



THE PREAMBLE

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1] Introduction

The term 'preamble' refers to the introduction or preface to the Constitution. It contains the summary or essence of the Constitution.

The Preamble to a written Constitution states the objects, which the Constitution seeks to establish. It also promotes and aids the legal interpretation of the Constitution, where the language is found to be ambiguous. Therefore, for a proper appreciation of the aims and aspirations embodied in our Constitution, we need to turn to the various expressions contained in the Preamble.

The Preamble to the Constitution of India states:

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

JUSTICE, social, economic and political;

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

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

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation:

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

The Preamble to our Constitution serves, two purposes:

- a) It indicates the source from which the Constitution derives its authority;
- b) It also states the objects, which the Constitution seeks to establish and promote.

2] Status of the Preamble

2.1 Traditional View

The traditional view is that it is not a necessary part of the Constitution, but an ornamental part. This means that if we drop it from the statute, it will not impact the provisions of the law or enactment.

2.2 Modern View

The modern view is that the Preamble is a part of the Constitution and it is subject to amendment by the Parliament.

2.3 Status of the Preamble in India

2.3.1 Berubari Union case, 1960

- The Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution, and is thus a key to the minds of the makers of the Constitution. Further, where the terms used in any article are ambiguous or capable of more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble.

- Despite this recognition of the significance of the Preamble, the Supreme Court held that the Preamble is not a part of the Constitution. It is also not the source to prohibit the power, which is given explicitly in the Constitution. Further, the Preamble is not enforceable in a Court of Law.

2.3.2 Kesavananda Bharat case, 1973

In the Kesavananda Bharati case (1973), the Supreme Court rejected the earlier opinion (in the Berubari Case) and held that the Preamble is a part of the Constitution. It observed that the Preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.

Explanation provided by the Supreme Court:

- The Preamble may not be an essential part of ordinary statute, but it is an essential part of Constitutional Law.
- Supreme Court admitted that a few facts regarding the Preamble were not noticed in the Berubari Case. These facts established Preamble as a part of the Constitution.
 - It has been adopted by the Constituent Assembly in the same manner as other parts.
 - The motion by which the Preamble was adopted said: "The question is that Preamble stands part of the Constitution".
 - The Preamble was enacted after rest of the Constitution was already enacted. The Preamble was inserted in the end to ensure that there is no inconsistency between the Preamble and other provisions of the Constitution. This was unlike USA where the Preamble was enacted first.

2.3.3 S R Bommai case, 1994

- The Supreme Court again held that the Preamble is an integral part of the Constitution.

3] Amendability of the Preamble

The question regarding the amendability of the Preamble was raised in the Kesavananda Bharati Case (1973). The argument of the petitioner was that the Preamble is not a provision of the Constitution, hence it cannot be amended.

Supreme Court's view: Preamble is an essential and integral part of the Constitution. Hence, it can be amended; otherwise the harmony of the Constitution may get disturbed. It held that the Preamble could be amended, subject to the condition that no amendment is done to the 'basic features' of the Constitution.

Consequently the Preamble was amended by the 42nd Amendment Act, 1976. It added three new words: **Socialist, Secular and Integrity** to the Preamble.

4] Preamble as an aid to the interpretation of the Constitution

4.1 Berubari Case

- Preamble has limited significance in the interpretation of the Constitution.
- The Preamble cannot be invoked when the provisions of the Constitution are explicit. (A. K Gopalan case, 1950). In the Gopalan case, the SC clarified that the Preamble will

not be invoked to explain or interpret explicit provisions. In this case, the SC held that the term 'law' used in Article 21 (life & liberty) denotes a 'law made by the State' and not 'natural law'.

- It however acknowledged that the Preamble may be used if there is an ambiguity in the provisions of the Constitution. According to the SC, Preamble is the key to unlock the minds of the Constituent Assembly.

4.2 Kesavananda Bharati Case

- Preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.
- SC clarified that Preamble can be used in the interpretation of the relationship between Fundamental Rights and Directive Principles.
- SC utilized the above approach in examining the validity of 25th Amendment Act, 1971, which added Article 31C.

5] Key Words in the Preamble

5.1 Sovereign

The term *Sovereignty* refers to the independent authority of a State. It means that the State has the power to legislate on any subject; and that it is not subject to the control of any State or external power.

Consequently, the term *Sovereign* in the Preamble of India implies that India is neither a dependency nor a dominion of any other nation, but an independent state. There is no authority above it, and it is free to conduct its own affairs, both internal and external.

India's declaration to continue her full membership of the Commonwealth of Nations in 1949 does not affect India's sovereignty in any manner. This declaration is *extra-legal* and there is no mention of it in the Constitution. It is a voluntary declaration and indicates a free association and no obligation. This association was an honorable association between independent states. It accepts the crown of England only as a *symbolic* head of the Commonwealth, and having no claim to the allegiance of citizens of India. As Pandit Jawaharlal Nehru explained:

"It is an agreement by free will, to be terminated by free will"

5.1.1 Sovereignty and Globalization

India has always been a supporter of international institutions. It is a founding member of the United Nations. It has also actively participated in evolution of international law. Does this compromise sovereignty of our nation?

It has to be realized that sovereignty is a legal fiction. In practice, it is often compromised. However, the view that globalization **dilutes** sovereignty needs to be revisited. Globalization is not a dilution of sovereignty, but a modification of the manner in which sovereignty is exercised. Globalization requires a more responsible use of sovereignty.

The Government of India continues to ensure its strategic autonomy in international sphere and is vigilant in protecting the interests of the people of India. The recent debate in WTO with regards to the food subsidy is a case in point.

5.2 Socialist

The Constitution had a socialist content in the form of certain Directive Principles of State Policy (esp. Arts. 39(b) and 39(c)), even before the term was added in 1976. However, the 'socialism' envisaged by the Indian Constitution is not the usual scheme of State socialism, which involves 'nationalisation' of all means of production, and the abolition of private property. Instead, Indian Socialism is 'democratic Socialism', influenced by Fabianism. It is a peaceful gradual transformation of the society in participation with the state and not against the state.

Though the word 'Socialism' may seem to be vague, our Supreme Court has observed that its principal aim is to eliminate inequality of income and status and standards of life, and to provide a decent standard of life to the working people. The Indian Constitution, therefore, does not seek to abolish private property altogether but seeks to put it under restraints so that it may be used in the interests of the nation, which includes the upliftment of the poor. Instead of a total nationalization of all property and industry, it envisages a 'mixed economy', but aims at offering 'equal opportunity' to all, and the abolition of 'vested interests'.

However, some have argued that the Indian state is deviating from its path of Socialism. The following have been cited as reasons behind this line of argument:

- Adoption of neo-liberal economic policy: The new economic policy (1991) of liberalization, privatization and globalization has diluted the socialist credentials of the Indian state.
- From 1991 onwards, the trend has been away from socialism to privatization. Investment in many public enterprises has been divested in favour of private persons and many industries and services, which were reserved for the government sector have been thrown open for private enterprise.
- Growth, which happened after the reforms of 1990s exacerbated inter-state and intra-state disparities. Further, this growth has been without any meaningful job creation. (Jobless growth)
- The Indian state has failed to end mass poverty

However, it should be noted that these developments have been in keeping with the worldwide trend after the collapse of socialism in the USSR and East European countries. Also, the constitutional obligation to pay compensation to the private owner for State acquisition has been taken away by repealing Art. 31 by the Constitution (44th Amendment) Act, 1978. Further, the limitations of the neo-liberal economic model are being realized and the ideal of inclusive growth has been brought back into the fold of policy making.

5.3 Secular

The unity and fraternity of the people of India, professing numerous faiths, has been sought to be achieved by enshrining the ideal of a 'secular state'. A secular state, in the context of India, means that the State protects all religions equally and does not uphold any religion as the State religion. The term "secular" was added by the 42nd Amendment Act, 1976.

This is one of the glowing achievements of Indian democracy given that her neighbors such as Pakistan, Bangladesh, Sri Lanka and Burma, uphold particular religions as State religions.

The reasons for the necessity of secularism in India are as follows:

- India is a heterogeneous society.
- The idea of India as a secular state has been challenged by states like Pakistan.
- We may be subjected to international propaganda (terrorism and related problems).

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5.3.1 Constitutional Provisions regarding Secularism

- The Indian state has no religion.
- All citizens are equal in the eyes of the law. Articles 14, 15 and 27 establish the secular nature of the state. Article 15 is a specific instruction that the state shall not discriminate among the citizens only on the grounds of religion, race, caste, sex or place of birth. Affirmative action is allowed, but not on the grounds of religion only.
- Fundamental Rights mentioned in Arts. 25–28 guarantee to all individuals, the freedom to profess, practice and propagate their religion, and assure strict impartiality on the part of the state and its institutions towards all religions.
- Religion is subordinate to the state rather than the state being subordinate to the religion. It also implies that the state can interfere in religious affairs for the purpose of social reforms.
- A special feature of Indian secularism emerging from historical context is that special protection is granted to the minorities with respect to the conservation of their culture and traditions.

5.3.2 Communal Violence Bill

In order to strengthen the secular credentials of the state, the Government recently presented the Communal Violence Bill' in the Parliament. If this act can provide a mechanism to safeguard the wellbeing of minorities, it will help in achieving the ideal of secularism enshrined in the Preamble.

Key Provisions of the Communal Violence Bill

1. Rigorous imprisonment for life as well as fine for those who have been convicted for committing organized violence.
2. Offence of hate propaganda will be punishable with imprisonment up to 3 years or fine or both.
3. Those who are found guilty of aiding communal violence financially and materially will also be given same punishment.
4. Public servant guilty of dereliction of duty shall be punished with imprisonment up to 2 years and may be extended to 5 years.
5. Punishment for threatening a witness is imprisonment for three years or fine.
6. If there is a chance that the trial cannot be conducted fairly in a particular state, the trial can be conducted outside the state.
7. In case of organized violence, the state Government shall establish relief camps at safe locations. Such camps should not be closed till all the internally displaced persons are rehabilitated.
8. It authorizes NHRC to receive information with respect to any build-up of communal violence.
9. Earlier the Bill was dealing only with minorities. Now, it has been made community neutral.
10. The minimum compensation in case of death and sexual violence is 15 Lakhs and 5 Lakhs respectively.
11. The definition of sexual violence has now been broadened by including both genders: male as well as female.
12. Any act, which can be considered to be derogatory to the sexual dignity of a person will be treated as sexual offence.
13. Communal violence is defined as anything, which destroys the secular fabric of the country.

14. According to the critics, only the term 'reparation' has been used and it has not been dealt with properly. They demand for measurement of 'loss and damage' and public apology for the act.

However, there has been a highly politicized debate on this issue. A few arguments related to this issue are mentioned below:

Arguments against such a Bill:

- Similar provisions already exist under various sections of IPC.
- The problem is not of lack of laws, but poor implementation of existing laws.
- Communalism is linked to the prejudices against a particular community in a society. Such laws may further strengthen such prejudices. Hence, the solution lies not in framing a new law, but elsewhere (politics, social reform, cultural development).

Arguments in favor of such a Bill:

- Law is not a guarantee, but it does provide some form of deterrence.
- This Bill includes many offences, which are not a part of the IPC like hate propaganda and sexual abuse.
- Existing laws may require modification and new laws dealing with relief and rehabilitation are needed.
- The morphology of communal rights in the country has changed. They have become more organized and it has been observed that certain sections of society suffer on account of their religion at the hands of the police, bureaucracy and the judicial system.

Some Steps taken recently to strengthen the secular credentials of the country:

- Constitution of National Commission on Minorities.
- Prime Minister's 15 Point Program for educational and economic empowerment of minorities (On the basis of Ranganath Mishra Committee and Sachar Committee)

5.4 Democratic

The 'democratic republic', which the Preamble envisages is democratic not only from a political standpoint but also from a social standpoint. Thus, it envisages not only a democratic form of government but also a democratic society, infused with the spirit of 'justice, equality and fraternity'.

The form of government envisaged by our Constitution is a representative democracy. The people of India are to exercise sovereignty through the Parliament at the Centre and Legislature in each State, which are elected on the basis of universal adult franchise. The real Executive, namely the Council of Ministers, shall be responsible to the Parliament. Though there shall be an elected President at the head of the Union and a Governor nominated by the President at the head of each state, neither of them can exercise any political function without the advice of Council of Ministers. The Council of Ministers is collectively responsible to the people's representatives in the respective Legislatures (excepting the functions which the Governor is authorized by the Constitution itself to discharge in his discretion or on his individual responsibility).

In essence, Parliamentary democracy envisages the following:

- Representation of People
- Responsible Government
- Accountability of the Council of Ministers to the Legislature

5.5 Republic

A democratic polity can be classified into two categories – monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position (example: Britain, Japan). In a republic, the head of the state is always elected directly or indirectly for a fixed period (example: US, India)

The Preamble declares that source of all authority under the Constitution is the people of India and there is no subordination to any external authority. While, Pakistan remained a British Dominion until 1956, India ceased to be a dominion and declared herself a 'Republic' since enacting the Constitution in 1949.

We have an elected President as the Head of State and all offices including that of the President are open to all citizens.

5.6 Justice

Justice, as a concept involves fair, moral, and impartial treatment of all persons. In its most general sense, it means according individuals what they actually deserve or merit, or are in some sense, entitled to.

The term 'justice' as imbibed in the Preamble embraces three distinct forms –social, economic and political. These are secured through various provisions of Fundamental Rights and Directive Principles.

Social justice denotes equal treatment of all citizens without any distinction based on caste, color, race, religion, sex and so on. It means absence of privileges to any section of the society and at the same time making provisions for the improvement of backward sections (SCs, STs and OBCs) and women.

Economic justice denotes non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property.

Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.

The ideal of justice – social, economic and political has been taken from the Russian Revolution.

5.7 Liberty

The term liberty means an absence of restraints on the activities of individuals and at the same time, providing opportunities for the development of individual personalities.

The Constitution secures to all citizens liberty of thought, expression, belief, faith and worship through Fundamental Rights, which are enforceable in Court of Law. However, reasonable restrictions are placed on liberty by the Constitution itself.

The ideals of liberty, equality and fraternity are taken from the French Revolution.

5.8 Equality

The term 'equality' means absence of special privileges to any section of the society and the provision of adequate opportunities for all individuals without any discrimination.

The Preamble secures to all citizens equality of status and opportunity. This provision embraces three dimensions of equality – civic, political and economic.

The following Fundamental Rights ensure civic equality:

- Equality before Law (Art. 14)
- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Art. 15)
- Equality of Opportunity in matters of public employment (Art. 16)
- Abolition of Untouchability (Art. 17)
- Abolition of titles (Art. 18)

There are two provisions in the Constitution, which seek to achieve political equality:

- No person is to be declared ineligible for inclusion in electoral rolls on the grounds of religion, race, caste or sex (Art. 325).
- Elections to the Lok Sabha and the state assemblies are to be conducted on the basis of adult suffrage (Art. 326).

The Directive Principles (Art. 39) secure to men and women equal right to an adequate means of livelihood and equal pay for equal work.

5.9 Fraternity

Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Art. 51A) say that it shall be the duty of every citizen to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic, regional and sectoral diversities.

According to the Preamble, fraternity assures two things – the dignity of the individual and the integrity of the nation. The word 'integrity' was added by the 42nd Amendment Act, 1976.

According to K.M Munshi, the phrase 'dignity of the individual' signifies that the Constitution not only ensures material betterment and maintains a democratic set-up, but that it also recognizes that the personality of every individual is sacred.

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

6] Questions (Mains)

1. What are the major commitments of the Constitution of Indian as incorporated in its preamble? (in about 150 words) (88/II/4a/20)
2. Why is Indian called a Republic? (88/II/8f(B)/3)
3. The Preamble to the Constitution is aimed to embody the fundamental values and the philosophy on which the Constitution is based. Elucidate. (In about 75 words) (97/I/3c/10)
4. What is the significance of a preamble to a constitution? Bring out the philosophy of the Indian polity as enshrined in the Preamble of the Indian Constitution. (in about 250 words) (04/I/6a/30)



POLITY AND CONSTITUTION: 4

UNION AND ITS TERRITORY

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UNION AND ITS TERRITORY

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Constitutional Provision: Article 1-4 (Part-I)

ARTICLE 1

- Article 1(1) – India, that is Bharat, shall be a Union of States.
- Article 1(2) – The states and territories thereof shall be as specified in the First Schedule.
- Article 1(3) – The territory of India shall comprise:
 - The territories of the States
 - The Union territories specified in First Schedule; and
 - Such other territories as may be acquired.

Federation versus Union

The Drafting Committee had a purpose while choosing the word “Union”, in preference to “Federation”. They were of the view that the word “Union” better expresses the fact that the Union of India is not the outcome of an agreement among the old provinces and it is not open to any State or a group of States to secede from the Union or to vary the boundary of their States on their own free will.

The Federation is a Union because it is **indestructible**. Though the country and the people can be divided into different States for convenience of administration, the country is one integral whole, its people living under a single imperium derived from a single source.

Territory of India

The territory of India, which is described in clause (3) falls under three categories:

- (i) State Territories
- (ii) Union Territories
- (iii) Territories which may be acquired by the Government of India

The names of States and Union Territories and their territorial extent are mentioned in the first schedule of the Constitution. At present, there are 28* states and 7 union territories.

The expression ‘Union of India’ should be distinguished from the expression ‘territory of India’. While the former includes only states which enjoy the status of being member of the federal system and share a distribution of powers with the Union, the “territory of India” includes the entire territory over which the sovereignty of India, for the time, extends and such territories are directly administered by the Central Government.

A territory can be said to have been acquired when the Indian Union acquires sovereignty over such territory according to the modes recognized by International law, i.e. purchase, treaty, cession or conquest. If there was any public notification, assertion or declaration by which the Government of India had declared or treated a territory as part and parcel of India, the Courts would be bound to recognise an ‘acquisition’ as having taken place, with the consequence that the territory would be part of the territory of the Union within Article 1(3)(c).

* AP Reorganization Bill, 2014 is passed by the Parliament and the 29th state will come into being on June 2, 2014

ARTICLE 2

Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

There are two powers given to Parliament by Article 2, namely:

- (i) The power to admit new States into the Union; and
- (ii) The power to establish new States.

The first refers to the admission of duly organised political communities (states which are already in existence), while the second to the formation of state where none existed before, i.e. Article 2 refers to the admission or establishment of new states **that are not part of the Union of India.**

Further, it should be noted that Article 2 gives complete discretion to Parliament to admit or establish new States on such terms and conditions as "it thinks fit". Such terms and conditions must, however, be consistent with the foundational principles or the basic structure of the Constitution. There is nothing in the Constitution, which would entitle a new State, after its formation or admission into the Union, to claim complete equality of status with an existing state.

ARTICLE 3

Formation of new States and alteration of areas, boundaries or names of existing States

Parliament may by law:

- i. Form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- ii. Increase the area of any State
- iii. Diminish the area of any State
- iv. Alter the boundaries of any State
- v. Alter the name of any State

A Bill under Article 3 must satisfy 2 conditions:

- It shall be introduced in either House of Parliament only on the recommendation of the President.
- If the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has to be referred by the President to the Legislature of the State for expressing its views thereon. The President shall specify the period within which the State Legislature must express its views. If the views of the State Legislature are not received within the specified or extended period, the second condition stands fulfilled.

The President (or Parliament) is not bound by the views of the State Legislature and may either accept or reject them, even if the views are received in time. Further, it is not necessary to make a fresh reference to the State Legislature every time an amendment to the bill is moved and accepted in Parliament.

Article 3 empowers the Parliament to alter the territory or integrity of the states without their consent or concurrence, which differentiates the Indian Federal system with that of the traditional system. In other words, the Parliament can redraw the political map of India according to its will. Hence, the territorial integrity or continued existence of any state is not guaranteed by the Constitution. Therefore, India is rightly described as **“an indestructible Union of destructible states”**.

While in America, where the federal system is the result of a compact or agreement between independent states, it is obvious that the agreement could not be altered without the consent of states, who are party to it. That is why American Federation has been described as **“an indestructible Union of indestructible States”**.

In the Indian context, D D Basu argues that such liberal powers were granted to the Indian Parliament because the grouping of the Provinces under the Government of India Acts was based on historical and political reasons rather than social, cultural and linguistic divisions of the people themselves. The question of reorganising the units according to natural alignments was indeed raised at the time of making of the Constitution but, then, there was not enough time to undertake the huge task, considering the magnitude of the problem.

There are instances where the State Legislatures have passed resolution for creating new states. But constitutionally, states cannot initiate the process of creation of states etc. It has to start from the Union Council of Ministers advising the President to recommend the introduction of the Bill in the Parliament. The motion passed by Uttar Pradesh Assembly in November 2011, to divide the state into 4 parts – Poorvanchal, Paschim Pradesh, Awadh Pradesh and Bundelkhand had only suggestive value but no material significance in Constitutional terms.

ARTICLE 4

Laws made under Articles 2 and 3 to provide for the amendment of the First and Fourth Schedule or containing supplemental, incidental and consequential provisions are not to be deemed to be an amendment of this Constitution for the purposes of the Article 368. This means that such laws can be passed by a simple majority and by the ordinary legislative process.

Does cession of an Indian Territory need a Constitutional Amendment?

This question came up for examination before the Supreme Court in a reference made by the President in 1960. The decision of the Central government to cede part of a territory known as **Berubari Union** (West Bengal) to Pakistan (Nehru-Noon Agreement of 1958) led to political agitation and controversy and thereby necessitated the Presidential reference. The Supreme Court held that the power of Parliament to diminish the area of a state (under Article 3) *does not cover cession of Indian territory* to a foreign country. Since the implementation of the agreement would result in the reduction in the total area of India, Article 1 as well as relevant portions of the First Schedule of the Constitution would have to be amended. Hence, Indian

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

During the Manmohan Singh visit of Bangladesh in 2011, a protocol was signed to exchange enclaves under the Land Boundary agreement of 1974. However the same need to be ratified by the Parliament. In accordance with this, the Constitutional (119th Amendment) Bill was introduced in 2013.

On the other hand, the Supreme Court in 1969 ruled that, settlement of a boundary dispute between India and another country does not require a constitutional amendment. It can be done by executive action as it does not involve cession of Indian territory to a foreign country.

Katchatheevu Island: India ceded Katchatheevu island to Sri Lanka through treaties concluded between the two neighbours in 1974 and 1976. As per the position stated in the Berubari Union case, an Indian territory can be ceded to a foreign power only by a constitutional amendment. The cession of Katchatheevu to Sri Lanka was challenged in 2012 in the Supreme Court for being violative of the procedure laid down by the Supreme Court.

Evolution of States and Union Territories

Post-independence, the reorganization of the states on the basis of language became a major aspect of national consolidation and integration. It was a huge task to integrate the provinces, whose boundaries were drawn in a haphazard manner by the Britishers, along with the integration of princely states in post-independence period, which further added to the heterogeneity.

British India had two types of territories

- Provinces, governed directly by British Officials who were responsible to the Governor-General of India
- Princely states under the control of local hereditary rulers having British government as the sovereign but enjoying autonomy based on treaty.

When India gained Independence on 15th August, 1947, the British Government dissolved their treaty relations with the over 600 princely states, who had the option of acceding to either India or Pakistan. Most of the princely states joined India either voluntarily or by armed intervention.

Subsequently, during the period 1947-50, these states were politically integrated into the Indian Union by either merging with the existing provinces or by organising into new provinces. i.e. on 26th January 1950, when the new constitution came into existence, the constituent units of Indian Union were classified into four classes:

- The Part A states included the erstwhile Governor's provinces. The nine part A states were Assam, Bihar, Bombay, Madhya Pradesh, Madras, Orrisa, Punjab, Uttar Pradesh and West Bengal.

- The Part B states were former princely states or group of Princely states, governed by Rajpramukh, who was often a former prince, along with an elected legislature. The Rajpramukh was appointed by the President of India. The Part B states were Hyderabad, Jammu & Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union (PEPSU), Rajasthan, Saurashtra, Travancore-Cochin and Vindhya Pradesh
- The 10 Part C states included both the former chief commissioner's provinces and some princely states except Andaman and Nicobar Islands. The Part C states were Ajmer, Bhopal, Bilaspur, Cooch-Bihar, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur and Tripura.
- The Part D included only Andaman and Nicobar Island and was administered by the Lieutenant Governor.

History of the Demand of Reorganisation of States

The boundaries of provinces in pre-1947 India had been drawn in a haphazard manner as the British conquest of India had proceeded for nearly a hundred years. No heed was paid to linguistic and cultural cohesion so that most of the provinces were multilingual and multicultural. There has been a constant demand for reorganisation of states on the linguistic lines. The Indian National Congress recognised this anomaly as early as 1917 and decided to structure its state units on linguistic basis. But after Independence, having witnessed a partition on the basis of religion, the demands for new states on linguistic basis were seen with suspicion.

In the wake of demands from all quarters for new states, a Linguistic Provinces Commission (also called Dhar Commission), under the Chairmanship of S.K. Dhar, was set up by the President of the Indian Constituent Assembly in 1948 to consider the question of reorganization of states in India. The Commission in its report recommended that the reorganization of states should be on the basis of administrative convenience rather than on linguistic basis.

The Indian National Congress in its Jaipur Session set up a high level committee called **Linguistic Provinces Committee** – consisting of Jawaharlal Nehru, Vallabhbhai Patel and Pattabhi Sitaramiah (JVP Committee) to consider the Dhar Commission's recommendation. In its report, the committee counselled utmost caution in proceeding with the proposal for the linguistic reorganization of States.

However, the Government of India, in 1953 was forced to create the first linguistic state, the state of Andhra, by separating the 16-Telugu speaking districts of Madras state, comprising of the Coastal Andhra and Rayalaseema Regions, following the long drawn agitation and death of Potti Sriramulu, after a 56 day hunger strike for the cause.

Subsequently, Jawaharlal Nehru appointed the States Reorganization Commission (1953), under the chairmanship of Fazl Ali to examine the whole question. The other two members of the Commission were KM Panikkar and HN Kunzru. In 1955, the Commission submitted its report. While laying down that due consideration should be given to administrative and economic factors, it recognized for the most part the linguistic principle and recommended redrawing of state boundaries on that basis.

The four criteria laid down by the State Reorganisation Commission (SRC) for accepting the demand by a region for the formation of a state are:

- States are to be formed on the basis of linguistic and cultural unity
- Creation of states should strengthen and preserve national unity
- Formation of new states should also be governed by financial, administrative and economic viability
- It should aid the process of implementation of Five Year Plans.

The State Reorganisation Act was passed by the Parliament in November 1956. It provided for fourteen states and six centrally administered territories. The Constitutional (Seventh) Amendment Act was passed to replace the four types of states, known as Part A, B, C and D with a single class of states.

The reorganisation of existing state boundaries since the consolidation of Indian Union in 1950 can be broadly classified under three broad waves of reorganisation.

- The first major reorganization occurred in 1956 following a nationwide movement for the creation of linguistically compact provinces. Kashmir had already been incorporated within the Indian union based on the special status granted to it by Article 370.
- The second major initiative came in the 1970s, when the Northeast was split up and several new states were created following the establishment of Nagaland in 1963.
- The third phase marked the creation of Jharkhand, Uttaranchal and Chhattisgarh in the Northern provinces of India.

Each phase of re-organisation was based on a new balance of political power between the Centre and its federal Units. Reorganization resulted in rationalizing the political map of India, without seriously weakening its unity. The Linguistic reorganization during 1950's was a major development in incorporating cultural identities into political and administrative units. By reorganizing the states on Linguistic lines, the national leadership removed a major grievance which could have led to fissiparous tendencies. States reorganisation is, therefore, 'best regarded as clearing the ground for national integration.'

Timeline- Creation of New States and Union Territories in India

Andhra Pradesh	Created by the Andhra State Act (1953) by carving out some areas from the State of Madras. Kurnool was the capital and high court was established at Guntur.
Gujarat and Maharashtra	The State of Mumbai was divided into two States i.e. Maharashtra and Gujarat by the Mumbai (Reorganisation) Act 1960
Kerala	Created by the State Reorganisation Act, 1956. It comprised Travancore and Cochin areas
Karnataka	Created from the Princely State of Mysore by the State Reorganisation Act, 1956. It was renamed Karnataka in 1973

Nagaland	It was carved out from the State of Asom by the State of Nagaland Act, 1952
Haryana	It was carved out from the State of Punjab by the Punjab (Reorganisation) Act, 1966
Himachal Pradesh	The Union Territory of Himachal Pradesh was elevated to the status of State by the State of Himachal Pradesh Act, 1970
Meghalaya, Manipur and Tripura	First carved out as a 'sub-State' or 'autonomous state' within the State of Assam by 22 nd Constitutional Amendment Act, 1969. Later in 1971, it received the status of a full-fledged State by the North-Eastern Areas (Reorganisation) Act 1971. Both these States were elevated from the status of Union-Territories by the North-Eastern Areas (Reorganisation) Act 1971. The two union territories of Mizoram and Arunachal Pradesh (originally known as North-East Frontier Agency—NEFA) came into being.
Sikkim	Sikkim was first given the Status of Associate State by the 35th Constitutional Amendment Act 1974 while it was under the rule of 'Chogyal'. It got the status of a full State in 1975 by the 36th Amendment Act, 1975.
Mizoram	It was elevated to the status of a full State by the State of Mizoram Act, 1986
Arunachal Pradesh	It received the status of a full state by the State of Arunachal Pradesh Act, 1896
Goa	Goa was separated from the Union-Territory of Goa, Daman and Diu and was made a full-fledged State of Goa, Daman and Diu Reorganisation Act 1987. But Daman and Diu remained as Union Territory
Chhattisgarh	Formed by the Constitutional Amendment Act, 2000 by dividing Madhya Pradesh on November 1, 2000
Uttarakhand	Formed by the Constitutional Amendment Act, 2000 by dividing Uttar Pradesh on November 9, 2000
Jharkhand	Formed by the Constitutional Amendment Act, 2000 by dividing Bihar on November 15, 2000

The Union Territories are, since 1987, seven in number – Delhi; Andaman & Nicobar Islands; Dadra and Nagar Haveli; Lakshadweep; Daman & Diu; Pondicherry and Chandigarh. For the Union Territory of Pondicherry, the Parliament has by enacting a law, viz. Pondicherry (Administration) Act, 1962 under Art. 239A made provision for a legislature etc. By an amendment to the constitution two new articles, viz. 239AA and 239AB were inserted in 1992 providing for a legislature and a ministry for Delhi, which has been named as National Capital Territory of Delhi by Art. 239AA.

Rest of the Union Territories are centrally administrated areas, to be governed by the President, acting through an 'Administrator' appointed by him, and issuing Regulations for their good

government [Arts. 239-240].

PUDUCHERRY (PONDICHERRY)

A previous French Colony, a treaty of cession was signed by India and France in 1956. Until 1962, when the French Parliament ratified the agreement, it was given the status of an 'acquired territory'. It finally got the status of a Union Territory in 1962, when India and France exchanged instruments of ratification under which France ceded to India full sovereignty over the territories it held. Further, in 2006, the Parliament passed a Bill to rename the Union Territory of Pondicherry as Puducherry in response to the wishes of the people of the Union Territory.

Puducherry encompasses four regions namely – Puducherry, Karaikal, Mahe and Yanam.

SIKKIM

Sikkim was originally a Protectorate (defined after the paragraph) of India. It was granted the status of an 'associate state' of the Indian Union by amending the constitution (35th Amendment Act) in 1974. Sikkim assembly adopted a resolution in 1975, abolishing the institution of the Chogyal (royalty) and declaring Sikkim as a constituent unit of India. A general referendum was held, which further paved the way for integration of the state with the Indian Union. Consequently, the Parliament passed the 36th Constitutional Amendment Act in 1975 and Sikkim became the 22nd state of Indian Union.

Protectorate – In international law, a protectorate is a political entity that formally agrees by treaty to enter into a relationship with another, stronger state, called the protector, which agrees to protect it (diplomatically or militarily) against third parties, in exchange for which the protectorate usually accepts specified obligations.

Performance of new states created in 2000

Looking at the economic growth for these states and contrast them with that of their mother states for two period- 1994 – 2000 (pre) and then from 2001 to 2012 (post).

In the pre-birth years, Uttarakhand and Chhattisgarh clocked an average growth rate of approximately 3% during the pre-birth periods. In the post- birth period, these states improved their growth rates dramatically too approximately: Uttarakhand 11%, Chhattisgarh: 9% – a good 200% increase in the growth rates. Contrast this with the mother states – UP accelerated 20% from 4.7% to 6%, MP from 6% to 7%.

Clearly these two states – Chhattisgarh and Uttarakhand performed much better than their mother states after their birth. Jharkhand, on the other hand, did shown an increase in growth rate, from 5% to 7%, but not as stellar as its other cousins. Bihar outpaced Jharkhand during this period from roughly 4.7% to 7.2%, being an outlier.

The pertinent question then is – while all new small states accelerated its growth rate why is it that Uttarakhand and Chhattisgarh performed better than their mother states but Jharkhand could not mimic the same feature? Is it merely smallness of states that explains this dichotomy?

Issues in Reorganisation of states

Demand for new states- Is it a threat to the Unity of the Nation?

Ramachandra Guha argues that the creation of linguistic states has safeguarded the unity of India. Pakistan was divided, and Sri Lanka subject to protracted Civil War, because Bengali speakers in the former and Tamil speakers in the latter case were denied the autonomy and dignity they wanted and deserved. On the other hand, the fact that in India citizens were free to educate and administer themselves in their own language has created a feeling of comfort and security.

Eminent scholars and other many are of the view that linguistic states were necessary in the early stages of Indian independence, but now it may be time for a further reorganisation of states. The proponents of Telangana, Vidharbha and Gorkhaland all have a robust case. Their regions are well defined in an ecological and cultural sense, and have historically been neglected by the more powerful or richer part of the states.

After 65 years of Independence, there need no longer be any fear about the unity of India. The country is not about to Balkanise(break up). The real problems in India today have to do with the quality of governance. Smaller states may be one way to address the problem.

Is there a need for 2nd State Reorganisation Commission

The increasing demand for new states raises a number of questions with regard to the well-being of India's federal democratic polity. There are four measures that must be considered while devising any framework to address the issue of federal reorganisation.

- The constitution of a permanent State Reorganisation Commission
- Amendment of the Constitution to ensure that the demand for a new state emanates from the state legislature and not at the centre
- Examination of economic and social viability rather than political considerations
- Clear-cut safeguards to encourage democratic concerns like development and governance rather than religion, caste and language as valid grounds for a new state

There have long been calls for the establishment of a second States Reorganisation Commission (SRC) to take a more comprehensive look at the shape and size of India's states. If one were to be established, a new SRC might address the following range of questions.

Does India need more states?

India sits at the bottom of the federal league table of numbers of states per capita population. It has an average of over 35 million people per state. That compares to about 7 million people in Brazil, 6 million in the US or 4 million in Nigeria. However, in geographical terms, the size of its states is less startling. India's states are an average of about 110,000 square kilometres in size compared to almost 200,000 sq km in the US and over 300,000 sq km in Brazil. German Länder are much smaller, at an average of 22,000 sq km, while Swiss cantons are an average of only 1,588 sq km. So, in per capita terms, it lags behind other federal systems, but it is not an outlier in terms of geographical area.

Does small state mean better Governance?

Secondly, a new commission might ask whether smaller states are likely to improve governance. One thing that the creation of new states is likely to do is to increase the density of the states. New states require new capitals, administrative structures, courts and personnel to man them. While this idea of a "gravity train" is one of the reasons that critics sometimes rail against the expense and inefficiency of creating new states, an increase in the depth of the state may improve its capacity.

India has one of the lowest rates of public sector employment among G20 countries. Gaps in the public workforce undermine the ability of the Indian state to tax, deliver justice, security and basic goods like education and healthcare. Yet, filling vacancies depends critically on improving skills and higher education — new states hold no guarantees in this regard.

There is no necessary connection between reducing the size of states and improving governance. Those who see a link between state size and governance often do so on the assumption that smaller states will be more geographically compact, more socially cohesive and thus will help to improve the efficiency of public spending.

It is also assumed that smaller states can improve accountability by reducing the distance between elected representatives and voters. Yet if one looks at the states that perform better in terms of economic growth, or in terms of poverty reduction, we do not see a clear relationship between state size and performance. Nor is it the case that the "newness" of a state is likely to give a boost in itself — the mixed experience of India's newest states, Chhattisgarh, Jharkhand and Uttarakhand, demonstrates this.

Alternatives to Creation on new states

A third question for a new SRC is that if the ground for creation of new states is administrative efficiency then are there any other alternatives to creating new states that could address some of the concerns. In some cases a better distribution of Central resources or a better devolution of power to Panchayati Raj Institutions at state level may give desired result rather than creating a new state. Here it might be noted that states have extremely mixed records in the extent to which they have empowered sub-state institutions such as municipal corporations, autonomous regional councils or Panchayati raj institutions.

In case of Telangana, the consequences for the urban governance of Hyderabad are still an under-explored dimension of the future administrative set-up especially while it remains a shared capital of Telangana and Andhra Pradesh. This touches on important issues around the administration of big cities and their relationship to state governments which continue to address large rural electorates too. These questions also affect other metros, and we are likely to observe more demands in coming years for new administrative set-ups in other big cities such as Mumbai or Bangalore in order to increase their autonomy from state governments. A future SRC could usefully consider the place of cities and mega-cities within new state set-ups.

Who should decide if new states are to be created?

Fourth, a new SRC might wish to ask who should decide whether new states are created. It is an interesting feature of India's constitutional settlement that despite the centralised nature of

Article 3, which effectively gives the Central government the power to make or break states, the real battles over state division are fought in state level arenas. A new SRC might consider whether a state assembly's resolution supporting bifurcation should be made a necessary requirement.

Adjudicating the existing demands of statehood

Lastly, any future SRC would need to adjudicate on other actually existing demands for statehood — in Gorkhaland, Vidarbha, Bodoland, Bundelkhand, Harit Pradesh and elsewhere. A question that any future SRC would — or should — not easily find an answer to is that of the "right" size of a state. There is no one-size-fits-all or abstract answer to which regions should become states. States can only emerge as a compromise or balance between regional political cultures, identities and demands for recognition, geographies and economic factors.

Telangana Issue

In case of creation of the state of Telangana, the Andhra Pradesh Reorganisation Bill, 2013 was decisively rejected by the Andhra Pradesh Legislative Assembly and Council. But the same did not deter the Government from going ahead with the passage of the Andhra Pradesh Reorganisation Bill, 2014 (Telangana) in the Parliament.

While the legal interpretation of Article 3 is clear, i.e. the views of the Andhra Pradesh Assembly will have no legal effect; the formation of Telangana is solely the prerogative of the government of India but this position should be reconsidered in the light of the evolving meaning of Indian Federalism.

However, to treat the State's views as carrying merely formal value, as has been widely suggested, would render the constitutional process of consultation entirely nugatory in a matter of national importance. The current proviso to Article 3 was introduced by the Constitution (Fifth Amendment) Act, 1955. Before this amendment, the President could only introduce an Amendment Bill in Parliament after referring it to the State legislatures concerned for their views. This was a time-consuming process, allowing States to vacillate in responding, thereby frustrating the efforts of the government of India. This amendment was necessary to lay the groundwork for the smooth passage of the States' Reorganisation Commission Report that recommended a radical redrawing of State boundaries and creation of new States. By adequately circumscribing State power, it was felt that no single State could hold up the process of reorganisation.

The rejection of the Telangana Bill by the Andhra Pradesh Assembly is evidence of a dramatically changed time. For the legal interpretation of Article 3 to ignore such change would be an anachronism. It would also be inconsonant with the Supreme Court's characterisation of the Constitution as "*a living tree*" capable of continuous growth with concomitantly changing scenarios.

The same spirit of reinterpretation of provisions of the Constitution that have a bearing on the federal character was displayed on the *S.R. Bommai vs. Union of India* when the power of the President to impose President's Rule was held to be not above and beyond judicial review.

In the face of such changes, to merely parrot an originalist constitutional vision of a strong Centre while interpreting legal provisions is to take a blinkered view. The centralising tendency in India's federal structure was adopted at a time when it was necessary to weld India's disparate elements together into a nation. This was a task for which the government of India was uniquely positioned and required a supporting constitutional architecture.

Thus, the federal provisions of the Constitution were as much lofty vision as political strategy. Such strategy now requires a careful recalibration since such a tool for nation-building, if used unthinkingly, will be seen purely as central hegemony. Such forced unitary structure will be more harmful than a genuine recognition of a more equal federal structure that is perfectly consonant with the idea of India.

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POLITY AND CONSTITUTION: 5

CITIZENSHIP IN INDIA

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CITIZENSHIP IN INDIA

Citizen - Meaning

The Oxford Dictionary defines a citizen as:

- A legally recognized subject or national of a state or commonwealth
- An inhabitant of a town or city. The term citizen has an urban origin. It has been derived from the Anglo-Norman word 'citezein' and French 'citoyen'. This is based on the Latin civitas, meaning people united in a city or community. The expansion and development of citizenship has been closely linked to the growth of cities and the emergence of the nation state.

A **Citizen** is a member of a society, community, (originally a city or town but now usually a country) and carries with it rights to political participation; such membership is called **Citizenship**

Introduction

A Citizen of a given state is a person who enjoys full membership of the political community or the State.

There are two classes of people in any country – **citizens and aliens**. Citizens are different from aliens or mere residents who do not enjoy all the rights which go to make full membership of the State. For example, citizens can vote and contest to hold representative offices like a Member of Parliament, while the aliens cannot. Aliens are of two types: citizens of friendly countries are friendly aliens while those of enemy countries are enemy aliens – the latter being denied some of the rights that the former enjoy. Further, the Citizens of India have the following rights, which aliens shall have not-

- Some Fundamental rights belong to citizen alone, such as, - **Arts. 15, 16 18(2), 19 and 29.**
- Only citizens are eligible for certain offices, such as those of the President; Vice-President; Judge of Supreme Court or of a High Court; Attorney General; Governor of a State; Advocate-General
- The right of suffrage for election to the House of the People (of the Union) and the Legislative Assembly of every state and the right to become a member of Parliament and of the Legislature of a state are also confined to citizens

A person of India Origin (PIO) is one who has acquired the citizenship of another country. He is no more a citizen of India unlike the NRI's.

The provisions relating to Citizenship are contained in Articles 5 to 11 in Part II of the Constitution of India. The Citizenship Act, 1955 deals with matters relating to acquisition, determination and termination of Indian Citizenship. It provides for the acquisition of Indian citizenship by birth, by descent, by registration and by naturalisation. The Citizenship rules, 1956 prescribe the procedure, forms of application and fees etc.

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Section 2(b)

Of the Act defines citizen as - "citizen" in relation to a country specified in the First Schedule, means a person who under the citizenship or nationality law for the time being in force in that country, is a citizen or national of that country.

The First schedule mentioned here in has been omitted by Citizenship Amendment Act, 2003

Besides Citizens, there are certain other categories of persons dealt by the Indian law. These are as follows:-

Non-Resident Indian (NRI)

A Non-Resident Indian is an Indian citizen who is ordinarily residing outside India and holds an Indian Passport. A resident is defined as one who resides in the country for a certain number of days – 182 days in the previous year according to Indian Law. A non-resident Indian is a citizen of India but has not resided in the country for the required number of days

Person of Indian Origin (PIO)

A person who, or any of his ancestors, was an Indian national and who is presently holding another country's citizenship/ nationality i.e. he/she is holding foreign passport or

Any person who at any time held an Indian Passport; or he or either of his parents or grandparents was born in or was permanently resident in India as defined in Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time citizen of Afghanistan, Bhutan, China, Nepal, Pakistan and Sri Lanka; or

A person who is a spouse of citizen of India or a person of Indian origin is eligible to apply for a PIO Card.

PIOs of all countries are eligible except Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka. A PIO Card Holder is entitled to the following

Benefits:

- Shall not require a separate Visa to visit India.
- Will be exempt from the requirements of registration if his/her stay on any single visit in India does not exceed 180 days.
- In the event of continuous stay in India exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned FRRO/FRO.
- Parity with NRIs in respect of all facilities available to the later in the economic, financial and educational fields, except in matters relating to the
 - Acquisition of agricultural/plantation properties
 - No parity shall be allowed in the sphere of political rights
- A PIO Card Holder can visit India without visa for 15 years from the date of issue of PIO card. The PIO Card Holder is required to register with local police authorities in India when the stay in India exceeds 180 days for the first time.

As per section 5(1) (a) & 5(1) (c) of the Citizenship Act, a PIO Card Holder has to reside in India for minimum 7 years Before making application for acquiring Indian Citizenship.

Overseas Citizen of India (OCI)

A person registered as Overseas Citizen of India (OCI) under Section 7A of the Citizenship Act, 1955. The OCI scheme is operational from 2-12-2005

A foreign national, who was eligible to become citizen of India on 26 Jan 1950 or was a citizen of India on or at any time after 26 Jan 1950 or belonged to a territory that became part of India after 15 August 1947 and his/her children and grandchildren, provided his/her country of citizenship allows dual citizenship in some form under the local laws, is eligible for registrations as Overseas Citizen of India (OCI).

An OCI is entitled to the following benefits:-

- (i) A multiple entry Multi-purpose life long visa for visiting India.
- (ii) Exemption from registration with local police authority for any length of stay in India.
- (iii) Parity with Non-resident Indians (NRIs) in respect of Economic, financial and educational fields except in relation to
 - Acquisition of agricultural or plantation properties
 - No parity shall be allowed in the sphere of Political rights.

Any other benefits as may be notified by the Ministry of Overseas Indian Affairs (MOIA) under Section 7B (1) of the Citizenship Act, 1955. An OCI can visit India without visa for life long. Registered OCI may be granted Indian citizenship after 5 years from date of registration provided he/she stays for One year in India before making application.

Constitutional Provisions

Article 5

Citizenship at the commencement of the Constitution.—at the commencement of this Constitution, every person who has his domicile in the territory of India and—

- Who was born in the territory of India; or
- Either of whose parents was born in the territory of India; or
- Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Article 6

Rights of citizenship of certain persons who have migrated to India from Pakistan.—Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

- he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

- In the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
- in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Article 7

Rights of citizenship of certain migrants to Pakistan.—notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

Article 8

Rights of citizenship of certain persons of Indian origin residing outside India.—Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Article 9

Persons voluntarily acquiring citizenship of a foreign State not to be citizens.— No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

Article 10

Continuance of the rights of citizenship.—Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Article 11

Parliament to regulate the right of citizenship by law.—nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship

ACQUISITION & TERMINATION OF CITIZENSHIP

Legal provisions relating to acquisition and termination of citizenship of India are contained in the Citizenship Act, 1955. The Indian law confers the status of citizen in the following ways:

- By Birth
- By Descent
- By Registration
- By Naturalization
- By acquisition of territory

Citizenship by Birth (Section 3)

- A person born in India on or after 26th January 1950 but before 1st July, 1987 is citizen of India by birth irrespective of the nationality of his parents.
- A person born in India on or after 1st July, 1987 but before 3rd December, 2004 is considered citizen of India by birth if either of his parents is a citizen of India at the time of his birth
- A person born in India on or after 3rd December, 2004 [the commencement of the Citizenship (Amendment) Act, 2003] is considered citizen of India by birth if both the parents are citizens of India or one of the parents is a citizen of India and the other is not an illegal migrant at the time of his birth.
- A person shall not be a citizen of India by virtue of this section if at the time of his birth
 - Either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or
 - His father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.

An “**illegal migrant**” as defined in section 2(1) (b) of the Act, is a foreigner who entered India

- (i) Without a valid passport or other prescribed travel documents : or
- (ii) With a valid passport or other prescribed travel documents but remains in India beyond the permitted period of time.

Citizenship by Descent (Section 4)

- A person born outside India on or after 26th January 1950 but before 10th December 1992 is a citizen of India by descent, if his father was a citizen of India by birth at the time of his birth. In case the father was a citizen of India by descent only, that person shall not be a citizen of India, unless his birth is registered at an Indian Consulate within one year from the date of birth or with the permission of the Central Government, after the expiry of the said period.

- A person born outside India on or after 10th December 1992 but before 3rd December 2004 is considered as a citizen of India if either of his parents was a citizen of India by birth at the time of his birth. In case either of the parents was a citizen of India by descent, that person shall not be a citizen of India, unless his birth is registered at an Indian Consulate within one year from the date of birth or with the permission of the Central Government, after the expiry of the said period.
- A person born outside India on or after 3rd December, 2004 shall not be a citizen of India, unless the parents declare that the minor does not hold passport of another country and his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period.

Citizenship by Registration [Section 5(1)]

Indian Citizenship by registration can be acquired (not illegal migrant) by: -

- Persons of Indian origin who are ordinarily resident in India for SEVEN YEARS before making application. (Throughout the period of twelve months immediately before making application and for SIX YEARS in the aggregate in the EIGHT YEARS preceding the twelve months).
- Persons of Indian origin who are ordinarily resident in any country or place outside undivided India under section.
- Persons who are married to a citizen of India and who are ordinarily resident in India for SEVEN YEARS before making application under section.
- Minor children whose both parents are Indian citizens under section.
- Persons of full age and capacity whose both parents are registered as citizens of India can acquire Indian citizenship.
- Persons of full age who or either of the parents were earlier citizen of Independent India and residing in India for ONE YEAR immediately before making application.
- Persons of full age and capacity who has been registered as an OVERSEAS CITIZEN OF INDIA(OCI) for 5 years and residing in India for ONE YEAR before making application.

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

Citizenship by Naturalization (Section 6)

Citizenship of India by naturalization can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for TWELVE YEARS (throughout the period of twelve months immediately preceding the date of application and for ELEVEN YEARS in the aggregate in the FOURTEEN YEARS preceding the twelve months) and other qualifications as specified in Third Schedule to the Act.

Where an application is made in the prescribed manner by any person of full age and capacity who is not a citizen of a country specified in the First Schedule for the grant of a certificate of a naturalization to him, the Central Government may, if satisfied that the applicant is qualified for naturalization under the provisions of the Third Schedule, grant to him a certificate of naturalization.

Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished services to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule of Citizenship act, 1955.

The person to whom a certificate of naturalization is granted shall, on taking an oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalization as from the date on which that certificate is granted.

Citizenship by Incorporation of Territory

If any territory becomes a part of India, the Central Government, may by orders notified in the Official Gazette, specify the persons who shall be citizens of India by reasons of their connection with that territory, and those persons shall be citizens of India as from the date to be specified in the order.

Termination

Citizenship is terminated either by **renunciation or acquisition of citizenship of another country**. Termination is covered in Section 9 of the Citizenship Act, 1955. Section 9(1) of the Act provides that any citizen of India who by naturalisation or registration acquires the citizenship of another country shall cease to be a citizen of India. It also provides that any citizen of India who voluntarily acquires the citizenship of another country shall cease to be a citizen of India.

Renunciation of Citizenship

Renunciation is covered in Section 8 of the Citizenship Act 1955. If any citizen of India of full age and capacity, who is also a citizen or national of another country, makes in the prescribed manner a declaration renouncing his Indian citizenship; the declaration shall be registered by the prescribed authority, and upon such registration, that person shall cease to be a citizen of Indian. Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central government otherwise directs.

Where a person ceases to be a citizen of India every minor child of that person shall there upon cease to be a citizen of India, provided that any such child may, within one year after attaining full age, make a declaration that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

For the purpose of this section, any woman who is, or has been, married shall be deemed to be of full age.

Acquisition of Citizenship of Another Country

Any citizen of India who by naturalization, registration or otherwise voluntarily acquires, or has at any time between the 26th January 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country, cease to be a citizen of India.

However, this does not apply to a citizen of India, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

The acquisition of another country's passport is also deemed under the Citizenship Rules, 1956 to be voluntary acquisition of another country's nationality. Rule 3 of Schedule III of the Citizenship Rules, 1956 states that **"the fact that a citizen of India has obtained on any date a passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date"**.

Deprivation

The Central government under section 10 of the Indian citizenship Act, 1955 deprives any citizen of Indian Citizenship if it is satisfied that-

- The registration or certificate of naturalization was obtained by means of **fraud, false representation or concealment** of any material fact; or
- That citizen has shown himself by act or speech to **be disloyal or disaffected** towards the Constitution of India as by law established; or
- That citizen has, during the war in which India may be **engaged, unlawfully traded or communicated with an enemy** or been engaged in or associated with, any business that was to his knowledge carried on in such manner as to assist any enemy in that war;
- That citizen has, within five years after registration or naturalization, been sentenced in any country to imprisonment for a term of not less than two years; or
- That citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government of India or of an International organization of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.
- The Central Government shall not deprive a person of citizenship unless it is satisfied that it is not conducive to **the public good** that person should continue to be a citizen of India.

CONCEPT OF DUAL CITIZENSHIP

Citizenship is generally defined based on some common factors. One could be a citizen of a country for one or more of the following reasons

- "Right of the Soil" - if he was born in the territory (within the borders) of that country
- "Right of Blood" - If one or both of his parents are citizens of that country.
- By Marriage - If he is married to a person who is a citizen of that country (this is no longer an automatic process - he still needs to apply for citizenship)

- Naturalization - If he obtained citizenship of the country by going through the legal process of naturalization

As there are various ways to acquire citizenship of a country, it is possible for someone to be considered a citizen under the laws of two or more countries at the same time. This is dual citizenship.

Dual Citizenship is simply being a citizen of two countries. Dual citizens can carry two passports and essentially live work, and travel freely within their native and naturalized countries. Some countries do not allow dual citizenship. For example, South Korean and American citizenship cannot be carried on hand in hand.

The Indian Parliament passed a Bill to grant Overseas Citizenship of India (OCI) to people of Indian origin in December 2003. The OCI Scheme became operational from Dec 2, 2005. The Constitution of India does not as such allow holding Indian Citizenship and citizenship of a foreign country simultaneously. Based on the recommendation of the High Level committee on Indian Diaspora, the Government of India decided to grant Overseas Citizenship of India (OCI) commonly referred to as 'Dual Citizenship'.

The Indian Government grants an Overseas Citizenship of India (OCI) status under which Persons of Indian Origin (PIO), who have migrated from India and acquired citizenship of a foreign country (other than Pakistan and Bangladesh), are eligible for certain benefits, "as long as their home countries allow dual citizenship in some form or the other under their local laws". This status is not the same as being a citizen of India – according to the modification issued by the Government of India, such person:

- Does not get an Indian passport
- Has no voting rights
- Cannot contest elections or be nominated to the Lok Sabha, Rajya Sabha, Legislative Assembly or Council.
- Cannot hold constitutional posts such as those of President, Vice President, Judge of Supreme Court or High Court. A registration certificate in prescribed format is issued and a multiple entry,

STATUS OF REFUGEES IN INDIA

India is neither party to the 1951 Convention on Refugees nor the 1967 Protocol. The lack of specific refugee legislation in India has led the government to adopt an adhoc approach to different refugee influxes. The status of refugees in India is governed mainly by political and administrative decisions rather than any codified model of conduct. The ad hoc nature of the Government's approach has led to varying treatment of different refugee groups. Some groups are granted full range of benefits including legal residence and the ability to be legally employed, whilst others are criminalized and denied access to basic social resources.

The legal status of refugees in India is governed mainly by the Foreigners Act 1946 and the Citizenship Act 1955. These Acts do not distinguish refugees and apply to all non-citizens equally. Under the Acts it is a criminal offence to be without valid travel or residence documents. These provisions render refugees liable to deportation and detention.

The United Nations High Commissioner for Refugees (UNHCR) is based in New Delhi. Once recognized, Afghan, Burmese, Palestinian and Somali refugees receive protection from the UNHCR. Many refugees receive a small monthly subsistence allowance and all have access to the services provided by the UNHCR's implementing partners in Delhi: the YMCA, Don Bosco and the Socio-Legal Centre (SLIC).

The largest refugee populations in India do not fall under the UNHCR's mandate, but are nonetheless considered refugees by the government. There are over 1, 50,000 Tibetans and 90,000 Sri Lankans who have fled violence and persecution and sought refuge in India. These groups are accommodated and assisted in accessing education, healthcare, employment and residence to varying degrees.

Tibetan Refugees

Following the Chinese incursion in 1951, in 1959, many Tibetans fled to India with a steady flow filtering into India in the years that followed. There are approximately 1, 50,000 Tibetan refugees in India.

Legal status

Tibetans who arrived in India in the late 1950s and early 1960s were accorded refugee status by the Indian government despite India not being party to either the 1951 UN Convention Relating to the Status of Refugees or the 1967 Protocol. These Tibetans were issued registration certificates, which must be renewed once or twice a year. Tibetans who were born in India are also eligible to obtain a registration certificate once they are 18 years old.

Although the Indian government continues to allow Tibetans to enter the country, it has not afforded them the same legal status as the first wave of Tibetans. However, some Tibetans who arrived in the second-wave were able to obtain their registration certificates by claiming that they were born in India. Tibetans are given more rights than most other refugee groups in India. They are provided with residence permits, which enable them to seek formal employment. They are the only refugee group to receive travel permits from the Indian government.

Sri Lankan Refugees

The legal status of Sri Lankan refugees in India is officially governed by the Foreigner's Act 1946 and India's Citizenship Act 1955 which defines all non-citizens who enter without visas to be illegal migrants, with no exception for refugees or asylum seekers.

Sri Lankans who are considered to be a threat to national security are deemed to be militants and detained in 'special camps' in Chenglepet or Vellore. Nonetheless, in general the Government of India recognizes Sri Lankans fleeing violence at home to be refugees and accordingly grants them protection.

Bhutanese Refugees

Ethnic Nepalese people started arriving in Bhutan in significant numbers in the early 20th century. By the 1980s they accounted for a quarter of the Bhutanese population. In the mid to late 1980s, the authorities began to view the growing numbers of Hindu Nepalese in Bhutan as

a direct threat to Bhutanese ethnic identity. After this time, discriminatory measures were employed to restrict the Nepalese from government service jobs, from obtaining promotions and receiving passports.

Alongside these measures, the government introduced a national campaign to revive traditional culture. Teaching Nepali as a second language in schools was banned and Bhutanese national dress was to be worn at school as well as on official occasions. A census was carried out in the early 1980s which determined the number of Nepalese living in Bhutan.

As a result of the census, the Citizenship Act of 1985 was enacted which set out new conditions for citizenship of Bhutan. A great number of Hindu Nepalese became illegal residents overnight. The only way to regain it was to prove their residence in Bhutan for the previous years.

As a result, many naturalized citizens lost their status. The Act also allowed for any naturalized citizen to be stripped of his or her status if they had shown, by act or speech, to be 'disloyal' to the King, country, or people of Bhutan. This provision has been used frequently to revoke citizenship from Hindu Nepalese under the pretext of 'disloyalty'.

In response to the protests by the ethnic Nepalese in Bhutan in the south against their deportation and discrimination, the government's military presence increased. After several raids and bombings, the Bhutanese authority ordered the closure of local Nepalese schools, clinics, and development programs. Many ethnic Nepalese were forcibly evicted and forced to cross the Indian borders into Assam and West Bengal.

The Indian states would not accept the expelled Bhutanese and they were forced to move on. Most went through Nepal to go back into India at different entry points, while many stayed in UNHCR refugee camps in Nepal. There are between 30,000 (approx.) ethnic Nepalese living in India. For them, obtaining recognition as refugees remains an impossible task.

Legal status

Since 1949, Bhutanese citizens have been permitted to move freely across the Indian border. An Open border between India and Nepal and India and Bhutan is provided for by a treaty between the respective states, last updated in February 2007. A reciprocal arrangement between Indian and Bhutan grants its citizens equal treatment and privileges.

The right to residence, study, and work are guaranteed without the need for identity papers. For this reason, the Indian government has not acknowledged the ethnic Nepalese Bhutanese who were forced to flee to be refugees, and nor has it provided any sort of assistance. The UNHCR does not carry out status determination for the Bhutanese. This is most likely due to the friendship treaty between the two countries.

Hindu Pakistani Refugees

Roughly 1,15,000 people displaced from Pakistan have arrived in India since 1965. The Indian government does not recognize this group to be refugees and as a result, they are unable to acquire residence permits and find it difficult to gain employment. The Indian Constitution and the Indian Citizenship Act 1955, however, make specific provision for those who were born or whose parents were born in undivided India to apply for Indian citizenship.

The Citizenship Amendment Rules 2004 specifically provide for Pakistanis to apply for citizenship in Gujarat and Rajasthan. The conditions for citizenship are that the individual must have been continuously resident in India for 5 years, rather than for 12 years as is the case with other foreigners applying for citizenship, and intend to settle permanently in India.

As a result of this legislation, the Indian government awarded 13,000 Hindu Pakistanis, Indian citizenship between 2005 and 2006. Once Pakistani refugees have attained citizenship they are afforded the same rights as Indian citizens. The amendment of the Citizenship Act in 2005, however, has drastically increased the fees structure for citizenship application.

Burmese Refugees

Most of the Burmese enter India from the northeast and very few asylum seekers who travel to Delhi are recognized as refugees by the UNHCR. The organization provides the more vulnerable individuals with a small monthly stipend. In addition to the Burmese who are recognised refugees by the UNHCR, there are also a large number of Burmese asylum seekers living in India. Unlike some other refugee groups, Burmese refugees are granted residence permits to stay in India.

Palestinian Refugees

160 Palestinians are currently seeking refugee status and are the most recent refugee group to arrive in India. The UN High Commission for Refugees (UNHCR) in Delhi has recognized some of the Palestinians as refugees and other applications are under consideration. These refugees have not been issued residence permits by the Indian government.

Afghan Refugees

The Indian government does not officially recognize the Afghan community to be refugees. Instead, they are recognised and protected under the UNHCR mandate. The Indian government has issued most Afghan refugees valid residence permits

This affords them a degree of legal protection, which allows them to stay in the country despite not having valid passports. Attaining residence permits has been more difficult for the newer arrivals in India between 2004-07. Afghan refugees receive a small subsistence allowance for the first six months for the principal applicant and for each dependent.

In addition to these groups India also hosts small numbers of refugees from Sudan, Iraq, Iran Ethiopia and Eritrea amongst others.

CONCLUSION

The concept of Citizenship is gaining more importance especially with regard to Globalisation and Foreign Direct Investment in India. The Overseas Citizens of India have been conferred with certain benefits under the scheme though not in respect to investment, as of date. But considering the manner in which Indian legal system has opened its arms in many aspects to other countries, it's not impossibility for the Indian economy to soon provide additional rights in terms of investment to the OCIs. Considering the fact that there are many investors/potential investors who are of Indian origin, it wouldn't be a bad idea to give additional rights to such people to invest directly in India

Pravasi Bharatiya Divas

Pravasi Bharatiya Divas (PBD) is celebrated on 9th January every year to mark the contribution of Overseas Indian community in the development of India. January 9 was chosen as the day to celebrate this occasion since it was on this day in 1915 that Mahatma Gandhi, the greatest Pravasi, returned to India from South Africa, led India's freedom struggle and changed the lives of Indians forever.

PBD conventions are being held every year since 2003. These conventions provide a platform to the overseas Indian community to engage with the government and people of the land of their ancestors for mutually beneficial activities. These conventions are also very useful in networking among the overseas Indian community residing in various parts of the world and enable them to share their experiences in various fields.

During the event, individuals of exceptional merit are honoured with the prestigious Pravasi Bharatiya Samman Award to appreciate their role in India's growth. The event also provides a forum for discussing key issues concerning the Indian Diaspora.

Ministry of Overseas Indian Affairs

The Ministry of Overseas Indian Affairs (MOIA) is an interactive ministry, dedicated to the multitude of Indian Nationals settled abroad. Established in May 2004 as the Ministry of Non-Resident Indians' Affairs, it was renamed as the Ministry of Overseas Indian Affairs (MOIA) in September 2004. Driven by a mission of development through coalitions in a world without borders, MOIA seeks to connect the Indian Diaspora community with its motherland.

Positioned as a 'Services' Ministry, it provides information, partnerships and facilitations for all matters related to Overseas Indians (comprising Persons of Indian Origin (PIOs) and Non-Resident Indians (NRIs) .

The Ministry is headed by a Cabinet Minister. It has four functional service divisions to handle its diverse scope of services:

- Diaspora Services
- Financial Services
- Emigration Services
- Management Services
- The Ministry focuses on developing networks with and amongst Overseas Indians with the intent of building partnerships with the Diaspora.

Besides dealing with all matters relating to Overseas Indians, the Ministry is engaged in several initiatives with them for the promotion of trade and investment, emigration, education, culture, health and science & technology.

Current Issues

The idea of Citizenship – An analysis

A PARADIGM shift has taken place in the understanding of citizenship in India. For about 40 years, citizenship in India had a philosophical and ideological basis. Everyone born in the

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territory of India after Independence had the right to become a citizen. The basis for granting this right was associational: the founders of the Constitution wanted to adopt a concept of citizenship that was large enough to accommodate everyone (without any distinction) who was born on Indian territory. Indeed, citizenship in many republican countries is guaranteed to persons merely on the grounds of having been born within their territories after independence.

Apart from this, those who claimed Indian citizenship could do so by virtue of either of their parents having been born in the territory of India or their having been ordinarily a resident in the territory of India for not less than five years immediately preceding the adoption of the Constitution in 1950.

However, India began gradually to shift its commitment to this ideal meaning of citizenship. While the Citizenship Act of 1955 laid down that every person born in India on or after January 26, 1950, was to be a citizen of India by birth, the Citizenship (Amendment) Act, 1986, provided that every person born in India would be a citizen of India only if either of his/her parents was a citizen of India at the time of his/her birth, prioritising, thereby, Indian parentage.

The Citizenship Amendment Act of 2003 made citizenship by birth conditional, restricting it to a person born in India, where both of his/her parents are citizens of India; or one of his/her parents is a citizen of India and the other is not an illegal migrant at the time of his birth. If the Rajiv Gandhi-led Congress government can be blamed for the 1986 amendment, in 2003, the Atal Bihari Vajpayee-led National Democratic Alliance government introduced a notion of citizenship that went against the constitutional ethos.

NPR v/s UIDAI – An analysis

India is also home to a large population of illegal immigrants who not only pose a threat to national security but also dip into the schemes and benefits meant for Indians. In such a scenario the logic of counting every single bonafide Indian citizen so that their activities could, as and when required, possibly be seen through the prism of national security is overwhelmingly strong.

It's the tussle between these two worldviews, often diverging and sometimes converging, that's at the bottom of the constant skirmishes between **the Unique Identification Authority of India (UIDAI) and the National Population Register (NPR)**. The idea of NPR was seeded during a local project to issue identity cards in selected border areas of Rajasthan in 1986. The national security environment of that time created an imperative so pressing that by 1993 a legislation -- The Specified Areas (Issue of Identity Cards to Residents) Bill -- was introduced in the Parliament. But it could not be passed.

The Kargil intrusion was a rude jolt and a Group of Ministers (GoM) recommended the compulsory registration of citizens and non-citizens living in India. While at it, they also recommended that all citizens be given a **Multipurpose National Identity Card (MPNIC)** and non-citizens issued cards of a different colour and design. The recommendations were accepted by the government in 2001 and the Citizenship Act 1955 was amended in 2004 by inserting Section 14A, which allowed the central government to compulsorily register every citizen of India and issue a national identity card.

Importantly, it allowed the government to maintain a **National Register of Indian Citizens (NRIC)** and the Registrar General was designated as the Registrar General of Citizen Registration. The Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003 were framed and pilot projects were conducted at several places across the country to test the processes and procedures between 2003 and 2006.

The results of the pilot projects were placed before an Empowered Group of Ministers (EGoM) which recommended the creation of an NPR as the first step towards creating a National Register of Indian Citizens (NRIC). It's this history one needs to keep in mind when discussing the objectives of NPR.

The Aadhar programme of the UIDAI, on the other hand, has completely different moorings. It's an idea of the 21st century and a thought process of an emerging, economically confident India more at peace with itself. In-built within its logic is an introspective attitude of how to ensure that the benefits of development reach every single Indian.

The idea of the Aadhar programme is also rooted in an unshakeable belief that technological solutions and a cooperative participation with the private sector can lead to a larger social good of providing sharper and focused assistance to those yet to get on the bandwagon of growth.

The UIDAI was established by the government in February 2009 with a mandate to issue a unique 12-digit number to all residents of India and maintain the UID number database. The government admits that the programme is aimed at ensuring inclusive growth by providing a form of identity to those who do not have any.

There are genuine divergences in the objectives of NPR and UIDAI. Their worldviews are from different eras. While one is rooted in a mindset of exclusion and security, the other is inclusive and participative. While these divergences can explain differences in issues like data points, methodologies and secure storage of data, it does not explain the constant undercurrent of hostility that exists between these two programmes. Nor does it explain why the popular discourse on these two programmes rests exclusively on 'duplication' and additional cost to the exchequer.

NPR has always been an exercise in achieving and establishing greater control over people. In short, NPR allows the bureaucrats to practically have a stranglehold on every single Indian. Aadhaar was always an exercise in de-bureaucratization to empower every single Indian to delink himself from the rent-seeking bureaucracy that was siphoning off his benefits in collusion with contractors and politicians.

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FUNDAMENTAL RIGHTS

Content:

Fundamental Rights

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1 Concept of Fundamental Rights

Rights are certain legal claims that individuals or citizens are granted by a constitution or legal statute. They are the essence of a democracy, as they empower the individuals and enable them to develop. However, just because we claim something, it does not become our right. It has to be recognized by the society we live in. Rights acquire meaning only in society. Every society makes certain rules to regulate our conduct. They tell us what is right and what is wrong. What is recognized by the society as rightful becomes the basis of rights. That is why the notion of rights changes from time to time and society to society.

It is only when the socially recognized claims are written into law that they acquire real force. Otherwise, they remain merely as natural or moral rights. When law recognizes some claims they become enforceable. We can then demand their application. When fellow citizens or the government do not respect these rights, we call it violation or infringement of our rights. In such circumstances, citizens can approach courts to protect their rights. Thus, rights can be defined as the **reasonable claims of persons recognized by society and sanctioned by law**.

Some rights, which are **fundamental to our life**, are given a **special status**. They are not only listed in a constitution, but also specially protected. Such rights are called **Fundamental Rights**. They are called "fundamental" because they are essential for the all-round development of an individual and also because they are guaranteed by the fundamental law of the land i.e. the constitution itself.

In the Constitution of India, Fundamental Rights are enshrined in Part III, from Articles 12 to 35. These not only guarantee political freedom in the country, but are also a check against arbitrary actions of the state. Further, they help in establishing the Rule of Law instead of Rule of Men, which means that the state cannot act in an arbitrary manner.

In fact, Fundamental Rights serve as the foundation of the Rule of Law by acting as a check on the arbitrary action of the state. Further, an independent judiciary, with the power of judicial review, acts as a protector of the Fundamental Rights as well as a guardian and guarantor of the Rule of Law.

2 Various Type of Rights

2.1 Natural Rights

These are available to the individual by the virtue of his birth as a human being. They are supposed to be given by nature or GOD to human beings and thereby, are intrinsic to human lives. They are not conferred by law but only enforced by law. For example, Right to Life.

2.2 Human Rights

These are supposed to be a secular version of natural rights. These are available to all individuals by virtue of being born as human beings. In that sense, these are supposed to be universal in nature regardless of nationality, race, religion, gender etc.

2.3 Civil Rights

These are those rights, which are available to the citizens of a country and are conferred to them either by law of the land or the constitution itself. For example, Right to Freedom

2.4 Legal rights

These are those civil rights, which are conferred by the statutes enacted by the legislature.

2.5 Constitutional Rights

These are the rights enshrined in the constitution. Some are given special status like Fundamental Rights, while others enjoy ordinary status only. For instance, at present, right to property is merely a constitutional right under the Indian Constitution.

2.6 Fundamental Rights

These are a branch of constitutional rights and are given a special status by virtue of their importance and being directly enforced by the Supreme Court.

3 Evolution of Fundamental Rights

The inspiration for incorporating fundamental rights into the Constitution was the result of a long struggle for freedom and learning from the experiences of world's leading democracies.

In 1928, a series of All Party Conferences headed by Motilal Nehru drafted a constitutional scheme, called the Nehru Report. It called for establishing India into a Parliamentary democracy and giving protection to minorities.

The famous resolution of 1931 Karachi Session further committed itself to issues of individual rights and liberties. This included fundamental civil rights, socio-economic rights like ensuring minimum wages and abolition of untouchability and serfdom.

However, the Simon Commission and the Joint Parliamentary Committee, which were responsible for the Government of India Act, 1935, had rejected the idea of enacting declarations of fundamental rights on the ground that "abstract declarations are useless, unless there exist the will and the means to make them effective". But nationalist opinion, since the time of the Nehru Report, was in favour of a Bill of Rights because the experience gathered from the British regime was that a subservient Legislature might serve as a handmaid to the Executive in committing inroads upon individual liberty.

Regardless of the British opinion, therefore, the makers of our Constitution adopted Fundamental Rights to safeguard individual liberty and also for ensuring (together with the Directive Principles) social, economic and political justice for every member of the community. The Constituent Assembly was also inspired by the Bill of Rights of USA and UK as well as France's Declaration of the Rights of Man.

4 Limitations to Fundamental Rights

All over the world, even in historically deep-rooted democracies, there are limitations imposed on the enjoyment of the Fundamental Rights. Indian constitution also includes such limitations. For instance, Article 19 says that these rights are conditional and are subject to reasonable restrictions. While such reasonable restrictions are spelt out in Article 19, for others such limitations have been added through either Amendment Acts or through Supreme Court

verdicts. For instance, reasonable restrictions found in Article 19 were extended to Article 21 also in the famous Maneka Gandhi case, 1978. Articles 15 and 16 have been amended by the Parliament in the pursuit of social justice.

5 Features of Fundamental Rights

These rights are not absolute. Instead they are subject to certain reasonable restrictions. What constitutes “reasonableness” is to be decided by the Judiciary. Thus, there is fair degree of balance between rights of an individual and overall good of society.

Some of these rights (under Article 15, 16, 19, 29 and 30) are available to Indian citizens only, while the rest are available to foreigners also.

They are not sacrosanct. The Parliament can abridge or take them away through a constitutional amendment as long as such an amendment doesn't alter the basic structure of the Constitution.

The scope of these rights is further limited by Articles 31A, 31B, 31C, 33, 34, and 35

These can be suspended during the national emergency except for Articles 20 and 21. The six rights guaranteed under Article 19 can be suspended only when an emergency is declared on the grounds of war and external aggression, and not on the grounds of armed rebellion.

6 Classes of Fundamental Rights

The fundamental rights as enshrined in part III are generally categorized into following six classes:

- Right to Equality (Art. 14-18)
- Right to Freedom (Art. 19-22)
- Right against Exploitation (Art. 23-24)
- Right to Freedom of Religion (Art. 25-28)
- Cultural and Educational Rights (Art. 29-30)
- Right to Constitutional Remedies (Art. 32)

7 Details of Fundamental Rights

7.1 Article 12 – Definition of State

7.1.1 Text

In this Part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

7.1.2 Description

Article 12 seeks to define the scope of “State” for the purpose of Part III of the Constitution. A citizen can approach the Supreme Court on violation of FR by any of the bodies included within the definition of the State. Judicial pronouncements have given a wide scope to the expression “other authorities” but still the list is not exhaustive. It includes the Parliament, Union Government, State legislature, State Executive, Local Authorities etc.

Under “other authorities”, the following bodies have been included:

- Bodies exercising statutory powers formed under a statute
- Bodies receiving substantial funding from the government
- Bodies performing governmental functions
- Bodies under control of the government

7.2 Article 13 – Judicial Review

7.2.1 Text

Laws inconsistent with or in derogation of the fundamental rights.

- 1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- 2) The State shall not make any law, which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
- 3) In this article, unless the context otherwise requires,
 - a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
 - b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.
- 4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

7.2.2 Description

Article 13 deals with powers of judicial review. It makes the judiciary the guardian of Fundamental Rights in the country. It aims to secure the paramount status of the Constitution in case of Fundamental Rights. Judicial review is the power of the judiciary to declare any act of legislature as ultra vires (beyond the competence of the legislature to make the law) or null and void (illegal).

7.2.3 Judicial Review

It is the power of the judiciary to declare any act of Parliament and State Legislature as “null & void” (particular law or a part of it not valid) or “ultra-vires” (doesn’t have authority).

It emerged in USA as an implied power of judiciary in Marbury v/s Madison case, 1803.

Indian Constitution grants the power of judicial review against executive as well as legislative explicitly to protect the fundamental rights.

7.2.3.1 Provisions

Pre-constitution laws and Fundamental Rights: The pre-constitution laws are not declared invalid ab-initio (from the start). They are invalid only when they are inconsistent with any of the fundamental rights.

7.2.4 Doctrine of Lapse

Article 13(1) states that pre-constitutional laws will be void if they are inconsistent with any FR. However, if such a FR, which 'eclipses' the pre-constitutional law, is amended to the extent that the pre-constitutional law is no more inconsistent with the amended Fundamental Right, then such a law becomes valid again. Such a law is said to have come out of the eclipse caused by the Fundamental Rights. This judgment was given in Bhikhaji Narayan case(1955).

In the Ambika Mill case, the Supreme Court opined that the Doctrine of Eclipse is applicable to post-constitutional laws also.

7.2.5 Doctrine of Severability

If any legislature passes a law that violates any provision of the Constitution, then such a law is declared void by the Court "to the extent of such inconsistency". Instead of declaring the entire law as illegal, only that portion of the law may be removed, which is inconsistent. This is the doctrine of severability.

In Minerva Mill case, 1980 the Supreme Court invalidated clause 4 and 5 of Article 368, which were added by 42nd Amendment Act in 1976.

7.2.5.1 Motor General Trades v/s State of A.P. 1984

- If valid section of a law can be separated from the invalid section and the valid section can be considered to form an independent statute, then this section remains valid.
- If valid and invalid is so mixed up that it cannot be separated then the whole is declared void.
- After omitting the invalid part, if what remains is very thin and what emerges out is something different, then the entire law is invalid.

7.2.6 Doctrine of Waiver

It is applicable in the USA, but rejected in Indian context, considering Indian circumstances. Individual cannot waive of his rights and allow the state to infringe his rights.

7.2.7 Amendability of FRs

Article 13(2) states that State should not make any law, which abridges the Fundamental Rights. The controversy pertains to whether "any law" includes a Constitutional Amendment also. The following are the important events involved in the controversy of amendability of Fundamental Right.

Sankari Prasad case(1951): In Sankari Prasad case, the Supreme court opined that a Constitutional Amendment is not an ordinary law. The term, any law, therefore does not include

Constitutional amendment and hence Parliament has the power to amend Fundamental Rights.

Golaknath case(1967): The Supreme Court changed its earlier position and stated that Fundamental Rights have been given a “transcendental position” in our Constitution. Therefore they cannot be amended.

24th Constitutional Amendment Act, 1971: This act inserted Clause 13(4) in the Constitution, which clarifies that the term “any law” does not include a constitutional amendment. Therefore, the State once again had the power to amend the Constitution.

Kesavananda Bharati case (1973): The judiciary gave the concept of Basic Structure of the Constitution, according to which there are certain features of the Constitution, which cannot be amended. Fundamental Rights can be amended only if they do not form part of basic structure.

42nd amendment Act, 1976: This act added Article 368(4) and 368(5) to nullify the doctrine of basic structure. It gave unbridled powers to the Parliament to amend the Constitution, which could not be challenged in the court.

Minerva Mills case (1980): In this verdict, the Supreme Court invalidated Article 368(4) and 368(5) as it curtailed judicial review, which is a basic feature of the Constitution. Thus at present, Fundamental Rights can be amended to the extent that they do not form part of the basic structure.

IR Coehlo case (2007): It deals with validity of laws placed in the 9th Schedule. The Doctrine of Basic Structure will be applied on acts placed in the schedule from the date of Kesavananda Bharati verdict as judicial review is the basic feature of the constitution.

7.2.8 Doctrine of Basic Structure

According to this doctrine there are certain basic structures or basic features of the Constitution, which can't be abridged or taken away by the Parliament by way of constitutional amendment.

Through various verdicts the judiciary has enunciated the following, among others, as basic features of the Constitution:

- Supremacy of the Constitution
- Republican and Democratic form of government
- Secular character
- Separation of Powers
- Judicial Review
- Sovereignty

7.2.9 Doctrine of Prospective Over-Ruling

This is USA's invention. It was first pronounced by the Supreme Court in the Golaknath case, 1967. The SC can overrule its earlier judgment but the impact will apply from the prospective effect and not from retrospective effect.

7.2.10 42nd Amendment, 1976

Added Articles 368(4) and 368(5) – this was to nullify the doctrine of basic structure given in Kesavananda Bharati case.

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Article 368(4) – No amendment shall be called into question in any court on any grounds.

Article 368(5) – No limitation on the constituent powers of the Parliament.

7.2.11 Minerva Mill Case, 1980

Invalidated the Articles – 368(4) and 368(5), as these took away the power of judicial review, which itself is a basic feature.

- SC struck down 368(4) and 368(5).
- SC said that judicial review is a basic feature of the Constitution, which cannot be altered.
- Therefore, at present Fundamental Rights are subject to amendment but they are subject to judicial review also.

7.3 Article 14 – Right to Equality

7.3.1 Text

The State shall not deny to any person Equality before Law or Equal Protection of Law within the territory of India.

7.3.2 Description

7.3.2.1 Equality before Law

This implies that all citizens are equal in the eyes of law. It has been borrowed from the British tradition. It is negative in its orientation as the State is restricted from making any discrimination between two citizens.

7.3.2.2 Equal Protection of Law

It is borrowed from the American Constitution. It implies that the State should ensure that every citizen gets equal protection of law and no one should be deprived of justice because of poverty or any other reason. It is a positive concept. It also implies that people who are in similar circumstances will be treated similarly, but differently from people in different circumstances.

7.3.2.3 Rule of law

The concept of equality before law is an element of Rule of Law given by A.V. Dicey. It consists of the following three elements:

- 1) Absence of arbitrary power, that is, no man can be punished except for a breach of law.
- 2) Equality before law, that is, subjecting all citizens to the law equally.
- 3) Constitution is not the source, but the consequence of rights of the individual as individual rights are enjoyed even before the emergence of the Constitution.

The first and the second notion apply in India but not the third. In the Indian system, the Constitution is the source of individual rights.

The Supreme Court has stated that Rule of Law is a basic feature of our Constitution.

7.3.3 Exception to Equality

- The President and Governors enjoy immunity from prosecution under the Constitution (Article 361 and 361A).
- MPs and MLAs enjoy privileges in the legislature (Article 105 and 194).
- Foreign diplomats also enjoy immunity from prosecution.

7.3.4 Applicability

Art. 14 grants Right to Equality to all persons whether Indian citizens, foreigners, or even legal entities such as a Company. This right is available against state action only.

7.4 Article 15 – Right against Discrimination

7.4.1 Text

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

- 1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- 2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition 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.
- 3) Nothing in this article shall prevent the State from making any special provision for women and children.
- 4) Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- 5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens 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 referred to in clause (1) of article 30

7.4.2 Description

Article 15(1) prohibits discrimination by the state on the grounds of religion, caste, sex, race and place of birth. Discrimination is prohibited on these grounds only and the state can discriminate on other grounds.

Meaning of only – It means that discrimination only on the above grounds is not allowed. Discrimination on either of the above grounds in combination with some other grounds is allowed.

For example – No discrimination only on the grounds of caste but discrimination based on caste and backwardness is permitted.

Discrimination against a person is not allowed however positive discrimination or affirmative action is allowed.

Article 15(2) relates to prohibition of discrimination in case of special kinds of disabilities. While 15(1) is a direction only to the state, 15(2) is available against private individuals as well.

Article 15(3) provides for affirmative action for women and children.

7.4.3 Constitutional Amendments

- Article 15(4) was added by the 1st Constitutional Amendment Act and provides for affirmative action for socially and economically backward sections of society or for SC/STs. Article 29(2) states that the State will not discriminate in admission to educational institutions on the basis of religion, race, caste, sex or place of birth. Affirmative action was held violative of this provision in Champakam Dorairajan case (1951).

In the Champakam Dorairajan case – for the first time, dispute between FRs and DPSPs arose.

Articles, which were questioned in this case, were – Article 46 (Promotion of educational and economic interests of SCs/STs/and other weaker sections), which was found to be in violation of Article 14 and 15.

Hence, the first constitutional amendment was enacted.

- Article 15(5) provides for affirmative action for socially and economically weaker sections of society in educational institutions whether aided or unaided. While Article 15(4) is general in nature, Article 15(5) is specific and pertains to education. Article 15(5) was added by the 93rd Constitutional Amendment Act (2005). Minority educational institutions are an exception to the clause.
- The Supreme Court upheld the validity of 93rd Constitutional Amendment Act and gave the concept of creamy layer, according to which the well-off in backward sections are to be treated at par with the forward sections of society and not given any reservation.
- Arguments for extending reservation in private institutions:
 - Since economic reforms, role of the state has been diminishing, while the private sector has been acquiring larger space.
 - Given the number of private institutions and their important role in the society, it is important that the private sector also takes up the responsibility of building a more egalitarian society.
 - Private sector also gets a number of benefits in India.

7.4.4 Controversy related to reservation in Private Educational Institutions

- Inamdar vs. State of Maharashtra and TMA Pai Foundation vs. State of Karnataka: The Supreme Court opined that government can not introduce quota in private unaided educational institutions as it was violative of Fundamental Rights under Article 19(1)(g), that is, freedom of profession.
 - The 93rd amendment was enacted to override this verdict.
 - Supreme Court upheld the validity of the above constitutional amendment.

- The central government then passed Central Educational Institutions Act, 2006 to give effect to the provisions of the Constitution.
- Ashok Kumar Thakur vs. Union of India case: upheld the validity of 93rd amendment and Central Educational Institutions Act, 2006. The status of quota in private unaided institutions was left open to be decided in the future.
- Society for unaided private schools for Rajasthan vs. Union of India case 2013—upheld the validity of introduction to quota under Right to Education Act, 2009 even in private unaided institutions. Arguments given by Supreme Court:
 - Education cannot be treated as a purely commercial enterprise.
 - Article 21A is an obligation on the State.
 - Right to Education is a child-centered act rather than an institution-centered act.

7.4.5 Article 15 and Social Progress

Article 14 establishes equality before law but historical facts of inequality mandate special treatment for the disadvantaged groups. The Constitution recognizes this and therefore in Art. 15 there are provisions in favor of the marginalized sections of the society.

Preferential treatment in favor of SC/ST and OBC candidates regarding educational and other facilities is a social reform that is based on Article 15. At the same time the SC sought to balance it with general social good by limiting the quantitative extent of reservation permissible to 50%. Also in case of socio-economically backward classes, SC introduced the concept of creamy layers.

Regarding women and their social progress on the basis of Article 15, the following needs to be noted –

- According to SC, reservation of posts exclusively for women is valid under Article 15(3) as it covers every dimension of the state action.
- Provisions in the criminal law and procedural law in favor of women have been accepted by the courts in view of their social weakness.
- Reservation for women in the local bodies and educational institutions has been supported by Article 15.
- In Vishakha v/s State of Rajasthan (1997), Supreme Court suggested measures to eliminate sexual harassment in the work place as it violates Article 14, 15, and Article 23.

7.4.6 Pending Bills

The Women's Reservation Bill that is being nationally debated since 1996 is also based on the protective provisions of the Article 15. Constitution (108) Amendment Bill, which was introduced in the Rajya Sabha in 2008 was also an attempt to empower woman.

7.4.7 Applicability

This right is available to Indian citizens only. Hence foreign nationals can be discriminated against vis-à-vis Indian citizens by the Indian state. Similarly, legal entities can also be discriminated against. Further while Art. 15(1) is a direction only to the State, Art. 15(2) is available against private individuals as well.

7.5 Article 16 – Right to equality of opportunities in matters of public employment

7.5.1 Text

Equality of opportunity in matters of public employment.

- 1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- 2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- 3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
- 4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
 - a) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
 - b) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.
- 5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

7.5.2 Description

- Article 16(2) states that the State cannot discriminate in matters of public employment on the basis of caste, sex, religion, race, place of birth, descent and residence. The State is free to discriminate on other grounds. Note that this article adds two more grounds to those specified in Article 15 – descent and residence.
- Residence can't be the basis for reservation. However Art. 16(3) make exceptions. A state or a UT can reserve certain posts for its own residents only, though, the Parliament alone is competent to legislate on this matter.
- Article 16(4) enables a State to provide reservation in public employment in favor of any backward classes. Backward classes can include SC/STs and socially and

educationally backward class or any other class considered by the State to be backward. Thus, the scope of providing affirmative action is wider in Article 16 than in Article 15.

- Article 16(5) provides for discrimination on the basis of religion in case of certain posts of a religious endowment.

7.5.3 Mandal Commission and its Aftermath

The Mandal Commission was appointed in 1979 under Article 340 to investigate the conditions of socially and educationally backward sections of population and to suggest measures for their advancement. The Commission identified nearly 52% of the population as backward. In 1990, the V.P. Singh government gave 27% reservation in government jobs to OBCs.

In 1991, the Narsimha Rao government introduced the concept of most backward classes within the backward classes. Also, 10% reservation was provided to poorer sections of upper castes.

Indira Sawhney vs. Union of India—in this verdict, SC upheld the government's policy of providing reservation for backward classes. It is popularly known as the Mandal case.

- In this, the Court overruled its earlier judgment in Balaji v/s State of Mysore case, 1963 in which it held that caste can't be the main criteria. Instead, poverty should be treated as the main criteria.
- Caste was considered as the sole criteria for reservation because in India, caste is intricately related to class. It also introduced the creamy layer concept.
- Reservation of upper castes on the basis of economic backwardness was rejected because they do not suffer from social backwardness despite being poor.
- Reservation would be given only at entry level and not at promotion level.
- In one year, reservation shall not be more than 50%.
- It directed the government to constitute a statutory body (National Commission for Backward Classes) to decide on the criteria of inclusion and exclusion of a caste from reservation.

7.5.4 Issue of reservation in promotions

77th Amendment Act, 1995—introduced Article 16(4A), which provided reservation in promotion to SC/STs. Thus, this annuls an important criterion laid down by the Supreme Court in Indira the Sawhney case, that is, reservation should be applicable only at the entry level and not for promotion.

Ajit Singh vs. State of Punjab—Supreme Court upheld the validity of 77th amendment act and directed to introduce "catch up rule".

85th Amendment Act, 2001— (Issue on consequential seniority) To negate the catch up rule directed by Supreme Court. It introduced promotion with consequential seniority. This act was brought with retrospective effect from 1995.

Nagaraj case— In this case, the validity of 85th Amendment was questioned. SC held that the amendment didn't violate the basic structure of the Constitution.

SC has given 3 more guidelines:

- The class for which reservation in promotion is sought is not adequately represented.

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- Govt. must provide verifiable data.
- It shouldn't impact the efficiency of administration under Article 335.

Rajesh Kumar vs. UP Power Corporation — Supreme Court struck down UP govt. seniority rules, which provided for reservation in promotion. No exercise was undertaken to verify underrepresentation as mentioned in SC guidelines.

117th Constitutional Amendment Bill — It proposes that all SC/STs are deemed to be backward and it is not necessary to collect the data to verify their backwardness. Thereby, it seeks to annul the Supreme Court's ruling in Nagaraj case.

Reservation in case of super-speciality jobs — In Indira Sawhney case, SC clarified that there are certain jobs where merit alone is the sole criteria.

Faculty Association of AIIMS vs. Union of India, July 2013 case — A five judge bench of the Supreme Court ruled that there are certain jobs for which merit alone should be the sole criteria. The Union Government appealed against this judgment and in the review petition a five-judge bench in January 2014, threw the ball back into the Central Government's court saying that the Government was free to amend the Constitution to provide reservation in faculty for superspeciality posts and that the previous judgment did not place any restriction on the Government to decide whether or not there should be reservation in superspeciality posts.

7.5.5 Applicability

Right to equality of opportunity in matters of public employment is available only to Indian citizens.

7.6 Article 17 – Abolition of Untouchability

7.6.1 Text

Abolition of Untouchability.—“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

7.6.2 Description

Untouchability is banned in any form in our country. Under article 35, the Parliament has made 2 enabling Acts to enforce this provision.

7.6.2.1 The Protection of Civil Rights Act, 1955

Untouchabilities (Offences) Act, 1955 was amended in 1976 and renamed as The Protection of Civil Rights Act. It makes provisions against untouchability stronger.

Untouchability is a cognizable offence (police officer can arrest the accused without a magisterial warrant) and a non-compoundable offence (cases which cannot be withdrawn even if a compromise is reached between disputing parties; the State becomes a party). It provides for a special court for speedy trial.

7.6.2.2 The Schedule Caste and Schedule Tribe Prevention of Atrocities Act, 1989

- Its main objective is prevention of atrocities by increased surveillance, collecting licenses of upper castes etc.
- Provides relief and rehabilitation measures for the victims.
- Provides for special court and special police.
- In some situations, police can even provide arms to members of SC and ST community for self-defense.

Notably, the Constitution has not defined the term “untouchability”.

A person convicted of the offence of untouchability is disqualified as a candidate for elections to the Parliament and State Legislature.

7.7 Article 18

7.7.1 Text

Abolition of titles.

- 1) No title, not being a military or academic distinction, shall be conferred by the State.
- 2) No citizen of India shall accept any title from any foreign State.
- 3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
- 4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

7.7.2 Description

It is a restriction on the powers of the State, citizens and non-citizens.

The State must not give any titles except a military or an academic one.

No citizen of India is allowed to accept any title from a foreign state.

A foreign citizen holding any office of profit or office of trust under the Indian State is not allowed to accept any title, present, emolument, or office of any kind from a foreign state without the permission of the President of India.

7.7.3 Case of Bharat Ratna and Padma Awards

In Balaji Raghavan case, the SC allowed the State to give Bharat Ratna and Padma awards but made it clear that these couldn't be used as a title.

7.8 Article 19 – Right to Freedom

7.8.1 Text

Protection of certain rights regarding freedom of speech, etc.—

- 1) All citizens shall have the right—
 - a) to freedom of speech and expression;

- b) to assemble peaceably and without arms;
 - c) to form associations or unions;
 - d) to move freely throughout the territory of India;
 - e) to reside and settle in any part of the territory of India; and
 - f) to practise any profession, or to carry on any occupation, trade or business.
- 2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
 - 3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
 - 4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.
 - 5) Nothing in sub-clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the state from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.
 - 6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—
 - i. the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or
 - ii. the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

7.8.2 Description

Article 19 is said to be the foundation of democratic rule in India. However, none of the freedoms are absolute and they can all be curtailed by imposing some reasonable restriction.

Reasonable restrictions can be imposed only by authority of law and not only by executive action. It is subject to judicial review. Restrictions can be imposed only on the grounds mentioned in the constitution.

For instance, Article 19(1) (a) which guarantees Freedom of speech and expression can be restricted on 8 grounds:

- Sovereignty and integrity of India,
- Security of the State,

- Friendly relations with foreign States,
- Public order,
- Decency or morality,
- In relation to contempt of court,
- Defamation; and
- Incitement to an offence.

7.8.3 Prominent rights flowing out of Freedom of Speech and Expression

- Right to information
- Freedom of press
- Right to privacy
- Right to hoist national flag
- Right to demonstration or picketing, but not right to strike
- Right to not speak

7.8.4 Right to Information—Legal right under RTI Act, 2005.

It is a citizen centric law that guarantees access to information from the government unless such information threatens the security of the country. Information is to be provided by the concerned department in a time-bound manner.

The act also provides for an institutional mechanism of Information Commissioners who can look into a citizen's complaint if he does not receive the information that he has sought.

Second ARC considered this act as "master key for good governance". Experts believe that it marks the emergence of second stage of democracy in India.

It marks a big transformation from Official Secrets Act, 1923 to a situation where only limited information would be held in secrecy. Further, the government departments are encouraged to provide information suo-moto and proactively.

Certain organizations are kept out of the scope of the act in the interest of sovereignty, territorial integrity and other reasons also.

Information can be asked in regional languages also and no reasons need to be given as to why the information is being sought.

Information can be sought from public authority and not from a private body. However, information can be asked from a private body also if its functions are public in nature in substantial means.

Public authority means constitutional bodies, statutory bodies, any non-government organization receiving substantial government financing and any other body being substantially financed by the government.

7.8.4.1 Recent controversy over the status of Political Parties

In June 2013, the Central Information Commission held six political parties to be public authorities under the RTI Act and hence subject to the transparency and information requirements under the Act.

RTI Amendment Bill, 2013 explicitly removes political parties from the ambit of the definition of

public authorities and hence from the purview of the RTI Act.

The amendment will apply retrospectively, with effect from June 3, 2013 i.e. the date of CIC judgment.

7.8.4.2 Controversy over the office of CJI

CIC held that the CJI office would come under the scope of RTI.

Delhi HC also held that office of CJI must come under RTI. Presently the issue is pending in Delhi HC.

7.8.4.3 Significance of the Preamble of RTI

This preamble provides the philosophy and overview of RTI act.

Philosophy: Constitution of India has established democratic Republic, and democracy requires an informed citizenry and transparency.

Overview: RTI is an Act for setting out the practical regime of transparency and right to information and for constitution of a Central Information Commission (CIC) and State Information Commissions (SIC).

7.8.5 Status of Freedom of Press

Unlike several countries such as USA, there is no separate provision guaranteeing the freedom of press, but the Supreme Court in Sakaal paper v/s Union of India case, has held that the freedom of press is included in the "freedom of expression" under Article 19(1) (a). In Brij Bhushan case, SC clarified that there is no prior censorship on the media, i.e., no prior permission is needed.

44th amendment, 1976 introduced Article 361A that provides protection to a person publishing proceedings of the Parliament and State Legislatures.

In Indian Express case, it was clarified that the Freedom of Press includes:

- Right to Information
- Right to Publish
- Right to Circulate

In 1997, the Prasar Bharti Act grants autonomy to Doordarshan and All India Radio (which means it can criticize the state policies and actions).

In 1966, Press Council of India was created to regulate the print media. PCI has a retired SC judge as its chairperson and 28 other members.

- 20 members are the representatives from the media
- 5 members are nominated by Parliament
- 3 members – one each come from UGC, Sahitya Kala Academy and Bar Council of India

The National Commission to Review the Working of Constitution (NCRWC) recommended that Freedom of Press be explicitly granted and not be left implied in the Freedom of Speech.

7.8.6 Control of Social and Broadcast Media

Media in India is against external regulation. But it is realized that self-regulation may turn out to be no regulation at all. Hence PCI sought to bring electronic and social media under its ambit.

According to PCI chairperson, there is difference between regulation and control.

There are two rights on which media claims independence –

- Article 19(1) (a) – Under freedom of speech expression
- Article 19(1) (g) – Freedom to practice any profession, occupation, trade or business

Neither of these rights is absolute. Moreover, media cannot claim to be a purely commercial venture.

Levenson Report on Media in Britain – also calls for regulation of media.

7.8.7 Right to Privacy

It is not an explicit right but a “penumbral” right.

Reasonable restrictions can be imposed on it as well. India does not have sufficient safeguards to protect right to privacy. A bill proving the right to privacy, introduced in 2011, is still pending in the Parliament.

Indian Telegraph Act 1955, allows the govt. to intercept messages.

Section 69 of Information Technology Act also allows govt. to intercept messages.

7.8.7.1 Section 66A of IT Act

Section 66A added in 2008 to IT Act created controversies because of vagueness in its provisions. According to section 66A, messages, which are offensive and menacing in character can attract fines and up to 3 years of imprisonment. The terms offensive and menacing are however not defined by the Act. As per the new guidelines, only a DCP or IG level officer can register a FIR under provisions of IT Act.

In 2011, government instructed some Internet Service Providers to remove content, which was harmful to minors.

Some of the government programs like Aadhar, NATGRID, Central Monitoring System (CMS) (for monitoring data), NETRA (an internet spy system capable of detecting mala fide messages).

Recently, Brazil and Germany have moved a resolution in UN titled right to privacy in digital age to protect citizens from draconian cyber laws. India has supported the resolution, which has been passed. However back home, sufficient safeguards do not exist to balance right to privacy with security needs of the country.

7.8.8 Issues related to Rights under Article 19

7.8.8.1 19 (1) (a) – Freedom of Speech and Civil Servants

According to the Supreme Court, freedom of speech for civil servants can be curtailed in the interests of discipline even though such a restriction is not mentioned in Article 19 (2). Service rules are essential for discipline within services. The objective here is not to curb the freedom

of speech of civil servants but to ensure that they are able to effectively discharge their duties. Hence, there is balance to be maintained between organizational functioning and freedom of speech. Such restrictions, however do not apply to an elected representative in an organization as he represents people.

7.8.8.2 19 (1) (b) – Caste Rallies

19 (1)(b) itself mentions the restriction, that is, Freedom to assemble peacefully without arms. Other restrictions are found in 19(3), which are as follows:

- Sovereignty and integrity of India
- Public Order

Lucknow bench of Allahabad HC in 2013 has banned caste rallies on the ground that they disturb public order and creates animosity between castes. This order is being contested as it seems to violate Art. 19(1)(b).

7.8.8.3 19 (1) (c) - Right to form Cooperatives

By 97th Amendment Act 2011, the right to form co-operatives has been added.

Restrictions – Article 19 (1) (4) mentions:

- Sovereignty and integrity of India
- Public Order
- Morality

7.8.8.4 19 (1) (c) - Right to strike in case of Govt. Officials

Trade Unions have the right to strike under certain circumstances in Industrial Disputes Act.

However, for the government officials, SC has held that right to strike is available only as a last resort, when all other channels of communication have failed. However, it can not be deemed to be coming under the cover of Fundamental Rights. Hence, the government can invoke Essential Services Maintenance Act in such situations and force to call off the strike.

SC in T.K. Rangarajan vs. State of Tamil Nadu held that govt. officials don't have the fundamental right to strike.

7.8.8.5 19 (1) (d) and 19 (1) (e)

The former deals with the right of the Indian citizens to move freely throughout the country and the latter grants the right to residence to the citizens. The basis for the grant of these rights is that India is one territory. Both are related and in fact follow from one another. They are not available to the foreigners like other freedoms in Article 19. Following are the additional restrictions that apply to them:

- To maintain public order: If authorities suspect the movement of a person is likely to threaten public order in a region, the right can be denied. However, the restrictions can't be oppressive or excessive.
- For safety reasons, helmets can be prescribed for two wheeler riders.
- Externment orders against citizen to leave the territory of a state if he is an anti-social element. For example, a person can be externed from a state if he is intimidating witness in a case.
- Protection in the interests of scheduled tribes.

7.8.8.6 19 (1) (g)

Freedom to practice any profession, carry out any occupation, trade or business can be restricted by the following:

- The State can prescribe certain technical qualifications for a particular profession
- The State can reserve certain activities for itself – partially or completely and exclude private persons
- For food security, traders may be asked to sell a commodity at a certain price
- Betting and gambling are not part of trade and hence can be restricted or banned
- It can be restricted in the interest of public morality and social health. Example: prostitution
- Notably right to start the business does not give the right to close the business.

7.8.9 Impact of National Emergency on the Rights under Article 19

Article 19 is suspended automatically if proclamation is on ground of external aggression, and remains so, as long as emergency is in operation. However, after the 44th Amendment, it cannot be suspended if the emergency is declared on the grounds armed rebellion.

7.8.10 Applicability

Rights under Article 19 are available to Indian citizens only.

7.9 Article 20 – Protection in respect of Conviction for Offences

7.9.1 Text

Protection in respect of conviction for offences.

- 1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, 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.
- 2) No person shall be prosecuted and punished for the same offence more than once.
- 3) No person accused of any offence shall be compelled to be a witness against himself.

7.9.2 Description

Article 20(1) guarantees rights against ex-post facto laws. Only a law in force at the time of commission of the said offence can be used to punish an accused. However, such a protection is available only in case of criminal laws and not civil laws.

Article 20(2) provides protection from double jeopardy. It states that an individual can be punished for an offence only once. Departmental inquiries are however not treated as violation of this principle.

Article 20(3) protects an individual from self-incrimination. Every person has the right to defend himself. In *Selvi vs. State of Karnataka* SC has put restrictions on narco analysis and brain mapping. However, DNA testing and other samples can be taken.

7.9.3 Controversies

7.9.3.1 Vodafone case

In 2012, the Government of India made budgetary proposal to amend the Income Tax Act with retrospective effect from 1962 to assert the government's right to levy tax on merger and acquisition (M&A) deals involving overseas companies with business assets in India. It was partly to override the Supreme Courts' ruling favoring Vodafone in a tax dispute. Notably, the government could bring in such an amendment because it was a tax law, not a criminal law. However, the Parthasarathi Shome committee later recommended that either the retrospective tax amendment be withdrawn or penalty/interest, if covered under taxes, be waived off.

7.9.3.2 Aftermath of 16th December 2012, Nirbhaya incident

After the notorious gang rape incident in Delhi, even though public sentiment favored harsher punishment for all the six accused in the Nirbhaya gang rape case — one of them being a minor — any revision in the juvenile age would not help the case as the amendment shall not apply with retrospective effect.

7.9.4 Applicability

Applies to all – individuals whether Indian citizens or foreigners.

7.10 Article 21 – Right to Life and Liberty

7.10.1 Text

Protection of life and personal liberty.

No person shall be deprived of his life or personal liberty except according to procedure established by law.

7.10.2 Description

This article is a check on arbitrary powers of the State. The State must act according to a procedure while depriving an individual of his liberty.

Procedure established by law has been borrowed from the British tradition. It checks whether the law is procedurally correct. However, judiciary is not allowed to challenge the intentions of the law.

Due process of law is a facet of American judiciary. Judiciary can challenge the law not only on procedural grounds but also on the basis of its reasonableness.

7.10.3 Due Process of Law

It implies that law has to be fair and reasonable. If it is not, then it is liable to be struck down even if the prescribed procedure is followed. It is also known as Principle of Natural justice. The constitutional guarantee of due process of law, found in fifth and fourteenth amendment to the US Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty and property. It is because of this principle that the Supreme Court of USA has acquired more powers than Apex Courts in other countries, including India.

Rajinder Nagar: 1/8-B, 2nd Floor, Apsara Arcade, Near Gate 6, Karol Bagh Metro, Delhi

Mukherjee Nagar: 103, 1st Floor, B/1-2, Ansal Building, Behind UCO Bank, Delhi-9

09650617807, 09968029039, 09717162595

7.10.4 Status in India

7.10.4.1 A.K. Gopalan Case (1950)

The Supreme Court held that due process of law is not available in India. Hence, it implied that the right only protects life and liberty of an individual from arbitrary executive action, and not from legislative action. Further, it was enough if the procedure was followed and the courts could not inquire into the reasonableness of the procedure.

7.10.4.2 Maneka Gandhi case (1978)

Supreme Court accepted that due process is inherent in procedure established by law. SC in this case applied the American principle of "due process of law" for the first time. It applied the following arguments:

- Article 19 and 21 can't be understood as watertight compartments and the same criteria of reasonableness must be applied for Article 21 too.
- Merely following the procedure established by law is not enough. The courts have the right to review and question the reasonableness of the law itself.
- Restrictions must be reasonable, just and fair and shouldn't be arbitrary.

In India, traditionally we followed the principle of "procedure established by law", as it prevailed in Britain. However since 1978, we have followed both in India.

7.10.5 Judiciary deduced Rights

In the Maneka Gandhi case, the Supreme Court also ruled that "life" under Article 21 meant more than a mere "animal existence". It would include the right to live with human dignity and all other aspects, which made life "meaningful, complete and worth living". Subsequent judicial interpretation has broadened the scope of Article 21 to include within it a number of rights, including:

- Right to Elementary Education
- Right to livelihood
- Right to life with dignity
- Right to water
- Right to speedy justice
- Right to privacy
- Right to health
- Right to travel abroad
- Right to shelter
- Right to free legal aid
- Right against bonded labor

Note: In the Hussainara Khatoon Case 1979, which saw the emergence of PIL in India, it was laid down that speedy trial is the essence of criminal justice and, therefore, the Supreme Court for the first time talked of the necessity of free legal aid to poor persons to make the justice system mount a meaningful protection of their rights.

7.10.6 Right to Death/Suicide

In Gyan Pal case, SC has settled the controversy by clearly establishing that there is no right to

suicide and death. Thus section 309 of IPC, which criminalizes attempt to suicide doesn't violate Article 21.

7.10.7 Euthanasia/Mercy killing

Aruna Shaunbag case, SC permitted passive euthanasia but not active euthanasia.

7.10.7.1 Active Euthanasia

Means ending the life of a person by giving him active means like lethal injections, drugs etc.

7.10.7.2 Passive Euthanasia

Means taking out the life support systems. It is allowed by SC to be done under guarded circumstances only.

7.10.7.3 Guarded Circumstances

Once request for mercy killing is made by the patient or close relatives, the case is considered by a committee of HC judges of at least two members. This committee will make recommendation on the basis of opinion of three-member committee of doctors.

7.10.8 Death Penalty/Capital Punishment

While global trend is in favor of abolishment of death penalty, India continues to find itself in mix of countries such as China, Iran, Pakistan, USA where it has not been completely abolished.

The proponents of death penalty hail it for its deterrent capacity. Further, there are some crimes, which are so heinous that nothing short of death penalty meets the ends of justice. In cases like terrorism, if terrorists are not executed then they continue to pose a grave threat to national security.

However following arguments are made in favor of abolishing death penalty.

- No sufficient data to support the deterrent logic.
- Study conducted in USA shows that the state abolishing death penalty had witnessed the fall in murders.
- The principle of revenge (eye for an eye) cannot be the basis of justice in any civilized society
- The purpose of punishment should be to reform rather than to punish
- In Bachan Singh case, the Supreme Court sought to strike a balance. It proclaimed that death penalty is an exception not a rule. It proclaimed the doctrine of "rarest of the rare".
- There is also possibility of error in judgment as admitted by the SC in 2009 in "Santosh Kumar v/s State of Maharastra case". It admitted that there are at least 13 cases in which death penalty was awarded, the doctrine of "rarest of the rare" was not applied. Out of these, 2 persons have already been executed.
- United Nation's Declaration on Human Rights also expects the state to abolish torturous punishments and death penalty.

It is argued that for heinous crimes such as rape and murder, life imprisonment can be a better option.

7.10.9 Impact of National Emergency and Applicability

Rights under Article 20 and 21 are never suspended and both are available to all individuals whether Indian citizens or foreigners.

7.11 Article 21A

7.11.1 Text

Right to education

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

7.11.2 Description/Historical Evolution

In 1992, the Supreme Court held in Mohini Jain case that the "right to education" is part of "right to life" and hence is a fundamental right under Part III of the Constitution.

The Supreme Court Judgment in Unni Krishnan case further reinforced the same when it affirmed that right to education flows from the right to life guaranteed under Article 21 and draws its support from the Directive Principles of the Constitution, Article 41 and 45.

Article 41 provides for right to education. Article 45 originally required the State to make provisions within 10 years for free and compulsory education for all children until they achieved the age of 14 years. It has been replaced by 86th Amendment Act.

Notably, SC held that this too is not an absolute right. It shall depend on the state to determine the manner in which it shall implement the right.

The demand for RTE was first made by Gopal Krishna Gokhale during British times. After 100 years of this, RTE came into existence.

7.11.3 86th Amendment Act

The 86th Amendment Act brought about the following changes to the Constitution:

- Under Article 21A, every child between the age of 6-14 has a fundamental right to education, which the State shall provide "in such a manner the State may, by law, determine"
- Early childhood care and protection (for children in the age group of 0-6) is provided for as a directive principle of State Policy under Article 45 of the Constitution.
- Article 51 (K) provides a duty on those who are parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age 8-14.

7.11.4 Salient Features of RTE

- All children between the ages of six and 14 years shall have the right to free and compulsory elementary education in a neighborhood school.
- Even those who have been deprived of this opportunity, this act provides for 8 years of schooling. Those who have missed i.e. non-admitted children will be admitted to the class appropriate to their age.

- Kendriya Vidyalayas, Navodaya Vidyalayas, Sainik Schools, and unaided schools shall admit at least 25% of students from disadvantaged and economically weaker groups.
- No child shall be held back, expelled, or required to pass a board examination until the completion of elementary education.
- Schools may not screen applicants during admission or charge capitation fees.
- All schools to follow the norms of teacher qualification within 5 years. A fixed teacher to pupil ratio of 1:30 is to be achieved.
- All schools except for those private unaided, will constitute School Management Committees. 75% of its members would be parents or guardians.
- National Commission for the Protection of Child Rights will act as watchdog. States to constitute similar state bodies at the state level.
- Central and state government to share the funding:
 - Center may ask the Finance Commission to allocate additional resources to states.
 - Funding gaps can be arranged in partnership with civil society
 - Curriculum development in accordance with the constitutional rights

7.11.5 Evaluation of RTE

- There are no specific penalties if the authorities fail to provide the right to elementary education.
- Both the state government and the local authority have the duty to provide free and compulsory elementary education. Sharing of this duty may lead to neither government being held accountable.
- The Bill provides for the right to schooling and physical infrastructure but does not guarantee that children learn. It exempts government schools from any consequences if they do not meet the specified norms.
- The Bill legitimizes the practice of multi-grade teaching. The number of teachers shall be based on the number of students rather than by grade.
- Enrolment has reached universal levels but the problem of dropouts and absenteeism continues
- Also, the act doesn't provide for those who cannot go to school
- Hence, it is said that it is a right to schooling instead of the right to education
- Bulk of the schools fail to meet the targets of improving infrastructure
- There is a big deficit in the country with respect to the availability of untrained teachers
- Some people believe that not failing a child is not a good option as it relieves the teachers from responsibility.

7.11.6 Applicability

Applies to all children in the relevant age group whether Indian citizens or not.

7.12 Article 22 – Protection against Arrest and Detention in Certain Cases

7.12.1 Text

Protection against arrest and detention in certain cases.

- 1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult,

and to be defended by, a legal practitioner of his choice.

- 2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
- 3) Nothing in clauses (1) and (2) shall apply—
 - a) to any person who for the time being is an enemy alien; or
 - b) to any person who is arrested or detained under any law providing for preventive detention.
- 4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless—
 - a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or
 - b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).
- 5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a (b) to any person who is arrested or detained under any law providing for preventive detention.
- 6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

7.12.2 Description

Article 22 provides for 2 kinds of detentions-

- Preventive detention; and
- Punitive detention

Protection in case of punitive detention is available to citizens and no-citizens but not to enemy aliens. A person must be informed of the grounds of his arrest so that he can prepare for his defense. The person also has the right to consult and be defended by the legal practitioner of his choice. Such an individual must be presented before a magistrate within 24 hours so that any wrong action of the executive can be corrected.

The objective of preventive detention is to prevent a person from committing a crime. Certain rights are available to such a person as well. He must be informed of the grounds of his arrest. Police cannot detain a person beyond 3 months unless it has permission from an advisory board. Such an advisor board will consist of 3 judges of SC. Parliament can also prescribe a law providing for detention beyond 3 months.

7.12.2.1 Criticism of Preventive Detention

In India, there has been a misuse of such laws and so it has become a human rights concern. It represents the police power of the State. No other democratic country mentions preventive detention in its constitution and such laws come into effect only under emergency conditions.

7.12.2.2 Arguments given in favor of Preventive detention

Areas in context of which preventive laws can be made are laid down in the Constitution itself in Union List entry 9 related to defense, foreign affairs and security of the country and Concurrent List entry 3 for maintenance of public order, security of state and maintaining essential supply and services. Thus, it checks the arbitrary action by the State.

7.12.3 Legislations

The below mentioned acts have a provision to detain beyond three months:

- National Security Act,
- Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA); and
- Prevention of Terrorism Act (POTA)

Likewise, many states have come up with similar acts. Both at the central and state level, there are around forty laws in the statute book of India authorizing preventive detention.

7.13 Article 23 – Prohibition of Traffic in Humans and Forced Labor

7.13.1 Text

Prohibition of traffic in human beings and forced labor.

- 1) Traffic in human beings and begar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- 2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

7.13.2 Description

Article 23(1) abolishes any form of bonded labor, forced labor and trafficking in human beings. It has special significance for SC/STs and women. “Begar” is described as labor or service, which a person is forced to give without receiving any remuneration for it. It is also known as “debt bondage”.

Article 23(2) states that State can impose compulsory service if there is a need for the same.

Notably, Devadasi system has been abolished because of the prohibition of above article.

7.13.3 Legislations

To check human trafficking, following legislations have been made:

- Immoral Traffic Prevention Act (ITPA), 1956
- Bonded Labor System (Abolition) Act, 1976
- Juvenile Justice (Care and Protection) Act, 2000

7.13.4 Applicability

It is available both to citizens and non-citizens.

7.14 Article 24 – Prohibition of employment of children

7.14.1 Text

Prohibition of employment of children in factories, etc.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

7.14.2 Description

Article 24 prohibits the employment of children in hazardous occupations. However, it does not prohibit their employment in harmless work.

Note: Article 23 and 24 are complemented by Article 39(e) and 39(f).

7.14.3 Legislations

Child Labor (Prohibition and Regulation) Act, 1986 is the legislation to check child labor. The Act prohibits employment of children below 14 years in certain occupations such as automobile workshops, bidi-making, carpet weaving, handloom and power loom industry, mines and domestic work.

In light of the Right of Children to Free and Compulsory Education Act, 2009, The Union cabinet of India approved the amendments to the Child Labor (Prohibition & Regulation) Act, 1986, today putting a blanket ban on employing anybody below 18 years in hazardous occupation. The Bill seeks to prohibit employment of children below 14 years in all occupations except where the child helps his family after school hours. The Child Labor (Prohibition and Regulation) Amendment Bill, 2012 was introduced in the Rajya Sabha on December 4, 2012 by the Minister of Labor and Employment, Mallikarjun Kharge.

The Commission for Protection of Child Rights Act, 2005 was enacted to provide for speedy trials of offences committed against children and violation of child rights.

In 2006, government banned the employment of children as domestic servants or working establishments like hotels. It warned that anyone employing children below the age of 14 years is liable for penal action.

7.14.4 Applicability

It is available to all children regardless of citizenship status.

7.15 Article 25

Freedom of conscience and free profession, practice and propagation of religion.

- 1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- 2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

- a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

7.15.1 Description

Article 25 states that people have freedom to

- conscience (inner freedom of thought),
- profess (declare one's religious beliefs openly),
- practice (perform religious worship), and
- propagate (dissemination of one's religious beliefs) their religion.

This article is the bedrock of secularism in India.

The freedom of conscience refers to the inner freedom of an individual to mould his religious belief and faith. The state cannot interfere in this inner freedom of the individual. When this inner freedom takes an outward expression, then it takes the form of right to profess, practice and propagate a religion of one's choice. The right to profess means the right of an individual to express openly his religious belief and faith. For instance, right of Sikhs to carry kirpan is considered as their right to profess.

The right to practice means the performance of religious worship, rituals, ceremonies and exhibition of beliefs and ideas.

The right to propagate implies the transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion. But, it does not include a right to convert another person to one's own religion. Forcible conversions impinge on the 'freedom of conscience' guaranteed to all the persons alike.

Thus, Article 25 covers not only religious beliefs (doctrines) but also religious practices (rituals). However, they are subject to public order, morality and health. Besides, the State can regulate the economic, financial and political activities associated with any religion.

7.15.2 Important Judgments

7.15.2.1 Jagadishwaranand case, 1984

The Supreme Court held that the Anand Margi practice of dancing with skulls is not essential to its religion and could be reasonably restricted. Similarly, cow slaughter is not considered essential to Islam on Bakrid Day. Thus, the state can regulate what constitutes the essential religious practices and what does not and outlaw the latter if it is anti-social.

7.15.2.2 Stainislaou v/s State of MP, 1977

Constitution bench of the Supreme Court ruled that Article 25(1) doesn't give the right to convert but only the right to spread tenets of one's own religion.

Thus, only voluntary conversions are valid in India. In fact, some states have passed anti-conversion laws prohibiting forced conversions.

7.15.3 Applicability

It is available to both citizens and non-citizens.

7.16 Article 26

7.16.1 Text

Freedom to manage religious affairs—subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

- a) to establish and maintain institutions for religious and charitable purposes;
- b) to manage its own affairs in matters of religion;
- c) to own and acquire movable and immovable property; and
- d) to administer such property in accordance with law.

7.16.2 Description

Article 26 states that a religion has a right to

- Establish and maintain its institutions for religious and charitable purposes,
- Manage its own affairs and
- Acquire property for the same.

Note – while right to property of an individual is not a Fundamental Right anymore, for religious denomination it continues to be a Fundamental Right.

- The State can make laws to regulate the administration of such property, but it cannot take away the right to administration altogether.

This freedom is, however, subject to public order, morality and health.

Note: In a January 2014 verdict the Supreme Court quashed the Tamil Nadu government's order appointing executive officer to manage the affairs and properties of the ancient Sri Sabhanayagar Temple, better known as Nataraja temple, in Chidambaram in Tamil Nadu. The SC Bench held that the temple will be managed by priests and cannot be taken over by the state government over allegations of mismanagement of temple properties.

7.16.3 Relation with Article 25

Article 25 gives freedom to an individual, while Article 26 deals with an entire religious denomination or any of its section.

7.17 Article 27

7.17.1 Text

Freedom as to payment of taxes for promotion of any particular religion.—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.

7.17.2 Description

Article 27 prohibits the State from spending any public money collected by way of tax for promotion of any religion. It is one of the essential consequences of secularism. The State cannot patronize any particular religion or religious denomination. In other words, the state should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion. This provision prohibits the state from favoring, patronizing and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

This provision prohibits only levy of a tax and not a fee. This is because the purpose of a fee is to control secular administration of religious institutions and not to promote or maintain religion. Thus a fee can be levied on pilgrims to provide them some special service or safety measures. Similarly, a fee can be levied on religious endowments for meeting the regulation expenditure.

Note: In 2012, the Supreme Court directed the Union government to gradually reduce and abolish Haj subsidy in 10 years and invest the amount in education and other measures for social development of the minority community.

7.18 Article 28

7.18.1 Text

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

- 1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- 2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- 3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

7.18.2 Description

According to Article 28,

- No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

- However, this provision does not apply to institutions administered by the state but established under any endowment or trust, which requires imparting religious instructions.
- Further, in an educational institution recognized by the State, religious instructions can be provided to a person but only with his consent. In case he is a minor, his guardian's consent is required.

7.19 Article 29

7.19.1 Text

Protection of interests of minorities.

- 1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- 2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

7.19.2 Description

Article 29(1) recognizes the right of an individual to preserve his culture, his language and script. Article 29(2) prohibits the State from making discrimination while granting access to educational institutions.

Note: Article 15 doesn't mention language as a ground of discrimination, but it is included in Article 29.

Article 29 grants protection to both linguistic and religious minorities. SC has held that the scope of this article is not restricted to minorities only and is available to "all sections" of the population, including majority.

In Champakam Dorairajan case (1951) the reservation provided to backward sections was challenged on the ground that it violated Article 29(2). The 1st Amendment Act was then enacted, inserting Article 15(4) for providing reservation.

7.19.3 Applicability

Both article 29 and 30 are available to Indian citizens only.

7.20 Article 30

7.20.1 Text

Right of minorities to establish and administer educational institutions.

- 1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
 - a) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

- 2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

7.20.2 Description

Under Article 30, minorities (linguistic or religious) have the right to establish and administer educational institutions of their choice. The State cannot impose any restrictions on the right of the minorities except for making regulations, which promote excellence in education.

In case a minority's property is acquired by the State, it shall be provided adequate compensation for the same.

The State cannot discriminate while providing aid to such institutions.

The term minority has not been defined by the Constitution but literally it means a non-dominant group.

In Presidential reference to Kerala Education Bill, and later on Guru Nanak Dev University, the judiciary has established parameters to determine the minority status. At union level, it means those groups, which have less than 50% population at all India level. At state level, it means groups forming less than 50% population within the state.

7.20.3 Relation between Article 29 and 30

While Article 29 is a general protection available to all sections of the population, Article 30 is protection available only to the linguistic or religious minorities.

7.20.4 Applicability

Articles 29 and 30, both, are available to Indian citizens only.

7.20.5 Important judgments

7.20.5.1 St. Stephens v/s University of Delhi, 1992

The Supreme Court ruled that minority institutions should make available at least 50% of their annual admission intake for other communities. The admission of other communities should be done purely on the basis of merit.

7.20.5.2 Unnikrishnan v/s State of Andhra Pradesh, 1993

Supreme Court ordered for the introduction of three types of seats:

- 15% seats are management seats and fee is not limited.
- 35% seats, wherein State government fixed fees
- 50% are free seats based on merit established by a common entrance examination

7.20.5.3 TMA Pai Foundation and others v/s State of Karnataka, 2002

Following are the essential features of the landmark judgment:

- All citizens have the rights to establish and administer educational institutions
- The right to administer MEI (Minority Educational Institution) is not absolute

- The State can apply regulations to unaided MEIs also to achieve educational excellence
- Percentage of non-minority students to be admitted to an aided MEI to be decided by the state or university.
- Fees to be charged by unaided MEIs can't be regulated, but no institution can charge capitation fee

7.20.5.4 Islamic Academy of education v/s State of Karnataka, 2003

In this case, the Supreme Court clarified its judgment in TMA Pai case. The ruling says that Article 30 confers on linguistic and religious minorities the unqualified right to establish educational institutions, but the government could exercise control and regulation on them for maintaining good standards.

7.20.6 The Lacuna

The issue acquires importance because the Constitution doesn't define the words "majority" and "minority" – a lacuna that has induced many Hindu sects like Arya Samajists, and Ramkrishnaites to acquire the status of a minority. It is notable that Hindus are minority in five states – Jammu and Kashmir, Punjab, Nagaland, Mizoram, Meghalaya.

7.21 Article 31

Was originally the right to property but was repealed in 1978 by the 44th Amendment Act and made into an ordinary right under Article 300A.

7.22 Article 31A

Article 31A saves 5 categories of laws from being challenged and invalidated on the ground of contravention of Fundamental Rights conferred by Article 14 and Article 19. They are related to agricultural land reforms, industry and commerce.

Added by 1st Amendment Act, it allows the State to nationalize private property. The idea was to give effect to land reforms.

Both Parliament and State Legislatures can make laws. This article, however doesn't immunize a state law unless it has been reserved for the consideration of the President and has received his assent.

This article also provides for payment of compensation at market value when the state acquires a land held by a person for cultivation below the statutory ceiling limit.

7.23 Article 31B – Validation of Certain Acts and Regulations

Article 31B protects the laws in the ninth schedule from invalidation on the ground of contravention of rights under Article 14 and 19.

7.23.1.1 Controversy with respect to IX Schedule

The Ninth Schedule was created by a Constitution Amendment in 1951 by former Prime Minister Jawaharlal Nehru to push land reforms. The basic purpose of the Schedule was to abolish zamindari system. However, in recent times it has been misused. Not just land reforms laws, the Ninth Schedule today includes several controversial legislation like the 69 per cent reservation law of Tamil Nadu, which violates the Apex Court's 50 per cent ceiling on quotas.

Article 31B, which gives blanket protection to all items in the 9th Schedule, is also retrospective in nature. So, even if a statute, which has already been declared unconstitutional by a court of law is included within the schedule, it is deemed to be constitutional from the date of its inception.

However, in IR Coelho case (2007), the Apex Court ruled that laws placed under Ninth Schedule after April 24, 1973 (the date of Kesavananda Bharati verdict) shall be open to challenge in court if they violated fundamental rights guaranteed under Articles 14, 19, 20 and 21 of the Constitution. The apex court also said that if the law put in the Ninth Schedule abridges or abrogates fundamental rights resulting in the violation of the basic structure of the Constitution, such laws have to be invalidated.

7.24 Article 31C – Saving of laws giving effect to directive principles

Article 31C was inserted by the 25th Amendment Act in 1971 and protects laws implementing Directive Principles under 39(b), 39(c) from invalidation on the ground of violation of Article 14, 19 and 31.

Article 31-C had two parts. The first part protected a law giving effect to the policy of the state towards securing the principles specified in Articles 39 (b) and (c) from being challenged on the ground of infringement of the Fundamental Rights under Article 14, 19 and 31. The second part of Article 31 C originally sought to oust the jurisdiction of the courts to find out whether the law in question gave effect to the principles of Articles 39 (b) and 39 (c).

The second part was struck down in the Kesavananda Bharati case 1973, as it took away the powers of judicial review, which was held to be a basic feature of the constitution by the Supreme Court.

The scope of this Article was further extended through 42nd Amendment Act, in which the immunity was provided in favor of all the DPSPs against any of the fundamental rights. It provided that no law which gives effect to any of the directive principles (not just 39(b) and 39(C)) can be invalidated on the ground of violation of the Article 14 and 19.

However, the Apex Court in the Minerva Mill case, 1980 struck down the above provision and thereby restored the balance between fundamental rights and directive principles.

7.25 Article 32

7.25.1 Text

Remedies for enforcement of rights conferred by this Part.

- 1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- 2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- 3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

- 4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

7.25.2 Description

Article 32(1) gives the right to move the SC for the enforcement of Fundamental Rights. However, it mentions the right to move by appropriate proceedings.

It is the duty of SC and right of persons.

SC can determine what appropriate proceedings are. The traditional approach is that the person moving the courts should have a locus standi. However, the SC has liberalized this approach and admits:

7.25.2.1 Public Interest Litigation

- Adopted from the USA social interest litigation.
- It's not private interest litigation, nor a political interest litigation
- It is not a fundamental right

7.25.2.2 Epistolary jurisdiction

- Taking action on the basis of post card, letter.

7.25.2.3 Suo moto

- SC can take action on its own

7.25.3 Doctrine of Laches

- SC protects the rights of those who are vigilant about their rights.
- In case of unnecessary delay in approaching the courts for enforcing the rights, SC may deny the issue of writs.

7.25.4 Doctrine of Res Judicata

- According to the dictionary meaning, 'res judicata' means a case or suit involving a particular issue between two or more parties already decided by a court. Thereafter, if either of the parties approaches the same court for the adjudication of the same issue, the suit will be struck by the law of 'res judicata'.
- If a person goes first to a High Court under Article 226 and his petition is dismissed on merits, he cannot approach the SC under Article 32 because of 'res judicata'. He can reach the SC only by way of appeal. If, however, high court dismisses his or her writ petition not on merits, then 'res judicata' does not apply and petitioner can move the SC
- This doctrine is applied to give recognition to the decision of courts of competent jurisdiction.
- Same person however, can approach the SC on the same cases, if some new facts have emerged which have not been examined by HC.

7.25.5 Importance of Article 32

Mere declaration of the fundamental right is meaningless until and unless there is an effective

machinery for enforcement of the fundamental rights. So, a right without a remedy is a worthless declaration. The framers of our constitution adopted the special provisions in the article 32 which provide remedies to the violated fundamental rights of a citizen. SC in IR Coelho case (2007), mentioned that Article 32 is integral part of the basic structure. This article also established SC as the guardian of Fundamental Rights. It also shows the SC's powers of judicial review. According to Dr. Ambedkar, this Article is the soul of part-III.

7.25.6 Various types of writs

A writ means an order. A warrant is also a type of writ. Anything that is issued under an authority is a writ.

7.25.6.1 Habeas Corpus

By Habeas Corpus writ the Supreme Court or High Court can cause any person who has been detained or imprisoned (this means violation of his fundamental right to liberty) to be physically brought before the court. The court then examines the reason of his detention and if there is no legal justification of his detention, he can be set free.

7.25.6.2 Mandamus

Mandamus means "we order". The Supreme Court or High Court orders to a person, corporation, lower court, public authority or state authority to perform their specific duty.

7.25.6.3 Certiorari

Literally, Certiorari means to be certified. The writ of certiorari can be issued by the Supreme Court or any High Court for quashing the order already passed by an inferior court, tribunal or quasi-judicial authority. There are several conditions necessary for the issue of writ of certiorari.

- There should be court, tribunal or an officer having legal authority to determine the question with a duty to act judicially.
- Such a court, tribunal or officer must have passed an order, acting without jurisdiction or in excess of the judicial authority vested by law in such court, tribunal or officer.
- The order could also be against the principles of natural justice or the order could contain an error of judgment in appreciating the facts of the case.

7.25.6.4 Prohibition

The writ of Prohibition means to forbid or to stop and it is popularly known as stay order. This writ is issued when a lower court or a body tries to transgress the limits or powers vested in it. The writ of Prohibition is issued by any High Court or the Supreme Court to any inferior court, or quasi-judicial body prohibiting the latter from continuing the proceedings in a particular case, where it has no jurisdiction to try. After the issue of this writ, proceedings in the lower court etc. come to a stop.

Difference between Prohibition and Certiorari:

While the writ of Prohibition is available during the pendency of proceedings, the writ of Certiorari can be resorted to only after the order or decision has been announced. Both the writs are issued against legal bodies.

7.25.6.5 Quo warranto

Quo warranto means "by what warrant"?

The word Quo-Warranto literally means "by what warrants?" or "what is your authority"? It is a writ issued with a view to restrain a person from holding a public office to which he is not entitled. The writ requires the concerned person to explain to the Court by what authority he holds the office.

Conditions for issue of Quo-Warranto:

- The office must be public and it must be created by a statute or by the constitution itself.
- The office must be a substantive one and not merely the function or employment of a servant at the will and during the pleasure of another.
- There must have been a contravention of the constitution or a statute or statutory instrument, in appointing such person to that office.

7.25.7 Article 32(3)

Parliament can authorize any other court also to enforce Fundamental Rights.

Conditions:

- Without negatively affecting the powers of SC
- The other court which has been authorized to issue writs; its powers are limited within the local limits of its jurisdiction.

7.25.8 Article 32(4)

It provides for the suspension of Article 32, in special manner as prescribed in Article 359.

7.25.8.1 Article 359 –Suspension of FRs during the proclamation of national emergency

Except rights given under Article 19, whose enforcement is automatically suspended with the proclamation of national emergency on grounds of external aggression or war; the suspension of other rights doesn't happen automatically.

Rights under Article 20 and 21 are never suspended. Rest of the rights can be suspended only when the President issues an order to suspend a right. In his order, the President has to specify which rights, for what period and for what geographical limits.

7.26 Article 33

7.26.1 Text

Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.—Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,—

- a) the members of the Armed Forces; or
- b) the members of the Forces charged with the maintenance of public order; or
- c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

- d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organization referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

7.26.2 Description

Article 33 empowers the Parliament to restrict or abrogate the application of the fundamental rights in relation to the armed forces, paramilitary forces, police etc. But it does not mean that the article itself would abrogate any rights. The operation of this article depends upon the parliamentary legislation, though these legislations don't need to refer this article. Such legislation by parliament of India may restrict the operation of any fundamental rights such as Equality, Freedom of Expression, Freedom of association, Personal Liberty etc. One such article is Police Forces (Restriction of Rights) Act, 1966. This act was challenged in Supreme Court but was held valid.

7.27 Article 34

7.27.1 Text

Restriction on rights conferred by this Part while martial law is in force in any area.— 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 or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

7.27.2 Description

Article 34 pertains to the restrictions on the fundamental rights while martial law is in force in any area. (Martial law means law made by military authorities. Such a law is imposed by the President, since he is the supreme commander of armed forces). The article gives indemnity by law in respect to acts done during operations of martial law. Here we have to note that the Constitution does not have a provision of authorizing the proclamation of martial law. The article simply means that if there is a Government servant on duty, then he/ she is indemnified for the acts done by him or her in connection with maintenance of law and order in the area where martial law is in force. This act of indemnity cannot be challenged in any court on the ground of contravention with any of the fundamental rights.

Martial Law	National Emergency
It affects only Fundamental Rights.	It affects not only Fundamental Rights but also Centre-State relations, distribution of revenues and legislative powers between Centre and States and may extend the tenure of the Parliament.
It suspends the government and ordinary law courts.	It continues the government and ordinary law courts.
It is imposed to restore the breakdown of law and order due to any reason.	It can be imposed only on three grounds - war, external aggression or armed rebellion.
It is imposed in some specific area of the country.	It is imposed either in the whole country or in any part of it.
It has no specific provision in the Constitution. It is implicit.	It has specific and detailed provision in the Constitution. It is explicit.

7.28 Article 35

7.28.1 Text

Legislation to give effect to the provisions of this Part.—

Notwithstanding anything in this Constitution,

- a) Parliament shall have, and the Legislature of a State shall not have, power to make laws—
 - i. with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and
 - ii. for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii);
- b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation—In this article, the expression "law in force" has the same meaning as in article 372.

7.28.2 Description

Article 35 states that power to make laws to give effect to FR shall vest only in the Parliament and not State Legislatures. This would ensure that there is uniformity throughout the territory of India in both the laws made and the punishments prescribed for offences against Fundamental Rights.

8 Status of Right to Property

At present right to property is not a fundamental right. However initially, it was a fundamental right guaranteed by Article 19(1)(f). This was further supplemented by Article 31, which provided protection from acquisition from the state. This led to lot of confusion, legal tussles, and constitutional amendments. Finally in 1978, through 44th Amendment Act, both these provisions were repealed and another Article 300A was inserted which provided that "no person will be deprived of his personal property except by the authority of law". It means that –

- Thus, right to property is no longer a fundamental right, it is merely a constitutional right. One can't move to the Supreme Court or High Court in case this right is violated.
- Further, it protects individuals from arbitrary executive action only, not from arbitrary legislative action.
- The state is not constitutionally bound to pay any compensation in case of acquisition.

9 Are Fundamental Rights Absolute

Fundamental Rights don't give absolute powers to an individual. They are restricted rights. In Gopalan case, 1950, SC held that there can not be any such thing as absolute or unmonitored liberty, for that would lead to anarchy. On other hand, if the state has absolute powers, then that would lead to tyranny. The purpose of Fundamental Rights is to establish rule of law and hence there should be a balance between individual rights and social needs. That's why constitution empowers the Parliament to provide reasonable and fair restrictions on the Fundamental Rights.

Grounds of reasonable restrictions are as follows:

- The grounds mentioned in article 19(2).
- Advancement of SC, ST, OBC and other weaker sections of society including women and children.
- In the interest of general public, public order, decency and morality
- Sovereignty and integrity of India
- Security of the state
- Friendly relation with foreign state

10 Criticism of Fundamental Rights

- Although called fundamental rights, these are subject to lot of restrictions. Further what constitutes "reasonableness" is subject to differing interpretations by courts.
- These rights provide only political rights. However political freedom is meaningless unless there is social and freedom also.
- These rights are not sacrosanct. They can be abridged by the Parliament. Most of these get suspended during the operation of national emergency.
- The remedy in case Fundamental Rights are violated, is costly, time consuming and in practice inaccessible to vast majority of the population.

11 Significance

Despite above criticisms, it must be recognized that the Fundamental Rights constitute the bedrock of liberal democratic framework of our country. The experience since independence has shown that not only they have helped in deepening the roots of democracy; the liberal interpretations by the courts have vastly expanded the scope of individual rights. And today they are a significant bulwark against executive tyranny and legislative arbitrariness.

Questions

1. In many democratic countries radio and television are not under the control of the state. Do you think that the same policy should be adopted in India? Mention briefly the points in favour of and against such a step. (Not more than 200 words) (80/I/14/25)
2. The Press in India is free to publish any news and views except those, which are objectionable from the point of view of the security of state, friendly relations with Foreign States etc. What steps have been taken recently by Government to prevent monopoly of the management of the newspaper, to encourage the growth of small newspapers and to prevent the exploitation of working journalists and other employees of Indian newspapers? (Not more than 150 words) (81/I/6/25)

3. Bring out the significance of the Fundamental rights provided in the Constitution of India. The right to acquire, hold and dispose of property has ceased to be a fundamental right. Examine the purpose of the change involved. (in about 150 words) (81/II/4a/20)
4. Why has there been reservation of seats for Scheduled Castes and Tribes in the legislatures and in public services? Has the purpose been achieved? Indicate recent developments. (in about 150 words) (81/II/4b/20)
5. Differentiate between Fundamental Rights and Directive Principles of State Policy. Do you think that the latter have been adequately implemented? Give reasons for your views (in about 150 words) (82/II/5c/20)
6. Consider the recommendations of the Mandal Commission and offer your comments, referring to the situations obtaining in the country. (in about 150 words). (83/II/4c/20)
7. What is meant by Habeas Corpus? What is the purpose of a writ of Habeas Corpus? (83/II/8a(B)/2)
8. What is the present status of the Right to Property? (84/II/8a(B)/3)
9. What is dealt with in Article 25 of Indian Constitution? What was the controversy about it recently? (Not more than 100 words) (84/II/9a/20)
10. What are the main causes of anti-reservation stir in Gujarat? What are the provisions in our Constitution regarding reservation? Do you consider the policy of reservation justified? (About 200 words) (85/II/11/35)
11. What do you understand by "preventive detention"? (86/II/8f(B)/3)
12. Discuss the importance of Article 32 of the Indian Constitution. (in about 150 words) (87/II/4c/20)
13. Define the writ of Certiorari. (87/II/8a(B)/3)
14. What do you understand by 'positive discrimination'? (87/II/8b(B)/3)
15. Explain the concept of Minorities in the India Constitution and mention the safeguards provided therein for their protection. (150 words) (88/II/4b/20)
16. What are the "reasonable restrictions" mentioned in the Indian Constitution accompanying the fundamental rights? (in about 150 words) (90/II/4d/20)
17. Explain the significance of Prasar Bharati Corporation in the context of Modern mass media. (90/II/8a(B)/3)
18. Define writ of Mandamus. Explain its importance. (90/II/8e(B)/3)
19. Discuss the secular nature of Indian polity and the position of minorities in India. (in 150 words) (91/II/4c/20)
20. The writ of Mandamus will not be granted against certain persons. Who are they? (92/II/4c/20)
21. Distinguish between preventive detention and punitive detention. (93/II/8a(B)/3)
22. When and why was the National Literacy Mission founded? (93/II/8c(B)/3)
23. What is meant by 'equal protection of law'? (93/II/8d(B)/3)
24. What is the purpose of Article 24 of the Constitution of India? (93/II/8f(B)/3)
25. Difference between the 'due process of law' and 'the procedure established by law' in the context of deprivation of personal liberty in India. (94/II/8a(B)/3)
26. Explain the meaning of ex post-facto legislation (94/II/8b(B)/3)
27. Indicate the provisions of Indian Constitution relating to Secularism. (94/II/8e(B)/3)
28. What are the constitutional rights of the citizens of India? What do you think about the demand of the NRI's for dual citizenship? (150 words) (95/II/4c/20)
29. What is the present status of the right to property as a Fundamental Right? (95/II/8b(B)/3)
30. Why is Article 32 considered as the cornerstone of the Constitution? (95/II/8c(B)/3)

31. The writ of Mandamus cannot be granted against certain persons. Who are they? (96/II/8c(B)/3)
32. What are the provisions regarding the protection of Linguistic minorities in the Constitution? (in about 75 words) (97/I/3d/10)
33. 33 What is Social Justice? How can reservation of seats for women in Parliament contribute to the establishment of a socially just society in India? (97/II/1b/40)
34. What, according to the Supreme Court, Constituted 'The Basic Features' which is upheld in case known as
 - (i) Keshavanand Bharati v/s. State of Kerala (1990)
 - (ii) Minerva Mills v/s. Union of India (1990)? (in about 150 words) (97/II/4c/20)
35. What specific provisions exist in the Constitution of India about child labour? (97/II/8e(B)/3)
36. What are the circumstances leading to the promulgation of Prasar Bharti Ordinance in August 1998? (in about 50 words) (98/I/7a/6)
37. State the amplitude of Article 21 of the Constitution. (98/II/8c(B)/3)
38. On what grounds does Article 15 of the Indian Constitution prohibit discrimination? Indicate the way the concept of 'Special protection' has qualified this prohibition, and contributed to social change. (in about 250 words) (99/II/1b/40)
39. What is the status of the right to Property in the Indian Constitution? (in about 25 words) (99/II/9e/3)
40. Discuss the constitutional provisions regarding the rights of children. (in about 150 words) (01/I/8c/15)
41. Discuss how the Constitution of India provides equal rights. (in about 250 words) (04/I/7a/30)
42. What is Habeas Corpus? (20 words) (04/I/9a/2)
43. What is the special facility provided to the linguistic minorities under Article 350 A? (04/I/9c/10)
44. Give your views on the right to freedom of religion as enshrined in the Indian Constitution. Do they make India a secular State (250 words) (05/I/7b/30)
45. What are the constitutional limitations on the free movements of Indians throughout the country? (150 words) (05/I/8a/15)
46. What is the meant by 'double jeopardy'? (20 words) (05/I/9a/2)
47. What is right to life and personal liberty? How have the courts expanded its meaning in recent years ? (in 250 words) (06/I/6a/30)
48. Bring out the difference between the Fundamental Rights and the Directive Principles of State Policy. Discuss some of the measures taken by the Union and State Governments for the implementation of the Directive Principles of State Policy. (250 words) (07/I/6b/30)
49. What is the importance of Right to Constitutional Remedies? (07/I/9e/2)
50. 'As we live in a plural society we need the greatest freedom to express our opinions even if others find it offensive' – Do you agree? Discuss with reference to some recent incidents in the Indian context. (09/I/9c/15)

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POLITY AND CONSTITUTION: 7

FUNDAMENTAL DUTIES

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Fundamental Duties

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Fundamental Duties

The 42nd Amendment Act 1976 added a new part in the Constitution, Part IVA. It incorporated Fundamental Duties by inserting a new article 51A below article 51.

As the Directive Principles are addressed to the state, the fundamental duties are addressed to the citizens. The citizens enjoying the fundamental rights must respect the ideals of the constitution, to promote harmony and spirit of the brotherhood.

Sardar Swaran Singh committee was constituted by Indira Gandhi soon after emergency was imposed in the country. The objective of this committee was to study the question of amending the constitution in the light of past experiences and recommend the amendments. The 42nd Amendment Act, also called the "Mini Constitution", which amended many articles and even the Preamble was a result of the recommendations of the Sardar Swaran Singh committee. The 10 fundamental duties were also added as per the recommendations of the Sardar Swaran Singh committee.

The objective of incorporating the fundamental duties is to place before the country a code of conduct, which the citizens are expected to follow.

Fundamental Duties are non-justiciable. It means the citizens cannot be forced to observe them. Some of them, are however part of the enforceable law. For example – Prevention of Insults to National Honor Act, 1971, and so on.

However, if a citizen violates FDs, his FRs may not be restored when he approaches courts.

Detailed Fundamental Duties

- a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- c) to uphold and protect the sovereignty, unity and integrity of India;
- d) to defend the country and render national service when called upon to do so;
- e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- f) to value and preserve the rich heritage of our composite culture;
- g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- i) to safeguard public property and to abjure violence;
- j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- k) who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

The last fundamental duty was added by 86th Amendment Act, 2002.

Fundamental duties are applicable not only on the citizens but also on the State. The State is thus required to undertake protection of the environment.

Purpose for Incorporating Duties

FDs were incorporated in the constitution through 42nd Amendment Act, 1976 with the purpose to:

- Promote patriotism in citizens
- Help them to follow a code of conduct that would strengthen the nation
- Protects its sovereignty and integrity
- Help the State in performing its diverse duties
- Promote ideas of harmony
- To ensure citizens commitments towards the State
- And to check indiscipline prevailing at that time

Committees and Judicial Pronouncements

Justice Verma Committee Report on teaching Fundamental Duties to citizens: The committee was setup in 1999. It recommended reorienting approaches to school curriculum and teachers' education program and incorporating fundamental duties in higher and professional education.

In 2003, the Supreme Court has directed the center to enact a law for the enforcement of fundamental duties by citizens as suggested by the Justice Verma Committee (2000).

The former Chief Justice of India, Ranganath Mishra, in a letter to the Chief Justice of India, requested the apex court to issue necessary directions to the State to educate its citizens in the matter of fundamental duties so that a right balance emerged between rights and duties. The letter was treated as a writ petition.

National Commission to Review the Working of the Constitution (NCRWC) Report in 2002 recommended the implementation of the Justice Verma Committee recommendations. It recommended that the first and foremost step that was required to be taken by the Union and State governments was to sensitize the people and create a general awareness of the provisions of fundamental duties amongst citizens.

Criticisms

Duties as enshrined in the Constitution represent no consistent underlying theme. They have been criticized as being vague, ambiguous and mere moral percepts having little practical value due to their non-enforceable character. Violation of most of these duties is anyways punishable under various laws. Some critics feel that it would have been more appropriate to include duties alongside FRs as rights and duties are two sides of the same coin.

Significance

Duties give a sense of discipline and commitment to many patriotic individuals. They are a reminder that while enjoying rights the citizens also have certain duties. They have also helped courts in examining constitutional validity of laws. Above all they have a great educative value.

Questions:

1. Write short note on Fundamental Duties of Indian Citizens. (in about 150 words) (80/11/4c/25)
2. Indicate the nature of the Fundamental Duties inserted in our Constitution. (82/11/8b(A)/3)
3. What are the fundamental duties and their implications. (in about 150 words) (93/11/4a/20)
4. Write any four fundamental duties prescribed in the Constitution of India. (97/11/8d(B)/3)
5. Identify the major Fundamental Duties. (in about 150 words) (03/1/8b/15)
6. Enumerate the Fundamental Duties incorporated in the Constitution after the 42nd Amendment. (08/1/6a/15)

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POLITY AND CONSTITUTION: 8

DIRECTIVE PRINCIPLES OF STATE POLICY

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Directive Principles of State Policy

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1 DPSP

Fundamental Rights (Part III of the Constitution) are the bedrock of political democracy. Political democracy however remains fragile unless the socio-economic foundations are strengthened with policies that aim to establish a welfare state. Welfare state is one that takes primary responsibilities for the welfare of the people, particularly those who are weak and vulnerable. It is a state that seeks to minimize disparities and ensure equitable development. Individual rights can be enjoyed meaningfully when social security and economic wellbeing is ensured.

DPSPs as enshrined in part IV of the constitution (Article 36 – 51) represent a comprehensive program of ushering in social and economic democracy in the country. Though, not justiciable, they are supposed to be fundamental to the governance of the country. These represent a set of principles that governments of the day – both federal and state must keep in mind while making state policies.

Notably Part III doesn't include some important rights such as right to work, social security etc. These rights find place in DPSPs.

2 Historic Evolution

The Sapru committee appointed by the "All Party Conference" in 1944 submitted its report in 1945. The Constituent assembly drew from its recommendations in formulating fundamental rights and other rights in Indian constitution.

The committee suggested two categories of rights – justiciable and non-justiciable. The former are found as Fundamental Rights and other rights in the Indian constitution. The latter are mentioned in Part IV of the constitution as DPSPs, which are largely in the nature of "instrument of instructions" to the government in making appropriate policies of socio-economic change.

3 Influences

DPSPs as enshrined in the Indian constitution are influenced by number of factors:

- DPSP as an idea was borrowed from the Constitution of Ireland.
- Government of India Act, 1935 contained a set of "Instrument of Instructions".
- The leadership of Indian freedom struggle representing liberal democratic ideas of the west chose to include them in the Indian Constitution as moral guidelines for public policies of the welfare state.
- The contemporary socialist ideas also impacted the framers of the constitution. For example, some DPSPs related to worker welfare.
- Constituent Assembly was also influenced by ideas of Mahatma Gandhi's vision of India. For example – directive principles related to Panchayats, promotion of village industries etc.

4 Characteristics of DPSPs

4.1 What are “Directives”

These are directives to the government of the day – at both federal and state level to apply these principles while making public policies.

4.2 Vision of the Constituent Assembly

According to Dr. Ambedkar, these are limitations on any one coming to power. It is a check against political majority making attempts to hijack the vision of the Constituent Assembly with respect to the future Indian State.

4.3 Non-enforceable

According to Article 37, DPSPs are not automatically enforceable in a court of law. They become enforceable only when a law giving effect to some directive principles exists. For example – MNREGS for the Right to Work.

Still, as held by Dr. Ambedkar, these cannot be considered to be mere pious declaration. If there is no force of law, there is political force of public opinion. No government in India can overlook these directions.

4.4 Amplification of Preamble

DPSPs do amplify the preambular values. For instance – it is DPSPs that give meaning to the “socialist democracy” as enshrined in the Preamble. For instance, the word “socialist” added through the 42nd Amendment Act, was given meaning through Articles 38 and 39. “Democracy” was sought to be more meaningfully realized by the 73rd and 74th Amendments. “Secularism” was given meaning through Article 44 – wherein the goal of uniform civil code is mentioned.

4.5 Relation with Fundamental Rights

The Fundamental Rights and DPSPs constitute the conscience of the Constitution. The purpose of FRs is to confer on individuals the rights necessary for their development, free from coercion. DPSPs are essential for a welfare society. According to Justice Chandrachud, the Constitution aims to bring about a synthesis between the two and together they constitute, not individually, the conscience of the Constitution.

The tension between FR and DPSP has been evident ever since the commencement of the Constitution. Initially, the comparative status of FRs and DPSPs was not clear. It was believed that they were contradictory in nature. It was in the Champakam Dorairajan case, in 1952 that the debate first came to the fore. A series of judicial pronouncements and constitutional amendments have altered the balance between the two since the commencement of the constitution.

- Champakam Dorairajan case (1952)—The Supreme Court held that **Article 37 expressly says that the directive principles are not enforceable by court**. The Supreme Court

mandated that the chapter on Fundamental Rights in the constitution is sacrosanct and the directive principles have to conform to and run subsidiary to the chapter on Fundamental Rights.

This means that **Fundamental Rights were given superiority over the Directive principles.**

- In Golaknath case (1967) however, the SC reversed its decision stating that FRs have been given a transcendental position and cannot be abridged. The doctrine of Prospective Overruling was applied in the Golaknath case, whereby the SC could overrule its own decision.
- 24th Amendment Act, 1971 was enacted to overcome the Golaknath case. It added Article 13(4) to the Constitution, whereby Constitutional amendment could modify a FR.
- In the Kesavananda Bharati case (1973), the SC gave the Doctrine of basic structure, whereby FRs could be abridged only to the extent that they did not form part of the basic structure.
- 42nd Amendment Act, 1976 passed by Parliament gave precedence to DPSPs over FRs and added Article 31C which provided for protection of laws implementing DPSPs 39(b), 39(c) from illegality on ground of being violative of the constitution.
- In the Minerva Mills case (1980), the SC held that powers of the Parliament to amend the Constitution are limited by the basic structure doctrine. The Supreme Court held that the Constitution exists on the balance of Part III and Part IV. Giving absolute primacy to one over the other will disturb the harmony of the Constitution. This took the Article 31(C) to its prior condition that “a law would be protected by article 31C only if it has been made to implement the directive in article 39(b) and (c) and not any of the articles included in Part IV”.
- Thus, the final status of FRs and DPSPs with respect to each other is following:
 - They form an integrated scheme
 - They are not supplementary but complementary in nature
 - Together they provide the basis for inclusive democracy in India
 - Supreme Court has pronounced the doctrine of Harmonious Construction
 - FRs have a superior legal status but it doesn't undermine the importance of DPSPs
 - Over a period of time by using the doctrine of “liberal interpretation” Supreme Court has included number of directive principles under Article 21.
 - To examine the validity of a particular law giving effect to directive principles which abridge FRs, SC applies the doctrine of –
 - Basic Structure and
 - The Golden Triangle of rights – Article 14, 19, and 21.

5 Classification and Details of Directive Principles

Though not classified in the constitution, on the basis of their content, conventionally DPSPs can be classified into the following categories:

- **Socialistic**

These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state.

- **Gandhian**

These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhiji during the national movement. In order to fulfill the dreams of Gandhi, some of his ideas were included as Directive Principles.

- **Liberal-intellectual**

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

5.1 Article 36

5.1.1 Text

Definition—In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III.

5.2 Article 37

5.2.1 Text

Application of the principles contained in this Part—the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

5.2.2 Description

Article 37 provides that DPSPs will be non-justiciable. However, they have their utility in giving directions to the State regarding the nature and direction of public policy.

The violation of DPSPs however, cannot be challenged in any Court.

5.3 Article 38 (Socialistic)

5.3.1 Text

State to secure a social order for the promotion of welfare of the people.—(1) 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.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

5.3.2 Description

Article 38 is socialistic in its orientation. It seeks to minimize the inequality between people as well as regions in our country. It also outlines the goal of the State as economic, social and political justice. The difference in status, which exists in our society due to the caste system is sought to be eliminated. The state must also try to ensure equality in opportunity of education as well as employment.

5.4 Article 39 (Socialistic)

5.4.1 Text

Certain principles of policy to be followed by the State—The State shall, in particular, direct its policy towards securing:

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

5.4.2 Description

Article 39 is also socialistic in its orientation. It is a specific direction to State while formulating its policies.

Any law, which implements article 39(b) and 39(c) cannot be held illegal on the ground that it violates FRs under Article 14 and 19. (Article 31C)

The State is required to ensure equality between men and women in terms of their pay when they are performing the same duties.

Use of resources should be in public interest and should not unduly benefit a private citizen.

State must ensure that the wealth generated in the country is not concentrated and everyone enjoys the prosperity of the nation.

5.5 Article 39A (Socialistic)

5.5.1 Text

Equal justice and free legal aid—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

5.5.2 Description

Article 39A is also socialistic in its orientation. It directs the State to ensure that the judicial system of the country is available to all. The State should provide free legal aid for accomplishing the same. Notably, the union govt. has passed National Legal Services Authority Act, 1987 to achieve the same.

Inserted by the Constitution 42nd amendment act, 1976

5.6 Article 40 (Gandhian)

5.6.1 Text

Organisation of village panchayats.—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

5.6.2 Description

It is a Gandhian Directive Principle. It requires the State to set up local bodies as institutions of self-govt. it also requires that such local bodies should be given adequate power for them to be self-sufficient. Notably, the govt. has passed 73rd and 74th amendment acts, which provide for local bodies as the third tier of government.

5.7 Article 41 (Socialistic)

5.7.1 Text

Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

5.7.2 Description

It is a socialistic principle. Within the State's resources, it is required to undertake welfare programs especially for those who cannot fend for themselves such as the old and the disabled. The State is undertaking National Social Assistance programs for such people, providing them monthly pensions.

Right to work has been made a legal right under MGNREGA and it partially fulfills this right.

5.8 Article 42 (Socialistic)

5.8.1 Text

Provision for just and humane conditions of work and maternity relief—The State shall make provision for securing just and humane conditions of work and for maternity relief.

5.9 Article 43 (Socialistic and Gandhian)

5.9.1 Text

Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

5.9.2 Description

Article 43 says that the state will endeavour to secure by suitable legislations or economic organizations or in other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure & social cultural opportunities and in particular promote cottage industries on an individual or cooperative basis in rural areas.

5.10 Article 43A (Socialistic)

5.10.1 Text

Participation of workers in management of industries—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

Rajinder Nagar: 1/8-B, 2nd Floor, Apsara Arcade, Near Gate 6, Karol Bagh Metro, Delhi

Mukherjee Nagar: 103, 1st Floor, B/1-2, Ansal Building, Behind UCO Bank, Delhi-9

09650617807, 09968029039, 09717162595

5.10.2 Description

Article 43 A was inserted by 42nd amendment act 1976. This article says that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of industry.

5.11 Article 44 (Liberal Intellectual)

5.11.1 Text

Uniform civil code for the citizens—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

5.11.2 Description

Personal laws relate to marriage, divorce, maintenance, succession, adoption. Different religions in India have different personal laws. A uniform civil code would imply the same personal law being followed by all the people of the country.

SC has repeatedly rejected petitions seeking direction to the center to apply uniform civil code stating that it is a matter of policy that the court is not competent to venture in.

5.12 Article 45 (Liberal Intellectual)

5.12.1 Text

Provision for early childhood care and education to children below the age of six years—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

5.12.2 Description

It was inserted by the 86th amendment, 2002 when the earlier DPSP under article 45(elementary education) was guaranteed by Article 21A.

5.13 Article 46 (Socialistic and Liberal Intellectual)

5.13.1 Text

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

5.13.2 Description

The government has tried to implement this directive principle by providing reservation to socially and educationally backward sections of our society, particularly the SC/STs.

5.14 Article 47 (Liberal Intellectual and Gandhian)

5.14.1 Text

Duty of the State to raise the level of nutrition and the standard of living and to improve public health—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

5.14.2 Description

It is a Gandhian principle. Mid day meal scheme can be said to be fulfilling this directive principle.

The Food Security Act passed in 2013 can be a step towards fulfilling this directive principle.

5.15 Article 48 (Liberal Intellectual and Gandhian)

5.15.1 Text

Organisation of agriculture and animal husbandry.—The State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

5.16 Article 48A (Liberal Intellectual)

5.16.1 Text

Protection and improvement of environment and safeguarding of forests and wild life—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

5.16.2 Description

Article 48A was added by the constitution by 42nd amendment act 1976. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

5.17 Article 49 (Liberal Intellectual)

5.17.1 Text

Protection of monuments and places and objects of national importance—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

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5.17.2 Description

It is a liberal-intellectual principle requiring the State to protect monuments of national importance. The Archaeological Survey of India is charged with this exercise.

5.18 Article 50 (Liberal Intellectual)

5.18.1 Text

Separation of judiciary from executive—The State shall take steps to separate the judiciary from the executive in the public services of the State.

5.18.2 Description

Separation of powers is necessary for the system of checks and balances. It also ensures the independence of the judiciary.

It is also a liberal-intellectual principle. It has been fulfilled by amending the CrPC in 1973.

5.19 Article 51 (Liberal Intellectual)

5.19.1 Text

Promotion of international peace and security—The State shall endeavour to—

- (a) promote international peace and security;*
- (b) maintain just and honourable relations between nations;*
- (c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and*
- (d) encourage settlement of international disputes by arbitration.*

5.19.2 Description

Article 51 says that The State shall endeavor to promote international peace and security, maintain just and honorable relations between nations, foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration.

6 Differences with Fundamental Rights

- FRs are based on philosophy of liberalism granting protection to individual and his rights. Different DPSPs reflect different ideologies for example – that of welfare state, Fabian Socialism, Gandhism, Environmentalism, Internationalism etc.

- FRs are prohibitions on the state in general and in certain cases on private individuals also. DPSPs are positive obligations on the state. Union, state governments as well as other authorities are expected to consider the DPSPs as fundamental guidelines to be observed in policy making.
- FRs are enforceable in court of law. Right to constitutional remedies itself is a fundamental right. Judiciary is empowered to declare any law null and void if it abridges any of the fundamental rights. As per Article 37, DPSPs are not enforceable in a court of law. Constitutional remedies, thereby are not available.
- FRs establish political democracy and gives civil rights while DPSPs establish socio-economic democracy in the country.
- FRs are individual centric while DPSPs are group centric
- DPSPs establish India as a welfare state.
- SC has pronounced the doctrine of harmonious reconstruction to establish the relation between FRs and DPSPs
- According to B.N. Rau, legal advisors to the constituent assembly, FRs and DPSPs are integrated in scheme. They were presented as a single scheme in constituent assembly. Even in Motilal Nehru report they formed one unit. It is for avoiding constitutional crisis – inability to enforce DPSPs because of lack of resources, that they have been separated.
- Part III reflects liberal democratic ideology. Part IV reflects the mixture of following ideologies –
 - Welfare State
 - Socialism
 - Communalism
 - Gandhism
 - Hindu right
 - Internationalism

7 Implementation of DPSP

Since the commencement of the constitution, there has been substantial legislation to implement the DPSPs. Some of those are listed below –

First constitutional amendment was for implementing land reforms. It was followed by 4th, 17th, 25th, 42nd, and 44th amendment acts (Article 39).

The 73rd amendment to the constitution was done in pursuit of implementing the article 40.

Right to work has been made a legal right under MGNREGA. National Social Assistance Program of government of India is another step in implementing the directives under Article 41.

The Minimum Wages Act (1948), Child Labour Prohibition and Regulation Act (1986) etc. seeks to protect the interests of the workers. Similarly the Maternity Benefit Act (1961) and Equal Remuneration Act (1976) have been implemented to protect the interests of women workers.

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Handloom Board, Handicrafts Board, Coir Board, Silk Board have been set up for the development of cottage industries. These are some steps towards implementation of Article 42 and 43.

86th amendment act 2002 makes provisions for early childhood care and education (Article 45).

The policy of preferential treatment to weaker sections including women, SCs, STs, OBCs, has been a consistent plank of the government welfare policies. One important step in this regard has been implementation of Mandal Commission's recommendation in pursuit of Article 46. The 93rd Amendment Act 2006 is another step in the same direction.

Integrated Rural Development Programme (1978), Jawahar Rozgar Yojana (1989), Swarnajayanti Gram Swarozgar Yojana (1999), Sampoorna Gram Rozgar Yojana (2001), Mahatma Gandhi National Rural Employment Guarantee Programmes (2006) etc have been implemented to improve the living standard of the people.

Regarding Article 48, the green revolution and the research in biotechnology are aimed at modernizing agriculture and animal husbandry, among other things.

The National Forest Policy (1988) aims at the protection, conservation and development of forests. The Environment Protection Act, 1986; The Wildlife (Protection) Act, 1972; are also some important steps towards fulfilling directives under Article 48A.

The Archaeological Survey of India is charged with the work of protection of the monuments like Taj Mahal.

Separation of judiciary from executive has been completed by amending the CrPC, in 1973.

The efforts of India to secure international peace are many like participating in the peacekeeping missions through the UN. India also pioneered the Non-Aligned movement to defuse cold war after the Second World War.

8 Directives and Constitutional Amendments

Since the Indian constitution came into force, there have been number of amendments – addition, and modification from the part IV of the constitution.

Affected Article	Change	Through
38 (2)	Added	44 th Amendment Act, 1978
39 (f)	Added	42 th Amendment Act, 1976
39 (a)	Added	42 th Amendment Act, 1976
43 (a)	Added	42 th Amendment Act, 1976
43 (b)	Added	97 th Amendment Act, 2011
45	Modified Text	86 th Amendment Act, 2002
48 (a)	Added	42 nd Amendment Act, 1976

9 Reasons behind Directive Principles being made non-justiciable and legally non-enforceable

The framers of the Constitution made the Directive Principles non-justiciable and legally non-enforceable because:

1. The country did not possess sufficient financial resources to implement them.
2. The presence of vast diversity and backwardness in the country would stand in the way of their implementation.
3. The newly born independent Indian State with its many preoccupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.

The Constitution makers, therefore, taking a pragmatic view, refrained from giving teeth to these principles. They believed more in an awakened public opinion rather than in court procedures as the ultimate sanction for the fulfillment of these principles.

10 Criticisms of DPSPs

- a) Critics point out the lack of consistency in the DPSPs. Apparently greatly important directives have been mixed with seemingly less important ones. Further, they have not been arranged in a logical manner based on a consistent philosophy. According to N. Srinivasan, 'the Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions. It combines rather incongruously the modern with the old and provisions suggested by the reason and science with provisions based purely on sentiment and prejudice'.
- b) Also, their non-enforceable nature leaves their implementation on the discretion of the government of the day.
- c) They have been criticized as a dustbin of sentiments – as they contain merely the vision of constitution makers without any instrumentalities to achieve it
- d) It has been argued that since the Constitution is the basic law of the land, it should not contain anything, which is non-justiciable.
- e) Also, they have been criticized on the ground that they disturb the federal structure – directives are instructions to both union and state governments. Much of the directives deal with those subjects, which come under state list. K. Santhanam has pointed out that the Directives lead to a constitutional conflict:
 - Between the Centre and the States
 - Between the President and the Prime Minister, and
 - Between the Governor and the Chief Minister

According to him, the Centre can give directions to the states with regard to the implementation of these principles, and in case of non-compliance, can dismiss the state government. Similarly, when the Prime Minister gets a bill (which violates the

Directive Principles) passed by the Parliament, the President may reject the bill on the ground that these principles are fundamental to the governance of the country and hence, the ministry has no right to ignore them. The same constitutional conflict may occur between the governor and the chief minister at the state level.

11 Significance of DPSPs

The DPSPs aim to establish an India where the ideals of not only political democracy, but also social and economic democracy have been realized. They provide a broad direction to the ruling regime regardless of its political complexion and hence help in maintaining some consistency in policy direction despite change in governments. DPSPs have also functioned as beacons to the judiciary. Above all, they have an educative value.

According to M C Setalvad, the former Attorney General of India, the Directive Principles, although confer no legal rights and creates no legal remedies, are significant and useful in the following ways:

1. They are like an 'Instrument of Instructions' or general recommendations addressed to all authorities in the Indian Union. They remind them of the basic principles of the new social and economic order, which the Constitution aims at building.
2. They have served as useful beacon-lights to the courts. They have helped the courts in exercising their power of judicial review, that is, the power to determine the constitutional validity of a law.
3. They form the dominating background to all State action, legislative or executive and also a guide to the courts in some respects.
4. They amplify the Preamble, which solemnly resolves to secure to all citizens of India justice, liberty, equality and fraternity.
5. They facilitate stability and continuity in domestic and foreign policies in political, economic and social spheres in spite of the changes of the party in power.
6. They are supplementary to the fundamental rights of the citizens. They are intended to fill in the vacuum in Part III by providing for social and economic rights.
7. Their implementation creates a favourable atmosphere for the full and proper enjoyment of the fundamental rights by the citizens. Political democracy, without economic democracy, has no meaning.
8. They enable the opposition to exercise influence and control over the operations of the government. The Opposition can blame the ruling party on the ground that its activities are opposed to the Directives.
9. They serve as a crucial test for the performance of the government. The people can examine the policies and programmes of the government in the light of these constitutional declarations.
10. They serve as a common political manifesto. A ruling party, irrespective of its political ideology, has to recognize the fact that these principles are intended to be its guide, philosopher and friend in its legislative and executive acts.

Questions:

1. Write short notes in 150 words on Directive Principles of State Policy. (79/II/4a/25)
2. Mention any three Directive Principles concerning social and economic justice. (84/II/8c(B)/3)
3. What additions have been made to the Directive Principles of State Policy since the commencement of the Constitution? (85/II/8e(B)/3)
4. Briefly mention why and how the Chapter on Directive Principles gained precedence over the Chapter on Fundamental Rights in the Indian Constitution. (About 250 words) (87/II/1a/40)
5. Besides the Directive contained in Part IV, there are certain other Directives addressed to the State in other parts of the Constitution. What are they? (150 words) (92/II/4a/20)
6. What are the various writs available to the citizens of India? (93/II/8b(B)/3)
7. What have been the observations of the Supreme Court in a recent judgment in respect of a Uniform Civil Code? (in about 50 words) (95/I/7a/6)
8. Briefly state the stages through which the present position of the Directive Principles vis-a-vis the Fundamental Rights has emerged. (98/II/1a/40)
9. What is the importance of Directive Principles of State Policy? Mention, which Directive Principles of State Policy have got primary over the Fundamental Rights. (in about 150 words) (99/II/4a/20)
10. What is the constitutional position of Directive Principles of State Policy? How has it been interpreted by the judiciary after the emergency in 1975-77? (in about 250 words) (01/I/7a/30)
11. Discuss the constitutional provisions relating to the non-justiciable directives binding upon the states. (in about 150 words) (02/I/8a/15)

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