

POLITY

TABLE OF CONTENT

S. no.	TOPIC	Page Number.
1.	Historical Background.	04.
2.	Constitutional Amendments in India.	11.
3.	Preamble.	21.
4.	Fundamental Rights.	24.
5.	DPSP.	35.
6.	Fundamental Duties.	40.
7.	Citizenship.	43.
8.	Scheduled and Tribal Areas.	44.
9.	India's Federal Structure.	49.
10.	Separation of Power.	62.
11.	Parliament and State Legislature.	67.
12.	Judicial System.	93.
13.	Dispute Redressal Mechanisms.	135.
14.	Local Self Government.	147.
15.	CAG.	156.
16.	NCSC, NCST and NCBC.	159.
17.	UPSC and SPSC.	163.
18.	Election Commission.	166.
19.	Delimitation Commission.	185.
20.	Attorney General.	189.
21.	National Human Rights Commission.	191.
23.	CIC and SIC.	193.
24.	CVC.	195.
25.	Union and state Executive	197.
26.	Pressure Groups.	227.
27.	Representation of Peoples' Act.	232.
28.	Comparison of Indian Constitution.	243.

	GOVERNANCE & SOCIAL JUSTICE	
1.	Governance.	258.
2.	E - Governance.	268.
3.	Citizen Charter.	283.
4.	Right to Information.	291.
5.	Central Consumer Protection Authority.	299.
6.	Regulatory Bodies.	303.
7.	Role of Civil Services of Democracy.	325.
8.	Miscellaneous Topics.	338.
9.	NGO	362.
10.	Self Help Groups.	368.
11.	Pressure Groups.	372.
12.	Health.	376.
13.	Education.	402.
14.	Human Resources.	434.
15.	Schedule Caste and Scheduled Tribe.	440.
17.	PVTGs.	449.
18.	Children.	451.
19.	Poverty.	473.
20.	Hunger and Malnutrition.	478.
21.	Women.	494.
22.	Minority.	514.
23.	Elderly Population.	526.
24.	Person with Disabilities.	535.
25.	Transgender.	540.

INTERNATIONAL RELATIONS

INDEX

S. no.	TOPIC	Page Number.
1.	India and its Neighbourhood Relations.	2.
2.	India - USA	49.
3.	India - Russia.	55.
4.	India - China.	61.
5.	India - EU.	71.
6.	India - Japan.	78.
7.	India - Indonesia.	88.
8.	India - West Asia.	91.
9.	India - Iran.	94.
10.	India - Israel.	96.
11.	India - Saudi Arabia.	100.
12.	India - UAE.	102.
13.	India - Central Asia.	104.
14.	India - Latin America.	108.
15.	India - Vietnam.	112.
16.	India - Australia.	115.
17.	India - Africa.	118.
18.	Regional Organisations.	121.
19.	International Organisations.	143.
20.	Indian Diaspora.	175.
21.	Geopolitics of Technology.	179.
22.	Religion and Culture as tools of Soft Power.	183.

HISTORICAL BACKGROUND

The Indian Constitution, adopted on 26th January 1950, stands as an enduring symbol of India's triumphant transition from a colonial territory to a sovereign republic. It is a living document that governs the democratic functioning of the world's second-most populous nation, articulating an inclusive vision that has navigated the country's enormous diversity towards a common purpose.

CONSTITUTIONAL PILLARS

- **Embodying Resilient Diversity**
 - The Indian Constitution stands as a vibrant embodiment of India's multi-faceted diversity.
 - In spite of a staggering array of languages, religions, traditions, and cultures, it has served as a unifying force, binding the nation together.
- **Safeguarding Rights and Freedoms**
 - One of the key tenets of the Indian Constitution is the protection it offers to the citizens' rights.
 - It guarantees fundamental rights, setting clear boundaries that safeguard freedom, justice, and fairness for all, regardless of any government's power or agenda.
- **Historical Roots**
 - The Indian Constitution, while a post-colonial creation, has its foundations firmly rooted in the era of British Colonial rule.
 - The legislative developments during this time laid the groundwork for the comprehensive document that would later become the Indian Constitution.
- **The Genesis of Democratic Rights**
 - **Universal protections:** The Indian Constitution provides democratic rights to all humans, including non-Indian citizens.
 - **Democratic evolution:** The democratic institutions and values introduced during the colonial period laid the foundation for the principles of democratic governance upheld by the Indian National movement.

EVOLUTION OF INDIAN CONSTITUTION: A JOURNEY THROUGH KEY ACTS AND REFORMS

REGULATING ACT OF 1773

- **Governor-General of Bengal:** The Act designated the Governor of Bengal as the 'Governor-General of Bengal' and created an Executive Council of four members to assist him.
- **Control over Bombay and Madras Presidencies:** The Act subordinated the governors of Bombay and Madras presidencies to the governor-general of Bengal.
- **Establishment of Supreme Court:** The Act established a Supreme Court at Calcutta in 1774
- **Significance:** The Act is significant as it recognized the political and administrative functions of the Company for the first time, and laid the foundation for central administration in India.

PITT'S INDIA ACT OF 1784

- **Establishment of a Board of Control:** The Act established a Board of Control to exercise control over the Company's civil, military and revenue affairs.
- **Greater Powers to the Governor-General:** The governor-general was given a council of three members, including the commander-in-chief, and the presidencies of Bombay and Madras were made subordinate to the governor-general.
- **Significance:** The Act termed the Company's territories in India as the 'British possessions in India' for the first time, and handed supreme control over the Company's affairs and its administration in India to the British Government.

- **Era of Charter Acts:** Pitts India act was followed by a series of Charter Acts, starting from the Charter Acts of 1793 and 1813 which primarily regulated the trading and commercial functions of the Company.

CHARTER ACT OF 1833

- **Centralization of Power:** The Governor-General of Bengal was made the Governor-General of India, who was given exclusive legislative powers for the entire British India.
- **End of Monopoly:** The Company's monopoly over trade with China and in tea also ended.
- **Open Competition for Civil Services:** The Act attempted to introduce a system of open competition for selection of civil servants.
- **Steps towards Abolishing Slavery:** The Act urged the administration to improve the conditions of slaves and to abolish slavery (which was abolished in 1843).
- **Significance:** The Act created a centralized Government of India with authority over the entire territorial area possessed by the British in India.

CHARTER ACT OF 1853

- **Separation of Powers:** The Act separated the legislative and executive functions of the Governor-General's council.
- **Open Competition for Civil Service:** The Act introduced an open competition system of selection and recruitment of civil servants.
- **Local Representation:** For the first time, local representation was introduced in the Indian (Central) Legislative Council.
- **Significance**
 - Legislation was considered a special function of the government, requiring special machinery and special process.
 - The civil service was opened to Indians, leading to the establishment of the Macaulay Committee in 1854.

GOVERNMENT OF INDIA ACT OF 1858

- **End of Company Rule:** The Act abolished the rule of East India Company, and transferred the powers of government, territories and revenues to the British Crown.
- **Secretary of State for India:** A secretary of state for India was appointed to govern India in the name of the Crown.
- **Viceroy of India:** The Act changed the designation of the Governor-General of India to that of Viceroy of India.
- **Council of India:** The Act established a 15-member Council of India to assist the secretary of state for India.
- **Significance:** Although the Act was a formal transfer of power from the Company to the Crown, it did not substantially alter the administrative system in India before the revolt of 1857.

DEVELOPMENTS AFTER 1858

- **Growth of Political Consciousness:** The revolt of 1857 stimulated political consciousness among the Indians and demands for more representation of Indians in administration grew day by day.
- **Policy of Association:** Three acts were enacted by the British Parliament in 1861, 1892 and 1909 to ensure cooperation of Indians for better administration and to avoid situations like the 1857 revolt. These acts were a stepping stone towards the development of the Indian Constitution.

INDIAN COUNCILS ACT, 1861

- **Nomination of Indians:** The Act authorized the Viceroy to nominate Indians as non-official members of his expanded council.
- **Restoration of Legislative Powers:** The Act restored the legislative powers to the Bombay and Madras Presidencies, initiating a process of decentralisation.

- **Issuance of Ordinances:** The Viceroy was empowered to issue ordinances without the legislative council's concurrence during emergencies.
- **Portfolio System:** The 'Portfolio' system, introduced by Lord Canning in 1859, received official recognition through this Act.
- **Significance**
 - The Act marked the inception of representative institutions by involving Indians in the legislative process.
 - The legislative devolution policy eventually led to almost complete internal autonomy to the provinces in 1937.

INDIAN COUNCILS ACT, 1892

- **Increased Membership:** The Act increased the additional (non-official) members in the Central and provincial legislative councils while maintaining an official majority.
- **Budget Discussion:** The legislative councils were given the power to discuss the budget.
- **Indirect Elections:** Although the term 'election' was not explicitly used, the Act paved the way for some of the non-official seats to be filled through indirect elections.
- **Significance:** The Act made limited provisions for the use of elections in filling up some non-official seats in the Central and provincial legislative councils.

INDIAN COUNCILS ACT, 1909/MORLEY-MINTO REFORMS

- **Increased Council Size:** The Act expanded the legislative councils, both at the Central and provincial levels.
- **Inclusion of Indians:** It provided for the first time, the association of Indians with the executive Councils of the Viceroy and Governors.
- **Separate Electorate:** The Act introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'.
- **Significance:**
 - The Act brought the concept of communal representation into Indian politics.
 - For the first time, it involved Indians in governance at central and provincial levels through a restricted and unrepresentative electorate divided along communal lines.

GOVERNMENT OF INDIA ACT, 1919/ MONTAGU-CHELMSFORD REFORMS

- **Indian Members in Executive Council:** The Act mandated the inclusion of three Indians in the Viceroy's executive Council.
- **Bicameral Legislature:** A two-house legislature was established – the Legislative Assembly and the Council of State.
- **Decentralization:** The Act relaxed the central control over the provinces by demarcating and separating central and provincial subjects.
- **Dyarchy at Provinces:** A dyarchy was introduced at the provincial level, dividing provincial subjects into transferred and reserved ones.
- **Central Public Service Commission:** The Act provided for the establishment of a public service commission, leading to the establishment of the Central Public Service Commission in 1926.
- **Significance:** The Act eased the central control over the provinces, marking a significant step in the evolution of Parliamentary democracy in India.

SIMON COMMISSION

- **Rejection of Parliamentary Responsibility:** The commission rejected the idea of parliamentary responsibility at the center.
- **Representative Government in Provinces:** The commission proposed the establishment of a representative government in the provinces.

- **Separate Communal Electorates:** It recommended that separate communal electorates be retained.
- **Need for a Federal Government:** The commission recognized the country's diversity and opined that the ultimate character of the Indian government had to be federal.
- **Reaction:** The Simon Commission met with substantial opposition from several political parties, highlighting the increasing political awareness and growing demand for more significant representation in governance among Indians.

NEHRU REPORT

- The Nehru Report, presented by a committee under the chairmanship of Motilal Nehru in 1928, was the first serious attempt by Indians to frame a full-fledged constitution for India.
- This report laid the groundwork for a demand for complete political independence.
- **Salient Features of the Nehru Report:**
 - **Dominion Status:** The report demanded dominion status for India within the British Empire, similar to that enjoyed by Australia and Canada.
 - **Responsible Government:** The report advocated for a responsible government at the Centre and in the provinces.
 - **Universal Adult Suffrage:** The report supported the idea of voting rights for all adults.
 - **List of Fundamental Rights:** The report also proposed a list of fundamental rights guaranteeing civil liberties and freedom of expression.

GOVERNMENT OF INDIA ACT OF 1935

- The Government of India Act of 1935 was an important step towards establishing a constitutional mechanism in India.
- **Salient Features of the Act**
 - **All-India Federation:** The Act proposed a federation incorporating British India and the princely states.
 - **Bicameralism:** The Act proposed a bicameral federal legislature.
 - **Responsible Government:** The Act introduced responsible governments in provinces, marking a significant move towards decentralization.
 - **Federal Court:** The Act provided for the establishment of a Federal Court with both original and appellate jurisdictions.
 - **Public Service Commission:** The Act established a Federal Public Service Commission and Provincial Public Service Commissions.
- **Significance of the Act:** This act was the most comprehensive and extensive legislation enacted by the British Parliament for the governance of India. Despite its limitations, it marked a milestone towards a completely responsible government in India and provided Indians with practical experience of running the government.

INDIAN INDEPENDENCE ACT OF 1947

- The Indian Independence Act of 1947 marked the end of British rule in India and declared India and Pakistan as two separate dominions.
- **Salient Features of the Act:**
 - **End of British Rule:** The Act declared India and Pakistan as two independent dominions from August 15, 1947.
 - **Power to the Constituent Assemblies:** The Act gave the constituent assemblies of India and Pakistan the power to frame their respective constitutions.
 - **Partition of India:** The Act provided for the partition of British India into India and Pakistan.

CONSTITUENT ASSEMBLY OF INDIA

- The demand for a Constituent Assembly was accepted by the British Government in principle under the Cabinet Mission Plan of 1946.

- The Constituent Assembly was composed of indirectly elected representatives and nominated members from the princely states. It took two years, eleven months and eighteen days to draft the Constitution.

Criticism of the Constituent Assembly

- The Constituent Assembly faced criticism on several grounds, including the limited franchise through which its members were elected, the dominance of the Congress party, and the length of time it took to frame the Constitution.
- However, these criticisms were countered by the fact that the assembly represented a wide range of social, political and economic viewpoints, and its prolonged deliberations were a necessary result of its efforts to accommodate and reconcile these divergent views.

Objectives Resolution

- The Objectives Resolution, moved by Jawaharlal Nehru on December 13, 1946, was a significant step as it outlined the fundamental principles that were to guide the deliberations of the Assembly. It formed the basis of the Preamble to the Constitution.

ENACTMENT & ENFORCEMENT OF CONSTITUTION

- The Constitution of India was adopted on November 26, 1949, and came into effect on January 26, 1950, marking the transition of India from a British colony to an independent republic.
- This day is celebrated as Republic Day in India every year.
- The journey of constitutional development in India was a long and meticulous process. It was the outcome of various historical, political, and social events. Today, the Constitution of India stands as a testament to the vision and foresight of its architects. It continues to guide the nation in its pursuit of justice, liberty, equality, and fraternity.

Public Opinion and the Indian Constitution

- **Public Engagement:** In 1948, the Indian Constitution draft was made available to the general public, encouraging widespread participation.
- **Nationwide Feedback:** This move elicited feedback, suggestions, and proposed amendments from citizens all over the country.
- **Continuing the Legacy:** This democratic approach was an extension of the participatory processes initiated during the freedom struggle.

COMPREHENSIVE OVERVIEW OF THE INDIAN CONSTITUTION

- **Detailed and Written Constitution**
 - **Length:** The Indian Constitution is the world's lengthiest written constitution with 470 articles, 25 parts, 12 schedules, and 5 appendices.
 - **Amendments:** It has been amended 105 times reflecting its dynamic nature.
- **Blend of Rigidity and Flexibility**
 - The Constitution can be both rigid and flexible, depending on the part to be amended.
- **Parliamentary Form of Government**
 - **Model:** The Indian Constitution establishes a parliamentary system of government inspired by the British Westminster model.
 - **Structure:** The Prime Minister, with the Council of Ministers, serves as the head of government.
- **Sovereign, Socialist, Secular, and Democratic Republic**
 - These qualities are mentioned in the Preamble and they define the essence of the Indian state.
- **Independence of Judiciary**
 - Judicial independence is ensured by provisions in the Constitution, empowering judges to perform their duties without fear or favour.
- **Fundamental Rights**
 - Fundamental rights guaranteed by the Indian Constitution serve as the cornerstone for citizens' life, liberty, and property.

- **Directive Principles of State Policy**

- DPSPs guide the government to ensure social and economic democracy, a unique feature of the Indian Constitution.

- **Fundamental Duties**

- Enshrined by the 42nd Amendment Act in 1976, these duties call upon citizens to contribute to the common benefit of all.

- **Federal System with Unitary Bias**

- India has a federal system of government, but also maintains many unitary features, striking a unique balance.

- **Universal Adult Franchise**

- The Indian Constitution guarantees universal adult suffrage, giving every citizen above the age of 18 the right to vote.

- **Single Citizenship**

- Despite its federal nature, the Indian Constitution provides for only a single citizenship - the Indian citizenship.

- **Emergency Provisions**

- The Constitution allows for three types of emergencies - National, State, and Financial - enabling the President to tackle extraordinary situations.

- **Secular State**

- The Constitution of India establishes a secular state, upholding no specific religion as the state religion.

CRITIQUES OF THE INDIAN CONSTITUTION

- **Bag of Borrowings:**

- **Critique:** Critics often label the Indian Constitution as a 'borrowed Constitution' or a 'bag of borrowings', claiming it lacks originality.

- **Counterargument:** Despite having borrowed some concepts and provisions from various world constitutions, the framers intelligently adapted these to meet India's unique needs and circumstances. As Dr. B.R. Ambedkar rightly pointed out, the critique is based on an insufficient understanding of the Constitution.

- **Carbon Copy of the 1935 Act:**

- **Critique:** Sir Ivor Jennings, a British constitutional expert, claimed that the Indian Constitution derives substantially from the Government of India Act, 1935, with many provisions copied almost textually.

- **Counterargument:** Dr. B. R. Ambedkar refuted this by clarifying that the borrowed provisions mainly pertained to administrative details. The Constitution still encapsulates the vision of an independent India, incorporating fundamental rights, directive principles of state policy, and other features distinct from the 1935 Act.

- **Excessive Length and Detail:**

- **Critique:** Critics argue that the Indian Constitution is overly lengthy and detailed, making it unwieldy.

- **Counterargument:** The extensive detail is deliberate and serves to make the Constitution a comprehensive document, providing guidance on every aspect of governance, and minimizing ambiguities. The length is a testament to the inclusiveness and thoroughness of the Constitution.

-

- **Lawyer's Paradise:**

- **Critique:** The legal language and phraseology used in the Constitution have been dubbed as complex, leading Sir Ivor Jennings to term it a "lawyer's paradise".

- **Counterargument:** Legal precision was necessary to avoid potential misinterpretations and misuse. It is meant to be a document of the people but also one that can stand up in a court of law.

Recent Developments

- The **104th Constitutional Amendment Act, 2020**, which extends the reservation of seats for SCs, STs in the Lok Sabha and states assemblies, was a significant development.
- The **103rd Constitutional Amendment Act, 2019**, providing a maximum of 10% reservation to the Economically Weaker Sections (EWS) of citizens, is another crucial milestone.
- The abolition of Article 370 in 2019, which granted special status to Jammu and Kashmir, led to a major constitutional change.
- Debates and controversies over the Citizenship Amendment Act, 2019 have raised questions about the constitutionality of laws and policies.
- The implementation and subsequent protests against the Farm Bills of 2020 brought up discussions on federalism, the role of state and center, and the importance of cooperative federalism.

CONSTITUTIONAL AMENDMENTS IN INDIA

- Pandit Jawaharlal Nehru once highlighted the dynamic nature of a constitution, stating that while we strive to make our constitution as permanent and solid as possible, it should also allow for flexibility to adapt to the nation's growth and changing conditions.
- Our Constitution, like any written Constitution, allows for amendments to adapt to changing conditions and societal needs. Until now, the Constitution has been amended 105 times. The process of amendment is defined in Article 368 of the Constitution.

Recent Developments

- The Supreme Court recently dismissed the Centre's plea for review of its ruling that the identification of socially and Educationally Backward Classes (SEBC) for granting quota in jobs and education lies exclusively with the Central government and not the states.
- In response, the Centre is considering a constitutional amendment to restore the right of state governments to identify and notify SEBCs.
- The Constitution (104th Amendment) Act, 2020, extended the reservation for seats for SCs & STs in the Lok Sabha and state assemblies but removed the reservation for Anglo-Indians.

PROCESS OF CONSTITUTIONAL AMENDMENT

- **Introduction of a Bill:** An amendment can be initiated by introducing a bill in either House of Parliament (not in state legislatures). The bill can be introduced by either a minister or a private member, without requiring prior permission of the President.
- **Passing the Bill:** The bill must be passed by a special majority in each House (a majority of the total membership and a two-thirds majority of the members present and voting). In case of disagreement, there is no provision for a joint sitting of the two Houses.
- **Ratification by State Legislatures:** If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by half of the state legislatures by a simple majority.
- **Presidential Assent:** Once passed by both Houses and ratified by the necessary state legislatures, the bill is presented to the President, who must give his assent. The President cannot withhold his assent or return the bill for reconsideration. After Presidential assent, the bill becomes an Act, and the Constitution is amended.

TYPES OF AMENDMENTS

- **Amendment by Simple Majority of Parliament:** This includes amendments related to admission or establishment of new states, alteration of boundaries of existing states, abolition or creation of legislative councils in states, etc.
- **Amendment by Special Majority of Parliament (Under Article 368):** This includes amendments to Fundamental Rights, Directive Principles of State Policy, and all other provisions not covered by the first and third categories.
- **Amendment by Special Majority of Parliament and Ratification by State Legislatures (Under Article 368):** This includes amendments related to the election of the President, the 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, representation of states in Parliament, power of Parliament to amend the Constitution and its procedure.

INFORMAL AMENDMENTS

- **Judicial Pronouncements:** Landmark cases such as the Kesavananda Bharati case (1973), Minerva Mill case (1980), and Berubari case (1960) have led to significant changes in the Constitution.

- **Conventions:** Some unwritten rules have been accepted as having the force of law and have indirectly influenced constitutional changes.

THE NECESSITY OF CONSTITUTIONAL AMENDMENTS

- **Societal Evolution:**
 - Societal values and norms change with time.
 - **For example, the recognition of 'third gender'** required constitutional amendment to ensure protection of their rights.
- **Technological Advancements:**
 - Rapid changes in technology necessitate amendments.
 - **For instance, in the era of the internet and data privacy concerns,** relevant constitutional safeguards may need to be instated.
- **Fulfilling Social Contracts: For example, the 73rd and 74th Amendments,** which were introduced to realize the dream of 'Gram Swaraj' as envisaged by Mahatma Gandhi.
- **Enhancing Representation:** Amendments may be needed to ensure proper representation of all sections of society, **like the reservation for Scheduled Castes and Scheduled Tribes in legislatures.**
- **Legal Backing to Policy:** To align with policy changes, such as the introduction of the GST required a constitutional amendment.
- **Structural Adjustments:** Amendments like the abolition of the Right to Property from Fundamental Rights were required for economic considerations.

DANGERS OF CONSTITUTIONAL AMENDMENTS

- **Excessive Amendments:** Frequent amendments may erode the sanctity of the Constitution, turning it into a plaything of transient political majorities.
- **Shift of Power:** Excessive amendments might alter the balance of power between various institutions, such as the Parliament and Judiciary, Centre and States, leading to instability.
- **Ambiguity:**
 - Frequent amendments may lead to complexities and ambiguities.
 - For example, the **Ninth Schedule** has become a bone of contention between the Judiciary and Legislature.
- **Encroaching Rights:** Amendments might infringe upon the basic structure or fundamental rights, leading to conflict.
- **Undermining Basic Structure:** The 'Basic Structure' doctrine introduced in the Keshvananda Bharti case might get undermined through haphazard amendments.

CRITICISM OF THE AMENDMENT PROCEDURE

- **Lack of Clarity:** The Constitution is unclear about the specific procedure to be followed, leading to different interpretations and potential confusion.
- **Centralised Power:** Critics argue that the power of amendment is concentrated mainly in the Parliament, thereby neglecting the federal structure.
- **No Special Body:** Unlike some countries, India does not have a provision for a special body like a Constitutional Convention for proposing amendments.
- **Limited Scope for Public Involvement:** The amendment process does not include provisions for a referendum or direct public involvement, which could enhance the democratic nature of amendments.

WAY FORWARD

- **Setting Up a Joint Parliamentary Committee:** To ensure in-depth deliberation on proposed amendments and consensus-building among all parties.
- **Creating a Separate Committee/Body:** This could be dedicated to considering amendments to the Constitution, which could provide better scrutiny and avoid hasty changes.

- **Engaging Civil Society:** Public consultations could be held to gauge public sentiment and opinion on major constitutional changes.
- **Defining Amendment Procedure:** Clearer procedural guidelines could help reduce confusion and potential misuse of the amendment provision.
- **Involve State Legislatures:** Their active participation in the amendment process could ensure a balanced federal structure is maintained.

While constitutional amendments are a necessary tool for ensuring our Constitution remains relevant and adaptable to changing times, it is crucial that they are used judiciously and sparingly to maintain the integrity and stability of our fundamental law.

IMPORTANT AMENDMENTS

An amendment signifies growth, evolution, and a nation's ability to adapt with changing times.

FIRST CONSTITUTIONAL AMENDMENT, 1951

- Enacted to address the challenges posed by certain judicial rulings, such as in the *State of Madras v. Champakam Dorairajan* and *Romesh Thappar vs The State of Madras* cases, the First Amendment led to notable shifts in the Indian Constitution.
- **Amendments Incorporated:**
 - **Article 15:** Revised to empower the state to advance socially and economically backward classes.
 - **Articles 31A and 31B:** Newly introduced along with the Ninth Schedule, these provisions provide safeguards for laws related to estate acquisitions.
 - **Article 19:** Amended to include three additional grounds for restricting freedom of speech and expression: public order, friendly relations with foreign states, and incitement to an offence. It also stipulated that state trading and the nationalization of any trade or business would not be deemed invalid on grounds of violating the right to trade or business.
- **Impact of the First Amendment:**
 - **Restrictions on Freedom of Speech and Expression:** The amendment introduced more stringent controls in the interest of public order, state security, and maintaining friendly relations with foreign states.
 - **Caste-based Reservations:** The amendment facilitated caste-based reservations by restricting Article 15's applicability to government provisions for the advancement of backward classes.
 - **Property Rights:** It circumscribed the right to property and validated the abolition of zamindari by enabling the state to acquire property without offering equitable compensation.
 - **Interplay Between Parliament and Judiciary:** This amendment established a precedent for amending the Constitution to circumvent judicial decisions impeding government policies and programmes.
 - **Social Justice:** It endorsed the abolition of zamindari and the redistribution of land among the poor, ensuring the constitutional validity of agrarian reform measures.
 - **Judicial Review:** The addition of the Ninth Schedule limited the scope of Judicial Review by protecting laws listed under this schedule from judicial scrutiny.

42ND CONSTITUTIONAL AMENDMENT, 1976

- Known as one of the most controversial constitutional amendments, the 42nd Amendment was implemented during an internal emergency period. With the scale and significance of changes made, it has often been **referred to as a 'mini constitution'**.

Changes	Amendment	Significance/Issue
Preamble	The preamble was augmented with the words 'socialist', 'secular', and 'integrity'.	The addition of these terms provided a clearer definition of the guiding principles and objectives for India's future.
Fundamental Rights & DPSP	Directive Principles of State Policy (DPSPs) were accorded precedence over Fundamental Rights.	This adjustment empowered the Parliament to legislate for the better implementation of DPSPs, thereby fostering a socio-economic revolution for poverty alleviation.
New Part IV A	Introduced 10 Fundamental Duties for Citizens.	These duties aimed to strike a democratic balance by emphasizing citizens' responsibilities alongside their rights.
New DPSPs	Incorporated new directives into the DPSPs, including Article 39, Article 39A, Article 43 A, and Article 48 A.	These directives empowered the government to foster comprehensive development, protect industrial workers, provide justice for all, and tackle environmental degradation and biodiversity loss.
Lok Sabha & Assembly	Delimitation of constituencies for Lok Sabha and state legislative assembly elections was paused until after the 2001 census.	This underscored the importance of population control measures, a focal concern for successive governments.
Parliament	The President was made bound by the advice of the Cabinet. The Parliament was given unrestrained power to amend any part of the Constitution without judicial review.	This significantly enhanced Parliament's power, asserting its supremacy over the other wings of government.

Judiciary	The powers of judicial review and the writ jurisdiction of the Supreme Court and High Courts were curtailed. No Constitutional Amendment could be questioned in any court of law. The courts' power to determine what constitutes an office of profit was also revoked.	These changes undermined the power and jurisdiction of the judiciary, limiting the scope of Judicial Review.
Federalism	Transferred five subjects from the State List to the Concurrent List: Education, Forests, Weights & Measures, Protection of Wild Animals and Birds, and Administration of Justice. It also authorized the use of Central armed forces in any State to deal with law-and-order problems.	These changes transferred more power from the state governments to the central government, challenging the federal structure of India.

Emergency Provisions	Facilitated the proclamation of a national emergency in part of the territory of India. Extended the one-time duration of the President's rule in a state from 6 months to one year.	These amendments curtailed democratic rights and had the potential to strain Centre-State relations. It also increased the vulnerability of states to misuse of Article 356.
-----------------------------	--	--

44TH CONSTITUTIONAL AMENDMENT, 1977

- This amendment was enacted by the Janata Party Government, which had won the 1977 general elections promising to **"restore the Constitution to the condition it was in before the Emergency"**.
- **Key Amendments & Significance:**
 - Removed the right to property from the list of Fundamental Rights and made it only a legal right.
 - Restored the original term of the Lok Sabha and the state legislative assemblies (i.e., 5 years).
 - Restored provisions regarding the quorum in the Parliament and state legislatures.
- **Significant contributions of the 44th amendment include:**
 - Restoration of the balance between the judiciary, executive, and legislative branches, which had been skewed by the 42nd amendment.
 - Protection of freedom and liberties enjoyed by citizens.
 - Safeguards against misuse of emergency provisions.
 - Restoration of democratic and constitutional values, thwarting the possibility of an authoritarian regime.

52ND CONSTITUTIONAL AMENDMENT, 1985

- This amendment addressed the problem of instability caused by democratically elected legislators frequently shifting allegiance and defecting from one party to another.
- **Key Amendments & Significance**
 - Added 10th Schedule to the Constitution which laid down the process by which legislators may be disqualified on grounds of defection.
 - 91st amendment, 2001, strengthened the anti-defection law by removing the exception provision that disqualification on grounds of defection is not applicable in case of a split.
- **Significant contributions of the 52nd amendment include:**
 - Strengthening the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.
 - Providing stability to the government by preventing shifts of party allegiance.
 - Promoting party discipline and also preventing breach of trust of people due to defection.

73RD & 74TH CONSTITUTIONAL AMENDMENT, 1992

- These amendments granted constitutional status to Panchayati Raj Institutions (PRIs) and municipalities.
- **Key Amendments & Significance**
 - PRIs come under the purview of the justiciable part of the constitution and mandates states to adopt the system.
 - It transformed representative democracy to participatory democracy.
- **Significant contributions of these amendments include:**
 - Greater decentralisation and increased involvement of the community in planning and implementing schemes, thus, increasing accountability.
 - Political empowerment of women, SCs, and STs through improved representation.

Amendment Act	Key Provisions	Significance
	Lowered the voting age from 21 to 18.	Led to political empowerment of youth and widened the base of democracy.
	State shall provide free and compulsory education for all children between the age of 6 and 14 years (FR).	Recognised education as a fundamental right of every child. It made education inclusive and increased gross enrolment ratio of weaker sections in primary and secondary education.
	Introduced the Goods and Services Tax (GST) since 1 July 2017.	GST replaced multiple taxes levied by the central and state governments. It provided for the unification and simplification of indirect taxes to establish one nation one tax regime in the country.
	Gave Constitutional status to National Commission for Backward Classes.	Empowered NCBC to examine complaints and welfare measures regarding socially and educationally backward classes.
	Inserted Article 15 (6) and Article 16 (6) in the Constitution to provide reservation for the unreserved category.	The act promotes the welfare of the poor not covered by the 50% reservation policy for SCs, STs, and SEBC. It provides maximum of 10% Reservation for Economically Weaker Sections (EWSs) among the general category.

As **Dr. Babasaheb Ambedkar noted**, the Indian constitution is a living document, and it must evolve with the changing times, challenges, and aspirations of the nation. If it isn't allowed to change, it could hinder the growth of the nation. The amendment procedure provided in the constitution is an essential provision to ensure its continual relevance.

DOCTRINE OF SEVERABILITY AND CONSTITUTIONAL AMENDMENTS

Doctrine of Severability: The Case of Co-operative Societies and the Constitutional Amendment

- The 97th Amendment of 2012 introduced Part IXB into the Constitution, outlining the terms for running co-operative societies.
- The Amendment passed without ratification by State legislatures, an action deemed necessary by the Constitution.
- Part IXB mandates criteria for society membership including size, tenure, and necessary expertise.
- Despite this, the Supreme Court affirmed the Centre's jurisdiction over Multi State Co-operative Societies.
- The Court concluded that co-operative societies are under the “exclusive legislative power” of State legislatures.
- Part IXB, composed of Articles 243ZH to 243ZT, has significantly affected State legislatures' exclusive power over the co-operative sector under Entry 32 of the State List.
- The Court disapproved the passing of the Amendment without State ratification.

- Nonetheless, the court didn't invalidate the sections of Part IXB concerning 'Multi-State Cooperative Societies' due to the lack of ratification.
- The court declared Part IXB of the Constitution is operative only insofar as it concerns multi-State cooperative societies.

BASIC STRUCTURE OF THE CONSTITUTION

Basic and fundamental provisions form the core of the constitution. The term "Basic structure" is not mentioned in the constitution. The Basic structure is a judicially innovated doctrine originated in the Kesavananda Bharati case of 1973. The Supreme Court has yet to define or clarify what constitutes the 'basic structure' of the Constitution.

Recent Context

- Kesavananda Bharati, the petitioner in the Supreme Court case that resulted in the landmark verdict of 1973 outlining the basic structure doctrine of the Constitution, passed away in 2020.
- The Supreme Court ruled in the Kesavananda Bharati Vs. State of Kerala case that the basic structure of the Constitution is inviolable and cannot be amended by Parliament.
- This was the largest-ever bench in the history of the Supreme Court, composed of 13 members.

Origin of the Basic Structure

- The origins of the basic structure doctrine are **found in the German Constitution**, which was amended to protect some basic laws after the Nazi regime.
- The **original Weimar Constitution allowed Parliament to amend the Constitution with a two-thirds majority, a feature exploited by Hitler for radical changes.**
- Learning from this, the new German Constitution introduced substantive limits on Parliament's powers to amend certain parts of the Constitution, known as 'basic law'.

Evolution of Basic Structure in India	
Amendments	Details
Shankari Prasad case 1951	The validity of the first constitutional amendment was challenged for it purported to infringe Fundamental Rights. The Supreme Court ruled that Parliament could modify or take away any of the Fundamental Rights using a constitutional amendment act.
Golaknath case 1967	The Supreme Court declared that Fundamental Rights are immutable and the Parliament cannot modify or take away any of these rights.
24th Amendment Act (1971)	In response to the Golak Nath case, this act amended Articles 13 and 368, declaring that the Parliament has the power to modify or take away any Fundamental Rights under Article 368.
Kesavananda Bharati case (1973)	The Supreme Court upheld the 24th Amendment Act's validity, stating that the Parliament has the power to alter Fundamental Rights but cannot alter the 'basic structure' of the Constitution.
42nd Amendment Act (1976)	This act proposed several changes to the Constitution, intending to reduce the power of the courts to pronounce upon the constitutionality of laws.
Minerva Mills case (1980)	The Supreme Court ruled that the 'basic structure' doctrine is applicable to the validity of Constitutional amendment acts.
Waman Rao case (1981)	The Supreme Court ruled that all amendments made prior to the Kesavananda Bharati case, which do not damage or destroy the 'basic structure' of the Constitution, are valid and constitutional.

Elements of Basic Structure

- Over the years, the Supreme Court has through various judgments recognized many features as part of the Constitution's basic structure.
- **These include:** The Supremacy of the Constitution; Republican and Democratic form of Government; Secular character of the Constitution; Federal character of the Constitution; The Sovereignty of India; The Unity and Integrity of the Nation; Essential features of Individual Freedoms; The mandate to build a welfare state (Directive Principles of State Policy); Equality of status and opportunity; The establishment of a just society as envisaged by the Constitution; Free and fair elections; Judicial review; Balance between Fundamental Rights and Directive Principles; The principle of equality; Rule of Law; Powers of the Supreme Court under Articles 32, 136, 141, 142; Social justice; The jurisdiction of the Supreme Court and High Courts; The limited amending power of the Parliament; Harmony and balance between Fundamental Rights and Directive Principles; The concept of social and economic justice; The sovereignty of the country; The democratic political system; Freedom and dignity of the individual; Unity and integrity of the Nation; Effective access to justice; Power to amend the Constitution by a special majority.

Significance of Basic Structure

- The Basic Structure doctrine is a significant contribution of the Indian Judiciary to constitutional theory.
- The doctrine has preserved the supremacy of the Constitution, preventing its manipulation by a temporary majority in Parliament.
- It upholds the constitutional principles and fundamental ideals envisioned by the founding fathers of the Constitution.
- It privileges the sustainability of democracy over the certainty of tyranny.
- It acts as a limitation on the constituent power, curbing potential destabilizing forces that could threaten democracy.
- The absence of the doctrine could have led to India's devolution into a totalitarian State or one-party rule, particularly considering amendments made during the Emergency.
- The judiciary has responsibly applied the doctrine, maintaining a high threshold for invoking it.
- **For instance, the 99th Constitutional Amendment Act 2015, which proposed the National Judicial Appointments Commission (NJAC), was struck down due to violating the basic structure of the Constitution.**

Criticism of Basic Structure

- Critics argue the doctrine lacks a textual or constitutional basis, as there is no explicit provision stating the Constitution has a basic structure that is beyond amendment.
- Critics see the doctrine as an overreach of the judiciary into the legislature's territory, posing a risk to democratic systems where the amending power belongs to the people or their representatives, not to judges.
- The doctrine is subject to individual interpretations by judges, leading to potential subjectivity and personal bias.
- The judiciary, by invoking the basic structure doctrine, acts as a third chamber of the Parliament, potentially rendering parliamentary decisions meaningless.
- Critics argue that amendments may be necessary to change the original intentions of the Constitution framers to suit current needs, which the doctrine may hinder.

The Doctrine of Basic Structure: Current Implications and Future Perspectives

- As of today, the doctrine of the basic structure remains one of the essential aspects of the Indian Constitution.
- Its implications continue to be discussed in contemporary legal and political spheres.

- Future debates and constitutional amendments are likely to further refine our understanding of the basic structure.
- The Basic Features doctrine is recognized and appreciated globally, with countries like Bangladesh, Pakistan, and Uganda adopting similar measures.
- In India, the doctrine forms the bedrock of judicial review for all laws passed by Parliament.
- The doctrine acts as a safety valve against majoritarianism and authoritarianism, thus protecting the constitution and democracy in India.
- However, issues surrounding the doctrine's subjectivity must be addressed, potentially through codification of basic features by judicial and parliamentary cooperation.

I.R. COELHO CASE

- The I.R. Coelho case is a landmark judgment that further cemented the concept of the Basic Structure doctrine in Indian constitutional law.
- **The main aspects of the case are as follows:**
 - **Invalidation of Ninth Schedule Laws:** The Supreme Court in the I.R. Coelho case held that laws placed in the Ninth Schedule after April 24, 1973 (date of Kesavananda Bharati judgment), which violate the basic structure of the Constitution, are open to judicial review and can be invalidated.
 - **Significance of Judicial Review:** The ruling underscored the importance of judicial review as a part of the basic structure. It was established that even laws placed in the Ninth Schedule are not immune from judicial scrutiny.
 - **Ensuring Constitutionality:** The judgment solidified the concept that no part of the Constitution, including the power of amendment, is beyond the purview of judicial review, which maintains the constitutionality of laws and acts as a safeguard against arbitrary legislative or executive actions.
 - **Preserving Basic Structure:** The judgment also indicated that any constitutional amendment which infringes the basic structure of the Constitution would be void. It thus reinforced the importance of preserving the core values and principles embodied in the Constitution.

The Basic Structure doctrine, an innovative judicial concept emanating from India, has played a pivotal role in safeguarding the tenets of the Indian Constitution from arbitrary amendments. Its significant contributions to constitutional theory have been recognized and adopted by several other countries, asserting its global relevance.

PREVIOUS YEAR QUESTIONS

1. "Parliament's power to amend the constitution is a limited power and it cannot be enlarged into absolute power". In the light of this statement explain whether parliament under article 368 of the constitution can destroy the Basic structure of the constitution by expanding its amending power? (2019)
2. What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution? (2016)

3.SIGNIFICANT PROVISIONS IN THE INDIAN CONSTITUTION

- India, also known as Bharat, is a sovereign, socialist, secular, democratic republic with a parliamentary system of government. It is a Union of States that is governed according to the Constitution of India. This Constitution, adopted on 26th November 1949 and put into effect on 26th January 1950, outlines the federal structure of the government, albeit with unitary features.
- **Significant Provisions of the Indian Constitution:** The provisions encapsulate the fundamental elements of the Constitution, which are – Preamble; Fundamental Rights; Fundamental Duties; Directive Principles of State Policy; Universal Adult Franchise; Single Citizenship; Separation of Powers.

SIGNIFICANT PROVISIONS: AN IN-DEPTH ANALYSIS

- **Preamble**

- The Preamble sets the tone for the entire Constitution. It gives a succinct overview of India's nature and the Constitution's objectives.
- It has come under scrutiny from various quarters, with debates on whether the terms 'socialist' and 'secular' should be removed or retained.
- **Fundamental Rights**
 - Fundamental rights provide a set of justiciable (legally enforceable) rights covering civil rights, political rights, and procedural rights.
 - They are a vital component of our constitutional law and governance.
 - They safeguard the citizens against any arbitrary and absolute exercise of power by the State.
 - The recent controversy over the Citizenship Amendment Act (CAA), 2019, brings the debate on the right to equality and the principle of secularism to the fore.
- **Universal Adult Franchise**
 - The provision of Universal Adult Franchise grants every adult citizen of the country the right to vote, regardless of their caste, colour, creed, or sex.
 - It is a testament to the democratic principle of political equality.
 - However, the ongoing debates about the effects of illiteracy and ignorance on the quality of democratic participation focus on this provision.
- **Single Citizenship**
 - Single Citizenship provision, a unique feature of our Constitution, implies that all citizens irrespective of the state they reside in, enjoy the same rights of citizenship.
 - In light of issues related to interstate migration and the National Register of Citizens (NRC), this provision is of great relevance.
- **Separation of Powers**
 - The Separation of Powers is a method to distribute authority so that no single body has absolute power.
 - The Judiciary's role as the guardian of the Constitution, especially during discussions on judicial overreach, highlights this provision's importance.

PREAMBLE

The Preamble of the Constitution sets out its guiding principles and purpose. It establishes the source of the Constitution's authority – the people of India. This section drafted by Vengalil Krishnan Krishna Menon outlines the characteristics of the Indian State and the objectives of the Constitution. **Keywords in the Preamble are as following:**

Sovereign

- The term 'Sovereign' signifies the independent authority of a state.
- Internally, it implies the state's absolute power to legislate on any subject.
- Externally, it ensures the state is not subject to any external power's control.
- Digital sovereignty, an emerging dimension of sovereignty in the age of social media, focuses on the governance of digital resources and cybersecurity.
- In an era of global interdependence, India's sovereignty continues to adapt.
- Issues like cybersecurity, data privacy, and border disputes underscore the complexity of maintaining sovereignty in today's world.

Socialist

- 'Socialist' denotes the state's commitment to achieving social, economic, and political justice for its citizens.
- Inserted into the Constitution by the 42nd Amendment Act, 1976, it envisions a 'mixed economy' where public and private sectors coexist.
- The concept of socialism has taken new dimensions in the era of liberalization, privatization, and globalization (LPG).
- Balancing public welfare with market forces is a significant challenge in pursuing this objective.

Secular

- A 'Secular' state, India does not uphold any religion as the State religion.
- Instead, it ensures equal protection of all religions, unlike the Western model of secularism where state and religion share no relationship.
- In the current socio-political scenario, India's secular fabric is increasingly under scrutiny.
- The rise of communal politics, hate crimes, and religious intolerance poses challenges to India's secular ethos.
- **Lessons from Indian Constitution's Approach to Secularism for France**
 - **Inclusive Secularism:** The Indian Constitution promotes a secularism based on respect for all religions. In contrast to French laïcité which separates church and state, Indian secularism upholds the coexistence of different religions. This approach can help promote religious harmony in France's diverse society.
 - **Religious Freedom:** The Indian Constitution upholds freedom of religion and conscience, while treating all religions equally. This could provide a model for France to manage its religious diversity.
 - **Interfaith Dialogue:** India's approach encourages dialogue between different religious communities, fostering understanding and harmony. France can leverage this approach to address issues of religious friction.
 - **Balanced Approach:** The Indian Constitution's secular approach balances the rights of individuals with the need for social harmony. France can learn from this balance to address its own challenges with religious extremism and social integration.

Democratic

- 'Democratic' signifies a form of government that gets its authority from the will of the people.
- In the Preamble, it is used to underscore political, economic, and social democracy.

- India's democracy is going through significant trials with issues like electoral reforms, money and muscle power in politics, criminalization of politics, and ensuring representation of marginalized communities being hot topics of discussion.

Republic

- 'Republic' means that the head of the state, the President, is elected either directly or indirectly by the people.
- It highlights the political sovereignty vested in the people, contrasting with a monarchy where the head of the state inherits the position.
- India, as a Republic, is grappling with maintaining its egalitarian promise in the face of rising socio-economic inequalities.
- The goal of achieving substantive equality remains a key issue.

Justice

- Justice in the Preamble refers to social, economic, and political justice.
- **Social Justice:** Ensuring equal status in society for all.
Recent Context: Inclusion and acceptance of the LGBTQIA+ community as indicated by the Madras High Court's directions.
- **Economic Justice:** Ensuring equitable distribution of wealth.
○ **Recent Context:** The Stand-Up India Scheme to promote entrepreneurship among women and SC/ST communities, India's slipping ranks in SDG Index due to challenges in achieving food security, gender equality, and promoting inclusive industrialisation.
- **Political Justice:** Providing equal political rights to all citizens.
○ **Recent Context:** "Right to access to justice" guaranteed under Article 21 includes the right to access live court proceedings, which was emphasised during the pandemic.

Liberty

- Liberty refers to the freedom of thought, expression, belief, faith, and worship.
- **Recent Context:** Interpretations of Article 21 have highlighted the balance between personal liberty and societal norms, with debates surrounding the rights of married minors and live-in couples.

Equality

- Equality refers to ensuring no discrimination or privileges against any section of society.
- **Recent Context:** The 2020-21 SDG India Index indicated poor performance in gender inequality, pointing to the need for improved measures. Oxfam Report highlighted the rising economic inequality. Legal recognition and protection for the LGBTQIA+ community and tribal rights contribute to social equality.

Fraternity

- Fraternity signifies a sense of brotherhood, assuring the dignity of the individual and the unity and integrity of the nation.
- **Recent Context:** The pandemic has highlighted the need for a sense of unity and fraternity, as seen in the debates around vaccine distribution and the discrimination against certain communities.

SIGNIFICANCE OF PREAMBLE

- The Preamble embodies the Constitution's source, philosophy, and fundamental values.
- It gives the Constitution direction and purpose, reflecting the values of the freedom struggle and acting as a constant reminder to lawmakers.
- Though not directly enforceable in court, the Preamble helps interpret ambiguous language in the Constitution's Articles.

AMENDABILITY OF PREAMBLE

- The question of whether the Preamble can be amended has been discussed in several landmark cases.
- Initially, in the *Berubari Case* (1960), the Supreme Court stated that the Preamble was not a part of the Constitution and could not be amended.
- However, in the *Kesavananda Bharati Case* (1973), the court stated that the Preamble is a part of the Constitution and can be amended, provided the Constitution's basic structure is not compromised.
- Recent proposals have included a move to replace the word "socialist" with "equitable" in the Preamble.

Nehru and Preamble

Jawaharlal Nehru highlighted the importance of economic democracy and removing inequalities for the meaning of a vote to be significant. He advocated that political democracy should be used to increasingly achieve economic democracy.

The Preamble embodies the values that guided India's freedom struggle and serves as the foundation for the country's democratic structure. These values are crucial to the nation's progress and the pursuit of justice, liberty, equality, and fraternity.

PREVIOUS YEAR QUESTIONS

1. What can France learn from the Indian Constitution's approach to secularism? (2019)
2. Discuss each adjective attached to the word 'Republic' in the 'Preamble'. Are they defensible in the present circumstances? (2016)

FUNDAMENTAL RIGHTS

The Constitution of India provides six Fundamental Rights, which are:

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 FUNDAMENTAL RIGHTS ARE NECESSARY?

- Promote political democracy.
- Safeguard individual liberties against state invasion.
- Foster all-round development of individuals and the country.
- Prevent authoritarian and dictatorial rule.
- Act as a bulwark against the tyranny of the executive and arbitrary laws of the legislature.

Relation Between Fundamental Rights and Democracy

- The essence of democracy is deeply intertwined with human rights, which are enshrined in our constitution as Fundamental Rights.
- The extent of enjoyment of these rights by the citizens forms a frame of reference for democracy, as these rights are executed by a government elected by the people.

DISTINCTIVE FEATURES OF FUNDAMENTAL RIGHTS

- Availability to all persons, with some rights exclusive to citizens.
- Existence of reasonable restrictions.
- Protection against authoritarian tendencies.
- A combination of negative (restrictive) and positive (privilege-conferring) characteristics.
- Justiciability and defence by the Supreme Court.
- Direct enforceability, with some exceptions.
- Possible restrictions under certain circumstances, like martial law.
- Susceptibility to curtailment or repeal through a constitutional amendment, barring the basic structure.
- Limited operational scope due to Articles 31A, 31B, and 31C.

ARTICLE 12

- Article 12 provides an expansive definition of 'State,' encompassing:
 - Government and Parliament of India.
 - Government and legislature of states.
 - All local authorities.
 - All other authorities, both statutory and non-statutory.
- Judiciary's position within the definition of the state under Article 12 is contingent upon its judicial and non-judicial functions. When acting in its judicial capacity, it is not regarded as a State. However, its administrative action is amenable to the writ jurisdiction.
- The United Nations does not qualify as a 'State' under Article 12, and its actions are beyond the jurisdiction of Article 226.

ARTICLE 13

- Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. Thus, it expressly provides for the doctrine of judicial review.
- The power of Judicial Review has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Right.
- The term 'Law' has a wider meaning and any of the following can be challenged in the courts as violating a Fundamental Right and hence, can be declared as void.]
 - Permanent laws enacted by the Parliament or the state legislatures.
 - Temporary laws like ordinances issued by the president or the state governors.
 - Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification.
 - Non-legislative sources of law such as custom or usage having the force of law.
- A constitutional amendment is not a law and hence cannot be challenged.
- However, the Supreme Court held in the Kesavananda Bharati case (1973) that a Constitutional amendment can be challenged on the ground that it violates a fundamental right that forms a part of the 'basic structure' of the Constitution.

Inclusion of Personal Laws under Article 13

- **AIMPLB's Stance:** The All-India Muslim Personal Law Board (AIMPLB) contends the Supreme Court cannot nullify personal law provisions.
- **Bombay HC Ruling:** The 1951 Bombay HC ruling (State of Bombay vs Narasu Appa Mali) determined personal law isn't 'law' under Article 13.
- **Shayara Bano Case (2017) Verdict:** SC ruled Shariat Act, being pre-constitutional legislation, falls under "laws in force" as per Article 13(3)(b) and can be struck by Article 13(1) if inconsistent with Part III of the Constitution.

RIGHT TO EQUALITY (ARTICLE 14 -18)

- Right to Equality, enshrined from Article 14 to 18 in the Constitution of India, forms the cornerstone of our democratic nation, championing the principle of equality among all citizens.
- Article 14, in particular, forbids discrimination and endorses equal protection under the law.

Exploring Article 14: Equality before law

- Article 14 asserts that no person will be denied Equality before Law or Equal Protection of Law within Indian territory.

Equality before Law vs Equal Protection of Laws

- **Equality before law:** An idea of British origin, it negates any special privileges in favor of any person, subjects all persons to ordinary law, and affirms that no person is above the law.
- **Equal protection of laws:** An American concept, it calls for equal treatment under identical circumstances and consistent application of the same laws to all persons in similar situations.

Exceptions under Article 14

- **Special Provisions:** The state **can make special provisions for women, children, socially and economically backward classes, SCs, STs in public educational institutions as per 1st Constitutional Amendment Act, 1951.**
- **Admission Provisions:** The state can provide **special provisions for backward classes, SCs, STs for admission to educational institutions** including private ones except minority education institutions (**93rd Constitutional Amendment Act, 2005**).

- **Economically Weaker Sections (EWS):** The state can make special provisions for EWS, including reservations in educational institutions (103rd Constitutional Amendment Act, 2019).
- **Presidential and Gubernatorial Immunities:** Article 361 grants certain immunities to the President of India and the Governors of States.
- **Parliamentary Privileges:** MPs and State Assembly members enjoy privileges and immunities **under Articles 105 and 194 respectively.**

ARTICLE 15: PROHIBITION OF DISCRIMINATION

- State and private individuals cannot discriminate on grounds of religion, race, caste, sex, place of birth.
- **Exceptions:** Special provision for women and children, SCs & STs, and socially and educationally backward classes of citizens.
- **Reservation Policy:**
 - Current reservation: SC (15%), ST (7.5%), OBC (27%), PwD (3%) and EWS (10%)
 - Supreme Court cases related to reservation: Champakam Dorairajan Case (1951), Indra Sawhney Case (1992), M. Nagaraj Case (2006), Jarnail Singh Case (2018).

ARTICLE 16: EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT

- No discrimination or ineligibility for any employment or office under the State on grounds of religion, race, caste, sex, descent, place of birth, or residence.
- **Exceptions:**
 - Parliament can prescribe residence as a condition in employment.
 - Reservation for backward classes not adequately represented in the state services.
 - Certain religious or denominational institutions may require members to belong to that particular religion or denomination.
- **Recent Developments:**
 - Demand for local reservation in private sector jobs
 - Supreme Court setting aside the order which stayed the operation of Haryana State Employment of Local Candidates Act 2020.
 - Creamy Layer Criteria for SC/ST in Promotions: Review of Jarnail Singh Case
 - Reservation in Promotion not a Fundamental Right: SC Judgement
 - Reservations Based on Place of Birth: Madhya Pradesh Law

ARTICLE 17: ABOLITION OF UNTOUCHABILITY

- Abolition of untouchability in any form.
- Protection of Civil Rights Act, 1955
- Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989: Its main objective is prevention of atrocities on SCs and STs by increased surveillance.
- **Recent Developments:**
 - Subhash Kashinath Mahajan case (2018) and its amendment through SC and ST (Prevention of Atrocities) Amendment Act, 2018.
 - Prithvi Raj Chouhan Case (2020)
 - Maharashtra's law against social boycott

ARTICLE 18: ABOLITION OF TITLES

- No title, not being a military or academic distinction, shall be conferred by the State.
- Abolition of hereditary titles of nobility conferred by colonial States
- **Recent Developments:** Balaji Raghavan case (1994) allowing the State to give Bharat Ratna and Padma awards but these couldn't be used as a title.

ARTICLE 19

- **Article 19(1)** of the Indian constitution outlines six rights guaranteed to all citizens of India.
- The rights under Article 19(1) are protected against state action and are available to citizens and shareholders of a company but not to foreigners or legal persons such as companies or corporations.

Rights under Article 19(1):

- **Freedom of Speech and Expression:** Fundamental right to articulate one's opinions and ideas without fear of retaliation, censorship, or legal sanction.
- **Right to Assemble Peaceably and without Arms:** The right to come together and collectively express, promote, pursue, and defend common interests.
- **Right to Form Associations or Unions [or Co-operative Societies]:** The right to join with others to collectively express, promote, pursue, and defend common interests.
- **Right to Move Freely throughout the Territory of India:** Allows citizens to move freely within the territory of India – though this right can be restricted in the interests of the general public or Scheduled Tribes.
- **Right to Reside and Settle in any Part of the Territory of India:** The right to live and settle in any part of the territory of India.
- **Right to Practise any Profession, or to Carry on any Occupation, Trade or Business:** The right to conduct any lawful profession, or to carry on any occupation, trade, or business.
- **Article 19(2) permits the State to impose 'reasonable restrictions'** on these rights based on the grounds mentioned in the Article.

LANDMARK JUDGMENTS AND CASE STUDIES

- **Shreya Singhal Case (2015)**
 - This case dealt with Section 66A of the Information Technology Act, 2000, which imposed punishments for sending 'grossly offensive' or 'menacing' information using a computer resource or communication device.
 - The Supreme Court struck down Section 66A, establishing its ruling as a pivotal moment for online free speech in India.

ARTICLE 20 (PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES)

- Article 20, which enshrines the principles of legality, double jeopardy, and self-incrimination, serves as a robust defense against arbitrary punishment.
- **Kedar Nath Singh Case (1962):** The Supreme Court upheld the constitutional validity of the sedition law, stating that criticism of the government cannot be considered sedition unless it incites or calls for violence.
- **No ex-post-facto law:** No person shall be (i) convicted of any offence except for violation of a law in force at the time of the commission of the act, nor (ii) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.
- **No double jeopardy:** No person shall be prosecuted and punished for the same offence more than once.
- **No self-incrimination:** No person accused of any offence shall be compelled to be a witness against himself.

SIGNIFICANT CASES

- **The Selvi vs. State of Karnataka case (2010),** where the Supreme Court restricted the use of narco analysis and brain mapping. This reinforces the protection against self-incrimination.
- **D.K. Basu vs. State of West Bengal (1997) case,** which defined the administration of polygraph and narco tests as cruel, inhuman, and degrading treatment, thereby expanding the interpretation of Article 21 to include these forms of treatment.

ARTICLE 21 (PROTECTION OF LIFE AND PERSONAL LIBERTY)

- Article 21 guarantees the right to life and personal liberty, subject to procedure established by law. It's the foundation for a broad range of human rights, including the right to privacy and the right to live with dignity.

Crucial cases:

- **The A.K Gopalan Case (1950)** interpreted 'procedure established by law' narrowly, ruling that protection under Article 21 is only against arbitrary executive action, not arbitrary legislative action.
- **In Menaka Gandhi Case (1978)**, the Supreme Court widened the interpretation of 'procedure established by law' to include protection against arbitrary legislative action as well, similar to the American concept of 'due process of law'.
- **In the Puttaswamy judgment (2017)**, a landmark ruling, the Supreme Court held that privacy was intrinsic to freedom of life and personal liberty. It played a pivotal role in decriminalising homosexuality and abolishing provisions related to adultery.
- **The recent Swapnil Tripathi Case 2018** upheld the right to access justice under Article 21.

Conflict between Article 19(6) and 21

- There can be a potential conflict between Article 19(6), which allows for reasonable restrictions on the right to trade, and Article 21, which safeguards the right to employment.
- The principle of balance between public and private interests, as laid out in the **Chintaman Rao V State of MP case**, ensures that restrictions under Article 19(6) don't disproportionately infringe upon the right to employment under Article 21.

Article 21: Right to Privacy versus Right to be Forgotten

- The Right to be Forgotten, which refers to the ability of individuals to limit, de-link, delete, or correct the disclosure of personal information on the internet, is a relatively new concept in Indian jurisprudence.
- It's a significant aspect of data protection and privacy, as emphasized by the BN Srikrishna committee.
- While recognizing this right, it is crucial to ensure it doesn't infringe upon the freedom of speech and expression, and the right to information of other citizens.
- Balancing these rights can present challenges due to the global nature of the internet and the differing legal norms across jurisdictions.

ARTICLE 21A (RIGHT TO EDUCATION, 86TH AMENDMENT ACT 2002)

- This article **mandates free and compulsory education for all children aged 6-14**, implemented through the Right of Children to Free and Compulsory Education Act, 2009.
- **The recent National Education Policy 2020 expanded the age bracket for compulsory education to 3-18 years**, addressing the need for early childhood education and extending the provision of education till higher secondary school.

ARTICLE 22 (PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES)

• Ordinary Law Conditions:

- **Right to be informed of grounds for arrest:** This ensures the arrested person is fully aware of why they are being detained. This also includes being informed of the right to bail.
- **Right to consult and be defended by a legal practitioner:** This is the fundamental right to legal representation, ensuring that the accused has access to legal advice and defense.

- **Right to be produced before a magistrate within 24 hours:** This prevents undue detention without judicial oversight, ensuring prompt investigation and minimizing the potential for misuse of power.
- **Right to be released after 24 hours unless authorized by magistrate:** This continues the protection against arbitrary detention.
- **Preventive Detention Conditions:**
- **Detention of a person cannot exceed three months without an advisory board report:** Prevents prolonged detention without adequate justification.
- **Grounds of detention should be communicated to the detenu:** Ensures transparency and gives the detained person an opportunity to dispute the grounds of their detention.

RIGHT AGAINST EXPLOITATION (ARTICLE 23 -24)

ARTICLE 23 (PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR)

- **Traffic in Human Beings:** The article aims to combat human trafficking, a grave issue that exploits individuals for purposes such as forced labour, sex trafficking, and organ trafficking.
- **Begar (Forced Labour):** It refers to the practice of compelling individuals to work without payment, which is a gross violation of human rights.
- **PUDR vs. Union of India:** A landmark judgement reinforcing the right against forced labour, ruling that economic compulsion that leaves no choice for a person and compels them to provide labour or service also constitutes forced labour.
- **Labour Law Issues: Modifications to labour laws during COVID-19** have raised concerns regarding workers' rights. Worker exploitation can increase due to unchecked economic power of employers, leading to longer working hours and lesser pay.

ARTICLE 24 (PROHIBITION OF EMPLOYMENT OF CHILDREN IN FACTORIES, ETC.)

- This article explicitly prohibits child labour. However, child labour is still a pressing issue in many sectors of the Indian economy, often fueled by poverty and lack of education.

RIGHT TO FREEDOM OF RELIGION (ARTICLE 25 -28)

- India's Constitution, recognising the country's profound religious diversity, confers the right to freedom of religion as a fundamental right.
- **Embodying the principles of secularism, these rights allow individuals and communities to practice their faith without fear of discrimination, subject to public order, morality, and health.**

ARTICLE 25:

- Article 25 guarantees the freedom of conscience and the right to freely profess, practice, and propagate religion, with certain limitations to ensure public order, morality, and health.
- It extends to religious beliefs (doctrines) and religious practices (rituals).
- The State is permitted to regulate or restrict any secular activity associated with religious practice and provide for social welfare and reform.
- The Karnataka High Court's recent ruling that wearing hijabs is not an essential religious practice in Islamic law highlights the interpretation of this Article in contemporary times.

ARTICLE 26:

- This article confers on every religious denomination the freedom to manage its religious affairs, own and acquire movable and immovable property, and administer it according to law.
- The contrast between Articles 25 and 26 is noteworthy: while Article 25 protects individual religious rights, Article 26 safeguards collective religious freedoms.

ARTICLE 27:

- Article 27 prevents an individual from being compelled to pay taxes for the promotion or maintenance of a particular religion.
- This provision ensures the state doesn't favor or patronize one religion over another, maintaining its secular character.

ARTICLE 28:

- It prohibits religious instructions in any educational institution that is wholly funded by the state.
- However, this doesn't apply to educational institutions administered by the state but established under endowments or trusts requiring religious instruction.

CULTURAL AND EDUCATIONAL RIGHTS (ARTICLE 29 -30)

The Constitution, appreciating India's vast cultural diversity, also protects cultural and educational rights under Articles 29 and 30, ensuring that no minority group is alienated or marginalized.

ARTICLE 29:

- Article 29 defends both individual and group rights, allowing citizens to conserve their distinct language, script, or culture and preventing them from being denied admission to state-maintained or aided institutions on discriminatory grounds.

ARTICLE 30:

- All minorities, whether based on **religion** or **language**, shall have the right to establish and administer educational institutions of their choice.
- It also includes the **right of a minority** to impart education to its children **in its own language**.
- The right to establish and administer educational institutions is **not absolute**. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence.
- The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.
- **Article 30(1A)** deals with the fixation of the amount for acquisition of property of any educational institution established by minority groups.

REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART (ARTICLE 32)

- A mere declaration of fundamental rights in the Constitution is meaningless, useless and worthless without providing an effective machinery for their enforcement, if and when they are violated.
- Hence, Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen. Supreme Court has ruled that **Article 32 is a basic feature of the Constitution**.
- That is why Dr Ambedkar called Article 32 as the most important article of the Constitution '**an article without which this constitution would be a nullity**.' It is the very soul of the Constitution and the very heart of it'
- Parliament can empower any other court to issue directions, orders and writs of all kinds.

- The Constitution provides that the President can suspended the right to move any court for the enforcement of the FR during National Emergency (**Article 359**).
- Recently, the Supreme Court had said that the right to approach the Supreme Court under Article 32 is itself a fundamental right and that “there is no doubt that if a citizen of India is deterred in any case from approaching this Court in exercise of his right under Article 32 of the Constitution of India, **it would amount to a serious and direct interference in the administration of justice in the country**”.

WRITS POWER

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

- **Habeas Corpus:**
 - It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it.
 - The court then examines the cause and legality of detention.
 - It can be issued against both public authorities as well as private individuals.
- **Mandamus:**
 - It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform.
 - It can also be issued against any public body, a corporation, an inferior court, a tribunal or government for the same purpose.
- **Prohibition:**
 - It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
- **Certiorari:**
 - It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case.
 - It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law.
- **Quo-Warranto:**
 - It is issued by the court to enquire into the legality of claim of a person to a public office.
 - Hence, it prevents illegal usurpation of public office by a person.

ARMED FORCES AND FUNDAMENTAL RIGHTS

- **Article 33** empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces.
- The objective of this provision is to ensure the proper discharge of their duties and the maintenance of discipline among them.

MARTIAL LAWS AND FUNDAMENTAL RIGHTS

- Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India.
- It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force.

LEGISLATION TO GIVE EFFECT TO THE PROVISIONS OF THIS PART (ARTICLE 35)

- Article 35 lays down that the **power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament** and not in the state legislatures.
- **It contains the following provisions:**
 - Prescribing residence as a condition for certain employments or appointments in a state or union

territory or local authority or other authority (Article 16).

- Empowering courts other than the Supreme Court and the high courts to issue writs of all kinds for the enforcement of fundamental rights (Article 32).
- Restricting or abrogating the application of Fundamental Rights to members of armed forces, police forces, etc. (Article 33).
- Indemnifying any government servant or any other person for any act done during the operation of martial law in any area (Article 34).

RIGHT TO PROPERTY

- The **44th Amendment Act of 1978** abolished the right to property as a Fundamental Right by repealing Article 19(1)(f) and Article 31 from Part III.
- The Act inserted a new **Article 300A in Part XII** under the heading '**Right to Property**'. Thus, it is a **legal right or a constitutional right** but not fundamental right.
- Though the Fundamental Right to Property under Part III has been abolished, the Part III still carries two provisions. It guaranteed right to compensation:
 1. When the State acquires the property of a minority educational institution (Article 30)
 2. When the State acquires the land held by a person under his personal cultivation and the land is within the statutory ceiling limits (Article 31 A).

EXCEPTIONS TO FUNDAMENTAL RIGHTS

- **Article 31 A:** It saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 and Article 19. They are related to agricultural land reforms, industry and commerce.
- **Article 31B:** It saves the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the fundamental rights.
 - In **I.R. Coelho case (2007)**, the Supreme Court ruled that there could not be any blanket immunity from judicial review of laws included in the Ninth Schedule.
 - **laws placed under the Ninth Schedule after April 24, 1973, are open to challenge in court** if they violated fundamentals right or basic features of constitution.
- **Article 31C**, as inserted by the 25th Amendment Act of 1971, contained the following two provisions –
 - No law that seeks to implement the socialistic directive principles specified in Article 39(b) 21 or (c) shall be void on the ground of contravention of the fundamental rights conferred by Article 14 or Article 19.
 - No law containing a declaration that it is for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.
 - In the **Kesavananda Bharati case 23 (1973)**, the SC declared the above second provision of Article 31C as unconstitutional and invalid on the ground that judicial review is a basic feature of the Constitution and hence, cannot be taken away.
 - However, the above **first provision of Article 31C was held to be constitutional and valid.**

AMENDABILITY OF FUNDAMENTAL RIGHTS

- **Shankari Prasad Case 1951:** The Supreme Court ruled that the power of the Parliament to amend the Constitution under Article 368 also includes the power to amend Fundamental Rights.
- **Golaknath Case 1967:** The SC reversed its earlier stand and ruled that the Fundamental Rights are given a 'transcendental and immutable' position and hence, the Parliament cannot abridge or take away any of these rights.
- **Kesavananda Bharati Case 1973:** The SC ruled that Parliament is empowered to abridge or take away any of the Fundamental Rights. At the same time, it laid down a new **doctrine of the 'basic structure'**.

- It ruled that the power of Parliament **under Article 368** does not enable it to alter the 'basic structure' of the Constitution.
- This means that the **Parliament cannot abridge or take away a Fundamental Right that forms a part of the 'basic structure' of the Constitution.**

SIGNIFICANCE OF FUNDAMENTAL RIGHTS

- **Safeguarding people's interests:** Fundamental rights are very important because they are like the backbone of the country. They are essential for safeguarding the people's interests.
- **Intellectual Wellbeing:** Fundamental Rights play a significant role because they are most essential for the attainment of the full intellectual, moral, and spiritual status of an individual.
- **Individual Dignity:** The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity.
- **Democracy and FR:** The writers of the constitution regarded democracy to no avail if civil liberties, like freedom of speech and religion, were not recognised and protected by the State.
- **Protector of Human Rights:** The fundamental rights help not only in protection but also the prevention of gross violations of human rights.
- **Equality without discrimination:** They emphasise on the fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background.
- **Protection against individuals too:** Fundamental rights primarily protect individuals from any arbitrary state actions, but some rights are enforceable against individuals. **Example:** untouchability and begar.

ISSUES AND CHALLENGES PERTAINING TO IMPLEMENTATION OF FR:

- **Interpretation issue:** The FRs have been at helm of judicial interpretation. E.g. evolving interpretation of Article 19 and 21.
- **Suspension:** Fundamental rights can be suspended during National Emergency **except** Article 20 and 21.
- **Immunities:** Certain privileges/ immunities enjoyed by president and governor under **Article 361. for ex -** The President or the Governor is not answerable to any court for the exercise of the powers and duties of his office.
- **Privileges:** Art. 105 and Art. 194 of the Indian Constitution lay down the **powers, privileges and immunities** of Members of Parliament (MPs) and State Assemblies respectively.
- **Article 31C is an exception:** Laws made to implement Article 39(b) and 39(c) cannot be challenged on the ground that they are in violation of Article 14.
- **False sense of implementation:** There are back door mechanism through which FRs are violated. E.g. Right to Privacy is a FR but have been diluted through state surveillance.
- **Missing horizontal implementation:** Due to increase in private sector it has become default to enforce the FRs against them. (Vertical implementation pertains to government)
- **Delayed judicial remedy:** Pendency of cases having crossed 4.4 crore across all courts thus Delayed justice is denied justice.

CONCLUSION

The true democracy could not exist without ensuring the dignity and equality of individuals against the state as well as from social majorities. It was only with fundamental rights that **an individual can rise from the status of subject to that of 'citizen'.**

PREVIOUS YEAR QUESTIONS

1. “Right of movement and residence throughout the territory of India are freely available to the Indian citizens, but these rights are not absolute.” Comment. (2022)
2. Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. (2017)
3. Does the right to clean the environment entail legal regulations on burning crackers during Diwali? Discuss in the light of Article 21 of the Indian Constitution and Judgement(s) of the Apex Court in this regard. (2015)
4. What do you understand by the concept “freedom of speech and expression”? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss. (2014)
5. Discuss Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution. (2013)



DPSP (PART IV, ARTICLE 36-51)

The Directive Principles of State Policy (DPSP) has been taken from the **Irish constitution**. They are an '**instrument of instructions**' which are enumerated in the Government of India Act, 1935.

- The concept behind the DPSP is to create a '**Welfare State**'. They seek to establish **economic and social democracy** in the country.
- According to Dr B R Ambedkar, these principles are '**novel features**' of the Constitution. DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. But DPSPs are **not legally enforceable** by the courts for their violation.

CONSTITUTIONAL PROVISIONS FOR DPSP

Article Number	What it says
Article 36	Defines State as same as Article 12 unless the context otherwise defines.
Article 37	Application of the Principles contained in this part.
Article 38	It authorizes the state to secure a social order for the promotion of the welfare of people.
Article 39	Certain principles of policies to be followed by the state.
Article 39A	Equal justice and free legal aid.
Article 40	Organization of village panchayats.
Article 41	Right to work, to education and to public assistance in certain cases.
Article 42	Provision for just and humane conditions of work and maternity leaves.
Article 43	Living wage etc. for workers.
Article 43-A	Participation of workers in management of industries.
Article 43-B	Promotion of cooperative societies.
Article 44	Uniform civil code for the citizens.
Article 45	Provision for early childhood care and education to children below the age of six years.
Article 46	Promotion of education and economic interests of SC, ST, and other weaker sections.
Article 47	Duty of the state to raise the level of nutrition and the standard of living and to improve public health.
Article 48	Organization of agriculture and animal husbandry.
Article 48-A	Protection and improvement of environment and safeguarding of forests and wildlife.
Article 49	Protection of monuments and places and objects of national importance.
Article 50	Separation of judiciary from the executive.
Article 51	Promotion of international peace and security.

CONFLICT BETWEEN DPSP AND FR

- **After the Minerva Mills Case**, The Supreme Court held the view that there is no conflict between the Fundamental Rights and the DPSP and they were complimentary of each other. There was no need to sacrifice one for the sake of the other.

- If there is a conflict it should be avoided as far as possible. Fundamental Rights and the Directive Principles of State Policy needed to be balanced and harmonised if they were to reap social order and empower people.

IMPLEMENTATION OF DPSP

- From 1950, onwards various programmes have been implemented to give effect to the Directive Principles.
- **Some examples being:**

Article 40	The 73rd Amendment Act for 3rd tier i.e., village panchayat
Article 42	Code on Social Security, 2020- provides for maternity leaves
Article 45	Right of Children to Free and Compulsory Education Act, 2009 to provide for compulsory education to children between the ages of 6 and 14.
Article 43	Mahatma Gandhi National Rural Employment Guarantee Act for promoting inclusive development through guaranteed wages.
Article 44	There have been various discussions from bodies like the Law Commission etc. on implementation of Uniform Civil Code. In Goa it is already in place.
Article 47	Gujarat and Bihar have prohibited sale and consumption of liquor within their states

UNIFORM CIVIL CODE: QUEST FOR A UNIFORM CIVIL CODE - A PATH TOWARDS A UNIFIED NATION

- As we stride into the 21st century, India stands tall as a sovereign, socialist, secular, and democratic republic.
- In its mission to uphold these principles, it navigates the complex societal fabric stitched together by diverse cultural, religious, and linguistic threads.
- **One such stride is the pursuit of a Uniform Civil Code (UCC) as enshrined in Article 44 of our Constitution, under the Directive Principles of State Policy.**
- A UCC aims to replace the personal laws based on the scriptures and customs of each major religious community in India with a common set of laws governing every citizen.
- It will not only uphold the principle of equality, as guaranteed under Article 14 of the Constitution but also simplify the myriad personal laws currently in force.
- A UCC aims to ensure gender justice, offering equal rights to women, who have traditionally been disadvantaged by biased personal laws.
- Furthermore, it is seen as a tool to foster national integration by eliminating divisive loyalties to laws based on religious practices.
- However, the quest for UCC is fraught with challenges, including respect for the diversity of personal laws, fear of homogenization of unique traditions, and possible opposition from religious communities.
- It's important to pursue the UCC not as a symbol of homogeneity but as a beacon for unity in diversity, affirming India's commitment to equality and secularism, and its journey towards a modern, progressive nation.

KEY DEVELOPMENTS AND LEGISLATION

Pre-Independence:

- **Lex Loci Report (1840):** Emphasized the need for uniform codification of laws, but suggested exclusion of personal laws.
- **Queen's 1859 Proclamation:** Promised non-interference in religious matters.
- **BN Rau Committee (1941):** Established to codify Hindu law due to increasing legislation on personal matters.

Post-Independence:

- **Inclusion in DPSP (Directive Principles of State Policy):** Indicated the aspiration for UCC.
- **Hindu Succession Act 1956:** Codified law for intestate succession among Hindus, Buddhists, Jains, and Sikhs.
- **Special Marriage Act 1954:** Provided a legal framework for civil marriages outside religious personal law.

Supreme Court Verdicts:

- **Shah Bano Case (1985):** Called for Parliament to outline the UCC.
- **Sarla Mudgal Case (1995):** Addressed the issue of bigamy and conflict between personal laws on matters of marriage.
- **Shayara Bano Vs. Union of India Case (2017):** Challenged the practice of Triple Talaq and declared it unconstitutional.

The Need for Uniform Civil Code:

- **Ensuring Equality:** UCC would eradicate religious biases in personal laws, ensuring equal rights and privileges for all citizens.
- **Simplification of Laws:** UCC would unify and simplify diverse and complex personal laws.
- **Promoting Gender Justice:** By superseding existing personal laws, UCC would eliminate gender biases.
- **Freedom of Choice:** A religion-neutral personal law would protect inter-caste and inter-religious marriages.
- **Protection to Vulnerable Sections:** UCC would safeguard the rights of women and religious minorities.
- **Adherence to Secularism:** A UCC is essential for a secular republic to provide a common law for all its citizens.
- **National Integration:** UCC would separate religion from social relations, fostering unity and harmony in society.
- **Indication of a Progressive Nation:** Implementing a UCC signals that a country has moved beyond caste and religious politics towards social development.

Challenges and Issues:

- **Interference in Personal Matters:** UCC may be perceived as a reduction in the scope of freedom of religion.
- **Threat to Plurality and Diversity:** The imposition of uniformity might jeopardize the cultural and religious diversity.
- **Contradiction to Indian Secularism:** UCC might not align with the spirit of Indian secularism that cherishes diverse identities.
- **Issue of Drafting the UCC:** The challenge of drafting a universally acceptable code.
- **Concerns of Minorities:** The fear of imposition of a majoritarian outlook and erosion of identity.
- **Not Supported by Law Commission (2018):** The commission suggested codification of personal laws rather than a complete UCC.
- **Political Sensitivity:** The issue of UCC has been politicized, causing friction between communities.
- **Constitutional Hurdle:** Potential conflict between the principle of equality (Article 14) and the freedom to practice and propagate any religion (Article 25).

Way Forward:

- **Piecemeal Approach:** Gradual introduction of UCC in stages.
- **Eradication of Discrimination:** Prioritize equity and equality in the process of codification.
- **Inclusive Outlook:** Encourage progressive thinking and understanding of UCC.
- **Public Debate on Personal Laws:** Invite scrutiny and discussion on codified personal laws.
- **Consultation with Experts:** Ensure the drafting process respects all communities.
- **Codification of Personal Laws:** Establish universal principles to ensure equity.
- **Awareness among Citizens:** Promote understanding and acceptance of UCC.
- **Outreach to Communities:** Engage in consultations to draw consensus for reforms.

Implementing a Uniform Civil Code represents a crucial milestone in the journey towards a more inclusive, equal, and secular society in India. However, its implementation demands sensitivity, widespread consultations, and a commitment to respecting the country's diverse cultural fabric. Therefore, while striving for this uniformity, it is essential that the process does not undermine the pluralistic character of the Indian nation, and ensures that every citizen feels seen, heard, and respected.

RIGHT TO HEALTH

- Articles 38, 39, 42, 43, & 47 put the obligation on the state in order to ensure the effective realization of the right to health.

Efforts towards right to health in recent times:

- Recently, the Chief Minister of Rajasthan announced the implementation of the Rajasthan Model of Public Health that would include a Right to Health as well as measures for preventive, primary and curative care as envisioned by the World Health Organisation (WHO).
- **Govt efforts to ensure Right to health:**
 - Budget 2021-22 announced various Aatmanirbhar Bharat Abhiyaan packages by the Government of India, which also include several short-term and longer-term measures to strengthen the health sector.
 - Production-Linked Incentive schemes have been announced to boost domestic manufacture of pharmaceuticals and medical devices.
 - Mission COVID Suraksha has also been launched to promote the development and testing of indigenous vaccine candidates.
 - To ensure food and nutrition security for the poor and the vulnerable during the COVID-19 crisis, the Government of India launched the Pradhan Mantri Garib Kalyan Package for providing free foodgrains to 800 million beneficiaries.
 - To facilitate access to subsidised grains across the country, the **‘One Nation One Ration Card’** scheme has been enabled in 32 States/Union Territories covering 690 million beneficiaries.
 - **Allocations for water, sanitation, nutrition and clean air:** The National Health Policy (NHP), 2017, highlights the close links between health, water and sanitation. This year's Economic Survey too recognises that improvements in access to bare necessities such as water, sanitation and housing are strongly correlated with progress in health indicators.
 - **Pneumococcal vaccine :** Budget 2021 was the government's decision to expand the coverage of the pneumococcal vaccine across the country.
 - Pneumococcal pneumonia is a major killer of children under the age of five years. Once universalised, this indigenously developed vaccine could save up to 50,000 lives annually.

COVID-19 vaccine: The Finance Minister has also made a special allocation of ₹35,000 crore for the COVID-19 vaccine in 2021–22, which could be increased if required.

- The priority accorded to capital expenditure through the launch of the Pradhan Mantri – Aatmanirbhar Swasth Bharat Yojana (PMANSBY).

ACCESSIBLE AND AFFORDABLE JUDICIAL SYSTEM

- **Article 39A** directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way.
- **Recent context:** The Vice President of India has recently raised concerns over making the entire judicial system more accessible and understandable for the common man.
 - **Issue:** Cost of legal processes is one of the major impediments in securing justice to all.
 - **How to ensure Accessible and affordable judicial system:**
 - Innovations like Lok Adalats and mobile courts be leveraged wherever feasible to improve access.
 - Streamlining free legal aid mechanisms and lawyers offering 'pro-bono' services for poor litigants can help in reducing out-of-pocket expenditure for the underprivileged
 - Local language: System needs to be brought closer to the people by conducting court proceedings and delivering judgments in the language of local people.
 - Resolve pendency: We need to find systemic solutions to solve the nearly 4 crore pending cases in the country, with most cases stuck in the lower courts, where around 87 percent of the total pending cases lie.
- Appointments to the courts must also be expedited and vacancies must be filled in a time-bound manner. This will bring great productivity gains especially in the lower court.

Constitution makers had no intention to introduce directive principles of state policy as mere pious declarations. It was the intention of the Constituent Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country.

PREVIOUS YEAR QUESTION

Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy. (2015)

FUNDAMENTAL DUTIES

- India, a democratic republic, secures its democratic fabric through the Indian Constitution, which bestows upon its citizens certain Fundamental Rights and, at the same time, confers upon them certain Fundamental Duties.
- **Embodied in Article 51A of the Indian Constitution**, the Fundamental Duties serve as an ethical and moral compass guiding citizens on their obligations toward the nation, society, and themselves.
- **With roots traced back to the constitution of the USSR, these duties were incorporated in the Indian Constitution on the recommendations of the Swaran Singh Committee in 1976**, during a period marked by the internal emergency.
- **Constitutional Provisions:**
 - Introduced through the 42nd Amendment Act of 1976, the Fundamental Duties were a set of ten duties that were directed towards citizens of India only.
 - A consequential addition was made by the 86th Amendment Act, 2002, which introduced an 11th duty, emphasizing the duty of parents to provide opportunities for education to their child.

FUNDAMENTAL DUTIES (ARTICLE 51A)

- a. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- b. To cherish and follow the noble ideals which inspired our national struggle for freedom.
- c. To uphold and protect the sovereignty, unity, and integrity of India.
- d. To defend the country and render national service when called upon to do so.
- e. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
- f. To value and preserve the rich heritage of our composite culture.
- g. To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.
- h. To develop the scientific temper, humanism and the spirit of inquiry and reform.
- i. To safeguard public property and to abjure violence.
- j. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.
- k. Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. **(added by the 86th Amendment Act, 2002)**

Conflict between Fundamental Duties and Rights

- The relationship between Fundamental Duties and Fundamental Rights was elaborated by the Supreme Court following the judgment in the Kesavananda Bharati case.
- The apex court opined that the Fundamental Rights and Directive Principles of State Policy are complementary to each other, each supplementing the role of the other in establishing a welfare state.

RIGHTS AND DUTIES

The interdependence of rights and duties is a fundamental aspect of social and political life. This principle is embodied in India's Constitution, which delineates both fundamental rights, which citizens can expect from the state, and fundamental duties, which are the responsibilities of each citizen towards the state and society.