

CONSTITUTIONAL LAW

Guide to All India Bar Examination — Constitutional Law (pp. 1–18)

NOTE: The Indian Penal Code, 1860, The Indian Evidence Act, 1872, and The Code of Criminal Procedure, 1973 have been repealed and replaced by The Bharatiya Nyaya Sanhita, 2023, The Bharatiya Sakshya Adhinyam, 2023, and The Bharatiya Nagarik Suraksha Sanhita, 2023 respectively. References to the old laws in provisions should be interpreted as their corresponding new criminal law names, vide S.O. 2790(E) dated 16th July 2024.

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WHAT IS CONSTITUTION?

- A constitution is a document having a special legal sanctity which sets out the framework and principal functions of the Government.
- It defines the powers of main organs of the State, demarcates their responsibilities and regulates their relationship with each other and with the People.
- It is a “Fundamental Law” of a country which reflects people’s faith and aspirations.

THE BACKGROUND

There are many constitutional experiments, introduced by the British government before the making of the present Constitution, which form the basis of the constitutional developments in India.

1. Constitutional Experiments Before 1858

Many constitutional experiments were introduced in India even before the British Government assumed direct responsibility of Indian Administration in 1858. These experiments were aimed at controlling the activities of the Company on the one hand and to streamline the Indian Administration on the other. These are:

- Regulating Act of 1773
- Pitt’s India Act of 1784
- The Charter Act of 1793
- The Charter Act of 1813
- The Charter Act of 1833
- The Charter Act of 1853

CROWN RULE (1858–1947)

2. Government of India Act of 1858

This significant Act enacted in the wake of the Revolt of 1857 had the following peculiar features:

- It abolished the East India Company, and transferred the powers of Government, territories and revenues to the British Crown.
- It changed the designation of the Governor-General of India to that of ‘Viceroy of India’. Lord Canning thus became the first Viceroy of India.
- It created a new office, Secretary of State for India, vested with complete authority and control over Indian administration. The Secretary of State was a member of the British cabinet and was responsible ultimately to the British Parliament.

3. Indian Councils Act of 1861

- It made a beginning of representative institutions by associating Indians with the law-making process.
- It initiated the process of decentralisation by restoring the legislative powers to the Bombay & Madras Presidencies. It thus reversed the centralising tendency that started from the 1773 Act.
- The Viceroy of India was empowered to issue ordinances in emergencies.

4. Indian Councils Act of 1892

It increased the functions of legislative councils and gave them the power of discussing the budget.

5. 1909 Act or Morley-Minto Reforms

Lord Morley was the then Secretary of State for India and Lord Minto was the then Viceroy of India:

- It introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'. Thus, the Act 'legalised communalism' and Lord Minto came to be known as the father of communal electorate.
- It provided for the first time for the association of Indians with the executive councils of the Viceroy & Governors.

6. Government of India Act of 1919

It is also known as the Montague Chelmsford Reforms (Montague was the Secretary of State for India and Lord Chelmsford was the Viceroy of India). Objective of this Act was the gradual introduction of responsible government in India:

- It relaxed the central control over the provinces by separating the central and provincial subjects.
- It further divided the provincial subjects into two parts – Transferred and reserved. This dual scheme of governance was known as "diarchy". However, this experiment was largely unsuccessful.
- It introduced for the first time, bicameralism and direct elections in the country.
- It extended the principle of communal representation to include Sikhs, Anglo-Indians and Europeans.

7. Government of India Act of 1935

The Act based on the white paper of 1932 was prepared by the British Government based on the deliberations of the three Round Table Conferences:

- It made provisions for an All-India Federation consisting of provinces and princely states as units. The Act divided the powers between the Centre and the units in terms of three lists – Federal, Provincial and Concurrent List.
- It abolished dyarchy in the provinces and introduced 'provincial autonomy' in its place. Moreover, the Act introduced responsible governments in provinces.
- It provided for the adoption of dyarchy at the Centre. However, this provision of the Act did not come into operation at all.
- It further extended the principle of communal representation by providing separate electorates for depressed classes, women and labour (workers).
- It provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission.
- It provided for the establishment of a Federal Court, which was set up in 1937 and for the establishment of a Reserve Bank of India.

8. Indian Independence Act of 1947

It was based on the famous Mountbatten Plan (3rd June, 1947). Its main provisions were:

- It ended the British rule in India and declared India as an independent and sovereign state from August 15, 1947.
- Two Dominion States – India and Pakistan came into existence on August 15, 1947.
- Both the states were given right to frame their constitutions through their respective Constituent Assemblies. They were also given the right to leave the British Commonwealth.
- It granted freedom to the Indian Princely states either to join the Dominion of India or Pakistan or to remain independent.

- Till the new Constitutions are not effective, the governments in the two States were to run on the basis of provisions of the Government of India Act, 1935.
- The British Crown was declared to cease to be the ruler of India.

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MAKING OF THE CONSTITUTION

Constituent Assembly

- The Assembly consisted of 389 members representing provinces (292), States (93), and the Chief Commissioner Provinces (4).
- The Assembly held its first meeting on December 9, 1946, and elected Dr. Sachhidanand Sinha, the eldest member of the Assembly as the Provisional President.
- On December 11, 1946 the Assembly elected Dr. Rajendra Prasad as its permanent President. B.N Rau was appointed constitutional Adviser to the Constituent Assembly.
- Pt. Jawaharlal Nehru introduced his historic Objective Resolution in the Assembly on December 13, 1946, which was adopted by the Assembly on January 22, 1947. Its modified version forms the Preamble of our Constitution.
- The Constituent Assembly set up 13 committees for framing the Constitution. On the basis of the reports of these committees, a draft of the Constitution was prepared by a seven-member Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar.
- After a thorough discussion of the draft by the people, press, provincial assemblies and the Constituent Assembly, it was finally adopted on November 26, 1949.
- Though the major part of the Constitution came into force on January 26, 1950, the provisions relating to citizenship, elections, provisional Parliament and other temporary provisions came into force with immediate effect, viz., from November 26, 1949.

FEATURES OF THE INDIAN CONSTITUTION

The Indian Constitution is unique in its contents and spirit. The Indian Constitution has several salient features that distinguish it from the Constitution of other countries.

(1) Longiest Written Constitution

- The Constitution originally (1949), consisted of 395 Articles divided into 22 parts and 8 Schedules. Presently, it consists of about 471 Articles (24 parts) and 12 Schedules.

(2) Combination of Rigidity and Flexibility

- Some provisions of the Constitution can be amended by the Parliament by a simple majority while others require a two-third majority of the members of the Parliament as well as majority in the State Legislatures.

(3) Parliamentary Form of Government

- The Constitution provides for a parliamentary system of government under which the real executive power rests with the council of ministers and the President is only a nominal ruler.

(4) Federal System with a Unitary Bias

- Indian Constitution provides for a federation with a strong Centre.
- The Constitution has not used the term 'Federation' anywhere and has described India as a 'Union of States', which implies that the Indian federation is not the result of any agreement among the units and the units cannot secede from it.
- The Indian federal structure acquires a unitary character during emergency, when the normal distribution of powers between the Centre and the States undergoes a vital change.

(5) Integrated and Independent Judiciary

- The Supreme Court is the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution.
- It also determines the limits of the powers of the Centre and the States.

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(6) Synthesis of Parliamentary Sovereignty

- The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review. The Parliament on the other hand, can amend major portions of the Constitution through its constituent power.

(7) Fundamental Rights

- The Constitution contains an elaborate list of Fundamental Rights.
- They are justiciable in nature, that is, they are enforceable by the courts for their violation.
- The Fundamental Rights are not absolute and subject to reasonable restrictions by State.
- They can be curtailed or repealed by the Parliament through a Constitutional Amendment Act subject to the basic structure theory laid down by the Supreme Court.

(8) Fundamental Duties

- The 42nd Constitutional Amendment Act of 1976 added Part IVA in the Constitution.
- Article 51A in Part IVA of the Constitution originally contained 10 fundamental duties.
- The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.

(9) Directive Principles of State Policy

- The Constitution outlines certain Directive Principles of State Policy which the government has to keep in mind while formulating any policy.
- Unlike Fundamental Rights, the Directive Principles of State Policy are non-justiciable.

(10) Universal Adult Franchise

- The Constitution introduces universal adult franchise and accords the right to vote to all citizens above 18 years of age without discrimination.

(11) Single Citizenship

- Though the Indian Constitution is federal and envisages a dual polity (Centre and States), it provides for only a single citizenship, that is, the Indian citizenship.

(12) A Secular State

- The term 'secular' was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.
- Secularism implies that the State is only concerned with relation between various citizens and is not concerned with relations of man with God.
- In a secular state, there is no religion of the State and the citizens are free to profess, practice and propagate any religion.

(13) Emergency Powers

- The Constitution vests extraordinary powers in the President during emergencies arising out of
 - War, external aggression or armed rebellion (Article 352) or,
 - Emergency due to breakdown of constitutional machinery in the State (Article 356) or,
 - Failure to comply with the directions of the Centre (Article 365) and,
 - Financial emergency when the credit of the country is threatened (Article 360).

(14) Panchayati Raj

- The Constitution provides constitutional basis to Panchayati Raj institutions as well as urban local bodies.

- This was achieved through the 73rd and 74th Constitutional Amendment Acts respectively passed in the year 1992.

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- 73rd and 74th Constitutional Amendment Acts were passed on the recommendations of Balwant Rai Mehta Committee report.

(15) Independent Bodies

- The Indian Constitution not only provides for the legislative, executive and judicial organs of the government but also establishes certain independent bodies such as Election Commission; Comptroller and Auditor-General of India, Union Public Service Commission, etc.

(16) Drawn from various Sources

- The Constitution of India has borrowed most of its provisions from the Government of India Act of 1935 as well as Constitutions of various other countries.

TABLE 1 — SOURCES OF THE CONSTITUTION

Sources	Features Borrowed
1. Government of India Act, 1935	Federal Scheme, Office of Governor, Judiciary, Emergency Provisions and Administrative Details.
2. British Constitution	Single Citizenship, Rule of Law, Parliamentary Government, Cabinet System, Bicameralism.
3. Canadian Constitution	Federation with a strong Centre, Residuary power of the Centre, Advisory Jurisdiction of the Supreme Court, Appointment of State Governor.
4. US Constitution	Fundamental Rights, Judicial Review, Independence of Judiciary, Impeachment of the President; Post of Vice-President, Removal of Supreme Court & High Court Judges.
5. Irish Constitution	Directive Principles of State Policy, Nomination of Members to Rajya Sabha and Method of Election of President.
6. Australian Constitution	Concurrent List, Freedom of Trade, Commerce and Intercourse, Joint Sitting of two Houses of Parliament.
7. Weimer Constitution of Germany	Emergency Provisions.
8. Soviet Constitution	Fundamental Duties.
9. French Constitution	Republic and the Ideals of Liberty, Equality and Fraternity in the Preamble.
10. South African Constitution	Procedure for amendment of the Constitution and Election of Members of Rajya Sabha.
11. Japanese Constitution	Procedure established by Law.

TABLE 2 — SCHEDULES OF THE CONSTITUTION

Schedules	Deals with
FIRST	Names and territorial extent of 28 States and 8 Union Territories of the Indian Union.
SECOND	Emoluments, allowances, privileges of the President of India, the State Governors, the Speakers and the Deputy-Speaker of the Lok Sabha and the State Legislative Assemblies, Chairman and the Deputy-Chairman of the Rajya Sabha and the State Legislative Councils, the Judges of the Supreme Court and the State High Courts and Comptroller and Auditor-General of India.

Schedules	Deals with
THIRD	Forms of Oaths or Affirmation to be made by the Union and State ministers, the members of Parliament and the State Legislatures, the Judges of the Supreme Court and the State High Courts, the Comptroller and Auditor-General of India.
FOURTH	Number of seats allocated to various States and Union Territories in the Rajya Sabha.
FIFTH	Administration and control of Scheduled Castes and Scheduled Tribes.
SIXTH	Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.
SEVENTH	Three Lists having subjects upon which Union and State Legislature can make laws.
EIGHTH	Languages (22) recognised by the Constitution. Bodo, Santhali, Maithali, Dogri were added by the 92nd Amendment Act, 2003.
NINTH	Acts and Regulation (originally 13 but presently more than 280), dealing with land reforms and other matters. These are immune from judicial review.
TENTH	Disqualification of the members of Parliament and State Legislatures, added by 52nd Amendment Act, 1985.
ELEVENTH	Powers, authority and responsibilities of Panchayats (29 subjects). 73rd Amendment Act, 1992.
TWELFTH	Powers, authority and responsibilities of Municipalities (18 subjects), added by 74th Amendment Act, 1992.

PREAMBLE

The Preamble to the Indian Constitution reads as follows:

'We, the people of India, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, Social, economic and political;

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

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

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

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

- The Preamble is based on the 'Objective Resolution', drafted and moved by Pandit Nehru and adopted by the Constituent Assembly, on January 22, 1947.
- It has been amended by the 42nd Constitutional Amendment Act (1976), which added two new words – socialist and secular, and 'unity of the nation' was changed to 'unity and integrity of the nation'.
- Preamble is regarded as an introduction to the Constitution. It spells out the Central thrust and the basic philosophy which is contained in the body of the Indian Constitution.

Is Preamble a Part of the Constitution?

- In the Berubari Union case (1960), the Supreme Court held that Preamble is not a part of the Constitution.
- Thirteen years later in the Kesavananda Bharati case (1973), Supreme Court accepted the Preamble as a part of the Constitution.

- The Preamble has been described as the 'key to the Constitution'. It has helped courts resolve various ambiguous points of the Constitution and interpret it in the true spirit in which it was enacted by the framers.

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Can Preamble be amended under Article 368?

- In *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, it was held that since Preamble is a part of the Constitution it can be amended but subject to this condition that the "basic features" in the Preamble cannot be amended.

42nd Amendment and the Preamble

- The 42nd Amendment Act, 1976 inserted three new words in the Preamble, i.e., Secularism, Socialism and Integrity.
- The term 'socialism' generally implies a system of government in which the means of production is wholly or partially controlled by the State. India's socialism is, however, a democratic socialism which is in consonance with the idea of a welfare State which would prevent only the excess of exploitation without destroying free competition and individual initiative.
- The word 'integrity' is intended to put an end to separatist tendencies and make people feel that every part of India is their home. This concept was already implicit in the nature of the federation envisaged by the Indian Constitution. The framers have used the words "India shall be a Union of States" in Article 1 with a view to make it clear that the States have no right to secede from the federation.
- 'Secularism' means a State which does not recognise any religion as a State religion. It treats all religions equally. In *S.R. Bommai v. Union of India*, the Supreme Court held that "secularism is the basic feature of the Constitution."

The Union and its Territory

- Article 1 of the Constitution declares India, that is Bharat, shall be a Union of States.
- The territory of India falls under three categories:
 1. State territories;
 2. Union territories;
 3. Territories which may be acquired by Government of India.
- Before the Constitution (7th Amendment) Act, 1956, the Union consisted of States which were classified into four main categories, Parts A, B, C and D of the First Schedule. The Constitution (7th Amendment) Act, 1956 abolished the four categories and placed all States of the Union on the same footing as a result of reorganisation made by States' Reorganisation Act, 1956.
- The Union Territories are centrally administered areas to be governed by the President acting through an Administrator appointed by him.

Admission or establishment of new States

Article 2 provides that Parliament may, by law admit into the Union, or establish new States on such terms and conditions as it thinks fit. Article 2 thus gives Parliament two powers, first, to admit into the Union new States, and secondly, the power to establish new States.

Formation of new States and alteration of boundaries, etc., of existing States

- According to Article 3, a new State may be formed or established in the following ways:
 1. by separation of territory from any State; or
 2. by uniting two or more States; or
 3. by uniting parts of States; or
 4. by uniting any territory to a part of any State.
- Parliament under this Article can also increase or decrease the area of any State or alter the boundaries or change the name of any State without their consent or concurrence.

- It can form new States and can alter the area, boundaries or names of the existing States by a law passed by simple majority.

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Cession of Indian territory to foreign country

In *Re Berubari Union and Exchange of Enclaves* (AIR 1960 SC 858) the Supreme Court held that power of Parliament under Article 3 to diminish the area of any State does not cover ceding of Indian territory to a foreign State. It could only be implemented by an amendment of the Constitution in accordance with Article 368.

Citizenship

- The Constitution does not lay down a permanent or comprehensive provision relating to citizenship in India.
- Part II of the Constitution simply describes classes of persons who would be deemed to be the Citizens of India at the commencement of the Constitution, the 26th January, 1950, and leaves the entire law of the citizenship to be regulated by the law made by Parliament.
- Article 11 expressly confers power on Parliament to make laws to provide for such matters.
- In exercise of its power under Article 11, the Parliament has enacted the Indian Citizenship Act, 1955.
- The Indian Citizenship Act, 1955 provides for the acquisition and termination of citizenship subsequent to the commencement of the Constitution.

Citizenship at the commencement of the Constitution

The following persons under Articles 5 to 8 of the Constitution shall become citizens of India at the commencement of the Constitution:

- (a) Citizenship by domicile (Article 5)
- (b) Citizenship of Migrants to India from Pakistan (Article 6)
- (c) Citizenship of Migrants to Pakistan (Article 7)
- (d) Citizenship of Indians abroad (Article 8)

CITIZENSHIP (AMENDMENT) ACT, 2019

The Citizenship Amendment Act, 2019 (47 of 2019) has amended the Citizenship Act, 1955, with effect from 10 January 2020, to provide for Indian Citizenship to migrants from persecuted religious minority communities [i.e., Hindu, Sikh, Buddhist, Jain, Parsi or Christian] from Afghanistan, Pakistan or Bangladesh, who have entered into India up to the cut of date of 31 December 2014 [section 2(1)(b), proviso].

The Central Government or an authority specified by it shall grant the certificate of registration or certificate of naturalization, subject to such conditions, restrictions and manner as may be prescribed [section 6B(1)]. However, the provisions of section 6B shall not apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.

On 11 March 2024, the Ministry of Home Affairs officially announced the rules for the Citizenship Amendment Act, 2019 vide Ministry of Home Affairs, Notification No. GSR 172(E), dated 11-3-2024. The Citizenship (Amendment) Rules, 2024 amended the Citizenship Rules, 2009, inter alia, by inserting rules 10A, 11A and 13A, and amending rules 14, 15, 17 and 38.

FUNDAMENTAL RIGHTS

- The Fundamental Rights are enshrined in Part III of the Constitution from Articles 12 to 35.
- The Fundamental Rights are not absolute and the government is authorised to impose reasonable restrictions on the rights. But whether these restrictions are reasonable or not is to be decided by the Courts.

- Part III of the Constitution has been described as the Magna Carta of India.

Footnotes (p. 8): (1) According to Intelligence Bureau records, the immediate beneficiaries of the Amended Act will be 31,313 people, which include 25,447 Hindus, 5,807 Sikhs, 55 Christians, 2 Buddhists and 2 Parsis. (2) The Inner Line Permit, which include Arunachal Pradesh, Mizoram and Nagaland. The inclusion of Manipur in Inner Line Permit was also announced on 9 December 2019.

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- Magna Carta is a charter of rights agreed to by King John of England in 1215. This is the first written document relating to fundamental rights of citizens. Later in 1689, the Bill of Rights was written consolidating all important rights and liberties of the English people.
- In France, Declaration of Rights of Man and Citizen (1789) declared the natural, inalienable and sacred rights of Man.
- Following the spirit of the Magna Carta of the British and the Declaration of the Rights of Man and the Citizen of France, the Americans incorporated the Bill of Rights in their Constitution. The Americans were first to give Bill of Rights a constitutional status.

Suspension of Fundamental Rights

The fundamental rights are not absolute and Constitution provides for their curtailment or suspension under certain circumstances. (See Articles 358 and 359)

Fundamental Rights available against State and not against Private Individuals

The rights which are given to the Citizens by way of fundamental rights are a guarantee against State action as distinguished from violation of such rights by private parties. Private action is sufficiently protected by the ordinary law of land.

Article 12: Definition of State

- Article 12 defines the term 'State' as used in different Articles of Part III. It says that unless the context otherwise requires, the term 'State' includes the following:—
 1. The Government and Parliament of India, i.e., Executive and Legislature of the Union.
 2. The Government and Legislature of each State i.e., Executive and Legislature of States.
 3. All local or other authorities within the territory of India.
 4. All local and other authorities under the control of the Government of India.
- In earlier decisions, the Court gave a restrictive interpretation of the expression 'other authorities' under Article 12. The 'authorities' not created by the Constitution or by a statute could not be a 'State' within the meaning of Article 12.
- In subsequent decisions, the Supreme Court gave a broad and liberal interpretation to the expression "other authorities" in Article 12. With the changing role of the State from merely being a police State to a Welfare State it was necessary to widen the scope of the expression "authorities" in Article 12 so as to include all those bodies which are, though not created by the Constitution or by the statute are acting as agencies or instrumentalities of the Government.

Is Judiciary included in the word 'State'?

- In *Naresh v. State of Maharashtra*, AIR 1967 SC 1, it was held that even if a Court is the State a writ under Article 32 cannot be issued to a High Court of competent jurisdiction against its judicial orders, because such orders cannot be said to violate the fundamental rights.
- In *A.R. Antulay v. R.S. Nayak*, AIR 1988 SC 1531, it was held that the court could not pass an order or issue direction which would be violative of fundamental rights, it can be said that the expression 'State' includes judiciary also.

Article 13: Laws inconsistent with Fundamental Rights

- Article 13 provides for 'judicial review' of all legislations in India, past as well as future.

This power has been conferred on the High Courts and the Supreme Court (Article 226 and Article 32) which can declare a law unconstitutional if it is inconsistent with any of the provisions of Part III of the Constitution.

Article 13 is not Retrospective in Effect

Article 13(1) is prospective in nature. All pre-Constitution laws inconsistent with fundamental rights will become void only after the commencement of the Constitution. They are not void ab initio. A declaration of invalidity by the Courts will, however, be necessary to make the laws invalid.

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Doctrine of Severability

This doctrine means that if an offending provision can be separated from that which is constitutional then only that part which is offending is to be declared as void and not the entire statute. Article 13 uses the words “to the extent of such inconsistency be void” which means that when some provision of the law is held to be unconstitutional then only the repugnant provision of the law in question shall be treated by courts as void and not the whole statute.

Doctrine of Eclipse

This doctrine formulated in *Bhikaji v. State of Madhya Pradesh*, AIR 1955 SC 781 is based on the principle that a law which violates Fundamental Rights is not nullity or void ab initio but becomes only unenforceable, i.e., remains in a moribund condition. It is over-shadowed by the Fundamental Rights and remains dormant; but it is not dead. Such laws are not wiped out entirely from the statute book. They exist for all past transactions, and for the enforcement of rights acquired and liabilities incurred before the present Constitution came into force and for determination of right of persons who have not been given fundamental rights by the Constitution e.g., non-citizens.

Post-Constitution Laws

Clause (2) of Article 13 prohibits State from making any law which takes away or abridges rights conferred by Part III. If the State makes such a law, then it will be ultra vires and void to the extent of the contravention.

In *State of Gujarat v. Ambica Mills*, AIR 1974 SC 1300, the Supreme Court modified its view as expressed in *Deep Chand's* case and held that a post-Constitutional law which is inconsistent with Fundamental Right is not nullity or non-existent in all cases and for all purposes. The doctrine of absolute nullity is not a universal rule and there are many exceptions to it. A post-Constitutional law which takes away or abridges the right conferred by Part III will be operative as regards non-citizens because Fundamental Rights are not available to non-citizens. Such a law will become void or non-existent only against citizens because Fundamental Rights are conferred on them.

Is Constitutional Amendment a 'Law' under Article 13(2)

- The question whether the word 'law' in clause (2) of Article 13 also includes a 'Constitutional amendment' was for the first time considered by the Supreme Court in *Shankari Prasad v. Union of India*, AIR 1951 SC 458. The Court held that the word 'law' in clause (2) did not include law made by Parliament under Article 368. The word 'law' in Article 13 must be taken to mean rules or regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of Constitutional power.
- Later in *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845, the Supreme Court upheld *Shankari Prasad's* case.
- But in *Golak Nath v. State of Punjab*, AIR 1967 SC 1643, the Supreme Court overruled its decision in the aforesaid cases, and held that the word 'law' in Article 13(2) included Constitutional amendment and hence, if an amendment to the Constitution took away or abridged Fundamental Right of citizens, the amendment would be declared void.

- In order to remove the difficulty created by the Supreme Court's decision in Golak Nath's case, Parliament passed the Constitution (24th Amendment) Act, 1971 by which Clause (4) was added to Article 13 according to which Constitutional amendments passed under Article 368 shall not be considered 'law' within the meaning of Article 13. The validity of said amendment was considered by the Supreme Court in Kesavananda Bharati case. The Court overruled the Golak Nath case and upheld the validity of the said amendment.

1. Right to Equality (Articles 14–18)

The Constitution promises 'equality before law' to all citizens and prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

Article 14: Equality before law

- Article 14 declares that 'the State shall not deny to any person equality before the law or equal protection of laws within the territory of India'.
- Thus, Article 14 uses two expressions "equality before the law" and "equal protection of the laws". The first expression "equality before law" is of English origin and the second expression has been taken from the American Constitution. While both the expressions may seem identical, they do not convey the same meaning.

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While "equality before the law" is a somewhat negative concept implying the absence of any special privilege in favour of individuals, "Equal protection of the laws" is a more positive concept implying equality of treatment in equal circumstances. The rule is that like should be treated alike and not that unlike should be treated alike.

- There are however certain exceptions to the right to equality. Article 361 provides that the President and Governors shall not be answerable to any Court for the exercise of powers and duties of their office.
- The words 'any person' in Article 14 make the equal protection of laws available to any person both citizens and non-citizens and to natural persons as well as legal persons.

Article 14 permits classification but prohibits class legislation.

The equal protection of laws guaranteed by Article 14 does not mean that all laws must be general in character. It does not mean that the same laws should apply to all persons. It does not mean that every law must have universal application for all persons are not, by nature, attainment or circumstances in the same position.

New Concept of Equality

In *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555, the Supreme Court laid down a new concept of equality. The Court held,

"Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view, equality is antithesis to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14".

In *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, the Supreme Court held that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

- Article 15 provides for a particular application of the general principle embodied in Article 14.

- The first clause of Article 15 directs the State not to discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth or any of them. The second clause prohibits citizens as well as the States from making such discrimination with regard to access to shops, hotels, etc., and all places of public entertainment, of public resort, wells, tanks, roads, etc. The third clause empowers the State to make special provisions for the protection of women and children. The fourth clause which was added by the Constitution (1st Amendment) Act, 1951, enables the State to make special provisions for the protection of interests of the Backward classes of citizens and is, therefore, an exception to Articles 15(1) and 29(2) of the Constitution.
 - Article 15(3) is one of the two exceptions to the general rule laid down in Clauses (1) and (2) of Article 15. It says that nothing in Article 15 shall prevent the State from making any special provision for women and children. Women and children require special treatment on account of their very nature. Thus, under Article 42, women workers can be given special maternity relief and a law to this effect will not infringe Article 15(1). Again, it would not be violation of Article 15 if educational institutions are established by the State exclusively for women.
 - Article 15(4) is another exception to Clauses (1) and (2) of Article 15, was added by the Constitution (1st Amendment) Act, 1951, as a result of the decision in *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226. Under this clause, the State is empowered to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.
 - In *Balaji v. State of Mysore*, AIR 1963 SC 649, the Supreme Court held that sub-classification made between 'backward classes' and 'more backward classes' was not justified under Article 15(4). "Backwardness" as envisaged by Article 15(4) must be both social and educational and not either social or educational.
 - The new Clause 5 was added to Article 15 by Constitution (93rd Amendment) Act, 2006. It provides that nothing in Article 15 or in sub-clause (g) of Clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Caste or Scheduled Tribes in so far as such special provision relate to admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than minority educational institutions referred to in Clause (1) of Article 30.
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- Article 15(6) is added to provide reservations to economically weaker sections for admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30. The amendment aims to provide reservation to those who do not fall in 15(5) and 15(4) (effectively, SCs, STs and OBCs).

Article 16: Equality of opportunity in Public Employment

- Article 16(1) guarantees equality of opportunity for all citizens in matters of 'employment' or 'appointment' to any post under the State. Clause (2) says that no citizen shall, on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of, any employment or office under the State. An important point to note here is that two additional grounds "descent" and 'residence' which are not included in Article 15 have been added to Article 16(2).
- Clauses (3), (4), (4A), (4B) and (5) of Article 16 provide exceptions to this general rule of equality of opportunity. Under clause (3) residence within the State may be laid down by Parliament as a condition for particular classes of employment or appointment under any State or other local authority.
- Article 16(4) empowers the State to make special provision for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of State are not adequately represented in the services under the State. It must be interpreted in the light of Article 335 which

says that the claims of the Schedule Castes and Schedule Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration.

Indra Sawhney v. Union of India – Mandal Case – Insertion of New Clause (4A) in Article 16

The scope and extent of Article 16(4) was examined thoroughly by the Supreme Court in Indra Sawhney v. Union of India, AIR 1993 SC 477. In this case, a 9 Judge Constitution Bench of the Supreme Court headed by B.P. Jeevan Reddy, C.J. by a 6:3 majority held that the decision of the Union Government to reserve 27% Government jobs for backward classes provided socially advanced persons i.e., creamy layer among them are eliminated, is constitutionally valid.

The Constitution 77th Amendment Act, 1995

This amendment was passed to remove the difficulty created by the Mandal case in which the court held that reservation could not be made to promotion in jobs. It added Clause (4A) to Article 16 which provides that,

“Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services of the State in favour of the Scheduled Castes and Scheduled Tribes which in the opinion of the State, are not adequately represented in the services under the State”.

Constitution 81st Amendment Act, 2000 — Insertion of New Clause (4B) in Article 16

- This Amendment added a new Clause (4B) to Article 16 which ended the 50% ceiling on reservation for SC/STs and OBCs in backlog vacancies which could not be filled due to non-availability of eligible candidates.
- It provides that the unfilled vacancies would be treated as a separate class and would be filled in succeeding year or years and will not be considered together with vacancies of the year in which they are being filled-up, even if the 50% limit imposed in Mandal case is crossed.
- Article 16(6) is added to provide reservations to people from economically weaker sections in government posts.

St. Stephen’s College v. University of Delhi, LNIND 1991 SC 667 : AIR 1992 SC 630: “The minority institution has a distinct identity and the right to administer with continuance of such identity cannot be denied by coercive action. Any such coercive action would be void being contrary to the constitutional guarantee. The right to administer is the right to conduct and manage the affairs of the institution. This right is exercised by a body of persons in whom the founders have faith and confidence. Such a management body of the institution cannot be displaced or reorganised if the right is to be recognised and maintained. Reasonable regulations however, are permissible but regulations should be of regulatory nature and not of abridgment of the right guaranteed under Article 30(1).”

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T M A Pai Foundation & Ors v. State of Karnataka, LNIND 2002 SC 681 : AIR 2003 SC 355: “The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the state government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of.”

P.A. Inamdar & Ors v. State of Maharashtra & Or. LNIND 2005 SC 614 : AIR 2005 SCW 3923: While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe bye-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State qua non-minority students. The merit may be determined either through a common entrance test conducted by the university or the Government concerned followed by counselling, or on the basis of an entrance test conducted by the individual institutions. The method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society.

The Constitution 85th Amendment Act, 2001 – Amendment of Clause (4A) in Article 16

This Amendment has substituted in Clause 4A, for the words “in matters of promotion to any class” the words “in matters of promotion, with consequential seniority, to any class”.

Constitution (103rd Amendment) Act, 2019: 10% additional reservation for economically weaker sections

Amendment of Article 15:

In Article 15 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

‘(6) Nothing in this article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent the State from making,—

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

Amendment of Article 16:

In Article 16 of the Constitution, after clause (5), the following clause shall be inserted, namely:—

“(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.”

Supreme Court strikes down Maratha Reservation

A Constitution Bench of the Supreme Court struck down the reservation for Marathas being in excess of 50% ceiling limit as unconstitutional. The Court through a unanimous verdict held that there were no exceptional circumstances justifying the grant of reservation to Marathas in excess of 50% ceiling limit as a Socially and Economically Backward Class.

The bench struck down the Maharashtra SEBC Act 2018 to the extent it held Marathas as a socially and economically backward class as violating the principles of equality. The Court held that the representation need not be proportionate to the population of the community, rather the same should have an adequate representation.

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The Court also held that there was no need to revisit the 50 per cent ceiling on reservation as laid down by the 9-Judge Bench in Indira Sawhney case.

The bench also dismissed the petitions challenging the 102nd Constitution Amendment, which introduced the National Commission for Backward Classes. The argument that the 102nd Amendment Act violated the basic structure of the Constitution was rejected by the Court. The Court by a 3:2 majority held that after the introduction of Articles 338B and 342A to the Constitution “the final authority say in regard to inclusion or exclusion (or modification of lists) of SEBCs is firstly with the President, and thereafter, in case of modification or exclusion from the lists initially published, with the Parliament”. Therefore, States have no power to identify Socially & Educationally Backward Classes after 102nd Constitution Amendment.

The Court also observed that:

“Providing reservation for advancement of any socially and educationally backward class in public services is not the only means and method for improving the welfare of backward class. The State ought to bring other measures including providing educational facilities to the members of backward class

free of cost, giving concession in fee, providing opportunities for skill development to enable candidates from the backward class to be self-reliant.”

Dr. Jaishree Laxmanrao Patil v. Chief Minister (Civil Appeal No. 3123 of 2020 dated May 5, 2021 – Constitution Bench)

Article 17: Abolition of Untouchability

Article 17 abolishes untouchability and forbids its practice in any form.

Article 18: Abolition of titles

- Article 18 abolishes titles. Military and academic distinctions are, however, exempted from the prohibition.
- Clause (2) prohibits a citizen of India from accepting any title from any foreign State. Clause (3) provides that a foreigner holding any office of profit or trust under the State cannot accept any title from any foreign State without the consent of the President. Clause (4) provides that no person holding any office of profit or trust under the State shall accept, without the consent of the President any present, emolument or office of any kind from or under any foreign State.

2. Right to Freedom (Articles 19–22)

- Article 19 guarantees to all citizens the six rights. These are:
 - (a) Right to freedom of speech and expression.
 - (b) Right to assemble peaceably and without arms
 - (c) Right to form associations or unions
 - (d) Right to move freely throughout the territory of India
 - (e) Right to reside and settle in any part of the territory of India
 - (g) Right to practice any profession or to carry on any occupation, trade or business.
- Article 19 is one of the most important fundamental freedoms because it not only assures the condition necessary for democracy but also for a civilised life. These six rights are protected against only state action and not private individuals. Moreover, these rights are available only to the citizens.
- Article 20 grants protection against arbitrary and excessive punishment to an accused person whether citizen or foreigner. It contains three provisions:
 - (a) No ex-post facto law, i.e. No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act.
 - (b) No double jeopardy: No person shall be prosecuted and punished for the same offence more than once.
 - (c) No self-incrimination: No person accused of any offence shall be compelled to be a witness against himself.
- Article 21 declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law. This right is available to both citizens and non-citizens.

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- The meaning of the words “personal liberty” came up for consideration of the Supreme Court for the first time in *A.K. Gopalan v. Union of India*, AIR 1950 SC 27. The Court gave a restrictive interpretation of the expression ‘personal liberty’ to mean only liberty relating to or concerning the person or body of the individual. But in *Kharak Singh v. State of Punjab*, AIR 1963 SC 1295, the term ‘personal liberty’ was interpreted to be a compendious term including within itself all the varieties of rights which go to make up the personal liberty of a man other than those dealt with in Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, ‘personal liberty’ in Article 21 takes in and comprises the residue. Later in *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, the Supreme Court gave a new dimension to Article 21. It was held that the right to ‘live’ is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in *Francis Coralie v. Union Territory*

of Delhi, AIR 1978 SC 597, held that the right to live is not restricted to mere animal existence. It means something more than just physical survival.

- In *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180, popularly known as the 'pavement dwellers case' Supreme Court held that the word 'life' in Article 21 includes the 'right to livelihood' also.
- In *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632, popularly known as "Auto Shanker case" the Supreme Court expressly held the "right to privacy", or the right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical.
- In *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858, the Supreme Court held that every citizen has a 'right to education' under the Constitution. The right to education is concomitant to the fundamental rights. Thus, right to freedom of speech and expression cannot be fully enjoyed unless a citizen is educated and conscious of individualistic dignity.
- In *Rathinam v. Union of India*, (1994) 2 Scale Vol. II, 7674, the Supreme Court held that a person has a right to die and declared unconstitutional Section 309 IPC which makes attempt to commit suicide a penal offence. The right to live in Article 21 includes the right not to live i.e., right to die. A person can't be forced to enjoy right to life to his detriment, disadvantage or dislike. But the court rejected the plea that euthanasia (merely killing) should be permitted by law.
- In *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648, a five-judge Constitution Bench overruled *P. Rathinam's* case and held that 'right to life' under Article 21 does not include 'right to die' or 'right to be killed'. The 'right to die' is inherently inconsistent with 'right to life' as is 'death with life'. The court accordingly held that Section 309 IPC is not violative of Article 21.
- In *Common Cause (A Registered Society) v. Union of India* (decided on 9 March 2018), a five judge Constitution bench of the Supreme Court comprising Chief Justice Dipak Misra, Justice A K Sikri, Justice A M Khanwilkar, Justice D Y Chandrachud and Justice Ashok Bhushan gave legal sanction to passive euthanasia, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible coma. The SC held that the right to die with dignity is a fundamental right.

86th Amendment Act, 2002

This amendment added Article 21A which has made the right to education a fundamental right. It states that "the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine".

- In *Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. v. MP Road Development Corporation & Anr*, 2025 INSC 907, the Supreme Court held since the right to access any part of the country, with certain exceptions and restrictions under certain circumstances, is a fundamental right guaranteed under Article 19(1)(g) of the Constitution, the right to safe, well-maintained, and motorable roads is recognised as a part of the right to life under Article 21 of the Constitution of India.
- In *Mansi Brar Fernandes v. Shubha Sharma And Anr*, 2025 INSC 1110, the Supreme Court observed that right to housing is not merely a contractual entitlement but a facet of the fundamental right to life under Article 21. Genuine homebuyers represent the backbone of India's urban future, and their protection lies at the intersection of constitutional obligation and economic policy.

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- Article 22 grants protection to persons who are arrested or detained. A citizen arrested under any law has to be informed of the grounds for his arrest, and has the right to consult and to be defended by a legal practitioner of his choice. Each detained person has to be produced before the nearest magistrate within a period of 24 hours of such an arrest and cannot be kept in police custody beyond that period without the authority of the magistrate. However, under exceptional circumstances the state can curb the right to freedom and detain a person under the Preventive Detention Act on the ground of suspicion of committing anti-national activities.

3. Right Against Exploitation (Articles 23–24)

- Article 23 prohibits traffic in human beings, beggar and other similar forms of forced labour. The term beggar means compulsory work without remuneration.
- Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities.

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

- Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.
- Article 26 mention that every religious denomination or sect shall have right:
 - (a) to establish and maintain institutions for religious and charitable purposes;
 - (b) to manage its religious affairs;
 - (c) to own and acquire property; and
 - (d) to administer that property according to the provisions of law.
- Article 27 lays down that no person shall be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious denomination.
- Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of state funds.

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

- The Constitution permits the minorities to conserve their language, script and culture, and establish and administer educational institutions for this purpose.
- The State does not discriminate about providing aid to educational institutions on ground of religion or language. No citizen can be denied admission to any educational institution maintained or aided by the State on grounds only of religion, race, caste or language.

6. Right to Constitutional Remedies (Articles 32–35)

- Described as ‘the heart and soul of the Constitution’ by Dr. B.R. Ambedkar, this right gives every citizen the right to approach the Supreme Court for the enforcement of his/her fundamental rights.
- The Supreme Court can issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari.
- Even the State High Courts can issue various writs for the enforcement of the Fundamental Rights.
- The Supreme Court of India has propounded the doctrine of ‘Public Interest Litigation’ (PIL) under which any person or group of persons can approach the court, on behalf of the aggrieved person, for the protection of the Fundamental Rights.
- Article 33 empowers Parliament to modify the application of Fundamental Rights to armed forces or forces charged with maintenance of public order, etc., in the interest of discharge of duties and maintenance of discipline.
- According to Article 34, Parliament may by law indemnify any person in the service of the Union or of a State or any other person for anything done in contravention of Fundamental Rights for maintenance or restoration of order during the operation of martial law.
- 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 State Legislature.

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Hoisting the National Flag: A Fundamental Right

Reversing a judgment of the Delhi High Court, the Supreme Court in *Union of India v. Naveen Jindal* (2004) held that hoisting of the national flag by the citizens in their homes and offices is a fundamental right under Article 19(1)(a) of the Constitution. The Supreme Court held that hoisting the national flag

is an expression of love and goodwill for the nation; naturally, therefore, it falls within the category of Fundamental Rights.

History of Amending Power of Parliament with Respect to Fundamental Rights

1. Before 1967, the Supreme Court held the view that the Parliament had power to amend any part of the Constitution including the Fundamental Rights [Shankari Prasad v. Union of India, (1952)].
2. In Golaknath v. State of Punjab, (1967), the Court reversed its earlier stand and pronounced that the Parliament cannot amend the provisions of Part III related to Fundamental Rights.
3. The Parliament made amendment to Article 368 of the Constitution in 1971 (24th Amendment) which reiterated that Parliament has the power to amend Fundamental Rights.
4. The Supreme Court in Kesavananda Bharati v. State of Kerala, (1973) upheld the view that Parliament can amend any part of the Constitution, but it cannot amend the 'Basic Structure' of the Constitution.
5. Parliament again amended Article 368 in 1976 (42nd Amendment) which stated that the amendments made under Article 368 cannot be questioned in any court of law.
6. The Supreme Court in Minerva Mills v. Union of India, (1980) upheld that Judicial Review is a part of the basic structure of the Constitution and all the amendments made by Parliament under Article 368 are subject to judicial review. The Court thus nullified the effect of 42nd Amendment.

THE WRITS

Five types of writs can be issued by the Supreme Court or the High Courts for the protection of the Fundamental Rights of the Indian citizens. These writs are as under:

- (1) Habeas Corpus: It literally means 'a demand to produce the body'. This writ is issued in the form of an order calling upon a person who has detained another person to bring that person before the Court to let it know under what authority he has detained that person.
- (2) Mandamus: This writ is an order by a superior court commanding a person or a public authority to do or forbear to do something in the nature of public duty. Mandamus may lie against any authority, officers, government or even judicial bodies that fail to or refuse to perform a public duty and discharge a legal obligation. Mandamus would lie only to enforce a duty which is 'public in nature'. The public duty enforceable by mandamus must also be an absolute duty i.e., which is mandatory and not discretionary.
- (3) Prohibition: This writ is issued by the Supreme Court or High Court to an inferior court forbidding it to continue proceedings in a case in excess of its jurisdiction. A writ of prohibition is issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction, or acting contrary to the rules of natural justice.
- (4) Certiorari: It means 'to be certified' or 'to be informed'. It is issued by a higher court to a lower court either to transfer a case pending with the latter to itself or to quash the order of the latter. Thus, unlike prohibition, which is only preventive certiorari is both preventive as well as curative.
- (5) Quo warrant: It means 'by what authority or warrant'. It is issued by the court to enquire into the legality of claim of a person to a public office. Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

THE DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

Directive Principles of State Policy, enumerated in Part IV of the Constitution from Articles 36 to 51, aim at providing the social and economic base of a genuine democracy. These principles are not enforceable through courts and are merely directives which the government has to keep in mind while framing policy.

Distinction between Fundamental Rights and Directive Principles

Fundamental Rights	Directive Principles
(1) These are justiciable	Non-justiciable
(2) Negative as they prohibit the State from doing certain things	Positive as they require the State to do certain things
(3) Aim at establishing political democracy	Social and economic democracy
(4) They have legal sanctions	Moral and political sanctions
(5) Promote the welfare of the individual	Welfare of the community

Conflict between Fundamental Rights and Directive Principles

- In case of conflict between the two, the Fundamental Rights prevail. In the Golaknath case (1967), the Supreme Court held that the Fundamental Rights cannot be amended for the implementation of the Directive Principles. The 24th Amendment Act declared that the Parliament has the power to abridge or take away any of the Fundamental Rights by enacting Constitutional Amendment Acts. Supreme Court in the Kesavananda Bharati case (1973) declared that judicial review is a basic feature of the Constitution and hence cannot be taken away.
- In the Minerva Mills case (1980), the Supreme Court held that Constitution exists on the balance between Fundamental Rights and DPSP. To give absolute primacy to one over the other is to disturb the harmony of the Constitution which is the essential feature of its basic structure. So, they are complementary to each other and there is no need to sacrifice one for the sake of the other.

FUNDAMENTAL DUTIES

The Constitution outlines the Fundamental Duties of the Indian citizens, which were incorporated in the Constitution by the 42nd Amendment Act in 1976. These duties have been specified in Article 51A. By 86th Amendment Act, 2002, one more Fundamental duty was added to the list of ten. List of duties are:

It shall be the duty of every citizen of India:

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- to cherish and follow the noble ideals that inspired the national struggle for freedom;
- to uphold and protect the sovereignty, unity and integrity of India;
- to defend the country and render national service when called upon to do so;
- to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religions, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
- to value and preserve the rich heritage of the country's composite culture;
- to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
- to develop scientific temper, humanism and the spirit of inquiry and reform;
- to safeguard public property and to abjure violence;
- to strive towards excellence in all spheres of individuals and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
- to provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

Fundamental Duties serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.