

UNIT-I CONSTITUTION FRAMEWORK

1.1 MAKING OF THE INDIAN CONSTITUTION

1. It was M.N Roy who proposed the idea of an independent constituent assembly for India in 1934.
2. The constituent assembly was formed as per the guidelines suggested by the Cabinet Mission Plan, 1946. The mission was headed by Pethick Lawrence and included two other members apart from him – Stafford Cripps and A.V Alexander.
3. The total strength of the assembly was 389. However, after partition only 299 remained. It was partly elected and partly nominated body.
4. The elections to form the assembly took place in July-August 1946 and the process was completed by November 1946. The first meeting of the assembly took place on 9th December 1946 and was attended by 211 members.
5. Dr. Sachhidanand Sinha became the temporary President of the assembly following the French practice.
6. On 11th December 1946, Dr. Rajendra Prasad and H.C Mukherji were elected as President and Vice-President respectively.
7. Sir B.N Rau was appointed as the constitutional advisor to the assembly.
8. On 13th December 1946, Pt. Nehru moved the Objectives resolution which later went on to become the Preamble of the constitution in slightly modified form. The resolution was unanimously adopted on 22nd January 1947.
9. The Constituent Assembly ratified India's membership of the commonwealth in May 1949. Also, it adopted the National Song and National Anthem on 24th January 1950. Adopted the National Flag on 22nd July 1947.
10. The assembly met for 11 sessions, took 2 years, 11 months and 18 days to frame up the final draft, sat for 141 days in total and the draft constitution was considered for 114 days. Total amount incurred was around rupees 64 lakhs.
11. The assembly had 15 women members which were reduced to 9 after partition.
12. Some important committees of the constituent assembly along with their respective chairpersons are as follows:
 - Union Powers Committee - Jawahar Lal Nehru
 - Union Constitution Committee - Jawahar Lal Nehru
 - Provincial Constitution Committee - Sardar Patel
 - Drafting Committee - B.R Ambedkar
 - Rules of Procedure Committee - Dr. Rajendra Prasad
 - Steering Committee - Dr. Rajendra Prasad
 - Flag Committee - J.B. Kripalani
13. The following were the members of the Drafting Committee-
 - Dr. B.R Ambedkar (Chairman)

- Alladi Krishnaswamy Ayyar
- Dr. K.M Munshi
- N. Gopaldaswamy Ayyangar
- Syed Mohammad Saadullah
- N Madhava Rau
- TT Krishnamachari

14. The final draft of the constitution was adopted on 26th November 1949 and it contained 8 schedules, 22 parts, and 395 articles.

VARIOUS SOURCES OF THE INDIAN CONSTITUTION

1. The government of India Act of 1935 - Federal Scheme, Office of the governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
2. British Constitution - Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges, and bicameralism.
3. US Constitution - Fundamental rights, independence of the judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.
4. Irish Constitution - Directive Principles of State Policy, the nomination of members to Rajya Sabha and method of election of the president.
5. Canadian Constitution - Federation with a strong Centre, vesting of residuary powers in the Centre, the appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
6. Australian Constitution - Concurrent List, freedom of trade, commerce and intercourse, and the joint sitting of the two Houses of Parliament.
7. Weimar Constitution of Germany - Suspension of Fundamental Rights during Emergency.
8. Soviet Constitution (USSR, now Russia) - Fundamental duties and the idea of justice (social, economic and political) in the Preamble.
9. French Constitution - Republic and the ideals of liberty, equality, and fraternity in the Preamble.
10. South African Constitution - Procedure for amendment of the Constitution and election of members of Rajya Sabha.
11. Japanese Constitution - Procedure established by Law

1.2 - SALIENT FEATURES OF INDIAN CONSTITUTION

Constitution of India – Major Features

The salient features of the Indian Constitution are listed and briefed below:

1. Longiest Written Constitution

- Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution.
- The Constitution of India has the distinction of being the longest and detailed Constitutional document the world has so far produced. In other words, the Constitution of India is the longest of all the written constitutions of the world.
- It is a very comprehensive, elaborate and detailed document.
- The factors that contributed to the elephantine size of the Indian Constitution are:
 - **Geographical factors**, that is, the vastness of the country and its diversity.
 - **Historical factors**, for instance, the influence of the Government of India Act of 1935, which was bulky.
 - Single constitution for both the Centre and the states.
 - The dominance of legal luminaries in the Constituent Assembly.

The Constitution of India contains not only the fundamental principles of governance but also detailed administrative provisions.

Both justiciable and non-justiciable rights are included in the Constitution.

2. Drawn from Various Sources

- The Constitution of India has borrowed most of its provisions from the constitutions of various other countries as well as from the Government of India Act of 1935
- Dr B R Ambedkar proudly acclaimed that the Constitution of India has been framed after 'ransacking all the known Constitutions of the world'.
- The **structural part** of the Constitution is, to a large extent, derived from the Government of India Act of 1935.
- The **philosophical part** of the Constitution (Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions respectively.
- The **political part** of the Constitution (the principle of Cabinet government and the relations between the executive and the legislature) have been largely drawn from the British Constitution.

3. Blend of Rigidity and Flexibility

- Constitutions are classified into **rigid** and **flexible**.
- A rigid constitution is one that requires a special procedure for its amendment, as for example, the American Constitution.

- A flexible constitution is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution.
- The Indian Constitution is a unique example of the combination of rigidity and flexibility.
- A constitution may be called rigid or flexible on the basis of its amending procedure.
- The Indian Constitution provides for three types of amendments ranging from simple to most difficult procedures depending on the nature of the amendment.

4. Federal System with Unitary Bias

- The Constitution of India establishes a federal system of government.
- It contains all the usual features of a federation, such as two governments, division of powers, written constitution, the supremacy of the constitution, the rigidity of the Constitution, independent judiciary and bicameralism.
- However, the Indian Constitution also contains a large number of unitary or non-federal features, such as a strong Centre, single Constitution, appointment of state governor by the Centre, all-India services, integrated judiciary, and so on.
- Moreover, the term 'Federation' has nowhere been used in the Constitution.
- Article 1, describes India as a '**Union of States**' which implies two things:
 - Indian Federation is not the result of an agreement by the states.
 - No state has the right to secede from the federation.

Hence, the Indian Constitution has been variously described as 'federal in form but unitary in spirit', 'quasi-federal' by K C Wheare.

5. Parliamentary Form of Government

- The Constitution of India has opted for the British Parliamentary System of Government rather than the American Presidential system of government.
- The parliamentary system is based on the principle of cooperation and coordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs.

To read more about the Difference between Presidential and Parliamentary Forms of Government, check the linked article.

- The parliamentary system is also known as the 'Westminster' model of government, responsible government and cabinet government.
- The Constitution establishes the parliamentary system not only at the Centre but also in the States.
- In a parliamentary system, the role of the Prime Minister has become so significant, and therefore it is called a 'Prime Ministerial Government'.

What are the features of parliamentary government in India?

The features of parliamentary government in India are as follows:

- Presence of real and nominal executives
- Majority party rule
- Collective responsibility of the executive to the legislature
- Membership of the ministers in the legislature
- The leadership of the prime minister or the chief minister
- Dissolution of the lower house (Lok Sabha or Assembly)
- Indian Parliament is not a sovereign body like the British Parliament.
- Parliamentary Government combined with an elected President at the head (Republic).

6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy

- The doctrine of the sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court.
- Just as the Indian parliamentary system differs from the British system, the scope of judicial review power of the Supreme court in India is narrower than that of what exists in the US.
- This is because the American Constitution provides for 'due process of law' against that of 'procedure established by law' contained in the Indian Constitution (Article 21).
- Therefore, the framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of Judicial supremacy.
- The Supreme Court can declare the parliamentary laws as unconstitutional through its power of judicial review.
- The Parliament can amend the major portion of the Constitution through its constituent power.

7. Rule Of Law

- According to this axiom, people are ruled by law but not by men, that is, the basic truism that no man is infallible. The axiom is vital to a democracy.
- More important is the meaning that law is the sovereign in democracy.
- The chief ingredient of law is custom which is nothing but the habitual practices and beliefs of common people over a long number of years.
- In the final analysis, rule of law means the sovereignty of the common man's collective wisdom.
- Apart from this crucial meaning, rule of law means a few more things like
 - There is no room for arbitrariness
 - Each individual enjoys some fundamental rights, and

- The highest judiciary is the final authority in maintaining the sanctity of the law of the land.

The Constitution of India has incorporated this principle in Part III and in order to provide meaning to Article 14 (all are equal before the law and all enjoy equal protection of laws), promotion of Lok Adalats and the venture of the Supreme court known as “public interest litigation” have been implemented.

Also, as per today’s law of the land, any litigant can appeal to the presiding judicial authority to argue the case by himself or seek legal assistance with the help of the judiciary.

8. Integrated and Independent Judiciary

- India has a single integrated judicial system.
- Also, the Indian Constitution establishes Independent Judiciary by enabling the Indian judiciary to be free from the influence of the executive and the legislature.
- The Supreme Court stands as the apex court of the judicial system. Below the Supreme Court are the High Courts at the state level.
- Under a high court, there is a hierarchy of subordinate courts, that is district courts and the other lower courts.
- The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution. Hence, the Constitution has made various provisions to ensure its independence.

9. Fundamental Rights

- Part III of the Indian Constitution guarantees six fundamental rights to all Citizens.
- Fundamental Rights are one of the important features of the Indian Constitution.
- The Constitution contains the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend upon the will of any majority or minority.
- No majority has the right to abrogate such rights.
- The fundamental rights are meant for promoting the idea of political democracy.
- They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature.
- They are **justiciable** in nature, that is, enforceable by the courts for their violation.

10. Directive Principles of State Policy

- According to Dr B R Ambedkar, the Directive Principles of State Policy is a ‘novel feature’ of the Indian Constitution.
- They are enumerated in Part IV of the Constitution.
- The Directive Principles were included in our Constitution in order to provide social and economic justice to our people.

- Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.
- They are non-justiciable in nature.
- In the Minerva Mills case (1980), the Supreme Court held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles'.

11. Fundamental Duties

- The original constitution did not provide for the fundamental duties of the citizens.
- Fundamental Duties were added to our Constitution by the 42nd Amendment Act of 1976 on the recommendation of the Swaran Singh Committee.
- It lays down a list of ten Fundamental Duties for all citizens of India.
- Later, the 86th Constitutional Amendment Act of 2002 added one more fundamental duty.
- While the rights are given as guarantees to the people, the duties are obligations that every citizen is expected to perform.
- However, like the Directive Principles of State Policy, the duties are also **non-justiciable** in nature.
- There is a total of 11 Fundamental duties altogether.

12. Indian Secularism

- The Constitution of India stands for a secular state.
- Hence, it does not uphold any particular religion as the official religion of the Indian State.
- The distinguishing features of a secular democracy contemplated by the Constitution of India are:
 - The State will not identify itself with or be controlled by any religion;
 - While the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an antagonist or an atheist), it will not accord preferential treatment to any of them;
 - No discrimination will be shown by the State against any person on account of his religion or faith; and
 - The right of every citizen, subject to any general condition, to enter any office under the state will be equal to that of the fellow citizens. Political equality which entitles any Indian citizen to seek the highest office under the State is the heart and soul of secularism as envisaged by Constitution.

The conception aims to establish a secular state. This does not mean that the State in India is anti-religious.

The western concept of secularism connotes a complete separation between religion and the state (negative concept of secularism).

But, the Indian constitution embodies the **positive concept of secularism**, i.e., giving equal respect to all religions or protecting all religions equally.

Moreover, the Constitution has also abolished the old system of communal representation. However, it provides for the temporary reservation of seats for the scheduled castes and scheduled tribes to ensure adequate representation to them.

13. Universal Adult Franchise

- Indian democracy functions on the basis of 'one person one vote'.
- Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status.
- The Indian Constitution establishes political equality in India through the method of universal adult franchise.

14. Single Citizenship

- In a federal state usually, the citizens enjoy double citizenship as is the case in the USA.
- In India, there is only single citizenship.
- It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth.
- He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chattisgarh to which he/she may belong but remains a citizen of India.
- All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of India.
- The Constitution makers deliberately opted for single citizenship to eliminate regionalism and other disintegrating tendencies.
- Single citizenship has undoubtedly forged a sense of unity among the people of India.

15. Independent Bodies

- The Indian constitution not only provides for the legislative, executive and judicial organs of the government (Central and state) but also establishes certain independent bodies.
- They are envisaged by the Constitution as the bulwarks of the democratic system of Government in India.

The candidates can read about some of the Independent Bodies in detail from the links below:

16. Emergency Provisions

- The Constitution makers also foresaw that there could be situations when the government could not be run as in ordinary times.

- To cope with such situations, the Constitution elaborates on emergency provisions.
- There are three types of emergency
 - Emergency caused by war, external aggression or armed rebellion [Article 352]
 - Emergency arising out of the failure of constitutional machinery in states [Article 356 & 365]
 - Financial emergency [Article 360].

The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

During an emergency, the central government becomes all-powerful and the states go into total control of the centre.

This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

17. Three-tier Government

- Originally, the Indian Constitution provided for a dual polity and contained provisions with regard to the organisation and powers of the Centre and the States.
- Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government (that is, Local Government), which is not found in any other Constitution of the world.
- The 73rd Amendment Act of 1992 gave constitutional recognition to the panchayats (rural local governments) by adding a new Part IX and a new schedule 11 to the Constitution.
- Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local government) by adding a new Part IX-A and a new schedule 12 to the Constitution.

18. Co-operative Societies

- The 97th Constitutional Amendment Act of 2011 gave a constitutional status and protection of cooperative societies.
- In this context, it made the following three changes in the Constitution:
 - It made the right to form cooperative societies a fundamental right (Article 19).
 - It included a new Directive Principles of State Policy on the promotion of cooperative societies (Article 43-B).
 - It added a new Part IX-B in the Constitution which is entitled "The Co-operative Societies" [Articles 243-ZH to 243-ZT].

The new Part IX-B contains various provisions to ensure that the cooperative societies in the country function in a democratic, professional, autonomous and economically sound manner.

It empowers the Parliament in respect of multi-state cooperative societies and the state legislatures in respect of other cooperative societies to make the appropriate law.

Philosophy of Constitution

- On January 22, 1947, the Constituent Assembly adopted the Objectives Resolution drafted by Jawaharlal Nehru. The Objectives Resolution contained the fundamental propositions of the Constitution and set forth the political ideas that should guide its deliberations.

The main principles of the resolution were:

- that India is to be an independent, sovereign republic ;
- that it is to be a democratic union with an equal level of self-government in all the constituent parts;
- that all power and the authority of the Union Government and governments of the constituent parts are derived from the people;
- that the constitution must strive to obtain and guarantee to the people justice-based upon social, economic and political equality, of opportunity and equality before the law;
- that there should be freedom of thought, expression, belief, faith, worship, vocation, association and action;
- that the constitution must provide just rights for minorities, and people from backward and tribal areas, etc. so that they can be equal participants of social, economic and political justice; and
- to frame a constitution that should secure for India, a due place in the community of nations.

The philosophy of a Constitution consists of the ideals for which the constitution stands and the policies that the Constitution enjoins upon the rulers of the Community to follow. The Constitution of India reflects the impact of our ideology in the following spheres:

(i) **Secularism:** Secularism is the hallmark of the Indian Constitution. People professing different religions have the freedom of religious worship of their own choice. All religions have been treated alike. The fact appreciated in India was that all religions love humanity and uphold the truth. All the social reformers and political leaders of modern India have advocated religious tolerance, religious freedom and equal respect for all religions. This very principle has been adopted in the Constitution of India where all religions enjoy equal respect. However, the word 'secularism' was nowhere mentioned in the Constitution as adopted in 1949. The word 'secularism' has now been added to the Preamble to the Constitution through the 42nd Amendment passed in 1976.

(ii) **Democracy:** We have borrowed the modern form of democracy from the West. Under this system, democracy means the periodic responsibilities of the Government to go to the people. For this purpose; elections have been held every five-year to elect a Government by the people. However, democracy covers even the economic and social aspects of life. This

aspect of democracy is well-reflected in the Directive Principles of State Policy. They are aimed at human welfare, co-operation, international brotherhood and so on.

(iii) **Sarvodaya:** Sarvodaya refers to the welfare of all. It is different from the welfare of the majority. It seeks to achieve the welfare of all without exception. It is referred to as Ram Rajya. The concept of Sarvodaya was developed by Mahatma Gandhi Acharya Vinoba Bhave and J. Narayan under which the material, spiritual, moral and mental development of everyone is sought to be achieved. The Preamble to the Indian Constitution and the Directive Principles of State Policy represent this ideal.

(iv) **Socialism:** Socialism is not new to India. Vedanta's philosophy has socialism in it. The national struggle for freedom had this aim also in view. Jawaharlal Nehru referred to himself as a socialist and republican. Almost all the parties in India profess to promote democratic socialism. These principles are included in the Directive Principles of State Policy. However, to lay emphasis on this aspect, the word 'socialism' was specifically added to the Preamble to the Constitution through the 42nd Amendment.

(v) **Humanism:** Humanism is a salient feature of Indian ideology. Indian ideology regards the whole of humanity as one big family. It believes in resolving international disputes through mutual negotiations. This is what we find in the Directive Principles of State Policy.

(vi) **Decentralization:** Decentralization is another aspect of Sarvodaya. Indian has always practised decentralization through the Panchayat system. Mahatma Gandhi also advocated decentralization. It is on this account that he is regarded as a philosophical anarchist. We have introduced the Panchayati Raj system in India to achieve the objective of decentralisation. The concept of cottage industries as laid down in the Directive Principles of State Policy also refers to decentralization.

(vii) **Liberalism:** Liberalism does not refer to the Western concept of liberalism. It refers, in the Indian context, to self-government, secularism, nationalism, economic reforms, constitutional approach, representative institutions etc. all these concepts were advocated by the modern Indian leaders.

(viii) **Mixed Economy:** Co-existence is a salient feature of our ideology. Co-existence has manifested itself through a mixed system of economy. In this system, we have allowed both the private and public sectors of the economy to work simultaneously. Large scale and essential industries have been put in the public sector.

(ix) **Gandhism:** Gandhism represents an ethical and moral India. Gandhi set a new example of fighting foreign rule through non-violence. He taught the importance of non-violence and truth. He advocated untouchability, cottage industry, prohibition, adult education and the uplift of villages. He wanted a society free of exploitation and decentralized in character. All these Gandhian principles have found an honourable place in the Constitution of India.

1.3 - PREAMBLE OF INDIA – OBJECTIVE RESOLUTION

In 1946, Objective Resolution was moved by Jawaharlal Nehru, describing the constitutional structure. In 1947 (22nd January) it was adopted. It shaped the Constitution of India and its modified version is reflected in the Preamble of the Indian Constitution. The basic tenets that the objective resolution highlighted were:

- Constituent Assembly's resolve to see India as independent, sovereign and republic
- To draw a Constitution for India
- To make all territories of the pre-independent India into united states of post-independent India
- To realize residual powers, autonomy on such states as the Constitution of India reflects
- To realize union with the power which will be different than those given to such states
- The people of India to play the source of power and authority of the sovereignty, and the independence
- To provide justice, social, economic and political equality of status of opportunity and, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality before the law
- To provide adequate safeguards to the minorities, tribal and backward areas and other depressed and backward classes
- To maintain the integrity of the Indian republic's territory and its territorial rights on land, sea, air according to the justice and law of the civilized nation
- To promote peace and welfare among the worldly nations.

Some important keywords in the Preamble of India like:

1. Sovereign
2. Socialist
3. Secular
4. Democratic
5. Republic
6. Justice
7. Liberty
8. Equality
9. Fraternity

THE CONSTITUTION OF INDIA

PREAMBLE

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 ²[unity and integrity of the Nation];

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

1.4 – FUNDAMENTAL RIGHTS

What are the Fundamental Rights?

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

Why are they called Fundamental Rights?

These rights are called fundamental rights because of two reasons:

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

List of Fundamental Rights

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

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

Why Right to Property is not a Fundamental Right?

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

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

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

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

Introduction to Six Fundamental Rights (Articles 12 to 35)

1. Right to Equality (Articles 14 – 18)

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

2. Right to Freedom (Articles 19 – 22)

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

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

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

3. Right against Exploitation (Articles 23 – 24)

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

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

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

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

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

6. Right to Constitutional Remedies (32 – 35)

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

Features of Fundamental Rights

- Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the SC bypassing the lower courts. He or she should first approach the lower courts.

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

Fundamental Rights Available Only to Citizens

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

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of freedom of:(Article 19)
 - Speech and expression
 - Association
 - Assembly
 - Movement
 - Residence
 - Profession

Protection of the culture, language and script of minorities (Article 29).

Right of minorities to establish and administer educational institutions (Article 30).

Importance of Fundamental Rights

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

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

Amendability of Fundamental Rights

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

Read about [types of majorities in Indian Parliament](#) in the linked article.

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

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

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

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

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

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

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

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

Doctrine of Severability

This is a doctrine that protects the fundamental rights enshrined in the [Constitution](#).

It is also known as the Doctrine of Separability.

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

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

Doctrine of Eclipse

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

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

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

1.5 - FUNDAMENTAL DUTIES IN INDIA

The fundamental duties which were added by the 42nd Amendment Act of the Constitution in 1976, in addition to creating and promoting culture, also strengthen the hands of the legislature in enforcing these duties vis-a-vis the fundamental rights.

The list of 11 Fundamental Duties under article 51-A to be obeyed by every Indian citizen is given in the table below:

| S.No | 11 Fundamental Duties |
|------|--|
| 1. | Abide by the <u>Indian Constitution</u> and respect its ideals and institutions, the National Flag and the National Anthem |
| 2. | Cherish and follow the noble ideals that inspired the national struggle for freedom |
| 3. | Uphold and protect the sovereignty, unity and integrity of India |
| 4. | Defend the country and render national service when called upon to do so |
| 5. | Promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women |
| 6. | Value and preserve the rich heritage of the country's composite culture |
| 7. | Protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures |
| 8. | Develop scientific temper, humanism and the spirit of inquiry and reform |
| 9. | Safeguard public property and to abjure violence |

| | |
|-----|---|
| 10. | Strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement |
| 11. | Provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002 |

The Fundamental Duties form an important topic for IAS Prelims as can be seen from the past year question papers. Aspirants preparing for UPSC 2022 are advised to cover the topic with all facts and figures. The topic once understood can fetch you a great score in prelims and mains both.

Importance of Fundamental Duties- Part IV-A

Fundamental Duties are an inalienable part of fundamental rights. The importance of these are given in the table below:

| S.No | Importance of Fundamental Duties |
|------|---|
| 1. | They remind Indian Citizens of their duty towards their society, fellow citizens and the nation |
| 2. | They warn citizens against anti-national and anti-social activities |
| 3. | They inspire citizens & promote a sense of discipline and commitment among them |
| 4. | They help the courts in examining and determining the constitutional validity of a law |

Criticism of Fundamental Duties

The Fundamental Duties mentioned in Part IVA of the Constitution have been criticized on the following grounds:

- They have been described by the critics as a code of moral precepts due to their non-justiciable character. Their inclusion in the Constitution was described by the critics as superfluous. This is because the duties included in the Constitution as fundamental would be performed by the people even though they were not incorporated into the Constitution.
- Some of the duties are vague, ambiguous and difficult to be understood by the common man.

- The list of duties is not exhaustive as it does not cover other important duties like casting vote, paying taxes, family planning and so on. In fact, the duty to pay taxes was recommended by the Swaran Singh Committee.
- The critics said that the inclusion of fundamental duties as an appendage to Part IV of the Constitution has reduced their value and significance. They should have been added after Part III so as to keep them on par with Fundamental Rights.
- Swaran Singh's Committee recommended more than 10 Fundamental Duties, however, not all were included in the Constitution. Those duties recommended by the committee which were not accepted were:
 1. Citizens to be penalized/punished by the parliament for any non-compliance with or refusal to observe any of the duties.
 2. The punishments/penalties decided by the Parliament shall not be called in question in any court on the ground of infringement of any of Fundamental Rights or on the ground of repugnancy to any other provision of the Constitution.
 3. Duty to pay taxes.

1.6- DIRECTIVE PRINCIPLES OF STATE POLICY

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,**
- **Gandhian 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 minimise inequalities in income, status, facilities and opportunities |
|-------------------|--|

| | |
|-------------------|---|
| Article 39 | Secure citizens: <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 |
|-------------------|---|

| | |
|--------------------|---|
| | <ul style="list-style-type: none"> • 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 | In cases of unemployment, old age, sickness and disablement, secure citizens: <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 <u>uniform civil code</u> 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 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

Directive Principles of State Policy's notes about its classification is important for UPSC 2022 and aspirants should learn these with articles mentioned.

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

What is the conflict between Fundamental Rights and DPSPs?

With the help of four court cases given below, candidates can understand the relationship between Fundamental Rights and Directive Principles of State Policy:

Champakam Dorairajan Case (1951)

Supreme Court ruled that in any case of conflict between Fundamental Rights and DPSPs, the provisions of the former would prevail. DPSPs were regarded to run as a subsidiary to Fundamental Rights. SC also ruled that Parliament can amend Fundamental Rights through constitutional amendment act to implement DPSPs.

Result: Parliament made the First Amendment Act (1951), the Fourth Amendment Act (1955) and the Seventeenth Amendment Act (1964) to implement some of the Directives.

Golaknath Case (1967)

Supreme Court ruled that Parliament cannot amend Fundamental Rights to implement Directive Principles of State Policy.

Result: Parliament enacted the 24th Amendment Act 1971 & 25th Amendment Act 1971 declaring that it has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. 25th Amendment Act inserted a new Article 31C containing two provisions:

- No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)22 and (c)23 shall be void on the ground of contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property).
- No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

Kesavananda Bharti Case (1973)

Supreme Court ruled out the second provision of Article 31C added by the 25th Amendment Act during Golaknath Case of 1967. It termed the provision 'unconstitutional.' However, it held the first provision of Article 31C constitutional and valid.

Result: Through the 42nd amendment act, Parliament extended the scope of the first provision of Article 31C. It accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31.

Minerva Mills Case (1980)

Supreme Court held the extension of Article 31C made by the 42nd amendment act unconstitutional and invalid. It made DPSP subordinate to Fundamental Rights. Supreme Court also held that '**the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.**'

Supreme Court's rulings following the case were:

- Fundamental Rights and DPSPs constitute the core of the commitment to social revolution.
- The harmony and balance between Fundamental Rights and Directive Principles of State Policy is an **essential feature of the basic structure** of the Constitution.
- The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights.