

Historical evaluation of Indian continent and subcontinent

The most notable imperials in India are the Chalukya, Chola, Pallava, Chera, Pandyan, and Western Chalukya Empires. The Chola dynasty conquered southern India and successfully invaded in Southeast Asia, Sri Lanka, the Maldives, and Bengal in the 11th century

The Central Asian Turks who governed a large portion of the northern Indian subcontinent in the early 14th century formed the Delhi Sultanate in 1206 CE, following Mahmud Ghazni's invasions. However, the Delhi Sultanate collapsed in the late 14th century, coinciding with the rise of the Deccan sultanates. Additionally, the wealthy Bengal Sultanate, which ruled for more than three centuries, grew to importance. Several strong Hindu states, such as the Vijayanagara Empire and Rajput states like Mewar, also rose its popularity during this time. During the 15th century, Sikhism was emerged.

From the early 16th century, when the Mughal Empire conquered most of the Indian subcontinent, signalling the proto-industrialization, becoming the biggest global economy and manufacturing power, with a nominal GDP that valued a quarter of world GDP, superior to that of Europe. The Mughals suffered a gradual decline in the early 18th century, which provided opportunities for the Marathas, Sikhs, Mysoreans, Nizams, and Nawabs of Bengal to exercise control over large regions of the Indian subcontinent.

From the mid-18th century to the mid-19th century, large regions of India were gradually occupied by the East India Company, a chartered company acting as a sovereign power on behalf of the British government. Dissatisfaction with company rule in India led to the Indian Rebellion of 1857, which rocked parts of north and central India, and led to the dissolution of the company. India was afterwards ruled directly by the British Crown, in the British Raj. After World War I, a nationwide struggle for independence was launched by the Indian National Congress, led by Mahatma Gandhi, notable for nonviolence. Later, the All-India Muslim League would advocate for a separate Muslim-majority nation state. The British Indian Empire was partitioned in August 1947 into the Dominion of India and Dominion of Pakistan, each gaining its independence.

Background of Constitution of India

The Constitution of India (Bhāratīya Saṁvidhāna) is the supreme law of India. The document lays down the framework demarcates fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written national constitution in the world.

It imparts constitutional supremacy (not parliamentary supremacy, since it was created by a constituent assembly rather than Parliament) and was adopted by its people with a declaration in its preamble. Parliament cannot override the constitution.

Constituent Assembly

In 1928, the All Parties Conference convened a committee in Lucknow to prepare the Constitution of India, which was known as the Nehru Report

- 6 December 1946: Formation of the Constitution Assembly (in accordance with French practice).
- 9 December 1946: The first meeting was held in the constitution hall (now the Central Hall of Parliament House). The 1st person to address was J. B. Kripalani, Sachchidananda Sinha became temporary president. (Demanding a separate state, the Muslim League boycotted the meeting.)
- 11 December 1946: The Assembly appointed Rajendra Prasad as its president, H. C. Mukherjee as its vice-president and, B. N. Rau as constitutional legal adviser. (There were initially 389 members in total, which declined to 299 after partition. Out of the 389 members, 292 were from government provinces, four from chief commissioner provinces and 93 from princely states.)
- 29 August 1947: Drafting Committee appointed with B. R. Ambedkar as its Chairman. The other six members of committee were K.M. Munshi, Muhammed Sadulla, Alladi Krishnaswamy Iyer, N. Gopalaswami Ayyangar, Devi Prasad Khaitan and BL Mitter.

From 1947 to 1950, the same legislation continued to be implemented, as India was a dominion of United Kingdom for these three years, at the same time as each princely state was convinced by Sardar Patel and V. P. Menon to sign the articles of integration with India, and the British Government continued to be responsible for the external security of the country. Finally Babasaheb Ambedkar, the chairman of the drafting committee, presented the final draft of the Indian constitution before the Constituent Assembly president Rajendra Prasad on 25 November 1949. Thus, the constitution of India cancelled the Indian Independence Act 1947 and Government of India Act 1935 when it became effective on 26 January 1950. India ceased to be a dominion of the British Crown and became a sovereign,

democratic republic with the constitution. Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, 393, and 394 of the constitution came into force on 26 November 1949, and the remaining articles became effective on 26 January 1950 which is celebrated every year in India as Republic Day. The process took 2 years, 11 months and 18 days—at a total expenditure of 6.4 million to finish.

Drafting of the constitution by the Constituent Assembly

The constitution was drafted by the Constituent Assembly, which was elected by elected members of the provincial assemblies. The 389-member assembly (reduced to 299 after the partition of India) took almost three years to draft the constitution holding eleven sessions over a 165-day period.

The constitution was drawn from a number of sources. Based on the India's needs and conditions, its framers borrowed some features from the previous legislation such as the Government of India Act 1858, the Indian Councils Acts 1861, 1892 and 1909, the Government of India Acts 1919 and 1935, and the Indian Independence Act 1947. The latter, which led to the creation of Pakistan, divided the former Constituent Assembly into two parts. The Amendment act of 1935 is also a very important step for making the constitution for two new born countries. Each new assembly had sovereign power to draft and enact a new constitution for the separate states.

There are various layers in the background of the Indian Constitution:

- Regulating Act 1773
- Pitt's India Act 1784
- Charter Act of 1813
- Charter Act of 1833
- Charter Act of 1853
- Government of India Act 1858
- Indian Councils Act 1861
- India Councils Act 1892
- Morley-Minto Reforms 1909
- Montague-Chelmsford Reforms 1919
- Government of India Act 1935
- Indian Independence Act 1947

These acts were in some way instrumental for the development of the Indian Constitution.

Regulating Act 1773

- First time the British Parliament resorted to regulating the affairs of the East India Company.
- The Governor of Bengal was made the Governor-General of Bengal (Warren Hastings).

- An Executive Council of the Governor-General was created with 4 members.
- Centralised the administration with the Presidencies of Madras and Bombay being made subordinate to the Bengal Presidency.
- Supreme Court was established at Calcutta as the Apex Court in 1774.
- Prohibited company officials from engaging in private trade and from accepting gifts from Indians.

Pitt's India Act 1784

- Commercial and political functions of the company separated. The Court of Directors managed the commercial activities while the Board of Control managed political affairs.
- The company territories in India were called 'British possession in India'.
- Governor's Councils were set up in Madras and Bombay as well.

Charter Act 1813

- This act ended the East India Company's monopoly over trade with India except in tea and opium. Trade with India was open to all British subjects.

Charter Act 1833

- Governor-General of Bengal was designated the Governor-General of India (Lord William Bentinck).
- The legislative powers of the Bombay and Madras Presidencies were removed.
- This act ended the commercial activities of the company and it was transformed into an **Charter Act 1853**
- The legislative and executive powers of the Governor-General's Council were separated.
- A Central Legislative Council was created of 6 members out of which 4 were appointed by the provisional governments of Madras, Bombay, Agra and Bengal.
- The Indian civil service was opened as a means to recruit officers for administration through open competition.

Government of India Act 1858

- After the 1857 revolt, the rule of the company was ended and the British possessions in India came directly under the British Crown.
- The office of the Secretary of State for India was created. He was assisted by a 15-member Council of India.
- The Indian administration was under his authority and the Viceroy was his agent. The Governor-General was designated the Viceroy as well (Lord Canning).
- The Court of Directors and the Board of Control were abolished.

Indian Councils Act 1861

- Indians were given representation in the Viceroy's Councils. 3 Indians entered the Legislative Council.
- Provisions were made for the entry of Indians in the Viceroy's Executive council also as non-official members.
- Portfolio system was recognised.
- Decentralisation initiated with the presidencies of Madras and Bombay being restored their legislative powers.

Indian Councils Act 1892

- Indirect elections (nominations) were introduced.
- Legislative Councils expanded. Gave more functions to the legislative councils such as the discussion of budget and questioning the executive.

Indian Councils Act 1909 (Morley-Minto Reforms)

- Direct elections to the legislative councils were introduced for the first time.
- Central Legislative Council became the Imperial Legislative Council.
- The number of members of the legislative council was increased from 16 to 60.
- The concept of the separate communal electorate was accepted.
- For the first time, an Indian was made a member of the Viceroy's Executive Council. (Satyendra Prasad Sinha – Law Member).

Government of India Act 1919 (Montague-Chelmsford Reforms)

- Central and provincial subjects were separated.
- Diarchy was introduced in the provincial governments with executive councillors being in charge of the reserved list and the ministers in charge of the transferred list of subjects.
- The ministers were nominated from among the elected members of the legislative council and were responsible to the legislature.
- A bicameral legislature was introduced for the first time at the centre. (Legislative council and legislative assembly later to become Rajya Sabha and Lok Sabha respectively).
- It mandated 3 members of the Viceroy's executive council to be Indians.
- This act provided for the first time, the establishment of a public service commission in India.
- This act extended the right to vote and with this, about 10% of the population acquired voting rights.

Government of India Act 1935

- An all-India Federation was proposed which would consist of British India and the princely states. This never materialised though.
- Subjects were divided between the centre and the provinces. Centre was in charge of the Federal List, provinces in charge of the Provincial List and there was a Concurrent List which both catered to.
- Diarchy was abolished at the provincial level and introduced at the centre.
- More autonomy was accorded to the provinces and in 6 out of 11 provinces, the bicameral legislature was introduced.
- A federal court was established and the Indian Council abolished.
- Burma and Aden were severed off from India.
- This act provided for the establishment of the RBI.
- This Act continued until it was replaced by the new Indian Constitution.

Indian Independence Act 1947

- India was declared independent and sovereign.
- The Viceroy and the Governors were made constitutional (nominal) heads.
- Set up responsible governments at the centre and the provinces.

This Act marks the final step in the departure of the British from India. India became a truly independent and sovereign state after this Act. The Act established governments at the central and provincial levels. It also laid down the foundation of the Constituent Assembly.

B. R. Ambedkar in his concluding speech in constituent assembly on 25 November 1949 stated that:

The credit that is given to me does not really belong to me. It belongs partly to Sir B.N. Rau the Constitutional Advisor to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of Drafting Committee.

While deliberating the revised draft constitution, the assembly moved, discussed and disposed off 2,473 amendments out of a total of 7,635.

Timeline of formation of the Constitution of India

- 6 December 1946: Formation of the Constitution Assembly (in accordance with French practice).
- 9 December 1946: The first meeting was held in the constitution hall (now the Central Hall of Parliament House). The 1st person to address was J. B. Kripalani, Sachchidananda Sinha became temporary president. (Demanding a separate state, the Muslim League boycotted the meeting.)
- 11 December 1946: The Assembly appointed Rajendra Prasad as its president, H. C. Mukherjee as its vice-president and, B. N. Rau as constitutional legal adviser. (There were initially 389 members in total, which declined to 299 after partition. Out of the

389 members, 292 were from government provinces, four from chief commissioner provinces and 93 from princely states.)

- 13 December 1946: An "Objective Resolution" was presented by Jawaharlal Nehru, laying down the underlying principles of the constitution. This later became the Preamble of the Constitution.
- 22 January 1947: Objective resolution unanimously adopted.
- 22 July 1947: National flag adopted.
- 15 August 1947: Achieved independence. India split into the Dominion of India and the Dominion of Pakistan.
- 29 August 1947: Drafting Committee appointed with B. R. Ambedkar as its Chairman. The other six members of committee were K.M. Munshi, Muhammed Sadulla, Alladi Krishnaswamy Iyer, N. Gopalaswami Ayyangar, Devi Prasad Khaitan and BL Mitter.
- 16 July 1948: Along with Harendra Coomar Mookerjee, V. T. Krishnamachari was also elected as second vice-president of Constituent Assembly.
- 26 November 1949: The Constitution of India was passed and adopted by the assembly.
- 24 January 1950: Last meeting of Constituent Assembly. The Constitution was signed and accepted (with 395 Articles, 8 Schedules, and 22 Parts).
- 26 January 1950: The Constitution came into force. (The process took 2 years, 11 months and 18 days—at a total expenditure of 6.4 million to finish.)
- G. V. Mavlankar was the first Speaker of the Lok Sabha (the lower house of Parliament) after India turned into a republic.

Membership

B. R. Ambedkar, Sanjay Phakey, Jawaharlal Nehru, C. Rajagopalachari, Rajendra Prasad, Vallabhbhai Patel, Kanaiyalal Maneklal Munshi, Ganesh Vasudev Mavalankar, Sandipkumar Patel, Abul Kalam Azad, Shyama Prasad Mukherjee, Nalini Ranjan Ghosh, and Balwantrai Mehta were key figures in the assembly, which had over 30 representatives of the scheduled classes. Frank Anthony represented the Anglo-Indian community, and the Parsis were represented by H. P. Modi. Harendra Coomar Mookerjee, a Christian assembly vice-president, chaired the minorities committee and represented non-Anglo-Indian Christians. Ari Bahadur Gurung represented the Gorkha community. Judges, such as Alladi Krishnaswamy Iyer, Benegal Narsing Rau, K. M. Munshi and Ganesh Mavlankar were members of the assembly. Female members included Sarojini Naidu, Hansa Mehta, Durgabai Deshmukh, Amrit Kaur and Vijaya Lakshmi Pandit.

The first, two-day president of the assembly was Sachchidananda Sinha; Rajendra Prasad was later elected president. It met for the first time on 9 December 1946.

Drafting

Sir B. N. Rau, a civil servant who became the first Indian judge in the International Court of Justice and was president of the United Nations Security Council, was appointed as the

assembly's constitutional adviser in 1946. Responsible for the constitution's general structure, Rau prepared its initial draft in February 1948. The draft of B.N. Rau consisted of 243 articles and 13 schedules which came to 395 articles and 8 schedules after discussions, debates and amendments.

At 14 August 1947 meeting of the assembly, committees were proposed. Rau's draft was considered, debated and amended by the eight-person drafting committee, which was appointed on 29 August 1947 with B. R. Ambedkar as chair. A revised draft constitution was prepared by the committee and submitted to the assembly on 4 November 1947.

Before adopting the constitution, the assembly held eleven sessions in 165 days. On 26 November 1949, it adopted the constitution, which was signed by 284 members. The day is celebrated as National Law Day, or Constitution Day. The day was chosen to spread the importance of the constitution and to spread thoughts and ideas of Ambedkar.

Jawaharlal Nehru signing the constitution

The assembly's final session convened on 24 January 1950. Each member signed two copies of the constitution, one in Hindi and the other in English. The original constitution is hand-written, with each page decorated by artists from Shantiniketan including Beohar Rammanohar Sinha and Nandalal Bose. Its calligrapher was Prem Behari Narain Raizada. The constitution was published in Dehradun and photolithographed by the Survey of India. Production of the original constitution took nearly five years. Two days later, on 26 January 1950, it became the law of India. The estimated cost of the Constituent Assembly was 6.3 crore. The constitution has had more than 100 amendments since it was enacted.

Influence of other constitutions

Government	Influence
United Kingdom	<ul style="list-style-type: none"> • Parliamentary government • Nominal head of the state • Post of Prime Minister • More powerful lower house • Concept of single citizenship • Legislative procedure • Bicameral legislature • Rule of law • Cabinet system • The legislative speaker and their role • Prerogative writ • Parliamentary privilege
United States	<ul style="list-style-type: none"> • Bill of Rights (Fundamental rights) • Written constitution • Preamble to the Constitution

	<ul style="list-style-type: none"> • Federal structure of government • Impeachment of the President • Post of the Vice President and his functions • The institution of the Supreme Court • Removal of Supreme Court and High courts judges • Electoral College • Independent judiciary and separation of powers • Judicial review • President as commander-in-chief of the armed forces • Equal protection under law
Ireland	<ul style="list-style-type: none"> • Directive principles of state policy • Nomination of members to the Rajya Sabha by the President • Method of election of the President
Australia	<ul style="list-style-type: none"> • Freedom of trade between states • National legislative power to implement treaties, even on matters outside normal federal jurisdiction • Concurrent List • Provision of Joint Session of the Parliament • Preamble terminology
France	<ul style="list-style-type: none"> • Notions of <i>liberté, égalité, fraternité</i> (liberty, equality, fraternity) in the preamble • The ideals of republic in the preamble
Canada	<ul style="list-style-type: none"> • Quasi-federal government—a federal system with a strong central government • Distribution of powers between the central and state governments • Residual powers, retained by the central government • Appointment of Governor of states by Centre • Advisory jurisdiction of the Supreme Court
Soviet Union	<ul style="list-style-type: none"> • Fundamental Duties under article 51-A. • Mandated planning commission to oversee economic development • Ideals of justice (social, economic and political) in the preamble
Weimar Republic	<ul style="list-style-type: none"> • Suspension of fundamental rights during emergency
South Africa	<ul style="list-style-type: none"> • Amendment procedure of the constitution • Election of members of Rajya Sabha
Japan	<ul style="list-style-type: none"> • Procedure established by law • Laws on which the Supreme Court functions

The Indian constitution is the world's longest for a sovereign nation. At its enactment, it had 395 articles in 22 parts and 8 schedules. At about 145,000 words, it is the second-longest active constitution—after the Constitution of Alabama—in the world.

The constitution has a preamble and 470 articles, which are grouped into 25 parts. With 12 schedules and five appendices, it has been amended 105 times; the latest amendment became effective on 15 August 2021.

The constitution's articles are grouped into the following parts:

- Preamble, with the words "socialist", "secular" and 'integrity' added in 1976 by the 42nd amendment.
- Part I[46] – The Union and its Territory – Articles 1 to 4
- Part II – Citizenship – Articles 5 to 11
- Part III – Fundamental Rights – Articles 12 to 35
- Part IV] – Directive Principles of State Policy – Articles 36 to 51
- Part IVA – Fundamental Duties – Article 51A
- Part V – The Union – Articles 52 to 151
- Part VI – The States – Articles 152 to 237
- Part VII – States in the B part of the first schedule (repealed) – Article 238
- Part VIII – Union Territories – Articles 239 to 242
- Part IX– Panchayats – Articles 243 to 243(O)
- Part IXA – Municipalities – Articles 243(P) to 243(ZG)
- Part IXB – Co-operative societies[55] – Articles 243(ZH) to 243(ZT)
- Part X – Scheduled and tribal areas [56] – Articles 244 to 244A
- Part XI – Relations between the Union and the States [57] – Articles 245 to 263
- Part XII – Finance, property, contracts and suits – Articles 264 to 300A
- Part XIII – Trade and commerce within India – Articles 301 to 307
- Part XIV – Services under the union and states – Articles 308 to 323
- Part XIVA – Tribunals – Articles 323A to 323B
- Part XV – Elections – Articles 324 to 329A
- Part XVI – Special provisions relating to certain classes – Articles 330 to 342
- Part XVII – Languages – Articles 343 to 351
- Part XVIII – Emergency provisions – Articles 352 to 360

- Part XIX – Miscellaneous – Articles 361 to 367
- Part XX – Amendment of the Constitution – Articles 368
- Part XXI – Temporary, transitional and special provisions – Articles 369 to 392
- Part XXII – Short title, date of commencement, authoritative text in Hindi and repeals – Articles 393 to 395

Schedules

Schedules are lists in the constitution which categorise and tabulate bureaucratic activity and government policy.

Schedule	Article(s)	Description
First	1 and 4	Lists India's states and territories, changes in their borders and the laws used to make that change.
Second	59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 186 and 221	Lists the salaries of public officials, judges, and the comptroller and auditor general.
Third	75(4), 99, 124(6), 148(2), 164(3), 188 and 219	Forms of oaths – Lists the oaths of office for elected officials and judges
Fourth	4(1) and 80(2)	Details the allocation of seats in the Rajya Sabha (upper house of Parliament) by state or union territory.
Fifth	244(1)	Provides for the administration and control of Scheduled Areas and Scheduled Tribes (areas and tribes requiring special protection).
Sixth	244(2) and 275(1)	Provisions made for the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram.
Seventh	246	Central government, state, and concurrent lists of responsibilities

Eighth	344(1) and 351	Official languages
Ninth	31-B	Validation of certain acts and regulations.
Tenth	102(2) and 191(2)	Anti-defection provisions for members of Parliament and state legislatures.
Eleventh	243-G	Panchayat Raj (rural local government)
Twelfth	243-W	Municipalities (urban local government)

Appendices

- *Appendix I* – The Constitution (Application to Jammu and Kashmir) Order, 1954
- *Appendix II* – Re-statement, referring to the constitution's present text, of exceptions and modifications applicable to the state of Jammu and Kashmir
- *Appendix III* – Extracts from the Constitution (Forty-fourth Amendment) Act, 1978
- *Appendix IV* – The Constitution (Eighty-sixth Amendment) Act, 2002
- *Appendix V* – The Constitution (Eighty-eighth Amendment) Act, 2003

Nature of the constitution

The constitution is considered federal in nature, and unitary in spirit. It has features of a federation, including a codified, supreme constitution; a three-tier governmental structure (central, state and local); division of powers; bicameralism; and an independent judiciary.

It also possesses unitary features such as a single constitution, single citizenship, an integrated judiciary, a flexible constitution, a strong central government, appointment of state governors by the central government, All India Services (the IAS, IFS and IPS), and emergency provisions. This unique combination makes it quasi-federal in form.

Each state and union territory has its own government. equivalent (similar) to the president and prime minister, each has a governor or (in union territories) a lieutenant governor and a chief minister.

Article 356 permits the president to dismiss a state government and assume direct authority if a situation arises in which state government cannot be conducted in accordance with constitution. This power, known as president's rule, was abused as state governments came to be dismissed on fragile grounds for political reasons. After the *S. R. Bommai vs. Union of India* decision, such a course of action is more difficult since the courts have asserted their right of review.

The 73rd and 74th Amendment Acts introduced the system of panchayati raj in rural areas and Nagar Palikas in urban areas. Article 370 gave special status to the state of Jammu and Kashmir.

The main features of Indian Federal system are as follows:

1) **Division of Powers:** The division of powers between two levels of governments is an essential feature of federalism. Federalism means the distribution of powers of the state between the central and the state governments. The basis of such distribution of power is that in matters of national importance, in which a uniform policy is desirable in the interest of the units, authority is entrusted to the centre and matters of local concern remain with the states. In a Federation there should be clear division of powers so that the units and the centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of others. The Seventh schedule contains three legislative lists which enumerate subjects of administration viz., Union, State and Concurrent lists. The union list consists of 100 subjects, the more important of which are defence, railway, posts and telegraph, currency etc. The state list consists of 61 subjects, including public order, police, administration of justice, public health, education, agriculture etc. The concurrent list embraced 52 subjects including criminal law, marriage, divorce, trade unions, electricity etc. The residuary powers have been vested in the central government.

2) **Supremacy of the Constitution:** In a federation, the constitution should be the supreme source of strength, both for the centre as well as the federating units. Accordingly, Indian constitution is also supreme and not the hand maid of either the centre or of the states. If, for any reason, any organ of the state dares to violate any provision of the constitution, the court of law is there to ensure the dignity of the constitution, which is upheld at all costs.

3) **A Written Constitution:** A Federal constitution must almost be a written constitution. It will be practically impossible to maintain the supremacy of the constitution and division of powers between the centre and the states, unless the terms of the constitution have been reduced into writing. Accordingly, the Indian constitution is a written document containing 395 Articles and 10 Schedules, and therefore fulfils this basic requirement of a federal government. In fact the Indian constitution is the most elaborate constitution of the world.

4) **Rigid Constitution:** A natural corollary of a written constitution is its rigidity. In a rigid constitution the procedure of amendment is complicated and difficult. But this does not mean that the constitution should be legally unalterable. A Rigid constitution, as we know, is one which cannot be changed easily. The Indian constitution is largely a rigid constitution. All the provisions of the constitution concerning federal state relations can be amended only by the joint actions of the state legislatures and the union parliament. Such provisions can be amended only if the amendment is passed by a two-third majority of the members present and by voting in the parliament, and is ratified by at least one half of the states.

5) **Independent Judiciary:** For a federation, it is also essential that the judiciary is impartial and independent. A Federal court is indispensable to a federation. It acts as the guardian of the constitution. Especially, this principle has been playing an important and key role in the working of federal government. The constitution has provided for a Supreme Court, and every effort has been made to see that the judiciary in India is independent and supreme. The Supreme Court of India can declare a law as unconstitutional if it contravenes any provisions of the constitution. In order to ensure the impartiality of the judiciary, our judges are not removable by the executive and their salaries cannot be curtailed by the Parliament.

6) **Bicameral Legislature:** A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation. The Constitution of India also provides for a bicameral legislature at the Centre consisting of the Lok Sabha and the Rajya Sabha. While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by State Legislative Assemblies.

Governmental sources of power

The executive, legislative, and judicial branches of government receive their power from the constitution and are bound by it. With the aid of its constitution, India is governed by a parliamentary system of government with the executive directly accountable to the legislature.

- Under Articles 52 and 53: the president of India is head of the executive branch
- Under Article 60: the duty of preserving, protecting, and defending the constitution and the law.
- Under Article 74: the prime minister is the head of the Council of Ministers, which aids and advises the president in the performance of their constitutional duties.

- Under Article 75(3): the Council of Ministers is answerable to the lower house.

What is Constitution?

The definition of constitution is quite complex and has significantly evolved during the last two centuries.

According to the Western conception, constitution is the document that contains the basic and fundamental law of the nation, setting out the organization of the government and the principles of the society.

Yet, although many countries have a written constitution, we continue to see the phenomenon of “living constitution” in many parts of the world. As society change, so do laws and regulations. Furthermore, in some cases there is no single document that defines all aspects of the state, but rather several different documents and agreements that define the power of the government and provide a comprehensive – although not unitary – legal framework. Constitution has also been defined as:

- Basic norm (or law) of the state;
- System of integration and organization of norms and laws; and
- Organization of the government.

The constitution provides the foundation of the government, structuring the political organization and guaranteeing individual rights and freedoms.

What is Constitutionalism?

Constitutionalism is a system of governance in which the power of the government is limited by laws, checks and balances, in order to reconcile authority with individual and collective freedoms. The principle of constitutionalism must be understood in opposition to non constitutionalism – a system in which the government uses its powers in an arbitrary fashion, without respecting the citizens’ rights.

The idea of constitutionalism (and of constitution) is strictly linked with the progress and spread of democracies.

In monarchic, totalitarian and dictatorial systems there is generally no constitution or, if it exists it is not respected. Individual and collective rights are often disregarded in dictatorial regimes, and the government cannot be held accountable as there is no legal document that

defines its limits. The concept of constitutionalism has evolved during the last few centuries thanks to political changes and progress of democratic ideals.

Similarities between Constitution and Constitutionalism

- Constitution refers to a written body of laws and legislation.
- Constitutionalism is a complex principle and system of governance.
 1. Both refer to the limits and features of the system of governance of a country. Constitutionalism would not exist without a constitution, and a constitutional way of governing a country requires limits and boundaries to the central authority;
 2. Both influence the actions of both government and population. Besides providing a framework for political and institutional structure, the constitution sets out the main rules that all citizens should respect. Furthermore, ruling in a constitutional manner means that the government applies the regulations outlined in the constitution to limit and manage the citizens' acts – always respecting individual and collective rights;
 3. Both protect and preserve individual and collective rights, preventing the central government from abusing of its powers and infringing on the citizens' basic freedoms;
 4. Both have evolved, in benefiting from the spread of democratic ideals and becoming key features of the majority of Western countries.

Difference between Constitution and Constitutionalism

1. Constitutionalism is based on the principles outlined in the constitution – or in other word it is called as core legal documents
it is also a principle of its own.
The idea of constitutionalism is opposed to the concept of authoritarian and despotic rule and is based on the belief that the power of the government should be limited in order to prevent abuses and excesses;
2. The constitution is often a written document, while the principles of constitutionalism are generally unwritten. Both constitution and constitutionalism evolve with the promulgation of democratic ideals – although they do not always proceed at the same speed. There can be a constitutional form of governance – that respects the rights of the citizens and promotes democratic values – even though the national constitution is outdated. At the same time, an inefficient democratic government may not be able to rule in a constitutional way, despite the existence of a constitution.

Preamble of the Constitution of India

The Preamble of the Constitution of India presents the principles of the Constitution and indicates the sources of its authority. It was adopted on 26 November 1949 by the Constituent Assembly and came into effect on 26 January 1950, celebrated as the Republic

Day of India. It was amended during Indian emergency by Indira Gandhi where the words "socialist" and "secular" were added.

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 is based on the Objectives Resolution, which was moved in the Constituent Assembly by Jawaharlal Nehru on 13 December 1946 accepted on 22 January 1947 and adopted by the Constituent Assembly on 26 November 1949, coming into force on 26 January 1950. B. R. Ambedkar said about the preamble:

It was, indeed, a way of life, which recognizes liberty, equality, and fraternity as the principles of life and which cannot be divorced from each other: Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things.

While the Constituent Assembly was debating the Preamble, there was an argument to rename India the 'Union of Indian Socialistic Republics' as if India was to imitate the U.S.S.R. However, other members were not convinced.

There was even argument as to whether to include the names of 'God' and 'Gandhi' in the Preamble. The former was outvoted when 68 members voted against 'God'. H.V. Kamath desperately commented, 'This, Sir, is a black day in our annals. God save India'. While the latter - the suggestion to include Gandhi's name, was disapproved by Brajeshwar Prasad who felt that the 'rotten constitution'- which was based on the American Supreme Court cases and Government of India Act and thus not 'Gandhian' in nature, should not carry his name. Prasad said,

"I do not want that the name of Mahatma Gandhi should be incorporated in this Constitution, because it is not a Gandhian Constitution.... If we had a Gandhian Constitution, I would have been the first to offer my support. I do not want that the name of Mahatma Gandhi should be dragged in the rotten Constitution."

The preamble page, along with other pages of the original Constitution of India, was designed and decorated by the renowned painter Beohar Rammanohar Sinha of Jabalpur who was at Shantiniketan with Acharya Nandalal Bose at that time. Nandalal Bose endorsed Sinha's artwork without any alteration whatsoever. As such, the page bears Sinha's short signature Ram in Devanagari lower-right corner. The calligraphy was done by Prem Behari Narain Raizada.

Amendment during Indian emergency

As originally enacted the preamble described the state as a "sovereign democratic republic", to which the terms "Secular" and "Socialist" were later passed by the Parliament during The Emergency in the 42nd Amendment.

The preamble was amended only once on 18 December 1976. During the Emergency in India, the Indira Gandhi government pushed through several changes in the Forty-second Amendment of the constitution. Through this amendment, the words "socialist" and "secular" were added between the words "Sovereign" and "democratic" and the words "unity of the Nation" were changed to "unity and integrity of the Nation"..

In the year 1994, during the S. R. Bommai v. Union of India case , the Supreme Court of India held that secularism is a part of the basic structure doctrine.

Salient features of Indian Constitution

Indian constitution, one of the utmost admired constitutions in the world was enacted after 'ransacking' all the known constitutions of the world at that time. This constitution that we have enacted has stood the test of times. Though provisions were borrowed from other constitutions, the constitution of India has several salient features that distinguish it from constitution of other countries

Some of its salient features are discussed below:

Longest written constitution

- Constitution can be classified into written constitution such as that of America or unwritten constitution such as that UK.
- The constitution of India is a written constitution which happens to be the longest written constitution in the world.

- It is comprehensive, elaborate and a detailed document
- The factors that have contributed to this phenomenon are: geographical factors (vastness of country and diversity), Historical factors (Influence of GOI, 1935), Single constitution for both centre and state and dominance of legal luminaries

Drawn from various sources

- It has borrowed most of its provisions from the constitution of various other countries as well as from the Government of India act, 1935. Ex: structural part from GOI, 1935, independence of judiciary from USA, Fundamental Rights from USA etc
- Though it is borrowed, the Indian constitution-makers made sure the borrowed features were made suitable to Indian conditions. Ex: Though we borrowed cabinet form of governance from UK, the cabinet is not all-supreme as in the case of UK.

Preamble of the constitution

- The Preamble consists of the ideals, objectives and basic principles of the Constitution.
- The salient features of the Constitution have developed directly and indirectly from these objectives which flow from the Preamble
- It asserts India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity the individual, and unity and integrity of the nation.
- The Preamble is the nature of Indian state and the objectives it is committed to secure for the people.

Democratic system

- The authority of the government rests upon the sovereignty of the people. The people enjoy equal political rights.
- Free fair and regular elections are held for electing governments

India is a republic

- The Preamble declares India to be a Republic.
- India is not ruled by a monarch or a nominated head of state. India has an elected head of state (President of India) who exercises power for a fixed term of 5 years.
- After every 5 years, the people of India indirectly elect their President.

Union of states

- Article I of the Constitution declares, that “India that is Bharat is a Union of States.”

Fundamental Rights and duties:

- The Constitution of India grants and guarantees Fundamental Rights to its citizens.

- The constitution of India confirms the basic principle that every individual is permitted to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental right.
- The Six FR include- Right to Equality; Right to Freedom; Right Against Exploitation; Right to Freedom of Religion; Cultural and Educational Rights and Right to Constitutional Remedies (Art. 32).
- The fundamental rights are justifiable and are not absolute. Reasonable constraints can be imposed keeping in view the security-requirements of the state.
- A new part IV (A) after the Directive Principles of State Policy was combined in the constitution by the 42nd Amendment, 1976 for fundamental duties.

Directive Principles of State Policy:

- A unique aspect of the Constitution is that it comprises of a chapter in the Directive Principles of State Policy.
- These principles are in the nature of directives to the government to implement them to maintain social and economic democracy in the country.

Parliamentary System:

- The Constituent Assembly decided to espouse (adopt) Parliamentary form of government both for the Centre and the states.
- In Indian parliamentary system, distinction is made between nominal and real executive head.
- The Council of Ministers is responsible before the Lok Sabha, The lower house of union parliament. There are close relations between executive and legislature.

Federal structure of government:

- A federal state is a state where a country is divided into smaller regions and the government is functioning at two levels
- The Indian Constitution has envisaged a federal structure for India considering the geographical vastness and the diversity of languages, region, religions, castes, etc.
- Written Constitution, supremacy of the Constitution, division of powers between Union and States, bicameral Legislature, independent Judiciary, etc. are the features of Indian federation.
- Scholars describe India as a 'Quasi-Federation' (K.C. Wheare) or as 'a federation with a unitary bias, or even as 'a Unitarian federation.'

Universal adult franchise

- All men and women enjoy an equal right to vote. Each adult man and woman above the age of 18 years has the right to vote.
- All registered voters get the opportunity to vote in elections.

Single integrated State with Single Citizenship:

- India is the single Independent and Sovereign integrated state.
- All citizens enjoy a common uniform citizenship.
- They are entitled to equal rights and freedoms, and equal protection of the state.

Integrated Judicial system

- The Constitution provides for a single integrated judicial system common for the Union and the states.
- The Supreme Court of India works at the apex level, High Courts at the state level and other courts work under the High Courts.

Independent Judiciary

- It is necessary to secure the philosophical foundations of the rule of law and democracy
- Firstly, the Constitution makers created a separate Judiciary independent of Legislature and Executive.
- Secondly, the Constitution has ensured complete independence of Judiciary in the matters of administration and finances.

Amending the Constitution of India:

- Amending the Constitution of India is the procedure of making modifications to the nation's fundamental law or supreme law.
- The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution of India.
- This procedure guarantees the sanctity of the Constitution of India and keeps a check on uninformed power of the Parliament of India.
- Judicial Review:
 - The judiciary has significant position in Indian Constitution and it is also made independent of the legislature and the executive.
 - The Supreme Court of India stands at the peak of single integrated judicial system
 - It operates as defender of fundamental rights of Indian citizens and guardian of the Constitution.

Basic Structure doctrine:

- The basic structure doctrine is an Indian judicial norm that the Constitution of India has certain basic features that cannot be changed or destroyed through amendments by the parliament.
- The basic features of the Constitution have not been openly defined by the Judiciary.
- At least, 20 features have been described as "basic" or "essential" by the Courts in numerous cases, and have been incorporated in the basic structure.
- In Indira Gandhi v. Raj Narayan case and also in the Minerva Mills case, it was witnessed that the claim of any particular feature of the Constitution to be a "basic" feature would be determined by the Court in each case that comes before it.

Secularism

- In no other country of the world so many religions co-exist as in India. In view of such diversity the Constitution guarantees complete freedom of religion to all.
- The citizens of our country are free to follow any religion and they enjoy equal rights without any distinction of caste, creed, religion or sex.
- The State does not discriminate against anyone on the ground of his religion, nor can the State compel anybody to pay taxes for the support of any particular religion.
- Everybody is equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- The Constitution regards religion as a private affair of individuals and prohibits the State from interfering with it. The Constitution also grants various cultural rights to minorities.

Independent bodies

- Constitution has setup various independent bodies and vested them with powers to ensure the constitutional provisions. Ex: Election Commission, CAG, Finance Commission
- These institutions have been provided with security of tenure, fixed service conditions etc to ensure that they are not susceptible to the whims of either the legislature or the executive.

Emergency provisions

- Indian constitution contains elaborate provisions to deal with those challenges that pose a threat to the country's security and unity (It will be discussed in detail in upcoming chapters)

Three-tier government

- Through 73rd and 74th amendment act, we have rural and urban local bodies as an additional constitutional tier of the government structure.
- This section fulfills the dream of Gandhi ji to see a self-functioning villages in India

Scheme of the fundamental rights

The Fundamental Rights in India preserved in the Part III (Article 12-35) of the Constitution of India guarantee civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These rights are known as "fundamental" as they are most essential for all-round development i.e., material, intellectual, moral and spiritual and protected by fundamental law of the land i.e. constitution.

Classification of Fundamental Rights

The fundamental rights are classified into the following six categories:

Classification of Fundamental Rights	Article	Deals With
Right to Equality	14	Equality Before Law
	15	Prohibition of Discrimination
	16	Equality of Opportunity in Public Employment
	17	Abolition of Un-touchability
	18	Abolition of Titles
Right to Freedom	19	<p>Protection of 6 Rights</p> <p>Freedom of speech and expression.</p> <p>Freedom of assemble peaceably and without arms.</p> <p>Freedom of associations or unions or co-operative societies.</p> <p>Freedom to move freely throughout the territory of India.</p> <p>Freedom to reside and settle in any part of the territory of India.</p> <p>Freedom to practice any profession or to carry on any occupation, trade or business.</p>
	20	<ul style="list-style-type: none"> ➤ Protection in Respect of Conviction for Offences ➤ Retrospective criminal legislation: This is also known as ex-post-facto criminal legislation. Under this, a person cannot be convicted for an act that was committed at a time when the act had not been declared by law as an offence. ➤ This means that criminal legislation cannot be given a conservative effect. ➤ This resistance cannot be used against the provision of preventive detention, and also does not cover the trial. ➤ The law also provides that a person cannot be subject to a punishment greater than what is prescribed by law for the offence committed.

		<ul style="list-style-type: none"> ➤ (2) No person shall be prosecuted and punished for the same offence more than once. ➤ (3) No person accused of any offence shall be required to be a witness against himself.
	21	Protection of Life and Personal Liberty
	21-A	Right to Education
	22	<p>Protection Against Arrest and Detention</p> <p>(1) No person who is arrested shall be detained in custody without being informed, as soon as may not be, of the grounds for such arrest nor shall he is denied the right to consult, and to be defended by, a legal practitioner of his choice.</p> <p>(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.</p>
Right Against Exploitation	23	<p>Prohibition of Human Trafficking and Forced Labour</p> <p>It is said that every human has a right to live with dignity. But some people don't value the lives of other human beings and money, even if coming at the cost of a life is everything for them. As a result crimes like human trafficking and forced labor, specifically children and women. Therefore Prohibition of Traffic in Human Beings & Forced Labour has become the need of the hour.</p>
	24	Prohibition of Child Labour
Right to Freedom of Religion	25	Freedom of Conscience, Profession, Practice and Propagation
	26	Freedom to Manage Religious Affairs
	27	Freedom from Taxation for Promotion of a Religion

	28	Freedom from Attending Religious Instruction
Educational and Cultural Rights	29	Protection of Interests of Minorities
	30	Right of Minorities to Establish and Administer Educational Institutions
Right to Constitutional Remedies	32	<p>Right to remedies for the enforcement of the fundamental rights using five writs:</p> <p>Habeas Corpus - to direct the release of a person detained unlawfully.</p> <p>Mandamus - to direct a public authority to do its duty.</p> <p>Quo Warranto - to direct a person to vacate an office assumed wrongfully.</p> <p>Prohibition - to prohibit a lower court from proceeding on a case.</p> <p>Certiorari - the power of the higher court to remove a proceeding from a lower court and bring it before itself.</p>
	33	Empowers the Parliament to restrict or abrogate the fundamental rights of the 'Members of the Armed Forces, paramilitary forces, police forces, intelligence agencies and analogous forces
	34	Provides for the restrictions on fundamental rights while martial law(military rule) is in force
	35	Empowers the Parliament to make laws on Fundamental Rights

The scheme of the Fundamental Duties and its legal status

Fundamental Duties of the citizens of India mentioned in Article 51A of the Indian Constitution. By the 42nd Amendment of the Constitution, adopted in 1976, Fundamental Duties of the citizens have also been enumerated.

Following are the Fundamental Duties under the Constitution of India which is given in Part IV-A of the Constitution of India which was inserted by the (42nd Amendment) Act, 1976.

It shall be the duty of every citizens of India-

- i. to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- ii. to cherish and follow the noble ideals which inspired our national struggle for freedom;
- iii. to uphold and protect the sovereignty, unity and integrity of India;
- iv. to defend the country and render national service when called upon to do so;
- v. 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;
- vi. to value and preserve the rich heritage of our composite culture;

- vii. to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- viii. to develop the scientific temper, humanism and the spirit of inquiry and reform;
- ix. to safeguard public property and to abjure violence;
- x. 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.]
- xi. [(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 Fundamental duties have been incorporated in the constitution to remind every citizen that they should not only be conscious of their rights but also of their duties. The concept of Fundamental Duties was taken from the constitution of USSR along with the concept of Five Year Plan.

Part IV-A of the Constitution (Forty-second Amendment) Act, 1976, in accordance with the recommendations of the Swaran Singh Committee in order to bring out Constitution in line with Article 29 (1) of the Universal Declaration of Human Rights, 1948 and the Constitutions of countries like Japan, China, U.S.S.R. etc.

Directive Principles of State Policy

The Sapru Committee in 1945 suggested two categories of individual rights. One is justifiable and the other being non-justifiable rights. The justifiable rights, as we know, are the Fundamental rights, whereas the non-justifiable ones are the Directive Principles of State Policy.

DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. There are various definitions to Directive Principles of State which are given below:

- They are an ‘instrument of instructions’ which are enumerated in the Government of India Act, 1935.
- They seek to establish economic and social democracy in the country.
- DPSPs are ideals which are not legally enforceable by the courts for their violation.

Directive Principles of State Policy – Classification

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types-

- **Socialistic Principles,**
- **Gandhi-an Principles** and,
- **Liberal-Intellectual Principles.**

The details of the three types of DPSPs are given below:

DPSP – Socialistic Principles	
Definition: They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:	
Article 38	Promote the welfare of the people by securing a social order through justice, social, economic and political and to minimize inequalities in income, status, facilities and opportunities

Article 39	<p>Secure citizens:</p> <ul style="list-style-type: none"> • Right to adequate means of livelihood for all citizens • Equitable distribution of material resources of the community for the common good • Prevention of concentration of wealth and means of production • Equal pay for equal work for men and women • Preservation of the health and strength of workers and children against forcible abuse • Opportunities for the healthy development of children
Article 39A	Promote equal justice and free legal aid to the poor
Article 41	<p>In cases of unemployment, old age, sickness and disablement, secure citizens:</p> <ul style="list-style-type: none"> • Right to work • Right to education • Right to public assistance
Article 42	Make provision for just and humane conditions of work and maternity relief
Article 43	Secure a living wage, a decent standard of living and social and cultural opportunities for all workers
Article 43A	Take steps to secure the participation of workers in the management of industries
Article 47	Raise the level of nutrition and the standard of living of people and to improve public health

DPSP – Gandhian Principles

Definition: These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:

Article 40	Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
Article 43	Promote cottage industries on an individual or co-operation basis in rural areas
Article 43B	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
Article 46	Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation
Article 47	Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
Article 48	Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

DPSP – Liberal-Intellectual Principles

Definition: These principles reflect the ideology of liberalism. Under various articles, they direct the state to:

Article 44	Secure for all citizens a uniform civil code throughout the country
Article 45	Provide early childhood care and education for all children until they complete the age of fourteen years
Article 48	Organise agriculture and animal husbandry (farming) on modern and scientific lines
Article 49	Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance

Article 50	Separate the judiciary from the executive in the public services of the State
Article 51	<ul style="list-style-type: none"> • Promote international peace and security and maintain just and honourable relations between nations • Foster respect for international law and treaty obligations • Encourage settlement of international disputes by arbitration

What are the new DPSPs added by the 42nd Amendment Act, 1976

42nd Amendment Act, 1976 added four new Directive Principles in the list:

S.No	Article	New DPSPs
1	Article 39	To secure opportunities for the healthy development of children
2	Article 39A	To promote equal justice and to provide free legal aid to the poor
3	Article 43A	To take steps to secure the participation of workers in the management of industries
4	Article 48A	To protect and improve the environment and to safeguard forests and wildlife

Facts about Directive Principles of State Policy:

1. A new DPSP under **Article 38** was added by the 44th Amendment Act of 1978, which requires the State to minimise inequalities in income, status, facilities and opportunities.
2. The 86th Amendment Act of 2002 changed the subject-matter of **Article 45** and made elementary education a fundamental right under **Article 21A**. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of 14 years.
3. A new DPSP under **Article 43B** was added by the 97th Amendment Act of 2011 relating to co-operative societies. It requires the state to promote voluntary formation,

autonomous functioning, democratic control and professional management of co-operative societies.

4. The Indian Constitution under **Article 37** makes it clear that 'DPSPs are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.'

Criticism of Directive Principles of State Policy

As a point of debate, the following reasons are stated for the criticism of Directive Principles of State Policy:

1. It has no legal force
2. It is illogically arranged
3. It is conservative in nature
4. It may produce constitutional conflict between centre and state

Federal structure and distribution of legislative and financial powers between the Union and the States

Relations between the Union and the States

The relations between the Union and the States are based on the division of power between the governing parties. These relations are classified into three types:

- Legislative relations: Articles 245 to 255 of the Constitution
- Administrative relations: Articles 256 to 263 of the Constitution
- Financial relations: Articles 268 to 293 of the Constitution

Legislative relations: Articles 245 to 255 of the Constitution

Article 245

- The Parliament can make laws for the whole or any part of the country.
- A State legislature can make laws for the whole or any part of the State.
- The law of Parliament is never invalid even when the effect pertains to outside the country.

Article 246

- It talks about the Parliamentary laws and the laws proposed by the State.

Article 247

- The Parliament can establish additional courts to better manage the country's laws.

Article 248

- The Parliament can pass laws on any item not listed in the State or Concurrent List.

Article 249

- In a matter of national interest with a two-thirds majority, the Parliament has absolute power to legislate over the items on the State list.

Article 250

- In emergencies, the Parliament has absolute power to legislate over the State.

Article 251

- Even under the conditions of Articles 249 and 250, the State shall legislate as usual but remain inactive in Parliamentary legislative matters alone.
- The State legislation remains inactive until the Parliamentary order is completed.

Article 252

- The Parliamentary law can be nullified only by the passing of another law by the Parliament itself.
- State legislation has no power over this.

Article 253

- The Parliament has the power to make a decision regarding any international treaty or agreement for the whole or any part of the country.

Article 254

- It talks about the inconsistency of State and Parliamentary legislation.

Article 255

It talks about the previously passed laws and recommendations.

Administrative relations: Articles 256 to 263 of the Constitution

Administrative Relations between Centre and State government come under Articles 256 to 263 in Part XI of the Indian Constitution. The President of India can constitute an Inter-State Council (under Article 263) to examine and evaluate subjects of mutual interest between the Centre and the states.

The President might establish an Inter-State Council to investigate and discuss matters of common interest in administrative Relations between Centre and state under Article 263. This Inter-State Council was formed in 1990.

Administrative Relations between Centre and State

The Administrative Relations between Centre and State are divided on the basis of the distribution of legislative powers. Legislative relations care for the law-making bodies between the Centre and States whereas Administrative Relations form the spirit of the federal structure.

Administrative Relations - Centre's Control over State Legislation

- The state's edifice and operation of communications networks.
- Provision of appropriate facilities for students from linguistic minority groups in the state to receive primary school education in their native language.

- Specific programs for the welfare of the state's Scheduled Tribes are being developed and implemented.
- The coercive sanction underpinning the Central Directions under Article 365 also applies in specific circumstances.

Administrative Relations between Centre and State

In the Indian Constitution, dedicated Articles lay down the details about the Administrative Relations between Centre and State. Here, we have shared further information about these Articles –

- **Article 256 of the Indian Constitution**

According to this provision of Administrative Relations, the executive power of states should not prejudice or impede the executive powers of the Centre, and States ensure compliance with the Parliament's laws.

- **Article 257 of the Indian Constitution**

Just like article 256, this provision also states the superiority of the Centre's power over States. This provision offers the power to the Centre to give directions to States regarding the maintenance and construction of highways and waterways, means of communication, and measures to be taken for the protection of railways. Moreover, the central executive has the power to eliminate the hurdles that any centre agency finds to function with states.

- **Articles 258 & 259 of the Indian Constitution**

These Articles also describe the Administrative Relations between Centre and State. The Central power can entrust the governor or the officer of State either conditionally or unconditionally to do certain functions of the Union concerning any matter to which the executive power of State extends.

- **Article 260 of the Indian Constitution**

This provision of Administrative Relations states that with agreement governed by the laws associating the exercise of a foreign jurisdiction with the other territory's Government, the Government of India can undertake legislative, executive, or judicial functions of the foreign territory.

- **Article 261 of the Indian Constitution**

This provision of Administrative Relations between Centre and State states that Indian citizens shall give full faith and credit throughout India's territory to public records, acts, and judicial proceedings of the Centre and States.

- **Article 262 of the Indian Constitution**

This provision of Administrative Relations provides adjudication associated with any complaint or dispute relating to water. The Centre clears out all the disputes of States regarding water.

- **Article 263 of the Indian Constitution**

According to this provision of Administrative Relations between Centre and State, the President may establish ISC (Inter-State Council) to inquire into, investigate, discuss and advise upon disputes between the States.

Administrative Relations - Distribution of Executive Powers

The Constitution has distributed the executive power of Administrative Relations between Centre and State, which are the following –

- The executive power of the Union extends across the whole country, whereas the executive power of States extends to matters where the State legislature has its legislative jurisdiction.
- The Centre's executive power extends to the matters associated with the Union List, whereas States' power extends to the State List.
- The Centre's executive power extends to exercising authority, jurisdiction, and rights conferred by any agreement and treaty.
- When the Parliament and the State legislature have legislative power, the executive power belongs to the states, except for parliamentary statute or Constitutional provision expressly placed in the Union.
- Adjusting Administrative Relations between the Centre and the States is challenging in a federal system. But the Constitution of India is neither entirely federal nor unitary. Thus, the provisions of the Constitution help to quickly resolve the muddles and provide integration between the Centre and the State for a better-running nation.

Financial relations: Articles 268 to 293 of the Constitution

Article 268 to 293 in Part XII deal with the financial relations, the financial relations between the Union and the States can be studied under the following heads:

Taxes and duties levied by the Union, but collected and appropriated by the States: Stamp duties and duties of excise on medical and toilet preparations are levied by the Government of India, but collected and appropriated by the States, within which such duties are liveable, except in the Union Territories, where they are collected by the Union Government (Art.

268). The proceeds of these duties levied within any State are assigned to that State only and do not form a part of Consolidated Fund of India.

Service tax levied by the Centre, but collected and appropriated by the Centre and the States:
Taxes on services are levied by the Centre, but their proceeds are collected and appropriated by both the Centre and the States. Principles of their collection and appropriations are formulated by the Parliament.

Taxes levied and collected by the Union, but assigned to the States within which they are liveable (Art.269):

- a) Succession duty in respect of property, other than agricultural land.
- b) Estate duty in respect of property, other than agricultural land.
- c) Terminal taxes on goods or passengers carried by railways, sea or air.
- d) Taxes on railway fares and freights taxes on transactions in Stock Exchanges.

Taxes levied and collected by the Union and distributed between the Union and the States (Art.270): Certain taxes are levied as well as collected by the Union, but their proceeds are divided between the Union and the States in a certain proportion in order to effect an equitable distribution of the financial resources.

This category includes all the taxes and duties referred to in the Union List, except the three categories mentioned above, any surcharge and any cess levied for specific purposes. The manner of distribution of net proceeds of these taxes is prescribed by the President, on the recommendation of the Finance Commission.

Surcharge on certain taxes (Art.271): The Parliament is, authorized to levy surcharge on the taxes mentioned in the above two categories (Art.369 and Art.370) and the proceeds of such surcharges go to the Centre exclusively and are not shareable.

Taxes levied and collected and retained by the states: These are the taxes enumerated in the State List (20 in number) and belong to the States exclusively.

Grants-in-Aid: The Parliament may make grants-in-aid from the Consolidated Fund of India to such States as are in need of assistance (Art.275), particularly for the promotion of welfare of tribal areas, including special grant to Assam.

These are called statutory grants and made on the recommendation of the Finance Commission. Apart from this, Art.282 provides for discretionary grants by the Centre and States both, for any public purposes. The Centre makes such grants on the recommendation of the Planning Commission (an extra-constitutional body).

Loans: The Union Government may provide loan to any State or give guarantees with respect to loans raised by any State.

Previous sanction of the President (Art 274): No Bill or amendment can be introduced or moved in either House of Parliament without the previous sanction of the President, if:

It imposes or varies any tax in which the States are interested; or

It varies the meaning of the expression “Agricultural Income” as defined in the Indian Income-Tax Act; or

It affects the principles on which money are distributed to the States; or

It imposes a surcharge on the State taxes for the purpose of the Union.

According to Article 301, Freedom of Trade, Commerce and Intercourse throughout the territory of India is guaranteed, but Parliament has the power to impose restrictions in public interest.

Although taxes on income, other than agricultural income, are levied by the Union, yet the State Legislatures can levy taxes on profession, trade, etc.

Distribution of non-tax revenues: Non tax revenues from post and telegraph, railways, banking, broadcasting, coinage and currency, central public sector enterprises and escheat (death of a person without heir) and lapse (termination of rights) go to the Centre, while State receives non-tax revenues from irrigation, forests, fisheries, state public sector enterprises and escheat and lapse (if property is situated in that state).

Provision has been made for the constitution of a Finance Commission to recommend to the President certain measures for the distribution of financial resources between the Union and the States (Art.280).

Under the situation of emergencies, these financial relations also undergo changes according to the situation and the President can modify the constitutional distribution of revenues between the Centre and the States.

Three Lists for the Distribution of Legislative Powers between the Union and the States

Let us now go through the three lists enshrined under the 7th Schedule of the Constitution.

Union List

The Union list contains 97 items which comprise of the subjects having national significance. This list admits uniform laws that are applicable over the entire Indian Territory, and only the Indian Parliament is capable of legislating upon them.

- The Union List has 97 items.
- The Parliament has supreme power over the items on this list.
- It falls under the Seventh Schedule of the Constitution of India.
- The Union List deals with nationally important subjects like defence, banking, foreign affairs, railways, atomic energy, etc.

Some of the items in this List-I are as follows:

- Defence;
- Central Bureau of investigation;
- Foreign Affairs;
- Banking;
- Intellectual Properties;
- Census;
- Corporation Tax;
- Atomic energy and necessary mineral resources;
- Preventive Detention;
- Diplomatic, consular, and trade relations;
- War & peace;
- Citizenship;
- Highways and Railways, etc.

State List

- The State List contains 61 items.
- The State Legislature has supreme power over the items on this list.
- It falls under the Seventh Schedule of the Constitution of India.

- The State List deals with the production, transport, manufacture, and sale of intoxicating liquors; public health; agricultural education and research; state public services, etc.

The State list contains 66 items that comprise subjects relating to local interest or the interest of the State. The State legislature is thus competent in legislating over these subjects. Some of the subjects in this List-II are as follows:

- Public Order;
- Local Government;
- Public health & Sanitation;
- Agriculture;
- Fisheries;
- Libraries, museums, and other resembling institutions;
- Markets & fairs;
- Gas & allied works.

Concurrent List

- The Concurrent List contains 52 items.
- Both the Union and the States have power over the items on this list.
- It falls under the Seventh Schedule of the Constitution of India.
- The Concurrent List deals with criminal law and procedure, forests and their flora and fauna, industrial disputes, population control, etc.

This list enshrines 47 items, with respect to which; both the Union Parliament and the State legislature hold a concurrent legislative power. This list was meant to serve as a device for avoiding excessive rigidity in a two-fold distribution. Besides, the states can additionally legislate purporting to amplify the Parliamentary legislation. However, in case a dispute arises in relation to any subject contained in this list, the Union legislation shall prevail over that of the State.

Some of the subjects contained in this List-III are as follows:

- Criminal law & procedure;
- Archaeological sites;
- Marriage & divorce;
- Transfer of property, excepting agricultural land;
- Contempt of Court, excluding that of the Supreme Court;
- Civil law & procedure;
- Prevention of animal cruelty;
- Electricity;
- Economic & social planning;
- Legal, medical, and other professions.

Residuary Power

Residuary powers of legislation are included in Article 248 of the Constitution of India. The

1. Union Parliament has exclusive powers over any item not covered in the State or Concurrent Lists.

According to Article 248; Parliament is exclusively empowered to legislate with respect to any matter absent in the Concurrent List or State List. Also, such power shall include the legislative power for imposing a tax not mentioned in either of those Lists.

2. Parliamentary legislative power with respect to a matter in the State List

In the national interest

Article 249; if the Rajya Sabha passes a resolution relating to a matter of national interest with a two-third majority, such resolution empowers the Parliament to legislate with respect to any matter in the State List, and then it shall be lawful for the Parliament to legislate. Such legislation can extend to the whole or any part of the Indian Territory until the legislation operates.

Such a resolution normally lasts for a year and may be renewed upon the necessity but such extension cannot exceed a year.

These Parliamentary laws, however, shall cease to operate after the expiration of 6 months, following the cessation of the resolution.

Thus, the Parliament is competent to legislate on any law which is based on a resolution passed by a majority in the Upper House of the Parliament, if such resolution contains any matter of national importance. However, such a resolution can last for a year and can be extended for a period at a maximum of one year.

3. If a Proclamation of Emergency is in operation

According to Article 250; during the operation of the Proclamation of Emergency, the Parliament shall be empowered to legislate for the entire Indian Territory or any of its parts with respect to all the matters enumerated in the State List.

However, such law shall come to cessation on the expiration of 6 months following the cessation of the Proclamation of Emergency.

During Emergency, the Parliament has the power to make any law which shall be applicable over the entire or any part of India, and such law shall be applicable for only a year after the emergency is withdrawn.

4. Inconsistency between Parliamentary legislation under articles 249 and 250

and laws made by the Legislatures of States

According to Article 251; nothing under the Articles 249 & 250, shall restrict the State Legislature from legislating on any matter for which it has been empowered under the Constitution. However, if any legal provision legislated by the State Legislature is repugnant to any legal provision so legislated by the Parliament, whether legislated prior to or following the State law, then the law made by the Parliament shall prevail over the one passed by the

State and the State legislation shall be inoperative until the operation of the Parliamentary law.

5. Parliamentary legislative power for two or more States by consent and adoption of such legislation by any other State

According to Article 252; If it appears to the two or more State Legislatures that it is desirable that any of the matters with respect to which Parliament lacks any legislative power for the States except as provided under the Articles 249 and 250 should be regulated so that the States by Parliamentary law, and if resolutions are passed to that effect by all the House of those State Legislatures, it shall be lawful for Parliament to pass an Act in order to regulate that matter accordingly, and any Act so passed shall be applicable to such States and to any other State by which it is adopted later through a resolution passed in that behalf by the House or Houses of the State Legislature, as the case may be.

Any Parliamentary Act can be amended or repealed solely by a Parliamentary Act passed or adopted in resembling manner but not by an act of the State Legislatures.

6. Legislation for effecting international agreements

According to Article 253; notwithstanding anything in the foregoing provisions of this chapter, the Parliament has legislative power for the whole or any part of the Indian territory for-

- Implementation of any treaty, agreement, or other convention with another country;
- Implementing any decision made at any international conference, or international association, or international body.

The Parliament is hereby empowered to pass any law relating to implementing any international treaty, or agreement or convention, as the case may be; and related to any law for any decision taken at any international conference or association, and shall be applicable over the whole or any part of the nation.

7. Inconsistency between Parliamentary laws and the laws by the State

Legislature

According to Article 254; if any legal provision made by the State Legislature is repugnant to any legal provision made by the Parliament over which it has the competency, or to any existing legal provision with respect to any of the matters contained in the Concurrent List, then, subject to the provisions of clause (2), the Parliamentary laws, whether passed prior or following the enactment by the State Legislature, or, as the case may be, the existing law, shall prevail over the law passed by the State Legislature.

8. Requirements as to recommendations and previous sanctions to be regarded solely as procedural matters

According to Article 255; no Parliamentary Act or an act of a State legislature and no provision in any such Act shall be invalid solely for the reason that some recommendation or previous sanction required by this Constitution was not given in case the assent to that Act was given:

1. In case the required recommendation was of the Governor's and had to be given by the Governor or the President;
2. In case the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;
3. In case the recommendation or previous sanction required was that of the President, by the President.

Political System can be defined as the process of formation of an official government who takes legal decisions for the country. These political systems vary from country to country. Few types of these systems are mentioned below:

- **Dictatorship:** It is a form of government in which the country is ruled by a single person or a group through some kind of force. Single person or group possesses absolute power with no toleration of independent media or political pluralism.
- **Democracy:** It is a form of government which allows equal participation of citizens of the country in choosing their political representatives for governance.
- **Monarchy (crown rule):** It is a form of government in which a country is ruled by a king or queen and reign is passed on to next generations.
- **Totalitarian:** It is a form of government in which the leader of the country assumes total control of every aspect of their citizens' life by any means.
- **Theocracy:** It is a form of government in which the priest is the leader of the country and rules in the name of the God or religion.
- **Republic:** It is a form of government in which the country is governed by the elected representatives of the citizens.
- **Anarchy (absence of government):** It is a situation in which a country does not have a defined government or representatives. People do not follow any set of rules and regulations, they reject the hierarchy.

FORM OF GOVERNMENT IN INDIA

India is a Sovereign, Socialist, Secular, Democratic and Republic country which follows the **Parliamentary form of government** which is also known as **Westminster model of government** or **Cabinet government** or **Responsible government**. This form of government is prevalent in Britain, Japan, Canada and India among others.

Another form being called the **Presidential form of government** also known as **fixed executive form of government** is prevalent in USA, Brazil, Russia, Sri Lanka among others.

ELEMENTS OF PARLIAMENTARY SYSTEM IN INDIA

- **Bicameral legislature:** System may be either **bicameral** (two houses of the parliament) or **unicameral** (single house of the parliament). India follows a bicameral legislature in which the members of the **Lower House** (Lok Sabha) are elected by the people and members of **Upper house** (Rajya Sabha) by elected representatives.
- The President can dissolve the Lok Sabha on recommendation of the Prime Minister while Rajya Sabha is a permanent house and cannot be dissolved.
- **Nominal and Real Executives:** There are two parts of the executive in India, **nominal executive, and real executive**. The **President**, the Head of the State is the **nominal executive**.
- Theoretically, the Constitution of India vested all the executive powers in the President of India. But, in practice, are actually used by the Prime Minister and the Council of Ministers. The **Prime Minister is the real executive**.

- **Majority Party Rule:** The party which wins majority seats in the elections of the Lower House forms the government. The President appoints the leader as the Prime Minister and the other ministers on the recommendation of the Prime Minister.
- The President may invite a coalition of parties to form the government, in case no party got a clear majority.
- **Collective Responsibility:** The council of ministers is collectively responsible to the parliament. The lower house of parliament can dissolve the government by exercising the no confidence motion.
- **Opposition:** Party who gets the second highest vote counts in elections forms an opposition party. The opposition plays a crucial role in keeping a check on the ruling government.
- **Secrecy:** The members of the executive follow the principle of secrecy in official legal matters of the country. Ministers take oaths of secrecy before entering their office.

Difference between the Parliamentary & Presidential Systems

Parliamentary System	Presidential System
<ul style="list-style-type: none"> • Legislative and executive work cooperatively while the judiciary is independent. • Two executives are present: Nominal (President) and Real (Prime minister). • Executive is accountable to parliament. • Lower house can be dissolved before completion of its term. • No confidence motion can be passed against the government. 	<ul style="list-style-type: none"> • All three organs work independent of each other. • The President is the chief executive. • Executive is not accountable to the government. • Lower house cannot be dissolved, ministers will serve their term. • No provision for no confidence motion, government will serve its term.

The Legislature and amendments

Main articles: Amendment of the Constitution of India and List of amendments of the Constitution of India

Article 368 dictates the procedure for constitutional amendments. Amendments are additions, variations or repeal of any part of the constitution by Parliament. An amendment bill must be passed by each house of Parliament by a two-thirds majority of its total membership when at least two-thirds are present and vote. Certain amendments pertaining to the constitution's federal nature must also be ratified by a majority of state legislatures.

Unlike ordinary bills in accordance with Article 245 (except for money bills), there is no provision for a joint session of the Lok Sabha and Rajya Sabha to pass a constitutional amendment. During a parliamentary recess, the president cannot promulgate ordinances under his legislative powers under Article 123, Chapter III.

Despite the supermajority requirement for amendments to pass, the Indian constitution is the world's most frequently-amended national governing document. The constitution is so specific in spelling out government powers that many amendments address issues dealt with by order in other democracies.

In 2000, the Justice Manepalli Narayana Rao Venkata chaliah Commission was formed to examine a constitutional update. The commission submitted its report on 31 March 2002. However, the recommendations of this report have not been accepted by the consecutive governments.

The government of India establishes term-based law commissions to recommend legal reforms, facilitating the rule of law.

Limitations

Main article: Basic structure doctrine

In *Kesavananda Bharati v. State of Kerala*, the Supreme Court ruled that an amendment cannot destroy what it seeks to modify; it cannot tinker with the constitution's basic structure or framework, which are immutable. Such an amendment will be declared invalid, although no part of the constitution is protected from amendment; the basic structure doctrine does not protect any one provision of the constitution. According to the doctrine, the constitution's basic features (when "read as a whole") cannot be abridged or abolished. These "basic features" have not been fully defined, and whether a particular provision of the constitution is a "basic feature" is decided by the courts.

The *Kesavananda Bharati v. State of Kerala* decision laid down the constitution's basic structure:

1. Supremacy of the constitution
2. Republican, democratic form of government
3. Its secular nature
4. Separation of powers

5. Its federal character

This implies that Parliament can only amend the constitution to the limit of its basic structure. The Supreme Court or a high court may declare the amendment null and void if this is violated, after a judicial review. This is typical of parliamentary governments, where the judiciary checks parliamentary power.

In its 1967 *Golak Nath v. State of Punjab* decision, the Supreme Court ruled that the state of Punjab could not restrict any fundamental rights protected by the basic structure doctrine. The extent of land ownership and practice of a profession, in this case, were considered fundamental rights. The ruling was overturned with the ratification of the 24th Amendment in 1971.

President of India

The Indian President is the head of the state and he is also called the first citizen of India. He is a part of Union Executive, provisions of which are dealt with Article 52-78 including articles related to President (Article 52-62). Under these articles, information on how a President is elected, his powers and functions, and also his impeachment process is given.

President:

Under Article 52 of the Indian Constitution the Indian President is the head of the state. He is the first citizen of India and is a symbol of solidarity, unity, and integrity of the nation. He is a part of Union Executive along with the Vice-President, Prime Minister, Council of Ministers, and Attorney-General of India.

Election of President:

Under Article 54 of the Indian Constitution There is no direct election for the Indian President. An electoral college elects him. The Electoral College responsible for President's elections comprises elected members of:

- Lok Sabha and Rajya Sabha
- Legislative Assemblies of the states (Legislative Councils have no role)
- Legislative Assemblies of the Union Territories of Delhi and Puducherry

Who does not take part in the President's elections?

The following group of people is not involved in electing the President of India:

- Nominated Members of Lok Sabha (2) and Rajya Sabha (12)
- Nominated Members of State Legislative Assemblies
- Members of Legislative Councils (Both elected and nominated) in bicameral legislatures
- Nominated Members of union territories of Delhi and Puducherry

Term of the President's office:

Under Article 56 of The Indian Constitution Once President is elected, he holds office for five years. He sits in the office even after the completion of five years given no new election has taken place or no new President has been elected till then. He can also be re-elected and there is no cap on his re-election.

Qualifications of the President:

Under Article 58 of the Indian Constitution, A candidate has to meet some qualifications to be elected as the president.

- He should be an Indian Citizen
- His age should be a minimum of 35 years
- He should qualify the conditions to be elected as a member of the Lok Sabha
- He should not hold any office of profit under the central government, state government, or any public authority

Conditions of the President's office:

There are a few conditions for the candidate running for the President's elections:

- He cannot be a member of Lok Sabha and Rajya Sabha. If he has been a member of either of the house, he should vacate the seat on his first day as President in the office
- He should not hold any office of profit
- For his residence, Rashtrapati Bhavan is provided to him without the payment of rent
- Parliament decides his emoluments, allowances and privileges
- Parliament cannot diminish his emoluments and allowances during his term of office
- He is given immunity from any criminal proceedings, even in respect of his personal acts
- Arrest or imprisonment of the President cannot take place. Only civil proceedings can be initiated for his personal acts that too after giving two months of prior notice.

Procedure for impeachment of a President:

Under Article 61 of the Constitution, The only condition for the initiation of impeachment of the Indian president is the 'violation of the constitution.'

Indian Constitution contains no definition of violation of the constitution.

The impeachment charges are signed by one- fourth of the Lok Sabha. 14 days' notice is given to the president. Lok Sabha after signing the charges passes them to Rajya Sabha for investigation. Rajya Sabha agrees to the charges and passes it with two- third majority and president stands removed.

Appointments:

- Attorney general of India and determines his remuneration
- Comptroller and Auditor General of India (CAG)
- Chief Election Commissioner and other Election Commissioners
- Chairman and members of the Union Public Service Commission
- State Governors
- Finance Commission of India chairman and members
- National Commissions of;
 - Scheduled Castes
 - Scheduled Tribes
 - Other Backward Classes
- Inter-state council
- Administrators of union territories
- Appoints speaker, deputy speaker of Lok Sabha, and chairman/deputy chairman of Rajya Sabha when the seats fall vacant

Powers and Functions of president**Executive Powers of president:**

- A. For every executive action that the Indian government takes, is to be taken in his name
- B. He seeks administrative information from the Union government
- C. He requires PM to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council
- D. He can declare any area as a scheduled area and has powers with respect to the administration of scheduled areas and tribal areas

Legislative powers of president:

- a) Summons or prorogues Parliament and dissolve the Lok Sabha
- b) Summons a joint sitting of Lok Sabha and Rajya Sabha in case of deadlock
- c) Addresses the Indian Parliament at the commencement of the first session after every general election
- d) Nominates 12 members of the Rajya Sabha
- e) Can nominate two members to the Lok Sabha from the Anglo-Indian Community
- f) Consults the Election Commission of India on questions of disqualifications of MPs.
- g) Recommends/ permits the introduction of certain types of bills
- h) Promulgates ordinances
- i) He lays the following reports before the Parliament:
 - j) Comptroller and Auditor General
 - k) Union Public Service Commission
 - l) Finance Commission, etc.

Financial powers of the president:

- a) To introduce the money bill, his prior recommendation is a must
- b) He causes Union Budget to be laid before the Parliament
- c) To make a demand for grants, his recommendation is a pre-requisite
- d) Contingency Fund of India is under his control
- e) He constitutes the Finance Commission every five years

Judicial powers of president:

Appointment of Chief Justice and Supreme Court/High Court Judges are on him

He takes advice from the Supreme Court; however, the advice is not binding on him

He has pardoning power: Under article 72, he has been conferred with power to grant pardon against punishment for an offence against union law, punishment by a martial court, or death sentence.

Pardoning powers:

Pardon with the grant of pardon convicts both conviction and sentence completely absolved

Commutation with this nature of the punishment of the convict can be changed

Remission reduces the term of the imprisonment

Respite awards lesser punishment than original punishment by looking at the special condition of a convict

Reprieve stays the execution of the awarded sentence for a temporary period

Diplomatic Powers of President:

International Treaties and agreements that are approved by the Parliament are negotiated and concluded in his name

He is the representative of India in international forums and affairs

Military powers of President:

He is the commander of the defense forces of India. He appoints:

Chief of the Army

Chief of the Navy

Chief of the Air Force

Emergency powers of the President

He deals with three types of emergencies given in the Indian Constitution:

National Emergency (Article 352)

President's Rule (Article 356 & 365)

Financial Emergency (Article 360)

Ordinance making power of the president:

Article 123 deals with the ordinance making power of the President. The President has many legislative powers and this power is one of them. He promulgates an ordinance on the recommendation of the union cabinet. To read more on Ordinance Making Power of the President,

Veto power of the president

The Veto Power of the President of India is guided by Article 111 of the Indian Constitution. When a bill is introduced in the Parliament, Parliament can pass the bill and before the bill becomes an act, it has to be presented to the Indian President for his approval. It is on the President of India to either reject the bill, return the bill or withhold his assent to the bill. The choice of the President over the bill is called his veto power.

Vice-President

The post of Vice-President of India is modelled on the lines of American Vice-President. In India, Vice-President has the second-highest office in the country. Article 63 of the Indian Constitution mentions the post of Vice-President.

How the Vice President is elected in India?

There is no direct election for the Vice-President of India however; he/she is indirectly elected by an Electoral College. The election process is quite similar to that of the President of India but the Electoral College that elects President is different from the Electoral College responsible for the election of Vice-President of India.

The difference between the Electoral College that elects President and the one electing Vice-President of India is given below:

In Electoral College for Vice President, both elected and nominated members of both the Houses of Parliament take part. In presidential elections, nominated members are not a part of the Electoral College.

For Vice President's elections, states have no role to play unlike in President's elections where state legislative assemblies' elected members are a part of the Electoral College.

Note: The principle of election used in Vice President's elections is 'Proportional Representation' by means of a single transferable vote. (It is similar to that of President's.)

Who can be a Vice President of India?

- He should be an Indian Citizen
- His age should be a minimum of 35 years
- He should qualify the conditions to be elected as a member of the Rajya Sabha
- He should not hold any office of profit under the central government, state government, or any public authority

However, he should not be a member of either Lok Sabha or Rajya Sabha and if he is elected as Vice President when he has a seat in either of the house, he is deemed to have vacated that seat on his first day in the office. He also is not allowed to hold any office of profit under union government, state government, public authority and local authority.

- Sitting President of India
- Sitting Vice President of India
- Governor of State
- MPs/MLAs
-

The qualifications of this post are on the same lines of Presidential qualifications.

Who participates in Vice President Election?

An electoral college comprising below-given categories of people elect the Vice President. The mode of election hence is termed as 'indirect election'. The principle of election used is Proportional Representation by means of Single Transferrable Vote.

Elected members of both Lok Sabha and Rajya Sabha.

Nominated members of both Lok Sabha and Rajya Sabha.

There can be no more than 2 nominated members in Lok Sabha and 12 in Rajya Sabha. (To know more on differences between Lok Sabha and Rajya Sabha, aspirants may check the linked article.)

State Legislative Assemblies in case of unilateral legislatures and State legislative councils along with Assemblies in case of bilateral legislatures; don't participate in the election of Vice President

What is the term of office of Vice President?

From the date, he enters his office, Vice President holds the position for five years. However, he can resign before five years by handing over his resignation to the President. The other ways where a vacancy is created in the office of Vice President are given below:

When he completes his term of five years

When he resigns

When he is removed

On his death

When his election is declared void

Is Vice President also impeached as President of India?

No, unlike President of India who can be impeached formally; there is no formal impeachment for Vice President. Rajya Sabha simply can pass a resolution with a majority and Lok Sabha can pass it. Also, unlike President of India who can be impeached on the ground of 'Violation of Constitution,' there is no ground mentioned in the constitution for the removal of Vice President of India.

Note: Supreme Court decides election disputes related to the office of Vice President.

Vice Presidents [Article 63 – Article 71]

Article 63 to Article 71 of the Indian Constitution deals with the election, qualification, and removal of Vice Presidents of India. The table below highlights these Articles in gist.

Vice Presidents of India [Article 63 to Article 71]

Article 63 There shall be a Vice President of India

Article 64 The Vice-President shall be ex-officio Chairman of the Council of States and shall not hold any other office of profit

Article 65 The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President

Article 66 The Vice-President shall be elected by the members of an electoral college consisting of the members of both Houses of Parliament. The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State.

Article 67 The Vice-President shall hold office for a term of five years from the date of his appointment.

Article 68 An election to fill a vacancy created because of the completion of the term of office of Vice-President shall be completed before the expiry of the term.

The election to fill a vacancy created because of the death, resignation or removal of Vice-President shall be held as soon as possible.

Article 69 Every Vice-President shall make an Oath or Affirmation on entering upon his office before the President, or some person appointed in that behalf by him

Article 70 Discharge of President's functions in other contingencies

Article 71 Matters relating to, or connected with, the election of a president or vice-president

Powers and Functions of Vice President

The functions of Vice-President are two-fold:

- He acts as the ex-officio Chairman of Rajya Sabha. In this capacity, his powers and functions are similar to those of the Speaker of Lok Sabha. In this respect, he resembles the American vice-president, who also acts as the Chairman of the Senate – the Upper House of the American legislature.
- He acts as President when a vacancy occurs in the office of the President due to his resignation, removal, and death or otherwise. He can act as President only for a maximum period of six months, within which a new President has to be elected. Further, when the sitting President is unable to discharge his functions due to absence, illness or any other cause, the Vice-President discharges his functions until the President resumes his office.
- The election of a person as Vice-President cannot be challenged on the ground that the Electoral College was incomplete (i.e., existence of any vacancy among the members of the Electoral College).
- If the election of a person as Vice-President is declared void by the Supreme Court, acts done by him before the date of such declaration of the Supreme Court are not invalidated (i.e., they continue to remain in force).

While acting as President or discharging the functions of President, the Vice-President does not perform the duties of the office of the chairman of Rajya Sabha. During this period, those duties are performed by the Deputy Chairman of Rajya Sabha.

Prime Minister of India:

Powers, Duties and Appointment Details

It is mentioned in the Article 75 of the Indian Constitution that there would be a Prime Minister of the country who would be appointed by the President and chosen by the people of India through General Elections. He is thus the people's representative. Take a look at the details of the appointment, the powers and duties of the face chosen by the people of the country. Take a look at the details below.

Prime Minister is the head of the Cabinet.

He along with the Council of Ministers forms the executive power at the Centre. The President of India is just the nominal head while the main powers are vested in the PM of India. In short while the President is referred to as the head of the State, the Prime Minister is called the head of the Government.

Functions and Powers of the Prime Minister

1. He proposes the names of the members of his political party to President for appointment as Ministers.
2. He decides the distribution of charge to various ministers and can reshuffle their cabinet also.
3. He presides over the meetings of Cabinet and can change the decisions taken therein.
4. He can suggest the President of India about the resignation or removal of any Minister from his Cabinet.
5. He also controls and directs the functioning of Ministers in the Cabinet.
6. He can resign anytime and can suggest the President of India to dissolve the Cabinet. He can suggest the President to dissolve Lok Sabha and to organize fresh elections.

Note: If the Prime Minister resigns from his post or dies in office, The Cabinet stops functioning and spontaneously dissolves after the death of the Prime Minister.

Rights and powers with regard to Appointments:

Prime Minister can suggest the President about appointment of the following:-

1. Comptroller and Auditor General of India
2. Attorney General of India
3. Advocate General of India
4. Chairman and members of UPSC
5. Selection of Election Commissioners
6. Members and chairman of Finance Commission

Prime Minister is the leader of the lower house and can exercise following powers:

- a. He decides the foreign policy of the country.
- b. He is the speaker of the Central Government.
- c. He is the leader of the ruling party in the Parliament.
- d. He is the chairman of NITI Aayog National Development Council, National Integration Council, Inter-state Council, and National Water Resources Council.
- e. He is the head of disaster management team during emergency at political level.
- f. He is the political head of all the forces.

Relationship with the President of India:-

Following articles in the constitution of India explain the relation between President and Prime Minister of India:-

- Article 74: To advice the President in various matters of national importance, there will be a Cabinet of Ministers which must be headed by the Prime Minister. President will take decisions based on the advice of Prime Ministers, however, he can ask for reconsideration of the decisions taken by the Cabinet of Ministers, though any such decision/advice after reconsideration are bound to be followed by him.
- Article 75: The Prime Minister will be appointed by the President of India and other Ministers will also be appointed by him based on advice of the Prime Minister.
- Ministers can enjoy their office till the wish and will of the President of India.
- Cabinet of Ministers will be collectively responsible to the Parliament of India.

Duties of the Prime Minister:

- a. To report all the works done by the Cabinet Ministers to the President of India.
- b. To brief the President of India about any state of Emergency or any matter of foreign policy or urgent importance.

- c. To inform the functioning of the Government and Union of India to the President.

While drafting the constitution of India, Dr. Ambedkar enumerated the role of the Prime Minister of India to be a functionary which can be compared to the President of United states.

Therefore, it can be said that in India, President is the nominal head while the Prime Minister is the executive head of the Government.

Assignment-2

1. Explain the electoral process of president
2. Who is the head of the state and who is the head of the govt?
3. What is the relationship exists between the PM and the President?
4. Who is the head of the cabinet and when the cabinet can be dissolved?
5. What is the procedure of election of vice- president?
6. Explain the **Powers, Duties of PM?**
7. Explain the emergency Powers **of President?**
8. What is parliament? Explain about the both house of parliament.
9. What is council of ministers? Explain.
10. What is the term of office of PM in india?

Amendment of the Constitutional Powers and Procedure

To define constitutional amendment process, Article 368 of Part XX of Constitution of India provides for amendments.

The list of types of amendments- There are three ways in which the Constitution can be amended:

1. Amendment by simple majority of the Parliament
2. Amendment by special majority of the Parliament
3. Amendment by special majority of the Parliament and the ratification of at least half of the state legislatures.

A brief description of the above types of amendments of the Indian Constitution has been laid down below.

1. By Simple Majority of Parliament

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

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- Second Schedule-emoluments,
- Allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of the English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Citizenship-acquisition and termination.
- Elections to Parliament and state legislatures.
- Delimitation of constituencies.
- Union territories
- Fifth Schedule-administration of scheduled areas and scheduled tribes.
- Sixth Schedule-administration of tribal areas.

2. By Special Majority of Parliament

- The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.
- The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.
- The provisions which can be amended by this way include (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.

3. By Special Majority of Parliament and Consent of States

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the

formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

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

Types of Amendments – Constitutional Amendment Process

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

- An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament (Lok Sabha & Rajya Sabha) and not in the state legislatures.
- The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
- The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- Each House must pass the bill separately.
- In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
- If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
- After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
- The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament
- After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

Scope of Amendability in Indian Constitution

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' of the Constitution. However, the Supreme Court is yet to define or clarify as to what constitutes the 'basic structure' of the Constitution.

From the various judgements, the following have emerged as ‘basic features’ of the Constitution:

1. Supremacy of the Constitution
2. Welfare state (socio-economic justice).
3. Principle of equality
4. Sovereign, democratic and republican nature of the Indian polity.
5. Judicial review
6. Free and fair elections
7. The secular character of the Constitution.
8. Freedom and dignity of the individual
9. Independence of Judiciary
10. Separation of powers between the legislature, the executive and the judiciary.
11. Parliamentary system
12. Limited power of Parliament to amend the Constitution
13. Federal character of the Constitution
14. Rule of law
15. Effective access to justice
16. Unity and integrity of the nation
17. Harmony and balance between Fundamental Rights and Directive Principles
18. Reasonableness

The historical perspectives of the constitutional amendments in India

Important amendments brought in the Indian Constitution are mentioned below:

First Amendment Act, 1951
<p>The state was empowered to make special provisions for the advancement of socially and backward classes</p> <p>The Ninth Schedule was added</p> <p>Note:</p> <ul style="list-style-type: none">• Fourth Amendment Act, 1955 included some more Acts in the Ninth Schedule• 17th Amendment Act, 1964 included 44 more Acts in the Ninth Schedule• 29th Amendment Act, 1972 included two Kerala Acts on land reforms in the Ninth Schedule• 34th Amendment Act, 1974 included twenty more land tenure and land

reforms acts of various states in the Ninth Schedule

Three more grounds of restrictions on Article 19 (1) [Freedom of speech and expression] were added:

- Public order
- Friendly relations with foreign states
- Incitement to an offence

Note: Restrictions were made reasonable and justifiable.

Introduced the validity of the state's move to nationalize any business or trade and the same to not be invalid on the grounds of violation of the right to trade and business

Second Amendment Act, 1952

The scale of representation in the Lok Sabha was readjusted stating that 1 member can represent even more than 7.5 lakh people.

Seventh Amendment Act, 1956

The provision of having a common High Court for two or more states was introduced

Abolition of Class A, B, C and D states – 14 States and 6 Union Territories were formed

Introduction of Union Territories

Ninth Amendment Act, 1960

Adjustments to Indian Territory as a result of an agreement with Pakistan (Indo-Pak Agreement 1958):

- Cession of Indian territory of Berubari Union (West Bengal) to Pakistan

Tenth Amendment Act, 1961

Dadra, Nagar, and Haveli incorporated in the Union of Indian as a Union Territory

12th Amendment Act, 1962

Goa, Daman and Diu incorporated in the Indian Union as a Union Territory

13th Amendment Act, 1962

Nagaland was formed with special status under Article 371A

14th Amendment Act, 1962

Pondicherry incorporated into the Indian Union

Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Puducherry were provided the legislature and council of ministers

19th Amendment Act, 1966

System of Election Tribunals was abolished and High Courts were given the power to hear the election petitions

21st Amendment Act, 1967

Sindhi language was language into 8th Schedule of Indian Constitution

24th Amendment Act, 1971

The President's assent to Constitutional Amendment Bill was made compulsory

25th Amendment Act, 1971	
Fundamental Right to Property was curtailed	
26th Amendment Act, 1971	
Privy Purse and privileges of former rulers of princely states were abolished	
31st Amendment Act, 1972	
Lok Sabha seats were increased from 525 to 545	
35th Amendment Act, 1974	
The status of Sikkim as protectorate state was terminated and Sikkim was given the status of 'Associate State' of India	
36th Amendment Act, 1975	
Sikkim was made a full-fledged state of India	
40th Amendment Act, 1976	
Parliament was empowered to specify from time to time the limits of the territorial waters, the continental shelf, the exclusive economic zone (EEZ) and the maritime zones of India.	
42nd Amendment Act, 1976	Since the 42nd Amendment Act is the most comprehensive amendment of the Indian Constitution, called the 'Mini-Constitution,' candidates can read about it in detail in the linked article .

**44th
Amendment
Act, 1978**

It is also one of the important amendments in the Indian Constitution, enacted by the Janata Government. Candidates can read about the 44th Amendment Act in detail in the linked article.

52nd Amendment Act, 1985

A new tenth Schedule was added providing for the anti-defection laws. Candidates can read in detail about the Tenth Schedule in the linked article.

61st Amendment Act, 1989

The voting age was decreased from 21 to 18 for both Lok Sabha and Legislative Assemblies elections

65th Amendment Act, 1990

Multi-member National Commission for SC/ST was established and the office of a special officer for SCs and STs was removed.

Candidates can read about these National Commissions from the links provided below:

- National Commission for SC
- National Commission for ST

69th Amendment Act, 1991

Union Territory of Delhi was given the special status of 'National Capital Territory of Delhi.'

70-member legislative assembly and a 7-member council of ministers were established Delhi

71st Amendment Act, 1992

Konkani, Manipuri and Nepali languages were included in the Eighth Schedule of the Constitution.

Total number of official languages increased to 18

73rd Amendment Act, 1992

Panchayati Raj institutions were given constitutional status.

A new Part-IX and 11th Schedule were added in the Indian Constitution to recognize Panchayati Raj Institutions and provisions related to them

74th Amendment Act, 1992

Urban local bodies were granted constitutional status

A new Part IX-A and 12th Schedule were added to the Indian Constitution

86th Amendment Act, 2002

Elementary Education was made a fundamental right – Free and compulsory education to children between 6 and 14 years

A new Fundamental Duty under Article 51 A was added – “It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years”

Read about Fundamental Duties in detail in the linked article.

88th Amendment Act, 2003

Provision of Service Tax was made under Article 268-A – Service tax levied by Union and collected and appropriated by the Union and the States

92nd Amendment Act, 2003

Bodo, Dogri (Dongri), Maithili and Santhali were added in the Eighth schedule

Total official languages were increased from 18 to 22

95th Amendment Act, 2009

Extended the reservation of seats for the SCs and STs and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years i.e., up to 2020 (Article 334).

97th Amendment Act, 2011

Co-operative Societies were granted constitutional status:

- Right to form cooperative societies made a fundamental right (Article 19)
- A new Directive Principle of State Policy (Article 43-B) to promote cooperative societies
- A new part IX-B was added in the constitution for cooperative societies

100th Amendment Act, 2015

To pursue land boundary agreement 1974 between India and Bangladesh, exchange of some enclave territories with Bangladesh mentioned

Provisions relating to the territories of four states (Assam, West Bengal, Meghalaya) in the first schedule of the Indian Constitution, amended.

101st Amendment Act, 2016

Goods and Service Tax (GST) was introduced. Read more about GST in the linked article.

102nd Amendment Act, 2018

Constitutional Status was granted to National Commission for Backward Classes (NCBC)

103rd Amendment Act, 2019

A maximum of 10% Reservation for Economically Weaker Sections of citizens of classes other than the classes mentioned in clauses (4) and (5) of Article 15, i.e. Classes other than socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes

104th Amendment Act, 2020

Extended the deadline for the cessation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty. Removed the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies.

What is the latest amendment in the Indian Constitution?

105th Amendment Act of 2021 brought the latest amendment in the Constitution of India. The Constitution (One Hundred and Fifth Amendment) Act, 2021 is designed to clarify that the states can maintain the “state list” of OBCs.

Q2

How many amendments are there in Indian Constitution?

As of October 2021, there have been 105 amendments to the Constitution of India since it was first enacted in 1950.

Q3

What is the 122nd amendment bill to the Indian Constitution?

The 122nd Amendment introduced Goods and Service Tax.

Q4

What is the procedure for amending the Indian Constitution?

The amendment procedure varies depending on the types of changes required in the Indian Constitution.

Q5

How is the Indian Constitution amended?

If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the President for assent.

Q6

What is the 86th amendment of the constitution?

The Eighty-sixth Amendment of the Constitution of India, provides Right to Education for the age of six to fourteen years and Early childhood care until the age of six.

Q7

Which provision given below can be amended by a simple majority of the parliament?

1. Election of President & its manner
2. Fundamental Rights
3. Representation of states in Parliament
4. Citizenship-Acquisition/Termination

Answer: 4

Q8

The process of amendment of the Indian Constitution is taken from which of the following countries?

1. Japan
2. Britain
3. South Africa
4. USA

Answer: 3

Q9

Which of the following Constitutional Amendment Act amended the age of voting from 21 to 18?

1. 7th
2. 9th
3. 61st
4. 86th

Answer: 3

Q10

In which Constitutional Amendment Act, Sikkim was made an associate-State with Indian Union?

1. 35th Amendment Act 1974
2. 43rd Amendment Act 1977
3. 56th Amendment Act 1987
4. 57th Amendment Act 1987

Answer: 1

Q11

Which article of the Constitution of India safeguards one's right to marry the person of one's choice?

1. Article 19
2. Article 21
3. Article 25
4. Article 29

Answer: 2

Q12

Which of the following is true about the 42nd Constitutional Amendment Act, 1976?

1. Precedence to directive principles over fundamental rights
2. Fundamental duties are included
3. Constitutional amendment should not be questioned in any court
4. All of the above

Answer: 4

IAS aspirants preparing for UPSC 2023, may also check the linked article to know more about the upcoming examination and prepare for the civil services examination accordingly.

Polity has increased the overall scores of candidates in the past as well. This has also been stated by many toppers from the past. Aspirants must go through the success stories and the IAS toppers list to get motivated and excel in the upcoming recruitment.

Emergency Provisions: National Emergency, President Rule, Financial Emergency

Three Types of Emergency under the Indian Constitution

Black law's dictionary defines emergency "as a failure of social system to deliver reasonable conditions of life". The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them". Dr. B.R Ambedkar claimed that the Indian Federation was unique as during the times of emergency it could convert itself into an entirely unitary system. In India, the emergency provisions are such that the constitution itself enables the federal government acquire the strength of unitary government whenever the situation demands. During such urgent needs all the pacific methods should be exhausted and emergency should also be the last weapon to use as it affects India's federal feature of government.

There are three types of emergencies under the Indian Constitution namely-

- National Emergency
- Failure of constitutional machinery in states
- Financial Emergency

National Emergency

Article 352 of the Indian Constitution talks about the national emergency. National emergency is imposed whereby there is a grave threat to the security of India or any of its territory due to war, external aggression or armed rebellion. Such emergency shall be imposed by the president on the basis of written request by the council of ministers headed by the Prime Minister. When they are satisfied that they are satisfied that there is an eminent danger thereof.

Every proclamation is required to be laid before each House of Parliament, it will cease to operate after one month from the date of its issue unless in the meantime it is approved by the parliament, the proclamation may continue for a period of 6 months unless revoked by the president. For further continuance of emergency the resolution has to be passed by either house of parliament by a majority of not less than two-third members of the houses.

During the times of such emergency the executive, legislative and financial power rests with the centre whereas the state legislature is not suspended. The union government under Art.250 of the constitution gets the power to legislate in regards to subjects enumerated in the state list. Except Art20 and 21 all the fundamental rights are suspended. Under Art.359 the president may suspend the right to move to the courts for enforcement of fundamental rights during the time of emergency.

National emergency has been imposed thrice in the country- in 1962 at time of Chinese aggression, in 1971 during the indo-pak war, in 1975 on the grounds of internal disturbances.

Failure of Constitutional Machinery In State

Article 356 talks about the failure of constitutional machinery in state also known as the President's rule. If the president on Governor's report or otherwise is satisfied that the situation has arisen that the government can't be carried in accordance with the constitutional provisions then, he may issue State emergency.

President can declare emergency either by the report of Governor or he himself is satisfied that the situation is such that the emergency has to be imposed. But at times, President may declare emergency when a report is not received from the governor. This was done by President Venkataraman in 1991 in the state of Tamil Nadu even though he didn't receive a report from the governor.

After the 42th Amendment of the constitution the state emergency was made immune from judicial review. But later in the 44th Amendment the legality of President's rule could be challenged

The proclamation relating to state emergency shall be laid before each House of Parliament unless both Houses approve it, the emergency shall cease to have effect after the expiry of a period of two months. Further the duration of proclamation can be extended to 6 months each time by both Houses of Parliament passing resolution approving its continuance. Beyond the period of an year the proclamation can only be continued if the Election Commission certifies that it is not possible to hold election in the state or that territory. The consequences of state emergency are-

- The president assumes all the executive power of the state himself. The state administration runs by him or any person appointed by him generally the Governor.
- During such proclamation, the state assembly is either dissolved or suspended. But the MLA's do not lose their membership of the Assembly.
- Parliament makes laws regarding the state list. The parliament only passes the budget for the state.
- The High court of the state functions independently.
- President also proclaims ordinances in the state.

During the state emergency the Union government has absolute control over the state except the judiciary.

If one looks at the past instances of state emergency in the country, three common grounds emerge that have been invoked under Art.356- breakdown of law and order, political instability, corruption and maladministration.

In *Rameshwar Prasad V. UOI (Bihar Assembly Dissolution Case)* it was held that the presidential proclamation dissolving state assembly in Bihar under Art.356 was unconstitutional on extraneous and irrelevant ground. The court said that the state governor misled the centre in recommending dissolution of state assembly.

In the historic case of *S.R Bommai V. UOI*, a full bench of the Karnataka High court produced different opinion about the imposition of the President's rule in Karnataka, while in other states the court held that it was in violation of the constitution and would have restored the original position.

Financial Emergency

The president under Article 360 of the constitution has the power to declare financial emergency if he is satisfied that the financial stability or the credit of India or any part of its territory is threatened. It has to be laid before both the

Houses of Parliament and ceases to operate at the expiration of two months unless meanwhile approved by the resolution of Houses.

During the operation of financial emergency, the executive authority of the union extends to the giving of directions to any state to observe certain specified canons or financial propriety and such other directions that the President may find necessary. The directions may include reduction of salaries or allowance of those serving a state, of all those in connection with the affairs of union including judges of high court and Supreme Court. There has been no occasion of financial emergency in India

Conclusion

During the period of emergency for the execution of power there might be infringement of Fundamental rights of individuals, which are judicially granted by the Constitution of India. The validity of actions must be reviewed to deter political gains and give way to political interest. Despite abuse of powers of the emergency provisions still have an important role to play in the conditions prevailing in India, though it still remains a controversial issue in the country

Local Self Government – Constitutional Scheme in India

Local government in India refers to governmental jurisdictions below the level of the state. Local self-government means that residents in towns, villages and rural settlements are the people elect local councils and their heads authorising them to solve the important issues. India is a federal republic with three spheres of government: central, state and local. The 73rd and 74th constitutional amendments give recognition and protection to local governments and in addition each state has its own local government legislation. Since 1992, local government in India takes place in two very distinct forms. Urban localities, covered in the 74th amendment to the Constitution, have Nagar Palika but derive their powers from the individual state governments, while the powers of rural localities have been formalized under the panchayati raj system, under the 73rd amendment to the Constitution.

Within the Administrative setup of India, the democratically elected Local governance bodies are called the "municipalities" (abbreviated as the "MC") in urban areas and the "Panchayati Raj Institutes (PRI)" (simply called the "panchayats") in rural areas. There are 3 types of municipalities based on the population,

- Municipal Corporation (Nagar Nigam) with more than 1 million population,
- Municipal Councils (Nagar Palika) with more than 25,000 and less than 1 million population, and
- Municipal Committee (Nagar Panchayat) with more than 10,000 and less than 25,000 populations.

PRIs in rural areas have 3 hierarchies of panchayats,

- Gram panchayats at village level,
- Mandal or block panchayats at block level, and
- Zilla panchayats at district level.

Panchayats cover about 96% of India's more than 5.8 lakh (580,000) villages and nearly 99.6% of the rural population. As of 2020, there were about 3 million elected representatives at all levels of the panchayat, nearly 1.3 million are women. These members represent more than 2.4 lakh (240,000) gram panchayats, about over 6,672 were intermediate level panchayat samitis at the block level and more than 500 zila parishads at district level. Following the 2013 local election, 37.1% of councillors were women, and in 2015/16 local government expenditure was 16.3% of total government expenditure.

History

Committees for the study of issues

Various committees were formed to study the issues and make recommendations for the implementation of local governance in India.

The Balwant Rai Mehta Committee (1957)

In 1957, a committee led by Balwant Rai Mehta studied the Community Development Projects and the National Extension Service and assessed the extent to which the movement had succeeded in utilising local initiatives and in creating institutions to ensure continuity in the process of improving economic and social conditions in rural areas. The Committee held that community development would only be deep and enduring when the community was involved in the planning, decision-making and implementation process. The suggestions were for as follows:

- An early establishment of elected local bodies and devolution to them of necessary resources, power, and authority,
- That the basic unit of democratic decentralisation was at the block/samiti level since the area of jurisdiction of the local body should neither be too large nor too small. The block was large enough for efficiency and economy of administration, and small enough for sustaining a sense of involvement in the citizens,
- Such body must not be constrained by too much control by the government or government agencies,
- The body must be constituted for five years by indirect elections from the village panchayats,
- Its functions should cover the development of agriculture in all its aspects, the promotion of local industries and others
- Services such as drinking water, road building, etc., and
- The higher-level body, zilla parishad, would play an advisory role.

Ashok Mehta Committee (1977)

Main article: Ashok Mehta Committee

The PRi structure did not develop the requisite democratic momentum and failed to cater to the needs of rural development. There are various reasons for such an outcome which include political and bureaucratic resistance at the state level to share power and resources with local-level institutions, the domination of local elites over the major share of the benefits of welfare schemes, lack of capability at the local level and lack of political will.

It was decided to appoint a high-level committee under the chairmanship of Ashok Mehta to examine and suggest measures to strengthen PRIs. The Committee had to evolve an effective decentralised system of development for PRIs. They made the following recommendations:[8]

- The district is a viable administrative unit for which planning, coordination, and resource allocation are feasible and technical expertise available,
- PRIS as a two-tier system, with mandal panchayat at the base and zilla parishad at the top,
- The PRIS are capable of planning for themselves with the resources available to them,
- District planning should take care of the urban-rural continuum,
- Representation of SCS and STS in the election to PRIS on the basis of their population,
- Four-year term of PRIS,
- Participation of political parties in elections,
- Any financial devolution should be committed to accepting that much of the developmental functions at the district level would be played by the panchayats.

The states of Karnataka, Andhra Pradesh and West Bengal passed new legislation based on this report. However, the flux in politics at the state level did not allow these institutions to develop their own political dynamics.

G.V.K. Rao Committee (1985)

The G.V.K. Rao Committee was appointed by Planning Commission[9] to once again look at various aspects of PRIs. The Committee was of the opinion that a total view of rural development must be taken in which PRIs must play a central role in handling people's problems. It recommended the following:[10]-

- PRIs have to be activated and provided with all the required support to become effective organisations,
- PRIs at district level and below should be assigned the work of planning, implementation and monitoring of rural development programmes, and

- The block development office should be the spinal cord of the rural development process.
- District development commissioner to be introduced.
- Election should conduct regularly.

This is GVK Rao Committee main topics which they focused on.

L. M. Singhvi Committee (1986)

A committee led by Laxmi Mall Singhvi was constituted in the 1980s to recommend ways to revitalize PRIs. The Gram Sabha was considered as the base of a municipality decentralised, and PRIs viewed as institutions of governance which would actually facilitate the participation of the people in the process of planning and development. It recommended:[11]

- local government should be constitutionally recognised, protected and preserved by the inclusion of new chapter in the Constitution,
- Non-involvement of political parties in Panchayat elections.

The suggestion of giving panchayats constitutional status was opposed by the Sarkaria Commission, but the idea, however, gained momentum in the late 1980s especially because of the endorsement by the late Prime Minister Rajiv Gandhi, who introduced the 64th Constitutional Amendment Bill in 1989. The 64th Amendment Bill was prepared and introduced in the lower house of Parliament. But it got defeated in the Rajya Sabha as non-convincing. He lost the general elections too. In 1989, the National Front introduced the 74th Constitutional Amendment Bill, which could not become an Act because of the dissolution of the Ninth Lok Sabha. All these various suggestions and recommendations and means of strengthening PRIs were considered while formulating the new Constitutional Amendment Act.

Legal framework

Following laws and subsequent amendments were passed to implement the selected recommendations of various committees.

The 73rd Constitutional Amendment Act (1992)

The idea which produced the 73rd Amendment was not a response to pressure from the grassroots, but to an increasing recognition that the institutional initiatives of the preceding decade had not delivered, that the extent of rural poverty was still much too large and thus the existing structure of government needed to be reformed. This idea evolved from the Centre and the state governments. It was a political drive to see PRIs as a solution to the governmental crises that India was experiencing.

The Constitutional (73rd Amendment) Act, passed in 1992 by the Narasimha Rao government, came into force on April 24, 1993. It was meant to provide constitutional

sanction to establish "democracy at the grassroots level as it is at the state level or national level". Its main features are as follows:

- The Gram Sabha or village assembly as a deliberative body to decentralised governance has been envisaged as the foundation of the Panchayati Raj System. 73rd Amendment of the Constitution empowered the Gram Sabhas to conduct social audits in addition to its other functions.
- A uniform three-tier structure of panchayats at village (Gram Panchayat — GP), intermediate or block (Panchayat Samiti — PS) and district (Zilla Parishad — ZP) levels.
- All the seats in a panchayat at every level are to be filled by elections from respective territorial constituencies.
- Not less than one-third of the total seats for membership as well as office of chairpersons of each tier have to be reserved for women.
- Reservation for weaker castes and tribes (SCs and STs) have to be provided at all levels in proportion to their population in the panchayats.
- To supervise, direct and control the regular and smooth elections to panchayats, a State Election Commission has been constituted. The Act has ensured constitution of a State Finance Commission in every State/UT, for every five years, to suggest measures to strengthen finances of panchayati raj institutions.
- To promote bottom-up-planning, the District Planning Committee (DPC) in every district has been accorded to constitutional status.
- An indicative list of 29 items has been given in Eleventh Schedule of the Constitution. Panchayats are expected to play an effective role in planning and implementation of works related to these 29 items.

Types of local governance entities

The local governance entities are broadly classified into urban and rural, which are further sub-divided based on the size of population in case of the urban bodies and based on the size of population and hierarchy in case of the rural bodies.

Urban local governance bodies

Main article: Municipal governance in India

3 types of MCs

The following 3 types of democratically elected urban local governance bodies in India are called municipalities and abbreviated as the "MC". These are classified based on the size of the population of the urban settlement.

- Municipal Corporation, also called the "Nagar Nigam" or "City Corporation", of cities with more than 1 million population.

- Municipal Councils, also called the "Nagar Palika" or "Nagar Palika Parishad", of cities with more than 25,000 and less than 1 million population.
- Municipal Committee, also called the "Town Council" or "Nagar Panchayat" or "Town Panchayat" or "Notified Area Council" or "Notified Area Committee" depending on the state within which they lie, these are in the town with more than 10,000 and less than 25,000 population.

Municipal Acts

Municipal Acts are state level legislations to establish municipal governments in urban areas. These acts provide a framework of governance for cities within the state. Various processes including rules for elections, recruitment of staff, and demarcation of urban areas derive from the state municipal acts. Almost 70 different municipal acts in India govern the cities in the country. Typically, the municipal acts are of three types – state wide general municipalities acts, separate acts for establishing municipal corporations, and acts that are specific to individual municipal corporations.

Functions of MCs

All municipal acts in India provide for functions, powers and responsibilities to be carried out by the municipal government. These are divided into two categories: obligatory and discretionary.

The mandatory functions of MC include the supply of pure and wholesome water, construction and maintenance of public streets, lighting and watering of public streets, cleaning of public streets, places and sewers, regulation of offensive, dangerous or obnoxious trades and callings or practices, maintenance or support of public hospitals, establishment and maintenance of primary schools, registration of births and deaths, removing obstructions and projections in public streets, bridges and other places, naming streets and numbering houses, maintenance of law and public order, etc.

The discretionary functions of MC include the laying out of areas, securing or removal of dangerous buildings or places, construction and maintenance of public parks, gardens, libraries, museums, rest houses, leper homes, orphanages and rescue homes for women, public buildings, planting of trees and maintenance of roads, housing for low income groups, conducting surveys, organizing public receptions, public exhibitions, public entertainment, provision of transport facilities with the municipality, and promotion of welfare of municipal employees.

Some of the functions of the urban bodies overlap with the work of state agencies. The functions of the municipality, including those listed in the Twelfth Schedule to the Constitution, are left to the discretion of the state government. Local bodies have to be bestowed with adequate powers, authority and responsibility to perform the functions entrusted to them by the Act. However, the Act has not provided them with any powers directly and has instead left it to state government discretion. These are all functions of MCs

Rural local governance bodies

- In rural areas of India, block samiti, Panchayats, and Zila Parishad are established to carry out their functions as local self-government bodies. However, in urban areas, bodies like municipalities and corporations are established for local self-governance.
- Local Self Government in India has been a topic of debate even before independence. Where few, like Gandhi, wanted village republics and the principle of subsidiarity, Nehru and Ambedkar favored a strong center.
- Panchayati Raj System is a significant landmark in the evolution of grass root democratic institutions like Panchayats and Municipalities in the country.

Evolution of Local Self Government in India

The first local government system in India at the village level was established by the state of Rajasthan in 1959 in the Nagaur district, followed by Andhra Pradesh. Thereafter the system was adopted by most of the states.

- The major concern regarding the local self-government was its architecture, amount of power to be devolved, finances, etc. Several committees were constituted by respective union governments to devise a method for the same.
- In the earliest of times, village communities have been excited to carry out the function of self-governance. Over the period, these village communities were known as Panchayat Raj System, and they were the oldest Local Self Government.
- After 1882, the elected bodies came into existence because Lord Rippon took the initiative to establish these bodies. That's why Lord Rippon is known as the father of Local Self-Government.
- 73rd and 74th constitutional amendments were passed, which made it mandatory for every state in India to have such bodies in its urban and rural areas. There was also the compulsion to carry out elections for the Local Self Government bodies every five years.
- With the establishment of these bodies at the local level, the functioning and structure of the nation became better.

Functions of Local Government

All the Local Self Government bodies work with the aim of promoting economic development, infrastructure development, and promote social justice. Some of the most important functions of Local Government in India are:

- Spread awareness about education, and build infrastructure like roads, schools, transport, etc.

- Local Government looks after the community asset and promotes agricultural development through the proper implementation of various Government schemes.
- These bodies aim to boost health facilities so that people don't have to travel too far for health concerns. In addition, they promote the small-scale industries of rural areas.
- Developing dairy, animal husbandry, and forestry are also the functions of Local Self Government bodies.

Father of Local Self Government

Lord Rippon is known as the Father of Local Self Government because he was behind the establishment of various reforms. Among these reforms, he introduced Local Self-Government, and due to this, he is also called as 'Good Viceory of India.' The main objective of Rippon behind establishing the local government was to make things smoother and easier at the grassroots level of society. In addition, he introduced various schemes for the development of local government.

Tenure of Local Self-Government Bodies

The Local Self-Government bodies are elected for a five years term. When the term period gets over, a fresh election is conducted. Suppose anything happens and the panchayat is dissolved before the expiry period. In that case, the election is conducted within six months, and the panchayat or municipality will take care of the office for the six-month duration.

Powers of Local Self Government in India

The power of the Local Self-Government bodies is not defined exclusively, and they can be as per the states' requirements. The power to Panchayats and Municipalities is given by the state governments as per the economic development. The primary goal behind the establishment of Local Self-Government was to help the government in planning for social and economic development. These bodies are authorized to collect, impose and manage taxes as well.

Local Self Government – Way Forward

The Local Self-Government is taking care of the society at grassroots level, and it had made things easier and better for both the central government, and the citizens of India. However things can be improve with proper

- States should devise proper mechanisms to devolve funds to the Local Self-Government bodies. They should be conferred power to generate their own revenue. This can be done by including the third tier in GST or can tax lands or local activities.
- A proper uniform cadre should be created for the panchayats. Education programs for the representatives should be conducted, teaching them about their powers, roles, and responsibilities.

- The powers of the Local Self-Government bodies should be properly demarcated. Gram Sabha should be empowered, and regular meetings must be conducted. It should take place under a video recording camera. Social auditing mechanisms should be developed.

Scheme of the Fundamental Right to Equality

The right to equality provides for the equal treatment of everyone before the law, prevents discrimination on various grounds, treats everybody as equals in matters of public employment, and abolishes untouchability, and titles (such as Sir, Rai Bahadur, etc.).

In this article, you can read all about the Right to Equality and the related constitutional provisions from the IAS exam point of view. For more on Fundamental Rights, click on the linked article.

Before knowing about the right to equality, aspirants should know the types of equality to get an idea of what it is. It is also mentioned in our Preamble. The types of equality are:

1. Natural
2. Social
3. Civil
4. Political
5. Economic
6. Legal

The Right to Equality is one of the Fundamental Rights enshrined in the Constitution of India. It is very important to understand what this right entails and includes. This topic is a basic topic in the polity and constitution segments of the UPSC Syllabus for the civil services exam.

Below we provide the associated articles of the Constitution under the right to equality.

Right to Equality

Article	Brief description
Article 14	The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India, on grounds of religion, race, caste, sex or place of birth
Article 15	The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
Article 16	There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
Article 17	Abolition of untouchability
Article 18	Abolition of all titles except military and academic

Equality before the law (Article 14)

Article 14 treats all people the same in the eyes of the law. This Article is described in two parts – which states and commands the State not to deny to any person ‘equality before the law’. Another part of it also commands the State not to deny the ‘equal protection of the laws’.

- This provision states that all citizens will be treated equally before the law and avoids any kind of discrimination.
- The law of the country protects everybody equally.
- Under the same circumstances, the law will treat people in the same manner.

Prohibition of discrimination (Article 15)

This article prohibits discrimination in any manner. This article secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or of them.

No citizen shall, on grounds only of race, religion, caste, place of birth, sex or any of them, be subject to any liability, disability, restriction or condition with respect to:

- Access to public places
- Use of tanks, wells, ghats, etc. that are maintained by the State or that are meant for the general public

The article also mentions that special provisions can be made for women, children and the backward classes notwithstanding this article.

Equality of opportunity in matters of public employment (Article 16)

Article 16 provides equal employment opportunities in State service for all citizens.

- No citizen shall be discriminated against in matters of public employment or appointment on the grounds of race, religion, caste, sex, place of birth, descent or residence.
- Exceptions to this can be made for providing special provisions for the backward classes.

Abolition of untouchability (Article 17)

Article 17 prohibits the practice of untouchability.

- Untouchability is abolished in all forms.
- Any disability arising out of untouchability is made an offence.

Abolition of titles (Article 18)

Article 18 abolishes titles.

- The State shall not confer any titles except those which are academic or military titles.
- The article also prohibits citizens of India from accepting any titles from a foreign State.
- The article abolishes the titles that were awarded by the British Empire such as Rai Bahadur, Khan Bahadur, etc.
- Awards like Padma Shri, Padma Bhushan, Padma Vibhushan, Bharat Ratna and military honours like Ashok Chakra, Param Vir Chakra do not belong to this category.

Scheme of the Fundamental Right to certain Freedom under Article 19

The six fundamental rights enshrined in the Constitution are considered essential for the functioning of Indian democracy. The right to freedom gives citizens basic freedom with respect to speech and expression, form associations, freedom of personal liberty, freedom to live a life of dignity, etc. It is important to understand the scope of these provisions and any exceptions thereof.

Right to Freedom

The right to freedom guarantees freedom for citizens to live a life of dignity among other things. These are given in Articles 19, 20, 21A and 22 of the Indian Constitution. We shall take up the articles one by one in this section.

Below, we provide the associated articles of the Constitution under the right to freedom.

Article	Brief description
Article 19	Protection of 6 rights concerning the freedom of: <ol style="list-style-type: none">1. Speech and expression2. Assembly3. Association4. Movement5. Residence6. Profession
Article 20	Protection with respect to conviction for offences
Article 21	Right to life and personal liberty
Article 21A	Right to elementary education
Article 22	Protection against arrest and detention in certain cases

Article 19 guarantees six freedoms. They are:

- Freedom of speech and expression: The State guarantees freedom of speech and expression to every person of India. However, the State can impose restrictions on the freedom of speech and expression in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court. Read more about the Freedom of Speech and Expression [here](#).
- Freedom to assemble: The State guarantees every person the freedom to assemble peacefully without arms. However, as above, reasonable restrictions can be imposed in the interests of the sovereignty and integrity of the country and public order.
- Freedom to form associations/unions/cooperative societies: Again, the State can impose restrictions in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court. This freedom gives workers the right to form trade union, which is thus a fundamental right.
- The Police Forces (Restriction of Rights) Act, 1966 prohibits police personnel from forming trade unions.
- The Constitution also allows the Parliament to pass a law restricting the right to form political association to members of the armed forces, intelligence bureaus, persons employed with telecommunication system.
- Freedom to move freely: A citizen of India can move freely throughout the territory of India. But this right can also be restricted on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.
- Freedom of residence: Citizens of India have the right to reside in any part of the country. Although restrictions can be imposed on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.
- Freedom of profession: All citizens have the right to carry on any trade or profession/occupation, provided the trade or occupation is not illegal or immoral. Also, the law does not prevent the State from making laws related to technical or professional qualifications required for practicing the occupation or trade.

Article 20 deals with the protection of citizens in respect of conviction for offences. This provides for three types of protection of the individual against the State.

1. Retrospective criminal legislation: This is also known as ex-post facto criminal legislation. Under this, a person cannot be convicted for an act that was committed at a time when the act had not been declared by law as an offence.
2. This means that criminal legislation cannot be given a retrospective effect.
3. This immunity cannot be used against the provision of preventive detention, and also does not cover the trial.
4. The law also provides that a person cannot be subject to a punishment greater than what is prescribed by law for the offence committed.
5. Double jeopardy: This indicates that a person cannot be convicted for the same offence more than once.
6. Prohibition against self-incrimination: This implies that no person accused of an offence shall be compelled by the State to bear witness against himself.
7. Article 21

Article 21 states that no person shall be deprived of his life and personal liberty by the State except as per the procedure established by law. This article has a wide scope and its interpretation has undergone many changes over the decades.

- The Supreme Court has interpreted the right to life as the right to a dignified life.
- This is the most important right in one sense, because, without this right to life, all other fundamental rights would be meaningless.
- It is this article that differentiates between a police state and a constitutional state.

You can read more on Article 21 and the right to life and personal liberty [here](#).

Article 21(A)

This article was introduced by the 86th Constitutional Amendment in 2002. It provides that the State shall provide free and compulsory education to all children between the ages of 6 and 14.

Article 22

Article 22 deals with the protection against arrest and detention in certain cases.

- This article is applicable to both citizens and non-citizens.
- This provision extends certain procedural safeguards for individuals in case of an arrest.
- It comes into the picture after a person has been arrested. It is not a fundamental right against detention and arrest.
- The idea behind this right is to prevent arbitrary arrests and detention.
- The article provides the following safeguards:
- Article 22(1) – Any person who is in custody has to be informed as to why he has been arrested. Further, he cannot be denied the right to consult an advocate.
- Article 22(2) – The arrested individual should be produced before a judicial magistrate within 24 hours of his arrest.
- Article 22(3) – No individual who has been arrested can be kept in custody for more than the period determined by the judicial magistrate.
- These safeguards are, however, not applicable to
- Enemy aliens
- People arrested under preventive detention laws