

**SUBJECT:  
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## Salient Features of The Constitution

The constitution of a country is the basic or supreme law which the people give to themselves. Our constitution has adopted the best features of most of the major constitutions of the world as per the needs of the country. The parliamentary system of democracy has been taken from Britain, the concept of federalism from the USA, the idea of directive principles from Ireland, and a few more features from the constitutions of Australia and Canada. Our constitution is federal in structure but with unitary features. It is a lengthy and legalistic document, but reasonably flexible.

Salient features of the Indian constitution can be listed as-

1. Popular Sovereignty
2. Rule Of Law
3. Judicial Review

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4. Socialism
5. Secularism In Indian Constitution
6. Fundamental Rights
7. Directive Principles Of State Policy
8. Fundamental Duties
9. Judicial Independence
10. Parliamentary System
11. Federal And Unitary Features
12. Lengthy And Legalistic Document
13. Flexibility Of The Constitution
14. Single Citizenship
15. Emergency Provisions

### **Popular Sovereignty**

The constitution proclaims the sovereignty of the people in its opening itself. The idea is reaffirmed in several places in the Constitution, particularly in the chapter dealing with elections. Article 326 declares that "the elections to the House of people and the Legislative Assembly of every state shall be on the basis of adult suffrage". As a result, the Government at the Centre and in the States derive their authority from the people who choose their representatives for Parliament and the State Legislatures at regular intervals. Further, those who wield the executive power of the government are responsible to the legislature and through them to the people. Thus, in the affairs of the State, it is the will of the people that prevails ultimately and not the will of a few selfish individuals. This is the principle of popular sovereignty.

In spite of the ignorance and illiteracy of large sections of the Indian people, the Constitution Assembly adopted the principle of adult franchise with faith in the common man and the ultimate success of democratic rule. The Assembly was of the opinion that democratic government on the basis of adult suffrage would alone "bring enlightenment and promote well-being."

Free elections are, perhaps, the greatest forum of mass education. The dangers inherent in adult suffrage among illiterate peoples can be mitigated only by the blessings of universal education. In a country like India, the large majority of whose population is illiterate, the attainment of universal education is a goal still a long way off. But this need not necessarily mean that until a certain minimum standard of universal education is realised, the Indian masses are incapable of properly exercising their right of franchise. Illiteracy is not quite the same thing as ignorance. A free election, which ensures free exchange of ideas and free canvassing by contending parties who stand for different programs of social organization for the realisation of the common welfare, offers the best medium for the political education of the illiterate masses. It is this that the constitution guarantees. The constitution makers were not satisfied by merely providing for adult suffrage. They wanted to ensure free elections by creating an

independent constitutional authority to be in charge of everything connected with elections. Free election is a reality in India. It ensures for the electors both the freedom of choice and the secrecy of the ballot. The general elections have demonstrated that the ordinary man, in spite of his so-called ignorance, has been able to exercise his robust common sense in electing candidates of his choice. Neither money nor social status nor official position has been powerful enough to make him a convenient tool in the hands of a few. It is itself a guarantee that popular sovereignty will remain a living reality in India despite the fact that most of its people are steeped in ignorance, poverty and social backwardness.

All that the constitution provides is that every adult citizen of India shall have right to vote. This becomes significant when viewed in the background that for quite a long time, the women in many parts of Europe did not enjoy any such right. In addition, under the Government of India Act, 1935, hardly 15 per cent Indian citizens had this right. According to some thinkers this is the boldest step which has been taken by our constitution fathers. This shows that they had full faith in the capacity of the people of India to use their right properly. Some critics of course felt that it was premature to give to the people of India this right when there was poverty and illiteracy and the masses were yet politically not mature. But constitution fathers took a bold step and resolved to go ahead and wanted to make a beginning in this direction right earnestly

The principle of popular sovereignty has not been a mere ideal embodied in the constitution but has been a living reality during about five decades through which the Constitution has been in operation. The previous right in the hands of citizen which ensures the democratic ideal of "one man, one vote, one value", irrespective of his wealth, education, social status and "importance", has, in fact, enhanced their self-respect as citizens of a democratic India

### **Rule Of Law**

According to this axiom, people are ruled by law but not by men, that is, the basic truism that no man is infallible. The axiom is vital to democracy.

More important is the meaning that law is the sovereign in democracy. The chief ingredient of law is custom which is nothing but the habitual practices and beliefs of common people over a long number of years. In the final analysis, rule of law means the sovereignty of the common man's collective wisdom. Apart from this crucial meaning, rule of law means a few more things like (a) there is no room for arbitrariness (b) each individual enjoys some fundamental rights, and (c) the highest judiciary is the final authority in maintaining the sanctity of the law of the land.

It is this spirit that is making us to make various efforts to make Article 14 (all are equal before law and all enjoy equal protection of laws) meaningful, like providing legal assistance to the needy, promotion of Lok Adalats and the venture of the Supreme court known as "public interest litigation". Also, as per today's law of the land, any litigant can appeal to the presiding judicial authority to argue the case by himself or seek legal assistance with the help of the judiciary.

### **Judicial Review**

The right of the judiciary to review executive acts and legal enactments where there they are not in conformity with the established law of the land and its procedures is known as judicial review. Based on this principle the American Supreme court has acquired the power to so interpret the Constitution that it has come to be known as the third chamber of the Constitutions, whereas, in India our Supreme court does not enjoy the power of adding to the Constitution but it can only strike down any, act or any, legislation on the ground that it is contrary to the basic framework of the constitution or violative of the procedure established by law.

As the constitution stands today, the judiciary in India has the right to review legislative enactments and executive acts provided they are brought before the courts except for a few specific acts like the discretionary powers of the governors, the privileges and immunities of the members of the legislatures, etc. In pronouncing its verdict on legislative acts and executive actions the Supreme Court primarily bases itself on what is known as the basic framework of the Constitution—a phrase which has never been spelt out so that others could know the ingredients that go into the making of the basic

frame work of the Constitution. However, it is clear from the constitution as it is today that the Parliament has the right to amend the constitution as long as it does not erode the basic frame work of the constitution. Thus, making additions or deleting some Articles of the constitution is the power of the Parliament but not that of the Supreme Court as in the case of the U.S.

### **Socialism**

Increasing intervention as well as participation by the State in the economic field has been a distinguishing feature of the twentieth century. There is hardly any country today in which the State is not actively engaged in a variety of economic activities. In varying degrees, governments everywhere are involved in economic, industrial, commercial management. This is broadly described as the influence of socialist ideas on State activity.

Even before the adoption of a new Constitution, the Government of independent India had made clear its policy to enter the economic field in a very active manner. The Industrial Policy Resolution of 1948 gives ample evidence of this. It envisaged a greater role for the State in the economic development of the country. Certain industries such as atomic energy, manufacturing of arms and ammunition were declared to be the sole monopoly of the State. The right of the State to nationalise any major industry and bring it within the public sector was also clearly stated.

The Directive principles of State Policy, however, unmistakably set out the socialist objective of the Constitution, although one might point out that they do not go far enough to establish a full fledged socialist order. But then, it is also clear that our conception with its emphasis on a set of guaranteed fundamental rights did not envisage collectivist socialist State like those existed in Eastern Europe during 1945 and 1990. On the contrary, it aims to establishing a democratic socialist state which while moving progressively towards the social ideal, wants at the same time to protect and preserve basic human rights.

Nevertheless, successive amendments to the Constitution clearly show that the direction is more towards the realisation of socialist than the democratic ideal. The constitution was amended several times with a view to realising this objective. Among those amendments, special mention may be made of the First, Fourth, Seventeenth, Twenty fifth, Twenty ninth, Thirty fourth and Forty second Amendments. Almost everyone of these give precedent to the Directive Principles over Fundamental Rights in the implementation of certain legislative enactments. The Forty second Amendment (1976) went a step further and amended the permeable of the Constitution to include specifically the term "socialist" which was absent in the original form in which it was enacted.

### **Secularism In Indian**

India has declared its identity as a "Sovereign, Socialist, Secular Democratic Republic." The attributes of Socialist and Secular were added in 1976 by the 42nd Amendment to the Constitution. The bulky document does not attempt to define secularism. However, a definition is derived from the fundamental right that proclaims that "The State shall not discriminate against any citizen on grounds of religion, race, caste, sex place of birth or any one of them. "The Indian State has no religion of its own. The fundamental right of speech and freedom also means the right to preaching and proselytising religion. This is made clearer in Articles 25–28, "Subject to public order, mortality and health... all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion". The wearing and carrying of kirpans (swords) shall be deemed to be included in the freedom of the Sikh religion. Every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes, to maintain its own affairs in matters of religion. No person shall be compelled to pay any taxes for promotion of any particular religion. No religious instructions shall be provided in any educational institutions wholly maintained out of the State funds."

The distinguishing features of a secular democracy as contemplated by the Constitution of India are: (i) that the State will not identify itself with or be controlled by any religion; (ii) that while the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an

intagoiste or any atheist), it will not accord an preferential treatment to any of them; (iii) that no discrimination will be shown by the State against any person on account of his religion or faith; and (iv) that the right of every citizen, subject to any general condition, to enter any office under the state will be equal to that of the fellow citizens. Political equality which entitles any Indian citizen to seek the highest office under the State is the heart and soul of secularism as envisaged by Constitution.

The conception aims to establish a secular state. This does not mean that the State in India is anti-religious. Secularism in its original, historical sense was an anti-God and anti-religious concept. But in the Indian context that concept has no relevance.

### **Fundamental Rights**

The constitution contains the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend upon the will of any majority or minority. No majority has the right to abrogate such rights. In fact, the legitimacy of the majority to rule is derived from the existence of these rights. These rights include all the basic liberties such as freedom of speech, movement and association, equality before law and equal protection of laws, freedom of religious belief and cultural and educational freedoms.

The constitution has classified these rights into seven categories and one of them is the right to constitutional remedies which entitles every aggrieved person to approach even the Supreme Court of India to restore to him any fundamental right that may have been violated. It is, thus, a basic affirmation of the Constitution that the political system that it establishes should provide conditions favourable for the maximum development of the individual's personality. The framers of the Constitution were conscious of the fact that in the absence of the enjoyment of the above mentioned rights, such development of the personality was impossible and democracy would sound an empty word. Having spent most of their lives under a foreign rule and having fought relentlessly for the enjoyment of these rights by themselves, it was only natural that they should have wanted to embody them in the Constitution they framed for the establishment of a democratic political order. They hoped to build this political order on the firm foundation of the freedom of political competition. The prime importance of these rights is that while the will of the majority decides how these freedoms are to be implemented, the existence of the freedoms themselves is not subject to that will. On the contrary, these freedoms set the conditions under which the will of the majority is to be formed and exercised.

### **Directive Principles Of State Policy**

It is for the first time in India's Constitution, a chapter on Directive principles of the State Policy has been included. Before it, in the Government of India Act, 1935, there was no Instrument of Instructions for the Governor General, but it was quite different from the present Directives. These Directives are a guideline for the governments, but their violation cannot be challenged in the court of law. According to few critics when the Directive have no legal binding, these are useless. But that is not so. These are manifestation of our aims and aspirations. The government of the day can choose to violate these but if the people take the violation seriously they can throw the government out of power. The greatest force behind these Directives is the will of people. The Directives are guidelines both for the people as well as the government. These save us from duping in the dark. Thus these principles are not mere precepts but a great moral force.

The wall of separation which the fundamental rights erect between the government and the people is indeed one of the greatest and surest safeguards of the life, liberty and the pursuit of happiness of the individual. But conditions of absolute and unhindered growth of private power, like absolute governmental power, are capable of destroying individual freedom. Concentration of private power, mainly in the form of economic controls, in the hands of a few individuals is equally destructive of the dynamic qualities of a democratic society as a dictatorial government could be. In a highly capitalist society, a few giants in the industrial and financial world, who concentrate in themselves the bulk of economic power, can easily subject the rest of the community to the travails of a new feudalistic order. After having provided against the emergence of a totalitarian system through the constitutional guarantees of fundamental rights, the framers turned their attention to deal with the possible future menace of a private capitalist concentration of

economic power and to ensure the establishment and sustenance of a society which provided for the diffusion of economic power among the different sections of the people. The methods they sought to provide for the purpose are embodied in the chapter on Directive principles of State Policy.

The State and everyone of its agencies are commended to follow certain fundamental principles while they frame their policies regarding the various state activity. These principles,

on the one hand, are assurances to the people as to what they can expect from the State

and, on the other, are directives to the Government, Central and State.

### **Fundamental Duties**

Originally Fundamental Duties were not there in the constitution. It was great lacuna of the constitution. Hence the Swaran Singh Government was appointed which recommended 12 Fundamental Duties. However, out of that 10 Fundamental Duties were accepted by the 42nd Amendment of the constitution. But at present one more fundamental duty have been added under 86th Amendment Act, 2002. There are total 11 Fundamental duties altogether. Now in their modified form the Fundamental Duties are as follows:

- a) To abide by the constitution and respect the national flag and the national anthem.
- b) To cherish the noble ideals which inspired our struggle for freedom.
- c) To uphold the sovereignty, unity and integrity of the country.
- d) To defend the country and render national service when called on to do so.
- e) To promote harmony and the spirit of common brotherhood among all the people of India.
- f) To value and preserve the rich heritage of our composite culture.
- g) To protect and improve the natural environment includes lakes, rivers and Wildlife and have compassion for living.
- h) To develop scientific temper, humanism and "the spirit of inquiry and reform.
- i) To safeguard. Public property and abjure violence.
- j) To strive to achieve excellence in all spheres of individual and collective life so that the nation makes progress.
- k) To provide opportunities for education to his child or ward between the age of six and fourteen years.

### **Judicial Independence**

Man's long struggle has been to live under a government of laws, not of men. Equal justice under law has for long been his cherished ideal, a system under which the new law is applicable to all alike. Man has in all ages been striving to escape the regime that dispenses justice according to the political or religious ideology of the litigant or the whim or caprice of those who run the government. As a consequence of this struggle, there was established principle of abiding value, that no judiciary can be impartial unless it is independent. In fact the judicial process ceases to be judicial the moment those who seek to judge cease to be independent of every form of external influence. Hence the importance of judicial independence.

### **Parliamentary System**

The framers of our Constitution preferred parliamentary system of government. Our infant democracy could ill-afford any confrontation between executive and the legislature if they were separate and independent of each other. The President of India is the constitutional head of the Union Executive, but he exercises the executive power, vested in him, in accordance with the advice of the Union Council of Ministers. The real executive power thus vests with the Council of Ministers with the Prime Minister as the head. The Council of ministers is collectively responsible to the Lok Sabha. The same is true of the relationship between the Governors and the Council of Ministers in the States.

The parliamentary system of government both at the Centre and in the State is based on adult suffrage whereby all citizens of India who are not less than 18 years of age and

not otherwise disqualified by the Constitution or any law, have the right to vote. It is a bold political experiment in view of the vastness of the country, its large population, poverty and illiteracy.

### **Federal And Unitary Features**

The word 'federation' has not been used anywhere in the Constitution. In fact, India has been described as a Union of States. The provinces and the princely States were not sovereign entities before they joined the federation. The states are not 'inviolable' or 'indestructible' as in the USA. Parliament can by law change or alter the areas and boundaries of any State. No state has the right to secede from the Union.

But, it has some basic federal features. India has two governments functioning at the national and State levels with a clear cut distribution of powers. Both the State and the Union Government draw their authority from the Constitution. The supremacy of the Republic lies not with either the Union Government or the State Governments but with the Constitution. To uphold the legal supremacy of the Constitution, the power to interpret the constitution has been vested in the judiciary. Thus the Indian Constitution has four federal features: (a) clear division of powers between the two governments; (b) dual system of government; (c) supremacy of the Constitution; and (d) authority of the judiciary to interpret the constitution.

All the constituent States of the Union are not equal. The Union Territory do not enjoy the same status as the States. Unlike the American Constitution, the Indian Constitution does not provide for any safeguards for the protection of the rights of States. Except Jammu & Kashmir, no state has its own Constitution as in the U.S. Whereas the consent of the States is vital for an amendment of the American Constitution, the consent of the States in India is necessary only in regard to a few specific matters.

There are some features in our Constitution unlike the U.S.: (a) the right of the Governor to reserve a Bill for Presidential assent; (2) the role and functions of the State Governors; (3) the Emergency provisions of the Constitution regarding proclamation of national emergency, financial emergency and President's rule; (4) provisions of the Constitution enabling Parliament to legislate for the States; (5) Uniform All-India Services; (6) single and uniform citizenship; and (7) uniform and integrated judicial system. Also, the constitutional schemes of distribution of legislative, administrative and financial powers between the Union and the States has a strong unitary bias, unlike the US where the Federal Government has gained more powers through the interpretation of its Supreme Court.

### **Lengthy And Legalistic Document**

It is the most lengthy and legalistic constitutional document any country has so far adopted. One reason is that the Constitution has drawn from a variety of sources. The other is that the constitution-makers ensured that no element of uncertainty was left. It codifies in detail the relationship between the Union and the States and the State's interests and contains both justiciable and non-justiciable rights as well as fundamental duties. As the Constitution is not only a legal document but an instrument of social change, it has to be a detailed document in order to ensure that it stands the test of any situation in future. Also, care has been taken to ensure that the Constitution is not subverted or perverted by any future government. There are numerous in-built constitutional safeguards.

There are temporary, transitional and special provisions for the state of Jammu and Kashmir and it also take care of the regional problems in States like Gujarat, Maharashtra, Andhra Pradesh, Sikkim, Assam, Nagaland and Manipur. The legalistic nature of the Constitution is also partly because of heavy borrowings from the Government of India Act of 1935.

### **Flexibility of The Constitution**

Some eminent constitutionalists are of the view that the constitution is rigid. But, we know that it has been possible to amend the constitution over 80 times. Our constitution is more flexible than the American constitution, which requires ratification

of amendments by three-fourths of the States. In our constitution only amending of a few provisions requires ratification of amendments by three fourths of the states. In our constitution only amending of a few provisions requires ratification by half of the State Legislatures. While most of the provisions of the Constitution can be amended by two thirds majority of each of the Houses of Parliament and many of the provisions can be altered or modified by a simple majority. Also, the constitution can be supplemented by simple legislations like the Citizenship Act, National Security Act, the Untouchability Act etc.

Moreover, the scope for the growth of conventions to supplement the constitution makes it more flexible. Conventions govern the privileges and rights of the legislature, the functioning of the cabinet system, the status of the Cabinet Secretariate, etc.

### **Single Citizenship**

In a federation there is usually double citizenship. A citizen belongs to the State in which he is born and also enjoys the citizenship rights of the Federation, to which his state has joined as a unit. This is on the basic principle that the states in a federation are of course units, but do not at the same time, give up their individual entity. But in India there is single citizenship. Citizens belong to the Indian Union and not to any state.

Provision for single citizenship for the whole of India was perhaps intentional. The constitution fathers did not like that regionalism and other disintegrating tendencies which had already raised their ugly heads and were endangering the very security and integrity of country, should be further encouraged by providing double citizenship. Provision for double citizenship would have naturally stood on the way of emotional and national integration. The people in the State would have thought more in terms of the State than the country as a whole. Single citizenship has undoubtedly forged a sense of unity among the people of India and image of United India is reflected by this provision.

### **Emergency Provisions**

One of the Unique features of the Constitution of India is the way in which situations will be dealt with during emergency. According to emergency provisions when the head of the State is satisfied that it is impossible to run the administration of the country or a part thereof, in accordance with the normal procedure laid down in the Constitution he can declare emergency and take administration of the country or part thereof in his own hands. This emergency can be financial or political. Declaration of emergency has far-reaching effects and its consequences are that with such a declaration fundamental rights are suspended and the courts of law can refuse to entertain petitions for the enforcement of these rights. Federal set up of the country practically turns out to be a unitary one and no bill can be introduced in the legislature without prior permission of the head of the states. The President or Governor is the exclusive authority to decide as to whether there is need and necessity of declaration of such an emergency. In India emergency was declared in 1962, when China invaded India. It was again declared in 1965 and 1971 when Pakistan invaded the country. In 1975, internal emergency was declared in the country, as a result of which censorship of press was imposed. During this period Forty Second Constitution Amendment Act was passed which introduced far-reaching changes in the Constitution. This emergency was lifted only in 1977.

Provisions in the Constitution dealing with declaration of emergency were amended by Constitution Forty-Fourth Amendment Act by which it was ensured that in future it became difficult for any Prime Minister to declare internal emergency. On several occasions the President of India has taken over the administration of states on the plea that there is constitutional break down and administration of the state cannot be run in accordance with the provisions of the constitution. Over the years the salient features of the Indian Constitution have developed clear contours. The federal features of the Constitution have been weakened because certain centralising influence have become more and more compulsive. The Parliamentary executive has become increasingly assertive because one party has dominated the Indian political scene till now with a brief interlude. The chapter on Fundamental Rights has undergone a radical change with the deletion of the "Right to Property". The role of the judiciary, too, is undergoing changes because of the growing radicalism and needs of social justice. And the

Directive Principles, although not justiciable, have almost become as important as the Fundamental Rights. A good number of transitional provisions have been dropped. Finally, the conventions that the country has been evolving are also changing the temper of the constitution. Since all these changes have occurred in less than 50 years, it shows that even an elaborate and complex constitution necessarily calls for changes and adjustments.

### Philosophy of Constitution

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

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

The philosophical of a Constitutions consists of the ideals for which the constitution stands and the policies which the Constitution enjoins upon the rulers of the Community to follow. The

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

(ii) **Democracy** : We have borrowed the modern form of democracy from the West. Under this system, democracy means the periodic responsibilities of the Government to go to the people. For this purpose; elections have been held every five-year to elect a Government by the people. However, democracy covers even the economic and social aspects of life. This aspect of democracy is well-reflected in the Directive Principles of State Policy. They are aimed at human welfare, co-operation, international brotherhood and so on.

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

(iv) **Socialism** : Socialism is not new to India. Vedanta philosophy has socialism in it.

The national struggle for freedom had this aim also in view. Jawaharlal Nehru referred to himself as a socialist and republican. Almost all the parties in India profess to pro-mote democratic socialism. These principles are included in the Directive Principles of State Policy. However, to lay emphasis on this aspect, the word 'socialism' was specifically added to the Preamble to the Constitution through the 42nd Amendment.

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

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

(vii) **Liberalism** : Liberalism does not refers to the Western concept of liberalism. It refers, in the Indian context, to self government, secularism, nationalism, economic reforms, constitutional approach, representative institutions etc. all these concepts were advocated by the modern Indian leaders. All these elements have been incorin Indian Hnnstitntinn by virtue of which we want to establish a Welfare

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

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

## Fundamental Rights - Articles 12-35 (Part III of Indian Constitution)

Articles 12-35 of Indian Constitution deal with Fundamental Rights. These human rights are conferred on the citizens of India for Constitution tells that these rights are inviolable. Right to Life, Right to Dignity, Right to Education etc. all come under one of the six main fundamental rights.

In this article, you can read all about 6 fundamental rights:

1. **Right to Equality**
2. **Right to Freedom**

3. **Right against Exploitation**
4. **Right to Freedom of Religion**
5. **Cultural and Educational Rights**
6. **Right to Constitutional Remedies**

The significance and list of fundamental rights for the UPSC IAS exam is also given in the article.

## What are Fundamental Rights?

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

### Why are they called Fundamental Rights?

These rights are called fundamental rights because of two reasons:

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

## List of Fundamental Rights

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

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

### Why Right to Property is not a Fundamental Right?

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

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

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

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

## Introduction to Six Fundamental Rights (Articles 12 to 35)

Under this section, we list the fundamental rights in India and briefly describe each of them.

### 1. Right to Equality (Articles 14 – 18)

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

Aspirants can read more about Right to Equality in the linked article.

### 2. Right to Freedom (Articles 19 – 22)

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

many rights such as:

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

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

Read more on the [Right to Freedom](#) in the linked article..

### **3. Right against Exploitation (Articles 23 – 24)**

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

Read more on the [Right against Exploitation](#) in the linked article.

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

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

Read more on the [Right to Freedom of Religion](#) in the linked article.

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

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

Read more on [Cultural and Educational Rights](#) in the linked article..

### **6. Right to Constitutional Remedies (32 – 35)**

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

For more on [writs](#), check the linked article.

## **Features of Fundamental Rights**

- Fundamental rights are different from ordinary legal rights in the manner in which they are enforced. If a legal right is violated, the aggrieved person cannot directly approach the SC bypassing the lower courts. He or she should first approach the lower courts.
- Some of the fundamental rights are available to all citizens while the rest are for all persons (citizens and foreigners).
- Fundamental rights are not absolute rights. They have reasonable restrictions which means they are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.

- They are justiciable, implying they are enforceable by courts. People can approach the SC directly in case of violation of fundamental rights.
- Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.
- Fundamental rights can be suspended during a national emergency. But, the rights guaranteed under Articles 20 and 21 cannot be suspended.
- The application of fundamental rights can be restricted in an area which has been placed under martial law or military rule.

## Fundamental Rights Available Only to Citizens

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

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of freedom of (Article 19)
4. Speech and expression
5. Association
6. Assembly
7. Movement
8. Residence
9. Profession
10. Protection of the culture, language and script of minorities (Article 29).
11. Right of minorities to establish and administer educational institutions (Article 30).

## Importance of Fundamental Rights

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

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

## Amendability of Fundamental Rights

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

Read about types of majorities in Indian Parliament in the linked article.

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

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

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

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

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

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

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

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

### Doctrine of Severability

This is a doctrine that protects the fundamental rights enshrined in the Constitution.

It is also known as the Doctrine of Separability.

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

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

### Doctrine of Eclipse

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

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

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

This means that any post-constitutional law which is violative of a fundamental right is void ab initio.

## Questions related to Fundamental Rights

### What are the 7 fundamental rights?

There were 7 fundamental rights in the Constitution. Currently, there are only six as the 'Right to Property' was removed as a fundamental right. It is now only a legal right. The list of fundamental rights are:

Right to equality

Right to freedom

Right against exploitation

Right to freedom of religion

Cultural and educational rights

Right to constitutional remedies

## Right to Equality (Articles 14 - 18)

The right to equality provides for the equal treatment of everyone before the law, prevents discrimination on various grounds, treats everybody as equals in matters of public employment, and abolishes untouchability, and titles (such as Sir, Rai Bahadur, etc.).

### Right to Equality

The Right to Equality is one of the Fundamental Rights enshrined in the Constitution of India. It is very important to understand what this right entails and includes.

Below we provide the associated articles of the Constitution under the right to equality.

### Right to Equality

Article	Brief description
Article 14	The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
Article 15	The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
Article 16	There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
Article 17	Abolition of untouchability
Article 18	Abolition of all titles except military and academic

### Equality before the law (Article 14)

Article 14 treats all people the same in the eyes of the law.

- This provision states that all citizens will be treated equally before the law.
- The law of the country protects everybody equally.
- Under the same circumstances, the law will treat people in the same manner.

### Prohibition of discrimination (Article 15)

This article prohibits discrimination in any manner.

- No citizen shall, on grounds only of race, religion, caste, place of birth, sex or any of them, be subject to any liability, disability, restriction or condition with respect to:
  - Access to public places
  - Use of tanks, wells, ghats, etc. that are maintained by the State or that are meant for the general public
- The article also mentions that special provision can be made for women, children and the backward classes notwithstanding this article.

### Equality of opportunity in matters of public employment (Article 16)

Article 16 provides equal employment opportunities in State service for all citizens.

- No citizen shall be discriminated against in matters of public employment or appointment on the grounds of race, religion, caste, sex, place of birth, descent or residence.
- Exceptions to this can be made for providing special provisions for the backward classes.

### Abolition of untouchability (Article 17)

Article 17 prohibits the practice of untouchability.

- Untouchability is abolished in all forms.
- Any disability arising out of untouchability is made an offence.

### Abolition of titles (Article 18)

Article 18 abolishes titles.

- The State shall not confer any titles except those which are academic or military titles.
- The article also prohibits citizens of India from accepting any titles from a foreign State.
- The article abolishes the titles that were awarded by the British such as Rai Bahadur, Khan Bahadur, etc.
- Awards like Padma Shri, Padma Bhushan, Padma Vibhushan, Bharat Ratna and military honours like Ashok Chakra, Param Vir Chakra do not belong to this category.

### Questions related to Right to Equality

#### Is equality a basic human right?

The right to equality and non-discrimination is a fundamental component of international human rights law.

#### What are the exceptions to the right of equality of opportunity in matters of public employment?

Under Article 16, exceptions to the right of equality of opportunity in matters of public employment are provided for to protect the interests of the weaker and vulnerable sections of society such as women, children, the backward classes (SC/ST) and minorities. The Parliament may also pass a law to the effect that a certain post be filled only by people residing in a certain area, to fulfil the conditions of the post that warrants the knowledge of the locality and the local language. The Article also mentions that there can be a law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution shall be a person professing a particular religion or belonging to a particular denomination.

#### What does the Constitution of India say about equality?

The Indian Constitution has granted the right to equality to all citizens. All are equal before the law and there can be no discrimination on the basis of religion, race, caste, gender, place of birth, etc.

## Right to Freedom (Articles 19 - 22)

The Right to Freedom is one of the Fundamental Rights guaranteed by the Constitution of India. It is very important to understand what this right entails and includes.

The six fundamental rights enshrined in the Constitution are considered essential for the functioning of Indian democracy. The right to freedom gives citizens basic freedom with respect to speech and expression, form associations, freedom of personal liberty, freedom to live a life of dignity, etc. It is important to understand the scope of these provisions and any exceptions thereof.

### Right to Freedom

The right to freedom guarantees freedom for citizens to live a life of dignity among other things. These are given in Articles 19, 20, 21A and 22 of the Indian Constitution. We shall take up the articles one by one in this section.

Below, we provide the associated articles of the Constitution under the right to freedom.

Article	Brief description
Article 19	Protection of 6 rights concerning the freedom of: <ol style="list-style-type: none"> <li>1. Speech and expression</li> <li>2. Assembly</li> <li>3. Association</li> <li>4. Movement</li> <li>5. Residence</li> <li>6. Profession</li> </ol>
Article 20	Protection with respect to conviction for offences
Article 21	Right to life and personal liberty
Article 21A	Right to elementary education
Article 22	Protection against arrest and detention in certain cases

## Article 19

Article 19 guarantees six freedoms to every person. They are:

1. **Freedom of speech and expression:** The State guarantees freedom of speech and expression to every person. However, the State can impose restrictions on the freedom of speech and expression in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court.
2. **Freedom to assemble:** The State guarantees every person the freedom to assemble peacefully without arms. However, as above, reasonable restrictions can be imposed in the interests of the sovereignty and integrity of the country and public order.
3. **Freedom to form associations/unions/cooperative societies:** Again, the State can impose restrictions in the interests of the integrity, security and sovereignty of the country, friendly relations with foreign nations, for public order, with respect to defamation, incitement to offence or contempt of court. This freedom gives workers the right to form trade union, which is thus a fundamental right.
  1. The Police Forces (Restriction of Rights) Act, 1966 prohibits police personnel from forming trade unions.
  2. The Constitution also allows the Parliament to pass a law restricting the right to form political association to members of the armed forces, intelligence bureaus, persons employed with telecommunication system.
4. **Freedom to move freely:** A citizen of India can move freely throughout the territory of India. But this right can also be restricted on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.
5. **Freedom of residence:** Citizens of India have the right to reside in any part of the country. Although restrictions can be imposed on the grounds of security, public order or for protecting the interests of the Scheduled Tribes.
6. **Freedom of profession:** All citizens have the right to carry on any trade or profession/occupation, provided the trade or occupation is not illegal or immoral. Also, the law does not prevent the State from making laws related to technical or professional qualifications required for practicing the occupation or trade.

## Article 20

Article 20 deals with the protection of citizens in respect of conviction for offences. This

provides for three types of protection of the individual against the State.

1. **Retrospective criminal legislation:** This is also known as ex-post facto criminal legislation. Under this, a person cannot be convicted for an act that was committed at a time when the act had not been declared by law as an offence.
  1. This means that criminal legislation cannot be given a retrospective effect.
  2. This immunity cannot be used against the provision of preventive detention, and also does not cover trial.
  3. The law also provides that a person cannot be subject to punishment greater than what is prescribed by law for the offence committed.
2. **Double jeopardy:** This indicates that a person cannot be convicted for the same offence more than once.
3. **Prohibition against self-incrimination:** This implies that no person accused of an offence shall be compelled by the State to bear witness against himself.

## Article 21

Article 21 states that no person shall be deprived of his life and personal liberty by the State except as per the procedure established by law. This article has a wide scope and its interpretation has undergone many changes over the decades.

- The Supreme Court has interpreted the right to life as the right to a dignified life.
- This is the most important right in one sense, because, without this right to life, all other fundamental rights would be meaningless.
- It is this article that differentiates between a police state and a constitutional state.

**You can read more on Article 21 and the right to life and personal liberty [here](#).**

### Article 21(A)

This article was introduced by the 86th Constitutional Amendment in 2002. It provides that the State shall provide free and compulsory education to all children between the ages of 6 and 14.

## Article 22

Article 22 deals with the protection against arrest and detention in certain cases.

- This article is applicable to both citizens and non-citizens.
- This provision extends certain procedural safeguards for individuals in case of an arrest.
- It comes into the picture after a person has been arrested. It is not a fundamental right against detention and arrest.
- The idea behind this right is to prevent arbitrary arrests and detention.
- The article provides the following safeguards:
  - Article 22(1) – Any person who is in custody has to be informed as to why he has been arrested. Further, he cannot be denied the right to consult an advocate.
  - Article 22(2) – The arrested individual should be produced before a judicial magistrate within 24 hours of his arrest.
  - Article 22(3) – No individual who has been arrested can be kept in custody

for more than the period determined by the judicial magistrate.

- These safeguards are, however, not applicable to
  - Enemy aliens
  - People arrested under preventive detention laws

### What is Preventive Detention?

There are two types of detention:

1. Punitive
2. Preventive

Punitive detention is detention after a trial. Preventive detention is detention without trial. The idea behind this is to prevent an individual from committing a crime. This means that persons can be detained on grounds of suspicion. The rights of people arrested in this manner are governed by the preventive detention laws.

## Questions related to Right to Freedom

What are the six freedoms guaranteed by the right to freedom?

The 6 freedoms are freedom of:

1. Speech and expression
2. Assembly
3. Association
4. Movement
5. Residence
6. Profession

Why is right to freedom important?

The right to freedom is important because it is a basic human right. The Indian national struggle against colonialism was a fight to be free of foreign imperial rule, and also for the freedom to live life with dignity, to determine how to live in accordance with law, profess any occupation or trade, speak and express freely, move and reside in any part of the country, and ultimately to be able to live meaningful lives with security.

## Right against Exploitation (Articles 23 & 24) - Indian Polity

The Right against Exploitation is enshrined in Articles 23 and 24 of the Indian Constitution. These are important Fundamental Rights that guarantee every citizen protection from any kind of forced labour. In this article, you can read all about the right against exploitation and its implications.

### Right against Exploitation

There are two articles of the Constitution which guarantee the right against exploitation. They are described below:

#### Article 23 – Prohibition of traffic in human beings and forced labour

Article 23(1): Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

Article 23(2): Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any

discrimination on grounds only of religion, race, caste or class or any of them.

- Exploitation implies the misuse of others' services by force and/or labour without payment.
- There were many marginalised communities in India who were forced to engage in manual and agricultural labour without any payment.
- Labour without payment is known as *begar*.
- Article 23 forbids any form of exploitation.
- Also, one cannot be forced to engage in labour against his/her will even if remuneration is given.
- Forced labour is forbidden by the Constitution. It is considered forced labour if the less-than-minimum wage is paid.
- This article also makes 'bonded labour' unconstitutional.
- Bonded labour is when a person is forced to offer services out of a loan/debt that cannot be repaid.
- The Constitution makes coercion of any kind unconstitutional. Thus, forcing landless persons into labour and forcing helpless women into prostitution is unconstitutional.
- The Article also makes trafficking unconstitutional.
- Trafficking involves the buying and selling of men and women for illegal and immoral activities.
- Even though the Constitution does not explicitly ban 'slavery', Article 23 has a wide scope because of the inclusion of the terms 'forced labour' and 'traffic'.
- **Article 23 protects citizens not only against the State but also from private citizens.**
- The State is obliged to protect citizens from these evils by taking punitive action against perpetrators of these acts (which are considered crimes), and also take positive actions to abolish these evils from society.
- Under Article 35 of the Constitution, the Parliament is authorized to enact laws to punish acts prohibited by Article 23.
- Clause 2 implies that compulsory services for public purposes (such as conscription to the armed forces) are not unconstitutional.
- Laws passed by the Parliament in pursuance of Article 23:
  - Suppression of Immoral Traffic in Women and Girls Act, 1956
  - Bonded Labour System (Abolition) Act, 1976

#### Article 24 – Prohibition of employment of children in factories, etc.

Article 24 says that "No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."

- This Article forbids the employment of children below the age of 14 in any hazardous industry or factories or mines, without exception.

- However, the employment of children in non-hazardous work is allowed.

### **Laws that were passed in pursuance of Article 24 in India.**

#### **The Factories Act, 1948**

This was the first act passed after independence to set a minimum age limit for the employment of children in factories. The Act set a minimum age of 14 years. In 1954, this Act was amended to provide that children below the age of 17 could not be employed at night.

#### **The Mines Act of 1952**

This Act prohibits the employment of people under the age of 18 years in mines.

#### **The Child Labour (Prohibition and Regulation) Act, 1986**

This was a landmark law enacted to curb the menace of child labour prevalent in India. It described where and how children could be employed and where and how this was forbidden. This Act designates a child as a person who has not completed his/her 14th year of age. The 1986 Act prohibits the employment of children in 13 occupations and 57 processes.

#### **Child Labour (Prohibition & Regulation) Amendment Act, 2016**

This Act completely forbids the employment of children below 14 years of age. It also bans the employment of people between the ages of 14 and 18 in hazardous occupations and processes. Punishments to violators of this law were made stricter by this amendment act. This Act allows children to be employed in certain family occupations and also as artists.

#### **Child Labour (Prohibition and Regulation) Amendment Rules, 2017**

The government notified the above Rules in 2017 in order to provide a broad and specific framework for prevention, prohibition, rescue and rehabilitation of child and adolescent workers. The Rules clarified on issues concerning the employment of family enterprises and also provides safeguards for artists in that the working hours and conditions are specified.

Also read:

1. [National Child Labour Project Scheme](#)
2. [Child labour in India](#)

## **Questions on Right against Exploitation**

**What does right against exploitation say about child Labour?**

Article 24 says that “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.” The fundamental right against exploitation guaranteed to all citizens prohibits child labour in mines, factories and hazardous conditions.

**Which article deals with right against exploitation?**

Articles 23 and 24 of the Indian Constitution deal with the right against exploitation.

**What is right to equality?**

The right to equality is guaranteed by the Constitution in Articles 14 – 18. It provides for the equal treatment of everyone before the law, prevents discrimination on various grounds, treats everybody as equals in matters of public employment, and abolishes untouchability, and titles (such as Sir, Rai Bahadur, etc.). You can read more about the right to equality in the linked article.

## Right to Freedom of Religion (Articles 25 - 28) - Indian Polity

The Right to Freedom of Religion is guaranteed to all Indians by the Constitution under Articles 25 to 28. This topic, which is intertwined with the concept of secularism is very important. In this article, you can read all about these rights.

### Right to Freedom of Religion

The Constitution of India guarantees the right to freedom of religion to not only individuals but also religious groups in India. This is enshrined in Articles 25 to 28.

#### Article 25 (Freedom of conscience and free profession, practice and propagation of religion)

Article 25 guarantees the freedom of conscience, the freedom to profess, practice and propagate religion to all citizens.

- The above-mentioned freedoms are subject to public order, health and morality.
- This article also gives a provision that the State can make laws:
  - That regulates and restricts any financial, economic, political or other secular activity associated with any religious practice.
  - That provides for the social welfare and reform or opening up of Hindu religious institutions of a public character to all sections and classes of Hindus. Under this provision, Hindus are construed as including the people professing the Sikh, Jaina or Buddhist religions and Hindu institutions shall also be construed accordingly.
- People of the Sikh faith wearing & carrying the *kirpan* shall be considered as included in the profession of the Sikh religion.

#### Article 26 (Freedom to manage religious affairs)

This Article provides that every religious denomination has the following rights, subject to morality, health and public order.

1. The right to form and maintain institutions for religious and charitable intents.
2. The right to manage its own affairs in the matter of religion.
3. The right to acquire immovable and movable property.
4. The right to administer such property according to the law.

#### Article 27 (Freedom as to payment of taxes for promotion of any particular religion)

According to Article 27 of the Constitution, there can be no taxes, the proceeds of which are directly used for the promotion and/or maintenance of any particular religion/religious denomination.

#### Article 28 (Freedom as to attendance at religious instruction or religious worship in certain educational institutions)

This article permits educational institutions that are maintained by religious groups to disseminate religious instruction.

- This provides that no religious instruction shall be provided in State-run educational institutions.

- Educational institutions administered by the State but that were established under any endowment or trust which requires that religious instruction shall be imparted in such institutions is exempt from the above clause (that no religious instruction shall be provided).
- Any person who attends any educational institution recognised by the State or receiving State aid shall not be required to participate in any religious instruction that may be imparted in such institution, or also attend any religious worship in such institutions unless he/she has given consent for the same. In the case of minors, the guardians should have given consent for the same.

## What is Secularism?

The word 'secularism' means separate from religion.

- It entails the separation of religion from the government, social, economic and cultural aspects of life.
- Here religion is an entirely personal matter.
- India is a secular country with no State religion.
- However, this in India, also means that there is equal respect for all religions and faiths.
- The word is also a part of the Basic Structure of the Constitution. It was added by the 42nd Amendment to the Constitution.
- This concept enjoys high regard in Indian democracy.
- Secularism has also been an inalienable part of Indian culture as seen by the multitude of faiths that have co-existed in this country for centuries.
- All religious groups in India have the same powers without any discrimination.

## Indian and Western Models of Secularism

The term secularism, as explained above, indicates the separation of the State from religion. This concept, however, has slightly differing connotations in the Indian and the western polity. This is discussed below.

- In the Western model, secularism connotes complete separation of the State from the Church. This owes its origin to the French Revolution where the revolution sought to establish a 'secular' government, one which had no influence of the church or the clergy.
- Both the institutions (church and government) would not interfere in each other's domains.
- In India, however, the State and religion are not water-tight compartments.
- Even though the State has to maintain equal distance from all religions, the influence of the government does extend to religious affairs, albeit in a limited fashion.
- Unlike the western model, where the State does not offer financial support to any religious institution, in India, the State has chosen a positive engagement model.
- The state provides religious minorities the right to establish their educational institutions, and in some cases, also extends assistance to these institutions.
- Many Hindu temples are directly governed by the State.

- The State has set up Boards for the administration of large temples and has also set up the Waqf Board, etc.
- In India, when talking about society and the community, the word pluralism is better suited than the word secularism.
- Western societies have largely been homogenous with minimal religious (and other) minority groups, until recently.
- In India, for centuries, many religious groups have shared spaces in all respects and thrived together.

## Questions related to Right to Freedom of Religion

### What is meant by right to religion?

The right to freedom of religion gives individuals the right to profess any religion of their choice. It also includes the freedom to change one's religion or beliefs.

### What is the meaning of freedom of religion as per Indian Constitution?

Article 25 gives every person the right to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health. Article 26 also gives all denominations the right to manage their own affairs in matters of religion.

### How is right to freedom of religion a guarantee of secularism by the Indian Constitution?

The objective of this right is to sustain the principle of secularism in the country. The State shall not give preference to one religion over others.

## Cultural & Educational Rights (Articles 29 & 30) - Indian Polity Notes

Fundamental Rights guarantee basic rights to the citizens of India. There are six fundamental rights enshrined in the Constitution of India, and Articles 29 and 30 are cultural and educational rights. In this article, you can read all about Article 29 and Article 30.

### Cultural and Educational Rights

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

- This fundamental right intends to preserve the culture of all minority groups in India.
- Indian society is a composite heterogeneous one and its diversity is one of its strengths.
- The Constitution guarantees these rights to minorities so that the diversity of this country is preserved and provides avenues for all groups including marginalised ones to protect, preserve and propagate their culture.

### Article 29 – Protection of interests of minorities

This article is intended to protect the interests of minority groups.

**Article 29(1):** This provides all citizen groups that reside in India having a distinct culture, language and script, the right to conserve their culture and language. This right is an absolute right and there are no 'reasonable restrictions' in the interest of the general public here.

**Article 29(2):** The State shall not deny admission into educational institutes maintained by it or those that receive aids from it, to any person on the basis of race, religion, caste, language, etc. This right is given to individuals and not any community.

## Article 30 – Right of minorities to establish and administer educational institutions

This right is given to minorities to form and govern their own educational institutions. Article 30 is also called the **“Charter of Education Rights”**.

**Article 30(1):** All religious and linguistic minorities have the right to establish and administer educational institutions of their choice. (Read about [Minority Protection in India](#) in the linked article.)

**Article 30(2):** The State should not, when granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

## Questions related to Cultural & Educational Rights

### What are cultural and educational rights?

Cultural and educational rights are guaranteed by the Constitution to religious and linguistic minority groups in India, in order to enable them to preserve their distinct cultures, languages and scripts.

### What is Article 30?

Article 30 of the Indian Constitution provides minorities with the right to establish and manage their own educational institutions.

### What is Article 21 of the Constitution?

Article 21 of the Constitution guarantees the Right to Life. It is one of the most important fundamental rights guaranteed to the people of India.

## Right to Constitutional Remedies

Part III of the Constitution provides for legal remedies for the protection of these rights against their violation by the State or other institutions/individuals. It entitles the citizens of India to move the Supreme Court or High Courts for the enforcement of these rights. The State is forbidden from making any law that may be in conflict with the Fundamentals Rights.

Fundamental rights are the rights that grant individuals equality in every aspect irrespective of race, colour, caste, religion, birthplace or gender. These rights are mentioned under Articles 12 to 35 of the Indian Constitution. There are pre-defined punishments in case of violation of these rights upon the discretion of the judiciary.

### What is a Writ?

Writs are written order issued by the Supreme Court of India to provide constitutional remedies in order to protect the fundamental rights of citizens from a violation.

### Facts about writs in India

- Article 32 also empowers Parliament to authorize any other court to issue these writs
- Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs
- Article 226 empowers all the high courts of India to issue the writs
- Writs of India are borrowed from English law where they are known as 'Prerogative writs'

### **What is a Writ Petition?**

A writ petition is essentially a court petition for extraordinary review, asking a court to intervene in a lower court's decision. Under the Indian legal system, jurisdiction to issue 'prerogative writs' is given to the Supreme Court, and to the High Courts of Judicature of all Indian states. Parts of the law relating to writs are set forth in the Constitution of India.

### **Type of Writs**

The Constitution empowers the Supreme Court and High Courts to issue orders or writs.

The types of writs are:

- Habeas Corpus
- Certiorari
- Prohibition
- Mandamus
- Quo Warranto

### **Habeas Corpus**

Habeas Corpus is a writ that is enforced in order to protect the fundamental right to liberty of an individual against unlawful detention. This writ commands a public official to deliver a detained person in front of the court and provide valid reasons for the detention. However, this writ cannot be issued in case the proceeding is for contempt of a legislature or a court.

### **Certiorari**

The writ of certiorari is issued to a lower court directing that the transfer of a case for review, usually with the intention of overruling the judgment of the lower court. The Supreme Court issues the writ of Certiorari in case the decision passed by the lower court is challenged by the party. It is issued in case the higher court finds it a matter of over jurisdiction or lack of jurisdiction.

It is one of the mechanisms by which the fundamental rights of the citizens are upheld.

### **Prohibition**

Prohibition is a writ issued by a higher court to a lower court to enforce inactivity in the jurisdiction. It happens only in case the higher court is of the discretion that the case falls outside the jurisdiction of the lower court. Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.

### **Mandamus**

The writ of mandamus is issued to a subordinate court, an officer of the government, or a corporation or other institution commanding the performance of certain acts or duties.

Unlike Habeas Corpus, Mandamus cannot be issued against a private individual.

The writ of mandamus can be used to order the completion of a task or in other cases, it may require an activity to be ceased.

## Quo-Warranto

Quo warranto is issued against a person who claims or usurps a public office. Through this writ, the court inquires 'by what authority' the person supports his or her claim.

Through this writ, the court enquires into the legality of a claim of a person to a public office. This writ prevents the illegal assumption of a public office by an individual.

To know more about the [types of writs in India](#), refer to the linked article.

## Suspension of Fundamental Rights

- Fundamental rights can be suspended in the case of National Emergency as mentioned under article 352.
- The six fundamental rights under Article 19 are automatically suspended in case Under National Emergency is imposed on grounds of war or external aggression which is stated under article 358.
- Article 359 has the clause for suspension of other rights. In that case, a separate notification has to be issued by the President.
- The rights mentioned under Article 20 and 21 can never be suspended.
- Constitutional emergency and financial emergency cannot affect the Fundamental Rights.

## Status of Writs in Other Countries

1. The writs other than habeas corpus are discretionary remedies and have been known as prerogative orders in England and Wales since 1938.

The writs of quo warranto and procedendo are now obsolete. The modified names of certiorari, mandamus and prohibition are mentioned under the new Civil Procedure Rules 1998 known as quashing orders, mandatory orders, and prohibiting orders respectively.

1. Mandamus has been replaced by injunction in the United States district courts.
2. The Supreme Court of the United States grants certiorari while the supreme court of other states grant review.

## Fundamental Duties in India - Article 51A (Indian Polity Notes)

42nd Amendment Act of 1976 added 10 Fundamental Duties to the Indian Constitution. 86th Amendment Act 2002 later added 11th Fundamental Duty to the list. Swaran Singh Committee in 1976 recommended Fundamental Duties, the necessity of which was felt during the internal emergency of 1975-77.

The Fundamental Duties are dealt with Article 51A under Part-IV A of the Indian Constitution. This article will mention in detail the 11 Fundamental Duties and its importance in India.

### Introduction to Fundamental Duties in India

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

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

S.No	11 Fundamental Duties
1.	Abide by the <u>Indian Constitution</u> and respect its ideals and institutions, the National Flag and the National Anthem
2.	Cherish and follow the noble ideals that inspired the national struggle for freedom
3.	Uphold and protect the sovereignty, unity and integrity of India
4.	Defend the country and render national service when called upon to do so

5.	Promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women
6.	Value and preserve the rich heritage of the country's composite culture
7.	Protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures
8.	Develop scientific temper, humanism and the spirit of inquiry and reform
9.	Safeguard public property and to abjure violence
10.	Strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement
11.	Provide opportunities for education to his child or ward between the age of six and fourteen years. <b>This duty was added by the 86th Constitutional Amendment Act, 2002</b>

## Importance of Fundamental Duties- Part IV-A

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

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

## Criticism of Fundamental Duties

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

- They have been described by the critics as a code of moral precepts due to their non-justiciable character. Their inclusion in the Constitution was described by the critics as superfluous. This is because the duties included in the Constitution as fundamental would be performed by the people even though they were not incorporated into the Constitution.
- Some of the duties are vague, ambiguous and difficult to be understood by the common man.
- The list of duties is not exhaustive as it does not cover other important duties like casting vote, paying taxes, family planning and so on. In fact, the duty to pay taxes was recommended by the Swaran Singh Committee.
- The critics said that the inclusion of fundamental duties as an appendage to Part IV of the Constitution has reduced their value and significance. They should have been added after Part III so as to keep them on par with Fundamental Rights.
- Swaran Singh's Committee recommended more than 10 Fundamental Duties, however, not all were included in the constitution. Those duties recommended by the committee which were not accepted were:
  1. Citizens to be penalized/punished by the parliament for any non-compliance with or refusal to observe any of the duties.
  2. The punishments/penalties decided by the Parliament shall not be called in question in any court on the ground of infringement of any of Fundamental Rights or on the ground of repugnancy to any other provision of the Constitution.

3. Duty to pay taxes.

#### Facts about Fundamental Duties:

- Fundamental Duties are categorized into two – Moral Duty & Civic Duty
  1. Moral Duty: cherishing noble ideals of freedom struggle
  2. Civic Duty: respecting the Constitution, National Flag and National Anthem
- They essentially contain just a codification of tasks integral to the Indian way of life
- The Fundamental Duties are confined to Indian citizens only and do not extend to foreigners unlike few Fundamental Rights
- They are also nonjusticiable similar to Directive Principle of State Policies
- There is no legal sanction against their violation

## Questions related to Fundamental Duties

### Which Fundamental Duty was added by the 86th Amendment Act?

The Fundamental Duty added by the 86th amendment act directs citizens to provide opportunities for education to his child or ward between the age of six and fourteen years.

### Which Committee proposed to add Fundamental Duties in the Indian Constitution?

Swaran Singh Committee in 1976 recommended Fundamental Duties to be added in the constitution

### Which amendment act added 10 Fundamental Duties in the Indian Constitution?

42nd Amendment Act, 1976 added 10 Fundamental Duties

### Fundamental Duties are added under which part of the Indian Constitution?

They are added under Part-IV-A of the constitution.

## Directive Principles of State Policy(DPSP)

Articles 36-51 under Part-IV of Indian Constitution deal with Directive Principles of State Policy (DPSP). They are borrowed from the constitution of Ireland which had copied it from the Spanish Constitution. DPSP and Fundamental Rights form the soul of the constitution .

This article will solely discuss the Directive Principles of State Policy, its importance in the Indian Constitution and the history of its conflict with Fundamental Rights.

## What are the Directive Principles of State Policy?

The Sapru Committee in 1945 suggested two categories of individual rights. One being justiciable and the other being non-justiciable rights. The justiciable rights, as we know, are the Fundamental rights, whereas the non-justiciable ones are the Directive Principles of State Policy.

DPSP are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws. There are various definitions to Directive Principles of State which are given below:

- They are an 'instrument of instructions' which are enumerated in Government of India Act, 1935

- They seek to establish economic and social democracy in the country
- DPSPs are ideals which are not legally enforceable by the courts for their violation

### Directive Principles of State Policy – Classification

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types- **Socialistic Principles, Gandhian Principles** and, **Liberal-Intellectual Principles**.

The details of the three types of DPSPs are given below:

DPSP – Socialistic Principles	
<b>Definition:</b> They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:	
<b>Article 38</b>	Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimise inequalities in income, status, facilities and opportunities
<b>Article 39</b>	Secure citizens: <ul style="list-style-type: none"> <li>• Right to adequate means of livelihood for all citizens</li> <li>• Equitable distribution of material resources of the community for the common good</li> <li>• Prevention of concentration of wealth and means of production</li> <li>• Equal pay for equal work for men and women</li> <li>• Preservation of the health and strength of workers and children against forcible abuse</li> <li>• Opportunities for the healthy development of children</li> </ul>
<b>Article 39A</b>	Promote equal justice and free legal aid to the poor
<b>Article 41</b>	In cases of unemployment, old age, sickness and disablement, secure citizens: <ul style="list-style-type: none"> <li>• right to work</li> <li>• Right to education</li> <li>• Right to public assistance,</li> </ul>
<b>Article 42</b>	Make provision for just and humane conditions of work and maternity relief
<b>Article 43</b>	Secure a living wage, a decent standard of living and social and cultural opportunities for all workers
<b>Article 43A</b>	Take steps to secure the participation of workers in the management of industries
<b>Article 47</b>	Raise the level of nutrition and the standard of living of people and to improve public health

### DPSP – Gandhian Principles

**Definition:** These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:

<b>Article 40</b>	Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
<b>Article 43</b>	Promote cottage industries on an individual or co-operation basis in rural areas
<b>Article 43B</b>	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
<b>Article 46</b>	Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation
<b>Article 47</b>	Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
<b>Article 48</b>	Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

### DPSP – Liberal-Intellectual Principles

**Definition:** These principles reflect the ideology of liberalism. Under various articles, they direct the state to:

<b>Article 44</b>	Secure for all citizens a <a href="#">uniform civil code</a> throughout the country
<b>Article 45</b>	Provide early childhood care and education for all children until they complete the age of six years
<b>Article 48</b>	Organise agriculture and animal husbandry on modern and scientific lines
<b>Article 49</b>	Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance
<b>Article 50</b>	Separate the judiciary from the executive in the public services of the State
<b>Article 51</b>	<ul style="list-style-type: none"> <li>• Promote international peace and security and maintain just and honourable relations between nations</li> <li>• Foster respect for international law and treaty obligations</li> <li>• Encourage settlement of international disputes by arbitration</li> </ul>

### What are the new DPSPs added by the 42nd Amendment Act, 1976?

42nd Amendment Act, 1976 added four new Directive Principles in the list:

S.No	Article	New DPSPs
1	<b>Article 39</b>	To secure opportunities for the healthy development of children

2	<b>Article 39A</b>	To promote equal justice and to provide free legal aid to the poor
3	<b>Article 43A</b>	To take steps to secure the participation of workers in the management of industries
4	<b>Article 48A</b>	To protect and improve the environment and to safeguard forests and wildlife

### Facts about Directive Principles of State Policy:

1. A new DPSP under **Article 38** was added by the [44th Amendment Act](#) of 1978, which requires the State to minimise inequalities in income, status, facilities and opportunities.
2. The 86th Amendment Act of 2002 changed the subject-matter of **Article 45** and made elementary education a fundamental right under **Article 21A**. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.
3. A new DPSP under **Article 43B** was added by the 97th Amendment Act of 2011 relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
4. The Indian Constitution under **Article 37** makes it clear that 'DPSPs are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.'

### Criticism of Directive Principles of State Policy

The following reasons are responsible for the criticism of Directive Principles of State Policy:

1. It has no legal force
2. It is illogically arranged
3. It is conservative in nature
4. It may produce constitutional conflict between centre and state

### What is the conflict between Fundamental Rights & DPSPs?

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

#### Champakam Dorairajan Case (1951)

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

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

#### Golaknath Case (1967)

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

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

- No law which seeks to implement the socialistic Directive Principles specified in Article 39 (b)22 and (c)23 shall be void on the ground of

contravention of the Fundamental Rights conferred by Article 14 (equality before law and equal protection of laws), Article 19 (protection of six rights in respect of speech, assembly, movement, etc) or Article 31 (right to property).

- No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such a policy.

### **Kesavananda Bharti Case (1973)**

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

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

### **Minerva Mills Case (1980)**

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

Supreme Court's rulings following the case were:

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

**Conclusion:** Today, Fundamental Rights enjoy supremacy over the Directive Principles. Yet, Directive Principles can be implemented. The Parliament can amend the Fundamental Rights for implementing the Directive Principles, so long as the amendment does not damage or destroy the basic structure of the Constitution.

### **Directive Principles of State Policy –**

The table below mentions a few specific points about DPSPs:

DPSP	
What is its full form?	Directive Principles of State Policy
From which country is it borrowed?	Ireland (Which had copied it from Spanish Constitution)
How many articles are under DPSP?	Article 36-51 belong to DPSP
Which part in Indian Constitution deals with DPSP?	Part-IV belongs to DPSP
How many types of DPSP are there?	There are three types: 1. Socialist 2. Gandhian 3. Liberal-Intellectual

Have Directive Principles ever amended?	Yes, 42 <sup>nd</sup> Amendment Act, 44 <sup>th</sup> Amendment Act, and 86 <sup>th</sup> Amendment Act have added/deleted a few DPSPs.
Are DPSP justiciable?	No, DPSPs are non-justiciable in nature.
Are DPSP sub-ordinate to Fundamental Rights?	There is a balance between both. Fundamental Rights can be amended to implement Directive Principles until it does not harm basic structure of the Constitution.
Who described DPSP as 'novel feature' of Constitution?	Dr. B.R. Ambedkar
From where does Indian DPSPs find its motivation?	Irish Home Rule Movement
What are the recent developments in favor of DPSPs?	There are various such acts enacted to enforce DPSP. They are: <ul style="list-style-type: none"> <li>· Prevention of Atrocities Act (In favor of Article 46)</li> <li>· Minimum Wages Act (In favor of Article 43)</li> <li>· Consumer Protection Act</li> <li>· Equal Remuneration Act (In favor of Article 39)</li> </ul>

## Federalism in India - Federal Features of Indian Constitution

Federalism is a system of government in which powers have been divided between the centre and its constituent parts such as states or provinces. It is an institutional mechanism to accommodate two sets of politics, one at the centre or national level and second at the regional or provincial level. Both the seats of power are autonomous in their own spheres. A federal system is different from a unitary system in that sovereignty is constitutionally split between two territorial levels so that each level can act independently of each other in some areas.

There are two kinds of federations:

1. **Holding Together Federation** – in this type, powers are shared between various constituent parts to accommodate the diversity in the whole entity. Here, powers are generally tilted towards the central authority. Example: India, Spain, Belgium.
2. **Coming Together Federation** – in this type, independent states come together to form a larger unit. Here, states enjoy more autonomy as compared to the holding together kind of federation. Example: USA, Australia, Switzerland.

### Features of the Federal System

1. Governments at least two levels
2. Division of powers between various levels
3. Rigidity of constitution
4. Independence judiciary
5. Dual citizenship
6. Bicameralism

All federations might not have all the above features. Some of them may be incorporated depending on what type of federation it is.

## Federalism in India

India is a federal system but with more tilt towards a unitary system of government. It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system. Article 1 of the Indian Constitution states, 'India, that is Bharat, shall be a **union of states**'. The word federation is not mentioned in the constitution.

Elements of federalism were introduced into modern India by the Government of India Act of 1919 which separated powers between the centre and the provincial legislatures.

### Federal Features of the Indian Union

- Governments at two levels – centre and states
- Division of powers between the centre and states – there are three lists given in the Seventh Schedule of the Constitution which gives the subjects each level has jurisdiction in:
  - Union List
  - State List
  - Concurrent List
- Supremacy of the constitution – the basic structure of the constitution is indestructible as laid out by the judiciary. The constitution is the supreme law in India.
- Independent judiciary – the constitution provides for an independent and integrated judiciary. The lower and district courts are at the bottom levels, the high courts are at the state levels and at the topmost position is the Supreme Court of India. All courts are subordinate to the Supreme Court.

### Unitary Features of the Indian Union

- The flexibility of the constitution – the constitution is a blend of flexibility and rigidity. Certain provisions of the constitution can be easily amended. In case the amendments seek to change aspects of federalism in India, the provision to bring about such amendments is not easy.
- More power vests with the Centre – the constitution guarantees more powers with the Union List. On the Concurrent List, the parliament can make laws that can override the laws made by a state legislature on some matters. The parliament can also make laws regarding certain subjects in the State List.
- Unequal representation of states in the Rajya Sabha – the representation of the states in the upper house is based on the states' populations. For example, Uttar Pradesh has 31 seats and Goa, 1 in the Rajya Sabha. In an ideal federal system, all the states should have equal representation.
- The executive is a part of the legislature – in India, the executive in both the centre and the states is a part of the legislature. This goes against the principle of division of powers between the different organs of the government.
- Lok Sabha is more powerful than the Rajya Sabha – in our system, the Lok Sabha is more powerful than the upper house and unequal powers to two houses is against the principle of federalism.
- Emergency powers – the centre is provided with emergency powers. When an emergency is imposed, the centre has increased control over states. This undermines the autonomy of the states.

- Integrated judiciary – the judiciary in India is integrated. There is no separate judiciary at the centre and the state levels.
- Single citizenship – in India, only single citizenship is available to citizens. They cannot be citizens of the state as well. This helps in increasing the feeling of nationality as it forges unity amidst regional and cultural differences. It also augments fundamental rights such as the freedom of movement and residence in any part of the nation.
- Governor's appointment – the governor of a state acts as the centre's representative in the state. The state government does not appoint the governor, the centre does.
- New states formation – the parliament has the power to alter the territory of a state by increasing or reducing the area of the state. It can also change the name of a state.
- All India Services – through the All India Services such as the IAS, IPS, IRS, etc. the centre interferes in the executive powers of the states. These services also offer uniformity in administration throughout the nation.
- Integrated election machinery – the Election Commission of India is responsible for conducting free and fair elections at both the centre and the state levels in India. The members of the EC is appointed by the president.
- Veto over states bills – The governor of a state can reserve certain kinds of bills for the president's consideration. The president enjoys absolute veto on these bills. He can even reject the bill at the second instance that is, when the bill is sent after reconsideration by the state legislature. This provision is a departure from the principles of federalism.
- Integrated audit machinery – the president of the country appoints the CAG who audits accounts of both the centre and the states.
- Power to remove key officials – the state government or state legislature does not have the authority to remove certain key government officials even at the state level like the election commissioner of a state, judges of the high courts, or the chairman of the state public service commissions.

## Division of powers between Union and States

With reference to Indian Federation, the administration is primarily furnished by the state agencies.

Unlike other federations where both the federal and state government create their own agencies for the administration of their laws and the subjects allocated to them in the constitution, even the laws of the union are left to be administered by the state authorities in order to avoid duplication of administrative machinery.

In every federal constitution, **the central and state governments are firmly enclosed and the jurisdiction of the one excludes the other.**

The centre is concerned with problems of the Union List. The states are with matters on the State List.

There is also provision for the allocation of the powers by the union to the states and vice versa. The forte and success of such scheme require cooperation and coordination between Centre and States.

In India, the central government or the union is responsible for the governance of the whole country. There should be effective administrative norms between the Union and States.

The Supreme Court has demarcated that the Executive power of the union is coexistent with Power of the Parliament, with this limitation that the executive cannot act against the provisions of the constitution or of any law made by the parliament.

The Union Government is dependent on the States to give effect to its programmes. The scheme of distribution of administrative powers has some major objectives. It arms, the union government with powers to have effective control over administration of the state and espouses several advices for intergovernmental cooperation and coordination.

The executive powers in relation to any treaty or agreement has been discussed on the union by the Constitution, Parliament has also vested executive functions in the union over **Concurrent List** matters under several acts.

The Concurrent List gives power to the two legislatures, Union as well as State, to legislate on the same subject. In case of conflict or inconsistency, the **rule of repugnancy**, as contained in **Article 254** comes into play to uphold the principle of Union's supremacy.

Under this rule, **if there is any discrepancy between the State and the Centre over a subject in the Concurrent List**, the **Union law takes precedence over the State's law**, and the State's law to the extent of such repugnancy, be void.

But, **as an exception, if the State law has been reserved for the consideration of the President and has received his assent, then the State law prevails in that State**. But, the Parliament remains competent to override such a law by subsequently making a law on the same matter.

### **Executive Powers of the Union**

They are assigned by the President who can exercise it directly or through officers subordinate to him in accordance with Constitution.

- The President has the power to appoint and remove certain dignitaries in the states.
- He appoints the Governor of a State who holds his office during the rule of the President (**Article 155 and Article 156**).
- He also appoints judges of the High Courts (**Article 217**) and plays a significant role in the removal of High Court Judges as also members of State Public Service Commission (**Article 317**).

### **Legislative Relations**

- The Union-State relations in the legislative domain have been dealt by Articles 245 to 254.
- The Constitution evidently provides that the Parliament shall have special authority to make law for the whole or any part of the terrain of India with regard to subjects mentioned in the Union List.
- This list contains topics like defence, foreign affairs, currency, union duties, and communication.
- On the other hand, the State has exclusive power over the 66 items enumerated in the State List.
- This List comprises of topics like public order, health, sanitation, agriculture etc.
- Additionally, there is a Concurrent list containing 47 subjects like criminal law and procedure, marriage, contracts, trust, social insurance etc. over which both the Union and the State Governments can legislate.

### **The Union Government has an upper hand**

- If the law of the Union Government and the State Government clash with each other, the former succeeds.
- However, a State law on the simultaneous list shall prevail over the Central law if the same had been reserved for the consideration of the President and his consent had been received before the representation of the Central law on the same subject. This clearly gives some flexibility to the States.
- The constitution also vests the residuary powers (viz., the enumerated in any of the three Lists) with the Central Government.
- It is established that in this distribution of powers, the Union Government has positively been given a preferred treatment. It has not only been granted more extensive powers than the States, even the residuary powers have been granted to it contrary to the convention in other federations of the world, where the residuary powers are given to

the States.

**The Union government can legislate on any subject included in the State List, under some specific circumstances, which are as follows:**

(i) **If the Council of States (Rajya Sabha) declares that it is necessary for the Centre to legislate upon a subject in the State list**, in national interest, and passes a resolution to this effect, with a majority of at least 2/3rd of members present and voting (Article 249). This resolution remains in force for a year and can be renewed any number of times, but for not more than one year at a time. The laws so made do not have any effect six months after the resolution has ceased to be in force. At the same time, the State can also legislate upon the same subject, but in case of any inconsistency, laws of the Centre prevail. This particular feature makes the entire legislative process federal in nature.

(ii) **When two or more State Legislatures pass a resolution, requesting the Parliament to legislate upon a subject in the State List (Article 252)**. The law passed by Union Parliament shall be applicable only to the States, which demanded such legislation. Any other State may later adopt it by passing a resolution to that effect. In this case, States cease to have power to legislate upon that subject and only the Parliament can amend or repeal such a law. In past, laws have been made using this provision, some of them are: Wildlife (Protection) Act 1972, Urban Land (Ceiling and Regulation) Act.

(iii) **For the enforcement of International Treaties and Agreements**. This provision enables the central government to fulfill its international obligations (Art. 253). The Lokpal and the Lokayuktas Bill, 2011 was introduced in the Parliament through the provisions of this particular article.

(iv) **During national emergency, the Parliament can legislate upon any subject in the State List**. Such a law becomes inoperative on expiration of six months after the emergency has ceased to operate (Article 352) However, at the same time the State can also legislate upon the same subject, but in case of any inconsistency, laws of the Centre prevail.

(v) **During President's rule in a State, the Parliament can make laws with respect to any subject in the State list**, in relation to that state. Such a law continues to be operative even after the President's rule. But it can be repealed, altered or re-enacted later by the State Legislature (Article 356).

## Functions of Union

- Formulation, execution, evaluation and revision of public policy in various spheres which the party in power seeks to progress and practice.
- Coordination among various ministries and other organs of the government which might indulge in conflicts, wastefulness, duplication of functions and empire building.
- Preparation and monitoring of the legislative agenda which translated the policies of the government in action through statutory enactments.
- Executive control over administration through appointments, rule-making powers and handling of crises and disasters, natural as well as political.
- Financial management through fiscal control and operation of funds like Consolidated Fund and Contingency Funds of India.
- Review the work of planning and Planning Commission.

## Functions of State

- State governments have separate departments for efficient functioning of the state. States have jurisdiction over education, agriculture, public health, sanitation, hospitals and dispensaries and many other departments.
- **Internal security:** The state governments have to maintain the internal security, law and

order in the state. Internal security is managed through state police.

- **Public order:** States have jurisdiction over police and public order.
- **Education:** Providing a public education system, maintaining school buildings and colleges, employment of teachers, providing help to under privileged students all come under the education department of the state.
- **Agriculture:** The state governments have to provide support for farmers, funds for best farming practices, disease prevention and aid during disasters such as floods or droughts.
- **Finances:** State legislature handles the financial powers of the state, which include authorisation of all expenditure, taxation and borrowing by the state government. It has the power to originate money bills. It has control over taxes on entertainment and wealth, and sales tax.
- **Reservation of bills:** The state governor may reserve any bill for the consideration of the President.
- **Transport:** State government runs the trains, trams, bus and ferry services and other public transportation in the cities and towns of the States.
- **Water supply:** Water supply to cities and towns for drinking, including irrigation for farmers, is the responsibility of the State governments.
- **Budget:** State governments make budget for state.

## Presidential and Parliamentary Form of Government

There are basically two forms of democratic government systems – Presidential and Parliamentary. India follows a parliamentary form of government modelled on Britain's. Our founding fathers had strong reasons for adopting this, as opposed to the presidential system. In this article, we compare both systems.

Apart from the parliamentary and presidential systems, there can also be a hybrid system incorporating features of both systems. For example, France has a hybrid system. The chief difference between these systems is the extent of power separation between the legislative, the executive and the judiciary. Another major difference between the presidential and parliamentary system is the accountability of the executive to the legislature.

First, we will discuss both systems enumerating their merits and drawbacks, and then have a comparison of both the systems.

### Presidential System of Government

In a presidential system, the head of the government leads an executive, that is distinct from the legislature. Here, the head of the government and the head of the state are one and the same. Also, a key feature is that the executive is not responsible to the legislature.

#### Features of the presidential system

1. The executive (president) can veto acts by the legislature.
2. The president has a fixed tenure and cannot be removed by a vote of no-confidence in the legislature.
3. Generally, the president has the power to pardon or commute judicial sentences awarded to criminals.
4. The president is elected directly by the people or by an electoral college.

#### Merits of Presidential System

The advantages of the presidential system are given below:

- **Separation of powers:** Efficiency of administration is greatly enhanced since the three arms of the government are independent of each other.
- **Expert government:** Since the executive need not be legislators, the President can choose experts in various fields to head relevant departments or ministries. This will make sure that people who are capable and knowledgeable form part of the government.
- **Stability:** This type of government is stable. Since the term of the president is fixed and not subject to majority support in the legislature, he need not worry about losing the government. There is no danger of a sudden fall of the government. There is no political pressure on the president to take decisions.
- **Less influence of the party system:** Political parties do not attempt to dislodge the government since the tenure is fixed.

## Demerits of Presidential System

The disadvantages of the presidential system are given below:

- **Less responsible executive:** Since the legislature has no hold over the executive and the president, the head of the government can turn authoritarian.
- **Deadlocks between executive and legislature:** Since there is a more strict separation of powers here, there can be frequent tussles between both arms of the government, especially if the legislature is not dominated by the president's political party. This can lead to an erosion in efficiency because of wastage of time.
- **Rigid government:** Presidential systems are often accused of being rigid. It lacks flexibility.
- **Spoils system:** The system gives the president sweeping powers of patronage. Here, he can choose executives as per his will. This gives rise to the spoils system where people close to the president (relatives, business associates, etc.) get roles in the government.

## Parliamentary System of Government

India chose a parliamentary form of government primarily because the constitution-makers were greatly influenced by the system in England. Another reason the founding fathers saw was that the parliamentary model would only work to accommodate the varied and diverse groups within our population. Also, the strict separation of powers in the presidential system would cause conflicts between the two branches, the executive and the legislature, which our newly-independent country could ill-afford.

There are more parliamentary forms of government in the world than there are presidencies. In this system, the parliament is generally supreme and the executive is responsible to the legislature. It is also known as the Cabinet form of government, and also 'Responsible Government'.

### Features of the parliamentary system

1. **Close relationship between the legislature and the executive:** Here, the Prime Minister along with the Council of Ministers form the executive and the Parliament is the legislature. The PM and the ministers are elected from the members of parliament, implying that the executive emerges out of the legislature.
2. **Executive responsible to the legislature:** The executive is responsible to the legislature. There is a collective responsibility, that is, each minister's responsibility is the responsibility of the whole Council.
3. **Dual executive:** There are two executives – the real executive and the titular executive. The nominal executive is the head of state (president or monarch)

while the real executive is the Prime Minister, who is the head of government.

4. **Secrecy of procedure:** A prerequisite of this form of government is that cabinet proceedings are secret, and not meant to be divulged to the public.
5. **Leadership of the Prime Minister:** The leader of this form of government is the Prime Minister. Generally, the leader of the party that wins a majority in the lower house is appointed as the PM.
6. **Bicameral Legislature:** Most parliamentary democracies follow bicameral legislature.
7. **No fixed tenure:** The term of the government depends on its majority support in the lower house. If the government does not win a vote of no confidence, the council of ministers has to resign. Elections will be held and a new government is formed.

Although India follows this system chiefly influenced by the British model, there are a few differences between the Indian and British systems. They are:

- In India, the PM can be from either the Rajya Sabha or the Lok Sabha. In Britain, the PM will always be from the lower house, the House of Commons.
- In Britain, the speaker once appointed, formally resigns from his/her political party. In India, the speaker continues to be a member of his/her party though he/she is expected to be impartial in the proceedings.
- The concept of a shadow cabinet is absent in India. In Britain, the opposition forms a shadow cabinet that scrutinises the actions and policies of the government. It also offers alternative programmes.

### Merits of Parliamentary System

The advantages of the parliamentary system are as follows:

- **Better coordination between the executive and the legislature:** Since the executive is a part of the legislature, and generally the majority of the legislature support the government, it is easier to pass laws and implement them.
- **Prevents authoritarianism:** Since the executive is responsible to the legislature, and can vote it out in a motion of no confidence, there is no authoritarianism. Also, unlike the presidential system, power is not concentrated in one hand.
- **Responsible government:** The members of the legislature can ask questions and discuss matters of public interest and put pressure on the government. The parliament can check the activities of the executive.
- **Representing diverse groups:** In this system, the parliament offers representation to diverse groups of the country. This is especially important for a country like India.
- **Flexibility:** There is flexibility in the system as the PM can be changed easily if needed. During the Second World War, the British PM Neville Chamberlain was replaced by Winston Churchill. This is unlike the presidential system where he/she can be replaced only after the entire term or in case of impeachment/incapacity.

### Demerits of Parliamentary System

The disadvantages of the parliamentary system are as follows:

- **No separation of powers:** Since there is no genuine separation of powers, the legislature cannot always hold the executive responsible. This is especially true if the government has a good majority in the house. Also, because of anti-defection rules, legislators cannot exercise their free will and vote as per their understanding and opinions. They have to follow the party whip.

- **Unqualified legislators:** The system creates legislators whose intention is to enter the executive only. They are largely unqualified to legislate.
- **Instability:** Since the governments sustain only as long as they can prove a majority in the house, there is instability if there is no single-largest party after the elections. Coalition governments are generally quite unstable and short-lived. Because of this, the executive has to focus on how to stay in power rather than worry about the state of affairs/welfare of the people.
- **Ministers:** The executive should belong to the ruling party. This rules out the hiring of industry experts for the job.
- **Failure to take a prompt decision:** Because there is no fixed tenure enjoyed by the Council of Ministers, it often hesitates from taking bold and long-term policy decisions.
- **Party politics:** Party politics is more evident in the parliamentary system where partisan interests drive politicians more than national interests.
- **Control by the bureaucracy:** Civil servants exercise a lot of power. They advise the ministers on various matters and are also not responsible to the legislature.

## Comparison of Presidential and Parliamentary Systems

Basis	Parliamentary	Presidential
Executive	Dual	Single
Accountability	Executive accountable to legislature	Executive not accountable to legislature
Ministers	Only from among MPs	People outside the legislature can be appointed
Dissolution of lower house	PM can dissolve before the expiry of the term	President cannot dissolve
Tenure	Not fixed	Fixed

## Questions related to Presidential and Parliamentary Form of Government

Does a parliamentary democracy have a president?

A parliamentary democracy can have a president who is the nominal head of the executive.

Why do we have a parliamentary form of government?

Our founding fathers thought the parliamentary system suited India the best because of the diversity, and also because of the experience with the British system.

Which is the best form of government parliamentary or presidential?

Both systems have merits and demerits. It depends on the country the system which is best suited for it.

## President of India - Article 52-62 - Indian Polity Notes

Indian President is the head of the state and he is also called the first citizen of India. He is a part of Union Executive, provisions of which are dealt with Article 52-78 including articles related to President (Article 52-62.) Under these articles, information on how a President is elected, his powers and functions and also his impeachment process is given.

President is a vital part of Union Executive which again is important for [IAS Exam](#) and its three stages – Prelims, Mains and Interview.

This article will mention in detail about the President of India, how a president is elected, his qualifications, a term of office, impeachment process and vacancy in his office.

### Who is President of India?

Indian President is the head of the state. He is the first citizen of India and is a symbol of solidarity, unity and integrity of the nation. **He is a part of Union Executive along with Vice-President, Prime Minister, Council of Ministers and Attorney-General of India.**

### How is President elected?

There is no direct election for the Indian President. An electoral college elects him. The electoral college responsible for President's elections comprises **elected members of:**

1. Lok Sabha and Rajya Sabha
2. Legislative Assemblies of the states (Legislative Councils have no role)
3. Legislative Assemblies of the Union Territories of Delhi and Puducherry

**Note:**

- Value of the vote of an MLA is given below:

$$\text{Value of the vote of an MLA} = \frac{\text{Total population of state}}{\text{Total number of elected members in the state legislative assembly}} \times \frac{1}{1000}$$

- Value of the vote of MP is given below:

$$\text{Value of the vote of an MP} = \frac{\text{Total value of votes of all MLAs of all states}}{\text{Total number of elected members of Parliament}}$$

### Who does not take part in the President's elections?

The following group of people are not involved in electing the President of India:

1. Nominated Members of Lok Sabha (2) and Rajya Sabha (12)
2. Nominated Members of State Legislative Assemblies
3. Members of Legislative Councils (Both elected and nominated) in bicameral legislatures
4. Nominated Members of union territories of Delhi and Puducherry

### What is the term of President's office?

Once President is elected, he holds office for five years. He sits in the office even after the completion of five years given no new election have taken place or no new President has been elected till then. He can also be re-elected and there is no cap on his re-election.

### Questions related to President's elections for UPSC

There are a few facts which an IAS aspirant must know for UPSC 2020. Those facts are given in a question-answer format in the table below:

<b>What is the principle of election used in the President's election?</b>	Proportional Representation with means of a single transferable vote
<b>How does voting take place in the election of Indian President?</b>	It is a secret ballot system of voting
<b>What is a quota of votes in President's elections?</b>	$\text{Electoral quota} = \frac{\text{Total number of valid votes polled}}{1+1 = (2)} + 1$
<b>How is the Supreme Court (SC) involved in the President's election?</b>	Any dispute related to his election is taken up by SC. SC's decision is final. <b>Note:</b> After the election of President is declared null and void, the acts done by the President in his office remain valid even after his removal.

### What are the qualifications of President?

A candidate has to meet some qualifications to be elected as the president. Those qualifications of the President are:

1. He should be an Indian Citizen
2. His age should be a minimum of 35 years
3. He should qualify the conditions to be elected as a member of the Lok Sabha
4. He should not hold any office of profit under the central government, state government, or any public authority

### What are the conditions of the President's office?

There are a few conditions for the candidate running for the President's elections:

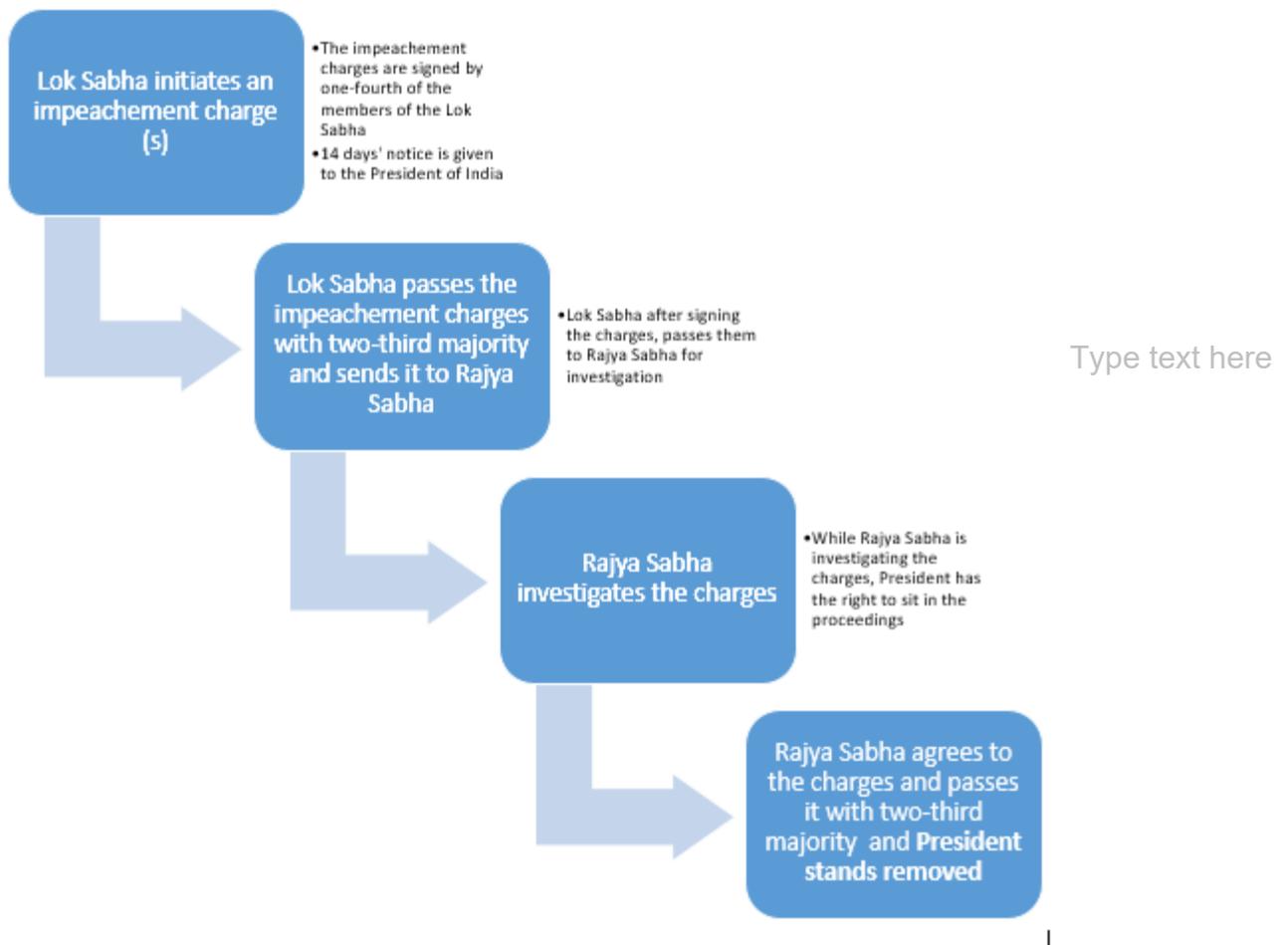
1. He cannot be a member of Lok Sabha and Rajya Sabha. If he has been a member of either of the house, he should vacate the seat on his first day as President in the office
2. He should not hold any office of profit
3. For his residence, Rashtrapati Bhavan is provided to him without the payment of rent
4. Parliament decides his emoluments, allowances and privileges
5. Parliament cannot diminish his emoluments and allowances during his term of office
6. He is given immunity from any criminal proceedings, even in respect of his personal acts
7. Arrest or imprisonment of President cannot take place. Only civil proceedings can be initiated for his personal acts that too after giving two months' of prior notice.

### What is the procedure for impeachment of a President?

The only condition for the initiation of impeachment of Indian president is the '**violation of the constitution.**'

**Note:** Indian Constitution contains no definition of 'violation of constitution.'

The impeachment process of President is given below. (We have taken Lok Sabha as the first house to initiate the impeachment charges, however, Rajya Sabha too can initiate the impeachment charges against President and in that case, it will pass the resolution and send the charges to Lok Sabha which will investigate and pass it if it finds those charges valid.)



## Can the President's office be vacant?

Yes, his office can be vacant in the following ways:

1. When President of India completes his term of five years in the office
2. If the President resigns by putting forward his resignation to the Vice-President of India
3. If Lok Sabha/Rajya Sabha initiates an impeachment charge and they stand valid, he is removed
4. If he dies in the office
5. If Supreme Court declares his election invalid

## What are the powers and functions of President of India?

### Executive Powers of President

1. For every executive action that the Indian government takes, is to be taken in his name
2. He may/may not make rules to simplify the transaction of business of the central government
3. He appoints the attorney general of India and determines his remuneration
4. He appoints the following people:
  1. Comptroller and Auditor General of India (CAG)
  2. Chief Election Commissioner and other Election Commissioners
  3. Chairman and members of the Union Public Service Commission
  4. State Governors
  5. Finance Commission of India chairman and members
5. He seeks administrative information from Union government
6. He requires PM to submit, for consideration of the council of ministers, any matter on which a decision has been taken by a minister but, which has not been considered by the council
7. He appoints National Commissions of:
  1. Scheduled Castes

2. Scheduled Tribes
3. Other Backward Classes
8. He appoints inter-state council
9. He appoints administrators of union territories
10. He can declare any area as scheduled area and has powers with respect to the administration of scheduled areas and tribal areas

### Legislative Powers of President

1. He summons or prorogues Parliament and dissolve the Lok Sabha
2. He summons a joint sitting of Lok Sabha and Rajya Sabha in case of deadlock
3. He addresses the Indian Parliament at the commencement of the first session after every general election
4. He appoints speaker, deputy speaker of Lok Sabha and chairman/deputy chairman of Rajya Sabha when the seats fall vacant (to know the difference between Lok Sabha and Rajya Sabha check the linked article.)
5. He nominates 12 members of the Rajya Sabha
6. He can nominate two members to the Lok Sabha from the Anglo-Indian Community
7. He consults Election Commission of India on questions of disqualifications of MPs.
8. He recommends/ permits the introduction of certain types of bills (to read on how a bill is passed in Indian Parliament, check the linked article.)
9. He promulgates ordinances
10. He lays the following reports before the Parliament:
  1. Comptroller and Auditor General
  2. Union Public Service Commission
  3. Finance Commission, etc.

### Financial Powers of President

1. To introduce the money bill, his prior recommendation is a must
2. He causes Union Budget to be laid before the Parliament
3. To make a demand for grants, his recommendation is a pre-requisite
4. Contingency Fund of India is under his control
5. He constitutes the Finance Commission every five year

### Judicial Powers of President

1. Appointment of Chief Justice and Supreme Court/High Court Judges are on him
2. He takes advises from Supreme Court however, those advise are not binding on him
3. He has **pardoning power**: Under article 72, he has been conferred with power to grant pardon against punishment for an offence against union law, punishment by a martial court or death sentence.

**Note:** Pardoning powers of the president includes the following types:

- **Pardon** with the grant of pardon convicts both conviction and sentence completely absolved
- **Commutation** with this nature of the punishment of the convict can be changed
- **Remission** reduces the term of the imprisonment
- **Respite** awards lesser punishment than original punishment by looking at the special condition of a convict
- **Reprieve** stays the execution of the awarded sentence for a temporary period

### Diplomatic Powers of President

1. International Treaties and agreements that are approved by the Parliament are negotiated and concluded in his name
2. He is the representative of India in international forums and affairs

### Military Powers of President

He is the commander of defence forces of India. He appoints:

1. chief of the Army
2. chief of the Navy, and
3. chief of the Air Force

### Emergency Powers of President

He deals with three types of emergencies given in the Indian Constitution:

1. National Emergency (Article 352)
2. President's Rule (Article 356 & 365); and
3. Financial Emergency (Article 360)

### What is the Ordinance Making Power of the President?

Article 123 deals with the ordinance making power of the President. President has many legislative powers and this power is one of them. President promulgates an ordinance on the recommendation of the union cabinet. To read more on [Ordinance Making Power of the President](#), check the linked article.

### What is the Veto Power of the President?

When a bill is introduced in the Parliament, Parliament can pass the bill and before the bill becomes an act, it has to be presented to the Indian President for his approval. It is on President of India to either reject the bill, return the bill or withhold his assent to the bill. The choice of the President over the bill is called his veto power. Veto Power of the President of India is guided by Article 111 of the Indian Constitution. To continue reading [Veto Power](#), check the linked article.

# Emergency Provisions under Indian Constitution



## Introduction

India is a federal country of *"its own kind"*. It acquires unitary features during an Emergency. Due to this reason, Dr B.R Ambedkar called the Indian Federal system as *unique* because it becomes entirely unitary during an Emergency. During an Emergency, as Constitutional machinery fails, the system converts itself into a unitary feature. The Emergency is a period of depression where all Fundamental Rights of a person is taken away except article 20 and 21.

## Emergency Definition

An emergency is a situation which arises due to the failure of the government machinery which causes or demands immediate action from the authority.

According to the Black Law's Dictionary, "Emergency is a situation which requires quick action and immediate notice as such a situation causes a threat to the life and property in the nation. It is a failure of the social system to deliver reasonable conditions of life"[1].

## Emergency meaning in Hindi

Emergency in hindi means " आपातकालीन" or "Aapatkaaleen".

## Types of Emergency

Part- XVIII of Indian Constitution deals with the Emergency provisions i.e. Articles 352 to 360. There are three types of Emergencies mentioned in the Constitution. The power of imposing all three types of Emergencies is vested upon the President of India. The concept of Emergency was borrowed from the Weimar Constitution of Germany. The three types are as follows –

1. Article 352 – National Emergency
2. Article 356 – President's Rule
3. Article 360 – Financial Emergency

## Grounds for the Proclamation of Emergency

### National Emergency

Grounds for the proclamation of National Emergency are as follows:

#### War

When a country declares a formal war against India and there is a violent struggle using armed forces, the President of India may impose National emergency.

#### External Aggression

When a country attacks another country without any formal declaration of war. It is a unilateral attack by any country towards India. In such circumstances, the President of India may impose a National emergency.

#### Armed Rebellion

Emergency due to the armed rebellion may be imposed by the President of India when a group of people rebel against the present government which will lead to the destruction of lives and property.

## State Emergency

Grounds for the Proclamation of the State Emergency is a failure in the Constitutional machinery of the state. In this Emergency, when Governor of the state is satisfied that the State is not functioning in accordance with the Constitutional provisions then he may write his report to the President of India. And the President, if satisfied by the report, may impose the President's rule. After that, the President will become the executive head of the state.

## Financial Emergency

Grounds for the Proclamation of the Financial Emergency is that when a state arises in the Country which leads to a financial crisis in India, the President of India may impose emergency to tackle the situation. In this situation, the Central Authority may reduce the budget or cut the budget given to the State, salaries of the Government officials may be deducted.

## Reason for Emergency in India

### National Emergency

Article 352 deals with "*Proclamation of Emergency*" or "*National Emergency*". The President of India has the power to declare an Emergency in India or any part of India by making a Proclamation. Under this Article, if the President is satisfied that a grave emergency exists in India due to which there is a threat to the security of the nation, he may declare Emergency on the grounds of-

1. War
2. External Aggression
3. Armed Rebellion

The word "Armed Rebellion" was substituted for "Internal Disturbance" by the Forty-fourth Constitution Amendment Act, 1978.

National Emergency has been imposed three times in India so far. The time period in which this happened was from 1962-1977. Brief description of the emergencies are as follows –

An emergency was imposed at the time of Indo-China war by the then President of India Dr Sarvepalli Radhakrishnan on the ground of external aggression from October 26, 1962, to

January 10, 1968.

External Aggression means when a country attacks another country without any formal declaration of war. It is a unilateral attack by any country towards another country. **For example** – If a country attacks India without any formal declaration of war, in such a scenario, the President of India may impose a National Emergency.

Again, an Emergency was imposed from December 3, 1971, to March 21, 1977, by the then President of India Mr V.V. Giri during the Indo-Pakistan war. The reason was the same as above i.e. external aggression.

The third Emergency was imposed due to a clash between Legislature and Judiciary. Mrs Indira Nehru Gandhi, the then Prime Minister of India with the permission of the then President Fakhruddin Ali Ahmed declared an emergency. It was imposed for a period of 19 months from June 25, 1975 to March 21, 1977.

## State Emergency

Article 356 deals with State Emergency or President's Rule in the State ("*Provisions in case of Failure of Constitutional Machinery in States*"). The President of India has the power to proclaim State Emergency when he receives a report from the Governor of that particular State explaining that the situation in the State Government is such that they cannot carry out the Constitutional provisions.

President's Rule has been imposed on the State of Jammu and Kashmir for six years and 264 days from January 19, 1990, to October 9, 1996. The State has always been a target for many external elements. The Indian Government imposed President's Rule to control the situation of Jammu & Kashmir which was facing a military threat from Pakistan.

Punjab was under the President's Rule for 4 years and 259 days from June 11, 1987, to February 25, 1992. The reason for imposing President's rule in Punjab was the control of Khalistan Commando Forces which was a Sikh organisation which was involved in the genocidal attack on Hindus.

Till January 2016, the President's Rule has been imposed 124 times in India. During Indira Gandhi's regime, the President's Rule was invoked for maximum time. The President's Rule under her cabinet was imposed 35 times in various states.

The case S.R Bommai v. Union of India[2] is a landmark case in respect of imposing President's Rule in any State. The case laid down the power of the Union Government in relation to the State Emergency under Article 356 of the Indian Constitution. Judicial Review of the President's Rule was made possible by this case. While giving the judgement, the court depended on Sarkaria's Commission Report, 1987.

President's Rule can be judicially reviewed and the President becomes answerable only when the Emergency is imposed in certain cases, which are:

1. When there is Constitutional non-conformity by the State with the direction of Union
2. When there is a political crisis in the State.
3. When there is an internal subversion in the State

## Financial Emergency

Article 360 deals with "*Provisions as to Financial Emergency*". Financial Emergency is imposed by the President when there arises any situation which causes a financial threat to India or any part of India.

Financial Emergency has never been imposed in India. However, in 1990, the possibility of financial emergency emerged but the situation was controlled by the Indian Government as in July 1991 the Reserve Bank of India pledged 46.91 tonnes of Gold with Bank of England and Union Bank of Switzerland to raise \$400 million.

## Emergency Provisions

1. Article 352: Proclamation of Emergency.
2. Article 353: Effect of Proclamation of Emergency.
3. Article 354: Application of provisions relating to the distribution of revenues while a proclamation of emergency is in operation.
4. Article 355: Duty of the Union to protect States against external aggression and internal disturbance.
5. Article 356: Provisions in case of failure of constitutional machinery in State.
6. Article 357: Exercise of legislative powers under Proclamation issued under Article 356.
7. Article 358: Suspension of provisions of article 19 during Emergencies.
8. Article 359: Suspension of the enforcement of the rights conferred by Part III during emergencies.
9. Article 360: Provisions as to Financial Emergency.

## Article 352

Article 352 (Part XVIII) talks about "*Proclamation of Emergency*".

**Clause 1** states that National Emergency may be imposed by the President if he is satisfied that there exists a grave situation due to which there is a threat to the security of India or any part of the territory because of:

- War
- External Aggression
- Armed Rebellion

**The proviso of Clause 1** states that an Emergency may be proclaimed by the President even when there is no actual occurrence of war, external aggression, and armed rebellion. In this case, the President must be satisfied that there is an imminent danger.

**Clause 2** states that another Proclamation may be issued to revoke and to make any variation in the previous Proclamation.

**Clause 3** states that the President of India may declare an Emergency when Union Cabinet (Council of Minister headed by the Prime Minister) advice to him in writing.

**Clause 4** states that before issuing Proclamation it is required to be placed before both the Houses of Parliament and shall end its effect at the expiration of one month unless both the Houses of Parliament approve it by resolution before the expiration of the said period.

**Clause 5** states that proclamation approved in the second resolution shall have an effect up to six months and on expiry of six months, it will end to operate unless it is revoked in between the period.

## 44th Constitutional (Amendment) Act, 1978

The imposition of Emergency stressed the legislature to think again about the Constitutional provisions that provide power to the executive to supersede the judiciary hampering the basic structure of the Indian Constitution.

Under Article 352, the amendment had substituted the ground of "*Internal Disturbance*" with "*Armed Rebellion*". The President is allowed to impose emergency only when the *Union Cabinet* communicates to him in writing about their decision.

The Proclamation is required to be approved by both the houses of Parliament by resolution within a month instead of two months by a total majority of the membership of each house of Parliament and by the ratification of not less than 2/3rd members present and voting in each house instead of a simple majority.

Under Article 356, the period for extension of a Proclamation from one month has been amended to six-months. Proclamation in the first instance can only be exceeded for six months.

## Case Study Indira Nehru Gandhi vs. Shri Raj Narain & Anr

## Facts

Raj Narain was a contender from Rae Bareilly Constituency in the 5th Lok Sabha Election 1971 against Indira Nehru Gandhi. Congress won the election with a majority in 1971 and Mrs Gandhi took the oath as a new Prime Minister of India. After the result of elections, Raj Narain approached the Allahabad High Court and filed a petition against Indira Nehru Gandhi contending that she had performed her election using corrupt practices.

Allahabad High Court observed in the case *Raj Narain v. State of Uttar Pradesh* that Indira Gandhi was guilty, as she misuses Government machinery under section 123(7) of Representation of Peoples Act, 1951. Indira Gandhi was barred to contest elections for six years and she was forbidden to continue as a Prime Minister of India.

Further, the court observed that *"Rules of evidence that prevent disclosure of certain government documents in court proceedings may be overridden if the public interest in disclosure outweighs the public interest in keeping documents secret"*.

The judgement led in a declaration of National Emergency under Article 352 by the then President of India Fakhrudeen A. Ahmad. The reason given for imposing an emergency was *"Internal Disturbance"*.

Raj Narain's case was on conditional stay up to their appearance in the Supreme Court on August 11, 1975. However, on August 10, 1975, Thirty-Ninth Constitutional (Amendment) Act, 1971 was done and it inserted Article 329A which bar the Supreme Court to entertain the matter. Further on one can question the election of Prime Minister, President, Vice-President and the Speaker of Lok Sabha.

## Issues

Whether the 39th Constitutional (Amendment) Act, 1971 was Constitutionally valid?

## Judgment

Referring to the landmark judgment of *Kesavananda Bharati v. State of Kerala* for the first time the Supreme Court observed that Clause 4 of Article 329A is violative and unconstitutional. It violates the principle of separation of power as it provides functions of the judiciary to the legislature. The amendment violated the *"Rule of Law"*.

The Apex Court finds the 39th Constitutional Amendment Act, 1971 as violative of the basic structure of the India Constitution and unconstitutional and therefore declares it as void.

## Effects of National Emergency

Under Article 358, National Emergency suspends the rights guaranteed under Article 19 of the Indian Constitution. Also, other Fundamental Rights get suspended under Article 359 except Article 20 and 21.

Article 20 of the Indian Constitution deals with the "*Protection in respect of conviction from offences*". This Article is pillars of all the Fundamental Rights which are guaranteed by the Indian Constitution. It protects the right of an individual in case of conviction.

Article 21 of the Indian Constitution deals with "*Protection of life and personal liberty*" because no person shall be deprived of his life and personal liberty except procedure established by law.

Under this kind of Emergency, the State Government comes under the direct control of the Central Government. The State Government has to work as per the direction is given by the Union.

The distribution of financial resources between the Union and the State may be suspended by the President.

The Parliament acquires power over the subjects of the State List which ceases on the expiry of six months.

## Article 356

Part XVIII, Article 356 talks about "*Provision in case of failure of constitutional machinery in states*" or "*President's Rule*".

The State Emergency or President's Rule is imposed by the President of India when the Constitutional machinery of State collapse and is unable to carry in accordance with the Indian Constitution. The President will impose an emergency when he will get a report of such a situation from the Governor of that particular state.

The Governor will report about the situation in the State that the government is unable to carry out in accordance to the provisions of the Constitution and the Emergency imposed upon such a report shall have an effect up to six months, after the expiry of which Emergency will end to have an effect on the State.

The maximum period for the State Emergency is three years after which it can be extended after a Constitutional amendment. It requires constant approval from the Parliament every six months.

Imposing of the State Emergency continuously became arbitrary in India. In the landmark judgment of *State of Rajasthan & Ors v. Union of India*, the Supreme Court observed that

Courts have no power to review the Proclamation passed under Article 352. Imposing the State emergency continuously becomes arbitrary in India due to this reason and, hence, the Supreme Court finds it necessary to overturn the decision.

In the case, *S. R. Bommai V. Union of India*, the Supreme Court observed that, under Article 356, President of India has restricted power and they are subjected to judicial review. The Supreme Court has the power to declare the emergency void even if both the houses of Parliament passed the Proclamation.

## Effects of State Emergency

During the State Emergency or President's Rule, the entire State administrative machinery is transferred to the Union. President becomes executive head of the State and Governor works under his name.

Legislative Assembly of the state may be dissolved or it may be suspended. Parliament took over the charge of making laws in the **66 subjects** of the **List-II** i.e. State List. All the ministers of State Legislative assembly were barred from performing any action as every money bill is required to be first referred to the Parliament for approval.

State's High Court functions independently in such a situation. There is no effect of an emergency in the State Judiciary. High Court may even entertain the petition filed against the President's Rule. In 2016, the Congress Government approached the Nainital High Court against the President's Rule imposed under Narendra Modi's regime.

It was imposed by the then President of India Pranab Mukherjee. The High Court of Uttarakhand gave its verdict in favour of Harish Rawat's government and declared to restore the Congress Government in the State of Uttarakhand. Later, the judgement was upheld by the Supreme Court of India and the Congress Government continued its period of governance.

## How many times State Emergency declared in India

There are different circumstances under which the President's Rule is imposed, these are:-



Image Source: <https://bit.ly/2Y9GpQb>

1. When the coalition government in the State collapses.
2. Law and orders are not followed in the State.
3. Failure to elect Chief Minister by the State Legislature.
4. Postponement of the State Elections due to any reasons.

In India, till 2018, the President's Rule was imposed 126 times by the President of India. Maximum times the President's Rule was invoked during Indira Gandhi regime i.e. 35 times.

## Difference between the National Emergency and President's Rule

National Emergency (Article 352)	President's Rule (Article 356)
National Emergency is proclaimed under Article 352 on the ground of <i>war, external aggression and armed rebellion</i> .	State Emergency is proclaimed under Article 356 when the State Government cannot be carried out according to the Constitutional provisions.
State Executive and legislature perform their power as mentioned in List II of Schedule VII. Concurrent List power vests in the Central Government.	State Executive powers get vested in the Central. Governor works in the state on the advice of the President. State Legislative Assembly is dissolved or suspended.
The Proclamation may be continued for an indefinite time as no maximum period is prescribed but it is subject to renew every six months.	The maximum period up to which State Emergency may continue is three years after which it will cease but it may be further continued after the Constitutional Amendment.
Fundamental Rights are suspended during National Emergency except Article 20 & 21.	There was no effect on the Fundamental Rights of the people of the State.

Resolution for the continuation of the proclamation of emergency must be passed with a special majority.	Resolution can be passed with a simple majority in the Parliament.
The resolution for the revocation of the proclamation can be passed by Lok Sabha.	Resolution for revocation of the proclamation can be passed by President in his discretion.
During this emergency, the Centre's relation undergoes a modification with all the States.	Centre's relation undergoes a modification only with the state under the President's Rule.
There is no delegation of lawmaking power of Parliament under the State list.	President may make laws for the state after consulting with the Members of Parliament from that state.

## Article 360

Part XIII, Article 360 talks about "*Financial Emergency*".

Financial Emergency is proclaimed by the President of India if he is satisfied that a situation of financial instability has arisen in the nation or any part of the nation. Emergency imposed under Article 360 shall not have effect after the expiration of two months from the date it was issued unless both the Houses of Parliament approves it by passing a resolution.

The situation of 1991 led to the circumstances of the financial crisis. But it was solved after introducing New Economic Policy by Economist Dr Manmohan Singh. No financial emergency was imposed so far in India.

## Effects of Financial Emergency

During the Financial Emergency, Parliament has the power to reduce the salaries and allowances of the people working under the Union or the State Government. Financial and Money Bills passed by the State Legislature of the State will be sent to the President of India for his consideration.

## Parliamentary approval and duration of the Emergency

In India, there are three types of Emergencies and all the three emergencies have a different duration up to which they remain in force. Parliamentary approval also differs in each emergency as the duration for approval of a resolution of emergency is different in each kind of emergency. The Parliamentary procedure for passing the resolution of Emergency is

discussed as follows:

## Parliamentary approval and duration of the National Emergency

Proclamation of National Emergency operates for the maximum period of six months subject to approval in every six months. There is no period prescribed up to which period may be extended.

Under Article 352, when the President imposes an Emergency, it must be approved by both the Houses of Parliament by a resolution within a month from the date of its issue. Before the 44th Amendment Act, 1978, the period for approval was two months.

Meanwhile, Lok Sabha gets dissolved when the Proclamation was issued or Lok Sabha dissolved without approving the proclamation of Emergency, one month will be counted from the first day of sitting of the Lower House i.e. Lok Sabha after its reconstitution. It is required that in the meantime Rajya Sabha has approved the proclamation.

When both the houses of Parliament approve the proclamation, it will remain in force for six months and there is no maximum time limit for Proclamation. It is subjected to renew by both the Houses of Parliament through resolution in every six months.

If Lok Sabha gets dissolved within six months from the date of issue of the resolution without further approving the Proclamation of Emergency. In this situation, the Proclamation will survive until a month from the first day of Lok Sabha after its reconstitution. It is required that in the meantime Rajya Sabha has approved the Proclamation.

Every resolution for imposing Emergency or continuance of Emergency must be passed by either of the House of Parliament by a special majority, i.e. a majority of the total membership of that house and a majority of not less than 2/3rd members of the house present and voting.

## Parliamentary approval and duration of the State Emergency

Proclamation of the State Emergency operates for the maximum period of six months or three years (subject to extension of the period).

Under Article 356, when the President imposes Emergency it must be approved by both the Houses of the Parliament by resolution within two months from the date of its issue after which it ceases to affect.

If Lok Sabha gets dissolved when a proclamation was issued, then it must be passed within 30 days from the first day of sitting of Lok Sabha after its reconstitution. In such situations, Rajya Sabha must approve the Proclamation. The duration of six months can be extended, subject to the approval in six months. But every Proclamation passed under this Article cannot be extended for more than three years.

## Parliamentary approval and duration of the Financial Emergency

Under Article 360, before the President imposes emergency it shall be approved by both Houses of Parliament. Otherwise, after the expiry of two months, from the date of issuance of the proclamation, it ceases to operate.

In case, Lok Sabha dissolves within two months, Lower House is required to approve the proclamation within thirty days from the first day of sitting after its reconstitution. Rajya Sabha must approve it in the meantime.

## Why was Emergency declared in 1975

### Background

National Emergency has been imposed three times in India. But, the Emergency of 1975 emerged as the Constitutional revolution in Indian history. The emergency of 1975 emerges as the dark phase for the Indian Constitution. The situation which leads to the Proclamation of Emergency was the fifth Lok Sabha election in 1971 in which Indira Gandhi won the election with a majority. Her opponent contender from Rai Bareilly was Raj Narain who approached the Allahabad High Court by filing a petition against Indira Gandhi's election.

Allahabad High Court's judgement was not acceptable to the Indira Gandhi who declared the decision against her. They barred her from contesting election for the next six years and the Court also barred her to continue the post of Prime Minister. To secure her post, Indira Gandhi came up with a strategy that shook the nation and questioned the democracy of India.

The President of India Fakhruddin Ali Ahmed imposed National emergency on June 28, 1975, a day before hearing of the case of *Raj Narain v. State of Uttar Pradesh* in the Supreme Court as an appeal. The reason behind the Proclamation of the Emergency was "Internal Disturbance". This Emergency was imposed when the emergency of 1971 due to the Indo-China war was already in force in India.

The situation was becoming out of control, the Prime Minister of India was barred to contest election for the next six years and her present post was declared to be occupied

using ill corrupt practices. Military and Police started disobeying the orders of the Government.

Union Railway Minister L.N. Mishra was murdered at Samastipur. A tussle between the central, opposition, and the citizens created an environment of violence, threat and agitation. The Parliament approved the Proclamation of Emergency and subsequently, National Emergency was imposed in India.

## 1975 Emergency Reason

1. Allahabad High Court gave judgement against the Prime Minister. Judgement barred her to contest election for the next six years and finds her involvement in ill corrupt practices in 5th Lok Sabha election of 1971.
2. The demonstration was organised by the opposition under the supervision of Jayaprakash Narayan.
3. The relationship between the Judiciary and Legislative become weak as Parliament's amendment of the Fundamental Rights was opposed by the Supreme Court.
4. An agitation that was launched in Gujarat in 1974 by the opposition party.

## Consequences

1. Freedom of the Press was suspended and *Indian Raj Censorship* was imposed under which newspapers get prior approval for publication.
2. Fundamental Rights of the citizens were suspended.
3. Opposition leaders were arrested and strikes were banned.
4. Under 42nd Constitutional (Amendment) Act, 1976, Elections of the Prime Minister, the President, and the Vice-President was kept out of the purview of justification from the court.
5. Provision of *Habeas Corpus* was neglected nullifying the rights of citizens under Article 21.

## Effects

1. It led to the political crisis and Constitutional crises on the Indian polity.
2. Many new political parties emerged after 1977.
3. Emergency showed its impact on 1977 Lok Sabha election as *Janta Party* won the election.
4. Fundamental Rights of the citizens were strengthened.
5. The 44th Constitutional (Amendment) Act, 1978, was passed to clear the ambiguity of provisions of emergency.

To sum up, everything that has been stated, the 1975 Emergency emerges as the dark side of the Indian Judiciary. The emergency of 1975 was not less than a dark age of the Indian

democracy because during this period India emerged as a weak democratic country. It affected the federal structure of democracy. It left the legislature to think about the provisions of the Constitution.

The Indian Constitution was continuously amending to favour one's situation. Later, it becomes necessary to amend the Constitution again, but this time to maintain its supremacy.

In Kesavananda Bharati v. State of Kerala, the Supreme Court observed that "Parliament does not possess any power under Article 368 to amend the basic structure of the Constitution. Parliament has the power to amend the entire Constitution whenever it becomes necessary according to the requirement subject to, they cannot touch the Fundamental Rights which are the basic structure of the Constitution".

## List of National Emergencies

National Emergency was invoked three times from 1962 to 1977.

First National Emergency was invoked in October 1962 during Indo-China war. This Emergency remained in force till January 1968. It was imposed by the then President of India Shri. Sarvepalli Radhakrishnan. The reason for imposing this emergency was the Chinese attack in Arunachal Pradesh (North-East Frontier Agency). External Aggression was ground for invoking the Emergency.

The second Emergency was invoked in December 1971 during the Indo-Pak war. This Emergency remained in force till March 1977. This Emergency was imposed by the then President of India Mr V.V. Giri. The reason for imposing Emergency was war in Bangladesh. Ground for imposing this Emergency was External Aggression, the Indian military was clashing with the military of Pakistan to provide independence to East Pakistan.

The period of the war was 11 days and considered as the shortest war in the World. But, in the meantime, the third emergency was imposed in India. The third emergency continued the second emergency until 1977.

The third Emergency was invoked in June 1975 due to an internal disturbance in the Central Government. It remained in force till March 1977. This Emergency was imposed by the then President of India Fakhruddin Ai Ahmed. It was imposed when the second Emergency was already in existence. The real cause behind this Emergency was to secure the seat of the then Prime Minister of India Mrs Indira Nehru Gandhi who was found guilty in corrupt practices during her constituency campaign by the Allahabad High Court.

## Impact of Emergency in India

Most of the time Emergency have an adverse impact on the country. Whenever an Emergency was imposed, whether it was the National Emergency or State emergency, it has questioned the democracy of India. More time it was imposed, more democracy shows its unitary structure. Impact of Emergency in India is:-

1. It deprives the citizens of their Fundamental Right.
2. The Freedom of Media was suspended.
3. Emergency overturned the Constitution.
4. Censorship orders barred newspapers to print anything without any prior consent from the government.

National Emergency of 1975 resulted in the arrest of many opposition leaders such as Morarji Desai, Jay Prakash Narayan, Atal Bihari Vajpayee and Lal Krishna Advani under Maintenance of Internal Security Act, 1971. The arrest of these leaders led to the filing of petitions in various High Courts challenging the detention. Indira Gandhi Government approached the Supreme Court because at the time of Emergency Fundamental Right under Article 21 remained suspended so this does not allow the writ of *Habeas Corpus* and the case came out to be known as the *Habeas Corpus* case.

## *A.D.M Jabalpur Case*

### Background

After defeat in the Lok Sabha election of 1971, Raj Narain challenged the election in the Allahabad High Court on the ground that she was guilty of corruption from her constituency. In the case of *Raj Narain v. State of Uttar Pradesh*, Allahabad High Court found Indira Gandhi's involvement in corrupt practices and declared her election invalid. Indira Gandhi approached the Supreme Court where *Justice Krishna Iyer* put a conditional stay on Allahabad judgement. On a day before hearing of the case in the Supreme Court, President Fakhruddin Ali Ahmed declared Emergency on the ground of "*Internal Disturbance*".

During the Emergency, Fundamental Rights remained suspended under Article 14 and 21, as well as any proceedings related to the enforcement of these Articles also remained suspended during the period of Emergency. Anyone who was causing a threat to the politics was arrested under *Preventive Detention* Law. Many famous political leaders were arrested under the Maintenance of Internal Security Act, 1971 because their activities were causing a political threat to Indira Gandhi.

These leaders approached the High Court against the arrest and the High Court made a decision in their favour. Indira Gandhi's Government filed a petition in the Supreme Court as a Fundamental Right under Article 21 is suspended writ cannot be issued.

## Issues

1. Whether writ of Habeas Corpus is maintainable by the High Court questioning illegal detention when an emergency was imposed by the President?
2. Whether suspension of Rights and Liberty of any person under Article 21 is valid under Rule of Law?
3. Whether detenu have *locus standi* during the proclamation of emergency?

## Judgement

Supreme Court observed that under Article 359 clause (1) no person has *locus standi* to approach the High Court under Article 226 to enforce his fundamental right of personal liberty in case of detention by filing a writ of *habeas corpus*. Fundamental Rights remain suspended during the Emergency. A person cannot invoke *habeas corpus* by filing an application under Section 491 of the Code of Criminal Procedure, 1973. Supreme Court declared Section 16A (9) of Maintenance of Internal Security as constitutionally valid.

## Conclusion

Emergencies in India are imposed by the President after both the House of Parliament passed the resolution of the Proclamation of Emergency. Where the State Emergency or President's Rule is quite frequently used by the President, National Emergency had become a part of history.

The national emergency of 1975 shows the weaker or dark phase of the Judiciary. Cases like **Indira Gandhi v. Raj Narain** and **A.D.M Jabalpur v. Shiv Kant Shukla** show loophole in the judicial system. Both cases do not recognize the Fundamental Rights of citizens during emergencies. There was a need to change the mechanism and it was done in Kesavananda Bharati's case.

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