provisions have been made by the state through Labour Laws and Factories Acts and the rules of service for the employees of the Union and the states.

**Article 43** also deals with the rights of the citizens. It directs the state to ensure all workers, agricultural, industrial or otherwise the following rights:

- Right to work
- Right to a living wage
- Right to such conditions of work ensures a decent standard of life and full enjoyment of leisure and social and cultural opportunities

Through the Forty-Second Amendment, Article 43(a) has been inserted in order to direct the state to ensure the participation of workers in the management of industry and other undertakings. This is a positive step in the advancement of socialism in the sense of economic justice.

**Article 44** directs the state to endeavour to provide for the citizens a uniform code throughout the territory of India. The purpose of this Article is to enable the legislature to make an attempt to unify the ‘personal law’ of the country.

Under the Eighty-Sixth Amendment Act of 2002, Article 45 was amended to provide early childhood care and education to children below the age of 6 years.



**Article 46** directs the state to promote the educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections. It also directs the state to protect these people from social injustice and exploitation. For this purpose, seats have been reserved for them in all educational institutions, and a fairly wide range of scholarships has also been provided for them.

**Article 47** can be divided into two parts:

- The direction to the state to raise the level of nutrition and the standard of living of its people and the improvement of their health
- The direction to the state to bring about prohibition of intoxicating drinks and drugs, which are injurious to health, except for medical purposes

The subject matter of **Article 48** centres a round the preservation and improvement of cattle and the prohibition of cow slaughter. The protection conferred by this Article extends only to cows, calves, and other animals which are capable of yielding milk or being used for some work.

Article 48(a) has been inserted, through the Forty-Second Amendment, in order to direct the state to protect and improve the environment and to safeguard the forests and wildlife of the country.

**Article 49** directs the state to protect, preserve and maintain monuments, places or objects of artistic or historic interest or of national importance. The state is to ensure that these monuments and objects are not spoiled, disfigured, destroyed, removed or exported. The aim of this Article is to preserve the nation's cultural heritage.

**Article 50** directs the state to take steps to separate the judiciary from the executive in public services of the state. The separation of judiciary from the executive would eliminate many evils that arise from the combination of two positions in the same person.

**Article 51** directs the state to shape its foreign policy as to attain the following objectives:



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- Promotions of international peace and security
- Maintenance of just and honourable relations between nations
- Respect for international law and treaty obligations in the dealings of organised people with one another
- Settlement of international disputes by arbitration

India's foreign policy is essentially based on these principles. Nehru's famous formulation of '*Panchsheel*', the five principles of peaceful co-existence, has been accepted by most of the civilised nations. Based on constitutional provisions, these principles are listed as follows:

- Mutual respect for each other's territorial integrity and sovereignty
- Non-aggression
- Non-interference in each other's internal affairs
- Equality and mutual benefit
- Peaceful co-existence

**2.5.1 Relationship between Fundamental Rights and Directive Principles**

Fundamental rights incorporated in Part III and the directive principles in Part IV form an organic unit.

Article 13 provides that any law passed in the violation of Part III of the Constitution dealing with fundamental rights is void to the extent of such violation. Initially the Supreme Court, however, adopted a legal attitude by declaring that the directive principles cannot abridge, curtail or stand in the way of fundamental rights. The court, thus, held that the former are subordinated to the latter. But later on, the judiciary substantially modified its attitude towards directive principles. It started taking notes of directive principles in determining the scope of fundamental rights. The directives now command more respect from the judiciary than they initially did.



Article 37 makes the Directive Principles of the State Policy non-justifiable. In case of the State of Madras vs. Champakam Dorairajan, 1951, the Court laid down the following principles in describing the relationship of the directive principles with fundamental rights:

- The ‘Directive Principles of State Policy’ cannot override fundamental rights because the former are unenforceable under Article 37 while the latter are enforceable under Article 32.
- Directive principles cannot abridge, curtail or stand in the way of fundamental rights because they are sacrosanct and supreme.
- Directive principles have to conform to, and run as subsidiary to fundamental rights.
- The state action under directive principles is subject to legislative and executive powers, i.e., a directive principle can be implemented only by the agency which is authorised to make laws on that subject.
- If the power of the state with respect to the subject relating to directive principles is limited by the Constitution, the state cannot exceed it.

Later, the court accepted that fundamental rights could be amended by the prescribed procedure and thereby directive principles can be implemented. In this period, the court evolves the ‘Principles of Harmonious Construction’. This meant that ordinarily directive principles were subordinate to fundamental rights and the state could not infringe on fundamental rights of any individual even on the plea of protecting the weaker sections of society as mentioned in the chapter on directive principles. The state, however, could put restrictions on fundamental rights in order to implement directive principles or otherwise by making amendments in the Constitution. This attitude was reflected through Sajjan Singh vs. State of Rajasthan, 1967, when the court held that directive principles are also fundamental in the government of the country and provisions of Part III must be interpreted harmoniously with these principles.



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**In-Text Questions**

7. What are the three categories of directives?
8. Which part of the Constitution and its articles enumerated directive principles of the state policy?
9. What were Nehru's five principles of peaceful co-existence?

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**2.6 SUMMARY**

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- The values expressed in the Preamble to the Indian Constitution include sovereignty, socialism, secularism, democracy, the republican character of the Indian State, justice, liberty, equality, fraternity, and human dignity, unity, and integrity of the nation.
- Justice is called a total value. The fathers of our Constitution knew that political freedom would not automatically solve the socio-economic problems which have been deep-rooted.
- The blessings of freedom have been preserved and ensured to our citizens through a set of fundamental rights.
- Every citizen of India is entitled to equality before law and equal protection of law. As a human being everybody has a dignified self.
- Fraternity stands for the spirit of common brotherhood. In the absence of that, a plural society like India stands divided.
- Fraternity and dignity of the individuals have a close link. Fraternity is only achievable when the dignity of the individual is secured and promoted.
- Article 17 has abolished the practice of untouchability by declaring it as a punishable offence.
- To maintain the independence of the country intact and enduring, unity and integrity of the nation is very essential.



- The Congress also passed a resolution in Madras in 1927 that declared that the basis of the future Constitution of India must be a declaration of fundamental rights.
- The final shape to the fundamental rights was given by the Advisory Committee for reporting on minorities, fundamental rights, and the tribal and excluded areas, under the chairmanship of Sardar Patel.
- The Constitution of India contained seven fundamental rights originally. However, the Right to Property was revoked in 1978 by the Forty-Fourth Constitutional Amendment Bill.
- Article 14 declares that the state shall not deny any person equality before the law or the equal protection of laws within the territory of India.
- Article 15(1) prohibits discrimination on certain grounds. It declares, ‘The state shall not discriminate against any citizen on ground of religion, race, caste, sex, place of birth or any of them.’
- Article 16(1) reads that ‘There shall be equality of opportunity for all citizens in matters relating to employment to any office under the state.’
- The practice of untouchability is a denial of human equality in an acute form. In pursuance of Article 17, the Parliament enacted the Untouchability Offences Act, 1955, which was later amended in 1976.
- Article 19 of the Constitution guarantees seven civil freedoms to the citizens as a matter of their rights.
- Article 20 (1) declares that ‘a person cannot be convicted for an offence that was not a violation of law in force at the time of the commission of the act., nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.’
- Article 21 says that no person shall be deprived of his life or personal liberty, except according to procedure established by law.
- Article 22 has two parts: Part I consists of Clauses 1 and 2, and deals with the rights of persons arrested under ordinary criminal law. Part II consists



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of Clauses 3–7 and deals with the rights of persons who are detained under the law of preventive detention.

- Clause 1 of Article 23 prohibits traffic of human beings, beggars, and other similar forms of forced labour, and makes the contravention of this prohibition an offence punishable in accordance with law.
- Article 25(1) grants all persons the freedom of conscience, and the right to freely profess, practice, and propagate religion.
- Article 27 declares that ‘No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination’.
- Article 28 is confined to educational institutions, maintained, aided or recognised by the state.
- The object of Article 29 is to give protection to the religious and linguistic minorities.
- The Constitution accords a concurrent jurisdiction for this purpose on the Supreme Court under Article 32, and on the state High Courts under Article 226.
- Directive principles depict the social and economic aspects of human rights. The Directive Principles of State Policy, included in Part IV of our Constitution seek to realise the high ideals of justice, liberty, equality and fraternity, enshrined in the Preamble to the Constitution.
- Fundamental rights incorporated in Part III and the directive principles in Part IV form an organic unit.

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**2.7 GLOSSARY**

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- **Mandamus:** It is issued by a higher court to a lower court, public authority, or government official, compelling them to perform a duty that they are legally obligated to perform but have failed to do so.



- **Prohibition:** It is issued by a higher court to prevent a lower court, tribunal, or quasi-judicial body from proceeding with a case or exercising jurisdiction that it does not have.
- **Directive Principles:** These are guidelines or principles given in the Indian Constitution to the state for framing laws and policies in order to establish a just and welfare-oriented society.
- **Constitutional Remedies:** They refer to the legal provisions in the Indian Constitution that empower individuals to directly approach the Supreme Court for the enforcement of fundamental rights through writs.
- **Fundamental Rights:** They are essential liberties guaranteed to individuals by the Indian Constitution, ensuring protection against arbitrary state actions and promoting equality and justice.
- **Quo Warranto:** It is a special form of legal action used to resolve a dispute over whether a specific person has the legal right to hold the public office that he or she occupies.
- **Certiorari:** It is a court process to seek judicial review of a decision of a lower court or government agency.
- **Habeas Corpus:** It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it.
- **Egalitarian:** It is generally characterised by the idea that all humans are equal in fundamental worth or moral status.

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## **2.8 ANSWERS TO IN-TEXT QUESTIONS**

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1. The fathers of our Constitution knew that political freedom would not automatically solve the socio-economic problems which have been deep rooted. Therefore, they stressed that the positive constructive aspect of political freedom has to be instrumental in the creation of a new social order, based on the doctrine of socio-economic justice.



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2. Fraternity stands for the spirit of common brotherhood. In the absence of that, a plural society like India stands divided. Therefore, to give meaning to all ideals like justice, liberty, and equality, our Constitution gives ample importance on fraternity.
3. The first explicitly and systematic demand for fundamental rights appeared in the Constitution of India Bill, 1895.
4. The Constitution of India contained seven fundamental rights originally. But the Right to Property was revoked in 1978 by the Forty-Fourth Constitutional Amendment Bill.
5. The Constitution classifies fundamental rights into six categories:
  - Right to Equality (Articles 14–18)
  - Right to Freedom (Articles 19–22)
  - Right against Exploitation (Articles 25–28)
  - Right to Freedom of Religion (Articles 25–28)
  - Cultural and Educational Rights (Articles 29–30)
  - Right to Constitutional Remedies (Article 32)
6. Clause 4 of Article 19 empowers the state to make reasonable restrictions upon this right on grounds only of:
  - Sovereignty and integrity of India
  - Public order
  - Morality
7. The directives fall into the following three main categories:
  - The ideals, especially economic, which the framers of the Constitution directed the state to strive for
  - The instructions and directions to the future legislatures and executives as to the manner in which they should exercise their respective powers



- The economic and educational rights which the citizens are authorised to expect from their duly constituted legislatures and executives
8. The Directive Principles of State Policy, as included in Part IV of the Constitution, have been enumerated under Articles 36 to 51. These principles aim at the establishment of a welfare state in India committed to the realisation of the ideals proclaimed in the Preamble to the Constitution.
9. Jawaharlal Nehru’s famous formulation of ‘*Panchsheel*’, the five principles of peaceful co-existence, have been accepted by most of the civilised nations. Based on Constitutional provisions, these principles are listed as follows:
- Mutual respect for each other’s territorial integrity and sovereignty
  - Non-aggression
  - Non-interference in each other’s internal affairs
  - Equality and mutual benefit
  - Peaceful co-existence

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## **2.9 SELF-ASSESSMENT QUESTIONS**

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1. What are the salient features of fundamental rights?
2. Describe the relationship between directive principles with fundamental rights.
3. Discuss the constitutional values—justice, liberty, equality, and fraternity in detail.
4. Examine fundamental rights mentioned in the Indian Constitution.
5. Briefly write about the directive principles of state policy.



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**2.10 REFERENCES/SUGGESTED READINGS**

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## UNIT 3

# FUNDAMENTAL DUTIES

NOTES

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### Structure

- 3.1 Learning Objectives
- 3.2 Introduction
- 3.3 Reflecting on the Ancient Indian Notions of Righteousness and Duty Consciousness
- 3.4 Fundamental Duties: Article 51A [(a)-(k)]
  - 3.4.1 Fundamental Duties [(Article 51(A)]
  - 3.4.2 Implementation of Fundamental Duties
- 3.5 Legal Status of Fundamental Duties and Judicial Approach
  - 3.5.1 Judicial Approach to Fundamental Duties
- 3.6 Critique
- 3.7 Summary
- 3.8 Glossary
- 3.9 Answers to In-Text Questions
- 3.10 Self-Assessment Questions
- 3.11 References/Suggested Readings

### 3.1 LEARNING OBJECTIVES

After reading this unit, students should be able to:

- Understand the meaning of pillars of righteousness and the doctrine of action according to ancient Indian notions
- Discuss the types and features of fundamental duties under Article 51A[(a)- (k)]
- Explain the significance of the non-judiciary part of fundamental duties

*Self-Instructional  
Material*

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### 3.2 INTRODUCTION

Ancient Indian civilisation, steeped in rich philosophical traditions, espoused profound notions of righteousness (*Dharma*) and duty consciousness (*Karma*) that continue to influence the contemporary thought. Rooted in texts like the Vedas, Upanishads, and the Bhagavad Gita, these concepts emphasise the importance of fulfilling one's obligations and upholding moral principles in society. In the modern Indian context, the Constitution of India incorporates these timeless values through the inclusion of fundamental duties outlined in Article 51A. These duties, ranging from respect for the national flag to striving for excellence in all spheres of individual and collective activity, serve as a moral compass for citizens, reinforcing the ethos of social responsibility and ethical conduct. Despite their non-justiciable nature, the legal status of fundamental duties has seen a shift in judicial approach over the years. Initially considered non-enforceable moral obligations, courts have increasingly acknowledged the significance of fundamental duties in fostering a harmonious society and have incorporated them into their decisions, thereby elevating their importance in the legal landscape of the country.

### 3.3 REFLECTING ON THE ANCIENT INDIAN NOTIONS OF RIGHTEOUSNESS AND DUTY CONSCIOUSNESS

Ancient Indian notions of righteousness (*Dharma*) and duty consciousness (*Karma*) form the core of the Indian ethical and philosophical thought. These concepts have been extensively elaborated in various texts, including the *Vedas*, *Upanishads*, *Dharma Shastras*, and epics like the *Mahabharata* and *Ramayana*; and also explored from the life journey of great people such as Lord Buddha and Ashoka. The intertwining of *Dharma* and *Karma* has historically guided the moral and social fabric of Indian society.



### **Dharma: The Path of Righteousness**

*Dharma* is a multifaceted concept that encompasses the principles of cosmic order, moral law, and social duties. It is derived from the Sanskrit root word "*dhr*", meaning 'to hold' or 'sustain'. *Dharma* is not only about personal virtue but also about sustaining the order of the universe and society. The description of *Dharma* in various ancient Indian texts are discussed below:

- 1. Vedic Perspective:** In the Vedic texts, *Dharma* is often associated with the rituals and duties prescribed for individuals based on their stage of life (*Ashrama*) and social class (*Varna*). The *Rig Veda* emphasises the performance of *Yajnas* (sacrifices) as a means to uphold *Dharma*.
- 2. Philosophical Elaboration:** The *Upanishads* broaden the scope of *Dharma* to include ethical conduct and the pursuit of truth (*Satya*). They articulate the idea that adherence to *Dharma* leads to the realisation of *Brahman* (the ultimate reality).
- 3. Dharma Shastras:** Texts like the *Manusmriti* and *Yajnavalkya Smriti* provide detailed codifications of *Dharma*, outlining duties and responsibilities for different individuals based on their *Varna* and *Ashrama*. These texts emphasise the concept of *Svadharmā*, the individual duty, which varies according to one's position in life and society.
- 4. Epics and Puranas:** The *Mahabharata* and *Ramayana* illustrate *Dharma* through the lives of their protagonists. Lord Rama and Yudhishtira are epitomes of *Dharma*, showcasing the complexities and dilemmas in adhering to righteous paths. The Bhagavad Gita, part of the *Mahabharata*, is a seminal text that discusses the interplay of *Dharma* and *Karma*, emphasising *Nishkama Karma* (selfless action) as a means to uphold *Dharma*.
- 5. Lord Buddha:** Central to his philosophy was the concept of the Four Noble Truths and the Eightfold Path, which offered a framework for individuals to attain liberation from suffering (*dukkha*). His emphasis on



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non-violence (*ahimsa*), truthfulness (*satya*), and compassion (*karuna*) resonated deeply with the Indian notion of *dharma*, which encompasses ethical duties and moral principles. In essence, Lord Buddha's teachings not only influenced the understanding of righteousness in his time but continue to inspire millions around the world to lead lives of compassion, morality, and spiritual awakening.

- 6. Ashoka:** Ashoka's commitment to *dharma* was manifested through his renowned inscriptions, known as the Edicts of Ashoka, which were carved on pillars and rocks across his empire. Under Ashoka's rule, the concept of *dharma* evolved beyond mere religious adherence to encompass broader ethical principles applicable to governance and social conduct. His reign symbolises a remarkable fusion of political power and moral responsibility, where the pursuit of righteousness was seen as integral to effective governance. Ashoka's legacy endures as a testament to the transformative potential of embracing *dharma* in both personal and political life, inspiring generations to strive for a more just and compassionate world.

***Karma: Duty Consciousness***

*Karma*, literally meaning action, refers to the law of cause and effect governing all actions. It signifies that every action has consequences, which influence one's future. *Karma* embodies the idea that individuals are responsible for their actions and the outcomes they generate. Positive actions lead to positive consequences, while negative actions lead to negative consequences. This framework emphasises personal accountability and the interconnectedness of all beings. Some key concepts to explain *Karma* are discussed as follows:

- 1. Philosophical Basis:** As discussed above, the doctrine of *Karma* is rooted in the belief that actions performed in accordance with *Dharma* yield positive results, while actions against *Dharma* lead to adverse outcomes. This concept is crucial in understanding the cyclical nature of birth, death, and rebirth (*Samsara*).



2. **Types of Karma:** The ancient texts categorise *Karma* into *Sanchita* (accumulated past actions), *Prarabdha* (fruits of past actions that are currently being experienced), and *Agami* (future actions that will shape one's destiny). The Bhagavad Gita emphasises performing one's duty without attachment to the results, advocating the path of *Karma Yoga*.
3. **Ethical Implications:** The doctrine of *Karma* reinforces the importance of ethical conduct and responsibility. It suggests that individuals are architects of their destiny, and are accountable for their actions. This fosters a sense of duty consciousness, where each action is measured against the yardstick of *Dharma*.

### **Interconnection of *Dharma* and *Karma***

The interrelationship between *Dharma* and *Karma* is pivotal in ancient Indian thought. While *Dharma* provides the guidelines for righteous living, *Karma* underscores the importance of action in alignment with these guidelines. Together, they promote a holistic view of life, where ethical behaviour and responsible actions are paramount.

1. **Social Order:** The *Varna-Ashrama Dharma* system illustrates how *Dharma* and *Karma* work in tandem to maintain social order. By fulfilling their prescribed duties, individuals contribute to societal harmony and the cosmic order.
2. **Spiritual Evolution:** Adherence to *Dharma* through rightful actions (*Karma*) is seen as a path to *Moksha* (liberation). The practice of selfless duty (*Nishkama Karma*) as advocated by Lord Krishna in the Bhagavad Gita is a means to transcend the bondage of *Karma* and attain spiritual freedom.
3. **Moral Accountability:** The notions of *Dharma* and *Karma* inculcate a sense of moral accountability. Individuals are encouraged to introspect and align their actions with ethical and righteous principles, thus fostering a conscientious society.



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The ancient Indian notions of righteousness and duty consciousness, encapsulated in the concepts of *Dharma* and *Karma*, form a comprehensive framework for ethical living. They emphasize the integration of personal virtue with social responsibility, guiding individuals towards a balanced and harmonious existence. These timeless principles continue to influence Indian thought and culture, reflecting the enduring wisdom of ancient Indian philosophy.

**In-Text Questions**

1. How do *Dharma Shastras* provide detailed codifications of *Dharma*?
2. State the relationship between the doctrine of *Karma* and *Dharma*.
3. What are the different types of *Karma* as per ancient texts?

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**3.4 FUNDAMENTAL DUTIES: ARTICLE 51A [(a)-(k)]**

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Fundamental duties are incorporated in the Indian Constitution to maintain balancing individual civic's freedoms. Let us discuss them in detail.

**3.4.1 Fundamental Duties [(Article 51(A))]**

The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties. As a result, the Constitution of India did not incorporate any chapter fundamental duties. It was during the 'Internal Emergency', declared in 1975, that the need and necessity for fundamental duties was felt. Accordingly, a Committee under the Chairmanship of Sardar Swaran Singh was appointed to make recommendations about fundamental duties. The Committee suggested for inclusion of a chapter of fundamental duties, provision for imposition of appropriate penalty or punishment for non-compliance with or refusal to observe any of the duties and also recommended that payment of taxes should be considered one of the fundamental duties.

## *Fundamental Duties*

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However, these recommendations were not accepted by the Congress government.

However, under the Forty-Second Amendment, carried out in 1976, a set of fundamental duties of Indian citizens was incorporated in a separate part added to Chapter IV under Article 51A[(a)-(k)]. Under this Article, this shall be the duty of every citizen of India:

- To abide by the Constitution and respect the national flag and national anthem
- To cherish and follow the noble ideas, which inspired our national freedom struggle
- To protect the sovereignty, unity, and integrity of India
- To defend the country
- To promote the spirit of common brotherhood amongst the people of India transcending religious, linguistic, regional, or sectional diversities and laws to renounce practices derogatory to women
- To preserve the rich heritage of our composite culture
- To protect and improve the natural environment
- To develop the scientific temper and spirit of enquiry
- To safeguard public policy
- To strive towards excellence in all spheres of individual and collective activity
- As a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years (This clause was inserted through the Eighty-Sixth Amendment Act 2002.)

Although not enforceable in courts, fundamental duties have been the accepted part of the Constitution. These duties may act as a social check on reckless activities indulged in by irresponsible citizens and as a reminder to

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citizens that while exercising or claiming the right they have to be conscious of these duties they owe to the nation and their fellow citizens. In brief, the incorporation of fundamental duties in the Constitution was, no doubt, an attempt to balance the individual's civic 'freedoms' with his civic 'obligations' and, thus, to fill a gap in the Constitution.

**3.4.2 Implementation of Fundamental Duties**

We have already seen how our Constitution is a value-loaded document. One may wonder then about its performance and achievements. As a positive law, our Constitution has endeavoured to bring about social and political change in our society. At the instance of our Constitution several socio-economic provisions enshrined in the part IV in the nature of 'Directive Principles' have been converted into fundamental rights and constitutional rights. For example, Article 45 has been transformed into a fundamental right in shape of Article 21-A which directs the state to provide free and compulsory education to all children between the age of six to fourteen years; and similarly, local self government in rural and urban areas have been made regular and uniform throughout the country. In case of the former, it is done keeping in mind that education is a key to social development and the latter has been an attempt to revitalise local self-governments especially at the village level.

In a similar vein, several social welfare measures have been taken by successive governments to raise the standard of living of the people in the lower rungs of society. The scheme like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) has been devised to provide employment to all persons below poverty line at least for 100 days a year. Several measures of land reforms have been introduced and the zamindari system has been abolished at the instance of the Constitution.

The judiciary, led by the Supreme Court too has played a proactive role in defending the causes of poor and downtrodden through public interest litigations (PILs). Federalism has been carried forward in a way that has led to the devolution of power to the states while not making the Centre powerless.



To make our Constitution adaptable to the changing needs and circumstances it has been amended 106 times so far. On the whole, despite a plethora of welfare programmes launched by successive governments and the fine scheme of the constitutional edifice, our polity faces unprecedented challenges like glaring disparity between haves and have-nots as projected in the increasing number of people come under Below Poverty Line (BPL), regional imbalances, rising of militancy having indigenous roots as well as being sponsored from abroad, ideologies not believing in liberal democracies, ethnic conflicts, and challenges from primordial forces like caste and community.

Democracy too has been plagued by rampant corruption, heinous crimes involved in politics, intra-party conflicts, and perpetual paralysis of parliamentary sessions and people's increasing apathy in the participation in developmental programmes and electoral exercises. Even, at times, people are hinting at the need for the review of our Constitution and switching over to the presidential model. Therefore, sufficient introspection is required from all quarters viz., government to individuals via political parties and civil society to make our democracy a vibrant and effective one. The Constitution is not failing but we are failing the Constitution. Granville Austin has very appropriately said, 'Constitutions do not "work", they are inert, dependent upon being "worked" by citizens and elected and appointed leaders.' To conclude, what we need to develop is the right type of political culture for sustaining the Constitution which is not just the result of the labour of few months and years as put by the members of the Constituent Assembly but the result of struggle and toil of millions of people in the national movement spanning over nearly a century almost.

**In-Text Questions**

4. Who was first appointed to make recommendations about fundamental duties?
5. What does MGNREGA stand for?



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### **3.5 LEGAL STATUS OF FUNDAMENTAL DUTIES AND JUDICIAL APPROACH**

The insertion of fundamental duties along with Directive Principles of State Policy suggests that these are not justifiable. In fact, the Constitution does not define how these will be implemented. No punishment or compulsive provisions have been mentioned on their violation. According to D. D. Basu, the legal utility of these duties is similar to that of the directives as they stood in 1949, while the directives were addressed to the state without any sanction, so are the duties addressed to the citizens without any legal sanction for their violation.

Also, the duties enumerated are quite vague and can be interpreted in more than one ways. It is, therefore, very difficult to have their universally acceptable definitions. One of the duties of the citizens is to follow the noble ideals that inspired our freedom struggle, while each section, which participated in the freedom struggle, had its own ideals. The term ‘noble ideal’, therefore, becomes ineffable and vague. Another duty expects every citizen of India to value and preserve the rich heritage of composite culture. A question that can be asked as to which is India’s composite culture. Similarly, it is difficult to define scientific temper, humanism or spirit of enquiry.

Thus, fundamental duties in India seem vague and may lack direct enforceability through the legal system, and their growing recognition and incorporation into judicial decisions underscore their increasing significance in shaping a morally conscientious society and promoting the collective welfare of the nation.

#### **3.5.1 Judicial Approach to Fundamental Duties**

The judiciary in India has played a crucial role in interpreting and enforcing Fundamental duties. Here are some key aspects of how the courts have approached these duties:

- 1. Interpretative Tool:** The Supreme Court and High Courts have often used fundamental duties as an interpretative tool to give context and



meaning to other constitutional provisions, especially fundamental rights.

**Case: *Ranganath Mishra vs. Union of India (2003)*:** The Supreme Court emphasised that fundamental duties should be read harmoniously with fundamental rights and Directive Principles of State Policy (DPSPs). This approach helps in ensuring that the rights and duties of citizens are balanced.

- 2. Balancing Rights and Duties:** The courts have recognised that while fundamental duties are not enforceable by law, they can be used to balance the exercise of fundamental rights.

**Case: *AIIMS Students' Union vs. AIIMS (2001)*:** The Supreme Court observed that duties must be considered when exercising rights. For instance, the duty to respect the ideals of the Constitution can guide the interpretation of the right to free speech and expression to prevent it from being abused.

- 3. Legislative and Executive Measures:** The judiciary has upheld legislative and executive actions taken to enforce fundamental duties, provided they are reasonable and do not infringe upon Fundamental Rights.

**Case: *M.C. Mehta vs. Union of India (2002)*:** The Supreme Court supported measures aimed at environmental protection, linking them to the duty of citizens under Article 51A(g) to protect and improve the natural environment.

- 4. Education and Awareness:** The courts have stressed the importance of educating citizens about their fundamental duties to ensure their effective implementation.

**Case: *Aruna Roy vs. Union of India (2002)*:** The Supreme Court directed the government to incorporate the teaching of fundamental duties in the education system, emphasising the need for awareness among citizens, especially the youth.



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**5. Public Interest Litigation (PIL):** The judiciary has allowed the filing of PILs to address issues related to fundamental duties, thus expanding their scope and impact.

**Case: *Javed v. State of Haryana (2003)*:** The Supreme Court upheld law prohibiting individuals with more than two children from contesting Panchayat elections, citing the duty to promote family planning as a part of the duty under Article 51A(e) to renounce practices derogatory to the dignity of women.

The judicial approach to fundamental duties in India has been to integrate them within the broader constitutional framework, ensuring that they complement and enhance the understanding and application of fundamental rights and DPSPs. The courts have played a pivotal role in promoting these duties through interpretation, enforcement of supportive legislation, and public awareness, thereby contributing to the overall constitutional vision of a just and responsible society.

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### **3.6 CRITIQUE**

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- India's judiciary frequently views fundamental rights as enforceable obligations rather than as moral obligations. Due to their restricted enforcement, fundamental obligations lose their practical significance and become only symbolic with no legal ramifications.
- Fundamental rights are typically given precedence over fundamental obligations by the judiciary. While upholding rights is important, placing too much emphasis on it might overlook the value of civic duties and even encourage a culture that prioritises rights over social obligations.
- In some cases, courts in the country have been proactive in emphasising fundamental duties, while in others, they have shown restraint. This inconsistent judicial activism creates uncertainty about the judiciary's role in advancing fundamental duties and can lead to unpredictable legal outcomes.



- The judiciary sometimes integrates fundamental duties with other legal provisions, such as environmental laws. While this integration can be positive, it also risks conflating different legal principles, potentially complicating legal interpretations and enforcement.
- The definition and extent of fundamental obligations have not been consistently established by the judiciary. This ambiguity can undermine the efficacy and clarity of these responsibilities by resulting in inconsistent implementation and understanding.
- The judiciary has recognised the role of education in promoting awareness of fundamental duties. Despite this acknowledgment, there is limited judicial action to ensure that educational institutions adequately impart knowledge and understanding of these duties.
- Fundamental duties have occasionally been invoked in PILs to address broader societal issues. While PILs can be effective, relying heavily on them to enforce fundamental duties might overburden the judiciary and dilute the focus on individual accountability.
- There is no comprehensive legal framework for the systematic implementation and monitoring of fundamental duties. The absence of such a framework hampers the judiciary’s ability to effectively promote and enforce these duties, limiting their impact on society.

**In-Text Questions**

6. Why are the judicial approach and fundamental duties integrated in India?
7. How do the courts play a pivotal role in promoting fundamental duties?

**3.7 SUMMARY**

- Ancient Indian notions of righteousness (*Dharma*) and duty consciousness (*Karma*) form the core of Indian ethical and philosophical thought. These concepts have been extensively elaborated in various texts, including the



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*Vedas, Upanishads, Dharma Shastras, and epics like the Mahabharata and Ramayana.*

- *Dharma* is a multifaceted concept that encompasses the principles of cosmic order, moral law, and social duties.
- *Karma*, literally meaning action, refers to the law of cause and effect governing all actions.
- Positive actions lead to positive consequences, while negative actions lead to negative consequences.
- The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties.
- As a positive law, our Constitution has endeavoured to bring about social and political change in our society.
- Under the Forty-Second Amendment, carried out in 1976, a set of fundamental duties of Indian citizens was incorporated in a separate part added to Chapter IV under Article 51A[(a)-(k)].

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**3.8 GLOSSARY**

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- **Fundamental Duties:** These are moral obligations outlined in the Indian Constitution that citizens are expected to perform to promote a spirit of patriotism and uphold the unity of India.
- **Righteousness:** It is the quality of being morally right, just, and virtuous in one's actions and character.
- **Public Interest Litigation (PIL):** It means a case or petition filed before a court to protect, safeguard or enforce public interest.
- **Primordial Force:** It refers to the deep historical and cultural roots of nations and nationalism and assumes their quasi-objective character.
- **Below Poverty Line:** It is a benchmark used by the Indian Government to identify individuals or families who are living in poverty and need the most help.



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### 3.9 ANSWERS TO IN-TEXT QUESTIONS

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1. *Dharma Shastras* like the *Manusmriti* and *Yajnavalkya Smriti* provide detailed codifications of *Dharma*, outlining duties and responsibilities for different individuals based on their *Varna* and *Ashrama*. These texts emphasize the concept of *Svadharmā*, the individual duty, which varies according to one's position in life and society.
2. The doctrine of *Karma* is rooted in the belief that actions performed in accordance with *Dharma* yield positive results, while actions against *Dharma* lead to adverse outcomes.
3. The ancient texts categorize *Karma* into three types: *Sanchita* (accumulated past actions), *Prarabdha* (fruits of past actions that are currently being experienced), and *Agami* (future actions that will shape one's destiny).
4. Sardar Swaran Singh was first appointed to make recommendations about fundamental duties.
5. MGNREGA stands for Mahatma Gandhi National Rural Employment Guarantee Act.
6. The judicial approach to Fundamental Duties in India has been to integrate them within the broader constitutional framework, ensuring they complement and enhance the understanding and application of Fundamental Rights and DPSPs.
7. The courts play a pivotal role in promoting these duties through interpretation, enforcement of supportive legislation, and public awareness, thereby contributing to the overall constitutional vision of a just and responsible society.

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### 3.10 SELF-ASSESSMENT QUESTIONS

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1. 'The Constitution is not failing but we are failing the Constitution.'  
Explain the statement.



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2. What are the fundamental duties of Indian citizens as per Chapter IV under Article 51(a)?
3. Discuss how ancient ideals (*Dharma* and *Karma*) find resonance in the modern Indian context through the inclusion of fundamental duties in Article 51A of the Constitution.
4. Critically analyse the non-judiciary part of fundamental duties.
5. Briefly write about the inclusion of fundamental duties in the Constitution.

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