



# RAS

**Rajasthan Administrative Services**

Rajasthan Public Service Commission

**Volume - 8**

**Indian Political System**



# INDIAN POLITICAL SYSTEM

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# 1 CHAPTER

# Constituent Assembly



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

## Working of the Constituent Assembly

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



## Objective Resolution:

- Presented on Dec 13, 1946, by **JL Nehru** in the Constituent Assembly, **unanimously adopted** by the assembly **on January 22, 1947.**
- **Important provisions:**
  - **proclaim India as the Independent Sovereign Republic**
  - **India, shall be a Union** of territories of British India that join it



- **Boundaries determined by the Constituent Assembly** which shall possess **residuary powers and exercise all powers and functions** of the Government and administration implied in the Union
- **power and authority** of Independent India **derived from the people**
- shall **guarantee** to all the people of India
  - **justice**, social, economic and political;
  - **equality** of status of opportunity, and before the law;
  - freedom of thought, expression, belief, faith, worship, association and action
- **adequate safeguards** shall be provided **for minorities, backward and tribal areas and depressed and other backward classes**
- Maintain **integrity of the territory of the Republic and its sovereign rights** on land, sea and air according to justice and the law of civilized nations
- **attains its rightful and honoured place in the world** and makes its full and willing **contribution** to the promotion of **world peace and the welfare of mankind**.

### Changes after the Indian Independence Act, 1947

- **Assembly → fully sovereign body** to frame Constitution
- became the **legislative body**.
  - **responsible to frame the Constitution** and **enact ordinary laws** for the country.
    - **worked as the Constitutional body → chaired by Dr Rajendra Prasad**
    - **as a legislative body → G.V. Mavlankar** became chairman (till **Nov 26, 1949**).
- **Muslim League withdrew from the assembly**
  - **reduced the total strength** of the assembly **to 299** from 389.
  - **strength of Indian provinces** reduced **to 229** from 296
  - **princely states to 70** from 93.



### Other Functions Performed by the Assembly

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



### Committees of the Constituent Assembly



	Committee	Headed by
<b>Major Committee</b>	Union Powers Committee	J.L. Nehru
	Union Constitution Committee	J.L. Nehru
	Provincial Constitution Committee	Sardar Patel
	Drafting Committee	Dr B.R. Ambedkar
	Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Sardar Patel
	Fundamental Rights Sub-Committee	J.B. Kriplani
	Minorities Sub-Committee	H.C. Mukherjee
	North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee	Gopinath Bardoloi

	Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee	A.V. Thakkar
	North-West Frontier Tribal Areas Sub-Committee	
	Rules of Procedure Committee	Dr Rajendra Prasad
	States Committee (for Negotiation with states)	J.L. Nehru
	Steering Committee	Dr Rajendra Prasad
<b>Minor Committee</b>	Finance and Staff Committee	Dr Rajendra Prasad
	Credentials Committee	A.K. Ayyar
	House Committee	B. Pattabhi Sitaramayya
	Order of Business Committee	Dr K.M. Munshi
	Ad-hoc Committee on National Flag	Dr Rajendra Prasad
	Committee on Functions of the Constituent Assembly	G.V. Mavalankar
	Ad-hoc Committee on the SC	S. Varadachari
	Committee on Chief Commissioners' Provinces	B. Pattabhi Sitaramayya
	Expert Committee on the Financial Provisions of the Union Constitution	Nalini Ranjan Sarkar
	Linguistic Provinces Commission	S.K. Dar
	Special Committee to Examine the Draft Constitution	J.L. Nehru
	Press Gallery Committee	Usha Nath Sen
	Ad-hoc Committee on Citizenship	S. Vallabhachari

### Drafting Committee

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



### Enactment of the Constitution

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



## Criticism to the Constituent Assembly

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



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

## Important Dates - From Constituent Assembly to Constitution

First meeting of the Constituent Assembly	Objective motion introduced	Constitution adopted	Signed by the members	Constitution came into force and the Constituent Assembly ceased to exist
9 December 1946	13 December 1946	26 November 1949	24 January 1950	26 January 1950

# 2 CHAPTER

# Salient Features of the Constitution



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

Countries	Borrowed Features of Indian Constitution
Australia	<ul style="list-style-type: none"> <li>● Concurrent list</li> <li>● Freedom of trade, commerce and intercourse</li> <li>● Joint-sitting of the two Houses of Parliament</li> </ul>
Canada	<ul style="list-style-type: none"> <li>● Federation with a strong Centre</li> <li>● Vesting of residuary powers in the Centre</li> <li>● Appointment of state Governors by the Centre</li> <li>● Advisory jurisdiction of the SC</li> </ul>
Ireland	<ul style="list-style-type: none"> <li>● Directive Principles of State Policy</li> <li>● Nomination of members to Rajya Sabha</li> <li>● Method of election of the President</li> </ul>
Japan	<ul style="list-style-type: none"> <li>● Procedure Established by law</li> </ul>
USSR/Russia	<ul style="list-style-type: none"> <li>● Fundamental Duties</li> <li>● Ideal of justice (social, economic and political) in the Preamble</li> </ul>
UK	<ul style="list-style-type: none"> <li>● Parliamentary Government</li> <li>● Rule of Law</li> <li>● Legislative procedure</li> <li>● Single Citizenship</li> <li>● Cabinet system</li> <li>● Prerogative writs</li> <li>● Parliamentary privileges</li> <li>● Bicameralism</li> <li>● Procedure Established by law</li> </ul>
US	<ul style="list-style-type: none"> <li>● Fundamental Rights</li> <li>● Independence of judiciary</li> <li>● Judicial Review</li> <li>● Impeachment of the President</li> <li>● Removal of SC and HC Judges</li> <li>● Post of vice-President</li> </ul>
Germany (Weimar)	<ul style="list-style-type: none"> <li>● Suspension of Fundamental Rights during emergency</li> </ul>
South Africa	<ul style="list-style-type: none"> <li>● Procedure for Amendment in the Indian Constitution</li> <li>● Election of members of Rajya Sabha</li> </ul>
France	<ul style="list-style-type: none"> <li>● Republic</li> <li>● Ideals of liberty, equality and fraternity in the Preamble</li> </ul>

- **separate provisions for SC, ST, women, children, and backward regions.**
- **detailed list of rights, DPSPs and details of administration procedures**
- **Originally (1949), had a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules.**
- **Presently, it consists of a Preamble, 25 parts, 448 Articles, 12 Schedules, and 104 Amendments till date.**
- **Unique blend of rigidity and flexibility:**

- **Some parts can be amended by ordinary law making procedure** while certain provisions can be amended **by a majority of the total membership of that house and by a majority of not less than two-third of the members** of that house present and voting.
- Some amendments are also **required to be ratified by the legislatures of not less than one-half of the states** before being presented to the President for assent.
- **India as a sovereign, socialist, secular, democratic and republic:** India is **governed by its people through their elected representatives** based on universal adult franchise.
- **Parliamentary System of Government:** Parliament controls the functioning of the CoM
  - **executive is responsible to the legislature** and remains in power as long as it enjoys the confidence of the legislature.
    - **President** of India, who remains in office for five years, is the **nominal, titular or constitutional head (Executive)**.
    - **PM is the real executive and head of the CoM** who is collectively responsible to the lower house (Lok Sabha).
- **Single Citizenship:** single citizenship **provided by the union and recognized by all the states** across India.
- **Universal Adult Franchise:** establishes political equality in India through the method of universal adult franchise which **functions on the basis of 'one person one vote'**.
  - Every Indian who is **18 years of age or above is entitled to vote** in the elections, irrespective of caste, sex, race, religion or status.
- **Independent and Integrated Judicial System: free from the influence of the executive and the legislature.**
  - SC as the apex court below which HCs and lower courts come
- **Fundamental Rights, Fundamental Duties and DPSPs:**
  - **Fundamental Rights are not absolute** but are **subject to the limitations** defined by the constitution itself and are enforceable in the court of law.
  - **DPSPs are the guidelines** to be followed by the states regarding governance and are not enforceable in the court of law.
  - **Fundamental Duties, added by the 42nd Amendment are moral conscience** which ought to be followed by the Citizens.
- **Federation with a strong centralising tendency:** India is an **indestructible Union with destructible states** means it acquires a unitary character during the time of emergency.
- **Balancing Parliamentary supremacy with Judicial Review:** An **independent judiciary with the power of judicial review**



### Parts of Indian Constitution

Parts	Subject Matter	Articles Covered
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III	Fundamental Rights	12 to 35
IV	Directive Principles of State Policy	36 to 51
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	Chapter V - Comptroller and Auditor-General of India	148 to 151
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	Chapter V - The High Courts	214 to 232
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<b>VIII</b>	The Union Territories	239 to 242
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<b>IX-A</b>	The Municipalities	243-P to 243-ZG
<b>IX-B</b>	The Co-operative Societies	243-ZH to 243-ZT
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	Chapter I - Services Chapter II - Public Service Commissions	308 to 314 315 to 323
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	Chapter III-Language of the Supreme Court, High Courts, and so on Chapter IV-Special Directives	348 to 349 350 to 351
<b>XVIII</b>	Emergency Provisions	352 to 360
<b>XIX</b>	Miscellaneous	361 to 367
<b>XX</b>	Amendment of the Constitution	368
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## Schedules of the Indian constitution

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

Numbers	Subject Matter
<b>First Schedule</b>	1. Names of the States and their territorial jurisdiction. 2. Names of the Union Territories and their extent.
<b>Second Schedule</b>	Provisions relating to the emoluments, allowances, privileges and so on of: <ol style="list-style-type: none"> <li>1. The President of India</li> <li>2. The Governors of States</li> <li>3. The Speaker and the Deputy Speaker of the Lok Sabha</li> <li>4. The Chairman and the Deputy Chairman of the Rajya Sabha</li> <li>5. The Speaker and the Deputy Speaker of the Legislative Assembly in the states</li> <li>6. The Chairman and the Deputy Chairman of the Legislative Council in the states</li> <li>7. The Judges of the Supreme Court</li> <li>8. The Judges of the High Courts</li> <li>9. The Comptroller and Auditor-General of India</li> </ol>
<b>Third Schedule</b>	Forms of Oaths or Affirmations for: <ol style="list-style-type: none"> <li>1. The Union ministers</li> <li>2. The candidates for election to the Parliament</li> <li>3. The members of Parliament</li> <li>4. The Judges of the Supreme Court</li> <li>5. The Comptroller and Auditor-General of India</li> <li>6. The state ministers</li> <li>7. The candidates for election to the state legislature</li> <li>8. The members of the state legislature</li> <li>9. The Judges of the High Courts</li> </ol>
<b>Fourth Schedule</b>	Allocation of seats in the Rajya Sabha to the states and the union territories.
<b>Fifth Schedule</b>	Provisions relating to the administration and control of scheduled areas and scheduled tribes.
<b>Sixth Schedule</b>	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.
<b>Seventh Schedule</b>	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 100 subjects (originally 97), the state list contains 61 subjects (originally 66) and the concurrent list contains 52 subjects (originally 47).
<b>Eighth Schedule</b>	Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages. They are: Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92nd Amendment Act of 2003.
<b>Ninth Schedule</b>	Acts and Regulations (originally 13 but presently 282) 19 of the state legislatures dealing with land reforms and abolition of the zamindari system and of the. Parliament dealing with other matters. This schedule was added by the 1st Amendment (1951) to protect the laws included in it from judicial scrutiny on the ground of violation of Fundamental Rights. However, in 2007, the

	Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to Judicial Review.
<b>Tenth Schedule</b>	Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52nd Amendment Act of 1985, also known as Anti-defection Law.
<b>Eleventh Schedule</b>	Specifies the powers, authority and responsibilities of Panchayats. It has 29 matters. This schedule was added by the 73rd Amendment Act of 1992.
<b>Twelfth Schedule</b>	Specifies the powers, authority and responsibilities of Municipalities. It has 18 matters. This schedule was added by the 74th Amendment Act of 1992.



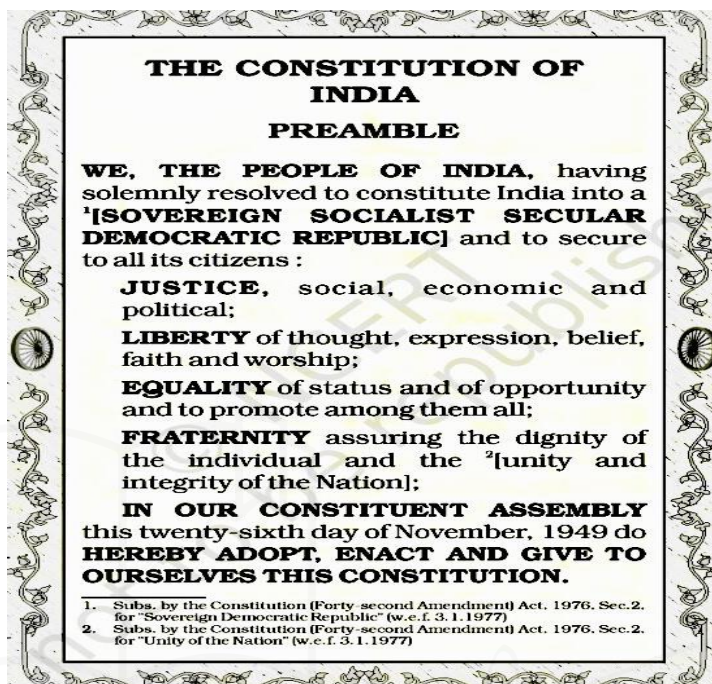
# 3 CHAPTER

## Preamble



### Introduction or preface to the Constitution

- Provides guidelines for the Constitution
- embodies basic philosophy and fundamental values as basis for the Constitution
- Reflects dreams and aspirations of founding fathers of the Constitution.
- enacted after the rest of the Constitution was already enacted.
- neither a source of power to the legislature nor a prohibition
- non justiciable not enforceable in Courts of law.
- can be amended without altering the basic structure.



### Ingredients of the Preamble

- Preamble makes **people of India, the ultimate authority**
- declares India as **sovereign, socialist, secular democratic and republican polity.**
- **Objectives of the Constitution: justice, liberty, equality and fraternity**
- **Date of adoption of the Constitution: It stipulates November 26, 1949 as the date.**

### Key Terms related to Preamble

- **Sovereignty: absolute Independence** that is a Government which is **not controlled by any other power**: internal or external. A country cannot have its own Constitution without being sovereign. India is a sovereign country. It is free from any external control.
- **Socialist: not part of the original Constitution.**
  - Added by **42nd Amendment act**
  - used in the context of economic planning.
  - commitment to attain ideals like **removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work.**
- **Secularism: added by 42nd Constitutional Amendment Act 1976.**
  - India is **neither religious nor irreligious nor anti-religious.**
  - **no state religion-** the state **does not support any particular religion**
- **Democratic Republic: Government is elected by the people and is responsible and accountable to the people.**
  - **democratic provisions:** Universal adult franchise, elections, Fundamental Rights and responsible Government.
  - **Republic:** the **elected head** of the state (President □ indirectly elected) not a hereditary ruler as Britain.
- **Justice:** to give people what they are entitled to in terms of basic rights to food, clothing, housing, participation in decision making and living with dignity as human beings.
  - taken from the **Russian Revolution (1917)**
  - three **dimensions of Justice-** social, economic and political.



- **Social justice:** equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on.
- **Economic justice:** non-discrimination on economic factors.

**Social justice + economic justice = 'distributive justice'**

- **Political justice:** all citizens should have equal political rights, equal access to all political offices and equal voice in the Government.
- **Liberty:** of thought and expression; **absence of restraints** on the activities of individuals, and at the same time, **providing opportunities** for the development of individual personalities.
  - taken from the **French Revolution (1789–1799)**.
- **Equality: absence of special privileges** to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.
  - three **dimensions of equality—civic, political and economic**.
- **Fraternity:** sense of brotherhood; promotes the feeling of fraternity by a system of **single citizenship and by article 51A** (Fundamental Duties).

### Preamble as a part of the Constitution

Berubari Union v. Unknown Case, 1960	Kesavananda Bharati v. State of Kerala Case, 1973	Union Government Vs LIC of India Case, 1995
<ul style="list-style-type: none"> <li>● SC stated that 'Preamble is the key to open the mind of the makers' but it <b>cannot be considered as part of the Constitution</b>. Therefore it is <b>not enforceable</b> in a Court of law.</li> </ul>	<ul style="list-style-type: none"> <li>● SC held that "Preamble of the Constitution will now be <b>considered as part of the Constitution</b>. The Preamble is <b>not the supreme power or source</b> of any restriction or prohibition <b>but it plays an important role in the interpretation</b> of statutes and provisions of the Constitution."</li> </ul>	<ul style="list-style-type: none"> <li>● SC held that <b>Preamble is the integral part of the Constitution</b> but is <b>not directly enforceable</b> in a Court of justice in India.</li> </ul>

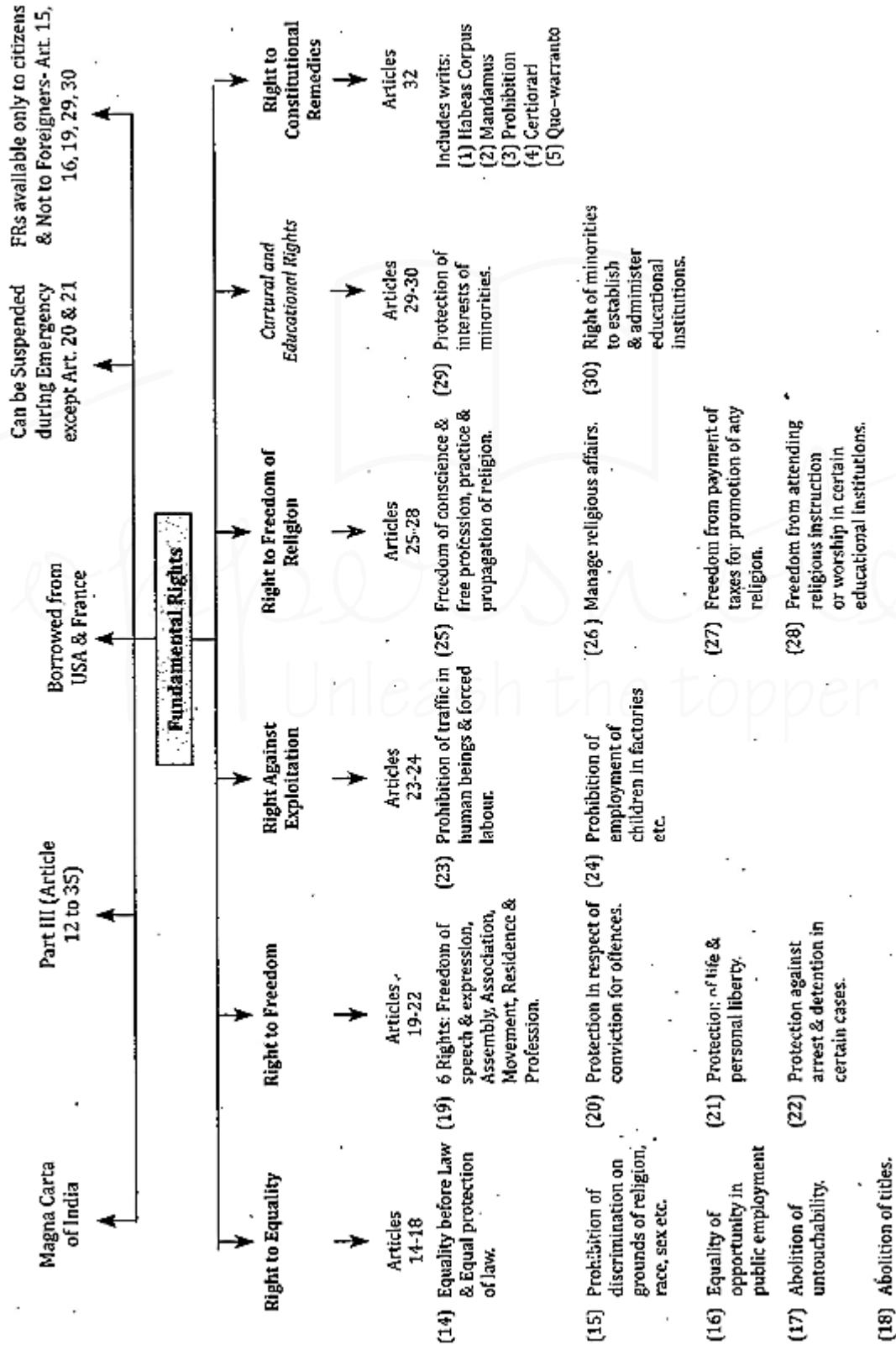


# 4 CHAPTER

# Fundamental Rights



## Fundamental Rights





## Constitutional Provisions

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



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

## Origin of Fundamental Rights

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



### Types of Rights

#### Natural Rights:

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

#### Human Rights:

- **Same as Natural Rights** as they are universal and inherent in human Nature.
- **Necessary for a dignified human life** and can be enjoyed regardless of social, political, or other factors.
- **Retained by a person** since he or she is a human being.
- **Universal Declaration of Human Rights** was adopted by the UN in 1948.

#### Civil Rights:

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

#### Fundamental Rights:

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

## Features of Fundamental Rights

- **Integral Part of Constitution: Cannot be taken away** by an ordinary law
- **Comprehensive and Detailed:** Are very elaborate, **each article described with its scope and limitation**
- **Lack of Social and Economic Rights: Guarantees only civil rights**, Rights like Right to work, right to health are missing.
- **Rights are qualified: Not absolute except the right against untouchability**, they are qualified and with limitations and reasonable restrictions.
- **Enforceability of rights: Justiciable** rights i.e. means if any of these rights are violated, **an individual has the right to move to the SC**.
- **Fundamental rights are amendable: Not sacrosanct or permanent**, they can be amended by the parliament.



- **Provision for the suspension of Rights:** Suspended **during an emergency.**
- **Constitutional Superiority of Fundamental rights:** Superior **than the ordinary laws and DPSP.**
- **Special Rights For the minorities:** Guarantee some special rights to minorities of various kinds.
- **No natural rights: constitution does not recognize natural rights** or unenumerated rights.
- **Right to Property not a fundamental right:** Due to **hindrances posed by the right to property in the way of implementing socio- economic reforms** it was deleted from fundamental rights.

### Article 12 : Definition of State

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

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

- The term 'law' includes:
  - **Permanent laws** enacted by the Parliament or the state legislatures;
  - **Temporary laws** like **ordinances** issued by the president or the state governors;
  - **Statutory instruments** in the nature of delegated legislation (executive legislation) like **order, bye-law, rule, regulation or notification;**
  - **Non-legislative sources of law**, that is, custom or usage having the force of law
- Not just a law, but **any of the above can be challenged in court as infringing on a fundamental right**, and therefore **declared void.**
- Article 13 specifies that a **constitutional amendment is not a law** and hence **cannot be overturned.**
  - **Kesavananda Bharati case (1973)** - SC concluded that a **constitutional amendment can be challenged on the grounds**
  - If it **violates a fundamental right that is part of the Constitution's 'basic structure,'** and so can be declared unconstitutional.

### Six Fundamental Rights

#### Right to Equality (Articles 14-18)

##### Article 14 : Equality Before law & Equal protection of laws

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



##### Equality before law

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



##### **Rule of Law**

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



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

= **The Rule of Law**

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

### **Equal Protection of the laws**

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

### **Exceptions to rule of equality**

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

### **Article 15 : Prohibition on discrimination on certain grounds.**

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

- **Discrimination on other grounds is not prohibited.**

**Article 15(2) : No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to**
- **Access to shops, public restaurants, hotels and places of public entertainment; or**
- **use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds.**

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

### **Exceptions to rule of Non Discrimination**

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

### **SOCIALLY AND EDUCATIONALLY BACKWARD CLASSES**

- **not defined in the Constitution.**
- **"Backward Classes" - Article 15(4), 16(4) and 29(2).**
- **Constitution empowers the State to give these classes of citizens special concessions in education, employment, etc. but it does not point out precisely who is backward.**
- Responsibility to define the **term/criteria** is to the **commissions established under Art. 338 and 340**, as circumstances contributing to backwardness vary from State to State.