



# GROUP I MAINS

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# IYACHAMY ACADEMY

TNPSC GROUP -I MAINS -2025

PRIME BATCH

**Indian Polity and Emerging Political Trends across the World affecting India**

## **Core Concepts of Constitutional Polity: India**

These concepts form the bedrock of modern democratic governance and are deeply embedded in the Indian constitutional framework, shaping its structure, functioning, and interpretation.

### **Popular Sovereignty**

#### **Meaning and Concept:**

1. **Definition:** Popular sovereignty is the principle that the **ultimate source of all governmental authority resides in the people**. The government derives its legitimacy from the consent of the governed and is accountable to them.
2. **Philosophical Roots:** Ideas trace back to social contract theorists like Jean-Jacques Rousseau ("general will"), John Locke (consent of the governed).
3. **Manifestation:** Typically expressed through mechanisms like free and fair elections, universal adult suffrage, referendums (where applicable), and the right of the people to alter or abolish their government (though within constitutional means in established democracies).

#### **Popular Sovereignty in the Indian Constitution:**

1. **Preamble:** The Constitution begins with the words: "**WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India... do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**"
  - o This explicitly declares that the people of India are the source of the Constitution and, by extension, all governmental authority flowing from it.
  - o **Dr. B.R. Ambedkar** stated in the Constituent Assembly that the Preamble embodies the principle that sovereignty vests in the people.
2. **Universal Adult Franchise (Article 326):** The provision for elections to the Lok Sabha and State Legislative Assemblies based on universal adult suffrage (every citizen above 18 years having the right to vote, unless disqualified) is a direct manifestation of popular sovereignty.
3. **Regular Elections:** The requirement for periodic elections ensures that the government remains accountable to the people and that the people can change their rulers.
4. **Fundamental Rights (Part III):** Many fundamental rights empower citizens and enable their participation in the democratic process, reinforcing popular control.
5. **Republic:** The fact that India is a Republic, with an elected head of state (President), further underscores that ultimate power is not vested in any hereditary monarch or external authority but with the people.
6. **Power to Amend the Constitution (Article 368):** While exercised by Parliament, this power is seen as deriving from the people, who have given themselves the Constitution. However, this power is not absolute and is limited by the **Basic Structure Doctrine** (as laid down in *Kesavananda Bharati v. State of Kerala, 1973*), which itself can be seen as protecting the fundamental will of the people embodied in the Constitution's core principles.

#### **Challenges and Interpretations:**

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- **Indirect Sovereignty:** In a large representative democracy like India, popular sovereignty is exercised indirectly through elected representatives. The extent to which these representatives truly reflect the "will of the people" is a continuous debate.
- **Role of Constituent Assembly:** Critics sometimes pointed out that the Constituent Assembly was not directly elected by universal adult franchise. However, its representative character and the subsequent acceptance and working of the Constitution by the people have largely validated its claim to embody popular sovereignty.
- **Supreme Court in *Kesavananda Bharati*:** Recognized popular sovereignty as an element of the basic structure, implying it cannot be abrogated.

## Constitutional Government (Limited Government)

### Meaning and Concept:

1. **Definition:** A constitutional government is one whose powers are **defined and limited by a constitution**. It is a government that operates within the framework of established laws and principles, rather than by arbitrary will. It is the antithesis of arbitrary or autocratic rule.
2. **Key Principles:**
  - **Supremacy of the Constitution:** The constitution is the highest law.
  - **Rule of Law:** Government actions must be based on and in accordance with law.
  - **Limited Powers:** Governmental powers are not absolute but are restricted by constitutional provisions (e.g., fundamental rights, division of powers).
  - **Accountability:** Government officials are accountable for their actions.
  - **Checks and Balances:** Mechanisms to prevent any one organ of government from becoming too powerful.

### Constitutional Government in India:

1. **Written Constitution:** India has a detailed written constitution that defines the powers and limitations of the Union and State governments.
2. **Fundamental Rights (Part III):** These act as explicit limitations on the powers of the State, protecting individual liberties from arbitrary encroachment.
3. **Judicial Review:** The power of the judiciary (Supreme Court under Article 32, High Courts under Article 226) to review legislative and executive actions and strike them down if they violate the Constitution is a cornerstone of constitutional government.
  - **Judgement: *Marbury v. Madison (1803)*** (US case, foundational for judicial review globally). In India, cases like *A.K. Gopalan v. State of Madras (1950)*, *Kesavananda Bharati (1973)*, *Minerva Mills v. Union of India (1980)* have affirmed and shaped judicial review.
4. **Separation of Powers (Functional):** Though not a strict separation (due to parliamentary system), there is a functional division of powers among the Legislature, Executive, and Judiciary, with each acting as a check on the others.
5. **Federalism:** Division of powers between Union and States acts as a vertical check on governmental power.
6. **Parliamentary System:** Ensures executive accountability to the legislature.

7. **Independent Judiciary:** Crucial for upholding constitutional limits.

## Parliamentary System of Government

### Meaning and Concept:

1. **Definition:** A system of democratic governance where the **executive branch derives its legitimacy from and is accountable to the legislature (Parliament)**. The head of government (Prime Minister) and the Council of Ministers are typically members of the legislature. There is a distinction between the Head of State (nominal executive) and the Head of Government (real executive).
2. Also known as the **Westminster model** (after the British Parliament) or **Cabinet form of government**.
3. **Key Features:**
  - **Nominal and Real Executives:** Head of State (President/Monarch) is nominal; Head of Government (Prime Minister) is real.
  - **Majority Party Rule:** The political party (or coalition) securing a majority in the lower house forms the government.
  - **Collective Responsibility:** The Council of Ministers is collectively responsible to the lower house of the legislature.
  - **Political Homogeneity:** Ministers usually belong to the same party or coalition and share a similar political ideology.
  - **Double Membership:** Ministers are members of both the legislature and the executive.
  - **Leadership of the Prime Minister:** PM is the leader of the Council of Ministers, the legislature, and the party in power.
  - **Dissolution of the Lower House:** The executive (PM) has the power to advise the Head of State to dissolve the lower house before its term expires and call for fresh elections.
  - **Fusion of Powers (Legislature and Executive):** Significant overlap and interdependence between the legislative and executive branches.

### Parliamentary System in India (Union - Articles 74, 75; States - Articles 163, 164):

1. **Adoption:** The framers of the Indian Constitution opted for the parliamentary system primarily due to:
  - **Familiarity with the System:** India had experience with it during British rule.
  - **Preference for Responsibility over Stability:** Dr. Ambedkar argued in the Constituent Assembly that the parliamentary system ensures more day-to-day accountability compared to the presidential system (which offers more stability).
  - **Need to Avoid Executive-Legislature Conflicts:** Which could be detrimental in a newly independent, diverse nation.
  - **Nature of Indian Society (Heterogeneity):** Seen as more accommodative of diverse interests.
2. **Features in India:**
  - **President as Nominal Head (Union); Governor as Nominal Head (State).**
  - **Prime Minister as Real Head (Union); Chief Minister as Real Head (State).**

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- Council of Ministers collectively responsible to Lok Sabha (Article 75(3)) and State Legislative Assembly (Article 164(2)).
  - Ministers must be members of Parliament/State Legislature (or become so within 6 months).
  - PM/CM advises President/Governor on dissolution of Lok Sabha/State Assembly.
3. **Distinction from British Model:**
- India has an elected Head of State (Republic), Britain has a hereditary monarch.
  - Indian Parliament is not sovereign in the British sense (due to written constitution, federalism, fundamental rights, judicial review).
  - Indian PM can be from either House of Parliament (in UK, PM is from House of Commons).

## Inclusive Governance

### Meaning and Concept:

1. **Definition:** Inclusive governance ensures that **all sections of society, especially the poor, marginalized, and vulnerable, have a voice in decision-making processes** and that policies are designed and implemented to benefit all, reducing inequalities and promoting equitable development.
2. **Key Principles:** Participation, non-discrimination, equity, transparency, accountability, responsiveness.
3. **Link to Good Governance:** Inclusive governance is a core component of good governance.

### Inclusive Governance in the Indian Context:

1. **Constitutional Mandate:**
  - **Preamble:** Aims for justice (social, economic, political), equality of status and opportunity.
  - **Fundamental Rights:** Equality (Art 14-18), non-discrimination (Art 15), abolition of untouchability (Art 17), protection of minorities (Art 29, 30).
  - **Directive Principles of State Policy:** Mandate state to promote welfare, minimize inequalities (Art 38), ensure adequate livelihood, equitable distribution of resources (Art 39), promote interests of weaker sections (Art 46).
2. **Mechanisms and Initiatives:**
  - **Reservations:** For SCs, STs, OBCs in legislatures, public employment, and education to ensure their representation and participation. (Recently, EWS reservation).
  - **Panchayati Raj and Municipalities (73rd & 74th Amendments):**
    - Constitutional mandate for local self-government with reservation for SCs, STs, and **women (at least 1/3rd seats and chairpersons)**, ensuring participation at grassroots.
    - Gram Sabhas and Ward Committees promote direct citizen participation.
  - **Right to Information Act, 2005:** Empowers citizens, promotes transparency and accountability.

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- **Targeted Welfare Schemes:** Numerous schemes for poverty alleviation, food security (National Food Security Act), health (Ayushman Bharat), education (Sarva Shiksha Abhiyan), employment (MGNREGA), social security for vulnerable groups.
  - **National Commissions:** For SCs, STs, BCs, Minorities, Women, Child Rights, Persons with Disabilities – act as watchdogs and advocates.
  - **Special Provisions for Certain Regions/Groups (e.g., Article 371 series, Fifth and Sixth Schedules):** To address specific needs and protect interests.
  - **Participatory Governance Platforms:** MyGov.in, public consultations on policies.
3. **Challenges:** Despite constitutional and policy measures, achieving genuine inclusive governance faces challenges like social hierarchies, economic disparities, bureaucratic apathy, corruption, lack of awareness, and effective implementation gaps.

## Constitutionalism

### Meaning and Concept:

1. **Definition:** Constitutionalism is the idea or theory that **government should be legally limited in its powers**, and that its authority depends on its observing these limitations. It implies a government of laws, not of men, and adherence to the letter and spirit of the Constitution.
2. It is more than just having a constitution; it means the constitution effectively controls the exercise of governmental power.
3. **Core Elements:** Limited government, rule of law, separation of powers, independent judiciary, protection of fundamental rights, accountability, popular sovereignty.
4. **Scholar: Carl J. Friedrich:** "Constitutionalism is a system of effective, regularized restraints upon governmental action."

### Constitutionalism in India:

1. **Written Constitution with Bill of Rights:** The very existence of a detailed written constitution with entrenched Fundamental Rights is a primary manifestation of constitutionalism.
2. **Supremacy of the Constitution:** All organs of government derive their powers from and are bound by the Constitution.
3. **Judicial Review:** The judiciary's power to strike down laws and executive actions inconsistent with the Constitution is a key mechanism for enforcing constitutionalism.
4. **Doctrine of Basic Structure:** (As laid down in *Kesavananda Bharati*) ensures that even the amending power of Parliament is not absolute and cannot destroy the fundamental tenets of the Constitution, thereby preserving constitutionalism.
5. **Rule of Law (Article 14):** Ensures that government actions are not arbitrary and are subject to law.
6. **Checks and Balances:** Through separation of powers (functional), federalism, parliamentary accountability.
7. **Independent Institutions:** ECI, CAG, UPSC, NHRC contribute to limiting arbitrary power.

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8. **Challenges:** Sometimes, executive actions or legislative measures may be seen as undermining constitutional principles, leading to judicial intervention or public debate. Ensuring substantive adherence to constitutionalism beyond mere formalism is an ongoing process.

## Constitutional Morality

### Meaning and Concept:

1. **Definition:** Constitutional morality means **adherence to the core principles and values underlying the Constitution**. It goes beyond mere textual compliance and involves upholding the spirit of the Constitution, including its commitment to democracy, liberty, equality, fraternity, social justice, and secularism.
2. It implies a sense of self-restraint and deference to constitutional norms by all constitutional functionaries and citizens.
3. **Dr. B.R. Ambedkar in Constituent Assembly:** Emphasized the importance of constitutional morality for the successful working of the Constitution. He stated, "Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it." He viewed it as a paramount reverence for the forms of the Constitution.
4. **Scholar: Granville Austin:** Discussed the idea of "imbibing the spirit of the Constitution."

### Constitutional Morality in Indian Jurisprudence:

- The Supreme Court has increasingly invoked the concept of constitutional morality in recent landmark judgments to interpret constitutional provisions and test the validity of laws and state actions.
- It is used as a standard to assess whether an action, though perhaps formally legal, violates the foundational ethos of the Constitution.
- **Key Judgments:**
  - *Naz Foundation v. Govt. of NCT of Delhi (2009, Delhi HC)* and *Navtej Singh Johar v. Union of India (2018, SC)* (decriminalizing homosexuality): SC held that constitutional morality should prevail over popular or majoritarian morality. Denying rights to LGBTQ+ individuals was seen as violative of constitutional morality based on principles of equality, dignity, and liberty.
  - *Indian Young Lawyers Association v. State of Kerala (2018) (Sabarimala Case)*: Majority opinion invoked constitutional morality to strike down the exclusion of women of menstruating age from the temple, holding it violative of equality and dignity. (Justice Indu Malhotra's dissent cautioned against applying contemporary morality to deeply held religious beliefs).
  - *Joseph Shine v. Union of India (2018)* (decriminalizing adultery): Adultery law struck down as violative of constitutional morality premised on gender equality and individual autonomy.
  - *Govt. of NCT of Delhi v. Union of India (2018)*: Emphasized constitutional morality in the context of Centre-State relations and cooperative federalism.
- **Significance:** Constitutional morality acts as an interpretive tool to ensure that the Constitution remains a living document, adapting to evolving societal values while upholding its core principles. It guides the judiciary in striking down laws or

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practices that are anachronistic or violate fundamental constitutional values, even if they have social sanction.

- **Criticism:** Some critics argue that the concept is vague and gives excessive discretion to judges, potentially leading to judicial overreach if not applied with caution and based on established constitutional principles.

## Constitutional Supremacy (Supremacy of the Constitution)

### Meaning and Concept:

1. **Definition:** Constitutional supremacy means that the **Constitution is the supreme law of the land**, and all organs of the government (Legislature, Executive, Judiciary) derive their powers from and are subordinate to it.
2. No law or action by any governmental body can violate the provisions of the Constitution.
3. It is a hallmark of countries with a written and rigid/semi-rigid constitution.
4. Contrasts with **Parliamentary Supremacy** (as in UK), where Parliament is the supreme law-making body and can make or unmake any law, and no court can question its validity.

### Constitutional Supremacy in India:

1. **Article 13(2):** "The State shall not make any law which takes away or abridges the rights conferred by this Part [Fundamental Rights] and any law made in contravention of this clause shall, to the extent of the contravention, be void." This directly establishes the supremacy of FRs, and by extension, the Constitution.
2. **Written Constitution:** The detailed written document itself signifies its supreme nature.
3. **Judicial Review:** The power of the SC and HCs to examine the constitutionality of laws and executive actions and declare them void if they conflict with the Constitution is the primary mechanism for upholding constitutional supremacy.
4. **Basic Structure Doctrine:** Reinforces constitutional supremacy by ensuring that even Parliament's power to amend the Constitution is limited and cannot destroy its fundamental framework.
5. **Federalism:** Division of powers between Union and States is mandated by the Constitution, and neither can transgress the limits set by it.
6. **Oaths of Office:** All high constitutional functionaries take an oath to uphold the Constitution.
7. **Supreme Court in *Kesavananda Bharati* and *Minerva Mills*:** Explicitly affirmed constitutional supremacy as a basic feature.

### Rule of Law

#### Meaning and Concept:

1. **Definition:** Rule of Law means that the **law is supreme and that no individual, including government officials, is above the law**. It implies governance based on principles of law and not on arbitrary will or discretion. It is an antithesis to arbitrary power.
2. **A.V. Dicey's Formulation (British context):** Popularized the concept with three main principles:
  - **(a) Supremacy of Law:** Absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power. No one can be punished or

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made to suffer except for a distinct breach of law established in the ordinary legal manner before ordinary courts.

- **(b) Equality before the Law:** Equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by ordinary law courts.
  - **(c) Predominance of Legal Spirit (Rights as source of law):** The Constitution is the result of the rights of individuals as defined and enforced by the courts, rather than the constitution being the source of individual rights (this aspect is more specific to UK's unwritten constitution).
3. **Modern Concept:** Includes principles like legality, certainty, equality, access to justice, accountability, fairness in application of law, and protection of human rights.

## Rule of Law in India:

### 1. Constitutional Embodiment:

- **Preamble:** Aims to secure justice, liberty, equality.
- **Article 14:** Guarantees equality before the law and equal protection of the laws. This is seen as the core of Rule of Law in India.
- **Fundamental Rights (Part III):** Protect individuals from arbitrary state action.
- **Article 21:** Protection of life and personal liberty "except according to procedure established by law."
- **Independent Judiciary and Judicial Review:** Essential for upholding Rule of Law.
- **Separation of Powers (Functional).**

### 2. Supreme Court Judgments:

- ***A.D.M. Jabalpur v. Shivkant Shukla (1976) (Habeas Corpus case):*** Majority judgment was criticized for diluting Rule of Law during Emergency. Justice H.R. Khanna's dissent upheld Rule of Law even during emergency. (The majority view was later effectively overruled by implications of 44th Amendment and subsequent jurisprudence).
- ***Kesavananda Bharati (1973):*** Rule of Law recognized as part of the basic structure.
- ***Maneka Gandhi v. Union of India (1978):*** Strengthened Rule of Law by interpreting "procedure established by law" under Article 21 to mean a procedure that is fair, just, and reasonable.
- ***Indra Sawhney v. Union of India (1992):*** Rule of Law identified as a basic feature.

3. **Challenges:** Issues like delays in justice, corruption, misuse of power, and sometimes lack of accountability can undermine the effective realization of Rule of Law.

## Due Process of Law vs. Procedure Established by Law

### Procedure Established by Law (Article 21 of Indian Constitution - Original Interpretation):

- "No person shall be deprived of his life or personal liberty except according to procedure established by law."

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- **Meaning:** This means that a law that is duly enacted by the legislature or the concerned body is valid if it has followed the correct procedure. The court would not go into the fairness, justness, or reasonableness of the law itself, but only see if the procedure prescribed by that law was followed.
- **Source:** Borrowed from the Japanese Constitution.
- **Initial Judicial Interpretation (e.g., *A.K. Gopalan v. State of Madras, 1950*):** The Supreme Court took a narrow view, holding that Article 21 provided protection only against arbitrary executive action, not against arbitrary legislative action. If a law was passed by a competent legislature following due procedure, its substantive reasonableness could not be questioned under Article 21.

## Due Process of Law (Primarily an American Concept):

- **Meaning:** This doctrine not only checks if there is a law to deprive a person of life/liberty but also examines if the law is fair, just, and not arbitrary or oppressive. It gives judiciary the power to assess the **substantive reasonableness of the law** itself, in addition to procedural fairness.
- It has two aspects:
  - **Procedural Due Process:** Requires fair procedure (notice, opportunity to be heard, impartial tribunal).
  - **Substantive Due Process:** Allows courts to protect certain fundamental rights from government interference, even if the interference is procedurally fair, by examining the content and policy of the law.

## Evolution in India - Towards Substantive Due Process:

1. **Maneka Gandhi v. Union of India (1978):** This was a landmark case that significantly transformed the interpretation of Article 21.
  - The Supreme Court held that the "procedure established by law" under Article 21 must be "**right, just and fair**" and "**not arbitrary, fanciful or oppressive.**" Otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.
  - It effectively introduced the principles of **substantive due process** into Article 21, without explicitly using the term. The Court stated that procedure must satisfy the requirements of Articles 14 (equality/non-arbitrariness) and 19 (freedoms, requiring reasonableness of restrictions).
  - This "golden triangle" (Articles 14, 19, 21) interlinkage ensures that any law depriving a person of life or personal liberty must not only pass the test of prescribed procedure but also the test of reasonableness and non-arbitrariness.
2. **Post-Maneka Gandhi Jurisprudence:**
  - The SC has consistently applied this expanded interpretation, using Article 21 to strike down arbitrary laws and executive actions and to recognize a host of unenumerated rights (right to privacy, clean environment, speedy trial, etc.) as part of right to life and personal liberty.
  - This has significantly enhanced the judiciary's power of judicial review and its role as a protector of fundamental rights.
3. **Difference in Effect:** While India formally retains "procedure established by law," its judicial interpretation has brought it very close to the American concept of

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"substantive due process," at least concerning Article 21. This means the judiciary can now examine not just the procedural validity of a law affecting life and liberty, but also its substantive fairness and reasonableness.

These core constitutional concepts are interconnected and mutually reinforcing. Popular sovereignty forms the basis of a constitutional government, which operates under the supremacy of the Constitution and the rule of law. The parliamentary system is one form of constitutional government. Inclusive governance, constitutional morality, and the evolution from a strict "procedure established by law" towards a more substantive "due process" approach all contribute to the deepening of constitutionalism and the realization of the rights and dignities promised by the Constitution.

## Introduction to the Constitution of India

### What is a constitution?

- **Definition:** A Constitution is the fundamental, supreme, and organic law of a country that establishes the framework and principal functions of the organs of the government (Legislature, Executive, and Judiciary), and defines the principles governing the operation of those organs. It also outlines the rights and duties of citizens and the relationship between the citizens and the state.
- **Nature:**
  - **Living Document:** It is not a static document but a dynamic one, capable of evolving with the changing needs and aspirations of society. As **Pt. Jawaharlal Nehru** stated, a Constitution, if it is out of touch with the people's life, aims and aspirations, becomes rather empty.
  - **Grundnorm:** According to legal philosopher Hans Kelsen's "Pure Theory of Law," the Constitution is the 'Grundnorm' or the basic norm from which all other laws derive their validity.
- **Purpose & Significance:**
  - Provides a set of basic rules that allow for minimal coordination amongst members of a society.
  - Specifies who has the power to make decisions in a society and how governments will be constituted.
  - Sets limits on what a government can impose on its citizens (fundamental rights).
  - Enables the government to fulfil the aspirations of a society and create conditions for a just society (e.g., Directive Principles of State Policy).
  - Expresses the fundamental identity of a people – collectively embodying the moral and political values that bind them.
- **Granville Austin's View:** He described the Indian Constitution as a "social document" aiming to bring about a "social revolution." He famously noted, "The Indian Constitution is first and foremost a social document... The majority of India's constitutional provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement."

### Historical Underpinnings & Evolution of the Demand for a Constitution

The Indian Constitution is not a sudden creation but a culmination of a long historical process, influenced by various colonial acts and the national freedom struggle.

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- **Early Seeds (Pre-Constituent Assembly):**
  - **Regulating Act of 1773:** First step by the British government to control and regulate the affairs of the East India Company in India.
  - **Charter Acts (1813, 1833, 1853):** Gradually centralized administration and introduced legislative functions.
  - **Government of India Act, 1858:** Transferred power from the East India Company to the British Crown after the 1857 revolt.
  - **Indian Councils Acts (1861, 1892, 1909):** Introduced representative institutions by associating Indians with law-making (though limited). Act of 1909 (Morley-Minto Reforms) introduced separate electorates for Muslims.
  - **Government of India Act, 1919 (Montagu-Chelmsford Reforms):** Introduced dyarchy in provinces and bicameralism at the Centre.
  - **Simon Commission (1927):** Appointed to review the working of the 1919 Act; boycotted by Indians as it had no Indian members.
  - **Nehru Report (1928):** A draft constitution prepared by a committee chaired by Motilal Nehru, demanding Dominion Status, fundamental rights, and a parliamentary system. This was the first major Indian attempt to draft a constitutional framework.
  - **Government of India Act, 1935:** A detailed document that provided for an All-India Federation (never materialized), provincial autonomy, dyarchy at the Centre, bicameral legislatures in provinces, and establishment of a Federal Court. This Act became a major blueprint for the present Constitution.
- **Demand for a Constituent Assembly:**
  - **1922:** Mahatma Gandhi expressed that Swaraj would not be a free gift of the British Parliament but a declaration of India's full self-expression, framed by Indians themselves.
  - **1934:** The idea of a Constituent Assembly for India was first formally put forward by **M.N. Roy**, a pioneer of the communist movement in India.
  - **1935:** The Indian National Congress (INC) officially demanded a Constituent Assembly to frame the Constitution of India.
  - **1938:** Jawaharlal Nehru, on behalf of the INC, declared that "the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise."
  - **August Offer (1940):** The British government, for the first time, conceded the demand for a Constituent Assembly, in principle.
  - **Cripps Mission (1942):** Sir Stafford Cripps proposed a framework for India's independence after World War II, including the setting up of an elected body to frame a new Constitution. This was rejected by the Muslim League, which wanted India to be divided into two autonomous states with two separate Constituent Assemblies.
  - **Cabinet Mission Plan (1946):** This plan finally provided for the establishment of the Constituent Assembly. It rejected the demand for two Constituent Assemblies but proposed a scheme that was complex and offered some autonomy to Muslim-majority provinces.

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## The Constituent Assembly: Composition, Working, and Key Aspects

- **Formation:** Constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.
- **Composition (Pre-Partition):**
  - **Total Strength:** 389 members.
    - 296 seats were allotted to British India (292 from 11 Governor's provinces and 4 from Chief Commissioner's provinces).
    - 93 seats to the Princely States.
  - **Method of Election:**
    - Members from British Indian provinces were indirectly elected by the members of the provincial legislative assemblies (elected on a limited franchise under the GoI Act, 1935).
    - Representatives of Princely States were to be nominated by the heads of the princely states.
  - **Proportional Representation:** Seats allocated to each British province were divided among the three principal communities – Muslims, Sikhs, and General (all others) – in proportion to their population. Voting was by the method of proportional representation by means of a single transferable vote.
  - **Not directly elected by adult franchise:** This was a point of criticism, but given the circumstances and lack of time, direct elections were deemed impractical.
- **Working of the Constituent Assembly:**
  - **First Meeting (Dec 9, 1946):** Attended by 211 members (Muslim League boycotted, demanding Pakistan). **Dr. Sachchidananda Sinha**, the oldest member, was elected as the temporary/interim President, following the French practice.
  - **Permanent Leadership (Dec 11, 1946):**
    - **President:** Dr. Rajendra Prasad.
    - **Vice-Presidents (two):** H.C. Mookherjee and V.T. Krishnamachari.
  - **Objectives Resolution (Dec 13, 1946):**
    - Moved by **Jawaharlal Nehru**.
    - Laid down the fundamental principles and philosophy that were to guide the framing of the Constitution.
    - Declared India as an Independent Sovereign Republic.
    - Envisioned a federal polity with residuary powers in the units (later modified).
    - Guaranteed justice, equality, freedom of thought, expression, value, belief, faith, worship, vocation, association, and action, subject to law and public morality.
    - Provided adequate safeguards for minorities, backward and tribal areas, and depressed and other backward classes.
    - Unanimously adopted on January 22, 1947.
    - Its modified version forms the Preamble of the present Constitution.

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- **Impact of Indian Independence Act, 1947:**
  - The Act made the Constituent Assembly a fully sovereign body, which could frame any Constitution it pleased.
  - It also became a legislative body (performing two separate functions: making the Constitution and enacting ordinary laws for the country). When it met as the Constituent body, it was chaired by Dr. Rajendra Prasad, and when it met as the legislative body, it was chaired by G.V. Mavalankar.
  - The Muslim League members from Indian Dominion areas joined the Assembly. Strength reduced to 299 (229 from provinces, 70 from princely states).
- **Other Functions Performed:**
  - Ratified India's membership of the Commonwealth in May 1949.
  - Adopted the National Flag on July 22, 1947.
  - Adopted the National Anthem on January 24, 1950.
  - Adopted the National Song on January 24, 1950.
  - Elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.
- **Committees of the Constituent Assembly:** The Assembly appointed numerous committees to deal with different tasks.
  - **Major Committees:**
    - Union Powers Committee – Jawaharlal Nehru
    - Union Constitution Committee – Jawaharlal Nehru
    - Provincial Constitution Committee – Sardar Patel
    - **Drafting Committee – Dr. B.R. Ambedkar** (most crucial)
    - Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Sardar Patel. This committee had sub-committees:
      - Fundamental Rights Sub-Committee – J.B. Kripalani
      - Minorities Sub-Committee – H.C. Mookherjee
      - 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
    - Rules of Procedure Committee – Dr. Rajendra Prasad
    - States Committee (for negotiating with states) – Jawaharlal Nehru
    - Steering Committee – Dr. Rajendra Prasad
  - **Drafting Committee:** Set up on August 29, 1947.
    - **Chairman:** Dr. B.R. Ambedkar (often referred to as the 'Father of the Indian Constitution' or 'Chief Architect').
    - **Members:** N. Gopalaswamy Ayyangar, Alladi Krishnaswamy Ayyar, Dr. K.M. Munshi, Syed Mohammad Saadullah, N. Madhava Rau (replaced B.L. Mitter who resigned due to ill-health), T.T. Krishnamachari (replaced D.P. Khaitan who died in 1948).

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- Took less than six months to prepare its first draft (published Feb 1948).
- **Enactment and Enforcement of the Constitution:**
  - The Draft Constitution was introduced by Dr. Ambedkar on November 4, 1948 (first reading).
  - Second reading (clause by clause consideration) started on November 15, 1948, and ended on October 17, 1949. About 7,653 amendments were proposed and 2,473 were actually discussed.
  - Third reading started on November 14, 1949. Dr. Ambedkar moved a motion – "the Constitution as settled by the Assembly be passed."
  - **Adoption:** The Constitution was declared as passed on **November 26, 1949**. It received the signatures of the members and the President.
    - This date is mentioned in the Preamble.
    - Certain provisions pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and short title (Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, and 393) came into force on this day itself.
  - **Commencement:** The remaining provisions (the major part) of the Constitution came into force on **January 26, 1950**.
    - This day is referred to in the Constitution as the 'date of its commencement' and celebrated as Republic Day.
    - January 26 was specifically chosen because of its historical importance: on this day in 1930, **Purna Swaraj Day** was celebrated, following the resolution of the Lahore Session (December 1929) of the INC.
  - With the commencement of the Constitution, the Indian Independence Act, 1947, and the Government of India Act, 1935 (with all enactments amending or supplementing it) were repealed (**Article 395**). The Abolition of Privy Council Jurisdiction Act, 1949, however, continued to apply.
- **Time and Cost:**
  - The Constituent Assembly took **2 years, 11 months, and 18 days** to finalize the Constitution, holding 11 sessions covering 165 days.
  - The framers had gone through the constitutions of about 60 countries.
  - The total expenditure incurred was ₹64 lakh.

## Philosophy and Guiding Values (as reflected in the Objectives Resolution & Preamble)

- The philosophy is best encapsulated in the **Preamble**, which was based on Nehru's **Objectives Resolution**.
- **Core Values:**
  - **Sovereignty:** India is an independent authority, not subject to the control of any external power.
  - **Socialist:** (Added by 42nd Amendment, 1976) Aims to achieve socialist ends through democratic means; a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism. Implies state ownership/control over means of production and equitable distribution of wealth. The Supreme Court in **D.S. Nakara v. Union of India (1983)** observed that "the principal

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aim of a socialist State is to eliminate inequality in income and status and standards of life."

- **Secular:** (Added by 42nd Amendment, 1976) The state has no official religion; all religions are treated with equal respect (Sarva Dharma Sama Bhava). Articles 25-28 guarantee freedom of religion. The concept was implicit before the amendment. In **S.R. Bommai v. Union of India (1994)**, the Supreme Court held secularism as a basic feature of the Constitution.
- **Democratic:** Government by the people, of the people, and for the people. Encompasses political, social, and economic democracy. India has representative parliamentary democracy.
- **Republic:** The head of the state (President) is elected, not a hereditary monarch.
- **Justice:** Social, economic, and political – secured through Fundamental Rights and Directive Principles.
- **Liberty:** Of thought, expression, value, belief, faith, and worship – essential for individual development.
- **Equality:** Of status and opportunity – to all individuals without discrimination.
- **Fraternity:** Assuring the dignity of the individual and the unity and integrity of the nation (integrity added by 42nd Amendment).
- **Significance of the Preamble:**
  - **N.A. Palkhivala:** Called the Preamble the "identity card of the Constitution."
  - **K.M. Munshi:** Referred to it as the "horoscope of our sovereign democratic republic."
  - **Sir Ernest Barker:** Described the Preamble as the "key-note" to the Constitution.
  - Initially, in the **Berubari Union case (1960)**, the Supreme Court held that the Preamble was not a part of the Constitution.
  - However, in the landmark **Kesavananda Bharati v. State of Kerala case (1973)**, the Supreme Court overturned its earlier decision and held that the Preamble is an integral part of the Constitution and can be amended (subject to the 'basic structure' doctrine). It has interpretational value and reflects the basic structure.

## Sources of the Indian Constitution

The Indian Constitution is often described as a 'borrowed' constitution, but it is not a mere patchwork. Dr. B.R. Ambedkar proudly stated that the Constitution of India has been framed after "ransacking all the known Constitutions of the World." It adopted and adapted features suitable to Indian conditions.

- **Government of India Act, 1935:** Federal Scheme, Office of Governor, Judiciary, Public Service Commissions, Emergency provisions, Administrative details. (This was the most significant source, forming the skeleton).
- **British Constitution:** Parliamentary government, Rule of Law, Legislative procedure, Single citizenship, Cabinet system, Prerogative writs, Parliamentary privileges, Bicameralism.

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- **US Constitution:** Fundamental Rights, Independence of judiciary, Judicial review, Impeachment of the President, Removal of Supreme Court and High Court judges, Post of Vice-President.
- **Irish Constitution:** Directive Principles of State Policy, Nomination of members to Rajya Sabha, Method of election of the President.
- **Canadian Constitution:** Federation with a strong Centre, Vesting of residuary powers in the Centre, Appointment of state governors by the Centre, Advisory jurisdiction of the Supreme Court.
- **Australian Constitution:** Concurrent List, Freedom of trade, commerce and intercourse, Joint sitting of the two Houses of Parliament.
- **Weimar Constitution of Germany:** Suspension of Fundamental Rights during Emergency.
- **Soviet Constitution (USSR, now Russia):** Fundamental duties, Ideal of justice (social, economic, and political) in the Preamble.
- **French Constitution:** Republic and the ideals of Liberty, Equality, and Fraternity in the Preamble.
- **South African Constitution:** Procedure for amendment of the Constitution, Election of members of Rajya Sabha.
- **Japanese Constitution:** Procedure established by Law.

## Salient Features of the Indian Constitution

1. **Longest Written Constitution:** Originally 395 Articles (in 22 Parts) and 8 Schedules. Now (as of latest updates) significantly more Articles, 25 Parts, 12 Schedules.
2. **Drawn from Various Sources:** As detailed above.
3. **Blend of Rigidity and Flexibility:** Some provisions can be amended by simple majority, others by special majority, and some by special majority plus ratification by half of the states (Article 368).
4. **Federal System with Unitary Bias:** Features of federation (two governments, division of powers, written Constitution, supremacy of Constitution, independent judiciary) and unitary features (strong Centre, single Constitution, single citizenship, integrated judiciary, appointment of state governor by Centre, all-India services, emergency provisions). **K.C. Wheare** described it as "quasi-federal." **Granville Austin** called it "cooperative federalism."
5. **Parliamentary Form of Government:** (Westminster model) Cooperation and coordination between legislative and executive organs.
6. **Synthesis of Parliamentary Sovereignty and Judicial Supremacy:** Parliament can amend large parts of the Constitution (parliamentary sovereignty), while the Supreme Court can declare parliamentary laws unconstitutional through judicial review (judicial supremacy).
7. **Integrated and Independent Judiciary:** Supreme Court at the top, followed by High Courts, and then subordinate courts. Independence ensured through various provisions.
8. **Fundamental Rights (Part III):** Justiciable rights promoting political democracy.

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9. **Directive Principles of State Policy (Part IV):** Non-justiciable, aim to establish a welfare state, promoting social and economic democracy. **Granville Austin** called FRs and DPSPs the "Conscience of the Constitution."
10. **Fundamental Duties (Part IV-A):** Added by 42nd Amendment (1976) on Swaran Singh Committee recommendation. Non-justiciable.
11. **A Secular State:** As discussed in the Preamble section.
12. **Universal Adult Franchise:** Voting rights for all citizens above 18 years without discrimination (originally 21, reduced by 61st Amendment Act, 1988).
13. **Single Citizenship:** Unlike federations like the USA.
14. **Emergency Provisions (Part XVIII):** National (Art 352), State/President's Rule (Art 356 & 365), Financial (Art 360) – to safeguard sovereignty, unity, integrity, and security.
15. **Three-tier Government:** Originally two-tier. 73rd and 74th Amendment Acts (1992) added a third tier (Panchayats and Municipalities), giving constitutional recognition to local self-government.

## Criticisms of the Constituent Assembly & the Constitution

- **Not a Representative Body:** Argued that members were not directly elected by adult franchise. However, direct elections for the entire country at that time were a monumental and time-consuming task. The composition did reflect different communities and regions.
- **Not a Sovereign Body:** Claimed it was a creation of the British. However, the Indian Independence Act, 1947, made it a fully sovereign body.
- **Time-Consuming:** Accused of taking too long. But given the complexity and diversity of India, and the detailed nature of the task, the time taken was justifiable (USA took nearly 4 months for a much simpler constitution).
- **Domination by Congress:** The INC held a majority. **Granville Austin** commented, "The Constituent Assembly was a one-party body in an essentially one-party country...The Congress was the Constituent Assembly." However, the Congress itself was a diverse party, and deliberate efforts were made to include non-Congress personalities.
- **Lawyer-Politician Domination:** This led to bulkiness and complicated language. This is partly true, but legal expertise was necessary for drafting a complex legal document.
- **Domination by Hindus:** Critics like Lord Viscount Simon called it "a body of Hindus." Winston Churchill commented it represented "only one major community in India." This is an overstatement, as all significant minority groups had representation.
- **A 'Borrowed' Constitution / 'Patchwork':** As discussed under 'Sources', while influences are undeniable, they were adapted. Dr. Ambedkar stated there was nothing to be ashamed of in borrowing, and "no one holds any patent rights in the fundamental ideas of a Constitution."
- **Carbon copy of the 1935 Act / 'Amended version of the 1935 Act':** Many provisions were indeed taken from it. Dr. Ambedkar acknowledged this, stating that they related to administrative details which had to be included.

## Historical Background of the Constitution of India

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The Constitution of India, adopted on November 26, 1949, and enforced on January 26, 1950, is not the product of a singular event but the culmination of a long and arduous historical journey. This journey witnessed the gradual evolution of administrative and legislative structures under British rule, alongside the persistent struggle of the Indian people for self-governance and a constitution framed by their own representatives.

## **The Company Rule (1773–1858)**

During this period, the British East India Company (EIC), initially a trading entity, transformed into a territorial power. The British Parliament began enacting laws to regulate its affairs and administration in India. These Acts laid the early foundations of a centralized system of governance.

### **Context: From Trade to Territory**

The EIC's victories, notably the Battle of Plassey (1757) and Battle of Buxar (1764), granted it Diwani rights (rights over revenue and civil justice) of Bengal, Bihar, and Orissa. This dual system of government was rife with corruption and administrative breakdown, necessitating parliamentary intervention.

### **Regulating Act of 1773**

This was the first significant step by the British Government to control and regulate the affairs of the EIC in India and to recognize, for the first time, its political and administrative functions.

#### **1. Key Provisions:**

- Designated the Governor of Bengal as the '**Governor-General of Bengal**' (Lord Warren Hastings was the first) and created an Executive Council of four members to assist him. Governors of Bombay and Madras presidencies were made subordinate to him.
- Provided for the establishment of a **Supreme Court at Calcutta (1774)** comprising one chief justice and three other judges. (Sir Elijah Impey was the first Chief Justice).
- Prohibited servants of the Company from engaging in any private trade or accepting presents or bribes from the 'natives'.
- Required the Court of Directors (governing body of the Company) to report on its revenue, civil, and military affairs in India to the British Government.

#### **2. Significance:**

- Laid the foundations of central administration in India.
- Marked the beginning of parliamentary control over the Company.

#### **3. Deficiencies:** The Act failed to clearly demarcate the powers of the Governor-General-in-Council and the Supreme Court, leading to frequent conflicts. The control of the British government over the Company proved inadequate.

## **Pitt's India Act of 1784**

Named after the then British Prime Minister William Pitt the Younger, this Act aimed to rectify the defects of the Regulating Act.

#### **1. Key Provisions:**

- Distinguished between the commercial and political functions of the Company.
- Established a **Board of Control** (6 members) in Britain to supervise and direct all operations of the civil and military government or revenues of the

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British possessions in India. The Court of Directors retained control over commercial affairs.

- This created a **dual system of control** (Company represented by Court of Directors, Crown represented by Board of Control).
- Empowered the Board of Control to supervise and direct all operations of the civil and military government or revenues of the British possessions in India.
- The Governor-General's Council strength was reduced to three members, making the Governor-General more powerful (able to override with one supporter).

## 2. Significance:

- Established the British Government's supreme control over the Company's affairs and its administration in India.
- For the first time, the Company's territories in India were called the '**British possessions in India**'.

## Charter Act of 1793

### 1. Key Provisions:

- Extended the trade monopoly of the Company in India for another 20 years.
- Stipulated that the members of the Board of Control and their staff were, henceforth, to be paid out of the Indian revenues. This practice continued up to 1919.
- Gave the Governor-General more powers and control over the subordinate Presidencies.

### 2. Significance: Reinforced the subordination of Indian revenues to British imperial interests.

## Charter Act of 1813

### 1. Key Provisions:

- Abolished the trade monopoly of the Company in India, i.e., Indian trade was thrown open to all British merchants. However, the Company's monopoly over trade in tea and trade with China was retained.
- Asserted the **undoubted sovereignty of the Crown** over the Company's territories in India.
- Allowed Christian missionaries to come to India for the purpose of "enlightening" the people.
- Provided for the spread of western education among the inhabitants of the British territories in India; a sum of one lakh rupees was to be set apart annually for this purpose.

### 2. Significance: Marked a significant shift in the Company's role, diminishing its commercial functions and subtly increasing its administrative and political responsibilities. It also initiated the state's role in education.

## Charter Act of 1833

This Act was the final step towards centralization in British India.

### 1. Key Provisions:

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- Made the Governor-General of Bengal the **Governor-General of India** (Lord William Bentinck was the first) and vested in him all civil and military powers.
  - Deprived the governors of Bombay and Madras of their legislative powers. The Governor-General of India was given exclusive legislative powers for the entire British India. Laws made under previous acts were called Regulations, while laws made under this act were called Acts.
  - Ended the activities of the East India Company as a commercial body, which became a purely administrative body. It provided that the company's territories in India were held by it 'in trust for His Majesty, His heirs and successors'.
  - **Attempted to introduce a system of open competition** for selection of civil servants (Section 87 stated that no Indian subject of the Company should be debarred from holding any office under the Company by reason of his religion, place of birth, descent or colour). However, this provision was negated after opposition from the Court of Directors.
  - A Law Member (Macaulay was the first) was added to the Governor-General's Council for professional advice on law-making.
2. **Significance:** Completed the process of administrative and legislative centralization. The Act legitimized British colonization of India.

## Charter Act of 1853

This was the last of the series of Charter Acts passed by the British Parliament between 1793 and 1853.

1. **Key Provisions:**
- Separated, for the first time, the **legislative and executive functions of the Governor-General's council**. It provided for the addition of six new members called 'legislative councillors' to the council, establishing a separate Governor-General's Legislative Council (known as the Indian Legislative Council or "mini-Parliament").
  - Introduced an **open competition system** for selection and recruitment of civil servants. The covenanted civil service was thus thrown open to Indians also. Accordingly, the **Macaulay Committee** (the Committee on the Indian Civil Service) was appointed in 1854.
  - Extended the Company's rule and allowed it to retain the possession of Indian territories on trust for the British Crown, but did not specify any particular period, unlike previous Charters. This was a clear indication that the Company's rule could be terminated at any time Parliament liked.
  - Introduced, for the first time, **local representation** in the Indian (Central) Legislative Council. Of the six new legislative members, four were appointed by the local (provincial) governments of Madras, Bombay, Bengal, and Agra.
2. **Significance:** Laid the foundation of the modern parliamentary form of government by separating legislative and executive functions. The opening of civil services was a crucial, albeit delayed, step.

## The Crown Rule (1858–1947)

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The Sepoy Mutiny of 1857 (or the First War of Independence) served as a major jolt to British rule. In its aftermath, the British Crown assumed direct responsibility for the governance of India.

## **Context: The Great Revolt of 1857**

The Revolt exposed the fundamental weaknesses of Company rule and the deep-seated resentment among various sections of Indian society. The British Parliament felt an urgent need for a more responsible and direct form of administration.

## **Government of India Act, 1858**

This significant Act was known as the "Act for the Good Government of India."

### **1. Key Provisions:**

- Abolished the East India Company, and transferred the powers of government, territories, and revenues to the British Crown.
  - Changed the designation of the Governor-General of India to that of **Viceroy of India**. He (Viceroy) was the direct representative of the British Crown in India (Lord Canning thus became the first Viceroy of India).
  - Ended the system of dual government by abolishing the Board of Control and Court of Directors.
  - 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.
  - Established a 15-member **Council of India** to assist the Secretary of State for India. The Council was an advisory body. The Secretary of State was made the Chairman of the Council.
2. **Significance:** Marked the formal end of Company rule and the beginning of direct rule by the British Crown. The administrative machinery remained largely centralized and bureaucratic, primarily aimed at strengthening imperial control.

## **Indian Councils Act of 1861**

After 1857, the British government felt the necessity of seeking the cooperation of Indians in the administration of their country.

### **1. Key Provisions:**

- Made a beginning of **representative institutions by associating Indians with the law-making process**. It provided that the Viceroy should nominate some Indians as non-official members to his expanded legislative council. (In 1862, Lord Canning nominated three Indians: the Raja of Benaras, the Maharaja of Patiala, and Sir Dinkar Rao).
- Initiated the process of **decentralisation (legislative devolution)** by restoring the legislative powers to the Bombay and Madras Presidencies.
- It empowered the Viceroy to make rules and orders for the more convenient transaction of business in the council. It also gave recognition to the **'portfolio' system**, introduced by Lord Canning in 1859 (under this, a member of the Viceroy's council was made in-charge of one or more departments).

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- Empowered the Viceroy to issue ordinances, without the concurrence of the legislative council, during an emergency. The life of such an ordinance was six months.
- 2. **Significance:** A cautious step towards including Indians in governance, though their role was purely advisory and non-official members were few and unrepresentative. The legislative devolution was a reversal of the centralizing tendency of earlier acts.
- 3. **Limitations:** The Legislative Council had no real power; it was an advisory body. The non-official members were nominated and had no effective say.

## Indian Councils Act of 1892

### 1. Key Provisions:

- Increased the number of additional (non-official) members in the Central and provincial legislative councils but maintained the official majority in them.
- Increased the functions of legislative councils and gave them the power of **discussing the budget** (but not voting on it) and **addressing questions** to the executive.
- Provided for the nomination of some non-official members of the:
  - Central Legislative Council by the Viceroy on the recommendation of the provincial legislative councils and the Bengal Chamber of Commerce.
  - Provincial legislative councils by the Governors on the recommendation of the district boards, municipalities, universities, trade associations, zamindars, and chambers.
- 2. **Significance:** The Act made a limited and indirect provision for the use of **election** in filling up some of the non-official seats. The word "election" was, however, not used in the Act. It was described as nomination on recommendation. This was a concession to nationalist demands for greater representation.
- 3. **Limitations:** The "elected" members were few, and the system of election was indirect. The councils still lacked substantial power.

## Indian Councils Act of 1909 (Morley-Minto Reforms)

Named after Lord Morley (Secretary of State) and Lord Minto (Viceroy).

### 1. Key Provisions:

- Considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central Legislative Council was raised from 16 to 60.
- Retained official majority in the Central Legislative Council but allowed the provincial legislative councils to have a non-official majority.
- Enlarged the deliberative functions of the legislative councils at both levels. Members were allowed to ask supplementary questions, move resolutions on the budget, and so on.
- Provided for the first time for the **association of Indians with the executive councils** of the Viceroy and Governors. (Satyendra Prasad Sinha became the first Indian to join the Viceroy's Executive Council. He was appointed as the law member).

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- Introduced a system of **communal representation for Muslims by accepting the concept of 'separate electorate'**. Under this, Muslim members were to be elected only by Muslim voters.
- 2. **Significance:** Represented a limited increase in Indian participation. However, the introduction of separate electorates is widely seen as a major flaw.
- 3. **Criticism:** The Act "legalised communalism," and **Lord Minto** came to be known as the "Father of Communal Electorate." The reforms were intended to rally the Moderates within the Congress while dividing the nationalist ranks by placating Muslims. As **K.M. Munshi** stated, these reforms "killed the nascent nationalism in India by dividing the people into watertight compartments of separate electorates."

## Government of India Act of 1919 (Montagu-Chelmsford Reforms / Montford Reforms)

1. **Context:** The First World War, the rise of the Home Rule Movement by Annie Besant and Tilak, and the increasing demand for self-government. The British government made the **August Declaration of 1917** (Montagu Declaration), stating its policy was the "gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire."
2. **Key Provisions:**
  - **Separation of Subjects:** Demarcated central and provincial subjects.
  - **Dyarchy in Provinces:** Provincial subjects were divided into 'transferred' and 'reserved' subjects.
    - Transferred subjects were to be administered by the governor with the aid of ministers responsible to the legislative council.
    - Reserved subjects were to be administered by the governor and his executive council without being responsible to the legislative council. This dual scheme of governance was known as 'dyarchy'—a term derived from the Greek word 'di-arche' which means double rule.
  - **Bicameralism and Direct Elections at the Centre:** Introduced, for the first time, bicameralism (Upper House - Council of State, Lower House - Legislative Assembly) and direct elections in the country. However, the franchise was limited based on property, tax, or education.
  - Required that three of the six members of the Viceroy's executive Council (other than the commander-in-chief) were to be Indian.
  - Extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians, and Europeans.
  - Created a new office of the **High Commissioner for India** in London and transferred to him some of the functions hitherto performed by the Secretary of State for India.
  - Provided for the establishment of a **Public Service Commission**. Hence, a Central Public Service Commission was set up in 1926 for recruiting civil servants.
  - Provided for the appointment of a statutory commission to inquire into and report on its working after ten years of its coming into force.

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3. **Significance:** A significant, though flawed, step towards responsible government. The idea of "responsible government" was explicitly mentioned.
4. **Deficiencies:** Dyarchy proved complex and largely unworkable. The division of subjects was illogical. Ministers had little control over finances or civil servants. The franchise remained extremely restricted.
5. **Simon Commission (1927):** Appointed two years ahead of schedule to review the Act. It was an all-British commission, which led to its widespread boycott in India under the slogan "Simon Go Back." The Commission recommended the abolition of dyarchy, extension of responsible government in provinces, establishment of a federation, and continuation of communal electorate.

## Nehru Report (1928)

1. **Context:** As a response to Lord Birkenhead's (Secretary of State) challenge to Indian politicians to produce a constitution acceptable to all, an All Parties Conference was convened, which appointed a committee under the chairmanship of **Motilal Nehru** (with Jawaharlal Nehru as secretary).
2. **Key Proposals:**
  - Dominion Status for India as the next immediate step.
  - A federal structure with residuary powers vested in the Centre.
  - Parliamentary form of government with a bicameral legislature at the Centre.
  - **Nineteen Fundamental Rights**, including equality before the law, freedom of speech, assembly, and religion.
  - Responsible government both at the Centre and in the provinces.
  - Rejection of separate electorates; instead, joint electorates with reservation of seats for minorities (in proportion to population) were proposed.
  - Creation of new provinces on linguistic basis.
3. **Significance:** This was the first major attempt by Indians to draft a constitutional framework for the country. It laid down many principles that were later incorporated into the Constitution of India. However, it was not accepted by the Muslim League, led by Muhammad Ali Jinnah, who put forth his "Fourteen Points."

## Round Table Conferences (1930-32) & Communal Award (1932)

1. **Context:** The Civil Disobedience Movement launched by Mahatma Gandhi. Three Round Table Conferences were held in London to discuss constitutional reforms.
2. **Communal Award (August 1932):** Announced by British Prime Minister Ramsay MacDonald, it extended separate electorates not only to Muslims, Sikhs, Indian Christians, Anglo-Indians, and Europeans but also to the Depressed Classes (Scheduled Castes).
3. **Poona Pact (September 1932):** Mahatma Gandhi undertook a fast unto death in Yerawada Jail, Poona, against the extension of separate electorates to Depressed Classes. An agreement was reached between the leaders of the Congress and the Depressed Classes (Dr. B.R. Ambedkar) known as the Poona Pact. It retained the Hindu joint electorate and gave reserved seats to the Depressed Classes in provincial and central legislatures, more than what was offered by the Communal Award.

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## Government of India Act of 1935

This was a lengthy and detailed document, forming a major blueprint for the Constitution of independent India.

### 1. Key Provisions:

- **All-India Federation:** Provided for the establishment of an All-India Federation consisting of provinces and princely states as units. (However, the federation never came into being as the princely states did not join it).
- **Provincial Autonomy:** Abolished dyarchy in the provinces and introduced 'provincial autonomy' in its place. The provinces were allowed to act as autonomous units of administration in their defined spheres. Ministers were responsible to the provincial legislatures. This came into effect in 1937 and was discontinued in 1939.
- **Dyarchy at the Centre:** Provided for the adoption of dyarchy at the Centre (federal subjects divided into reserved and transferred). This provision also did not come into operation.
- **Bicameralism:** Introduced bicameralism in six out of eleven provinces (Bengal, Bombay, Madras, Bihar, Assam, and the United Provinces).
- **Division of Powers:** Divided legislative powers between the Centre and units into three lists: Federal List (for Centre, with 59 items), Provincial List (for provinces, with 54 items), and Concurrent List (for both, with 36 items). Residuary powers were given to the Viceroy.
- Extended the principle of communal representation by providing separate electorates for depressed classes (Scheduled Castes), women, and labour (workers).
- Abolished the Council of India, established by the Act of 1858. The Secretary of State for India was provided with a team of advisors.
- Extended franchise. About 10 per cent of the total population got the voting right.
- Provided for the establishment of a **Reserve Bank of India** to control the currency and credit of the country.
- Provided for the establishment of not only a **Federal Public Service Commission** but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.
- Provided for the establishment of a **Federal Court**, which was set up in 1937. (Precursor to the Supreme Court of India).

### 2. Significance:

It was a landmark in India's constitutional development. Many provisions, such as the federal scheme, office of the governor, judiciary, public service commissions, emergency provisions, and administrative details, were drawn directly into the Constitution of India.

- **Jawaharlal Nehru** described it as a "machine with strong brakes but no engine" and "a Charter of Slavery."
- **M.A. Jinnah** called it "thoroughly rotten, fundamentally bad and totally unacceptable."

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3. **Deficiencies:** The proposed federation was flawed as states' accession was optional. Discretionary powers of the Governor-General and Governors were extensive. Franchise was still limited.

## Growth of Demand for a Constituent Assembly

The idea that India's Constitution should be framed by Indians themselves, through a representative body, gained momentum during the freedom struggle.

### 1. Early Ideas and Demands:

- **1922:** Mahatma Gandhi expressed that Swaraj would mean India's self-expression and that the Indian Constitution would be framed by Indians.
  - **1934:** The idea of a Constituent Assembly was first formally put forward by **M.N. Roy**, a pioneer of the communist movement in India.
  - **1935:** The Indian National Congress (INC) officially demanded a Constituent Assembly.
  - **1938:** Jawaharlal Nehru, on behalf of INC, declared that "the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise."
2. **August Offer (1940):** During WWII, the British Government, for the first time, acknowledged in principle the right of Indians to frame their own constitution. It proposed that a representative Indian body would be set up after the war.
  3. **Cripps Mission (1942):** Sir Stafford Cripps came to India with a draft proposal for a new constitution after the war, which could be adopted by an elected Constituent Assembly. The proposals were rejected by the Muslim League (wanted division) and the Congress (objected to dominion status and the states' representatives being nominated, not elected). Gandhi described Cripps' offer as "a post-dated cheque on a failing bank."
  4. **Cabinet Mission Plan (1946):** After WWII, the Labour Government under Clement Attlee sent a mission to India. It rejected the demand for two Constituent Assemblies but put forth a scheme for a single Constituent Assembly which was more or less accepted by all parties. This plan formed the basis for the actual constitution of the Constituent Assembly.

## Indian Independence Act, 1947

This Act put into effect the Mountbatten Plan for the partition of India and the creation of two independent dominions.

### 1. Key Provisions:

- Declared India independent and sovereign from August 15, 1947.
- Provided for the creation of two independent dominions: India and Pakistan, with the right to secede from the British Commonwealth.
- Abolished the office of Viceroy and provided for a Governor-General for each dominion, to be appointed by the British King on the advice of the dominion cabinet.
- Empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution for their respective nations and to repeal any act of the British Parliament, including the Indian Independence Act itself.
- Abolished the office of the Secretary of State for India.

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- Granted princely states the freedom to join either dominion or to remain independent (this latter option was problematic).
  - Designated the Governor-General of India and the provincial governors as constitutional (nominal) heads of the states.
2. **Significance:** This Act marked the end of British rule and the legal transfer of power to the two newly created dominions. It enabled the Constituent Assembly of India (which had its first sitting on December 9, 1946) to become a fully sovereign body.

## Scholarly Perspectives & Interlinkages: The Legacy of History

- **Continuity and Change:** The Indian Constitution, while a revolutionary document, did not emerge in a vacuum. It inherited and adapted several administrative and legislative structures from the colonial era (e.g., parliamentary system, aspects of judicial organization, civil services). As **Ivor Jennings** noted, the Constitution of India is largely a product of British rule. However, it also represented a decisive break by enshrining principles of sovereignty, democracy, fundamental rights, and social justice, which were denied under colonial rule.
- **Impact of Nationalist Aspirations:** The entire historical process was deeply intertwined with the nationalist movement. The demand for fundamental rights, universal suffrage, responsible government, and a secular state were core aspirations of the freedom struggle that found expression in the Constitution. The framers were acutely aware of the exploitative nature of colonial rule and sought to create a framework that would empower the citizens and transform Indian society.
- **An Evolutionary Rather Than Revolutionary Process:** Unlike some constitutions born out of violent revolutions that completely swept away the old order, the Indian constitutional development was more evolutionary, marked by gradual reforms and concessions wrested from the colonial power, culminating in a negotiated transfer of power.
- **Granville Austin's Observation:** "The Indian Constitution is first and foremost a social document... The Constituent Assembly, the Congress, and the country were agreed that the Constitution was to be an instrument of social revolution." This "social revolution" was aimed at fundamentally altering the hierarchical and inequitable social order inherited from the past, including the colonial past. The historical quest for self-rule was intrinsically linked to the quest for a just and equitable society, and the constitutional framework was seen as the primary means to achieve this.

The historical background thus provides the essential context for understanding the choices made by the framers of the Indian Constitution, the values they sought to embed, and the challenges they aimed to overcome. It underscores that the Constitution is a living testament to India's long journey towards self-determination and national regeneration.

### Making of the Indian Constitution

The making of the Indian Constitution was a monumental task undertaken in the backdrop of immense challenges: the aftermath of World War II, the impending partition of the country, widespread communal violence, the integration of disparate princely

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states, and deep-rooted socio-economic inequalities. The process reflects a remarkable exercise in democratic deliberation and consensus-building.

## The Constituent Assembly: Genesis and Composition

The idea of a Constituent Assembly, elected by the people of India to frame their own constitution without outside interference, was a long-standing demand of the Indian nationalist movement.

### Demand for a Constituent Assembly (Recap from Historical Background)

- **1922:** Mahatma Gandhi's assertion of Swaraj implying a constitution framed by Indians.
- **1934:** M.N. Roy's formal proposal.
- **1935:** Indian National Congress (INC) official demand.
- **1938:** Jawaharlal Nehru's declaration for an assembly based on adult franchise.
- **August Offer (1940):** British acceptance in principle.
- **Cripps Mission (1942):** Concrete proposal, but rejected.

### Cabinet Mission Plan, 1946: The Foundation

The Constituent Assembly was constituted in **November 1946** under the scheme formulated by the **Cabinet Mission Plan**.

#### 1. Key Features of the Scheme:

- **Total Strength:** 389 members.
  - **296 seats** were allotted to **British India** (eleven Governor's provinces and four Chief Commissioner's provinces).
  - **93 seats** to the **Princely States**.
- **Allocation of Seats in British India:** Seats allocated to each British province were to be divided among the three principal communities – **Muslims, Sikhs, and General** (all others excluding Muslims and Sikhs) – in proportion to their population.
- **Method of Election (British India):** Members were to be elected by the members of the **provincial legislative assemblies** (which themselves were elected on a limited franchise under the Government of India Act, 1935). The method of election was **proportional representation by means of a single transferable vote**.
- **Representation of Princely States:** Representatives of princely states were to be **nominated by the heads of the princely states**.

#### 2. Nature of the Assembly:

- It was a **partly elected and partly nominated body**.
- The members were **indirectly elected** by the members of the provincial assemblies.
- The election for the 296 seats allotted to British Indian Provinces was completed by July-August 1946.
  - Indian National Congress won 208 seats.
  - Muslim League won 73 seats.
  - Small groups and independents got the remaining 15 seats.
- The 93 seats allotted to the princely states were not filled initially as they decided to stay away from the Constituent Assembly.

### Impact of the Indian Independence Act, 1947, on the Constituent Assembly

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The Act, which partitioned the country into India and Pakistan, led to significant changes in the status and composition of the Assembly:

1. **Sovereign Body:** The Assembly became a fully **sovereign body**, free to frame any Constitution it pleased. It could abrogate or alter any law made by the British Parliament in relation to India.
2. **Legislative Body:** The Assembly also became a **legislative body** (Dominion Legislature). In other words, two separate functions were assigned to the Assembly:
  - Making of a constitution for free India.
  - Enacting ordinary laws for the country.
  - These two tasks were to be performed on separate days.
  - When the Assembly met as the **Constituent body**, it was chaired by **Dr. Rajendra Prasad**.
  - When it met as the **legislative body**, it was chaired by **G.V. Mavalankar** (who later became the first Speaker of the Lok Sabha). These two functions continued till November 26, 1949, when the task of making the Constitution was over.
3. **Reduced Strength:** After the withdrawal of Muslim League members (for areas included in Pakistan) and the partition, the total strength of the Assembly came down to **299** (as against 389 originally fixed).
  - The strength of the Indian provinces (formerly British Provinces) was reduced from 296 to **229**.
  - The strength of the princely states was reduced from 93 to **70**. The state-wise membership as on December 31, 1947, is a detailed factual point, but the overall reduction is key.

## Working of the Constituent Assembly

The Constituent Assembly's journey was marked by systematic work, extensive debates, and a spirit of accommodation.

## Inaugural Sessions and Key Appointments

1. **First Meeting (December 9, 1946):**
  - Attended by only **211 members**. The Muslim League boycotted the meeting, pressing its demand for Pakistan.
  - **Dr. Sachchidananda Sinha**, the oldest member, was elected as the temporary/interim President of the Assembly, following the French practice.
2. **Permanent Leadership (December 11, 1946):**
  - **President: Dr. Rajendra Prasad** was elected as the permanent President.
  - **Vice-Presidents:** Two Vice-Presidents were elected: **H.C. Mookherjee** and **V.T. Krishnamachari**.
3. **Constitutional Advisor: Sir B.N. Rau** was appointed as the Constitutional Advisor to the Assembly. He prepared an initial draft based on reports of various committees and research into other constitutions, which greatly facilitated the work of the Drafting Committee.

## The Objectives Resolution (The Guiding Star)

1. Moved by Jawaharlal Nehru on December 13, 1946.

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2. **Content and Philosophy:** It laid down the fundamentals and philosophy of the constitutional structure. It proclaimed India as an "Independent Sovereign Republic" and outlined its main objectives:
  - To secure for all its citizens: **Justice** (social, economic, and political); **Liberty** (of thought, expression, belief, faith, worship, vocation, association, and action, subject to law and public morality); **Equality** (of status, of opportunity, and before the law).
  - To promote **Fraternity** among them all, assuring the dignity of the individual and the unity of the nation.
  - To provide adequate safeguards for minorities, backward and tribal areas, and depressed and other backward classes.
  - To maintain the 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.
  - To attain its rightful and honored place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.
3. **Adoption:** The Resolution was unanimously adopted by the Assembly on **January 22, 1947**.
4. **Significance:**
  - It profoundly influenced the eventual shaping of the Constitution through all its subsequent stages.
  - Its modified version forms the **Preamble** of the present Constitution.
  - **Granville Austin** described the Indian Constitution as "first and foremost a social document," and the Objectives Resolution was the initial articulation of this social commitment.

## **Committee System: The Backbone of Deliberation**

The Constituent Assembly appointed numerous committees to deal with different aspects of the constitution-making. These committees submitted reports that formed the basis for discussions and the eventual drafting of the Constitution.

1. **Major Committees:**
  - **Union Powers Committee:** Chaired by Jawaharlal Nehru.
  - **Union Constitution Committee:** Chaired by Jawaharlal Nehru.
  - **Provincial Constitution Committee:** Chaired by Sardar Vallabhbhai Patel.
  - **Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas:** Chaired by Sardar Vallabhbhai Patel. This committee had several crucial sub-committees:
    - Fundamental Rights Sub-Committee – J.B. Kripalani
    - Minorities Sub-Committee – H.C. Mookherjee
    - 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
  - **Rules of Procedure Committee:** Chaired by Dr. Rajendra Prasad.

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- **States Committee (for negotiating with Princely States):** Chaired by Jawaharlal Nehru.
  - **Steering Committee:** Chaired by Dr. Rajendra Prasad.
  - **Drafting Committee:** (Most pivotal) See details below.
2. **Minor Committees:** Included committees on the Functions of the Constituent Assembly, Order of Business Committee, House Committee, Ad-hoc Committee on the National Flag, etc.

## The Drafting Committee: Architects of the Text

1. **Formation:** Set up on **August 29, 1947**, it was tasked with preparing a draft Constitution based on the reports from various committees.
2. **Composition (Seven Members):**
  - **Dr. B.R. Ambedkar (Chairman):** Widely regarded as the 'Father of the Indian Constitution' or 'Chief Architect of the Constitution of India'. His profound legal expertise, deep understanding of constitutionalism, and championing of social justice were instrumental. He is also described by some scholars as the "Modern Manu."
  - **N. Gopalaswamy Ayyangar**
  - **Alladi Krishnaswamy Ayyar**
  - **Dr. K.M. Munshi**
  - **Syed Mohammad Saadullah**
  - **N. Madhava Rau** (He replaced B.L. Mitter who resigned due to ill-health)
  - **T.T. Krishnamachari** (He replaced D.P. Khaitan who died in 1948)
3. **Process:**
  - The first draft of the Constitution was prepared by the Drafting Committee and published in **February 1948**. The people of India were given eight months to discuss the draft and propose amendments.
  - In light of public comments, criticisms, and suggestions, the Drafting Committee prepared a second draft, which was published in **October 1948**.
  - The Drafting Committee sat for a total of **141 days**.

## Enactment of the Constitution: Readings and Adoption

The Draft Constitution, as prepared by the Drafting Committee, was introduced in the Assembly and went through three "readings."

1. **First Reading (November 4, 1948):** Dr. B.R. Ambedkar introduced the final draft of the Constitution in the Assembly. General discussion on it for five days (till November 9, 1948).
2. **Second Reading (Clause-by-Clause Consideration):** This stage started on **November 15, 1948**, and ended on **October 17, 1949**. During this stage, as many as **7,653 amendments were proposed**, and **2,473 were actually discussed** in the Assembly. This extensive discussion highlights the democratic and thorough nature of the process.
3. **Third Reading:** The third reading of the draft started on **November 14, 1949**. Dr. B.R. Ambedkar moved a motion: "the Constitution as settled by the Assembly be passed."
4. **Adoption (November 26, 1949):**

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- The motion on Draft Constitution was declared as passed on **November 26, 1949**.
- It received the signatures of the members (284 members were actually present on that day and signed) and the President (Dr. Rajendra Prasad).
- This date is mentioned in the **Preamble** as the date on which the people of India "adopt, enact and give to themselves this Constitution."
- The Constitution as adopted on November 26, 1949, contained a **Preamble, 395 Articles, and 8 Schedules**.
- **Provisions that came into force immediately (November 26, 1949):** Certain provisions pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and the short title were given immediate effect. These are specified in **Article 394**. They include Articles 5, 6, 7, 8, 9 (Citizenship); Article 60 (Oath by President); Article 324 (Elections); Articles 366, 367 (Definitions, Interpretation); Articles 379, 380, 388, 391, 392, 393 (Transitional provisions & Short title).

## Commencement of the Constitution

1. The remaining provisions (the major part) of the Constitution came into force on **January 26, 1950**.
2. This date is referred to in the Constitution as the '**date of its commencement**' (**Article 394** states this).
3. It is celebrated as **Republic Day**.
4. **Historical Significance of January 26:** This date was specifically chosen because on this day in **1930, Purna Swaraj Day** was celebrated, following the resolution of the Lahore Session (December 1929) of the INC, which called for complete independence.
5. With the commencement of the Constitution:
  - The Indian Independence Act, 1947, and the Government of India Act, 1935 (with all enactments amending or supplementing it), were repealed (**Article 395**).
  - The Abolition of Privy Council Jurisdiction Act, 1949, however, continued to be applicable.
  - India ceased to be a Dominion of the British Crown and became a sovereign republic.

## Time, Cost, and Sessions

- **Time Taken:** The Constituent Assembly took **2 years, 11 months, and 18 days** to finalize the Constitution.
- **Sessions:** It held **11 sessions** covering a total of **165 days**. (114 days were spent on the consideration of the Draft Constitution).
- **Constitutions Consulted:** The framers had gone through the constitutions of about **60 countries**.
- **Expenditure:** The total expenditure incurred on making the Constitution amounted to **₹64 lakh**.

## Key Figures and Their Contributions

While the Assembly was a collective effort, certain individuals played exceptionally prominent roles:

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- **Dr. Rajendra Prasad:** As President of the Assembly, he guided its deliberations with immense patience, skill, and impartiality.
- **Dr. B.R. Ambedkar:** As Chairman of the Drafting Committee, his intellectual prowess, legal acumen, and passionate advocacy for social justice shaped the core of the Constitution. He is rightly called the "Chief Architect." He eloquently defended the draft against criticism in the Assembly.
- **Jawaharlal Nehru:** Moved the historic Objectives Resolution; chaired key committees like Union Powers and Union Constitution; his vision of a modern, secular, democratic India heavily influenced the Constitution.
- **Sardar Vallabhbhai Patel:** Chaired crucial committees like Provincial Constitution and Advisory Committee on Fundamental Rights, Minorities, etc. Played a pivotal role in the integration of princely states.
- **Sir B.N. Rau:** Constitutional Advisor. His groundwork, including the initial draft and comparative study of other constitutions, was invaluable.
- **K.M. Munshi:** A prominent member of the Drafting Committee and Order of Business Committee.
- **Alladi Krishnaswamy Ayyar:** A key member of the Drafting Committee, known for his legal scholarship.
- **H.C. Mookherjee:** Vice-President of the Assembly and Chairman of the Minorities Sub-Committee.
- **G.V. Mavalankar:** Chaired the Assembly when it met as the Dominion Legislature.

## Nature of Deliberations: Consensus and Accommodation

- **Spirit of Consensus:** Despite diverse ideologies and interests, the Assembly largely functioned through consensus rather than by majority vote on contentious issues. Dr. Rajendra Prasad noted, "We have deliberately chosen to proceed by way of consensus."
- **Principle of Accommodation:** Efforts were made to accommodate different viewpoints and interests, ensuring that the Constitution reflected the aspirations of various sections of Indian society. This is evident in provisions related to federalism, minority rights, and language.
- **Public Participation (Indirect):** Although members were indirectly elected, the process involved considerable public engagement. The draft was open for public discussion, and numerous comments and suggestions were received and considered.
- **Open Debates:** The Constituent Assembly Debates (CAD), meticulously recorded, are a rich source for understanding the rationale behind various constitutional provisions. They reveal the depth of discussion, the airing of diverse opinions, and the intellectual rigor of the members.

## Criticisms of the Constituent Assembly and the Constitution-Making Process

*(Also covered in Introduction, but relevant here for context on 'Making')*

1. **Not a Representative Body:** Critics argued it was not directly elected by universal adult franchise.
  - **Counter:** Given the conditions of 1946 (communal tensions, lack of electoral rolls), direct elections were impractical. The Assembly's composition, though indirectly elected, was fairly representative of various

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communities, interests, talents, and regions. Leaders like Nehru, Patel, Ambedkar, Prasad were popular figures who would likely have been elected even in direct elections.

2. **Not a Sovereign Body:** Initially argued it was created by British proposals (Cabinet Mission).
  - **Counter:** The Indian Independence Act, 1947, made it a fully sovereign body. It could alter or repeal any British law.
3. **Time-Consuming:** Accused of taking too long (2 years, 11 months, 18 days).
  - **Counter:** Given the complexity of drafting a constitution for a vast, diverse, and newly independent nation facing numerous challenges, the time taken was reasonable. The US Constitution took about 4 months but was for a more homogenous society and was less detailed.
4. **Domination by Congress:** The Congress party held a dominant majority.
  - **Granville Austin:** "The Constituent Assembly was a one-party body in an essentially one-party country. The Congress was the Constituent Assembly."
  - **Counter:** While Congress had a majority, it was an umbrella organization encompassing diverse ideologies. Deliberate efforts were made to include non-Congress members and eminent personalities from various fields (e.g., Dr. Ambedkar, Alladi Krishnaswamy Ayyar, Dr. S. Radhakrishnan). Internal democracy within the Congress party allowed for diverse views.
5. **Lawyer-Politician Domination:** Critics felt this led to legalistic language and bulkiness.
  - **Counter:** The complexity of modern governance and the need for a precise legal framework necessitated legal expertise. The "bulkiness" is also attributed to including administrative details to avoid ambiguity and ensure smooth working in a nascent democracy, and incorporating provisions for a diverse federal polity.
6. **Domination by Hindus:** Some critics like Winston Churchill suggested it represented only one major community.
  - **Counter:** While Hindus were a majority, all significant minority communities (Muslims, Sikhs, Christians, Anglo-Indians, Parsis, etc.) had representation, and their concerns were addressed, particularly through the Advisory Committee on Minorities.

## Significance of the Making Process

- **Democratic Exercise:** The process, despite limitations in direct representation, was profoundly democratic in its functioning, characterized by debate, discussion, and accommodation.
- **Indigenous Constitution:** For the first time, Indians themselves framed their own Constitution, reflecting their aspirations and solutions to their unique problems.
- **National Unity and Integration:** The process played a crucial role in fostering a sense of national unity and integrating the diverse princely states into the Indian Union.
- **Laying the Foundation for a Modern State:** The framers bequeathed a constitution that aimed to build a modern, democratic, secular, and egalitarian state.

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- A "Living Document" Born from Deliberation: The extensive debates and the principles of consensus and accommodation ensured that the Constitution was not merely imposed but was a product of collective wisdom, intended to be adaptable to changing times.

As **Dr. B.R. Ambedkar** stated in his concluding speech in the Constituent Assembly on November 25, 1949: *"However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot... The working of a Constitution does not depend wholly upon the nature of the Constitution."* This underscores that the success of the Constitution depends not just on its text but on the people who operate it and the democratic traditions they uphold.

The making of the Indian Constitution remains a remarkable chapter in India's history, showcasing a nation's resolve to define its own destiny through democratic means.

## Preamble of the Constitution of India

The Preamble to the Constitution of India serves as an introduction or preface, embodying the fundamental values, philosophy, objectives, and ideals upon which the entire Constitution is built. It reflects the dreams and aspirations of the founding fathers.

### Text of the Preamble

The Preamble, in its present form (after the 42nd Amendment, 1976), reads:

"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, value, 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."

### Inspiration and Origins

- **Objectives Resolution:** The Preamble is largely based on the 'Objectives Resolution', drafted and moved by **Pandit Jawaharlal Nehru** in the Constituent Assembly on December 13, 1946, and adopted on January 22, 1947. This resolution laid down the philosophical foundations and guiding principles for framing the Constitution.
- **Influence of Other Constitutions:** The practice of having a Preamble was borrowed, notably from the **Constitution of the United States of America**, which was the first major constitution to start with a Preamble. The ideals of Liberty, Equality, and Fraternity are reminiscent of the **French Revolution**.

### Components of the Preamble

The Preamble reveals four key components:

1. **Source of Authority of the Constitution:**

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- The Preamble explicitly states that the Constitution derives its authority from "**WE, THE PEOPLE OF INDIA.**"
  - This phrase emphasizes the principle of popular sovereignty, signifying that the ultimate power resides in the people of India, and the Constitution is an embodiment of their will.
  - Though the Constituent Assembly was not directly elected by universal adult franchise, its representative character and the subsequent acceptance and working of the Constitution by the people have affirmed this claim. **Dr. B.R. Ambedkar** stated in the Constituent Assembly that the Preamble "in the name of the people of India" was fully justified as the Assembly was, "if not in fact, at least in form, a representative body."
2. **Nature of the Indian State:**
- It declares India to be a **SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC.**
  - **Sovereign:**
    - Implies that India is an independent state, neither a dependency nor a dominion of any other external power.
    - It is free to conduct its own internal and external affairs.
    - Membership of the Commonwealth of Nations or other international bodies does not derogate from its sovereignty, as this is a voluntary association which can be terminated at will.
  - **Socialist:**
    - Added by the **42nd Constitutional Amendment Act, 1976.**
    - The Indian brand of socialism is '**democratic socialism**', not '**communistic socialism**' (which involves nationalization of all means of production and abolition of private property).
    - Democratic socialism aims to end poverty, ignorance, disease, and inequality of opportunity. It envisages a mixed economy where both public and private sectors co-exist side-by-side.
    - The Supreme Court in **D.S. Nakara v. Union of India (1983)** observed that "the principal aim of a socialist State is to eliminate inequality in income and status and standards of life." It also noted that Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism.
  - **Secular:**
    - Also added by the **42nd Constitutional Amendment Act, 1976.**
    - The concept of secularism was implicit in the Constitution even before 1976, particularly in Articles 25 to 28 (Fundamental Right to Freedom of Religion).
    - Indian secularism is a **positive concept**, meaning the state treats all religions with equal respect and protection (Sarva Dharma Sama Bhava). It is different from the Western concept of secularism which often implies a strict separation of religion and state.
    - The state has no official religion.

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- In **S.R. Bommai v. Union of India (1994)**, the Supreme Court held that secularism is a '**basic feature**' of the Constitution.
- **Democratic:**
  - Implies that the Constitution has established a form of government that derives its authority from the will of the people expressed in an election.
  - India has a **representative parliamentary democracy** under which the executive is responsible to the legislature for all its policies and actions.
  - It encompasses not only political democracy but also social and economic democracy.
  - Features of Indian democracy include universal adult franchise (Article 326), periodic elections, rule of law, independence of judiciary, and absence of discrimination on certain grounds.
- **Republic:**
  - Signifies that the head of the state (the President) is elected, directly or indirectly, for a fixed tenure, and is not a hereditary monarch.
  - In India, the President is indirectly elected.
  - It also means two more things: first, vesting of political sovereignty in the people and not in a single individual like a king; second, the absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.
- 3. **Objectives of the Constitution:**
  - It specifies the objectives to be achieved: **JUSTICE, LIBERTY, EQUALITY, and FRATERNITY.**
  - **Justice:**
    - Embraces three distinct forms – **social, economic, and political** – secured through various provisions of Fundamental Rights and Directive Principles of State Policy.
    - **Social Justice:** Denotes the absence of socially privileged classes and no discrimination against any citizen on grounds of race, religion, caste, sex, or place of birth (Article 15). It aims at the upliftment of weaker sections.
    - **Economic Justice:** Denotes non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income, and property. Aims towards equitable distribution of wealth (e.g., Article 39(b) and (c) in DPSP).
    - **Political Justice:** Implies that all citizens should have equal political rights, equal access to all political offices, and equal voice in the government (e.g., universal adult franchise under Article 326).
    - The ideal of justice (social, economic, and political) in our Preamble has been taken from the **Russian Revolution (1917)**.
  - **Liberty:**

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- Means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.
- The Preamble secures to all citizens liberty of **thought, expression\_value, belief, faith, and worship**, through their Fundamental Rights (e.g., Article 19 - freedom of speech and expression\_value; Articles 25-28 - freedom of religion), enforceable in a court of law.
- However, liberty as conceived by the Preamble or Fundamental Rights is not absolute but qualified, subject to reasonable restrictions.
- **Equality:**
  - Means the absence of special privileges to any section of society, and the provision of adequate opportunities for all individuals without any discrimination.
  - The Preamble secures to all citizens equality of **status and of opportunity**.
  - This is achieved through:
    - Equality before the law (Article 14).
    - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
    - Equality of opportunity in matters of public employment (Article 16).
    - Abolition of untouchability (Article 17).
    - Abolition of titles (Article 18).
    - Political equality through universal adult franchise (Article 326) and provisions in DPSP (e.g., Article 39(d) - equal pay for equal work).
- **Fraternity:**
  - Means a sense of common brotherhood among all Indians. The Constitution promotes this feeling of fraternity through the system of single citizenship.
  - Also, the Fundamental Duties (Article 51-A) state that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India, transcending religious, linguistic, regional or sectional diversities.
  - The Preamble declares that fraternity has to assure two things:
    - **The dignity of the individual:** The Constitution seeks to achieve this by guaranteeing fundamental rights to each individual, promoting human dignity through DPSPs, and ensuring that the personality of every individual is sacred. **K.M. Munshi**, a member of the Drafting Committee, stated that the phrase 'dignity of the individual' signifies that the Constitution not only ensures material betterment but also recognizes the personality of each individual is sacred.

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- **The unity and integrity of the Nation:** The word 'integrity' was added to the Preamble by the **42nd Constitutional Amendment Act, 1976**. This emphasizes the indivisible nature of the Indian Union and aims to overcome hindrances to national integration like communalism, regionalism, casteism, linguism, secessionism, etc. Article 1 of the Constitution describes India as a 'Union of States' to make it clear that the states have no right to secede from the Union.

#### 4. Date of Adoption of the Constitution:

- It stipulates **November 26, 1949**, as the date on which the Constituent Assembly adopted, enacted, and gave the Constitution to the people of India.
- This day is now celebrated as **Constitution Day** (or National Law Day).

#### Significance of the Preamble

The Preamble holds immense significance as it embodies the basic philosophy and fundamental values on which the Constitution is based. It serves several purposes:

- **A Key to the Minds of the Makers:** It reflects the general purposes for which the several provisions in the Constitution were made. As **Sir Alladi Krishnaswamy Iyer**, a prominent member of the Drafting Committee, observed, "The Preamble to our Constitution expresses what we had thought or dreamt so long."
- **Horoscope of the Constitution:** **K.M. Munshi** referred to the Preamble as the "political horoscope" of the Indian Constitution, as it outlines the grand vision and the direction the nation is intended to take.
- **Soul of the Constitution:** **Pandit Thakur Das Bhargava**, another member of the Constituent Assembly, described the Preamble as 'the most precious part of the Constitution. 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.'
- **Identity Card of the Constitution:** **N.A. Palkhivala**, an eminent jurist, called the Preamble the "identity card of the Constitution."
- **Guiding Light for Interpretation:** It acts as a guide for the judiciary in interpreting the provisions of the Constitution where the language is found to be ambiguous. The Supreme Court has often referred to the Preamble to understand the intent of the framers.
- **Declaration of Ideals and Aspirations:** It declares the ideals that the State should strive to achieve and the aspirations of the people.
- **Summary of the Constitution:** It provides a concise summary of the entire constitutional framework.

#### Preamble as Part of the Constitution: Judicial Pronouncements

The question of whether the Preamble is a part of the Constitution and its amendability has been a subject of judicial interpretation:

##### 1. Berubari Union Case (1960):

- The Supreme Court specifically opined that the Preamble is **not a part of the Constitution**.

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- It observed that the Preamble shows the general purposes behind the several provisions but, nevertheless, it is not a source of power nor a limitation upon the powers of the legislature.
  - It acknowledged its significance as a "key to open the mind of the makers" but held it as not being part of the main enactment.
2. **Kesavananda Bharati v. State of Kerala (1973) - Landmark Judgment:**
- The Supreme Court **overruled its earlier decision** in the Berubari case and held that the **Preamble is an integral part of the Constitution**.
  - The Court observed that the Preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.
  - Crucially, the Court also held that the Preamble can be amended, subject to the condition that no amendment is done to the **'basic features'** or fundamental framework of the Constitution. The Preamble itself was seen as reflecting the basic features.
  - **Justice S.M. Sikri, C.J.**, stated, "The Preamble of our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble."
3. **S.R. Bommai v. Union of India (1994):**
- The Supreme Court again held that the Preamble is an integral part of the Constitution.
  - It specifically reiterated that **secularism** (as mentioned in the Preamble) is a basic feature of the Constitution.
4. **LIC of India Case (1995):**
- The Supreme Court once again held that the Preamble is an integral part of the Constitution but is not directly enforceable in a court of justice in India.

## Amendability of the Preamble

- The question of whether the Preamble can be amended under **Article 368** of the Constitution arose for the first time in the historic **Kesavananda Bharati case (1973)**.
- The Court held that since the Preamble is a part of the Constitution, it **can be amended**, but subject to the **doctrine of 'basic structure'**. This means that the basic elements or fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 368.
- **Amendment to Date:**
  - The Preamble has been amended **only once** so far, by the **42nd Constitutional Amendment Act, 1976**.
  - This amendment added three new words:
    - **SOCIALIST**
    - **SECULAR**
    - **INTEGRITY** (added to "unity of the Nation," making it "unity and integrity of the Nation")
  - The validity of this amendment was upheld.

## Interpretation of the Preamble

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## 1. Not a Source of Power, Nor a Limitation:

- The Preamble is neither a source of power to the legislature nor a prohibition upon the powers of the legislature.
- Powers are specifically granted by the Articles of the Constitution, and limitations are also found within those Articles.

## 2. Non-Justiciable:

- Its provisions are not enforceable in courts of law. This means that the Preamble cannot be invoked in a court to invalidate a law if the law is otherwise constitutionally valid.
- However, it plays a significant role in the interpretation of statutes and the provisions of the Constitution itself, especially when there is ambiguity.

## 3. Guiding Philosophy:

- It sets out the main objectives which the legislation is intended to achieve.
- It helps in understanding the policy and legislative intent.

### Interlinkage with Fundamental Rights and Directive Principles

- The Preamble's ideals of Justice, Liberty, and Equality are reflected and elaborated in **Part III (Fundamental Rights)** and **Part IV (Directive Principles of State Policy)** of the Constitution.
  - **Justice (social, economic, political):** Finds resonance in Fundamental Rights (e.g., Articles 14, 15, 16, 17, 21, 23, 24) and more explicitly in DPSPs (e.g., Articles 38, 39, 39A, 41, 42, 43, 46).
  - **Liberty (of thought, expression, value, belief, faith, worship):** Directly protected under Articles 19 and 25-28 (Fundamental Rights).
  - **Equality (of status and opportunity):** Ensured by Articles 14, 15, 16, 17, 18 (Fundamental Rights) and promoted by DPSPs like Article 39(a), 39(d).
- **Granville Austin** famously described the Fundamental Rights and Directive Principles as the "**Conscience of the Constitution.**" The Preamble can be seen as the overarching statement of this conscience.
- While Fundamental Rights are largely political and civil rights (enforceable), DPSPs focus more on social and economic rights (non-enforceable but fundamental in governance). Together, they aim to achieve the Preamble's vision.

The Preamble is more than just a formal introduction. It is the philosophical soul and the moral compass of the Indian Constitution. It encapsulates the vision of a new India, free from colonial rule, striving for justice, liberty, equality, and fraternity. Its terms are not static but dynamic, acquiring new meaning and depth with the evolving needs of society and judicial interpretation. It continues to inspire and guide the nation, its government, and its judiciary in the pursuit of a just, equitable, and dignified life for all its citizens.

### Salient Features of the Indian Constitution

The Constitution of India, a product of profound deliberation and drawing from global constitutional experiences, stands out for its unique blend of features. It is a comprehensive document that not only lays down the framework of governance but also embodies the aspirations of a diverse nation striving for social, economic, and political transformation.

### Longest Written Constitution

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- **Elaboration:** Constitutions are classified into written (like the American Constitution) or unwritten (like the British Constitution). The Constitution of India is the lengthiest of all the written constitutions of the world.
- **Original Text (1949):** Contained a Preamble, 395 Articles (divided into 22 Parts), and 8 Schedules.
- **Present Text (Post Amendments):** Has grown considerably due to numerous amendments. It currently consists of a Preamble, about 470 Articles (divided into 25 Parts), and 12 Schedules. (Note: The exact number of articles can vary based on how sub-articles are counted, but the last numbered Article remains 395, with new articles typically added as A, B, C, etc., to existing ones or new parts inserted).
- **Factors Contributing to its Elephantine Size:**
  - **Geographical Vastness and Diversity:** India's immense size and heterogeneity necessitated detailed provisions to accommodate regional variations and unique issues.
  - **Historical Factors:** The influence of the **Government of India Act, 1935**, which was itself a bulky document, is significant. Many of its administrative provisions were adopted.
  - **Single Constitution for Centre and States:** Unlike the USA where states have their own constitutions, the Indian Constitution provides for the governance structure of both the Union and the States (except for Jammu and Kashmir, which had its own constitution under Article 370 until its abrogation in 2019).
  - **Dominance of Legal Luminaries:** The Constituent Assembly was dominated by lawyers and legal experts, which contributed to the precision and detail.
  - **Inclusion of Detailed Administrative Provisions:** To avoid ambiguities and ensure smooth functioning in a newly independent nation, detailed administrative provisions were included, which are normally left to ordinary legislation or conventions in other countries.
  - **Inclusion of Fundamental Rights, Directive Principles, and Fundamental Duties:** These elaborate charters of rights, duties, and policy directives add to its bulk.
  - **Provisions for Vulnerable Sections:** Special provisions for Scheduled Castes, Scheduled Tribes, Other Backward Classes, and minorities.
  - **Emergency Provisions:** Detailed provisions to deal with different types of emergencies.
- **Scholar's View:** Sir Ivor Jennings, a British constitutionalist, observed that the Indian Constitution is "far too large and therefore far too rigid." However, the framers deemed this necessary for clarity and to prevent future disputes.

## Drawn from Various Sources (A "Borrowed" Constitution with Indigenous Adaptation)

- **Dr. B.R. Ambedkar's Statement:** He proudly acclaimed that the Constitution of India has been framed after "ransacking all the known Constitutions of the World." He also stated, "As to the accusation that the Draft Constitution has reproduced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no

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plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution."

- **Major Sources:**
  - **Structural Part:** Largely derived from the **Government of India Act, 1935**.
  - **Philosophical Part (Fundamental Rights & DPSPs):** Inspired by the **American** (Bill of Rights) and **Irish** Constitutions respectively.
  - **Political Part (Principle of Cabinet Government & relations between Executive and Legislature):** Largely drawn from the **British Constitution**.
  - **Other Influences:**
    - **Canada:** Federation with a strong Centre, residuary powers with Centre, appointment of state governors by Centre, advisory jurisdiction of Supreme Court.
    - **Australia:** Concurrent List, freedom of trade, commerce and intercourse, joint sitting of two Houses of Parliament.
    - **Germany (Weimar Constitution):** Suspension of Fundamental Rights during Emergency.
    - **USSR (now Russia):** Fundamental Duties, ideals of justice (social, economic, political) in Preamble.
    - **France:** Republic and ideals of Liberty, Equality, Fraternity in Preamble.
    - **South Africa:** Procedure for amendment of the Constitution, election of members of Rajya Sabha.
    - **Japan:** Procedure established by law (Article 21).
- **Adaptation, Not Blind Copying:** The framers did not merely imitate but modified these features to suit Indian conditions and needs.

## Blend of Rigidity and Flexibility

- **Classification:** Constitutions are also classified into rigid (requiring a special procedure for amendment, e.g., US Constitution) and flexible (can be amended like ordinary laws, e.g., British Constitution).
- **Indian Scenario:** The Indian Constitution is a unique synthesis of both.
  - **Article 368** provides for two types of amendments:
    1. **By Special Majority of Parliament:** Amendment of most provisions requires a majority of the total membership of each House and a majority of two-thirds of the members of each House present and voting.
    2. **By Special Majority of Parliament with Ratification by Half of the State Legislatures:** For provisions related to the federal structure (e.g., election of President, extent of executive power of Union/States, Supreme Court & High Courts, distribution of legislative powers, any of the Lists in Seventh Schedule, representation of states in Parliament, Article 368 itself), amendment requires special majority plus consent of at least half of the state legislatures by a simple majority.
  - **By Simple Majority of Parliament (Outside Article 368):** Some provisions can be amended by a simple majority of Parliament in the manner of

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ordinary legislative process. These are not deemed as amendments under Article 368. Examples include admission or establishment of new states (Article 2), formation of new states and alteration of areas, boundaries or names of existing states (Article 3), abolition or creation of legislative councils in states (Article 169), rules of procedure in Parliament, citizenship, delimitation of constituencies, etc.

- **Scholar's View:** K.C. Wheare commented that India has a "variety of amending processes" which make it "neither purely rigid nor purely flexible." **Granville Austin** called the Indian approach to amendment "commendably pragmatic."

## Federal System with Unitary Bias ("Quasi-Federal")

- **Federal Features:**
  - **Two Governments:** Union and State governments.
  - **Division of Powers:** Clear division of legislative, executive, and financial powers between Union and States (Seventh Schedule – Union List, State List, Concurrent List).
  - **Written Constitution:** The foundation of the federal structure.
  - **Supremacy of the Constitution:** Constitution is the supreme law; laws enacted by Centre/States must conform to it.
  - **Rigid Constitution:** Certain federal provisions can be amended only with state ratification.
  - **Independent Judiciary:** To interpret the Constitution and settle disputes between Centre and States or between States.
  - **Bicameralism:** Lok Sabha (represents people) and Rajya Sabha (represents states).
- **Unitary (Non-Federal) Features:**
  - **Strong Centre:** Union List contains more subjects and more important subjects than State List. Centre has overriding authority on Concurrent List. Residuary powers vested in the Centre (Article 248).
  - **States Not Indestructible:** Parliament can alter boundaries or names of states, or form new states by simple majority (Article 3) – hence, "an indestructible Union of destructible states."
  - **Single Constitution:** For both Union and States (with exceptions like former J&K).
  - **Single Citizenship:** All citizens, irrespective of their state of domicile, are citizens of India.
  - **Flexibility of Constitution:** Bulk of the Constitution can be amended by Parliament alone.
  - **Integrated Judiciary:** A single system of courts enforces both central and state laws, with the Supreme Court at the apex.
  - **Appointment of State Governor by Centre:** Governor acts as an agent of the Centre (Article 155, 156).
  - **All-India Services (IAS, IPS, IFS):** Recruited and trained by the Centre, serve both Centre and States (Article 312).

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- **Emergency Provisions (Articles 352, 356, 360):** Can convert the federal structure into a unitary one without formal amendment. During national emergency, Centre becomes all-powerful.
- **Parliament's authority over State List:** Under certain circumstances (e.g., Rajya Sabha resolution under Article 249, during National Emergency under Article 250).
- **Scholarly Descriptions:**
  - **K.C. Wheare:** Described it as "quasi-federal" or "a federal system with strong centralizing tendencies."
  - **Granville Austin:** "Cooperative federalism" (emphasizing interdependence and cooperation).
  - **Morris Jones:** "Bargaining federalism."
  - **Ivor Jennings:** "A federation with a strong centralizing tendency."
- **Supreme Court:** In **S.R. Bommai v. Union of India (1994)**, the Supreme Court held that federalism is a 'basic feature' of the Constitution.

## Parliamentary Form of Government (Westminster Model)

- **Basis:** The Constitution establishes the parliamentary system both at the Centre (Articles 74 and 75) and in the States (Articles 163 and 164). This is adopted from the British system.
- **Features:**
  - **Nominal and Real Executives:** President is the nominal/de jure/titular executive; Prime Minister is the real/de facto executive. Similarly, Governor and Chief Minister in states.
  - **Majority Party Rule:** The political party securing majority seats in the Lok Sabha (or State Assembly) forms the government.
  - **Collective Responsibility:** The council of ministers is collectively responsible to the Lok Sabha (Article 75(3)) / State Assembly (Article 164(2)). They swim and sink together.
  - **Political Homogeneity:** Usually, ministers belong to the same political party, sharing the same political ideology. In coalition governments, ministers are bound by consensus.
  - **Double Membership:** Ministers are members of both the legislature and the executive. A minister must be a member of Parliament (or state legislature) within six months of appointment.
  - **Leadership of the Prime Minister (or Chief Minister):** PM/CM is the leader of the council of ministers, Parliament/state legislature, and the party in power.
  - **Dissolution of the Lower House:** The Lok Sabha (or State Assembly) can be dissolved by the President (or Governor) on the recommendation of the Prime Minister (or Chief Minister) before the expiry of its term to pave the way for fresh elections.
- **Reason for Adoption:** Familiarity with the system during British rule, preference for responsibility over stability (as argued by Dr. B.R. Ambedkar in contrast to the American presidential system which offers more stability but less day-to-day accountability).

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## Synthesis of Parliamentary Sovereignty and Judicial Supremacy

- **Parliamentary Sovereignty (British Concept):** Parliament can make or unmake any law.
- **Judicial Supremacy (American Concept):** Judiciary can declare laws unconstitutional if they violate the Constitution.
- **Indian Synthesis:** The Indian Constitution strikes a balance.
  - **Parliament's Power:** Parliament can amend major portions of the Constitution (Article 368). Its legislative authority is vast, covering Union and Concurrent Lists.
  - **Judicial Review:** The Supreme Court (Article 32, Article 13) and High Courts (Article 226) can review the constitutionality of legislative enactments and executive orders. If found to violate the Constitution (*ultra vires*), they can be declared illegal, unconstitutional, and invalid. The scope of judicial review in India is narrower than in the US because the Indian Constitution largely follows the "procedure established by law" (Article 21) rather than "due process of law" (US concept, though "due process" has been implicitly read into Article 21 by the Supreme Court since the **Maneka Gandhi case, 1978**).
  - The Supreme Court upheld the power of judicial review as a 'basic feature' of the Constitution in cases like **Kesavananda Bharati (1973)** and **Minerva Mills (1980)**.

## Integrated and Independent Judiciary

- **Integrated System:** Unlike the US where federal and state courts enforce respective laws, India has a single, hierarchical system of courts enforcing both central and state laws.
  - Supreme Court at the apex.
  - High Courts at the state level.
  - Hierarchy of subordinate courts (district courts and other lower courts) below the High Courts.
- **Independent Judiciary:** The Constitution ensures the independence of the judiciary through various provisions:
  - Security of tenure for judges.
  - Fixed service conditions.
  - Expenses charged on the Consolidated Fund of India.
  - Prohibition on discussion of judges' conduct in legislatures (except on impeachment motion).
  - Power to punish for its contempt.
  - Separation of judiciary from executive (Article 50 - DPSP).
  - Collegium system for appointment of judges (though subject to debate and attempts at reform like NJAC, which was struck down in the **Fourth Judges Case, 2015 (Supreme Court Advocates-on-Record Association v. Union of India)** as it violated independence of judiciary, a basic feature).
- **Role:** Guardian of the Constitution, protector of Fundamental Rights, arbiter of disputes between Centre-State and inter-state.

## Fundamental Rights (Part III, Articles 12-35)

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- **Inspiration:** US Bill of Rights.
  - **Nature:** These are justiciable rights, meaning they are enforceable by courts for their violation. They are not absolute but subject to reasonable restrictions.
  - **Purpose:** Promote political democracy by preventing arbitrary state action and protecting individual liberties. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature.
  - **Originally Seven, Now Six Fundamental Rights:**
    1. Right to Equality (Articles 14–18)
    2. Right to Freedom (Articles 19–22)
    3. Right against Exploitation (Articles 23–24)
    4. Right to Freedom of Religion (Articles 25–28)
    5. Cultural and Educational Rights (Articles 29–30)
    6. Right to Constitutional Remedies (Article 32 - "Heart and Soul of the Constitution" according to Dr. Ambedkar)
      - The Right to Property (formerly Article 31) was deleted from the list of Fundamental Rights by the **44th Amendment Act, 1978**, and made a legal right under Article 300-A in Part XII.
  - They can be suspended during a National Emergency (except Articles 20 and 21).
- Directive Principles of State Policy (Part IV, Articles 36–51)**

- **Inspiration:** Irish Constitution.
- **Nature:** These are non-justiciable in nature, meaning they are not enforceable by the courts for their violation.
- **Dr. B.R. Ambedkar's View:** Described these principles as 'novel features' of the Indian Constitution. They are the "instrument of instructions" for the governance of the country.
- **Purpose:** Embody the concept of a 'welfare state' and aim to establish social and economic democracy. They are fundamental in the governance of the country, and it shall be the duty of the State to apply these principles in making laws (Article 37).
- **Classification (Broadly):**
  - **Socialistic Principles:** (e.g., equitable distribution of resources - Art 39(b)(c), equal pay for equal work - Art 39(d), right to work - Art 41).
  - **Gandhian Principles:** (e.g., organization of village panchayats - Art 40, promotion of cottage industries - Art 43, prohibition of intoxicating drinks - Art 47).
  - **Liberal-Intellectual Principles:** (e.g., uniform civil code - Art 44, early childhood care and education - Art 45 (modified by 86th Amdt.), protection of environment - Art 48A, separation of judiciary from executive - Art 50, promotion of international peace - Art 51).
- **Relationship with Fundamental Rights:** Initially seen as subordinate to FRs. However, the Supreme Court in **Kesavananda Bharati** emphasized harmony and balance between them. In **Minerva Mills (1980)**, the Court held that "the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles. They together constitute the core of commitment to social revolution." They are "two wheels of a chariot."

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## Fundamental Duties (Part IV-A, Article 51-A)

- **Origin:** Added by the **42nd Amendment Act, 1976**, on the recommendation of the **Swaran Singh Committee**. Inspired by the Constitution of former USSR.
- **Nature:** Non-justiciable.
- **Initial List:** 10 Fundamental Duties.
- **Later Addition:** One more duty was added by the **86th Amendment Act, 2002** (duty of parent/guardian to provide opportunities for education to child/ward between 6-14 years). Total 11 duties now.
- **Purpose:** Serve as a reminder to citizens that while they enjoy rights, they also have duties to perform towards the nation, society, and fellow citizens. They aim to promote discipline and commitment among citizens.

## A Secular State

- **Meaning:** The Constitution stands for a secular state. The term 'Secular' was added to the Preamble by the 42nd Amendment (1976).
- **Indian Concept of Secularism:** Positive concept, implying that the State protects all religions equally and does not uphold any particular religion as the official state religion (Sarva Dharma Sama Bhava).
- **Constitutional Provisions Embodying Secularism:**
  - Preamble.
  - Articles 14, 15, 16 (equality, no discrimination on grounds of religion).
  - Articles 25-28 (Fundamental Right to Freedom of Religion).
  - Article 29 (protection of interests of minorities).
  - Article 30 (right of minorities to establish and administer educational institutions).
  - Article 44 (DPSP for Uniform Civil Code).
- **Judicial View:** In **S.R. Bommai case (1994)**, the Supreme Court held secularism as a 'basic feature' of the Constitution.

## Universal Adult Franchise

- **Provision:** Article 326 provides for universal adult suffrage. Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth, etc.
- **Original Age:** Voting age was 21 years. Reduced to 18 years by the **61st Constitutional Amendment Act, 1988** (effective 1989).
- **Significance:** Makes democracy broad-based, enhances self-respect and prestige of common people, upholds political equality, and enables minorities to protect their interests. It was a bold experiment given the high illiteracy and poverty at the time of independence.

## Single Citizenship

- **Contrast:** Unlike federal states like USA and Switzerland which have dual citizenship (national and state).
- **Indian System:** The Indian Constitution provides for only a single citizenship, i.e., Indian citizenship. All citizens, irrespective of the state in which they are born or reside, enjoy the same political and civil rights of citizenship all over the country.
- **Purpose:** To promote a feeling of unity and fraternity among the people and build an integrated Indian nation.

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## Emergency Provisions (Part XVIII, Articles 352-360)

- **Rationale:** To enable the President to meet any extraordinary situation effectively and to safeguard the sovereignty, unity, integrity, and security of the country, the democratic political system, and the Constitution.
- **Types of Emergencies:**
  1. **National Emergency (Article 352):** On grounds of war, external aggression, or armed rebellion (earlier 'internal disturbance', changed by 44th Amendment). During this, the federal structure can become unitary.
  2. **State Emergency / President's Rule (Article 356):** On grounds of failure of constitutional machinery in states. Also under Article 365 (failure to comply with or give effect to directions from the Union).
  3. **Financial Emergency (Article 360):** When the financial stability or credit of India or any part of its territory is threatened.
- **Criticism:** These provisions can be misused and can undermine the democratic and federal character of the polity. However, they are seen as a necessary evil. The safeguards introduced by the 44th Amendment (1978) have sought to reduce the scope for misuse, particularly of Article 352 and 356.

## Three-Tier Government

- **Original Scheme:** Two-tier system (Union and State governments).
- **Addition of Third Tier:** The **73rd and 74th Constitutional Amendment Acts, 1992**, added a third tier of government (local self-government).
  - **73rd Amendment (Panchayati Raj):** Gave constitutional recognition to Panchayats (rural local governments) by adding Part IX and Schedule 11.
  - **74th Amendment (Municipalities):** Gave constitutional recognition to Municipalities (urban local governments) by adding Part IX-A and Schedule 12.
- **Significance:** Aims at democratic decentralization and grassroots participation in governance. This is a unique feature not found in many other constitutions at this scale.

## Cooperative Societies

- The **97th Constitutional Amendment Act of 2011** gave constitutional status and protection to cooperative societies.
- It made the right to form cooperative societies a fundamental right (Article 19(1)(c)).
- It included a new Directive Principle of State Policy on promotion of cooperative societies (Article 43B).
- It added a new Part IX-B to the Constitution which is entitled "The Co-operative Societies" (Articles 243ZH to 243ZT).
- This aims to encourage economic activities of cooperatives which in turn help strengthen democracy and socio-economic justice.

## Parts of the Constitution of India

The Constitution of India, in its current form, is divided into **25 Parts**, along with a Preamble and 12 Schedules. Originally, it had 22 Parts. The Parts serve as a thematic organization of the Articles, grouping related provisions together for coherence and ease of understanding. This structure reflects the comprehensive nature of the Indian

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constitutional framework, addressing a wide array of subjects from the Union and its territory to fundamental rights, governance structures, and special provisions.

## Overview of the Structure

- **Original Structure (1949):** Preamble, 395 Articles (in 22 Parts), 8 Schedules.
- **Current Structure:** Preamble, approximately 470 Articles (still numbered up to 395, with additions like 21A, 51A, 300A etc., grouped into 25 Parts), 12 Schedules.
- **Significance of Parts:** Each Part deals with a specific subject matter, providing a logical flow to the constitutional document. Understanding the distribution of subjects across these Parts is fundamental to comprehending the architecture of Indian governance and rights.

## Detailed Examination of the Parts of the Constitution

*(Note: The Articles mentioned are indicative of the scope of each Part. Key concepts, landmark judgments, or committees relevant to specific Parts will be highlighted where appropriate.)*

### Part I: The Union and its Territory

- **Articles:** 1 to 4
- **Content:**
  - **Article 1:** Name and territory of the Union. Describes India, that is, Bharat, as a 'Union of States'. This implies:
    1. Indian federation is not the result of an agreement among the states (unlike the USA).
    2. States have no right to secede from the federation. The territory of India comprises: (a) territories of the states, (b) union territories, (c) territories that may be acquired by the Government of India.
  - **Article 2:** Admission or establishment of new states (that are not part of the Union of India).
  - **Article 3:** Formation of new states and alteration of areas, boundaries, or names of existing states (within the Union of India). Parliament can by law:
    - Form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state.
    - Increase the area of any state.
    - Diminish the area of any state.
    - Alter the boundaries of any state.
    - Alter the name of any state.
    - **Procedure:** A bill for this purpose requires prior recommendation of the President. Before recommending, the President has to refer the bill to the legislature of the state(s) concerned for expressing its views within a specified period. However, Parliament is not bound by the views of the state legislature. This highlights the "indestructible Union of destructible states" aspect.
  - **Article 4:** Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental, and consequential matters. Declares that such laws shall not be deemed to be

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an amendment of the Constitution for the purposes of Article 368 (i.e., can be passed by a simple majority).

- **Key Concepts:** Union of States, parliamentary power to reorganize states.
- **Relevant Committees:** States Reorganisation Commission (Fazl Ali Commission, 1953) significantly influenced the linguistic reorganization of states. Dhar Commission (1948), JVP Committee (1948).

## Part II: Citizenship

- **Articles:** 5 to 11
- **Content:** Deals with citizenship at the commencement of the Constitution and related matters.
  - **Article 5:** Citizenship at the commencement of the Constitution (domicile in India + born in India / either parent born in India / ordinarily resident for 5 years).
  - **Article 6:** Rights of citizenship of certain persons who have migrated to India from Pakistan.
  - **Article 7:** Rights of citizenship of certain migrants to Pakistan.
  - **Article 8:** Rights of citizenship of certain persons of Indian origin residing outside India.
  - **Article 9:** Persons voluntarily acquiring citizenship of a foreign state not to be citizens. (Concept of single citizenship).
  - **Article 10:** Continuance of the rights of citizenship.
  - **Article 11:** Parliament to regulate the right of citizenship by law.
- **Key Legislation: Citizenship Act, 1955**, enacted by Parliament under Article 11, provides for acquisition (by birth, descent, registration, naturalisation, incorporation of territory) and termination of Indian citizenship. This Act has been amended multiple times (e.g., 1986, 1992, 2003, 2005, 2015, 2019 - Citizenship Amendment Act, 2019, which has been controversial).
- **Key Concepts:** Single citizenship, *jus soli* (right of soil), *jus sanguinis* (right of blood).
- **Judgement:** The Supreme Court has interpreted various provisions related to citizenship, e.g., in cases concerning the status of migrants, determination of citizenship.

## Part III: Fundamental Rights

- **Articles:** 12 to 35
- **Content:** Enshrines fundamental rights, which are justiciable and act as limitations on state action. Often described as the 'Magna Carta' of India.
  - **Article 12:** Definition of 'State' (includes Government and Parliament of India, Government and Legislature of states, all local or other authorities within the territory of India or under the control of the Government of India).
    - **Judgement:** The scope of "other authorities" has been expanded by judicial interpretation to include bodies like LIC, ONGC, etc. (e.g., *R.D. Shetty v. International Airport Authority, 1979*; *Ajay Hasia v. Khalid Mujib, 1981*).

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- **Article 13:** Laws inconsistent with or in derogation of the fundamental rights shall be void. Establishes the power of Judicial Review. Defines 'law'.
- **Right to Equality (Articles 14-18):**
  - Art 14: Equality before law and equal protection of laws.
    - **Judgement: E.P. Royappa v. State of Tamil Nadu (1974)** - new concept of equality, arbitrariness is antithetical to equality. **Maneka Gandhi v. Union of India (1978)** - principle of reasonableness.
  - Art 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Special provisions for women, children, socially and educationally backward classes (SEBCs), SCs, STs, and Economically Weaker Sections (EWS - added by 103rd Amendment, 2019).
    - **Judgement: Indra Sawhney v. Union of India (1992)** (Mandal Case) - upheld reservations for OBCs, concept of 'creamy layer', 50% ceiling on reservations (with exceptions).
  - Art 16: Equality of opportunity in matters of public employment. No discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence. Reservations for backward classes, SCs, STs, EWS.
  - Art 17: Abolition of Untouchability. (Protection of Civil Rights Act, 1955; SC/ST (Prevention of Atrocities) Act, 1989).
  - Art 18: Abolition of titles (except military or academic distinctions).
- **Right to Freedom (Articles 19-22):**
  - Art 19: Protection of six rights: (a) freedom of speech and expression\_value, (b) assembly, (c) association or unions or co-operative societies (co-operative societies added by 97th Amdt, 2011), (d) movement, (e) residence, (f) profession. Subject to reasonable restrictions.
    - **Judgement: Freedom of press implicit in Art 19(1)(a) (Sakal Papers v. Union of India, 1962).**
  - Art 20: Protection in respect of conviction for offences (no ex-post-facto law, no double jeopardy, no self-incrimination).
  - Art 21: Protection of life and personal liberty. "No person shall be deprived of his life or personal liberty except according to procedure established by law."
    - **Judgement: Maneka Gandhi v. Union of India (1978)** - introduced "due process of law" implicitly; expanded scope of Art 21 to include right to live with human dignity, right to clean environment, right to privacy (later affirmed in **K.S. Puttaswamy v. Union of India, 2017**), right to education (led to Art 21A), right to speedy trial etc.
  - Art 21A: Right to Education (added by 86th Amendment, 2002) - State shall provide free and compulsory education to all children of the age of six to fourteen years.

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- Art 22: Protection against arrest and detention in certain cases.
- **Right against Exploitation (Articles 23-24):**
  - Art 23: Prohibition of traffic in human beings and forced labour (begar).
  - Art 24: Prohibition of employment of children in factories, etc. (children below 14 years).
- **Right to Freedom of Religion (Articles 25-28):**
  - Art 25: Freedom of conscience and free profession, practice and propagation of religion.
  - Art 26: Freedom to manage religious affairs.
  - Art 27: Freedom as to payment of taxes for promotion of any particular religion.
  - Art 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions.
    - **Judgement: S.R. Bommai v. UOI (1994)** - Secularism as basic feature. The "essential religious practices" test evolved by judiciary.
- **Cultural and Educational Rights (Articles 29-30):**
  - Art 29: Protection of interests of minorities (right to conserve distinct language, script or culture).
  - Art 30: Right of minorities to establish and administer educational institutions.
- **Saving of Certain Laws (Articles 31A, 31B, 31C):**
  - Art 31A: Saving of laws providing for acquisition of estates, etc.
  - Art 31B: Validation of certain Acts and Regulations (Ninth Schedule).
    - **Judgement: I.R. Coelho v. State of Tamil Nadu (2007)** - Laws in Ninth Schedule after April 24, 1973 (Kesavananda Bharati date) are open to judicial review if they violate basic structure.
  - Art 31C: Saving of laws giving effect to certain directive principles (initially for 39(b) and (c), expanded by 42nd Amdt, part of expansion struck down in **Minerva Mills v. UOI, 1980**).
- **Right to Constitutional Remedies (Articles 32-35):**
  - Art 32: Remedies for enforcement of rights conferred by this Part. Right to move the Supreme Court for enforcement of FRs. SC empowered to issue writs (Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto). **Dr. Ambedkar** called it the "heart and soul" of the Constitution. Part of Basic Structure.
  - Art 33: Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.
  - Art 34: Restriction on rights while martial law is in force.
  - Art 35: Legislation to give effect to the provisions of this Part (Parliament has exclusive power).
- **Key Concepts:** Judicial Review, Basic Structure Doctrine (**Kesavananda Bharati v. State of Kerala, 1973**), reasonable restrictions.

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## Part IV: Directive Principles of State Policy (DPSP)

- **Articles:** 36 to 51
- **Content:** Contains ideals that the State should keep in mind while formulating policies and enacting laws. Non-justiciable but fundamental in the governance of the country (Article 37). Aim to establish a 'welfare state'.
  - **Article 36:** Definition of 'State' (same as in Part III).
  - **Article 37:** Application of the principles contained in this Part.
  - **Socialistic Principles:** Art 38 (social order for welfare), Art 39 (certain principles of policy), Art 39A (equal justice and free legal aid - 42nd Amdt), Art 41 (right to work, education, public assistance), Art 42 (just and humane conditions of work, maternity relief), Art 43 (living wage for workers), Art 43A (participation of workers in management of industries - 42nd Amdt), Art 47 (raise level of nutrition, standard of living, public health).
  - **Gandhian Principles:** Art 40 (organisation of village panchayats), Art 43 (promotion of cottage industries), Art 43B (promotion of co-operative societies - 97th Amdt, 2011), Art 46 (promotion of educational and economic interests of SCs, STs, weaker sections), Art 47 (prohibit consumption of intoxicating drinks and drugs), Art 48 (prohibit slaughter of cows, calves, milch/draught cattle).
  - **Liberal-Intellectual Principles:** Art 44 (Uniform Civil Code), Art 45 (early childhood care and education for children below 6 years - modified by 86th Amdt), Art 48 (organisation of agriculture and animal husbandry on modern lines), Art 48A (protection and improvement of environment and safeguarding of forests and wild life - 42nd Amdt), Art 49 (protection of monuments and places and objects of national importance), Art 50 (separation of judiciary from executive), Art 51 (promotion of international peace and security).
- **Scholar's View:** Granville Austin called FRs and DPSPs the "Conscience of the Constitution."
- **Judgement:** *Minerva Mills v. UOI (1980)* - Harmony and balance between FRs and DPSPs is an essential feature of the basic structure.

## Part IVA: Fundamental Duties

- **Article:** 51A
- **Content:** Added by the **42nd Amendment Act, 1976**, on the recommendation of the **Swaran Singh Committee**. Originally 10 duties, one more added by **86th Amendment Act, 2002**. Total 11 duties. Non-justiciable.
- **List of Duties:** To abide by Constitution, respect National Flag & Anthem; cherish ideals of freedom struggle; uphold sovereignty, unity, integrity; defend country; promote harmony & common brotherhood; value rich heritage; protect environment; develop scientific temper; safeguard public property; strive for excellence; (11th) parent/guardian to provide education opportunities to child (6-14 years).
- **Judgement:** *AIIMS Students' Union v. AIIMS (2001)* - FRs and FDs are two sides of the same coin.

## Part V: The Union

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- **Articles:** 52 to 151
- **Content:** Deals with the Union Executive, Parliament, Legislative Powers of President, The Union Judiciary, Comptroller and Auditor-General of India.
  - **Chapter I – The Executive (Articles 52-78):**
    - President (Art 52-62): Election (Art 54, 55), qualifications, term, impeachment (Art 61), powers (executive, legislative, financial, judicial, diplomatic, military, emergency).
    - Vice-President (Art 63-71).
    - Council of Ministers (Art 74, 75): Headed by Prime Minister, collectively responsible to Lok Sabha (Art 75(3)).
    - Attorney-General for India (Art 76).
    - Conduct of Government Business (Art 77, 78).
  - **Chapter II – Parliament (Articles 79-122):**
    - Constitution of Parliament (Art 79 - President, Council of States (Rajya Sabha), House of the People (Lok Sabha)).
    - Composition of Houses (Art 80, 81). Duration (Art 83). Qualification (Art 84). Sessions, prorogation, dissolution (Art 85).
    - Officers of Parliament (Speaker, Deputy Speaker of LS; Chairman, Deputy Chairman of RS - Art 89, 93).
    - Conduct of Business (Art 99, 100). Disqualifications (Art 101-104). Powers, Privileges (Art 105).
    - Legislative Procedure (Art 107-111, including Money Bills - Art 110, Joint Sitting - Art 108).
    - Procedure in Financial Matters (Budget/Annual Financial Statement - Art 112, Appropriation Bills - Art 114).
  - **Chapter III – Legislative Powers of the President (Article 123):**
    - Power of President to promulgate Ordinances during recess of Parliament.
      - **Judgement: D.C. Wadhwa v. State of Bihar (1987)** - Successive re-promulgation of ordinances without attempting to pass them as Acts is unconstitutional. **Krishna Kumar Singh v. State of Bihar (2017)** - Re-promulgation is a fraud on the Constitution.
  - **Chapter IV – The Union Judiciary (Articles 124-147):**
    - Establishment and constitution of Supreme Court (Art 124).
    - Appointment of Judges, salaries, tenure. Acting Chief Justice, Ad hoc judges.
    - Jurisdiction: Original (Art 131), Writ (Art 32), Appellate (Art 132-134), Advisory (Art 143), Review (Art 137). Power to make rules (Art 145). Law declared by SC binding (Art 141).
      - **Judgements on Judicial Appointments:** First Judges Case (S.P. Gupta, 1981), Second Judges Case (SCAORA, 1993 - Collegium system established), Third Judges Case (Special Reference, 1998 - Collegium expanded), Fourth Judges Case (SCAORA, 2015 - NJAC struck down).

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- **Chapter V – Comptroller and Auditor-General of India (Articles 148-151):**
  - Appointment (Art 148), duties and powers (Art 149).
  - Guardian of public purse.

## Part VI: The States

- **Articles:** 152 to 237
- **Content:** Deals with the State Executive, State Legislature, Legislative Powers of Governor, The High Courts, Subordinate Courts. (Structure largely mirrors Part V for the Union). Applies to States formerly in Part A of First Schedule.
  - **Chapter I – General (Article 152):** Definition (not applicable to J&K originally).
  - **Chapter II – The Executive (Articles 153-167):**
    - Governor (Art 153-162): Appointment (Art 155), term, powers.
    - Council of Ministers (Art 163, 164): Headed by Chief Minister, collectively responsible to Legislative Assembly.
    - Advocate-General for the State (Art 165).
  - **Chapter III – The State Legislature (Articles 168-212):**
    - Constitution of Legislatures (Unicameral/Bicameral - Art 168). Abolition or creation of Legislative Councils (Art 169).
    - Composition, duration, qualification. Officers. Conduct of Business. Disqualifications. Powers, Privileges.
    - Legislative Procedure (similar to Union, Money Bills - Art 199).
  - **Chapter IV – Legislative Power of the Governor (Article 213):**
    - Power of Governor to promulgate Ordinances.
  - **Chapter V – The High Courts in the States (Articles 214-232):**
    - High Courts for States (Art 214). Constitution. Appointment, conditions of office of Judges.
    - Jurisdiction (Writ - Art 226). Power of superintendence (Art 227).
  - **Chapter VI – Subordinate Courts (Articles 233-237):**
    - Appointment of district judges (Art 233). Control over subordinate courts.

## Part VII: The States in Part B of the First Schedule

- **Article:** 238
- **Content:** Dealt with states in Part B (former princely states).
- **Status:** Repealed by the 7th Constitutional Amendment Act, 1956, as part of the reorganisation of states.

## Part VIII: The Union Territories

- **Articles:** 239 to 242
- **Content:** Administration of Union Territories.
  - Art 239: Administration of UTs by President through Administrator (Lieutenant Governor or Chief Commissioner).
  - Art 239A: Creation of local Legislatures or Council of Ministers or both for certain UTs (e.g., Puducherry).
  - Art 239AA: Special provisions with respect to Delhi (National Capital Territory). (Legislative Assembly, Council of Ministers). Added by 69th Amdt, 1991.

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- **Judgement: Govt. of NCT of Delhi v. Union of India (2018, 2023)** - Clarified powers of LG and elected government of Delhi.
- Art 239AB: Provision in case of failure of constitutional machinery in NCT of Delhi.
- Art 240: Power of President to make regulations for certain UTs.
- Art 241: High Courts for Union Territories.
- Article 242 (Coorg) was repealed by 7th Amdt, 1956.

## Part IX: The Panchayats

- **Articles:** 243 to 243-O
- **Content:** Added by the **73rd Constitutional Amendment Act, 1992**. Provides for a three-tier system of Panchayati Raj.
  - Art 243: Definitions.
  - Art 243A: Gram Sabha.
  - Art 243B: Constitution of Panchayats (at village, intermediate, and district levels).
  - Art 243C: Composition of Panchayats.
  - Art 243D: Reservation of seats (for SCs, STs, Women - not less than one-third).
  - Art 243E: Duration of Panchayats (5 years).
  - Art 243F: Disqualifications for membership.
  - Art 243G: Powers, authority and responsibilities of Panchayats (preparation of plans for economic development and social justice; implementation of schemes including those related to the 29 matters listed in the Eleventh Schedule).
  - Art 243H: Powers to impose taxes by, and Funds of, the Panchayats.
  - Art 243-I: Constitution of Finance Commission to review financial position.
  - Art 243K: Elections to the Panchayats (State Election Commission).
- **Key Committee: Balwant Rai Mehta Committee (1957)** - recommended democratic decentralization. **Ashok Mehta Committee (1978)**. **L.M. Singhvi Committee (1986)** - recommended constitutional status.

## Part IXA: The Municipalities

- **Articles:** 243P to 243ZG
- **Content:** Added by the **74th Constitutional Amendment Act, 1992**. Provides for urban local self-government.
  - Art 243P: Definitions.
  - Art 243Q: Constitution of Municipalities (Nagar Panchayat, Municipal Council, Municipal Corporation).
  - Art 243R: Composition of Municipalities.
  - Art 243S: Constitution and composition of Wards Committees.
  - Art 243T: Reservation of seats.
  - Art 243U: Duration of Municipalities.
  - Art 243V: Disqualifications.
  - Art 243W: Powers, authority and responsibilities of Municipalities (including matters listed in the Twelfth Schedule - 18 matters).
  - Art 243X: Power to impose taxes.

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- Art 243Y: Finance Commission (same as for Panchayats).
- Art 243ZA: Elections to the Municipalities (State Election Commission).
- Art 243ZD: Committee for district planning.
- Art 243ZE: Committee for metropolitan planning.

## Part IXB: The Co-operative Societies

- **Articles:** 243ZH to 243ZT
- **Content:** Added by the **97th Constitutional Amendment Act, 2011.**
  - Aims to encourage economic activities of cooperatives.
  - Deals with incorporation, number and term of members of board and its office bearers, election of members of board, supersession and suspension of board, audit of accounts, etc.
  - **Judgement:** In **Union of India v. Rajendra N. Shah (2021)**, the Supreme Court struck down certain provisions of Part IXB related to state cooperative societies on the ground that they were passed without ratification by state legislatures as required for matters affecting the state list. However, provisions related to multi-state cooperative societies were upheld.

## Part X: The Scheduled and Tribal Areas

- **Articles:** 244 to 244A
- **Content:**
  - Art 244: Administration of Scheduled Areas and Tribal Areas. Provisions of Fifth Schedule shall apply to administration and control of Scheduled Areas and Scheduled Tribes in any State other than Assam, Meghalaya, Tripura, Mizoram. Provisions of Sixth Schedule shall apply to administration of tribal areas in these four states.
  - Art 244A: Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefor (added by 22nd Amdt, 1969).

## Part XI: Relations between the Union and the States

- **Articles:** 245 to 263
- **Content:** Deals with legislative and administrative relations.
  - **Chapter I – Legislative Relations (Articles 245-255):**
    - Art 245: Extent of laws made by Parliament and by Legislatures of States (territorial jurisdiction). Doctrine of territorial nexus.
    - Art 246: Subject-matter of laws (Seventh Schedule - Union List, State List, Concurrent List).
    - Art 248: Residuary powers of legislation (vested in Parliament).
    - Art 249: Power of Parliament to legislate with respect to a matter in State List in national interest (if Rajya Sabha passes resolution).
    - Art 250: Power of Parliament to legislate on State List if a Proclamation of Emergency is in operation.
    - Art 251: Inconsistency between laws made by Parliament under Arts 249/250 and laws made by State Legislatures.
    - Art 252: Power of Parliament to legislate for two or more States by consent.
    - Art 253: Legislation for giving effect to international agreements.

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- Art 254: Repugnancy between laws made by Parliament and laws made by State Legislatures (on Concurrent List matters). Doctrine of Repugnancy.
- **Chapter II – Administrative Relations (Articles 256-263):**
  - Art 256: Obligation of States and the Union.
  - Art 257: Control of the Union over States in certain cases.
  - Art 261: Public acts, records and judicial proceedings.
  - Art 262: Adjudication of disputes relating to waters of inter-State rivers or river valleys.
  - Art 263: Provisions with respect to an Inter-State Council (to promote cooperative federalism).
    - **Committee: Sarkaria Commission (1983-88)** made extensive recommendations on Centre-State relations. **Punchhi Commission (2007-10)**.

## Part XII: Finance, Property, Contracts and Suits

- **Articles:** 264 to 300A
- **Content:**
  - **Chapter I – Finance (Articles 264-291):**
    - Distribution of revenues between Union and States (Art 268-281). Taxes levied by Union but collected/appropriated by States; Taxes levied and collected by Union but assigned to States; Taxes levied and collected by Union and distributed between Union and States.
    - Art 265: Taxes not to be imposed save by authority of law.
    - Art 266: Consolidated Funds and public accounts of India and of the States.
    - Art 267: Contingency Fund.
    - Art 275: Grants from the Union to certain States.
    - Art 280: Finance Commission (appointed every fifth year by President to recommend distribution of net proceeds of taxes between Union and States, and principles for grants-in-aid).
  - **Chapter II – Borrowing (Articles 292-293):**
    - Art 292: Borrowing by the Government of India.
    - Art 293: Borrowing by States.
  - **Chapter III – Property, Contracts, Rights, Liabilities, Obligations and Suits (Articles 294-300):**
    - Art 299: Contracts made in the exercise of executive power.
    - Art 300: Suits and proceedings (Union/State can sue or be sued).
  - **Chapter IV – Right to Property (Article 300A):**
    - **Article 300A:** Persons not to be deprived of property save by authority of law. (Added by 44th Amendment, 1978, making Right to Property a legal/constitutional right, no longer a Fundamental Right).

## Part XIII: Trade, Commerce and Intercourse within the Territory of India

- **Articles:** 301 to 307
- **Content:**

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- Art 301: Freedom of trade, commerce and intercourse throughout the territory of India (subject to other provisions of this Part).
- Art 302-305: Power of Parliament and State Legislatures to impose restrictions.
- Art 307: Appointment of authority for carrying out the purposes of Articles 301 to 304.

## Part XIV: Services under the Union and the States

- **Articles:** 308 to 323
- **Content:**
  - **Chapter I – Services (Articles 308-314):**
    - Art 309: Recruitment and conditions of service.
    - Art 310: Tenure of office (doctrine of pleasure).
    - Art 311: Dismissal, removal or reduction in rank of persons employed in civil capacities (provides procedural safeguards).
    - Art 312: All-India Services (Parliament can create).
  - **Chapter II – Public Service Commissions (Articles 315-323):**
    - Art 315: PSCs for the Union and for the States (UPSC, SPSC, Joint PSC).
    - Appointment, term of office, removal of members. Functions of PSCs (Art 320).

## Part XIVA: Tribunals

- **Articles:** 323A to 323B
- **Content:** Added by the **42nd Amendment Act, 1976**.
  - Art 323A: Administrative Tribunals (for service matters of public servants). (Led to Administrative Tribunals Act, 1985).
  - Art 323B: Tribunals for other matters (e.g., taxation, foreign exchange, industrial labour, land reforms, elections, etc.).
  - **Judgement: L. Chandra Kumar v. Union of India (1997)** - Judicial review by High Courts (Art 226/227) over decisions of tribunals is part of basic structure; direct appeal to SC from tribunals (bypassing HCs) struck down.

## Part XV: Elections

- **Articles:** 324 to 329A
- **Content:**
  - Art 324: Superintendence, direction and control of elections to be vested in an Election Commission (ECI). Composition of ECI.
  - Art 325: No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.
  - Art 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of universal adult suffrage. (Voting age reduced from 21 to 18 by 61st Amdt, 1988).
  - Art 327: Power of Parliament to make provision with respect to elections to Legislatures.
  - Art 328: Power of Legislature of a State to make provision with respect to elections to such Legislature.
  - Art 329: Bar to interference by courts in electoral matters.

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- (Article 329A relating to special provision as to elections to Parliament in case of Prime Minister and Speaker was repealed by 44th Amdt, 1978).

## Part XVI: Special Provisions Relating to Certain Classes

- **Articles:** 330 to 342A
- **Content:**
  - Art 330: Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.
  - Art 331: Representation of the Anglo-Indian community in the House of the People (provision for nomination by President, discontinued by 104th Amdt, 2019).
  - Art 332: Reservation of seats for SCs and STs in Legislative Assemblies of States.
  - Art 333: Representation of Anglo-Indian community in Legislative Assemblies (discontinued by 104th Amdt, 2019).
  - Art 334: Reservation of seats and special representation to cease after certain period (extended periodically, currently up to 2030 for SC/STs).
  - Art 335: Claims of SCs and STs to services and posts.
  - Art 338: National Commission for Scheduled Castes (NCSC).
  - Art 338A: National Commission for Scheduled Tribes (NCST) (added by 89th Amdt, 2003).
  - Art 338B: National Commission for Backward Classes (NCBC) (given constitutional status by 102nd Amdt, 2018).
  - Art 340: Appointment of a Commission to investigate the conditions of backward classes.
  - Art 341: Scheduled Castes (President to specify).
  - Art 342: Scheduled Tribes (President to specify).
  - Art 342A: Socially and educationally backward classes (President to specify, power of Parliament to include/exclude from central list - modified by 105th Amdt, 2021, restoring states' power to identify SEBCs for their own purposes).

## Part XVII: Official Language

- **Articles:** 343 to 351
- **Content:**
  - **Chapter I – Language of the Union (Articles 343-344):**
    - Art 343: Official language of the Union (Hindi in Devanagari script, English to continue for 15 years, Parliament may provide for continued use).
    - Art 344: Commission and Committee of Parliament on official language.
  - **Chapter II – Regional Languages (Articles 345-347):**
  - **Chapter III – Language of the Supreme Court, High Courts, etc. (Article 348-349):**
    - Art 348: Language to be used in SC and HCs and for Acts, Bills, etc. (English, until Parliament otherwise provides).
  - **Chapter IV – Special Directives (Articles 350-351):**

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- Art 350A: Facilities for instruction in mother-tongue at primary stage.
- Art 350B: Special Officer for linguistic minorities.
- Art 351: Directive for development of the Hindi language.

## Part XVIII: Emergency Provisions

- **Articles:** 352 to 360
- **Content:**
  - Art 352: Proclamation of National Emergency (on grounds of war, external aggression or armed rebellion - 'armed rebellion' substituted for 'internal disturbance' by 44th Amdt).
  - Art 353: Effect of Proclamation of Emergency.
  - Art 355: Duty of the Union to protect States against external aggression and internal disturbance.
  - Art 356: Provisions in case of failure of constitutional machinery in States (President's Rule).
    - **Judgement: S.R. Bommai v. UOI (1994)** - Laid down guidelines to prevent misuse of Art 356; proclamation subject to judicial review; secularism is basic feature.
  - Art 358: Suspension of provisions of Article 19 during emergencies.
  - Art 359: Suspension of the enforcement of the rights conferred by Part III (except Art 20 & 21) during emergencies.
  - Art 360: Provisions as to financial emergency.

## Part XIX: Miscellaneous

- **Articles:** 361 to 367
- **Content:** Miscellaneous provisions.
  - Art 361: Protection of President and Governors and Rajpramukhs.
  - Art 361B: Disqualification for appointment on remunerative political post (related to defection).
  - Art 364: Special provisions as to major ports and aerodromes.
  - Art 365: Effect of failure to comply with, or to give effect to, directions given by the Union (can be a ground for Art 356).
  - Art 367: Interpretation (General Clauses Act, 1897, to apply).

## Part XX: Amendment of the Constitution

- **Article:** 368
- **Content:** Power of Parliament to amend the Constitution and procedure therefor.
  - Specifies procedures for amendment by special majority, and special majority with ratification by states.
  - **Judgement: Kesavananda Bharati v. State of Kerala (1973)** - Parliament cannot amend the 'basic structure' of the Constitution. Other cases like **Golaknath (1967)**, **Minerva Mills (1980)** are also crucial.

## Part XXI: Temporary, Transitional and Special Provisions

- **Articles:** 369 to 392
- **Content:**

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- Art 370: Temporary provisions with respect to the State of Jammu and Kashmir (largely made inoperative/abrogated in August 2019, leading to reorganization of J&K into UTs).
- Art 371 to 371J: Special provisions with respect to States of Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh/Telangana, Sikkim, Mizoram, Arunachal Pradesh, Goa, Karnataka. These provisions aim to meet aspirations of people of backward regions or protect cultural/economic interests.
- Other articles deal with transitional powers of Parliament, provisions as to provisional President, judiciary, PSCs etc. until regular arrangements were made.

## Part XXII: Short Title, Commencement, Authoritative Text in Hindi and Repeals

- **Articles:** 393 to 395
- **Content:**
  - Art 393: Short title - "This Constitution may be called the Constitution of India."
  - Art 394: Commencement (Nov 26, 1949 for certain articles, Jan 26, 1950 for remainder).
  - Art 394A: Authoritative text in the Hindi language (added by 58th Amdt, 1987).
  - Art 395: Repeals (Indian Independence Act, 1947, and Government of India Act, 1935, with all supplementing enactments, are repealed).

## Schedules of the Constitution of India

The Schedules are integral to the Constitution of India, providing detailed elaborations and tabulations of matters that are briefly mentioned in the Articles. They serve to make the constitutional text more concise by segregating lengthy lists or procedural details into separate annexures. Originally, the Constitution had 8 Schedules; this number has since increased to 12 through various amendments, reflecting the evolving needs of the nation.

### Purpose and Significance of Schedules

- **Elaboration and Detail:** Schedules provide specific details, lists, and forms that supplement the provisions in the Articles. For instance, the allocation of powers between the Union and States is detailed in the Seventh Schedule.
- **Conciseness of Articles:** By placing lengthy enumerations or administrative details in Schedules, the main body of the Articles remains more focused on fundamental principles and structures.
- **Flexibility and Amendment:** While Schedules are part of the Constitution and can be amended through the procedure laid down in Article 368, some Schedules (like the First and Fourth) can also be affected by laws made under Articles like 3 and 4, which are not considered amendments for the purpose of Article 368.
- **Operationalization of Provisions:** Schedules often contain the operational details necessary for the implementation of certain constitutional provisions (e.g., forms of oaths, lists of languages).

### Detailed Examination of the Schedules

#### First Schedule

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- **Related Articles:** 1 and 4
- **Content:** This Schedule specifies:
  1. **Names of the States** and their territorial jurisdiction.
  2. **Names of the Union Territories** and their extent.
- **Structure:**
  - **Part I:** Deals with the States.
  - **Part II:** Deals with the Union Territories.
- **Amendments:** Any change in the territory of a state or union territory, or the formation of a new state or union territory (under Articles 2, 3, or 4) necessitates an amendment to the First Schedule. For example, the formation of Telangana in 2014 led to an amendment of this Schedule. The Jammu and Kashmir Reorganisation Act, 2019, also significantly altered this schedule by creating the Union Territories of Jammu and Kashmir, and Ladakh.
- **Significance:** Defines the constituent units of the Indian Union, thereby establishing the territorial framework of the country.

## Second Schedule

- **Related Articles:** 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 186, and 221.
- **Content:** This Schedule contains provisions relating to the **emoluments, allowances, privileges, and so on** of:
  - **Part A:** The President of India and the Governors of States.
  - **Part B:** (Repealed by the 7th Amendment Act, 1956). Originally dealt with Rulers of Indian States in Part B of the First Schedule.
  - **Part C:** The Speaker and the Deputy Speaker of the House of the People and the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council of a State.
  - **Part D:** The Judges of the Supreme Court and of the High Courts.
  - **Part E:** The Comptroller and Auditor-General of India.
- **Significance:** Ensures financial independence and dignity for high constitutional functionaries by fixing their emoluments (which are charged on the Consolidated Fund and are not subject to the vote of Parliament/Legislature, except for allowances which may be). These provisions are intended to keep these offices above political influence.

## Third Schedule

- **Related Articles:** 75(4), 99, 124(6), 148(2), 164(3), 188, and 219.
- **Content:** Contains the **Forms of Oaths or Affirmations** for:
  1. The Union Ministers.
  2. The candidates for election to Parliament.
  3. The Members of Parliament (MPs).
  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.

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- **Key Elements of Oaths:** Typically include swearing allegiance to the Constitution of India, upholding the sovereignty and integrity of India, faithfully and conscientiously discharging duties, and doing right to all manner of people without fear or favour, affection or ill-will.
- **Significance:** Oaths and affirmations are solemn undertakings that bind constitutional functionaries to their duties and to the Constitution. They reinforce the principles of constitutionalism and accountability.

## Fourth Schedule

- **Related Articles:** 4(1) and 80(2).
- **Content:** Deals with the **allocation of seats in the Rajya Sabha (Council of States)** to the States and Union Territories.
- **Basis of Allocation:** Seats are allocated on the basis of population, but not strictly proportionally. Smaller states have a minimum representation, while larger states have more seats. This reflects a balance between the principles of federal equality and proportional representation.
- **Amendments:** Changes in the population of states or the reorganization of states (e.g., formation of new states) may lead to a reallocation of seats and thus an amendment to this Schedule. Such amendments can be made by Parliament by a simple majority under Article 4 and are not considered constitutional amendments under Article 368.
- **Significance:** Ensures representation of states in the Upper House of Parliament, which is a key feature of Indian federalism. The Rajya Sabha acts as a chamber for representing state interests.

## Fifth Schedule

- **Related Article:** 244(1).
- **Content:** Contains provisions relating to the **administration and control of Scheduled Areas and Scheduled Tribes** in any State *other than* the states of Assam, Meghalaya, Tripura, and Mizoram.
- **Key Provisions:**
  - **Declaration of Scheduled Areas:** The President is empowered to declare any area as a Scheduled Area. The President can also increase or decrease its area, alter its boundaries, rescind such designation, or make fresh orders redefining any Scheduled Area, but only after consultation with the Governor of the state concerned.
  - **Executive Power of State and Union:** The executive power of a state extends to the Scheduled Areas therein. The executive power of the Union extends to giving directions to the state regarding the administration of such areas.
  - **Tribes Advisory Council (TAC):** Each state having Scheduled Areas has to establish a TAC (may also be established in states having STs but no Scheduled Areas, if the President so directs). It consists of not more than 20 members, of whom about three-fourths shall be representatives of the STs in the State Legislative Assembly. Its duty is to advise on matters pertaining to the welfare and advancement of STs in the state as may be referred to it by the Governor.

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- **Law Applicable to Scheduled Areas:** The Governor is empowered to direct that any particular Act of Parliament or of the State Legislature does not apply to a Scheduled Area or applies with specified modifications and exceptions. The Governor can also make regulations for the peace and good government of any Scheduled Area, after consulting the TAC. Such regulations may prohibit or restrict the transfer of land by or among members of STs, regulate allotment of land, and regulate money-lending. Such regulations require the President's assent.
- **Significance:** Provides a framework for the protection and welfare of Scheduled Tribes and the administration of Scheduled Areas, recognizing their distinct needs and vulnerabilities.
- **Committee:** The **Bhuria Committee (1995)** recommendations were instrumental in shaping the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), which aims to empower Gram Sabhas in Scheduled Areas.

## Sixth Schedule

- **Related Articles:** 244(2) and 275(1).
- **Content:** Contains provisions relating to the **administration of Tribal Areas in the states of Assam, Meghalaya, Tripura, and Mizoram.**
- **Rationale:** These regions have distinct cultures and historical backgrounds, necessitating a different administrative arrangement to preserve their traditions and ensure autonomy.
- **Key Features:**
  - **Autonomous Districts and Autonomous Regions:** The tribal areas in these four states have been constituted as autonomous districts. The Governor is empowered to organise and re-organise these autonomous districts. The Governor may also create autonomous regions within an autonomous district.
  - **District Councils and Regional Councils:** Each autonomous district has a District Council (consisting of not more than 30 members, of whom not more than 4 are nominated by the Governor and the rest elected on adult suffrage). Each autonomous region also has a separate Regional Council.
  - **Powers of Councils:** These councils have powers to make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs, etc. However, all such laws require the assent of the Governor.
  - They can constitute village councils or courts for trial of suits and cases between tribes. They can establish, construct, or manage primary schools, dispensaries, markets, etc. They are empowered to assess and collect land revenue and impose certain specified taxes.
  - The Acts of Parliament or of the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.
- **Significance:** Provides a greater degree of autonomy to tribal communities in these specific North-Eastern states, enabling them to manage their affairs according to their customs and traditions.

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- **Demand for Inclusion:** There are ongoing demands from other regions with significant tribal populations for inclusion under the Sixth Schedule.

## Seventh Schedule

- **Related Article:** 246.
- **Content:** Deals with the **division of legislative powers between the Union and the States** by providing three lists:
  - **List I – Union List:** Parliament has exclusive power to make laws on matters enumerated in this list. Contains subjects of national importance.
    - **Number of Subjects:** Originally 97, now 100 subjects (numbering remains up to 97, with some like 2A, 92A, 92B, 92C added).
    - **Examples:** Defence, banking, foreign affairs, currency, atomic energy, insurance, census, railways, posts and telegraphs, citizenship, inter-state trade and commerce.
  - **List II – State List:** State Legislatures have exclusive power to make laws on matters enumerated here (normally). Contains subjects of local or regional importance.
    - **Number of Subjects:** Originally 66, now 61 subjects (some transferred to Concurrent List).
    - **Examples:** Public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, betting and gambling.
  - **List III – Concurrent List:** Both Parliament and State Legislatures can make laws on matters enumerated here. However, in case of a conflict between a central law and a state law on a concurrent subject, the central law prevails (Article 254), unless the state law having received President's assent prevails in that state.
    - **Number of Subjects:** Originally 47, now 52 subjects (five subjects were transferred from State List to Concurrent List by the 42nd Amendment, 1976: (a) education, (b) forests, (c) weights and measures, (d) protection of wild animals and birds, and (e) administration of justice; constitution and organisation of all courts except the Supreme Court and the High Courts).
    - **Examples:** Criminal law and procedure, civil procedure, marriage and divorce, adoption, bankruptcy and insolvency, trade unions, social security, electricity, economic and social planning, population control and family planning.
- **Residuary Powers (Article 248):** Matters not enumerated in any of the three lists (residuary subjects) are vested in the Parliament. This reflects a centralizing tendency.
- **Significance:** Forms the bedrock of Indian federalism by clearly demarcating legislative competencies, aiming to reduce conflicts and ensure efficient governance.
- **Committees:** The **Sarkaria Commission** and **Punchhi Commission** have made recommendations regarding the distribution of powers and entries in these lists to strengthen cooperative federalism.

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## Eighth Schedule

- **Related Articles:** 344(1) and 351.
- **Content:** Specifies the **officially recognized languages of India**.
- **Original Languages:** Initially, it had 14 languages.
- **Current Languages:** Presently, it recognizes **22 languages**. These are:
  1. Assamese
  2. Bengali
  3. Bodo (added by 92nd Amendment, 2003)
  4. Dogri (added by 92nd Amendment, 2003)
  5. Gujarati
  6. Hindi
  7. Kannada
  8. Kashmiri
  9. Konkani (added by 71st Amendment, 1992)
  10. Maithili (added by 92nd Amendment, 2003)
  11. Malayalam
  12. Manipuri (added by 71st Amendment, 1992)
  13. Marathi
  14. Nepali (added by 71st Amendment, 1992)
  15. Odia (formerly Oriya, name changed by 96th Amendment, 2011)
  16. Punjabi
  17. Sanskrit
  18. Santhali (added by 92nd Amendment, 2003)
  19. Sindhi (added by 21st Amendment, 1967)
  20. Tamil
  21. Telugu
  22. Urdu
- **Significance:** Recognition in the Eighth Schedule accords official status, encourages development of these languages, and makes them eligible for representation on the Official Language Commission. Candidates for certain government services can also opt to write exams in these languages. It reflects India's linguistic diversity. Article 351 imposes a duty on the Union to promote the spread of Hindi language so that it may serve as a medium of expression for all the elements of the composite culture of India.
- **Demands for Inclusion:** There are persistent demands for the inclusion of more languages (e.g., Tulu, Rajasthani) in this Schedule.

## Ninth Schedule

- **Related Article:** 31B.
- **Content:** Contains a list of central and state laws which **cannot be challenged in courts** on the ground of contravention of any of the Fundamental Rights.
- **Origin:** Added by the **First Constitutional Amendment Act, 1951**, primarily to protect land reform laws and abolish the Zamindari system. Article 31B states that none of the Acts and Regulations specified in the Ninth Schedule shall be deemed to be void on the ground that they are inconsistent with any Fundamental Rights.
- **Judicial Scrutiny and Basic Structure Doctrine:**

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- Initially, laws placed in the Ninth Schedule were considered immune from judicial review.
- However, in the landmark case of **I.R. Coelho v. State of Tamil Nadu (2007)** (also known as the Ninth Schedule Case), the Supreme Court ruled that laws included in the Ninth Schedule *after April 24, 1973* (the date of the Kesavananda Bharati judgment which propounded the basic structure doctrine) are open to judicial review if they violate the basic structure of the Constitution (e.g., by infringing Fundamental Rights that form part of the basic structure). The "rights test" and "essence of the right" test would be applied.
- **Current Status:** The Schedule contains a large number of acts, but their immunity is now conditional.
- **Significance:** It was a tool to expedite socio-economic reforms, particularly agrarian reforms, by shielding them from prolonged legal challenges. However, its scope and application have been significantly reinterpreted by the judiciary to uphold the supremacy of the basic features of the Constitution.

## Tenth Schedule

- **Related Articles:** 102(2) and 191(2).
- **Content:** Contains provisions relating to **disqualification of members of Parliament and State Legislatures on the ground of defection**. This is popularly known as the **Anti-Defection Law**.
- **Origin:** Added by the **52nd Constitutional Amendment Act, 1985**.
- **Grounds for Defection:**
  1. Voluntarily giving up membership of the political party on whose ticket one is elected.
  2. Voting or abstaining from voting in the House contrary to any direction (whip) issued by the political party, without prior permission or condonation by the party within 15 days.
  3. An independently elected member joining any political party after election.
  4. A nominated member joining any political party after the expiry of six months from the date of taking seat.
- **Exceptions (Original, some now modified/deleted):**
  - Defection due to a split in a political party (where at least one-third of legislators formed a separate group) was earlier not a disqualification. This provision for split (paragraph 3) was **deleted by the 91st Amendment Act, 2003**, making splits no longer a valid defence against defection.
  - Defection due to a merger of political parties (where not less than two-thirds of the members of the legislature party concerned have agreed to such merger) is still an exception.
- **Deciding Authority:** The question of disqualification under the Tenth Schedule is decided by the **Presiding Officer** of the House (Speaker in case of Lok Sabha/Legislative Assembly, Chairman in case of Rajya Sabha/Legislative Council).
- **Judicial Review:**

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- Initially, the decision of the Presiding Officer was deemed final and not subject to judicial review.
- However, in **Kihoto Hollohan v. Zachillhu (1992)**, the Supreme Court struck down this provision (paragraph 7 of the Schedule which barred judicial review) as unconstitutional, holding that the decision of the Presiding Officer functions as a tribunal and is subject to judicial review on grounds of mala fides, perversity, non-compliance with rules of natural justice, etc. However, the Court held that judicial review should not be available prior to the Presiding Officer making a decision.
- **91st Amendment Act, 2003:** Besides deleting the split provision, this amendment also stipulated that a member disqualified on ground of defection shall also be disqualified to be appointed as a Minister. It also limited the size of the Council of Ministers at the Centre and States to 15% of the total strength of the Lok Sabha / State Legislative Assembly (with a minimum of 12 in smaller states).
- **Significance:** Aims to curb political defections motivated by lure of office or other similar considerations, thereby promoting political stability and strengthening party discipline.
- **Criticisms:** The law has been criticized for stifling dissent within parties, giving excessive power to party leadership, and the partisan role sometimes played by Presiding Officers. There are ongoing debates about reforming this law, such as vesting the decision-making power in the Election Commission or the President/Governor.

## Eleventh Schedule

- **Related Article:** 243G.
- **Content:** Specifies the **powers, authority, and responsibilities of Panchayats**. It lists **29 functional items** that may be devolved to Panchayats by the State Legislature.
- **Origin:** Added by the **73rd Constitutional Amendment Act, 1992**.
- **Examples of Items:** Agriculture, land improvement, minor irrigation, animal husbandry, fisheries, social forestry, minor forest produce, small scale industries, rural housing, drinking water, roads, rural electrification, poverty alleviation programmes, education (including primary and secondary schools), health and sanitation, family welfare, women and child development, social welfare (including welfare of handicapped and mentally retarded), public distribution system, maintenance of community assets.
- **Significance:** Provides a concrete list of subjects for devolution to Panchayati Raj Institutions, aiming to make them vibrant institutions of local self-government and enable them to prepare plans and implement schemes for economic development and social justice. The extent of actual devolution, however, varies from state to state.

## Twelfth Schedule

- **Related Article:** 243W.
- **Content:** Specifies the **powers, authority, and responsibilities of Municipalities**. It lists **18 functional items** that may be devolved to Municipalities by the State Legislature.

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- **Origin:** Added by the 74th Constitutional Amendment Act, 1992.
- **Examples of Items:** Urban planning including town planning, regulation of land-use and construction of buildings, roads and bridges, water supply, public health, sanitation conservancy and solid waste management, fire services, urban forestry, protection of the environment and promotion of ecological aspects, slum improvement and upgradation, urban poverty alleviation, provision of urban amenities such as parks, gardens, playgrounds, promotion of cultural, educational and aesthetic aspects, vital statistics including registration of births and deaths, public amenities including street lighting, parking lots, bus stops.
- **Significance:** Provides a framework for empowering urban local bodies to function as effective units of self-government, enabling them to address local issues and contribute to urban development. Similar to the Eleventh Schedule, the actual devolution of these functions depends on state legislation.

## Amendment Procedure of the Indian Constitution

A constitution, to remain a living document, must be capable of adapting to the changing needs and aspirations of society. The Indian Constitution, while providing a stable framework for governance, incorporates a mechanism for its amendment. This procedure strikes a balance between rigidity (to preserve its fundamental tenets) and flexibility (to allow for necessary modifications).

### Rationale for Amendment

- **Adaptability:** As society evolves, new challenges and opportunities emerge. The Constitution must be able to address these changing circumstances. **Pandit Jawaharlal Nehru** stated in the Constituent Assembly, "While we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a nation's growth, the growth of a living, vital, organic people."
- **Addressing Deficiencies:** No constitution is perfect. The amendment process allows for the correction of flaws or lacunae that may become apparent over time.
- **Reflecting Popular Will:** Amendments can reflect shifts in public opinion or societal values, ensuring the Constitution remains relevant to the people it governs.
- **Preventing Revolution:** A constitution that is too rigid and unamendable may lead to its overthrow if it fails to meet the demands of a changing society. **Thomas Jefferson** famously advocated for each generation to have the right to determine its own laws.

### Constitutional Provision: Article 368 (Part XX)

The power of Parliament to amend the Constitution and the procedure thereof are primarily laid down in **Article 368** of the Constitution, located in **Part XX**.

- **Original Article 368:** The original article was titled "Procedure for amendment of the Constitution" and provided a relatively simpler framework.
- **Evolution of Article 368:** The scope and interpretation of Article 368 have been significantly shaped by judicial pronouncements and constitutional amendments (notably the 24th and 42nd Amendments).
  - **24th Amendment Act, 1971:**

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- Amended Article 368 and Article 13.
- Changed the marginal heading of Article 368 from "Procedure for amendment of the Constitution" to "**Power of Parliament to amend the Constitution and procedure therefor.**"
- Explicitly empowered Parliament to amend any provision of the Constitution, including Fundamental Rights.
- Made it obligatory for the President to give assent to a Constitution Amendment Bill.
- This amendment was enacted to overcome the ruling in the **Golaknath v. State of Punjab (1967)** case, where the Supreme Court held that Parliament could not amend Fundamental Rights.
- **Key Phrase:** "Parliament may, in exercise of its **constituent power**, amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article." The term "constituent power" signifies that when Parliament amends the Constitution, it acts in a capacity different from its ordinary legislative power.

## Types of Amendment Procedures

The Indian Constitution provides for three ways in which its provisions can be amended:

### Amendment by Simple Majority of Parliament (Outside the Scope of Article 368)

A number of provisions in the Constitution can be amended by a simple majority of the two Houses of Parliament, in the same manner as ordinary legislation. These amendments are **not deemed to be amendments of the Constitution for the purposes of Article 368.**

- **Procedure:** Requires a majority of members present and voting in each House.
- **Provisions Amendable by Simple Majority:**
  1. Admission or establishment of new states (**Article 2**).
  2. Formation of new states and alteration of areas, boundaries, or names of existing states (**Article 3**). (Note: Article 4(2) explicitly states that laws under Art 2 & 3 are not Art 368 amendments).
  3. Abolition or creation of legislative councils in states (**Article 169**). (Requires a resolution by the state assembly by special majority first, then Parliament acts by simple majority).
  4. Second Schedule – emoluments, allowances, privileges, etc., of the President, Governors, Speakers, Judges, etc.
  5. Quorum in Parliament (**Article 100(3)**).
  6. Salaries and allowances of the members of Parliament (**Article 106**).
  7. Rules of procedure in Parliament (**Article 118**).
  8. Privileges of the Parliament, its members, and its committees (**Article 105(3)**).
  9. Use of English language in Parliament (**Article 120(2)**).
  10. Number of puisne judges in the Supreme Court.
  11. Conferment of more jurisdiction on the Supreme Court.
  12. Use of official language (**Article 343(3)**).
  13. Citizenship – acquisition and termination (**Article 11**).
  14. Elections to Parliament and state legislatures (e.g., delimitation of constituencies).

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15. Union territories.
16. Fifth Schedule – administration of scheduled areas and scheduled tribes.
17. Sixth Schedule – administration of tribal areas.

## **Amendment by Special Majority of Parliament (Under Article 368)**

The majority of the provisions in the Constitution can be amended by a special majority of Parliament.

- **Procedure (Article 368(2)):**

1. An amendment can be initiated only by the **introduction of a Bill** for the purpose in **either House of Parliament** (not in state legislatures).
2. The Bill can be introduced either by a **minister or by a private member** and does not require prior permission of the President.
3. The Bill must be passed in each House by a **special majority**, which means:
  - A majority (i.e., more than 50 per cent) of the **total membership** of that House; AND
  - A majority of **two-thirds of the members of that House present and voting**.  
(Total membership means the total number of seats in the House irrespective of whether there are vacancies or absentees).
4. Each House must pass the Bill separately. There is **no provision for a joint sitting** of the two Houses in case of a disagreement over a Constitution Amendment Bill (unlike ordinary bills under Article 108).
5. After being duly passed by both Houses, the Bill is presented to the **President for assent**.
6. The President **must give his assent** to the Bill. He can neither withhold his assent nor return the Bill for reconsideration of the Parliament. (This was made obligatory by the 24th Amendment Act, 1971).
7. After the President's assent, the Bill becomes an **Act (i.e., a Constitutional Amendment Act)**, and the Constitution stands amended in accordance with the terms of the Act.

- **Provisions Amendable by Special Majority:**

- Fundamental Rights (Part III).
- Directive Principles of State Policy (Part IV).
- All other provisions which are not covered by the first and third categories.

## **Amendment by Special Majority of Parliament and Consent of States (Under Article 368)**

Those provisions of the Constitution which relate to the **federal structure** of the polity can be amended by a special majority of Parliament and also with the consent of half of the state legislatures by a simple majority.

- **Procedure:**

1. The first four steps are the same as in the case of amendment by special majority of Parliament (i.e., introduction in either House, passage by special majority in each House separately).
2. After the Bill is passed by both Houses of Parliament, it must be **ratified by the legislatures of not less than one-half of the states**.

3. This ratification must be by a **resolution passed by each such state legislature by a simple majority** (i.e., a majority of the members of the House present and voting).
  4. There is no specific time limit prescribed within which the states should give their consent to the Bill.
  5. Once the necessary state ratifications are obtained, the Bill is presented to the President for assent.
  6. The President must give his assent.
- **Provisions Requiring State Ratification (Federal Provisions):**
    1. Election of the President and its manner (**Articles 54, 55**).
    2. Extent of the executive power of the Union (**Article 73**).
    3. Extent of the executive power of the States (**Article 162**).
    4. Supreme Court and High Courts (Provisions in Part V, Chapter IV and Part VI, Chapter V – e.g., dealing with their constitution, organization, jurisdiction, powers).
    5. Distribution of legislative powers between the Union and the States (any of the Lists in the **Seventh Schedule**).
    6. Representation of states in Parliament (e.g., matters affecting the Fourth Schedule).
    7. The provisions of **Article 368 itself** (i.e., the power of Parliament to amend the Constitution and the procedure therefor).

### **Scope of Parliament's Amending Power: The Basic Structure Doctrine**

The question of whether Parliament's power to amend the Constitution under Article 368 is absolute or limited has been a subject of intense constitutional debate and judicial scrutiny.

- **Shankari Prasad v. Union of India (1951):** The Supreme Court upheld Parliament's power to amend any part of the Constitution, including Fundamental Rights. It held that the word 'law' in Article 13(2) refers only to ordinary laws and not to constitutional amendment acts.
- **Sajjan Singh v. State of Rajasthan (1965):** The Court reiterated its earlier stand. However, Justices Hidayatullah and Mudholkar expressed doubts about the unbridled power of Parliament to amend Fundamental Rights.
- **Golaknath v. State of Punjab (1967):** In a landmark 6:5 majority judgment, the Supreme Court **overruled its earlier decisions** and held that:
  - Fundamental Rights are "transcendental and immutable" and Parliament has **no power to abridge or take away Fundamental Rights**.
  - A constitutional amendment is also a 'law' within the meaning of Article 13(2).
  - The Court suggested that if Fundamental Rights were to be amended, a new Constituent Assembly would have to be convened.
- **Parliamentary Response: 24th Amendment Act, 1971:** As detailed earlier, this amendment sought to restore to Parliament the power to amend Fundamental Rights.
- **Kesavananda Bharati v. State of Kerala (1973) - The Watershed Moment:**

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- This historic case, decided by a 13-judge bench (largest ever), **overruled the Golaknath case** regarding the amendability of Fundamental Rights.
- It upheld the validity of the 24th Amendment Act, thereby affirming Parliament's power to amend any part of the Constitution, including Fundamental Rights.
- However, the Court, by a narrow majority (7:6), propounded the **Doctrine of Basic Structure (or Basic Features)**.
- **Doctrine of Basic Structure:** The Court held that while Parliament has the power to amend any provision of the Constitution, this power is not unlimited. Parliament **cannot alter the 'basic structure' or 'fundamental features'** of the Constitution.
- What constitutes 'basic structure' was not exhaustively defined but illustrated through examples like: supremacy of the Constitution, republican and democratic form of government, secular character, separation of powers, federal character, dignity of the individual secured by Fundamental Rights, parliamentary system, unity and integrity of the nation, free and fair elections, independence of judiciary, rule of law, power of judicial review. The list is illustrative and not exhaustive, and the Court has added to it in subsequent judgments.
- **Indira Nehru Gandhi v. Raj Narain (1975) (Election Case):** The Supreme Court applied the basic structure doctrine to strike down Clause (4) of Article 329-A (inserted by the 39th Amendment Act, 1975), which sought to place the election of the Prime Minister and Speaker beyond judicial review. The Court found this to violate free and fair elections, rule of law, and judicial review, which are basic features.
- **Parliamentary Response: 42nd Amendment Act, 1976 (Mini-Constitution):**
  - Among many changes, it amended Article 368 to declare that there shall be **no limitation whatever** on the constituent power of Parliament to amend the Constitution, and that **no amendment of the Constitution (including of Fundamental Rights) shall be called in question in any court on any ground.**
- **Minerva Mills Ltd. v. Union of India (1980):**
  - The Supreme Court struck down these provisions of the 42nd Amendment (clauses (4) and (5) of Article 368) as violating the basic structure.
  - The Court held that **limited amending power of Parliament is itself a basic feature** of the Constitution. Parliament cannot, in the exercise of its limited amending power, expand that very power into an absolute one.
  - It reaffirmed the importance of **judicial review** as a basic feature.
  - It also emphasized the **harmony and balance between Fundamental Rights and Directive Principles** as a basic feature.
- **Waman Rao v. Union of India (1981):** The Supreme Court clarified that the basic structure doctrine would apply prospectively to constitutional amendments enacted after April 24, 1973 (the date of the Kesavananda Bharati judgment).
- **Subsequent Cases:** The basic structure doctrine has been applied and elaborated in numerous subsequent cases, e.g., **S.R. Bommai v. Union of India**

(1994) (federalism, secularism as basic features); **L. Chandra Kumar v. Union of India (1997)** (power of judicial review of High Courts under Art 226/227 as basic feature); **I.R. Coelho v. State of Tamil Nadu (2007)** (laws in Ninth Schedule are not immune if they violate basic structure).

## Criticism of the Amendment Procedure

Despite its blend of flexibility and rigidity, the amendment procedure has faced certain criticisms:

1. **No Provision for a Special Body:** Unlike some countries (e.g., USA, which requires a Constitutional Convention for proposing amendments, or ratification by conventions in states), there is no provision for a special body like a Constitutional Convention for amending the Constitution. The constituent power is vested in Parliament (and state legislatures in some cases), which is primarily a legislative body.
2. **Exclusive Power with Parliament (Largely):** Parliament has the sole power to initiate amendments. State legislatures cannot initiate any bill or proposal for amending the Constitution, except for passing a resolution requesting Parliament to create or abolish legislative councils in states (Article 169), which is not an amendment under Article 368.
3. **Lack of State Initiative in Ratification:** States must ratify certain federal amendments, but they cannot set a time limit for it, nor can they propose modifications to the amendment bill passed by Parliament. They must either accept or reject it in toto.
4. **No Provision for Joint Sitting:** If there is a deadlock between the two Houses of Parliament over an amendment bill, there is no provision for holding a joint sitting to resolve it. This can make the passage of contentious amendments difficult.
5. **Vagueness of "Basic Structure":** The doctrine of basic structure, while crucial for protecting the core of the Constitution, has been criticized for its alleged vagueness and for giving the judiciary too much power to interpret what constitutes a basic feature. However, proponents argue it is a necessary check on potential legislative overreach.
6. **Domination by Ruling Party:** If the ruling party enjoys a substantial majority in Parliament (and controls many state legislatures), it can push through amendments without wide consensus.
7. **Procedure Similar to Ordinary Legislation:** Except for the special majority requirement (and state ratification for federal provisions), the legislative procedure for passing an amendment bill is similar to that of an ordinary bill. Some argue that a more distinct and rigorous process might be appropriate.

## Significance of the Amendment Procedure

- **Adaptability and Resilience:** The procedure has allowed the Constitution to adapt to India's evolving socio-economic and political landscape, making it one of the most frequently amended constitutions in the world, yet one that has endured.
- **Preservation of Core Values:** The Basic Structure Doctrine, read into the amendment procedure, has ensured that while the Constitution can change, its fundamental identity and core democratic values are preserved.

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- **Federal Balance:** The requirement for state ratification for certain amendments ensures that the federal character of the polity is respected, although critics point to the Centre's dominance.
- **Reflection of Political Dynamics:** The history of constitutional amendments in India is closely intertwined with the political developments, judicial interpretations, and the ongoing dialogue between different organs of the state.

## Scholar's Perspective:

**Granville Austin** observed that the Indian amending process is "one of the most ably conceived aspects of the Constitution. It is neither too rigid to make amendment difficult, nor too flexible to make it an easy plaything." He described it as a "commendably pragmatic" approach.

## The Union and its Territory

Part I of the Constitution of India, comprising Articles 1 to 4, deals with the Union and its territory. These articles define the name and territorial extent of the country, and lay down the power of Parliament to admit new states, form new states, and alter the areas, boundaries, or names of existing states. This Part is fundamental to understanding the territorial framework and the nature of the Indian federation.

### Article 1: Name and Territory of the Union

**Article 1(1):** "India, that is Bharat, shall be a Union of States."

- **Name of the Country:** This clause declares the name of the country, adopting both "India" (the modern name by which it is known internationally) and "Bharat" (the ancient name with historical and cultural significance). The Constituent Assembly debated various names and settled on this dual nomenclature.
- **Type of Polity: "Union of States":**
  - This phrase was deliberately chosen by the framers instead of "Federation of States."
  - **Dr. B.R. Ambedkar**, Chairman of the Drafting Committee, explained that "Union of States" was preferred for two reasons:
    1. The Indian Federation is not the result of an agreement among the States to join in a federation (unlike the American federation, which was formed by an agreement between initially independent states).
    2. The component States have no freedom to secede from the Union. The federation is a Union because it is indestructible.
  - This signifies the permanence and integrity of the Indian Union. While the country is federal in structure, the emphasis is on its unity.

**Article 1(2):** "The States and the territories thereof shall be as specified in the First Schedule."

- This clause indicates that the names of the states and union territories and their respective territorial extents are detailed in the **First Schedule** of the Constitution.
- The First Schedule is, therefore, an integral part of understanding the territorial composition of India and is amended whenever there is a change in the number of states/UTs or their territories.

**Article 1(3):** "The territory of India shall comprise –

- (a) the territories of the States;

- (b) the Union territories specified in the First Schedule; and
- (c) such other territories as may be acquired."

- **"Territory of India" vs. "Union of India":**
  - The "Territory of India" is a wider expression\_value than the "Union of India."
  - The "Union of India" includes only the States which share in the distribution of powers with the Union.
  - The "Territory of India" includes not only the States but also Union Territories and territories that may be acquired by India at any future time.
- **Acquired Territories:** India can acquire foreign territories according to the modes recognized by international law, i.e., by cession (following treaty, purchase, gift, lease or plebiscite), occupation (hitherto unoccupied by a recognized ruler), or conquest or subjugation.
  - Examples of acquired territories that became part of India: Pondicherry, Karaikal, Mahe, and Yanam (ceded by France in 1954, formally in 1962); Goa, Daman, and Diu (acquired from Portuguese by police action in 1961); Sikkim (became a full-fledged state of India in 1975).
  - Acquired territories are initially administered by the Government of India as "acquired territories" and can later be constituted as Union Territories or States, or merged with existing States/UTs.

## Article 2: Admission or Establishment of New States

**Article 2:** "Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit."

- This article confers two distinct powers on Parliament:
  1. **Power to admit into the Union new States:** This refers to the admission of states which are already in existence (e.g., Sikkim's admission as an associate state initially, then full state).
  2. **Power to establish new States:** This refers to the establishment of states which were not in existence before (e.g., formation of a state from a territory not previously part of India, or from an acquired territory).
- **"On such terms and conditions as it thinks fit":** This gives Parliament wide discretion.
- **Distinction from Article 3:** Article 2 relates to the admission or establishment of *new* states that are not part of the Union of India. Article 3, on the other hand, deals with the formation of or changes in the *existing* states of the Union of India.
- **Example:** The formation of the State of Sikkim. The 35th Constitutional Amendment Act, 1974, inserted Article 2A and the Tenth Schedule, making Sikkim an "associate state." Subsequently, the 36th Constitutional Amendment Act, 1975, repealed Article 2A and the Tenth Schedule, and Sikkim was admitted as a full-fledged state of the Indian Union by amending the First and Fourth Schedules.

## Article 3: Formation of New States and Alteration of Areas, Boundaries or Names of Existing States

**Article 3:** "Parliament may by law –

- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State."
- This article empowers Parliament to reorganise the states internally. This power underscores the concept of India as an "**indestructible Union of destructible States.**" Parliament can redraw the political map of India according to its will.
- **Conditions for introducing a Bill under Article 3:**  
Two conditions must be fulfilled:
  1. **Prior recommendation of the President:** A bill contemplating the above changes can be introduced in either House of Parliament only on the prior recommendation of the President.
  2. **Reference to State Legislature:** Before recommending the introduction of such a bill, the President *must* refer the bill to the Legislature of the state(s) whose area, boundaries, or name is affected by it, for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow.
    - **Nature of State's Views:** The President (or Parliament) is **not bound** by the views of the state legislature. Parliament can proceed with the bill even if the state legislature does not express its views within the specified time or expresses views contrary to the proposed changes.
    - It is not necessary to make a fresh reference to the state legislature every time an amendment to the bill is moved and accepted in Parliament.
    - In the case of Union Territories, no such reference to the concerned legislature (if any, like Delhi or Puducherry) is needed, and Parliament can itself take any action as it deems fit.
- **Power of Parliament is Plenary:** The power of Parliament to reorganise states is extensive.
  - **Babulal Parate v. State of Bombay (1960):** The Supreme Court upheld Parliament's power under Article 3.
- **Cession of Indian Territory to a Foreign State:**
  - A critical question arose whether Parliament's power under Article 3 to diminish the area of any state also includes the power to cede Indian territory to a foreign country.
  - **In Re Berubari Union (I) (AIR 1960 SC 845):** This was a Presidential Reference under Article 143(1) regarding the implementation of the Indo-Pakistan Agreement (Nehru-Noon Agreement) relating to the Berubari Union and exchange of enclaves.
    - The Supreme Court held that the power of Parliament to diminish the area of a state (under Article 3) **does not cover cession of Indian territory to a foreign country.**
    - Cession of territory can only be done by amending the Constitution under **Article 368.**

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- Consequently, the **9th Constitutional Amendment Act, 1960**, was enacted to transfer the said territory to Pakistan.
- **Later Clarification by Supreme Court:** In subsequent cases, the SC clarified that if a boundary dispute settlement with another country does not involve cession of Indian territory but merely demarcation or adjustment of boundaries, it can be done by an executive action without a constitutional amendment. (e.g., **Maganbhai Ishwarbhai Patel vs Union Of India, 1969**, concerning the Kutch award).
- The **100th Constitutional Amendment Act, 2015**, was enacted to give effect to the acquiring of certain territories by India and transfer of certain other territories to Bangladesh in pursuance of the Land Boundary Agreement and its Protocol entered into between the Governments of India and Bangladesh.

**Article 4: Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.**

**Article 4(1):** "Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary."

- This clause mandates that any law made under Article 2 or 3 must include consequential amendments to the First Schedule (names of States and UTs and their territories) and the Fourth Schedule (allocation of seats in Rajya Sabha).
- It also allows for other supplemental, incidental, and consequential provisions.

**Article 4(2):** "No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368."

- This is a crucial provision. It means that laws relating to the admission/establishment of new states or formation/alteration of existing states can be passed by Parliament by a **simple majority** and by the ordinary legislative process.
- They do not require the special majority procedure prescribed under Article 368 for constitutional amendments, nor do they require ratification by states (even if they alter state boundaries or diminish their area).
- This further highlights the flexibility given to Parliament in reorganizing the internal political map of India.

## **Evolution of States and Union Territories: Historical Context and Reorganisation**

The present political map of India is a result of a long process of evolution and reorganisation, significantly influenced by linguistic, cultural, administrative, and political factors.

- **Integration of Princely States:** At independence, India comprised British Indian Provinces and numerous Princely States. **Sardar Vallabhbhai Patel**, with the assistance of **V.P. Menon**, played a monumental role in integrating these princely states into the Indian Union through instruments of accession, persuasion, and, in some cases (like Hyderabad, Junagadh), police action.

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- **Original Four-fold Classification (Part A, B, C, D States - First Schedule, 1950):**
  - **Part A States (9):** Former Governors' provinces of British India, ruled by an elected governor and state legislature.
  - **Part B States (9):** Former princely states or groups of smaller princely states, governed by a Rajpramukh (usually the former ruler) and an elected legislature.
  - **Part C States (10):** Former Chief Commissioners' provinces and some princely states, centrally administered by a Chief Commissioner appointed by the President.
  - **Part D Territories (1):** Andaman and Nicobar Islands, administered by a lieutenant governor appointed by the central government.
- **Demand for Linguistic Reorganisation:** There was a strong demand, particularly from South India, for the reorganisation of states on a linguistic basis. The Congress party had supported this demand before independence.
- **Committees on State Reorganisation:**
  - **Dhar Commission (Linguistic Provinces Commission, June 1948):** Headed by S.K. Dhar.
    - Recommended reorganisation on the basis of administrative convenience rather than linguistic factor. This was met with resentment.
  - **JVP Committee (December 1948):** Consisted of Jawaharlal Nehru, Vallabhbhai Patel, and Pattabhi Sitaramayya.
    - Formally rejected language as the basis for reorganisation of states.
    - However, it conceded that the demand was popular and had merit, suggesting a cautious approach.
  - **Formation of Andhra State (1953):** The death of Potti Sriramulu after a 56-day hunger strike demanding a Telugu-speaking state forced the government to create the first linguistic state, Andhra, by separating Telugu-speaking areas from Madras State. This intensified demands for linguistic states elsewhere.
- 2. **States Reorganisation Commission (SRC) (Fazl Ali Commission, December 1953):**
  - Chairman: Fazl Ali. Members: H.N. Kunzru and K.M. Panikkar.
  - Submitted its report in September 1955.
  - Broadly accepted language as the basis of reorganisation but rejected the 'one language-one state' theory.
  - Recommended that the unity of India should be the primary consideration. Other factors to be considered: linguistic and cultural homogeneity, financial, economic and administrative viability, and promotion of welfare of people in each state as well as the nation as a whole.
  - Suggested abolition of the four-fold classification of states and creation of 16 states and 3 centrally administered territories.
- **States Reorganisation Act, 1956, and 7th Constitutional Amendment Act, 1956:**
  - Based largely on SRC recommendations, these were enacted to implement the scheme of reorganisation.

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- Abolished the Part A, B, C, D classification.
- Created **14 States and 6 Union Territories** as of November 1, 1956.
- **Subsequent Reorganisations (Post-1956):** Even after 1956, the political map of India has continued to evolve due to various demands and factors:
  - **Maharashtra and Gujarat (1960):** Bombay state bifurcated.
  - **Dadra and Nagar Haveli (1961):** Converted into a UT (10th Amendment).
  - **Goa, Daman and Diu (1961/1962):** Acquired from Portuguese, made UT (12th Amendment); Goa later became a state in 1987.
  - **Puducherry (1962):** French establishments became a UT (14th Amendment).
  - **Nagaland (1963):** Carved out of Assam.
  - **Haryana, Chandigarh, Himachal Pradesh (1966):** Punjab reorganised based on Shah Commission recommendations. Haryana became a state, Chandigarh a UT, hilly areas merged with Himachal Pradesh (which later became a state in 1971).
  - **Manipur, Tripura, Meghalaya (1972):** Upgraded from UTs/sub-state to full states.
  - **Sikkim (1975):** Became a full state (36th Amendment).
  - **Mizoram, Arunachal Pradesh, Goa (1987):** Became states.
  - **Chhattisgarh, Uttarakhand, Jharkhand (2000):** Created from Madhya Pradesh, Uttar Pradesh, Bihar respectively, on socio-economic and administrative grounds rather than primarily linguistic.
  - **Telangana (2014):** Carved out of Andhra Pradesh.
  - **Jammu and Kashmir and Ladakh (2019):** The state of Jammu and Kashmir was reorganised into two Union Territories: Jammu and Kashmir (with a legislature) and Ladakh (without a legislature), by the Jammu and Kashmir Reorganisation Act, 2019. This followed the effective abrogation of Article 370.
  - **Dadra and Nagar Haveli and Daman and Diu (2020):** These two UTs were merged into a single UT.

## Implications of Parliamentary Power under Articles 2, 3, and 4

- **Flexibility of Federal Structure:** The ease with which Parliament can alter state boundaries without requiring state consent (beyond consultation) demonstrates a significant unitary feature within India's federalism. It makes the territorial integrity of states subservient to the will of the Union Parliament.
- **National Unity over Regionalism:** This power has been used to accommodate linguistic and cultural aspirations, manage regional demands, and ensure administrative viability, often with the aim of strengthening national unity.
- **Potential for Political Maneuvering:** Critics argue that this power can sometimes be used for political considerations by the ruling party at the Centre.
- **Judicial Restraint:** The Supreme Court has generally shown restraint in interfering with Parliament's power under Article 3, recognizing it as a political question, provided the procedural requirements are met.

## Key Concepts and Doctrines

- **Union of States:** Emphasizes indestructibility of the Union and lack of secession right for states.

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- **Indestructible Union of Destructible States:** Parliament can alter state territories, but the Union itself is permanent.
- **Territorial Nexus:** Principle allowing state laws to have extra-territorial operation if there's a sufficient connection between the state and the object of the law.
- **Cession of Territory:** Requires constitutional amendment under Article 368.
- **Simple Majority for Reorganisation:** Laws under Articles 2 and 3 are not Article 368 amendments.

Part I of the Constitution, therefore, lays a crucial foundation by defining the territory of India and bestowing upon Parliament significant powers to shape and reshape its internal political geography. This reflects a unique blend of federal principles with a strong central authority capable of ensuring the unity and integrity of the nation.

## Citizenship in India

Citizenship is a fundamental concept in modern nation-states, denoting the relationship between an individual and the state, involving specific rights and duties. In India, the provisions relating to citizenship are enshrined in **Part II (Articles 5 to 11)** of the Constitution and further elaborated by the **Citizenship Act, 1955**.

### Meaning and Significance of Citizenship

- **Definition:** Citizenship signifies full membership in a political community (the State). Citizens enjoy full civil and political rights, while aliens (non-citizens) generally do not.
- **Rights of Citizens in India (Exclusive):**
  1. Right against discrimination on grounds of religion, race, caste, sex or place of birth (**Article 15**).
  2. Right to equality of opportunity in matters of public employment (**Article 16**).
  3. Right to freedom of speech and expression\_value, assembly, association, movement, residence, and profession (**Article 19**).
  4. Cultural and educational rights (**Articles 29 and 30**).
  5. Right to vote in elections to the Lok Sabha and state legislative assemblies.
  6. Right to contest for the membership of Parliament and state legislature.
  7. Eligibility to hold certain public offices, viz., President of India, Vice-President of India, Judges of the Supreme Court and the High Courts, Governor of States, Attorney General of India, and Advocate General of states.
- **Duties of Citizens:** Citizens owe allegiance to the State and are expected to fulfill certain duties, such as those mentioned in Article 51A (Fundamental Duties).
- **Basis of Citizenship:** Modern states generally confer citizenship based on two main principles:
  - **Jus Soli** (right of the soil/birthplace): Citizenship is conferred on individuals born within the territory of the state, regardless of their parents' citizenship.
  - **Jus Sanguinis** (right of blood/descent): Citizenship is acquired by individuals through their parents or ancestors, irrespective of their place of birth.India, like many countries, adopts a combination of these principles.

## Constitutional Provisions (Articles 5-11)

Part II of the Constitution deals with citizenship. It identifies persons who became citizens of India at its commencement (i.e., on January 26, 1950) but **does not deal with the acquisition or loss of citizenship subsequent to its commencement**. It empowers Parliament to make further provisions.

- **Article 5: Citizenship at the commencement of the Constitution**
  - Deals with citizenship for persons domiciled in the territory of India at the commencement of the Constitution. A person who had his domicile in India and:
    - (a) was born in the territory of India; OR
    - (b) either of whose parents was born in the territory of India; OR
    - (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.
  - **Domicile:** Signifies a person's permanent home. It involves two elements: actual residence and the intention to reside permanently or indefinitely in that place. (As per judicial interpretations like **Pradeep Jain v. Union of India, 1984**, India has only one domicile – the domicile of India).
- **Article 6: Rights of citizenship of certain persons who have migrated to India from Pakistan**
  - This article conferred citizenship on persons who migrated from Pakistan to India before the commencement of the Constitution, subject to certain conditions based on the date of migration:
    - **Migrated before July 19, 1948:** Became a citizen if he or either of his parents or any of his grandparents was born in undivided India, and he had been ordinarily resident in India since migration. (July 19, 1948, was the date when the permit system for migration was introduced).
    - **Migrated on or after July 19, 1948:** Became a citizen if he or either of his parents or any of his grandparents was born in undivided India, he was registered as a citizen by an officer appointed by the Government of India after residing in India for at least six months preceding the date of his application for registration.
- **Article 7: Rights of citizenship of certain migrants to Pakistan**
  - Deals with persons who migrated from India to Pakistan after March 1, 1947, but subsequently returned to India for resettlement under a permit. Such persons could become citizens after fulfilling conditions similar to those under Article 6 for post-July 19, 1948 migrants.
  - This article has an overriding effect over Articles 5 and 6. A person covered by Article 7 could not be a citizen under Article 5 or 6 unless fulfilling conditions of Article 7.
- **Article 8: Rights of citizenship of certain persons of Indian origin residing outside India**
  - Confers citizenship on persons of Indian origin (person or either of whose parents or any of whose grandparents was born in undivided India) residing

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outside undivided India, if they registered as citizens of India with the diplomatic or consular representative of India in their country of residence, either before or after the commencement of the Constitution.

- **Article 9: Persons voluntarily acquiring citizenship of a foreign State not to be citizens**
  - Explicitly states that no person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State.
  - This reinforces the principle of **single citizenship** in India and disallows dual citizenship. The determination of whether citizenship was acquired "voluntarily" is made by the Central Government.
  - **Judgement:** The Supreme Court in **Izhar Ahmad Khan v. Union of India (1962)** upheld the government's power to make rules for determining voluntary acquisition of foreign citizenship.
- **Article 10: Continuance of the rights of citizenship**
  - Provides that every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.
  - This means citizenship is not static and can be regulated by parliamentary law.
- **Article 11: Parliament to regulate the right of citizenship by law**
  - Confers exclusive power on Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.
  - This power is plenary and not restricted by Articles 5 to 10.

## The Citizenship Act, 1955

Enacted by Parliament under Article 11, the Citizenship Act, 1955, provides for the acquisition and termination of Indian citizenship *after* the commencement of the Constitution. It has been amended several times, notably in 1986, 1992, 2003, 2005, 2015, and 2019.

## Acquisition of Citizenship (Post-Commencement)

The Act prescribes five ways of acquiring citizenship:

### 1. By Birth (Section 3):

- **Between Jan 26, 1950, and July 1, 1987:** Every person born in India was a citizen by birth, irrespective of the nationality of parents (*jus soli* principle).
- **Between July 1, 1987, and Dec 3, 2004 (Citizenship Amendment Act, 1986):** A person born in India was a citizen if either of his/her parents was a citizen of India at the time of birth. (Introduced an element of *jus sanguinis*).
- **On or after Dec 3, 2004 (Citizenship Amendment Act, 2003):** A person born in India is a citizen if:
  - (a) Both parents are citizens of India; OR
  - (b) One parent is a citizen of India and the other is not an illegal migrant at the time of birth.

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- Children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.
  - **Illegal Migrant:** Defined in Section 2(1)(b) as a foreigner who has entered India (i) without a valid passport or other prescribed travel documents or (ii) with a valid passport or other prescribed documents but remains therein beyond the permitted period of time.
2. **By Descent (Section 4):**
- **Between Jan 26, 1950, and Dec 10, 1992:** A person born outside India was a citizen by descent if his/her father was a citizen of India at the time of birth.
  - **On or after Dec 10, 1992 (Citizenship Amendment Act, 1992):** A person born outside India is a citizen if either of his/her parents was a citizen of India at the time of birth. (Gender neutrality introduced).
  - **On or after Dec 3, 2004:** For a person born outside India to acquire citizenship by descent, their birth must be registered at an Indian consulate within one year of birth (or with Central Govt. permission later), and the parents must declare that the minor does not hold a passport of another country. Further, unless the parent is in service of a government in India, the minor must not be a citizen of any other country and their application for Indian citizenship is made when they turn major.
3. **By Registration (Section 5):**
- The Central Government may, on application, register as a citizen of India any person (not being an illegal migrant) if they belong to certain categories. These include:
    - Persons of Indian origin ordinarily resident in India for seven years before applying.
    - Persons of Indian origin ordinarily resident in any country outside undivided India.
    - Persons married to a citizen of India and ordinarily resident in India for seven years before applying.
    - Minor children of persons who are citizens of India.
    - Persons of full age and capacity whose parents are registered as citizens of India.
    - Persons of full age and capacity who, or either of their parents, was earlier citizen of independent India, and resident in India for twelve months before applying.
    - Persons of full age and capacity registered as an Overseas Citizen of India Cardholder for five years, and resident in India for twelve months before applying.
  - "Person of Indian Origin" (PIO) for this purpose generally means a person who, or either of whose parents or any of whose grandparents, was born in undivided India or in such other territory which became part of India after August 15, 1947.
  - Applicants must take an oath of allegiance before being registered.
4. **By Naturalisation (Section 6):**

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- The Central Government may, on application, grant a certificate of naturalisation to any person (not being an illegal migrant) if they possess certain qualifications specified in the Third Schedule of the Act.
  - **Qualifications:**
    - Not a citizen of a country where Indian citizens are prevented from becoming citizens by naturalisation.
    - Has renounced citizenship of any other country.
    - Has resided in India or been in service of the Government in India (or partly one and partly other) throughout the 12 months immediately preceding the application.
    - During the 14 years immediately preceding the said 12 months, has either resided in India or been in government service for periods amounting in aggregate to not less than 11 years.
    - Is of good character.
    - Has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution.
    - Intends to reside in India or enter into/continue government service after naturalisation.
  - The Central Government may waive all or any of these conditions for a person who has rendered distinguished service to science, philosophy, art, literature, world peace, or human progress.
  - The applicant must take an oath of allegiance.
5. **By Incorporation of Territory (Section 7):**
- If any foreign territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall be citizens of India by reason of their connection with that territory.
  - Example: When Pondicherry became part of India, the Citizenship (Pondicherry) Order, 1962 was issued.

## Termination of Citizenship (Loss of Citizenship)

The Citizenship Act, 1955, prescribes three ways of losing citizenship:

1. **By Renunciation (Section 8):**
  - Any citizen of India of full age and capacity can make a declaration renouncing his Indian citizenship. Upon registration of such declaration, that person ceases to be a citizen of India.
  - When a person renounces citizenship, every minor child of that person also ceases to be an Indian citizen. However, such child may, within one year after attaining full age (18 years), make a declaration to resume Indian citizenship.
  - During a war in which India is engaged, the Central Government may withhold registration of a declaration of renunciation.
2. **By Termination (Section 9):**
  - If an Indian citizen voluntarily (consciously, knowingly and without duress, undue influence or compulsion) acquires the citizenship of another country, his Indian citizenship automatically terminates.
  - This provision does not apply during a war in which India is engaged.

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- The determination of voluntary acquisition of foreign citizenship is made by rules set by the Central Government.
- 3. **By Deprivation (Section 10):**
  - This is a compulsory termination of Indian citizenship by an order of the Central Government. It applies to citizens who acquired citizenship by naturalisation or registration (or under Article 5(c) – residence, or Article 6 – migration from Pakistan, or Article 8 – PIOs abroad).
  - **Grounds for Deprivation:**
    - Citizenship obtained by means of fraud, false representation, or concealment of any material fact.
    - Citizen has shown, by act or speech, to be disloyal or disaffected towards the Constitution of India.
    - Citizen has, during a war in which India is engaged, unlawfully traded or communicated with an enemy.
    - Citizen has, within five years after registration or naturalisation, been imprisoned in any country for a term of not less than two years.
    - Citizen has been ordinarily resident out of India for a continuous period of seven years, without registering annually at an Indian consulate an intention to retain Indian citizenship or being in service of Indian government or an international organization of which India is a member.
  - The Central Government must give the person a written notice and an opportunity to have their case referred to a committee of inquiry before issuing a deprivation order (unless it is not conducive to public good to provide reasons).

## Single Citizenship

- The Indian Constitution provides for only **single citizenship**, i.e., the citizenship of India.
- Unlike countries like USA or Switzerland where a person is a citizen of both the federal state and their constituent state, in India, there is no separate state citizenship.
- All citizens, irrespective of the state in which they are born or reside, enjoy the same political and civil rights of citizenship throughout the country.
- This feature is aimed at fostering a sense of national unity, promoting fraternity, and building an integrated Indian nation free from regional loyalties overshadowing national identity.
- **Dr. B.R. Ambedkar** emphasized in the Constituent Assembly that this "single Indian citizenship" and "one single Indian loyalty" would help in "welding a divided India into a single whole."
- Exceptions regarding employment or residence for certain state services or educational institutions are sometimes made but are subject to parliamentary law and judicial scrutiny (e.g., Article 16(3) allows Parliament to prescribe residence within a state for certain employments).

## Overseas Citizenship of India (OCI) Cardholder Scheme

# IYACHAMY ACADEMY

- **Background:** The concept was recommended by the **L.M. Singhvi Committee (High Level Committee on Indian Diaspora, 2000)** to address the demands of Persons of Indian Origin (PIOs) for dual citizenship. Since the Constitution prohibits dual citizenship, the OCI scheme was introduced by the Citizenship (Amendment) Act, 2003, and further modified by amendments in 2005 and 2015.
- The PIO Card scheme (introduced in 1999) was merged with the OCI Card scheme by the Citizenship (Amendment) Act, 2015.
- **Eligibility for OCI Cardholder Status:** A foreigner (not being a citizen of Pakistan or Bangladesh or such other country as specified by Central Govt.) is eligible if they:
  - Were a citizen of India at the time of, or at any time after, January 26, 1950.
  - Were eligible to become a citizen of India on January 26, 1950.
  - Belonged to a territory that became part of India after August 15, 1947.
  - Is a child or a grandchild or a great-grandchild of such a citizen.
  - Is a minor child of persons mentioned above.
  - Is a minor child whose both parents are citizens of India or one parent is a citizen of India.
  - Spouse of foreign origin of a citizen of India or spouse of foreign origin of an OCI Cardholder whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application.
  - No person who, or either of whose parents or grandparents or great grandparents, is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may specify, shall be eligible for registration as an OCI Cardholder.
- **Rights of OCI Cardholders:**
  - Grant of multiple entry, multi-purpose, life-long visa for visiting India.
  - Exemption from registration with Foreigners Regional Registration Officer (FRRO) or Foreigners Registration Officer (FRO) for any length of stay in India.
  - Parity with Non-Resident Indians (NRIs) in respect of economic, financial, and educational fields, except in matters relating to the acquisition of agricultural or plantation properties.
  - Parity with Indian citizens in matter of tariffs in air fares in domestic sectors in India.
  - Parity with Indian citizens in matter of entry fees for national parks, wildlife sanctuaries, national monuments etc.
- **Restrictions on OCI Cardholders:** They do **not** have:
  - Right to vote.
  - Right to hold constitutional offices (President, VP, Judge of SC/HC etc.).
  - Right to hold public employment (government jobs).
  - Right to acquire agricultural or plantation properties (except by inheritance).
  - They are not citizens of India in the constitutional sense.

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- **Renunciation/Cancellation of OCI Card:** Provisions exist for renunciation by the cardholder and cancellation by the Central Government on grounds similar to deprivation of citizenship.

## The Citizenship (Amendment) Act, 2019 (CAA)

- **Purpose:** This Act amends the Citizenship Act, 1955, to make specific categories of illegal migrants eligible for Indian citizenship.
- **Provisions:**
  - It proposes to grant citizenship to undocumented non-Muslim migrants (specifically Hindu, Sikh, Buddhist, Jain, Parsi, or Christian) from **Pakistan, Bangladesh, and Afghanistan** who entered India on or before **December 31, 2014**, due to religious persecution or fear of religious persecution in their country of origin.
  - It exempts these specific categories of migrants from being treated as "illegal migrants" for the purposes of the Act.
  - It reduces the requirement of aggregate residence in India for naturalisation for these categories from 11 years to 5 years.
  - The provisions of this amendment **do not apply** to:
    - Tribal areas of Assam, Meghalaya, Mizoram, or Tripura as included in the Sixth Schedule to the Constitution.
    - Areas covered under 'The Inner Line' notified under the Bengal Eastern Frontier Regulation, 1873 (currently applicable in Arunachal Pradesh, Nagaland, Mizoram, and Manipur).
- **Rationale provided by Government:** To provide refuge to religiously persecuted minorities from specified neighboring Islamic majority countries.
- **Criticisms and Concerns:**
  - **Violation of Article 14 (Equality):** Critics argue that by linking citizenship to religion and excluding certain religious groups (like Muslims) and certain neighboring countries (like Sri Lanka, Myanmar), it violates the principle of equality and secularism, which is a basic feature of the Constitution.
  - **Arbitrary Classification:** The choice of countries and religious groups is seen as arbitrary by critics.
  - **Impact on Assam Accord:** Concerns in Assam that it might undermine the Assam Accord of 1985, which set March 24, 1971, as the cut-off date for detecting and deporting illegal migrants irrespective of religion.
  - **Determination of Religious Persecution:** Concerns about the mechanism for determining religious persecution.
- **Government's Stand:** The government maintains that CAA is a benign piece of legislation, not aimed at depriving any Indian citizen of their citizenship, but rather to grant citizenship to persecuted minorities from specific countries. It argues that the classification is reasonable and based on the ground reality of religious persecution in those theocratic states.
- **Judicial Scrutiny:** The Act has been challenged in the Supreme Court, and its constitutional validity is sub-judice. The Court will examine whether the classification made by CAA is reasonable and not violative of Article 14 and the basic structure.

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- In determining reasonableness of classification under Article 14, two tests are applied:
  - The classification must be founded on an **intelligible differentia** which distinguishes persons or things that are grouped together from others left out of the group.
  - The differentia must have a **rational nexus** to the object sought to be achieved by the statute in question.

## National Register of Citizens (NRC)

- **Context:** The NRC is a register containing names of all genuine Indian citizens. The only time it was prepared for the entire country was in 1951 based on census data.
- **NRC in Assam:** There has been a long-standing demand in Assam to update the NRC to identify illegal immigrants. The Supreme Court monitored the process of updating the NRC in Assam based on the Citizenship Act, 1955 (specifically Section 14A and Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003) and the cut-off date of March 24, 1971, as per the Assam Accord. The final updated NRC for Assam was published in August 2019.
- **Proposed Nationwide NRC:** There have been discussions about a nationwide NRC, but no formal decision or framework has been established yet. Section 14A of the Citizenship Act, 1955, provides for compulsory registration of every citizen of India and issue of national identity card.

Citizenship in India is a dynamic concept, shaped by constitutional mandates, parliamentary legislation, judicial interpretations, and evolving socio-political contexts. It balances the idea of an inclusive nation with the state's prerogative to regulate membership, reflecting the complexities of identity, belonging, and national security.