



RAS

Rajasthan Administrative Services

Rajasthan Public Service Commission

Volume – 7

**Indian Political System and
World Politics**



RAS

Indian Political System

Volume – 7

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1 CHAPTER

Constituent Assembly

Cabinet Mission Plan provisioned to set up a Constituent Assembly of India:

- total strength = 389 partly elected and partly nominated
 - 296 seats were allotted to British India
 - 292 members from the 11 governors' provinces
 - 4 from the 4 chief commissioners' provinces
 - 93 seats to the Princely States.
- allotted seats in proportion to their respective population.
- Seats allocated to each British province were to be divided among Muslims, Sikhs and General (others), in proportion to their population.
- representatives of each community ☑ elected by members of that community by proportional representation using a single transferable vote.
- representatives of the princely states were to be nominated by the heads of the princely states
- members were indirectly elected by the members of the provincial assemblies.
- did not present the sentiments of the masses as the members of provincial assemblies themselves were elected on a limited franchise.
- election for British Indian Provinces was held in July-August 1946.
 - Indian National Congress won 208 seats,
 - Muslim League won 73 seats
 - Independent players held 15 seats
- seats of princely states were not filled as they refrained from the Assembly
- Assembly had representatives from every section of the society
- Mahatma Gandhi was not a member of the Constituent Assembly.
- On April 28, 1947 representatives of the 6 states became part of the assembly
- after the Mountbatten Plan of June 3, 1947, most of the princely states entered the assembly.
- Later Muslim League from the Indian dominion also joined the assembly.

Working of the Constituent Assembly

- first meeting: December 9, 1946.
 - Muslim League boycotted and demanded a separate state of Pakistan
 - Only 21 members attended the first meeting.
 - Dr Sachchidananda Sinha was elected as the interim President of the Assembly, (French practice)
 - Dr Rajendra Prasad was elected as the President of the Assembly
 - H.C. Mukherjee and V.T. Krishnamachari ☑ Vice-President

Objective Resolution

- Presented on Dec 13, 1946, by JL Nehru in the Constituent Assembly, unanimously adopted by the assembly on January 22, 1947.
- Important provisions:
 - proclaim India as the Independent Sovereign Republic
 - India, shall be a Union of territories of British India that join it
 - Boundaries determined by the Constituent Assembly which shall possess residuary powers and exercise all powers and functions of the Government and administration implied in the Union
 - power and authority of Independent India derived from the people
 - shall guarantee to all the people of India
 - justice, social, economic and political;
 - equality of status of opportunity, and before the law;
 - freedom of thought, expression, belief, faith, worship, association and action
 - adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes
 - Maintain integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations

- attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

- strength of Indian provinces reduced to 229 from 296
- princely states to 70 from 93.

Changes after the Indian Independence Act, 1947

- Assembly → fully sovereign body to frame Constitution
- became the legislative body.
 - responsible to frame the Constitution and enact ordinary laws for the country.
 - worked as the Constitutional body → chaired by Dr Rajendra Prasad
 - as a legislative body → G.V. Mavlankar became chairman (till Nov 26, 1949).
- Muslim League withdrew from the assembly
 - reduced the total strength of the assembly to 299 from 389.

Other Functions Performed by the Assembly

- Ratified India's membership of the Commonwealth in May 1949
- Adopted National Flag of India on July 22, 1947
- Adopted National Anthem on January 24, 1950
- Elected Dr Rajendra Prasad as the first President of India on January 24, 1950
- On January 24, 1950, the Constituent Assembly held its final session but continued as the provincial parliament from January 26, 1950, till the first general elections in 1951-52 were held.

Committees of the Constituent Assembly

	Committee	Headed by
Major Committee	Union Powers Committee	J.L. Nehru
	Union Constitution Committee	J.L. Nehru
	Provincial Constitution Committee	Sardar Patel
	Drafting Committee	Dr B.R. Ambedkar
	Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Sardar Patel
	Fundamental Rights Sub-Committee	J.B. Kriplani
	Minorities Sub-Committee	H.C. Mukherjee
	North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee	Gopinath Bardoloi
	Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee	A.V. Thakkar
	North-West Frontier Tribal Areas Sub-Committee	
	Rules of Procedure Committee	Dr Rajendra Prasad
	States Committee (for Negotiation with states)	J.L. Nehru
	Steering Committee	Dr Rajendra Prasad
Minor Committee	Finance and Staff Committee	Dr Rajendra Prasad
	Credentials Committee	A.K. Ayyar
	House Committee	B. Pattabhi Sitaramayya
	Order of Business Committee	Dr K.M. Munshi
	Ad-hoc Committee on National Flag	Dr Rajendra Prasad
	Committee on Functions of the Constituent Assembly	G.V. Mavalankar
	Ad-hoc Committee on the SC	S. Varadachari
	Committee on Chief Commissioners' Provinces	B. Pattabhi Sitaramayya
	Expert Committee on the Financial Provisions of the Union Constitution	Nalini Ranjan Sarkar
	Linguistic Provinces Commission	S.K. Dar
	Special Committee to Examine the Draft Constitution	J.L. Nehru
	Press Gallery Committee	Usha Nath Sen
	Ad-hoc Committee on Citizenship	S. Vallabhachari

Drafting Committee

- On **August 29, 1947**, set up to prepare a draft of the new Constitution.
- **seven-member committee** with
 - Dr B.R. Ambedkar ☑ Chairman
 - N. Gopaldaswamy Ayyangar
 - Alladi Krishnaswamy Ayyar
 - Dr K.M. Munshi
 - Syed Mohammad Saadullah
 - N.M. Rau
 - T.T. Krishnamachari
- **First draft published in February 1948**
- **second draft published in October 1948.**

- **S.N. Mukherjee = chief draftsman** of the constitution
- **Prem Behari Narain Raizada = calligrapher**
 - **handwritten the original text** of the constitution in a **flowing italic style**.
- **beautified and decorated by** artists from **Shanti Niketan** including **Nand Lal Bose** and **Beohar Rammanohar Sinha**.
- **calligraphy of the Hindi version = Vasant Krishan Vaidya**
 - **decorated and illuminated = Nand Lal Bose.**
- **elephant = symbol** of the Constituent Assembly.
 - **Elephant figurine carved on the seal** of the assembly.
- Originally, the Constitution of India did **not** make any provision concerning an authoritative text of the Constitution in the Hindi Language.
 - made by the **58th Constitutional Amendment Act of 1987** which inserted a new Article 394-A in the last part of the constitution.

Enactment of the Constitution

- **Dr B.R. Ambedkar** introduced the final draft on **Nov 4, 1948**, for first reading.
- **Second reading** held on **November 15, 1948**,
- **third reading** on **November 14, 1949**.
- **draft was passed on November 26, 1949** (Constitution day).
- **Constitution as adopted on November 26, 1949**, contained
 - **Preamble**
 - **394 Articles**
 - **8 Schedules.**
- Provisions of citizenship, elections, provisional parliament, temporary and transitional provisions and short title contained in Article 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 **came into force on November 26, 1949**. The **remaining** provisions came into force **on January 26, 1950**.
- With the adoption of the Constitution, all the provisions under the Indian Independence Act, 1947 and the **Government of India Act, 1935** were repealed.
- **Abolition of Privy Council Jurisdiction Act (1949)** continued.

Criticism to the Constituent Assembly

- **Not a Representative Body** - did not reflect the mass verdict due to election by the limited franchise.
- **Not a Sovereign body** as it was formed based on the proposals of the British Government and held its meeting with their permission.
- **Took greater time in framing** the Constitution as compared to the American constitution which took only 4 months.
- **Dominated by Congress**
- **Domination of Lawyers and Politicians**
- **Dominated by Hindus**

2 CHAPTER

Preamble



Basics of Preamble

- Introduction or preface/ Provides guidelines to the Constitution
- Embodies basic philosophy and fundamental values as basis for the Constitution
- Reflects dreams and aspirations of founding fathers of the Constitution.
- Neither a source of power to the legislature nor a prohibition
- Non-justiciable not enforceable in Courts of law.
- Can be amended without altering the basic structure.

Sayings

- Preamble is the '**horoscope of our sovereign democratic republic**' – K.M. Munshi
- It is the **soul of our Constitution**, which lays down the pattern of our political society. It contains a solemn resolve, which nothing but a revolution can alter – M. Hidayatullah
- **Phrase "dignity of the individual"**– signifies that the Constitution not only ensures material betterment

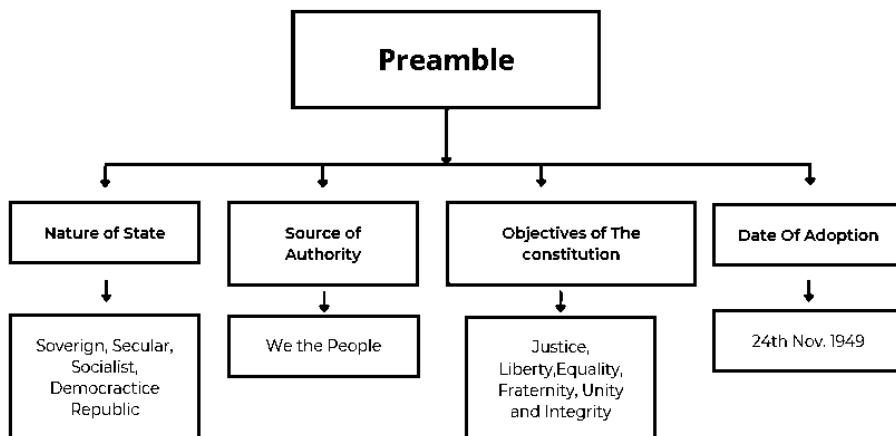
and maintain a democratic set-up, but it also recognizes that the personality of every individual is sacred – K.M Munshi

- '**Identity card of the constitution**'- NA Palkhivala
- 'The **preamble** to our constitution expresses what we had **thought or dreamt so long**'- Sir Alladi Krishnaswamy Iyer
- 'It is the soul of the constitution. It is a key to the constitution. It is a jewel set in the constitution. It is a proper yardstick with which one can measure the worth of the constitution'- Pandit Thakur Das Bhargava
- '**Key-note of the constitution**'- Sir Ernest Baker
- The Preamble contains mystic principle of a welfare state. – Acharya Kriplani

NOTE

- **Preamble** was enacted by the Constituent Assembly **after** the rest of the Constitution was already enacted to ensure its conformity with the Constitution.

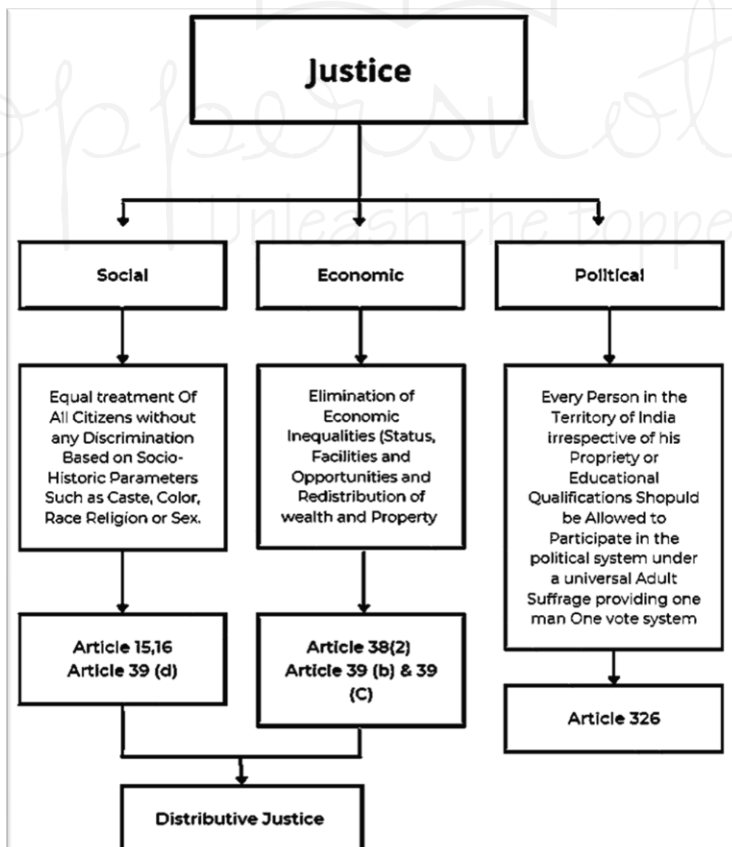
Components of the Preamble



Key Terms related to Preamble

- **Sovereignty: Absolute Independence** that is a government which is **not controlled by any other power**: internal or external.
 - A country cannot have its own Constitution without being sovereign. India is a sovereign country. It is free from any external control.
- **Socialist: not part of the original Constitution.**
 - Added by **42nd Amendment act**
 - **Article 36 to 51 (DPSP)**- Underline the **socialist leanings**
 - Used in the context of **economic planning**.
 - **Indian Socialism** – democratic socialism; Unique blend of **Gandhism and Marxism**
 - Commitment to attain ideals like **removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work.**
 - **Constitutional Provisions: Art 14-18, 21, 23, 330, 332, 334.**
- **Secularism: added by 42nd Constitutional Amendment Act 1976.**
 - India is **neither religious nor irreligious nor anti-religious.**

- **No state religion-** the state **does not support any particular religion**
- **Constitutional Provisions: Art. 14-16, 25-30, 44**
- **Democratic Republic:** Government is **elected by the people** and is **responsible and accountable to the people.**
 - **Democratic provisions:** Universal adult franchise, elections, Fundamental Rights and responsible Government.
 - **Constitutional Provisions: Art.12-35, 36-51, 325,326, 73rd and 74th Amendment Act.**
 - **Republic:** the **elected head** of the state (President, who is indirectly elected) not a hereditary ruler as Britain.
 - **Constitutional Provisions: Art.14, 55.**
- **Justice:** to give people what they are entitled to in terms of basic rights to food, clothing, housing, participation in decision making and living with dignity as human beings.
 - Taken from the **Russian Revolution (1917)**
 - Three **dimensions of Justice-** social, economic and political.



- **Liberty:** of thought and expression; **absence of restraints** on the activities of individuals, and at the same time, **providing opportunities** for the development of individual personalities.
 - Taken from the **French Revolution (1789–1799)**.
- **Equality: Absence of special privileges** to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
 - Three **dimensions of equality**—civic, political and economic.

- **Fraternity:** Sense of brotherhood; promotes the feeling of fraternity by a system of **single citizenship and by article 51A** (Fundamental Duties).

NOTE:

- **42nd Amendment Act 1976:** Added Three words to the preamble
 - Socialist
 - Secular
 - Integrity

Supreme Court Judgements Related to Preamble

Berubari Union v. Unknown Case, 1960	Kesavananda Bharati v. State of Kerala Case, 1973	Union Government Vs LIC of India Case, 1995
<p>Preamble is the key to open the mind of the makers' but it cannot be considered as part of the Constitution.</p> <p>Therefore, it is not enforceable in a Court of law.</p>	<p>Preamble of the Constitution will now be considered as part of the Constitution.</p> <p>The Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.</p>	<p>Preamble is the integral part of the Constitution but is not directly enforceable in a Court of justice in India.</p>

Amendability of Preamble

- The **question** about **amending** the Preamble under **Article 368** by the Parliament arose in the **Kesavananda Bharati case (1973)**
- It was argued that the **Preamble cannot be amended** because it was **not part** of the **constitution** as held in the **Berubari Union case**.
- The **Supreme Court**, however, **corrected** its earlier **stance** and held that the **Preamble is a part of the Constitution**.
- It held that the **Preamble can be amended**, but as long as **no amendment** is done to the **'Basic Structure'**
- In other words, the Court held that the **basic elements** or the fundamental features of the Constitution as contained in the **Preamble cannot be altered** by an amendment under **Article 368**

- BJP Member from Kerala K J Alphons moved the motion to introduce the **Constitution (Amendment) Bill, 2021** in the Upper House that would amend the Preamble.

NOTE

- **Private Member Bill:** The Bills introduced by private members (MP who is not a Minister) are referred to as Private Member's Bills.

Objective of Bill

- It seeks to **replace the word 'socialist' with 'equitable'**, among other changes.
- The MP has argued that the term "socialist" has "political connotations and carries a historical baggage which is not acceptable to a large section of India".
- The Bill seeks to **change the words in the Preamble** "EQUALITY of status and of opportunity" to "EQUALITY of status and of opportunity to be born, to be fed, to be educated, to get a job and to be treated with dignity".
- It also proposes adding "**access to information technology**" in the objectives of the Preamble.

NOTE:

- With the aim of inclusion, the Constitution's **Preamble** has been **recreated** in the Indian **sign language** by the Deaf Enabled Foundation

Recent Developments

Private Member's Bill to amend the Preamble to the Constitution

3

CHAPTER

Features of The Constitution



- **Longest written constitution:** it contains:
 - **Separate provisions for states and centre** and their inter-relationship.
 - **borrowed provisions** from several sources and constitutions of the world.

Countries	Borrowed Features of Indian Constitution
Australia	<ul style="list-style-type: none"> • Concurrent list • Freedom of trade, commerce and intercourse • Joint-sitting of the two Houses of Parliament
Canada	<ul style="list-style-type: none"> • Federation with a strong Centre • Vesting of residuary powers in the Centre • Appointment of state Governors by the Centre • Advisory jurisdiction of the SC
Ireland	<ul style="list-style-type: none"> • Directive Principles of the State Policy • Nomination of members to RajyaSabha • Method of election of the President
Japan	<ul style="list-style-type: none"> • Procedure Established by law
USSR/Russia	<ul style="list-style-type: none"> • Fundamental Duties • Ideal of justice (social, economic and political) in the Preamble
UK	<ul style="list-style-type: none"> • Parliamentary Government • Rule of Law • Legislative procedure • Single Citizenship • Cabinet system • Prerogative writs • Parliamentary privileges • Bicameralism • Procedure Established by law
US	<ul style="list-style-type: none"> • Fundamental Rights • Independence of judiciary • Judicial Review • Impeachment of the President

	<ul style="list-style-type: none"> • Removal of SC and HC Judges • Post of vice-President
Germany (Weimar)	<ul style="list-style-type: none"> • Suspension of Fundamental Rights during emergency
South Africa	<ul style="list-style-type: none"> • Procedure for Amendment in the Indian Constitution • Election of members of Rajya Sabha
France	<ul style="list-style-type: none"> • Republic • Ideals of liberty, equality and fraternity in the Preamble

- **separate provisions for SC, ST, women, children, and backward regions.**
- **detailed list of rights, DPSPs and details of administration procedures**
- **Originally (1949), had a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules.**
- **Presently, it consists of a Preamble, 25 parts, 448 Articles, 12 Schedules, and 104 Amendments till date.**
- **Unique blend of rigidity and flexibility:**
 - **Some parts can be amended by ordinary law making procedure** while certain provisions can be amended **by a majority of the total membership of that house and by a majority of not less than two-third of the members** of that house present and voting.
 - **Some amendments are also required to be ratified by the legislatures of not less than one-half of the states** before being presented to the President for assent.
- **India as a sovereign, socialist, secular, democratic and republic:** India is **governed by its people through their elected representatives** based on universal adult franchise.
- **Parliamentary System of Government:** Parliament controls the functioning of the CoM
 - **executive is responsible to the legislature** and remains in power as long as it enjoys the confidence of the legislature.

- **President** of India, who remains in office for five years, is the **nominal, titular or constitutional head (Executive)**.
 - **PM is the real executive and head of the CoM** who is collectively responsible to the lower house (Lok Sabha).
- **Single Citizenship:** single citizenship **provided by the union and recognized by all the states** across India.
- **Universal Adult Franchise:** establishes political equality in India through the method of universal adult franchise which **functions on the basis of 'one person one vote'**.
 - **Every** Indian who is **18 years of age or above is entitled to vote** in the elections, irrespective of caste, sex, race, religion or status.
- **Independent and Integrated Judicial System:** free from the influence of the **executive and the legislature**.
 - SC **as** the apex court below which HCs and lower courts come
- **Fundamental Rights, Fundamental Duties and DPSPs:**
 - **Fundamental Rights are not absolute** but are **subject to the limitations** defined by the constitution itself and are enforceable in the court of law.
 - **DPSPs are the guidelines** to be followed by the states regarding governance and are not enforceable in the court of law.
 - **Fundamental Duties, added by the 42nd Amendment are moral conscience** which ought to be followed by the Citizens.
- **Federation with a strong centralising tendency:** India is an **indestructible Union with destructible states** means it acquires a unitary character during the time of emergency.
- **Balancing Parliamentary supremacy with Judicial Review:** An **independent judiciary with the power of judicial review**

Parts and Schedules of Indian Constitution



Parts	Subject Matter	Articles Covered
I	The Union and its territory	1 to 4
II	Citizenship	5 to 11
III	Fundamental Rights	12 to 35
IV	Directive Principles of State Policy	36 to 51
IV-A	Fundamental Duties	51-A
V	The Union Government	52 to 151

	Chapter I - The Executive Chapter II - Parliament Chapter III - Legislative Powers of President Chapter IV - The Union Judiciary Chapter V - Comptroller and Auditor-General of India	52 to 78 79 to 122 123 124 to 147 148 to 151
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IX-A	The Municipalities	243-P to 243-ZG
IX-B	The Co-operative Societies	243-ZH to 243-ZT
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XI	Relations between the Union and the States	245 to 263
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XII	Finance, Property, Contracts and Suits	264 to 300-A
	Chapter I - Finance Chapter II - Borrowing Chapter III - Property, Contracts, Rights, Liabilities, Obligations and Suits Chapter IV - Right to Property	264 to 291 292 to 293 294 to 300 300-A
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	Chapter II - Regional Languages	348 to 349
	Chapter III-Language of the Supreme Court, High Courts, and so on	350 to 351
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XVIII	Emergency Provisions	352 to 360
XIX	Miscellaneous	361 to 367
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XXI	Temporary, Transitional and Special Provisions	369 to 392
XXII	Short title, Commencement, Authoritative Text in Hindi and Repeals	393 to 395

Schedules are the lists in the Constitution that categorize and tabulate bureaucratic activity and policy of Government.

Numbers	Subject Matter
First Schedule	1. Names of the States and their territorial jurisdiction. 2. Names of the Union Territories and their extent.
Second Schedule	Provisions relating to the emoluments, allowances, privileges and so on of: 1. The President of India 2. The Governors of States 3. The Speaker and the Deputy Speaker of the Lok Sabha 4. The Chairman and the Deputy Chairman of the Rajya Sabha 5. The Speaker and the Deputy Speaker of the Legislative Assembly in the states 6. The Chairman and the Deputy Chairman of the Legislative Council in the states 7. The Judges of the Supreme Court 8. The Judges of the High Courts 9. The Comptroller and Auditor-General of India
Third Schedule	Forms of Oaths or Affirmations for: 1. The Union ministers 2. The candidates for election to the Parliament 3. The members of Parliament 4. The Judges of the Supreme Court 5. The Comptroller and Auditor-General of India 6. The state ministers 7. The candidates for election to the state legislature 8. The members of the state legislature 9. The Judges of the High Courts
Fourth Schedule	Allocation of seats in the Rajya Sabha to the states and the union territories.
Fifth Schedule	Provisions relating to the administration and control of scheduled areas and scheduled tribes.
Sixth Schedule	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.
Seventh Schedule	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 100 subjects (originally 97), the state list contains 61 subjects (originally 66) and the concurrent list contains 52 subjects (originally 47).
Eighth Schedule	Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages. They are: Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71 st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92nd Amendment Act of 2003.
Ninth Schedule	Acts and Regulations (originally 13 but presently 282) 19 of the state legislatures dealing with land reforms and abolition of the zamindari system and of the. Parliament dealing with other

	matters. This schedule was added by the 1st Amendment (1951) to protect the laws included in it from judicial scrutiny on the ground of violation of Fundamental Rights. However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to Judicial Review.
Tenth Schedule	Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52nd Amendment Act of 1985, also known as Anti-defection Law.
Eleventh Schedule	Specifies the powers, authority and responsibilities of Panchayats. It has 29 matters. This schedule was added by the 73rd Amendment Act of 1992.
Twelfth Schedule	Specifies the powers, authority and responsibilities of Municipalities. It has 18 matters. This schedule was added by the 74th Amendment Act of 1992.

Comparison of Indian Constitution with Other Countries:

India vs.	Similarities with Indian Constitution	Differences with Indian Constitution
France	<p>Polity:</p> <ul style="list-style-type: none"> India and France have a written constitution French Constitution can be amended with a 60% majority similar to India's process of amendments Republic: Both the nations are Republic with the elected head of the State. India has borrowed ideas of liberty, equality and fraternity in the Preamble from the French Constitution. Emergency Provisions: Both the nations have a power for emergency provision. 	<p>Polity:</p> <ul style="list-style-type: none"> France has adopted a semi-Presidential System with the President having more power than the Prime Minister whereas India has adopted a Parliamentary form of Government with more power vested with the Prime Minister. Tenure of Head of Government: Indian PM has a tenure of 5 years whereas French President has for 7 years. Secularism: France adopted complete separation of state from religion, while Indian is more of a principled distance but not complete separation. France operates on a unitary model rather than federalism as in India. <p>Judiciary</p> <ul style="list-style-type: none"> There is no role of the judiciary in conducting elections in India whereas in France the judiciary plays an important role. The French court is divided in two parts, Judicial Courts and administrative courts but in India there is no such structure.
Canada	<p>Polity:</p> <ul style="list-style-type: none"> Both have a federal structure. residuary powers lies with the centre, Appointment of the Governor: Central government appoints the Governor for the States and Provinces. <p>Executive:</p> <ul style="list-style-type: none"> Both have a responsible government which is collectively responsible to the lower house. <p>Judiciary:</p> <ul style="list-style-type: none"> The appointment and advisory jurisdiction of the Supreme Court is the same as India. <p>Legislature:</p> <ul style="list-style-type: none"> Law made by the Parliament is applicable to the whole country. Members are elected by the first past the post system. 	<p>Polity:</p> <ul style="list-style-type: none"> Canada has a monarchical system whereas India has the President as head of the State. Canada is guided by both written and unwritten law whereas India is guided as by the written Constitution. There is a provision of dual citizenship in Canada whereas India does not give dual citizenship. <p>Executive:</p> <ul style="list-style-type: none"> Governor-General is appointed by the monarch on the advice of the Prime Minister whereas in India the President is elected by an indirect election. <p>Judiciary:</p> <ul style="list-style-type: none"> It has multiple legal systems whereas in the case of India it is absent.
Germany	<p>Polity:</p> <ul style="list-style-type: none"> Both the nations are Republic with the elected head of the State. 	<p>Polity:</p> <ul style="list-style-type: none"> Germany has a rigid Constitution whereas India has a flexible Constitution with certain features of Rigidity.

	<ul style="list-style-type: none"> Both have a Parliament form of Government in which the Chancellor/PM is head of the Government and the President has mainly ceremonial and supervisory duties. India has borrowed Emergency provisions from Germany. Both have a federal system. Both have the features of fundamental rights. 	<ul style="list-style-type: none"> Citizenship: Dual citizenship is allowed under certain circumstances in Germany India allows only Single Citizenship.
Japan	<p>Polity:</p> <ul style="list-style-type: none"> Both have written constitutions. Supremacy of Constitution and Judicial Review. Procedure established by Law. <p>Executive</p> <ul style="list-style-type: none"> Similar to India, the PM in Japan can belong to either House. The Council of Ministers is responsible to the Lower House, same as in India. <p>Legislature</p> <ul style="list-style-type: none"> Both have the Parliament as the highest legislative body. Two houses in the Parliament, Lower House is more powerful than the upper House. the No-Confidence motion leads to the dissolution of the House. In Japan, Upper House members have a term of 6 years and every year half the members retire. <p>Judiciary</p> <ul style="list-style-type: none"> Appointment, removal and fixed retirement age of Judges in Japan is similar to India. 	<p>Polity:</p> <ul style="list-style-type: none"> Japan is a Constitutional Monarchy whereas India is a Republic. In Japan, all the international treaties have to be ratified by their Legislature, which is not the case in India. Japan has a Rigid Constitution whereas India has a flexible and rigid Constitution. The Japanese Constitution provides for a unitary state. <p>Executive:</p> <ul style="list-style-type: none"> Ministers are appointed by the Prime Minister but in the case of India it is appointed by the President on the advice of the PM. In Japan their Parliament elects the PM from the party with the majority whereas in India such does not happen. <p>Judiciary:</p> <ul style="list-style-type: none"> Judges are appointed by the Diet(Legislature) but in India there is no role of Parliament in the Appointment.
Australia	<p>Polity:</p> <ul style="list-style-type: none"> Both have written the Constitution. Both India and Australia have federal parliamentary system with States and Territories. India borrowed a concurrent list from Australia. <p>Legislature:</p> <ul style="list-style-type: none"> There is a provision for 2nd reading and refer it to a committee which can suggest some recommendations similar to India. Both the nations have a provision for joint sitting to resolve the deadlock between both the Houses. <p>Judiciary:</p> <ul style="list-style-type: none"> The Supreme Court is the final court in Australia in all matters just like in India. 	<p>Polity:</p> <ul style="list-style-type: none"> In Australia the head of the Government is Prime Minister and the Queen is represented by a Governor general. The Australian Constitution can be amended only with the approval through a national referendum in which all the adults of the electorate must participate. State of emergency legislation differs in each state of Australia. There is a dual provision of citizenship in Australia, this provision was added on 4th April, 2002. <p>Legislature:</p> <ul style="list-style-type: none"> The Upper house is elected through the list system, in India it is elected by Single Transferable Vote.

	<ul style="list-style-type: none"> Both the nations have an independent judiciary and emphasizes on separation of power. Procedure for appointment and removal of Judges in Australia is the same as in India. 	<ul style="list-style-type: none"> Legislators of lower House are elected for 3 years in Australia whereas in India they are elected for 6 years.
USA	<p>Polity:</p> <ul style="list-style-type: none"> A written Constitution. of Fundamental Rights is similar. Preamble as their introductory statements. Both nations have the office of Vice-President. Judicial review in India is borrowed from the USA. There is a separation of powers between the different organs of the government. federal system in the USA similar to India. Supremacy of Constitution similar to India. Due Process of Law is followed. <p>Legislature:</p> <ul style="list-style-type: none"> Both the nations have representatives from their states in the Legislature. Both the nations have provision for removal of the President i.e., Impeachment process. 	<p>Polity:</p> <ul style="list-style-type: none"> The USA has a presidential form of government whereas India has a Parliamentary form of Government. The USA has a rigid constitution whereas India has a rigid and flexible Constitution. Residuary power is vested with the states whereas in India it is vested with the Union. The US Constitution has only been changed 27 times in 200 years. USA offers dual citizenship which is absent in case of India. <p>Executive:</p> <ul style="list-style-type: none"> In the USA the President is directly elected by the people whereas in India the President is indirectly elected. <p>Judiciary:</p> <ul style="list-style-type: none"> In India judges have retirement age whereas in the USA judges can be in the office until they enjoy good health. Each States has its own Constitution and Supreme Court which is absent in the case of India.
UK	<p>Polity</p> <ul style="list-style-type: none"> Type of Government: Both have a Parliamentary form of Government. India has adopted the Rule of Law from Britain. Both the nations have multiple party representation in the Parliament. <p>Executive:</p> <ul style="list-style-type: none"> Both the nations have a presence of Cabinet system. Both have the presence of Dual heads of Government. <p>Legislature:</p> <ul style="list-style-type: none"> The Ordinary Law can be passed, amended and repealed by a Simple Majority like in India. <p>Judiciary</p> <ul style="list-style-type: none"> Removal of Judges is the same as in India. 	<p>Polity:</p> <ul style="list-style-type: none"> The UK is a Constitutional Monarchy whereas India is a Republic. Offer dual citizenship in the UK. In the UK the Prime Minister has to be elected from the lower House whereas in India he can be from either House of Parliament. Written/Unwritten: The UK has an unwritten Constitution only a small portion is covered in a written document whereas India has a written constitution. The UK has a flexible Constitution & it is the unitary state <p>Legislature:</p> <ul style="list-style-type: none"> In the UK there is a convention that once a Speaker, always a Speaker, thus a former Speaker holds no political membership whereas in India the Speaker is still a member of the party. Parliament has the supreme power in the UK whereas the Indian Constitution has supreme power. <p>Judiciary:</p> <ul style="list-style-type: none"> the United Kingdom does not have a single unified legal system.

<p>Russia</p>	<p>Executive:</p> <ul style="list-style-type: none"> • In both countries the Prime Minister is appointed by the President. <p>Legislature:</p> <ul style="list-style-type: none"> • The Lower House is more powerful just like in India. • They both have a provision for fundamental rights. 	<p>Polity:</p> <ul style="list-style-type: none"> • Russia has a Semi Presidential system of Government while India has a Parliamentary form of Government. <p>Executive:</p> <ul style="list-style-type: none"> • Russia PM performs President's Duty in case of his death or resignation while the same responsibility is given to Vice-President in case of India. • In Russia the President can't have more than two consecutive terms in a row but there is no such limitation in India. • The President is Stronger in Russia while the PM enjoys more power in the case of India. • Term of the Russian President is 6 years while it is 5 years for the Indian President. <p>Legislature:</p> <ul style="list-style-type: none"> • Members of Lower House in Russia are chosen by Proportional Representation System while in India they are chosen by First Past the Post System <p>Judiciary</p> <ul style="list-style-type: none"> • There is not a Single Integrated Judiciary in Russia like in India.
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4

CHAPTER

Fundamental Rights



Constitutional Provisions

- **Articles 12 - 35** in **Part III** of the Indian Constitution
- **Source:** Constitution of USA (some provisions from French Constitution too)

Articles	Provisions
Article 12	Definition
Article 13	Laws inconsistent with or in derogation of the fundamental rights.
Article 14-18	Right To Equality
Article 19-22	Right To freedom
Article 23-24	Right Against Exploitation
Article 25-28	Freedom of Religion
Article 29-30	Cultural and Educational Rights
Article 31	Right to Property (Omitted)
Article 32-35	Right to Constitutional Remedies

Origin of Fundamental Rights

- **1st Demand:** Constitution of India Bill, in 1895, aka Swaraj Bill
- **Inspiration:** England Bill of Rights (1689), the United States Bill of Rights and France's Declaration of the Rights of Man.
- **1st Proposal:** Nehru Commission 1928
- **Adoption:** INC passed resolutions in 1931 pledging to defend fundamental civil rights as well as socio-economic rights.
- **Inclusion in Constitution:** By Drafting Committee

Types of Rights

Natural Rights:

- **Universal rights, part of human nature and inherent** in every individual.
- **Not conferred by law;** rather, they are recognised and enforced by it.
- **Eg:** Right to life.

Human Rights:

- **Same as Natural Rights** as they are universal and inherent in human Nature.
- **Necessary for a dignified human life** and can be enjoyed regardless of social, political, or other factors.

- **Retained by a person** since he or she is a human being.
- **Universal Declaration of Human Rights** was adopted by the UN in 1948.

Civil Rights:

- **Rights that citizens of a country enjoy, conferred by the law** of the country.
- May **differ from one country to another**

Fundamental Rights:

- **Civil rights** ensured by the Constitution and are defended by the SC directly.

Features of Fundamental Rights

- **Integral Part of Constitution:** Cannot be taken away by an ordinary law
- **Comprehensive and Detailed:** Are very elaborate, each article described with its scope and limitation
- **Lack of Social and Economic Rights:** Guarantees only civil rights, Rights like Right to work, right to health are missing.
- **Rights are qualified:** Not absolute except the right against **untouchability**, they are qualified and with limitations and reasonable restrictions.
- **Enforceability of rights:** **Justiciable** rights i.e. means if any of these rights are violated, **an individual has the right to move to the SC.**
- **Fundamental rights are amendable:** Not sacrosanct or permanent, they can be amended by the parliament.
- **Provision for the suspension of Rights:** Suspended during an emergency.
- **Constitutional Superiority of Fundamental rights:** Superior than the ordinary laws and DPSP.
- **Special Rights For the minorities:** Guarantee some special rights to minorities of various kinds.
- **No natural rights:** constitution does not recognize natural rights or unenumerated rights.
- **Right to Property not a fundamental right:** Due to hindrances posed by the right to property in the way of implementing socio- economic reforms it was deleted from fundamental rights.

Article 12 : Definition of State

- Article 12 - "The State" includes
 - The Government and Parliament of India
 - The Government and the Legislature of each of the States
 - All local or other authorities within the territory of India or under the control of the Government of India

Article 13: Laws inconsistent with or in derogation of the fundamental rights

- The term 'law' includes:
 - 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, that is, custom or usage having the force of law
- Not just a law, but any of the above can be challenged in court as infringing on a fundamental right, and therefore declared void.
- Article 13 specifies that a constitutional amendment is not a law and hence cannot be overturned.
 - Kesavananda Bharati case (1973) - SC concluded that a constitutional amendment can be challenged on the grounds
 - If it violates a fundamental right that is part of the Constitution's 'basic structure,' and so can be declared unconstitutional.

Six Fundamental Right to Equality (Articles 14-18)

Article 14 : Equality Before law & Equal protection of laws



The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Equality before law

- Borrowed from the English Common Law.
- Forbids the state from arbitrarily discriminating between persons.

- Implies elimination of any special privileges to any individual
- Equal submission of all classes to the regular law of the land administered by ordinary law courts
- no one is above the law, and that everyone is subject to the same jurisdiction.
- Prof. Dicey developed the concept of 'Rule of Law,' which gave birth to the concept of equality before the law.

Rule of Law

The rule of law is the foundation for the development of peaceful, equitable and prosperous societies. We believe there are four key areas that form the umbrella protection of the rule of law.

Equality Under the law + Transparency of law + Independent Judiciary + Accessible Legal Remedy

= The Rule of Law

- SC held that the 'Rule of Law' as embodied in Art 14 is a 'basic feature' of the constitution.
 - Cannot be destroyed even by an amendment.

Equal Protection of the laws

- Source- Constitution of USA.
- Implies right to equal treatment under same circumstances.
- Enables people to be treated differently depending on their socioeconomic level and educational attainment.
- Provides for 'affirmative action' for the most vulnerable members of society, as well as various tax rates for different income groups.

Exceptions to rule of equality

- Immunities to the President and Governors
 - while exercising powers and duties of their office
 - From any criminal prosecutions during his term of office.
 - From civil proceedings during his term of office.
- foreign sovereign and ambassadors.

Article 15 : Prohibition on discrimination on certain grounds.

Article 15(1) : State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

- Discrimination on other grounds is not prohibited.

Article 15(2) : No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

- Access to shops, public restaurants, hotels and places of public entertainment; or
- use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds.

This section prohibits discrimination by both the government and private persons, whereas the previous one solely prohibits discrimination only by the government.

Exceptions to rule of Non Discrimination

- special provision for women and children
 - Eg. Reservation of seats for women in local bodies
- Provisions for the progress of socially and educationally deprived persons, as well as the SCs and STs.
 - Eg. Reservation of seats or fee concessions in public educational institutions.
- special provision for the advancement of any EWSs of citizens.
 - Provision for reservation of upto 10% of seats for such sections in admission to educational institutions

SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES

- not defined in the Constitution.
- "Backward Classes" - Article 15(4), 16(4) and 29(2).
- Constitution empowers the State to give these classes of citizens special concessions in education, employment, etc. but it does not point out precisely who is backward.
- Responsibility to define the term/criteria is to the commissions established under Art. 338 and 340, as circumstances contributing to backwardness vary from State to State.
- On the basis of the recommendations of the commission, the President may specify backward classes - decision subject to judicial review.
- SC has held that 'Backwardness', as defined in Art. 15(4) should be both social and educational, and not either.

Reservation for OBCs in Educational Institutions

- Central Educational Institutions (Reservation in Admission) Act, 2006 - effecting the provisions of the 93rd Amendment Act, 2005- set aside a quota of 27% for OBC candidates in all central higher educational institutions (including IITs and IIMs).
- Both the Amendment Act and OBC Quota Act were upheld by the SC
 - Court asked the central government to exempt the 'creamy layer' (advanced section) of OBCs from the law's implementation.

Reservation for EWSs in Educational Institutions

- 103rd Amendment Act: Provides 10% reservation to the EWSs in admission to educational institutions.
- Availd by EWS persons who are not covered under any of the existing schemes of reservations for SCs, STs and OBCs.

Mandal Commission Report

- Appointment : 1979
- Chairman: B.P. Mandal
- Task: To evaluate conditions of the socially and educationally backward classes and recommend methods for their progress.
- Observations: identified 3743 castes as socially and educationally backward, constituting nearly 52% of the population, excluding the SCs and the STs.
- Recommendations: Reservation of 27% government positions for OBCs, bringing overall reservation for everyone (SCs, STs, and OBCs) to 50%.

Further developments:

- 1991- Narasimha Rao Government introduced two changes:
 - Preference to the poorer sections among the OBCs in the 27% quota.
 - Reservation of another 10% of jobs for poorer (economically backward) sections of higher castes not covered by any existing schemes of reservation.
- SC's Action (1992): Rejected the additional reservation of 10% for poorer sections of higher castes, it upheld the constitutional validity of 27% reservation for the OBCs with certain conditions
 - Excluded the advanced sections among the OBCs (the creamy layer) from reservation criteria.
 - No reservations in promotions; only in appointments.
 - Overall reserved quota shall not exceed 50% except for certain conditions.
 - For unfilled (backlog) positions, the 'carry forward rule' applies- it should not breach the 50% rule.
 - A permanent statutory authority should be formed to investigate concerns of OBC over-inclusion and under-inclusion.