

INDIAN CONSTITUTION

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Lecture Notes

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Unit 1

Constitution Law

Constitution law is a body of law which defines the role, powers, and structure of different entities within a state, namely, the executive, the parliament or legislature, and the judiciary; as well as the basic rights of citizens and, in federal countries such as the United States and Canada, the relationship between the central government and state, provincial, or territorial governments.

Not all nation states have codified constitutions, though all such states have a jus commune, or law of the land, that may consist of a variety of imperative and consensual rules. These may include customary law, conventions, statutory law, judge-made law, or international rules and norms. Constitutional law deals with the fundamental principles by which the government exercises its authority. In some instances, these principles grant specific powers to the government, such as the power to tax and spend for the welfare of the population. Other times, constitutional principles act to place limits on what the government can do, such as prohibiting the arrest of an individual without sufficient cause.

In most nations, such as the United States, India, and Singapore, constitutional law is based on the text of a document ratified at the time the nation came into being. Other constitutions, notably that of the United Kingdom, rely heavily on unwritten rules known as constitutional conventions; their status within constitutional law varies, and the terms of conventions are in some cases strongly contested.

What is Constitutionalism?

The concept of constitutionalism is a mechanism that provides legitimacy to a democratic government. It cannot and should not be confused with the legality of the acts of the officials in a government setup. Constitutionalism is far more important than having a written Constitution. With some exceptions most of the countries have Constitutions but it in no way means that they practice constitutionalism. Some of the basic principles developed over time **that embody the concept of constitutionalism are separation of powers, judicial control and accountable government.**

Principles of Constitutionalism

Constitutionalism is an amalgamation of the following underlying principles:

1. Separation of Powers

Separation of powers divides the mechanism of governance into three branches i.e., Legislature, Executive and the Judiciary. This not only prevents the monopolization of power, but also creates a system of checks and balances. As this division of powers is in the Constitution itself, this becomes an effective tool for ensuring Constitutionalism.

2. Responsible and Accountable Government

In a democratic setup, the government is elected so that it can serve the people who help elect it. It is in this sense that the electors have a right to demand accountability and answers from their government. Therefore, when the government fails the expectations of the electorate, the authorization to govern is revoked by voting them out.

3. Popular Sovereignty

The concept of popular sovereignty lays down that the government derives its legitimacy from the people. No corporate body, no individual may exercise any authority that does not expressly emanate from it. Even though there is a certain sovereign entity that is empowered to govern, ultimate sovereignty resides in the nation. The power of such a sovereign entity emanates from the public.

4. Rule of Law

The presence of rule of law means that the government does not belong to men but to the laws. Dicey lays down three essential components of Rule of Law:

- Nobody is to be punished except for a specific breach of law that is established in an ordinary legal manner before ordinary courts of law.
- No one is above the law.
- Courts play a vital role in protecting the rights and freedoms of an individual.

5. Independent Judiciary

The independence of the Judiciary is the essence of any liberal democracy and the foundation of a free society. The Judiciary is the upholder of Rule of law and if its independence is taken away, it puts the entire rule of law in jeopardy. The Constitution also envisages the separation of the judiciary from the Executive under Article 50.

6. Individual Rights

The rights of the individual shall be at the highest pedestal for constitutionalism to thrive. The constitutional setup in India gives these rights the importance that they deserve by engraving them in Part III of the Constitution. These individual rights have not only been protected by the courts but have also been interpreted in a manner where their effect and implementation has broadened. The enforcement of these rights is ensured by the Constitutional Courts i.e. the Supreme Court and the High Courts.

7.Civilian control of the military

Apart from these features, constitutionalism envisages that the control of the military should be in the hands of a civilian government so that the military does not interfere in the democratic decision making or attempt a military coup.

8.Police Accountability

Constitutionalism also envisages that police while performing its duties shall uphold the rights, freedoms and dignity of the individuals, the same can be ensured by bringing the police under the control of laws and courts.

Historical perspective of the Indian Constitution

- The history of the Constitution of India is very insightful as it explains exactly how it came into being. It also explains why India chose the Parliamentary form of democracy in its modern form.
- The British came to India in the 17th century initially for trading only. Eventually, after slowly gaining more power, they attained the rights to collect revenue and govern themselves. In order to do this, they enacted various laws, rules and regulations.
- According to the Charter Act of 1833, the Governor General of Bengal became the Governor General of India. It also created a Central Legislature, which, in a way, made the British supreme rulers of India.
- The rule of the Company itself finally ended with the Government of India Act in 1858. As a result, the British Crown became ruler of India and administered the country through its government.
- The Indian Councils Acts of 1861, 1892 and 1909 started giving representation to Indians in the Viceroy's councils. They also restored legislative powers back to some provinces. In other words, they adopted decentralization of powers between the Centre and the provinces.
- There are various layers in the background of the Indian Constitution:
 1. Regulating Act 1773
 2. Pitt's India Act 1784
 3. Charter Act of 1813
 4. Charter Act of 1833

5. Charter Act of 1853
6. Government of India Act 1858
7. Indian Councils Act 1861
8. India Councils Act 1892
9. Morley-Minto Reforms 1909
10. Montague-Chelmsford Reforms 1919
11. Government of India Act 1935
12. Indian Independence Act 1947

These acts were in some way instrumental for the development of the Indian Constitution.

Regulating Act 1773

- First time the British Parliament resorted to regulating the affairs of the East India Company.
- The Governor of Bengal was made the Governor-General of Bengal (Warren Hastings).
- An Executive Council of the Governor-General was created with 4 members.
- Centralised the administration with the Presidencies of Madras and Bombay being made subordinate to the Bengal Presidency.
- Supreme Court was established at Calcutta as the Apex Court in 1774.
- Prohibited company officials from engaging in private trade and from accepting gifts from Indians.

Pitt's India Act 1784

- Commercial and political functions of the company separated. The Court of Directors managed the commercial activities while the Board of Control managed political affairs.
- The company territories in India were called 'British possession in India'.
- Governor's Councils were set up in Madras and Bombay as well.

Charter Act 1813

- This act ended the East India Company's monopoly over trade with India except in tea and opium. Trade with India was open to all British subjects.

Charter Act 1833

- Governor-General of Bengal was designated the Governor-General of India (Lord William Bentinck).
- The legislative powers of the Bombay and Madras Presidencies were removed.
- This act ended the commercial activities of the company and it was transformed into an administrative body.

Charter Act 1853

- The legislative and executive powers of the Governor-General's Council were separated.
- A Central Legislative Council was created of 6 members out of which 4 were appointed by the provisional governments of Madras, Bombay, Agra and Bengal.
- The Indian civil service was opened as a means to recruit officers for administration through open competition.

Government of India Act 1858

- After the 1857 revolt, the rule of the company was ended and the British possessions in India came directly under the British Crown.
- The office of the Secretary of State for India was created. He was assisted by a 15-member Council of India.
- The Indian administration was under his authority and the Viceroy was his agent. The Governor-General was designated the Viceroy as well (Lord Canning).
- The Court of Directors and the Board of Control were abolished.

Indian Councils Act 1861

- Indians were given representation in the Viceroy's Councils. 3 Indians entered the Legislative Council.
- Provisions were made for the entry of Indians in the Viceroy's Executive council also as non-official members.
- Portfolio system was recognised.
- Decentralisation initiated with the presidencies of Madras and Bombay being restored their legislative powers.
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Indian Councils Act 1892

- Indirect elections (nominations) were introduced.

- Legislative Councils expanded. Gave more functions to the legislative councils such as the discussion of budget and questioning the executive.

Indian Councils Act 1909 (Morley-Minto Reforms)

- Direct elections to the legislative councils were introduced for the first time.
- Central Legislative Council became the Imperial Legislative Council.
- The number of members of the legislative council was increased from 16 to 60.
- The concept of the separate communal electorate was accepted.
- For the first time, an Indian was made a member of the Viceroy's Executive Council. (Satyendra Prasad Sinha – Law Member).

Government of India Act 1919 (Montague-Chelmsford Reforms)

- Central and provincial subjects were separated.
- Diarchy was introduced in the provincial governments with executive councillors being in charge of the reserved list and the ministers in charge of the transferred list of subjects.
- A bicameral legislature was introduced for the first time at the centre. (Legislative council and legislative assembly later to become Rajya Sabha and Lok Sabha respectively).
- It mandated 3 members of the Viceroy's executive council to be Indians.
- This act provided for the first time, the establishment of a public service commission in India.

Government of India Act 1935

- An all-India Federation was proposed which would consist of British India and the princely states. This never materialised though.
- Subjects were divided between the centre and the provinces. Centre was in charge of the Federal List, provinces in charge of the Provincial List and there was a Concurrent List which both catered to.
- Diarchy was abolished at the provincial level and introduced at the centre.
- More autonomy was accorded to the provinces and in 6 out of 11 provinces, the bicameral legislature was introduced.

- A federal court was established and the Indian Council abolished.
- Burma and Aden were severed off from India.
- This act provided for the establishment of the RBI.
- This Act continued until it was replaced by the new Indian Constitution.

Indian Independence Act 1947

- India was declared independent and sovereign.
- The Viceroy and the Governors were made constitutional (nominal) heads.
- Set up responsible governments at the centre and the provinces.
- Assigned both legislative and executive powers to the Constituent Assembly of India.

This Act marks the final step in the departure of the British from India. India became a truly independent and sovereign state after this Act. The Act established governments at the central and provincial levels. It also laid down the foundation of the Constituent Assembly.

Constituent Assembly

Members of the provisional assemblies indirectly elected members of the Constituent Assembly. This assembly served as the first 'Parliament' of independent India and first met on 9 December 1946 in Delhi. After Independence, the Assembly elected Dr Rajendra Prasad as its Chairman and began drafting the Constitution.

Dr Ambedkar became the head of the Drafting Committee. This is why he is called the Father of the Constitution. After more than two years of deliberations, the Assembly finally approved the Constitution on 26 November 1949. This is why we celebrate this day as Constitution Day today.

The Assembly finally adopted the Constitution on 26 January 1950. India formally became a sovereign republic that day. This is why we celebrate 26 January as India's Republic Day.

Timeline of formation of the Constitution of India

- **6 December 1946:** Formation of the Constitution Assembly (in accordance with French practice).
- **9 December 1946:** The first meeting was held in the constitution hall (now the Central Hall of Parliament House). The 1st person to address was J. B. Kripalani, Sachchidananda Sinha became temporary president. (Demanding a separate state, the Muslim League boycotted the meeting.)

- **11 December 1946:** The Assembly appointed Rajendra Prasad as its president, H. C. Mukherjee as its vice-chairman and B. N. Rau as constitutional legal adviser. (There were initially 389 members in total, which declined to 299 after partition. Out of the 389 members, 292 were from government provinces, 4 from chief commissioner provinces and 93 from princely states.)
- **13 December 1946:** An 'Objective Resolution' was presented by Jawaharlal Nehru, laying down the underlying principles of the constitution. This later became the Preamble of the Constitution.
- **22 January 1947:** Objective resolution unanimously adopted.
- **22 July 1947:** National flag adopted.
- **15 August 1947:** Achieved independence. India split into the Dominion of India and the Dominion of Pakistan.
- **29 August 1947:** Drafting Committee appointed with B. R. Ambedkar as its Chairman. The other 6 members of committee were Munshi, Muhammed Sadulla, Alladi Krishnaswamy Iyer, N. Gopalaswami Ayyangar, Khaitan and Mitter.
- **16 July 1948:** Along with Harendra Coomar Mookerjee, V. T. Krishnamachari was also elected as second vice-president of Constituent Assembly.
- **26 November 1949:** The Constitution of India was passed and adopted by the assembly.
- **24 January 1950:** Last meeting of Constituent Assembly. The Constitution was signed and accepted. (with 395 Articles, 8 Schedules, 22 Parts)
- **26 January 1950:** The Constitution came into force. (The process took 2 years, 11 months and 18 days - at a total expenditure of ₹6.4 million to finish.)

G. V. Mavalankar was the first Speaker of the Lok Sabha (the lower house of Parliament) after India turned into a republic.

Membership

B. R. Ambedkar, Sanjay Phakey, Jawaharlal Nehru, C. Rajagopalachari, Rajendra Prasad, Vallabhbhai Patel, Kanaiyalal Maneklal Munshi, Ganesh Vasudev Mavalankar, Sandipkumar Patel, Abul Kalam Azad, Shyama Prasad Mukherjee, Nalini Ranjan Ghosh, and Balwantrao Mehta were key figures in the assembly, which had over 30 representatives of the scheduled classes.

Frank Anthony represented the Anglo-Indian community and the Parsis were represented by H. P. Modi. Harendra Coomar Mookerjee, a Christian assembly vice-president, chaired the minorities committee and represented non-Anglo-Indian Christians. Ari Bahadur Gurung represented the Gorkha community. Judges, such as Alladi Krishnaswamy Iyer, Benegal Narsing Rau, K. M. Munshi and Ganesh

Mavlankar were members of the assembly. Female members included Sarojini Naidu, Hansa Mehta, Durgabai Deshmukh, Amrit Kaur and Vijaya Lakshmi Pandit.

The first, two-day president of the assembly was Sachchidananda Sinha; Rajendra Prasad was later elected president. It met for the first time on 9 December 1946 .

Drafting

Sir Benegal Narsing Rau, a civil servant who became the first Indian judge in the International Court of Justice and was president of the United Nations Security Council, was appointed as the assembly's constitutional adviser in 1946. Responsible for the constitution's general structure, Rau prepared its initial draft in February 1948. The draft of B.N. Rau consisted of 243 articles and 13 schedules which came to 395 articles and 8 schedules after discussions, debates and amendments

At 14 August 1947 meeting of the assembly, committees were proposed. Rau's draft was considered, debated and amended by the eight-person drafting committee, which was appointed on 29 August 1947 with B. R. Ambedkar as chair. A revised draft constitution was prepared by the committee and submitted to the assembly on 4 November 1947. Dr B. R. Ambedkar in his concluding speech in constituent assembly on 25 November 1949 stated that:

The credit that is given to me does not really belong to me. It belongs partly to Sir B.N. Rau the Constitutional Advisor to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of Drafting Committee.

While deliberating the revised draft constitution, the assembly moved, discussed and disposed off 2,473 amendments out of a total of 7,635.

Before adopting the constitution, the assembly held eleven sessions in 165 days. On 26 November 1949, it adopted the constitution, which was signed by 284 members.

The day is celebrated as National Law Day, or Constitution Day. The day was chosen to spread the importance of the constitution and to spread thoughts and ideas of Ambedkar.



[Jawaharlal Nehru](#) signing the constitution




The assembly's final session convened on 24 January 1950. Each member signed two copies of the constitution, one in Hindi and the other in English. The original constitution is hand-written, with each page decorated by artists from Shantiniketan including Beohar Rammanohar Sinha and Nandalal Bose. Its calligrapher was Prem Behari Narain Raizada. The constitution was published in Dehradun and photolithographed by the Survey of India. Production of the original constitution took nearly five years.

Two days later, on 26 January 1950, it became the law of India. The estimated cost of the Constituent Assembly was ₹6.3 crore (million).¹ The constitution has had more than 100 amendments since it was enacted.

Influence of other constitutions

Government	Influence
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 <u>United Kingdom</u>	<ul style="list-style-type: none"> • <u>Parliamentary government</u> • Concept of single citizenship • <u>Rule of law</u> • The <u>legislative speaker</u> and their role • Legislative procedure
 <u>United States</u>	<ul style="list-style-type: none"> • <u>Bill of Rights</u> • <u>Federal structure of government</u> • Electoral College • Independent judiciary and separation of powers • Judicial review • President as commander-in-chief of the armed forces • Equal protection under law
 <u>Ireland</u>	<p><u>Directive principles of state policy</u></p>
 <u>Australia</u>	<ul style="list-style-type: none"> • Freedom of trade between states • National legislative power to implement treaties, even on matters outside normal federal jurisdiction • <u>Concurrent List</u> • Preamble terminology
 <u>France</u>	<p>Notions of <i>liberté, égalité, fraternité</i></p>
 <u>Canada</u>	<ul style="list-style-type: none"> • Quasi-federal government—a federal system with a strong central government • Distribution of powers between the central and state governments • Residual powers, retained by the central government¹
 <u>Soviet Union</u>	<ul style="list-style-type: none"> • Fundamental Duties under article 51-A • Mandated planning commission to oversee economic development

 <u>Weimar Republic</u>	The emergency provision under article 356
 <u>South Africa</u>	Amending the constitution
 <u>Japan</u>	Due process

Structure

The Indian constitution is the world's longest for a sovereign nation. At its enactment, it had 395 articles in 22 parts and 8 schedules. At about 145,000 words, it is the second-longest active constitution—after the Constitution of Alabama—in the world

The constitution has a preamble and 470 articles,¹ which are grouped into 25 parts With 12 schedules and five appendices it has been amended 104 times; the latest amendment became effective on 14 January 2019.

Salient Features of Indian Constitution

1. **A Lengthy Written Constitution:**
2. A written constitution is framed at a given time and comes into force on a fixed date as a document. Our constitution was framed in 2 years, 11 months and 18 days, it was adopted on 26th November, 1949.
3. **Establishment of a Sovereign, Socialist, Secular, Democratic Republic**
 - i. SOVEREIGNTY-
 - ii. SECULARISM
 - iii. DEMOCRACY
 - iv. SOCIALIST
 - v. REPUBLIC
 - vi. JUSTICE
 - vii. LIBERTY AND FRATERNITY



5. The Preamble to Constitution of India.

The first words of the Preamble - "**We, the people**" - signifies that power is ultimately vested in the hands of the People of India. So far the Preamble has been amended only once in 1976 by 42nd amendment (change) which inserted the words Socialism, Secularism and Integrity. **A brief description of these concepts are as follows** (in the order they come in Preamble)-

1. **Sovereign**- It means free to follow internal and external Policies.
2. **Secular**- It means no particular Religion is preferred.
3. **Socialist**- It means no concentration of Power and Money.
4. **Democratic**- It means rule by elected representative of the People of India.
5. **Republic**- It means no room for hereditary ruler or monarch.

4. **Rigid and Flexible:** The Indian Constitution is a unique example of combination of rigidity and flexibility. A constitution is called rigid or flexible on the basis of its amending procedure. In a rigid constitution, amendment of the constitution is not easy like the constitutions of USA, Switzerland and Australia are rigid constitutions. Whereas, the British Constitution is considered flexible because its amendment procedure is easy and simple. The Constitution of India has three categories of amendments ranging from simple to most difficult procedure depending on the nature of the amendment.
5. **Federal but Unitary:** India has a federal structure. In a federation there are two distinct levels of governments. There is one government for the whole country which is called the Union or Central Government and there is a government for each Unit or State. The USA is a federation whereas the UK (Britain) has a unitary form of government where there is only one government for the whole country and the power is centralised. The *Constitution of India does not use the term 'federal state'* but calls India a 'Union of States'. There is a proper distribution of powers between the Union/Central Government and the State Governments in form of Union List, State List and the Concurrent List.
6. **Quasi Federal:** It means a federal set up where despite having two clear sets of government – central and the states, more powers are given to the Central Government, supremacy of the judiciary is an essential feature of a federation so that the constitution could be interpreted impartially.
7. **Parliamentary Democracy:** India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the latter. In this form of democracy, the Head of the State is nominal so in India, the President is the Head of the State. Constitutionally the President has numerous powers but in practice the Council of Ministers headed by the PM, exercises these powers. The President has to act on the advice of the Prime Minister and the Council of Ministers.
8. **Fundamental Rights and Fundamental Duties:** The Constitution of India guarantees Fundamental rights. The Constitution provides for six Fundamental Rights which are justiciable and hence are protected by the judiciary. Fundamental Duties were added to

our Constitution by the 42nd Amendment. It lays down a list of ten Fundamental Duties for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform.

9. **Directive Principles of State Policy:** These have been adopted from the Irish Constitution, included in our Constitution to ensure social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.
10. **Single Integrated Judicial System:** India has a single integrated judicial system. The Supreme Court is the apex court of the judicial system. Below it are the High Courts which control and supervise the lower courts. The Indian judiciary is like a pyramid with the lower courts as the base, High Courts in the middle and the Supreme Court at the top.
11. **Independence of Judiciary:** Indian judiciary is independent and impartial. It is free from the influence of the executive as well as the legislature. Its judges are appointed on the basis of their qualifications and cannot be removed easily neither can their terms of office be altered to their disadvantage.
12. **Single Citizenship:** Usually in a federal state the citizens enjoys double citizenship like in the USA. But in India there is only single citizenship which means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Rajasthan, Uttaranchal or Chattisgarh to which he/she may belong to. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of the nation.
13. **Universal Adult Franchise:** Indian democracy functions on the basis of 'one person one vote'. The Indian Constitution establishes political equality in India through the method of universal adult franchise. Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, gender, race, religion or status.
14. **Independent Agencies:** The Constitution provides for some independent Agencies to perform functions allotted to them. The important agencies like the Election Commission, Union and State Public Service Commission.
15. **Emergency Provisions:** The Constitution makers expected that there could be situations when the government could not be run in usual manner due to difficult circumstances. To cope with such situations, the Constitution elaborated on emergency provisions. There are three types of emergency; A) emergency caused by war, external aggression or armed rebellion; B) emergency arising out of the failure of constitutional machinery in states; and C) financial emergency.

Unit 2

Scheme of Fundamental Rights

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

Articles 12-35 of Indian Constitution deal with Fundamental Rights



What are the 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 of Indian Constitution 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 removed 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.

2. Right to Freedom (Articles 19 – 22)

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees 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.

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.

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.

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.

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.

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 Supreme Court 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)
 - Speech and expression
 - Association
 - Assembly
 - Movement
 - Residence
 - Profession
4. Protection of the culture, language and script of minorities (Article 29).
5. 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.

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

Question And answers

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 12-+

Initially, the constitution of India had 7 Fundamental Rights that are borrowed from the Constitution of the USA. But later on, Right to property was abolished and now there are just 6 Fundamental Rights in force. In this article, we have explained meaning of all the Fundamental Rights in detail.

1. Right to Equality (Art. 14-18)

Article 14 represents the idea of equality, which states that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The equality before the law is guaranteed to all without regard to race, colour, or nationality.

(Article 15): Non-discrimination on grounds of religion, race, caste, sex, or place of birth

Article 15 states that the state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth, or any of them and would not be subject to any disability, liability, restriction, or condition. Nothing in this article shall prevent the state from making any special provisions for women and children.

(Article 16): Equality of opportunity in public employment

Article 16 states that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence, or any of them, be ineligible for or discriminated against in respect of any employment or office under the state.

It empowers Parliament to make a law prescribing any requirement as to residence within that state or prior to employment or appointment in that state or Union Territory. It empowers the state to make special provisions for the reservation of appointments or posts in favour of any backward classes of citizens.

(Article 17): Abolition of Untouchability

Article 17 abolishes Untouchability and forbids its practice in any form. Untouchability refers to a social practice that looks down upon certain oppressed classes solely on account of their birth and makes any discrimination against them on this ground.

(Article 18): Abolition of Titles

Article 18 abolishes all titles and prohibits the state to confer titles on anybody whether a citizen or a non-citizen. However, military and academic distinctions are exempted from the prohibition.

2. (Article 19): Right to Freedom

The Right to Freedom guarantees to the citizens of India six Fundamental Freedoms: 1) Freedom of Speech and Expression, 2) Freedom of Assembly, 3) Freedom to form associations, 4) Freedom of Movement, 5) Freedom to reside and to settle, and 6) Freedom of profession, occupation, trade, or business.

(Article 20): Protection in respect of Conviction for Offences

Article 20 provides protection against arbitrary and excessive punishment for any person who commits an offense. This article has taken care to safeguard the rights of persons accused of crimes. Moreover, this article cannot be suspended even during an emergency in operation under Article 359.

(Article 21): Protection of Life and Personal Liberty

Article 21 states no person shall be deprived of his life or personal liberty except according to the procedure established by law. However, Article 21 puts a limit on the power of the State given under Article 246, read with the legislative lists. Thus, Article 21 does not recognise the Right to Life and Personal Liberty as an absolute right but limits the scope of the right itself.

(Article 22): Safeguards against Arbitrary Arrest and Detention

Firstly, Article 22 guarantees the right of every person who is arrested to be informed of the cause of his arrest; secondly, his right to consult and to be defended by a lawyer of his choice. Thirdly, every person arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours and shall be kept in continued custody only with his authority.

3. (Articles 23-24): Right against Exploitation

Article 23 prohibits traffic in human beings, women, children, beggars or other forced labour militate against human dignity. **Article 24 prohibits employing children below the age of 14 years in any hazardous profession.** This right followed the human rights concepts and United Nations norms.

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

Articles 25 and 26 embody the principles of religious tolerance and serve to emphasize the secular nature of Indian democracy, i.e. equal respect to all religions. Article 25 offers freedom of Conscience and Free Profession, Practice and Propagation of Religion whereas Article 26 helps to manage religious affairs, which is subject to public order, morality and health, every religious denomination or any section.

Article 27 provides freedom not to pay taxes for religious expenses on the promotion or maintenance of any particular religion. Article 28 prohibits religious instructions in educational institutions wholly maintained by the state.

5. (Articles 29-30): Rights to minorities (cultural and educational rights)

Article 29 provides protection of the interests of minorities. A minority community can effectively conserve its language, script, or culture by and through an educational institution. Article 30 states the rights of minorities whether based on religion or language to establish and administer educational institutions.

The 44th Amendment has abolished the Right to Property as a Fundamental Right guaranteed by Art. 19 (f) and Art. 31 of the Constitution. It is now only a Legal Right under article 300-A, gives protection against executive action but not against legislative action

6. (Articles 32-35): Right to Constitutional Remedies

Rights, in order to be meaningful, must be enforceable and backed by remedies in case of violation. This article guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights and deals with the Supreme Court's power to issue order or writs for the enforcement of Fundamental Rights.

Article 33 empowers Parliament to modify the application of Fundamental Rights to the armed forces or forces charged with the maintenance of public order. On the other hand, Article 35 lays down that the power to make laws to give effect to certain specified Fundamental Rights shall vest only with the Parliament and not with State Legislatures.

Therefore, Fundamental Rights play a significant role because they are most essential for the attainment of the full intellectual, moral, and spiritual status of an individual. Therefore, the objective behind the inclusion of Fundamental Rights in the Constitution was to establish a government of Law to preserve individual liberty, building an equitable society, and establish a welfare state.

Fundamental Duties in India - Article 51A

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.

FUNDAMENTAL DUTIES

To abide by the Constitution and respect its ideals, the institutions, the national flag and the national anthem



Playing of the national anthem before/after a movie

To cherish and follow the noble ideals which inspired our national struggle for freedom



Nehru-bashing. Operation BlueStar. Anna Hazare

To defend the country and render national service when called upon to do so



1962 war - asked volunteers for policemen

To promote harmony & spirit of brotherhood amongst all the people; to renounce practices derogatory to women



MNS doesn't want North Indians in Maharashtra

To value and preserve the rich heritage of our composite culture



Taj Mahal Red Fort

To uphold and protect the sovereignty, unity, and integrity of India



Triple Talag Ram Mandir

To protect, improve & have compassion towards national environment, including forests, lakes, rivers and wildlife



Aarey Ganga Tigress Avni

To develop scientific temper, humanism, and the spirit of inquiry and reform



Mission to Mars RTI

To safeguard public property and to give up violence



Mob fury. Shiv Sena burns down public property - made to pay

To strive towards excellence in all spheres so that the nation constantly rises to higher levels of endeavour



Make in India Skill India

Parliament passed a Constitution Act, 1976 (42nd Amendment) that inserted 10 Fundamental Duties.

Later, a 11th Fundamental Duty was added by the Constitution Act, 2002 (86th Amendment)

Parent/guardian to provide opportunities for education to the child between the age of 6-14 years



RTE Anti Child labour Scholarships

Prof. Freddy Singaraj

Fundamental Duties

Introduction to 11 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 .

The list of 11 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 Indian Constitution 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. This duty was added by the 86th Constitutional Amendment Act, 2002
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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

Legal Status Of Fundamental Duties

1. The 42nd Amendment Act, 1976 added a Chapter IV-A which consist of only one Article 51-A which dealt with a Code of Ten Fundamental Duties for citizens. Fundamental duties are intended to serve as a constant reminder to every citizen that while the constitution specifically conferred on them certain Fundamental Rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour because rights and duties are co-relative.
2. The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India.
3. The Fundamental Duties are however, not legally enforceable, i.e. without any legal sanction in case of their violation or non-compliance.
4. The Fundamental Duties are intended to serve as a constant reminder to every citizen that while the constitution specially conferred upon him certain Fundamental Rights, the citizens are also required to observe certain basic norms of democratic conducts and

behaviour.

Source of Fundamental Duties

1. Nowadays we can clearly see that people will start protesting and how often it becomes violent. There are many instances where any protest became violent and people start vandalizing public property and start disrespecting the government. Here citizens go beyond the line and often forget their moral duty towards the nation. There was a similar condition in our country during the National Emergency of 1976 where the then ruling party of our country i.e. Indian National Congress formed the Sardar Swaran Singh Committee.
2. Many countries in this world have the fundamental duty mentioned in their constitution

For example, Articles 43-45 of the Democratic Republic of Vietnam talks about the duties of citizens towards the nation. Similarly, Article 194 of The Netherlands also mentions about the same. Japan has also mentioned the fundamental duty of the residents of the country. The idea of Fundamental Duties which has been mentioned in our constitution is basically taken from the constitution of Russia(then USSR). These fundamental duties are mentioned in Chapter 10 of the Constitution of the USSR. The concept of Fundamental Duties have also been discussed in the Universal Declaration of Human Rights and also in the International Covenant on Civil and Political Rights.

Need for Fundamental Duties

1. It is important to understand that no democratic system could ever succeed if the citizens are not willing to participate actively by discharging their duties which are expected to be done by them.
2. Our Constitution has provided us with various rights and expects us to perform certain duties as a return. Article 51(A) talks about these Fundamental Duties and has 11 fundamental duties that are expected to be performed by the citizens (there were 10 earlier and 11th was added later by the 86th amendment).
3. From the fundamental duties, one can easily understand the need for the fundamental duty in our constitution. It is required to protect the sovereignty of our nation. To maintain the unity and integrity of our nation. Rights and duties go hand in hand and cannot be separated at any cost. Fundamental duties and fundamental rights are two sides of a coin which we know that it can't be separated. Also, it is found as the need of the hour to introduce fundamental duties in our constitution.
4. **Maintain the Sovereign Nature of State:** The main aim of the insertion of fundamental duties was to maintain the sovereign nature of our state. Although these are not legally enforced then also provide some kind of sovereign power to our state.
5. **To maintain Unity and Integrity of the nation:** In the current scenario, we can see that people are often talking about the term “intolerance”. Our Fundamental Duties help in developing tolerance among the citizens and ultimately help in developing the feeling of unity and integrity among the citizens of our country.

6. **Needed for the current situation:** When our Constitution was drafted by our Constitution makers they found that they didn't need to insert the fundamental duty in our constitution. But as time passes the need and importance of Fundamental Duty was felt that is why they were inserted later by 42nd Amendment in our Constitution. Earlier the feeling of patriotism, harmony, feeling to promote brotherhood, secularism were inherent and there was no need to put any moral or legal obligation on the citizen to the same. The feeling of serving the country and defending the country at any cost was there among the citizens of the country. The people were willing to protect the rich heritage of Indian culture.
7. However, as time passed people were lacking these qualities. Earlier the above qualities were taught by the family and also by the teachers in school and colleges. But with the passage of time, all the people become so busy in their life that they forget to inculcate these values among themselves. Those qualities which were once an integral part of the life of the citizens of India were found to be enforced in the form of Fundamental Duties.
8. However, this decision was taken before the insertion of fundamental duties in the Indian Constitution. It clearly explains the need for fundamental duties for making a welfare society.

Enforcement of Duties

Directive Principle of State Policy (which is given in Chapter IV of the Indian Constitution) and Fundamental Duties needs to be read together. Both have a moral obligation on the state and citizens respectively.

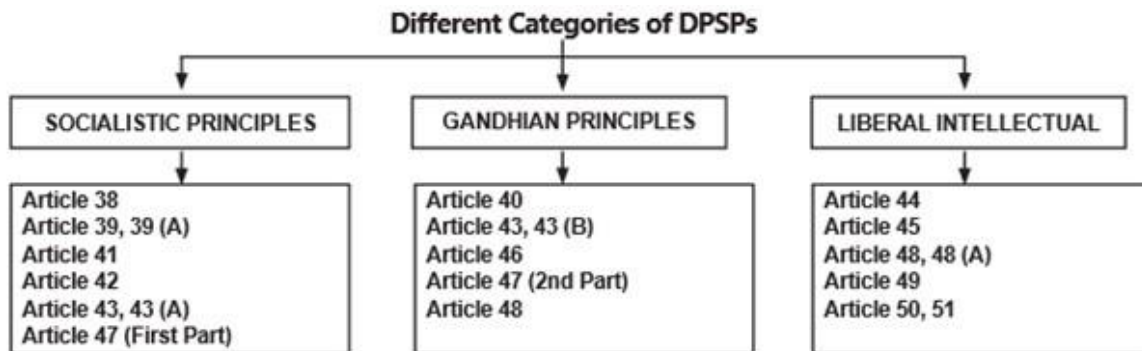
Fundamental Duties do not have any legal devour for its violation. There are **six positive** duties which are expected to be done by the citizens of our country and there **are five negative duties which are not expected to be carried out by the citizens**. There is no legal enforceability for its breach, it is because of the nature of the Fundamental Duties. We can clearly understand that it is practically impossible to enforce these duties.

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. 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.

The objective of the DPSPs is to better the social and economic conditions of society so people can live a good life. Knowledge of DPSPs helps a citizen to keep a check on the government. A citizen can use DPSPs as a measure of the performance of the government and can identify the scope where it lacks

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

Definition: 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:

Article 38	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
Article 39	Secure citizens: <ul style="list-style-type: none">• Right to adequate means of livelihood for all citizens• Equitable distribution of material resources of the community for the common good• Prevention of concentration of wealth and means of production• Equal pay for equal work for men and women• Preservation of the health and strength of workers and children against forcible abuse• Opportunities for the healthy development of children
Article 39A	Promote equal justice and free legal aid to the poor
Article 41	In cases of unemployment, old age, sickness and disablement, secure citizens: <ul style="list-style-type: none">• Right to work• Right to education• Right to public assistance,
Article 42	Make provision for just and humane conditions of work and maternity relief
Article 43	Secure a living wage, a decent standard of living and social and cultural opportunities for all workers
Article 43A	Take steps to secure the participation of workers in the management of industries

Article 47	Raise the level of nutrition and the standard of living of people and to improve public health
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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:

Article 40	Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government
Article 43	Promote cottage industries on an individual or co-operation basis in rural areas
Article 43B	Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies
Article 46	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
Article 47	Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
Article 48	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:

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

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	Article 39	To secure opportunities for the healthy development of children
2	Article 39A	To promote equal justice and to provide free legal aid to the poor
3	Article 43A	To take steps to secure the participation of workers in the management of industries

Importance of Directive Principles of State Policy

- Directive Principles of State Policy are guiding principles for the State to ensure proper framework of laws and policies by the government and its ultimate aim is to establish a just society and to secure welfare in the country.
- These principles address aspects like protection of women of the country, environmental conservation, Uniform Civil Code, decentralization of power, rural growth and development, etc. which are highly considered as some of the essential areas in making laws and policies for a 'welfare state'.
- These principles establish moral ideas. They provide for a moral code for the State but this does not decrease their value, as moral principles play a significant role in the society and their absence may hinder the growth and development of the society. Eventually it is observed that it is not affordable for any government to ignore these directive principles entirely as they show the essence of public views and opinions and they also reflect the basic spirit of the Preamble of our Constitution.
- Despite the ardent criticism faced in its implementation, DPSP have proved that it has some utility in constituting the national objectives and portraying the national conscience. Directive principles have proved to be beneficial in securing justice in the country and this can be seen in the various steps taken by the State in its direction. Some of them are:
 1. Jagirdari and Zamindari system have been abolished and land reforms have been introduced.
 2. Establishment of National Commission for the welfare of women.

3. Right to Property have been deleted from Chapter III of the Constitution for the purpose of reducing economic disparity.
4. Initiative like Khadi Gram Udyog have been encouraged and small scale and village industries have been promoted to bring prosperity in the rural areas.
5. India has also been co-operating with U.N guidelines in order to foster international peace and security.



Significance of DPSP

- DPSP are backed by public opinion.
- Provide for a welfare state.
- Importance as Moral Ideals.
- Directives constitute a Guide for the State.
- Source of continuity in policies.
- Are supplementary to fundamental rights.
- Yardstick for measuring the Worth of the Government.
- Helpful in interpretation of the Constitution.
- Ambiguity of Directive Principles is useful.

Implementation of the Directive Principles

Directive principles that have been implemented

The govt of the Union and the States have taken significant steps to implement the Directive Principles.

- 1) Abolition of Zamindari : The greatest progress has taken place in implementing Art. 39(b). which states equitable distribution of wealth. Under this Article, the Zamindari, Jagirdari and Inamdari systems have been abolished and actual tillers of the soil have been made owners of the land.
- 2) Land holdings : In order to prevent concentration of land in fewer hands [Art. 39(c)], a majority of State govts. have enacted laws fixing a limit to land holdings.

- 3) Panchayats : Under Art. 40, almost all the States have organised village panchayats, elected by adult population, which are endowed with powers of civil administration. This was brought about by 73rd and 74th Amendment Act.
- 4) Cottage industries : For promotion of cottage industries [Art. 43], various boards such as All India Khadi and Village Industries Board, Silk Board, Handloom Board, Small Scale Industries Board, NABARD, Agriculture Co-operative Societies etc have been established.
- 5) RTE : Compulsory and free education [Art. 45] is provided upto the school level.
- 6) Minimum wages : Laws providing for minimum wages and equal pay for equal work for both men and women have been enacted [MNREGA]
- 7) Standard of living : Community Development Programme has been launched throughout India for raising the standards of living of the rural population [Art. 47].
- 8) The judiciary has been separated from executive [Art. 50]. Cr.PC, 1973 was enacted by the Parliament placing the function of judiciary in the hands of judicial magistrates and are under complete control of the High Courts.
- 9) Free legal aid to economically backward classes of people has been provided [Art. 39A]
- 10) Nationalisation of banks : To provide easy access to the needy and poor sections of society to bank funds, the Union govt nationalised 14 major banks in 1969 and 6 more banks in 1980.
- 11) Abolition of privy purses : To abolish inequality, the privileges of ICS officers and the privy purses of former princes have been abolished.

Directive principles that have not been implemented

- 1) Right to work [Art. 41]
- 2) To minimise the inequalities in income [Art. 38]
- 3) To secure a Uniform Civil Code for all citizens [Art. 44]
- 4) To improve standard of living [Art. 47]
- 5) Some of the directives like providing employment, social security etc have not been achieved.

Conclusion:

Despite the rigorous efforts on part of India, it is yet to become the full-fledged welfare state as envisaged in Part IV of our Constitution. It is evident that several factors like limited material resources, lack of active awareness and organized action on part of the citizens and lack of mutual opinion, political will on the part of the states, etc. become reasons for hindrances in the non-implementation of DPSP.

In addition, they face various criticisms when implemented from the critics such as DPSP are misfit in a Sovereign State, they are not practicable nor sound, they may prove reactionary and regressive, etc. However, a closer look into the matter actively shows that the framers of our

Constitution did not add these directive principles for the mere sake of its existence, but to facilitate the governance of the country. .

Therefore, the DPSP would be looked upon as guideposts for all succeeding governments, and despite being non-justiciable, DPSP hold equal and immense importance and relevance as any other provision in the Constitution of India .

Unit III

Federal structure in India

The constitution establishes a **federal structure** in **India**, i.e., there are separate governments of the union and states, and there is a division of powers between the two.

Distribution of Legislative Powers between the Union and the States

Let us now go through the three lists enshrined under the 7th Schedule of the Constitution.

Union List

The Union list contains 97 items which comprise of the subjects having national significance. This list admits uniform laws that are applicable over the entire Indian territory, and only the Indian Parliament is capable of legislating upon them.

Some of the items in this List-I are as follows:

- Defence;
- Central Bureau of investigation;
- Foreign Affairs;
- Banking;
- Intellectual Properties;
- Census;
- Corporation Tax;
- Atomic energy and necessary mineral resources;
- Preventive Detention;
- Diplomatic, consular, and trade relations;
- War & peace;
- Citizenship;
- Highways and Railways, etc.

State List

The State list contains 66 items that comprise subjects relating to local interest or the interest of the State. The State legislature is thus competent in legislating over these subjects. Some of the subjects in this List-II are as follows:

- Public Order;
- Local Government;
- Public health & Sanitation;
- Agriculture;
- Fisheries;
- Libraries, museums, and other resembling institutions;
- Markets & fairs;
- Gas & allied works.

Concurrent List

This list enshrines 47 items, with respect to which; both the Union Parliament and the State legislature hold a concurrent legislative power. This list was meant to serve as a device for

avoiding excessive rigidity in a two-fold distribution. Besides, the states can additionally legislate purporting to amplify the Parliamentary legislation. However, in case a dispute arises in relation to any subject contained in this list, the Union legislation shall prevail over that of the State.

Some of the subjects contained in this List-III are as follows:

- Criminal law & procedure;
- Archaeological sites;
- Marriage & divorce;
- Transfer of property, excepting agricultural land;
- Contempt of Court, excluding that of the Supreme Court;
- Civil law & procedure;
- Prevention of animal cruelty;
- Electricity;
- Economic & social planning;
- Legal, medical, and other professions.

The extent of the Parliamentary laws and the laws by the State Legislatures

According to [Article 245](#); subject to the constitutional provisions, Parliament may legislate for the whole or any part of the Indian territory, a State legislature for the State territory, and no parliamentary legislation shall be invalid because of having extra-territorial operability, i.e. takes effect outside the Indian territory.

Subject-matter of the Parliamentary laws and laws made by the State Legislature

According to [Article 246](#);

1. The Union Parliament, notwithstanding anything under clause 2 and clause 3, is exclusively empowered to legislate in respect of any matters enshrined in the Union List (List-I).
- 2.
3. The Union Parliament and the State Legislature, notwithstanding anything under clause 3 and also clause 1, is empowered to legislate on any matters contained in the Concurrent List (List-III).
4. The Union Parliament is empowered to legislate with respect to any matter for any part of the Indian territory not included (in a State) notwithstanding such matter is enumerated in the State List.

Residuary legislative powers

According to [Article 248](#); Parliament is exclusively empowered to legislate with respect to any matter absent in the Concurrent List or State List. Also, such power shall include the legislative power for imposing a tax not mentioned in either of those Lists.

Therefore, the Parliament has the power to make laws in relation to any matter which is not present in either the concurrent list or the State List, including the power to make laws on tax imposition.

Financial Relations between Centre and State (Art. 268 to 293)

The Indian Constitution has elaborate provisions regarding the distribution of revenues between the Union and the States.

Article 268 to 293 in Part XII deal with the financial relations. The financial relations between the Union and the States can be studied under the following heads:

- **Taxes and duties levied by the Union, but collected and appropriated by the States:** Stamp duties and duties of excise on medical and toilet preparations are levied by the Government of India, but collected and appropriated by the States, within which such duties are leviable, except in the Union Territories, where they are collected by the Union Government (**Art. 268**). The proceeds of these duties levied within any State are assigned to that State only and do not form a part of Consolidated Fund of India.

Service tax levied by the Centre, but collected and appropriated by the Centre and the States: Taxes on services are levied by the Centre, but their proceeds are collected and appropriated by both the Centre and the States. Principles of their collection and appropriations are formulated by the Parliament.

- **Taxes levied and collected by the Union, but assigned to the States within which they are leviable (Art.269):**
 - a) Succession duty in respect of property, other than agricultural land.
 - b) Estate duty in respect of property, other than agricultural land.
 - c) Terminal taxes on goods or passengers carried by railways, sea or air.
 - d) Taxes on railway fares and freights taxes on transactions in Stock Exchanges.

- **Taxes levied and collected by the Union and distributed between the Union and the States (Art.270):** Certain taxes are levied as well as collected by the Union, but their proceeds are divided between the Union and the States in a certain proportion in order to effect an equitable distribution of the financial resources.

This category includes all the taxes and duties referred to in the Union List, except the three categories mentioned above, any surcharge and any cess levied for specific purposes.

Under the situation of emergencies, these financial relations also undergo changes according to the situation and the President can modify the constitutional distribution of revenues between the Centre and the States.

Parliamentary System in India

India has a parliamentary system of Government. Article 74 and Article 75 deal with the parliamentary system at the centre and Articles 163 and 164 deals with the states. There are multiple features of the Parliamentary system and various advantages over the Presidential system.



Indian Parliament

Parliamentary System in India

The democratic system of government can be divided into the parliamentary and the presidential system based on the relationship between the executive and the legislature. In a parliamentary system, executive is a part of legislature, which implements the law and plays an active role in framing it as well.

In a parliamentary system, the head of the state may be a monarch or a president, but both of these positions are ceremonial. The head of the government, who is generally called as the Prime Minister, is the real head. Thus, all the real executive powers are vested in the Prime Minister.

The parliamentary government is also called as the Cabinet government due to concentration of executive powers in the cabinet. **Articles 74 and 75 deals with the parliamentary system at the centre and Article 163 and article 164 deals with the Parliamentary system at the states.**

Elements and Features of Parliamentary System are;

- 1. Nominal and Real Head:** The head of the state holds a ceremonial position and is the nominal executive. For example, the President.
- 2. In India, the head of government is the Prime Minister who is the real executive.** Article 75 of the Indian constitution provides for a Prime Minister to be appointed by the president. According to Article 74, the Prime Minister headed council of ministers would aid and advise the President in the exercise of his functions.
- 3. Executive is a Part of Legislature:** The Executive forms a part of the legislature. In India, the person should be a member of parliament to become a member of the executive. However, the constitution provides that a person can be appointed as a minister for a period of not more than six consecutive months if he is not a member of the parliament, after which the person ceases to be a minister.
- 4. Majority Party Rule:** The party which wins majority seats in the elections of the Lower House forms the government. In India, the President invites the leader of the majority party in Lok Sabha to form the government. The President appoints the leader as the Prime Minister and the other ministers are appointed by the President on the advice of the Prime Minister. The President may invite a coalition of parties to form the government, in case, no party has got majority.
- 5. Collective Responsibility:** The council of ministers are collectively responsible to the parliament. The lower house of parliament has an ability to dismiss a government by getting the no confidence motion passed in the house. In India, the government survives till the time it enjoys support of the majority of members in the Lok Sabha. Thus, Lok Sabha is empowered to introduce no-confidence motion against the government.
- 6. Prime Minister as the Centre of Power:** In India, the Prime Minister is the real executive. He is the head of the government, the council of ministers and the ruling government. Thus, he has to play a significant and important role in the working of the government.
- 7. A Parliamentary Opposition:** No government in the parliament can get hundred percent majority. The opposition plays an important role in checking the arbitrary use of authority by the political executive.
- 8. Independent Civil Service:** The civil servants advice and implement decisions of the government. Civil servants hold permanent appointments based on merit-based selection process. They ensure continuity of employment even when the government changes. The civil service also ensures efficiency in execution of duties and responsibilities.
- 9. Bicameral Legislature:** Most of the countries following parliamentary system, including India, have bicameral legislature. The members of the Lower House of all these countries are elected by the people. The Lower House can be dissolved, in case, the term of the government is

over or there is no scope of government formation due to lack of majority in house. In India, the President can dissolve the Lok Sabha on recommendation of the Prime Minister.

10. Secrecy: The members of the executive in this system have to follow the principle of secrecy in matters such as proceedings, executive meetings, policymaking etc. In India, the ministers take oath of secrecy before entering their office.

Advantages of Parliamentary System

The parliamentary system has the following advantages over the presidential system:

1. Represents Diverse Group: The parliamentary form of government provides opportunity to various ethnically, racially, linguistically and ideologically diverse groups to share their views in framing of laws and policymaking. Countries, such as India, which have high level of diversity enables accommodation by providing political space to various diverse sections of the society.

2. Better Co-Ordination Between Legislature and Executive: The executive is a part of the legislature. As the government enjoys the support of majority of members in the lower house, the tendency of disputes and conflicts decreases. It makes easy for the government to pass the legislation in the parliament and implement them.

3. Prevents Authoritarianism: In a parliamentary system, the tendency of authoritarianism decreases as the power is vested in the council of minister rather than a single individual. The parliament can remove the government through no-confidence motion.

4. Responsible Government: The parliament can check the activities of the executive as the latter is responsible to the former. In a presidential system, the president is not responsible to the legislature. The members of the parliament can ask question, move resolutions, and discuss matters of public importance to pressurize the government. Such provisions are not available in Presidential system.

5. Availability of Alternate Government: The lower house of the parliament can introduce and pass a no-confidence motion. In such a situation, the head of the state invites the leader of the opposition party to form the government. In the United Kingdom, the opposition forms a shadow cabinet for the cabinet of the government, so that they can become ready for the role.

Power and Functions of Indian Parliament

All the legislative powers of the federal Government are vested in the Parliament. The laws framed by the Indian Parliament are enforced in the whole of the country. The Parliament of India is a bi-cameral legislature. It consists of two houses- Rajyasabha Lok Sabha and President of India. Rajyasabha is the upper chamber of the Parliament while Lok Sabha is the lower chamber of the Parliament.

The Parliament of India is a bi-cameral legislature. It consists of two houses- Rajyasabha & Lok Sabha and President of India. Parliament makes law with the help of its both the chambers. Laws passed by the parliament and approved by the president are enforced in the whole country.

Its powers and functions can be classified in to following heads:

- (1). Legislative powers
- (2). Executive powers
- (3). Financial powers
- (4). Constituent powers
- (5). Judicial powers
- (6). Electoral powers
- (7). Other powers

1) Legislative Powers- All the subjects in our constitution are divided among state, union and concurrent lists. In concurrent list Parliamentary law is over riding than state legislative law. Constitution also have powers to make law with respect to state legislature in following circumstances:

- (i). When Rajya Sabha passes a resolution to that effect
- (ii). When national emergency is under operation
- (iii). When two or more states request parliament to do so
- (iv). When necessary to give effect to international agreements, treaties and conventions
- (v). When President's rule is in operation.

2) Executive Powers- According to parliamentary form of government executive is responsible to the parliament for its acts and policies. Hence parliament exercises control by various measures like committees, question hour, zero hour etc. ministers are collectively responsible to the Parliament.

3) Financial Powers- It includes enactment of budget, scrutinizing the performance of government with respect of financial spending through financial committees (post budgetary control)

4) Constituent Powers- Example - To amend the constitution, to pass any laws required

5) Judicial Powers- Includes;

(i). Impeachment of President for violation of constitution

(ii). Removal of judges of Supreme Court and High court

(iii). Removal of Vice- President

(iv). Punish members for breach of privileges like sitting in the house when the member knows he is not an eligible member, serving as member before taking oath etc.

6). Electoral Powers- It has its participation in the election of President and **Vice-President**. The members of Lok Sabha elects speaker and deputy speaker from among its members. Similarly members of Rajya Sabha elects deputy chairman.

7). Other Powers-

(i). To discuss various issues of national and international importance

(ii). Imposing emergency

(iii). Increase or decrease area, change names, alter the boundary of the states

(iv). Create or abolish state legislature etc any powers can be added from time to time

Article 245 of the constitution declares that parliament may make laws for the whole or any part of the territory of India and a state legislature can make laws for the whole or any part of the state. Seventh Schedule of the constitution distributes the legislative powers between the centre and the state by putting subjects into Union List, State List and Concurrent List. The centre can make law on any of the subjects in the union list or in the concurrent list. The parliament can override the law of a state on a subject listed in concurrent list. In addition to these powers, the residuary powers are also vested with the parliament.

The constitution also empowers the Parliament to make law on a state subject in the following circumstances:

(i) When Rajya Sabha passes a resolution supported by two-thirds of the members present and voting

(ii) When a Proclamation of Emergency is in operation

(iii) When two or more states make a joint request to the parliament

(iv) When it is necessary for parliament to implement any international treaty, agreement or convention

(v) When President's rule is in operation in the state

Executive Powers and Functions

In India, political executive is a part of the parliament. Parliament exerts control over the executive through procedural devices such as question hour, zero hour, calling attention motion, adjournment motion, half-an-hour discussion, etc. Members of different political parties are elected/nominated to the parliamentary committees. Through these committees, the parliament controls the government. Committee on ministerial assurances constituted by parliament seeks to ensure that the assurances made by the ministries to parliament are fulfilled.

Article 75 of the constitution mentions that the council of ministers remains in office as long as it enjoys the confidence of the Lok Sabha. The ministers are responsible to the Lok Sabha individually and collectively. Lok Sabha can remove the council of ministers by passing a no confidence motion in the Lok Sabha.

Financial Powers and Functions

1. Parliament enjoys the supreme authority in financial matters.
2. Executive cannot spend any money without parliament's approval. No tax can be imposed without the authority of law.
3. The government places the budget before the parliament for approval. The passage of the budget means that the parliament has legalised the receipts and expenditure of the government.
4. In this way, parliament exerts budgetary as well as post-budgetary control on the government. If the government fails to spend the granted money in a financial year, the remaining balance is sent back to the Consolidated Fund of India. This is known as 'rule of lapse'. This also leads to increase in expenditure by the end of the financial year.

Judicial Powers and Functions

Judicial powers and functions of the Parliament are mentioned below;

(i) It has the power to impeach the President, the Vice-President, the judges of the Supreme Court and the High Court.

(ii) It can also punish its members or outsiders for the breach of privilege or its contempt.

Electoral Powers and Functions

The electoral powers and functions of the parliament are mentioned below;

(i) The elected members of the parliament (along with state assemblies) participate in the election of the President

(ii) All the members of the parliament participate in the election of the Vice-President.

(iii) The Lok Sabha elects its Speaker and Deputy Speaker.

(iv) The Rajya Sabha elects its Deputy Chairman.

(v) Members of various parliamentary committees are also elected.

Constituent Powers and Functions

Only parliament is empowered to initiate any proposal for amendment of the constitution. A bill for amendment can be initiated in either House of Parliament. However, the state legislature can pass a resolution requesting the parliament for the creation or abolition of the legislative council in the state. Based on the resolution, the parliament can make an act for amending the constitution for that purpose.

There are three types of bills for constitution amendment which requires:

(i) **Simple Majority:** These bills need to be passed by simple majority, that is, a majority of members present and voting in each of the House.

(ii) **Special Majority:** These bills need to be passed by the majority of the House and two-third of the members present and voting in each of the House.

(iii) **Special majority and consent of half of all the state legislatures:** These bills are to be passed by the special majority in each house. Along with this, atleast half of the state legislatures should give consent to the bill.

Rigid

Under this procedure, it is difficult to amend the Constitution. This procedure is used by the U.S., Australia, Canada, and Switzerland.

Flexible

Under this procedure, it is easy to amend the Constitution. The Amendment can be done by passing normal legislation.

Indian Constitution is both rigid as well as flexible i.e. it is difficult to amend but practically flexible. As per Article 368 of the Indian Constitution, an Amendment can be introduced in either of the houses, later it can be passed by a special majority or by a simple majority. Later if the bill is passed by the majority it will be sent to the president for his assent.

In 69 years of the Constitution, 103 Amendments are already done. The 42nd Amendment is considered as the terms socialist, secular, integrity was inserted through it. The First Amendment was done in the year 1950, itself.

Article 368 contains the provisions for the Amendment of the Indian Constitution. The Constitution provides three ways for amendment. They are:

Amendment by Simple Majority

Certain Articles of the Constitution can be amended by simple majority. Article 368 does not deal with this category of amendment. The following provisions require amendment by simple majority:

- Citizenship
- Abolition or creation of Legislative Councils in States
- Creation of Local Legislatures or Council of Ministers or both for certain Union Territories
- Admission or establishment of new states
- Use of English language in the Parliament
- Quorum of the Parliament
- Rules of procedure in the Parliament
- Delimitation of Constituencies
- Fifth schedule
- Sixth schedule, etc.

Amendment by Special Majority

Articles which require amendment by special majority come under the ambit of Article 368. The Articles which require amendment by special majority shall be brought into effect by a majority of the total members of each House of the Parliament and by majority of not less than 2/3 of the members of that House who are present and voting.

- The impeachment of the President under Article 61
- Approval of national emergency, etc. comes under this category.
- The Provisions which cannot be amended by Simple Majority and which do not require Ratification by States are amended by Special Majority.

Amendment by Special Majority and Ratification by States

Some Articles require Amendment by Special Majority as well as ratification by not less than $\frac{1}{2}$ of the State Legislatures. The States have an important role in the amendments of these matters. The following provisions require ratification by the States:

- Election of President – Articles 54, Article 55
- Extent of Executive powers of the Union and States – Article 73, Article 162
- Articles dealing with Judiciary, Supreme Court, High Court in the States and Union Territories – Articles 124 to 147, Article 214 to 231, Article 241
- Distribution of Legislative powers between the Centre and the State – Article 245 to Article 255
- Any of the Lists of Seventh Schedule
- Representation of States in Parliament Forth Schedule
- Article 368 (Amendment)

Procedure for Amendment

A Bill in order to amend the Constitution may be introduced by any House of the Parliament and must be passed by each House by a majority of the total membership of that House and by a majority of not less than $\frac{2}{3}$ of the members of that House who are present and are voting. After being passed by both the Houses, it shall be presented to the President and he shall give his assent to the Bill. In this process the Constitution is amended.

The Constitution of India

A **constitutional amendment** is a modification of the [constitution](#) of a [polity](#), [organization](#) or other type of [entity](#). Amendments are often interwoven into the relevant sections of an existing. As of January 2020, there have been 104 **amendments of the Constitution of India** since it was first enacted in 1950

There are three types of amendments to the [Constitution of India](#) of which second and third type of amendments are governed by [Article 368](#).

- The first type of amendments includes that can be passed by "simple majority" in each house of the [Parliament of India](#).
- The second type of amendments includes that can be effected by the parliament by a prescribed "special majority" in each house; and
- The third type of amendments includes those that require, in addition to such "special majority" in each house of the parliament, ratification by at least one half of the [State Legislatures](#).

The third type amendments that are made to the constitution are amendments No. 3, 6, 7, 8, 13, 14, 15, 16, 22, 23, 24, 25, 28, 30, 31, 32, 35, 36, 38, 39, 42, 43, 44, 45, 46, 51, 54, 61, 62, 70, 73, 74, 75, 79, 84, 88, 95, 99, 101, 102, 103 and 104.

Although constitutional amendments require the support of a two-thirds majority in both houses of Parliament (with some amendments requiring ratification by a majority of state legislatures), the Indian Constitution is the most amended national constitution in the world.¹ The Constitution spells out governmental powers with so much detail that many matters addressed by statute in other democracies must be addressed via constitutional amendment in India. As a result, the Constitution is amended roughly twice a year.

Historical Perspective

- Constitution of India came into force on January 26, 1950
- Prior to this, India governed by Government of India Act, 1935 (effective from 1937)
- India was a part of British Crown. And the Crown was the sovereign

Amendment under Indian Constitution

- Art. 368 – Power of Parliament to amend the Constitution and procedure therefor
- Amendments fall under 3 categories
 - 1. Effected by simple majority
 - 2. Effected by special majority (2/3rd)
 - 3. Effected by special majority + ratification by states

MAJOR CONSTITUTIONAL AMENDMENTS THAT CHANGED THE COURSE OF INDIA

1951 (1ST AMENDMENT)

Introduced 9th Schedule to keep certain laws beyond the scope of judicial review

1956 (7TH AMENDMENT)

States reorganised by language; Union Territories introduced

1976 (42ND AMENDMENT)

'Socialist' and 'Secular' added in the Preamble; fundamental duties prescribed

1978 (44TH AMENDMENT)

Right to Property knocked off from the list of fundamental rights

1985 (52ND AMENDMENT)

Defection becomes illegal

1989 (61ST AMENDMENT)

Voting age reduced to 18 from 21 years

1992 (73RD AND 74TH AMENDMENT)

Direct election for Panchayats and urban local bodies

2002 (86TH AMENDMENT)

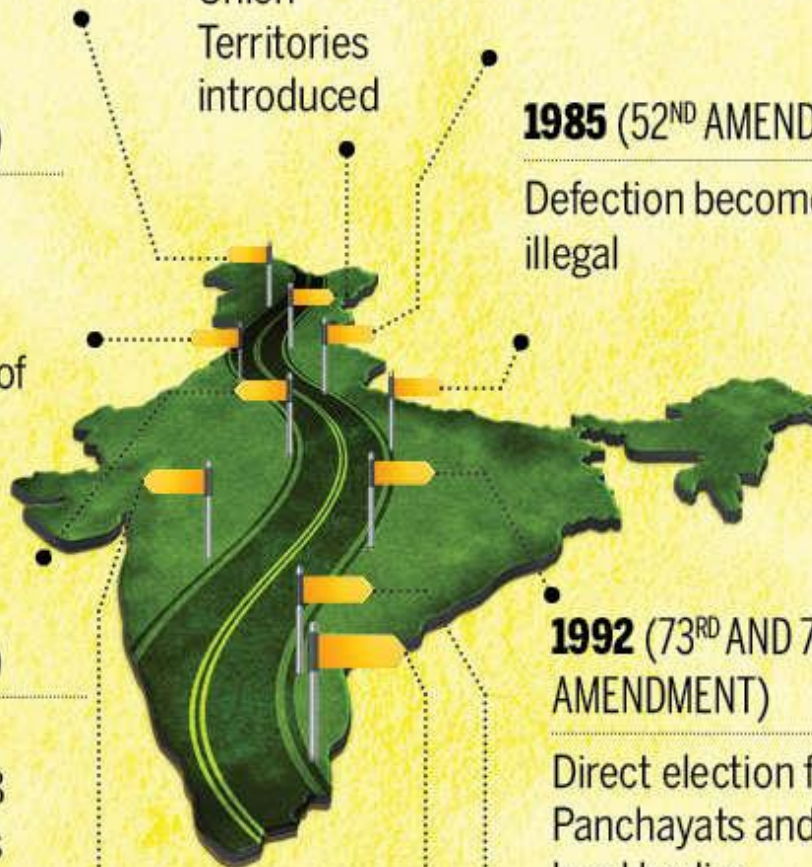
Free and compulsory education for children between 6 to 14 years

2019 (103RD AMENDMENT)

10% reservation for economically weaker

2016 (101ST AMENDMENT)

Introduction of the Goods and Services Tax (GST)



Important amendments brought in the Indian Constitution are mentioned below:

First Amendment Act, 1951

- The state was empowered to make special provisions for the advancement of socially and backward classes
- The Ninth Schedule was added.

Second Amendment Act, 1952

- The scale of representation in the Lok Sabha was readjusted stating that 1 member can represent even more than 7.5 lakh people.

Seventh Amendment Act, 1956

- The provision of having a common High Court for two or more states was introduced
- Abolition of Class A, B, C and D states – 14 States and 6 Union Territories were formed
- Introduction of Union Territories

Ninth Amendment Act, 1960

- Adjustments to Indian Territory as a result of an agreement with Pakistan (Indo-Pak Agreement 1958):
- Cession of Indian territory of Berubari Union (West Bengal) to Pakistan

Tenth Amendment Act, 1961

- Dadra, Nagar, and Haveli incorporated in the Union of Indian as a Union Territory
- 12th Amendment Act, 1962
- Goa, Daman and Diu incorporated in the Indian Union as a Union Territory

13th Amendment Act, 1962

- Nagaland was formed with special status under Article 371A

14th Amendment Act, 1962

- Pondicherry incorporated into the Indian Union
- Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Puducherry were provided the legislature and council of ministers

19th Amendment Act, 1966

- System of Election Tribunals was abolished and High Courts were given the power to hear the election petitions

21st Amendment Act, 1967

- Sindhi language was language into 8th Schedule of Indian Constitution

24th Amendment Act, 1971

- The President's assent to Constitutional Amendment Bill was made compulsory

25th Amendment Act, 1971

- Fundamental Right to Property was curtailed

26th Amendment Act, 1971

- Privy Purse and privileges of former rulers of princely states were abolished

31st Amendment Act, 1972

- Lok Sabha seats were increased from 525 to 545

35th Amendment Act, 1974

- The status of Sikkim as protectorate state was terminated and Sikkim was given the status of 'Associate State' of India

36th Amendment Act, 1975

- Sikkim was made a full-fledged state of India

40th Amendment Act, 1976

- Parliament was empowered to specify from time to time the limits of the territorial waters, the continental shelf, the exclusive economic zone (EEZ) and the maritime zones of India.

42nd Amendment Act, 1976

Since the 42nd Amendment Act is the most comprehensive amendment of the Indian Constitution, called the 'Mini-Constitution,' candidates can read about it in detail in the linked article

44th Amendment Act, 1978

It is also one of the important amendments in the Indian Constitution, enacted by the Janata Government.

52nd Amendment Act, 1985

- A new tenth Schedule was added providing for the anti-defection laws. Candidates can read in detail about the Tenth Schedule in the linked article.

61st Amendment Act, 1989

- The voting age was decreased from 21 to 18 for both Lok Sabha and Legislative Assemblies elections

65th Amendment Act, 1990

- Multi-member National Commission for SC/ST was established and the office of a special officer for SCs and STs was removed.
- Candidates can read about these National Commissions from the links provided below:
- National Commission for SC
- National Commission for ST

69th Amendment Act, 1991

- Union Territory of Delhi was given the special status of 'National Capital Territory of Delhi.'
70-member legislative assembly and a 7-member council of ministers were established
Delhi

71st Amendment Act, 1992

- Konkani, Manipuri and Nepali languages were included in the Eighth Schedule of the Constitution.
- Total number of official languages increased to 18

73rd Amendment Act, 1992

- Panchayati Raj institutions were given constitutional status.
- A new Part-IX and 11th Schedule were added in the Indian Constitution to recognize Panchayati Raj Institutions and provisions related to them

74th Amendment Act, 1992

- Urban local bodies were granted constitutional status
- A new Part IX-A and 12th Schedule were added to the Indian Constitution

86th Amendment Act, 2002

- Elementary Education was made a fundamental right – Free and compulsory education to children between 6 and 14 years
- A new Fundamental Duty under Article 51 A was added – “It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years”

88th Amendment Act, 2003

- Provision of Service Tax was made under Article 268-A – Service tax levied by Union and collected and appropriated by the Union and the States.

92nd Amendment Act, 2003

- Bodo, Dogri (Dongri), Maithili and Santhali were added in the Eighth schedule
- Total official languages were increased from 18 to 22

95th Amendment Act, 2009

- Extended the reservation of seats for the SCs and STs and special representation for the Anglo-Indians in the Lok Sabha and the state legislative assemblies for a further period of ten years i.e., up to 2020 (Article 334).

97th Amendment Act, 2011

- Co-operative Societies were granted constitutional status:
- Right to form cooperative societies made a fundamental right (Article 19)
- A new Directive Principle of State Policy (Article 43-B) to promote cooperative societies
- A new part IX-B was added in the constitution for cooperative societies

100th Amendment Act, 2015

- To pursue land boundary agreement 1974 between India and Bangladesh, exchange of some enclave territories with Bangladesh mentioned
- Provisions relating to the territories of four states (Assam, West Bengal, Meghalaya) in the first schedule of the Indian Constitution, amended

101st Amendment Act, 2016

- Goods and Service Tax (GST) was introduced. Read more about GST in the linked article.

102nd Amendment Act, 2018

- Constitutional Status was granted to National Commission for Backward Classes (NCBC)

103rd Amendment Act, 2019

- A maximum of 10% Reservation for Economically Weaker Sections of citizens of classes other than the classes mentioned in clauses (4) and (5) of Article 15, i.e. Classes other than socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes.

104th Amendment Act, 2020

- Extended the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty. Removed the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies.

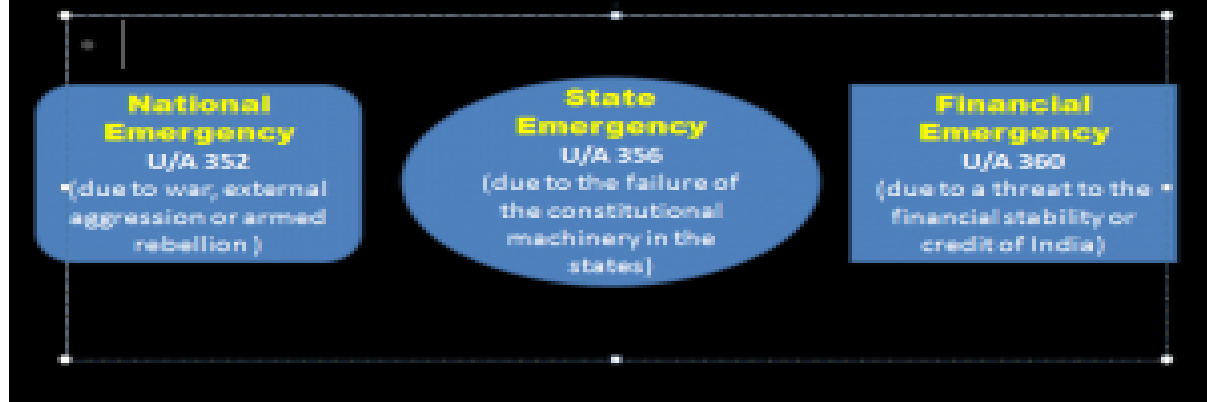


Emergency Provisions:

Emergency provisions under Indian constitution

Emergency Provisions are contained in Part Eighteen of the Constitution of India. The President of India has the power to impose emergency rule in any or all the Indian states if the security of part or all of India is threatened by "war or external aggression or armed rebellion".

Types of Emergency



Grounds of Crisis Declaration

1. When there is a **war or external aggression** has been committed or there is threat of the same, or if internal disturbances amounting to armed rebellion taking place.
2. When it becomes **impossible for the government of a State to be carried on in accordance with the Constitution.**
3. If the **credit or financial stability of the country is threatened.**

NATIONAL EMERGENCY(Article 352)

When can National Emergency be imposed?

3 conditions – War, External Aggression, Armed Rebellion

***Note:** Armed Rebellion was changed from Internal Disturbance on the recommendation of the Shah Commission. Internal Disturbance was a vague term prone to misuse.*

Features

CAN ONLY BE PROCLAIMED ON THE **WRITTEN** ADVICE OF THE **UNION CABINET** (NOT THE PM). PERHAPS, **THIS IS THE ONLY PLACE WHERE UNION CABINET HAS A ROLE.**

1. Expires in 1 month from its issue unless approved by a **Special Majority** (of the second kind*) – Not less than 2/3rd of the Members present and voting + Absolute Majority – in both the houses of the Parliament.
2. If the LS is dissolved, then RS shall approve it within 1 month and the re-constituted LS shall ratify within **30 days.**

3. Once approved, **the proclamation is extended for 6 months**, which can be **extended again for 6 more months**.
4. **Not less than 1/10th of the Members of the LS**(this can only be initiated in the LS) may give notice in writing to the Speaker or President (when LS is not in session). If there is no session, a special sitting of the LS shall be held within 14 days. If the resolution gets passed, the President has to revoke the Emergency.

Effects

1. **Executive : State Govt. is not suspended.** Union Govt. can issue orders to the State Govt. on subjects on the State List (something that it can't normally do).
2. **Legislature :** State Legislature is not suspended. However, **Parliament can make laws on the State subjects.** *Such laws remain valid for 6 months after the Emergency ceases to be.*
3. **Financial :** Distribution as per the President's will subject to approval by the **Parliament.**

STATE EMERGENCY OR PRESIDENT'S RULE(Article 356)

Under Article 356, the President can issue a proclamation to impose emergency in a state if he is satisfied on receipt of a report from the Governor of the State, or otherwise, that a situation has arisen under which the Government of the State cannot be carried on smoothly. It is also called the President's Rule.

When can a state emergency be imposed?

1. It has been seen that the President's Rule has been imposed when any one of the following circumstances have occurred:
2. The state legislature is not able to elect a leader as the Chief Minister for a time prescribed by the state's governor.
3. Breakdown of a coalition in the state government, that leads to the CM having minority support in the legislature, and the CM is unable to prove his majority within the time prescribed by the governor.
4. A no-confidence vote in the legislative assembly leading to a loss of majority.
5. Postponement of elections owing to unavoidable reasons such as a natural disaster, epidemic or war.

Approval

It must be approved by both the Houses of Parliament within two months, otherwise the proclamation ceases to operate. After approval, the proclamation remains valid for six months at

a time. It can be extended for another six months but not beyond a year. But, emergency in a State can be extended beyond one year if –

Effects of President's Rule in a State

It has the following effects:

- (i) The President can take over all or any of the functions of the State Government or he may vest all or any of those functions with the Governor or any other executive authority.
- (ii) The President may dissolve the State Legislative Assembly or suspend it. He can authorise the Parliament to make laws on behalf of the State Legislature.
- (iii) The President can make provisions necessary to handle the situation.

FINANCIAL EMERGENCY (Art. 360)

a. When can it be imposed?

If the President is satisfied that a situation has arisen whereby the **financial stability or credit of India or of any part of the territory** thereof is **threatened**, he may by a Proclamation make a declaration to that effect.

b. Features

It will **ordinarily remain in force for 2 months**, unless it is approved by both the houses. If LS is dissolved in this period, similar clause as that of the National Emergency applies.

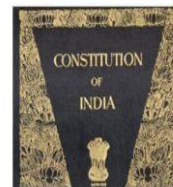
c. Effect

The financial autonomy of the states is transferred. The President can:-




















1. **Suspend distribution of financial resources.**
2. **Issue directions to follow canons of finance.**
3. **Direct the State Govt. to reduce the Salaries of their employees.**
4. **Direct the Governors to reserve all financial and money bills for his consideration.**



EMERGENCY PROVISIONS OF INDIAN CONSTITUTION

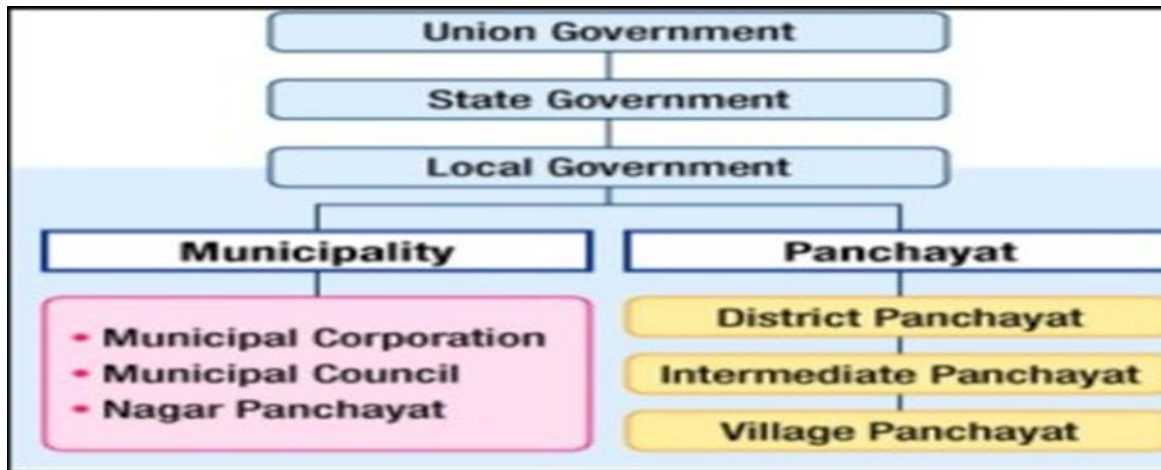


PART- XVIII

NATIONAL EMERGENCY	PRESIDENT'S RULE	FINANCIAL EMERGENCY
  Art 352	  Art 356, 365	  Art 360
<p><i>Grounds of Declaration:</i></p>  External Aggression or Armed Rebellion	<p><i>Grounds of Declaration:</i></p>  Failure of Constitutional Machinery*	<p><i>Grounds of Declaration:</i></p>  Threat to Financial Stability or Credit of India
<p> <i>Parliamentary Approval:</i> Must be Approved by Both the Houses of Parliament for all 3 types</p>		
 Must be approved by Both the houses within One month	 Must be approved by Both the houses within Two months	 Must be approved by Both the houses within Two months
 Special majority: Majority of more than (a)50% of the total membership of that house, and (b)2/3 rd of the members of that house present and voting.	 Simple Majority: Majority of more than 50% of the members of that house present and voting.	 Simple Majority: Majority of more than 50% of the members of that house present and voting.
 Continues for 6 Months Can be extended to an Indefinite Period by taking Approval of the parliament every 6	 Continues for 6 Months Can be extended to a Maximum period of 3 Years by taking Approval of the parliament every 6	 Continues Indefinitely until revoked. Therefore NO prescribed maximum period or NO repeated parliamentary



Local self-government



- **Local self-government means** that residents in towns, villages and rural settlements are the hosts in their own home. People elect **local** councils and their heads authorising them to solve the most important issues.
- The 73rd and 74th **constitutional** amendments give recognition and protection to **local governments** and in addition each state has its own **local government** legislation. ... As of 2017, there are a total of 267,428 **local government bodies**, of which 262,771 are rural and 4,657 urban.
- We know there is a government in India at the Center and State levels. But there is another important system for local governance. The foundation of the present local self-government in India was laid by the Panchayati Raj System (1992).
- But the history of Panchayati Raj starts from the self-sufficient and self-governing village communities. In the time of the [Rig-Veda](#) (1700 BC), evidence suggests that self-governing village bodies called 'sabhas' existed. With the passage of time, these bodies became panchayats (council of five persons).
- Panchayats were functional institutions of grassroots governance in almost every village. They endured the rise and fall of empires in the past, to the current highly structured system.
- Local self-government implies the transference of the power to rule to the lowest rungs of the political order. It is a form of democratic decentralization where the participation of even the grass root level of the society is ensured in the process of administration.

History of local administration

The village panchayat, as a system of administration, began in the British days, as their offer to satisfy the demands for local autonomy. They opened up the governance of the lowest levels to the citizens

How did the concept of local self-government evolve in India?

Even though such minor forms of local governance was evident in India, the framers of the constitutions, unsatisfied with the existing provisions, included **Article 40** among the Directive Principles, whereby:

1. Balwant Rai Mehta Committee (1957)

Originally appointed by the Government of India to examine the working of two of its earlier programs, the committee submitted its report in November 1957, in which the term ‘**democratic decentralization**’ first appears.

The important recommendations are:

- Establishment of a three-tier Panchayati Raj system – gram panchayat at village level (direct election), panchayat Samiti at the block level and Zila Parishad at the district level (indirect election).
- District Collector to be the chairman of Zila Parishad.
- Transfer of resources and power to these bodies to be ensured.

The existent National Development Council accepted the recommendations. However, it did not insist on a single, definite pattern to be followed in the establishment of these institutions. Rather, it allowed the states to devise their own patterns, while the broad fundamentals were to be the same throughout the country.

Rajasthan (1959) adopted the system first, followed by Andhra Pradesh in the same year. Some states even went ahead to create four-tier systems and **Nyaya panchayats**, which served as judicial **bodies**.

“The state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

Later, the conceptualisation of the system of local self-government in India took place through the formation and effort of four important committees from the year 1957 to 1986. It will be helpful if we take a look at the committee and the important recommendations put forward by them.

2. Ashok Mehta Committee (1977-1978)

The committee was constituted by the Janata government of the time to study Panchayati Raj institutions. Out of a total of 132 recommendations made by it, the most important ones are:

- Three-tier system to be replaced by a two-tier system.
- Political parties should participate at all levels in the elections.
- Compulsory powers of taxation to be given to these institutions.
- Zila Parishad to be made responsible for planning at the state level.

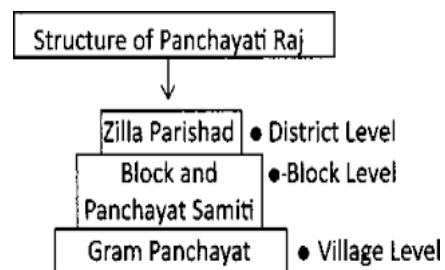
Panchayati Raj System under 73rd and 74th Constitutional Amendment acts, 1992

The acts of 1992 added two new parts IX and IX-A to the constitution.

It also added two new schedules – 11 and 12 which contains the lists of functional items of **Panchayats and Municipalities**. It provides for a three-tier system of **Panchayati Raj** in every state – at the village, intermediate and district levels.

What are Panchayats and Municipalities?

- Panchayat and Municipality are the generic terms for the governing body at the local level. Both exist as three tier systems – at the lower, intermediate and upper levels.
- The 73rd Constitutional Amendment act provides for a **Gram Sabha** as the foundation of the Panchayati Raj system. It is essentially a village assembly consisting of all the registered voters in the area of the panchayat. The state has the power to determine what kind of powers it can exercise, and what functions it has to perform at the village level.
- The 74th Constitutional Amendment act provides for three types of Municipalities:
 1. **Nagar Panchayat** for a transitional area between a rural and urban area.
 2. **Municipal Council** for a small urban area.
 3. **Municipal Corporation** for a large urban area.
- Municipalities represent **urban local self-government**.
- Most of the provisions of the two acts are parallel, differing only in the fact that they are being applied to either a Panchayat or a Municipality respectively.
- Each Gram sabha is the meeting of a particular constituency called *ward*.
- Each ward has a representative chosen from among the people themselves by *direct election*.
- The chairperson of the Panchayat or Municipality at the intermediate and district level are elected from among these representatives at the immediately lower level by *indirect election*.



	Gram Panchayat (village level)	Panchayat Samiti (block level)	Zila Parishad (district level)
Functions	<p>4. Setup Primary Health Centres, CHCs etc.</p> <p>5. Ensures that Constitution makers' dream of 'Gram Swaraj' is realised.</p>	<p>4. Setup Hospitals and Dispensaries.</p> <p>5. Acts as a link Between Gram Panchayat & ZP.</p>	<p>4. Setup Hospitals and Dispensaries.</p> <p>5. Acts as a link Between Local Bodies (Gram Panchayat & Panchayat Samiti) and Government.</p>

Types of Urban Local Government

There are eight types of urban local governments currently existing in India:

1. Municipal Corporations.
2. Municipality.
3. Notified area committee.
4. Town area committee.
5. Cantonment board.
6. Township.
7. Port trust.
8. Special purpose agency

History

Municipal governance in India has existed since the year 1687, with the formation of Madras Municipal Corporation, and then Calcutta and Bombay Municipal Corporation in 1726. In the early part of the nineteenth century almost all towns in India had experienced some form of municipal governance. In 1882 the then **Viceroy of India, Lord Ripon**, known as the Father of Local Self Government, passed a resolution of local self-government which led the democratic forms of municipal governance in India

In 1919, a Government of India Act incorporated the need of the resolution and the powers of democratically elected government were formulated. In 1935 another Government of India act brought local government under the preview of the state or provincial government and specific powers were given.

74th Constitutional Amendment Act

It was the 74th **amendment** to the **Constitution of India** in 1992 that brought constitutional validity to municipal or local governments. Until amendments were made in respective state municipal legislations as well, municipal authorities were organised on an *ultra vires* (beyond the authority) basis and the state governments were free to extend or control the functional sphere through executive decisions without an amendment to the legislative provisions.

Statutory towns are of various kinds and the major categories include

1. **Municipal corporation (Nagar Nigam)**
2. **Municipality (municipal council, municipal board, municipal committee) (Nagar Parishad)**
3. **Town area committee**
4. **Notified area committee**

The municipal corporations and municipalities are fully representative bodies, while the notified area committees and town area committees are either fully or partially nominated bodies. As per the **Constitution of India**, 74th Amendment Act of 1992, the latter two categories of towns are to be designated as municipalities or nagar panchayats with elected bodies.

After the 74th Amendment was enacted there are only three categories of urban local bodies:

- **Mahanagar Nigam (Municipal Corporation)**
- **Nagar Palika (Municipality)**
- **Nagar Panchayat (Notified Area Council or City Council)**

Among all urban local governments, municipal corporations enjoy a greater degree of fiscal autonomy and functions, although the specific fiscal and functional powers vary across the states. These local governments have larger populations, a more diversified economic base, and deal with the state governments directly. On the other hand, municipalities or nagar panchayats have less autonomy, smaller jurisdictions and have to deal with the state governments through the Directorate of Municipalities or through the collector of a district. These local bodies are subject to detailed supervisory control and guidance by the state governments.

Municipal Corporation (Nagar Nigam/Mahanagar Palika)

1. **Nagar Nigam** a.k.a. **Mahanagar Palika** or by some **other names in different states** (*translated in english as Municipal Corporation*) in India are state government formed departments that works for the development of a **metropolitan city**, which has a population of more than 1 million.
2. The growing population and urbanisation in various cities of India were in need of a local governing body that can work for providing necessary community services like health centres, educational institutes and housing and property tax. They also replace street lights.
3. They are formed under the Corporations Act of 1835 of **panchayati raj** system which mainly deals in providing essential services in every small town as well as village of a

district/city. Their elections are held once in five year and the people choose the candidates. The largest corporations are in the eight metropolitan cities of India namely **Mumbai, Delhi, Kolkata, Chennai, Bangalore, Hyderabad, Ahmedabad, Surat, and Pune**,. These cities not only have a large population, but are also the administrative as well as commercial centres of the country.

Municipality (Nagar Palika)

1. In India, a Nagar Palika or Municipality is an urban local body that administers a city of minimum population of 100,000 but less than 1,000,000. However, there are exceptions to that, as previously nagar palikas were constituted in urban centers with population over 20,000 so all the urban bodies which were previously classified as Nagar palika were reclassified as Nagar palika even if their population was under 100,000.
2. The members of the Nagar palika are elected representatives for a term of five years.
3. The town is divided into wards according to its population, and representatives are elected from each ward.
4. The members elect a president among themselves to preside over and conduct meetings. A chief officer, along with officers like an engineer, sanitary inspector, health officer and education officer who come from the state public service are appointed by the state government to control the administrative affairs of the Nagar Palika.

Notified Area Council (Nagar Panchayat)

A **Nagar Panchayat** or Notified Area Council or City Council is a form of an urban political unit in India comparable to a municipality. An urban centre with more than 11,000 and less than 25,000 inhabitants is classified as a "Nagar Panchayat".

Each Nagar Panchayat has a committee consisting of a chairman with ward members. Membership consists of a minimum of ten elected ward members and three nominated members. The NAC members of the Nagar Panchayat are elected from the several wards of the Nagar Panchayat on the basis of adult franchise for a term of five years. There are seats reserved for Scheduled Castes, Scheduled Tribes, backward classes and women. The Councillors or Ward Members are chosen by direct election from electoral wards in the Nagar Panchayat.

Responsibilities of urban local bodies

The municipal bodies of India are vested with a long list of functions delegated to them by the state governments under their respective municipal legislations.

The Twelfth Schedule of Constitution (Article 243) provides an illustrative list of *eighteen functions*, that may be entrusted to the municipalities.

Public health includes **water supply, sewerage and sanitation**, eradication of communicable diseases etc.; welfare includes public facilities such as education, **recreation**, etc.; regulatory functions related to prescribing and enforcing **building regulations**, encroachments on public land, **birth registration and death certificate**, etc.; public safety includes **fire protection, street lighting**, etc.; public works measures such as construction and maintenance of inner city roads,

etc.; and development functions related to [town planning](#) and development of commercial markets.

How are the elections held in the local government bodies?

- All seats of representatives of local bodies are filled by people chosen through *direct elections*.
- The conduct of elections is vested in the hands of the State election commission.
- The chairpersons at the intermediate and district levels shall be elected *indirectly from among the elected representatives at the immediately lower level*.
- At the lowest level, the chairperson shall be elected in a mode defined by the state legislature.
- Seats are reserved for SC and ST proportional to their population.
- Out of these reserved seats, not less than one-third shall be further reserved for women.
- There should be a blanket reservation of one-third seats for women in all the constituencies taken together too (which can include the already reserved seats for SC and ST).
- The acts bar the interference of courts in any issue relating to the election to local bodies.

What are the Qualifications needed to be a member of the Panchayat or Municipality?

Any person who is qualified to be a member of the state legislature is eligible to be a member of the Panchayat or Municipality.

“But he shall not be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years”

This means that unlike the [state legislature](#), a person needs to attain only 21 years of age to be a member of panchayat/municipality.

What is the duration of the Local Government bodies?

- The local governing bodies are elected for a term of five years.
- Fresh elections should be conducted before the expiry of the five-year term.
- If the panchayat/municipality is dissolved before the expiry of its term, elections shall be conducted within six months and the new panchayat/municipality will hold office for the remainder of the term if the term has more than six months duration.
- And for another five years if the remaining term is less than six months

What are the Powers invested on these Local Government bodies?

The powers of local bodies are not exclusively defined. They can be tailor-fitted by the state governments according to the environment of the states. In general, the State governments can assign powers to Panchayats and Municipalities that may enable them to prepare plans for economic development and social justice. They may also be authorized to levy, collect, or appropriate taxes.

Summary

To conclude, local self-government is one of the most innovative governance change processes our country has gone through. The noble idea of taking the government of a country into the hands of the grass root level is indeed praiseworthy.

However, like any system in the world, this system is also imperfect. Problems of maladministration and misappropriation of funds are recurring. But this shall not stand in the way of efficient governance; and if these ill practices are rooted out, there would be no comparisons around the world to our system of local self-government.

SCHEME OF FUNDAMENTAL RIGHT TO EQUALITY

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

Before knowing about the right to equality, aspirants should know the types of equality to get an idea of what it is. It is also mentioned in our Preamble. The types of equality are:

1. Natural
2. Social
3. Civil
4. Political
5. Economic
6. Legal

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, on grounds of religion, race, caste, sex or place of birth
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

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

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.

