

CHAPTER

14

CONSTITUTION OF INDIA

Covering-

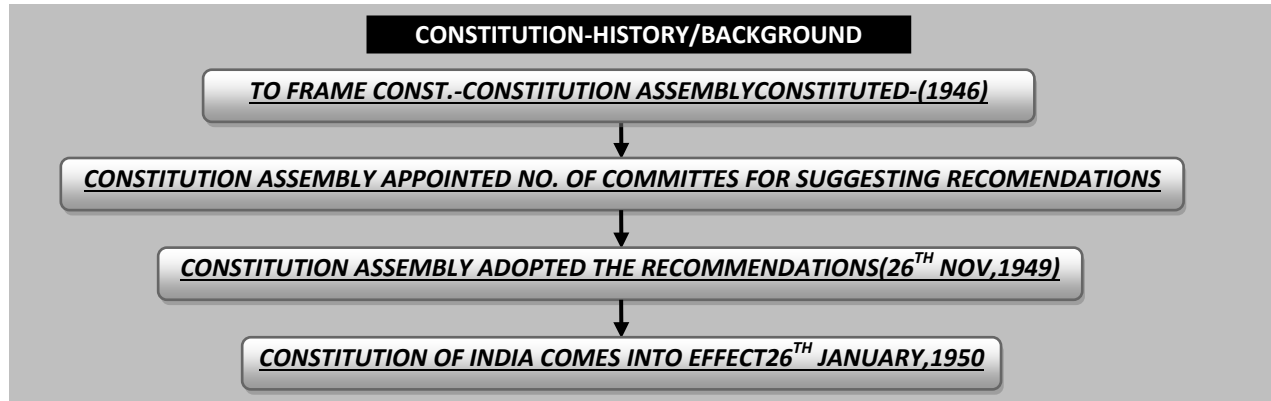
- Preamble
- Constitution-structure
- Fundamental Rights
- Definition of State
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- Advance Your Knowledge

**EXPECTED
MARKS COVERAGE**
(5 to 15)

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CONSTITUTION OF INDIA

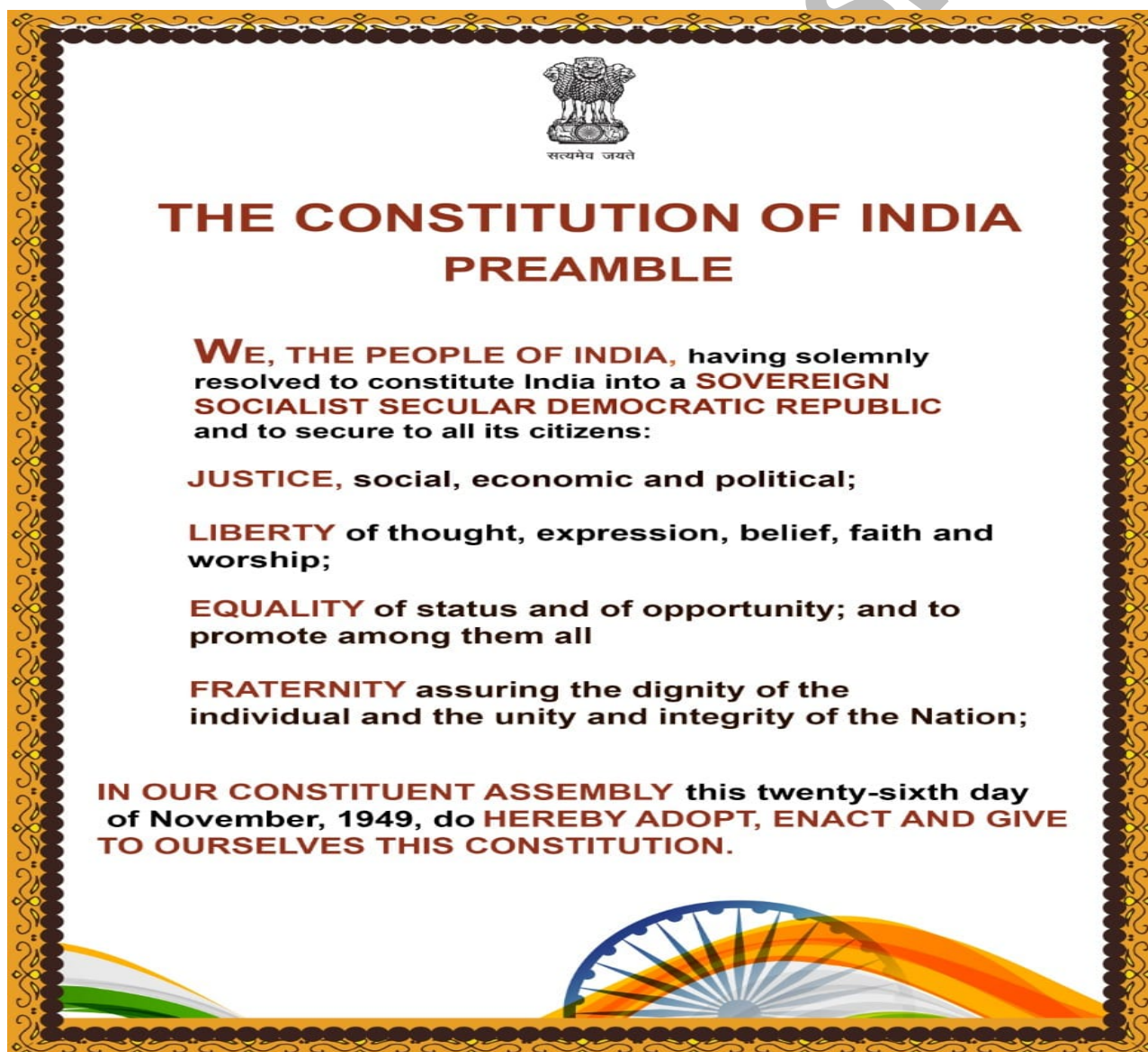
The Constitution of India came into force on **January 26, 1950**. It is a comprehensive document containing **395 Articles (divided into 22 Parts)** and **12 Schedules**.

Apart from **dealing with the structure of Government**, the Constitution makes **detailed provisions for the rights of citizens**. It is considered all supreme and has **overriding effect** over all the laws. All the laws have their **origin** in the Constitution, so it is known as **mother of all laws**.

All public authorities – **legislative, administrative and judicial** *derive their powers* directly or indirectly from it and the Constitution derives its authority from the people.

It reflects the *ideology and system of the Nation*. It is the **prime source of other laws**

PREAMBLE



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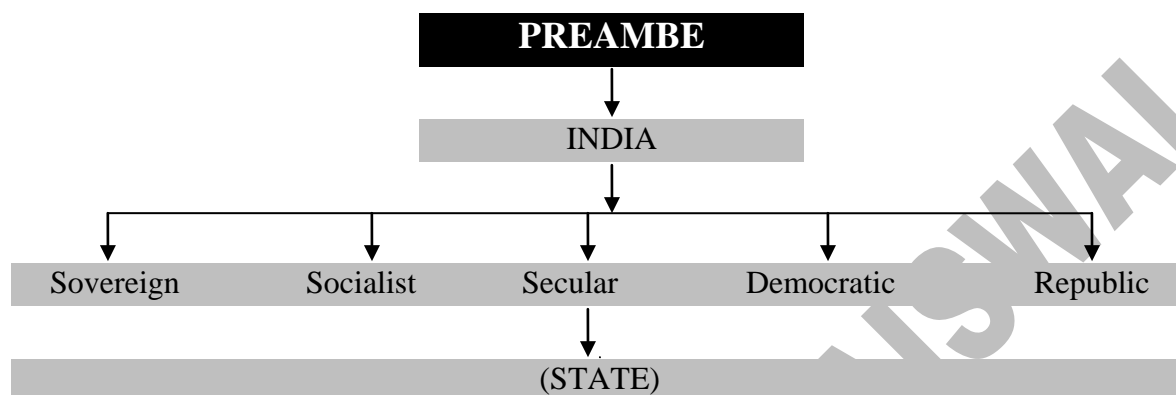
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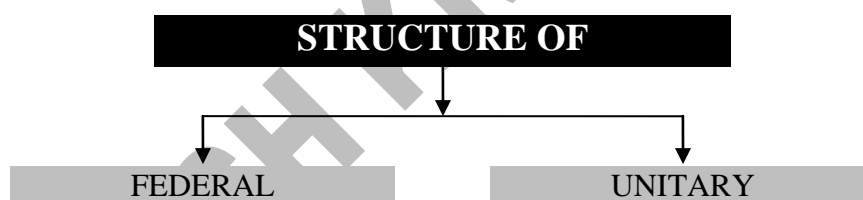
The preamble to the Constitution sets out the aims and aspirations of the people of India. It is a part of the Constitution. The preamble declares India to be a **Sovereign, Socialist, Secular, Democratic Republic and secures to all its citizens Justice, Liberty, Equality and Fraternity.**

It is declared that the Constitution has been *given by the people to themselves*, thereby **affirming the republican character** of the polity and the sovereignty of the people.



CONSTITUTION-STRUCTURE

Constitution of India is **basically federal** but with certain **unitary/ unitary /Peculiar** features.



A. The essential features of a Federal System are—

(i) <u>Dual Government,</u>	In India, there are Governments at different levels, like Union and States.
(ii) <u>Distribution of powers,</u>	Powers to make laws have been suitably distributed among them by way of various lists as per the Seventh Schedule.
(iii) <u>Supremacy of the Constitution,</u>	Both Union and States have to follow the Constitutional provisions when they make laws
(iv) <u>Independence of Judiciary,</u>	The Judiciary is independent with regard to judicial matters and judiciary can test the validity of independently. The Supreme Court decides the disputes between the Union and the States, or the States inter se.
(v) <u>Rigid procedure for the amendment of the Constitution.</u>	The Constitution is supreme and if it is to be amended, it is possible only by following the procedure explained in Article 368 of the Constitution itself.

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B. The essential features of a unitary /Peculiar System are—

- (i) State legislatures have the exclusive powers to make laws with respect to the subjects included in the State List and Parliament has no power to encroach upon them.

However, our Constitution makes a few exceptions to this general rule by **authorising Parliament to make law even on the subjects enumerated in the State List.** Following are the **exceptions** which the Constitution so recognises:-

- (a) In the National Interest
- (b) During a proclamation of emergency
- (c) Breakdown of Constitutional Machinery in a State
- (d) On the request of two or more States
- (e) Legislation for enforcing international agreements

- (ii) In case of **inconsistency** between laws passed by both (union as well as state) on a particular matter under Concurrent list, the law passed by **union** will **prevail** over the state law.
- (iii) In India there exist **single citizenship concept** unlike dual citizenship concept of USA.
- (iv) **Residuary legislative power** (i.e. on any new subject, only parliament can make a law) is vested in the **Union**.

So it can be said that the Constitution of India is **neither purely federal nor purely unitary**. It is a **combination of both**.

NKJ-CLASSROOM PRACTICE



Q. 1. The Constitution of India is—federal in character but with unitary features. Comment.

FUNDAMENTAL RIGHTS

PART III OF THE CONSTITUTION

The man by **birth** had certain rights which are **universal and inalienable**, and he could not be deprived of them. These rights are known as Fundamental Rights.

The concept behind these rights is that **all men are created equal** and that **they are endowed by their creator with certain inalienable rights**; that among these, are life, liberty and the pursuit of happiness.

Indian Constitution guarantees **six** categories of fundamental rights. These are:-

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

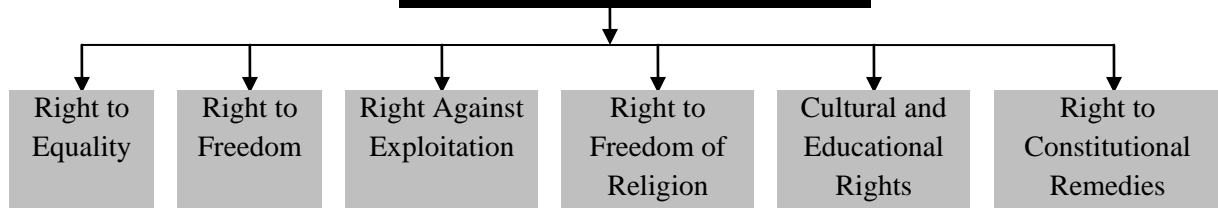
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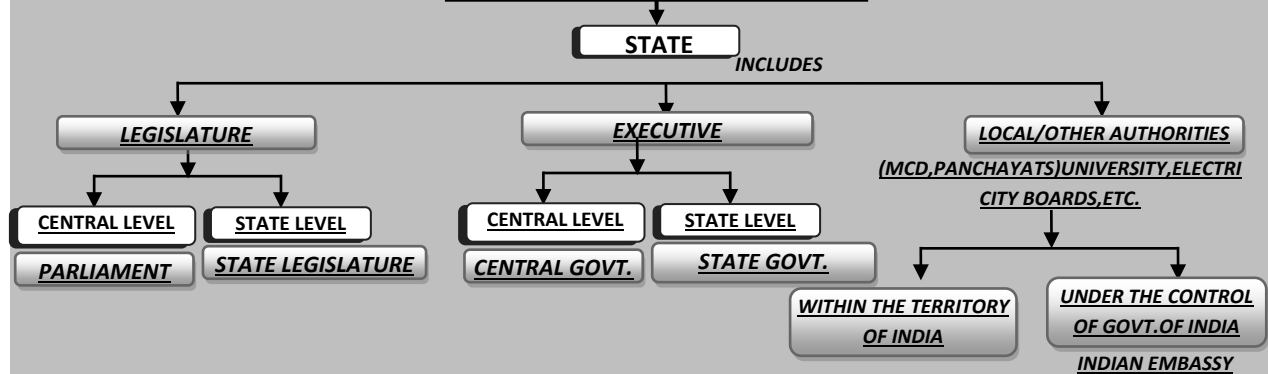
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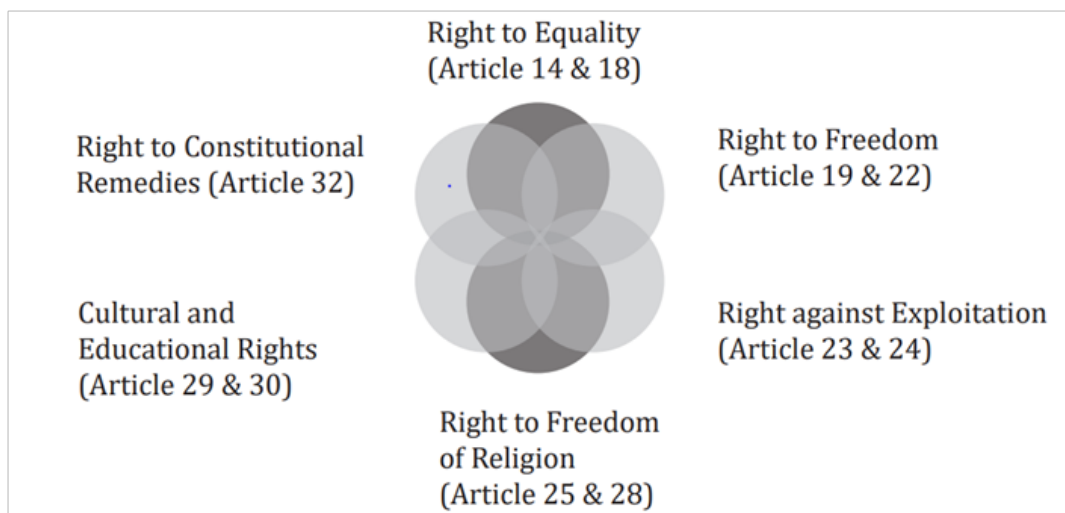
FUNDAMENTAL RIGHTS



DEFINITION OF 'STATE' (ARTICLE-12)



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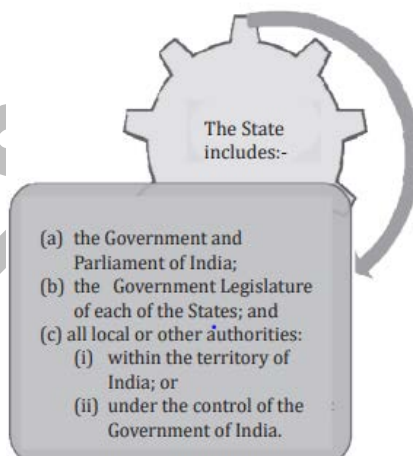
From the point of view of persons to whom the rights are available, the fundamental rights may be classified as follows:-

- | | |
|-----|--|
| (a) | Articles 15, 16, 19 and 30 are guaranteed only to citizens . |
| (b) | Articles 14, 20, 21, 22, 23, 25, 27 and 28 are available to any person on the soil of India—citizen or foreigner. |

DEFINITION OF STATE

ARTICLE-12

With a few exceptions, **all the fundamental rights are available against the State.**



Under Article 12, **unless the context otherwise requires, “the State” includes—**

- | | |
|-------|---|
| (i) | the Government and Parliament of India; |
| (ii) | the Government and the Legislature of each of the States; and |
| (iii) | <u>all local or other authorities:-</u> |
| | (a) within the territory of India; or |
| | (b) under the control of the Government of India. |

The expression ‘**local authorities**’ refers to authorities like Municipalities, District Boards, Panchayats, Port Trusts, Mining Settlement Boards, etc .

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‘Other authorities’ will include all authorities created by the Constitution or statute, Electricity Board, university, etc.

The words **“under the control of the Government of India”** bring, into the definition of State, not only every authority within the territory of India, but also those functioning outside, provided such authorities are under the control of the Government of India. for e.g. Indian Embassy’s situated abroad.

CASE LAW



In **R.D. Shetty v. International Airports Authority** & in **Ajay Hasia v. Khalid Mujib** Supreme Court has pointed out that corporations acting as instrumentality or agency of government would become ‘State’ under Article 12 if :-

(i)	the entire share capital of the Corporation is held by the Government,
(ii)	the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation it would afford some indication of the corporation being impregnated with government character.
(iii)	the corporation enjoys a monopoly status which is conferred or protected by the State.
(iv)	the state exercises deep and pervasive control in corporations.
(v)	the functions of the corporation are of public importance and closely related to government functions,
(vi)	If a department of government is transferred to a corporation,

CASE LAW



In **Zee telefilms Ltd. v. Union of India**, the Supreme Court held that the **board of Control for cricket in India (BCCI) was not State** for purposes of Article 12 because it was not shown to be financially, functionally or administratively dominated by or under the control of the Government and control exercised by the Government was not pervasive but merely regulatory in nature.

In **A.R. Antulay v. R.S. Nayak**, it was held that a **Court** can be considered as state under Article-12 **only**, if it exercises **non-judicial** functions.

NKJ-CLASSROOM PRACTICE

	Q. 1. Discuss the test laid down by the Supreme Court of India to determine the entity of "State", whether it is 'instrumentality or agency of State'. [Dec. 2018, 5 Marks]
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AMENDIBILITY OF FUNDAMENTAL RIGHTS

Article 13 provides that **any Law (pre/post constitution) will be invalid** if the law is **against the Fundamental rights**. It provides that, State shall not make any law which takes away, amend or abridges the Fundamental rights.

The word ‘LAW’ according to the definition given in Article 13 itself **includes** – “... any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India, the force of law.

The issue came up before the Supreme Court as to whether a **Constitutional Amendment** by which a fundamental right is taken away or abridged is also a law within the meaning of Article 13. The Court in the famous **Golaknath case** took the view that it includes such an amendment and, therefore, even a Constitutional amendment would be **void** to the extent it takes away or abridges any of the fundamental rights.

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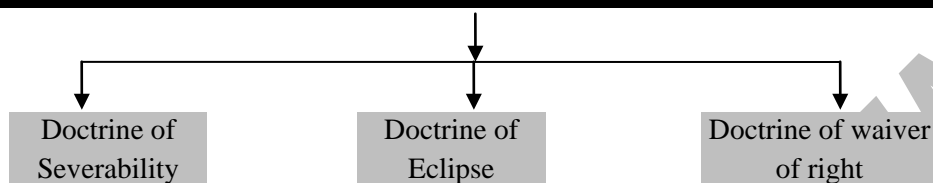
However a new clause has been added to **Article 13(i.e., clause -4)** which invalidated the aforesaid decision and provided that—

“Nothing in this Article shall apply to any amendment of this Constitution”.

Finally in **Keshavanand Bharti v. State of Kerala** Supreme Court had held that the **fundamental rights can be affected by Constitutional Amendment** provided basic structure of Constitution is not amended.

In a number of cases and the Courts have evolved following **doctrines** for interpreting the provisions of Article 13 :-

DOCTRINES FOR INTERPRETING THE PROVISIONS OF ARTICLES 13



(A) DOCTRINE OF SEVERABILITY

Doctrine provides that **all laws in force in India before the commencement of constitution** shall be void in so far they are inconsistent with the provisions of the constitution. However it further provides that **only that part of the law will be declared invalid which is inconsistent with the FRs** and the rest of the law will be valid. Courts had held that invalid part of the law shall be severed and declared invalid **if really it is severable**.

(B) DOCTRINE OF ECLIPSE

Though an existing law inconsistent with a fundamental right becomes in-operative from the date of the commencement of the Constitution, **yet it is not dead altogether**. A law made before the commencement of the Constitution **remains eclipsed or dormant** to the extent it comes under the shadow of the fundamental rights, i.e. is inconsistent with it, **but the eclipsed or dormant parts become active and effective again** if the prohibition brought about by the fundamental rights is removed by the amendment of the Constitution.

(C) DOCTRINE OF WAIVER OF RIGHTS

The doctrine of waiver of rights is based on the premise **that a person is his best judge** and that he has the liberty to waive the enjoyment of such rights as are conferred on him by the State. However, the person **must have the knowledge of his rights and that the waiver should be voluntary**.

RIGHT TO EQUALITY

ARTICLE 14-18

➤ ARTICLE 14: EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAWS

Article 14 of the Constitution says 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”.

Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws.

The expression ‘**equality before the law**’ is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. The second expression “**the equal protection of the laws**” directs that equal protection shall be secured to all persons within the territorial jurisdiction of the Union in the enjoyment of their rights and privileges.

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Article 14 applies to **all persons** and is not limited to citizens. A **corporation**, which is a juristic person, is also entitled to the benefit of this Article.

LEGISLATIVE CLASSIFICATION

“Equals are to be governed by the same laws. But as regards unequals, the same laws are not complemented.”

Legislative classification or distinction is made carefully between persons **who are and who are not similarly situated**. Article 14 does not forbid classification or differentiation which rests upon reasonable grounds of distinction.

CASE LAW

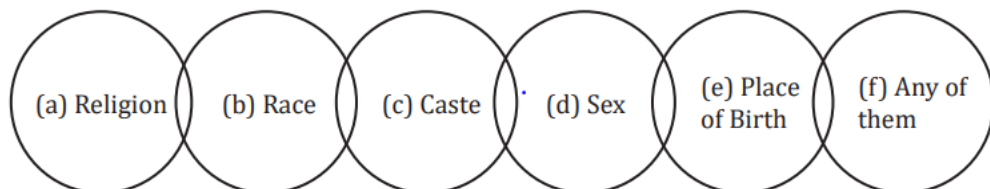


The rules with respect to permissible classification as evolved in various decisions have been summarised by the Supreme Court in **Ram Kishan Dalmiya v. Justice Tendulkar**, as follows:-

(i) Article 14 forbids class legislation, but does not forbid classification.
(ii) Permissible classification must satisfy two conditions, namely:- (a) it must be founded on an intelligible differentia which distinguishes persons. (b) the differentia must have a relation to the object sought to be achieved by the statute in question.
(iii) The classification may be founded on different basis , namely geographical, or according to objects or occupations or the like.
(iv) Even a single individual may be treated a class by himself on account of some special circumstances or reasons applicable to him and not applicable to others; a law may be constitutional even though it relates to a single individual who is in a class by himself.
(v) There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear non-compliance of the constitutional principles.

➤ **PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION ETC.** **[ARTICLE 15]**

Article 15(1) prohibits the State from discriminating against any citizen on grounds only of:



Article 15(1) prohibits the State from discriminating against any citizen on grounds <i>only</i> of:	(I) Religion
	(II) Race
	(III) Caste
	(IV) Sex
	(V) place of birth or
	(VI) any of them

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Article 15(2) lays down that **no citizen** shall be subjected to any disability, restriction or condition with regard to:-

(i)	access to shops, public restaurants, hotels and places of public entertainment; or
(ii)	the use of wells, tanks, bathing ghats, roads and places of public resort, maintained wholly or partially out of State funds or dedicated to the use of the general public.

Article 15(3) and 15(4) create certain **exceptions** to the right:-

- Under Article 15(3) the State can make special provision for women and children.
- Article 15(4) permits the State to make special provision for the advancement of—(i) Socially and educationally backward classes of citizens;(ii) Scheduled casts; and (iii) Scheduled tribes

➤ **ARTICLE 16:EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT**

Article 16 guarantees to all **citizens** equality of opportunity in matters relating to employment or appointment of **public office** under the State.

However, there are certain **exceptions** provided in Article. These are as under:-

•	Parliament can make a law requiring residential qualifications within that State or Union Territory prior to such employment or appointment .for e.g. - domicile requirements.
•	A provision can be made for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State.
•	A law shall not be invalid if it provides that the incumbent of an office in connection with the affair of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

➤ **ARTICLE 17:ABOLITION OF UNTOUCHABILITY**


Article 17 says that “**Untouchability**” is **abolished** and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an **offence** punishable in accordance with law.

In 1955 Parliament enacted the Untouchability (Offences)Act, 1955.In 1976, theActwas amended and renamed as the “**Protection of Civil Rights Act, 1955**” making changes in the existing law namely, all offences to be treated as **non-compoundable**

➤ **ARTICLE 18:ABOLITION OF TITLES**

No title, not being a military or academic distinction, shall be conferred by the State.

No citizen of India shall accept any title from any foreign State.

NKJ-CLASSROOM PRACTICE	
	Q. 1. "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Comment

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RIGHT TO FREEDOM

ARTICLE 19

Article 19(1), of the Constitution, guarantees to the citizens of India six <u>freedoms, namely:-</u>	(a) <i>freedom of speech and expression;</i>
	(b) <i>freedom to assemble peaceably and without arms;</i>
	(c) <i>freedom to form associations or unions</i>
	(d) <i>freedom to move freely, throughout the territory of India;</i>
	(e) <i>freedom to reside and settle in any part of the territory of India;</i>
	(f) <i>Right to acquire, hold and dispose of property – (deleted_by 44th Amendment in 1978.)</i>
	(g) <i>freedom to practise any profession, or to carry on any occupation, trade or business.</i>

None of these freedoms is absolute but subject to **reasonable restrictions** specified under clauses (2) to (6) of the Article 19. The Constitution under **Articles 19(2) to 19(6)** permits the imposition of restrictions on these freedoms subject to the following **conditions:-**

(a) The restriction can be imposed by law and not by a purely executive order issued under a statute;
(b) The restriction must be reasonable ;
(c) The restriction must be imposed for achieving one or more of the objects specified in the respective clauses of Article 19.

➤ **RIGHT TO FREEDOM OF SPEECH AND EXPRESSION**

The freedom of speech and expression under **Article 19(1)(a)** means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode.

- (a) This freedom includes the freedom of press and **Imposition of pre-censorship** on publication is violative of freedom of speech and expression. (*Maneka Gandhi v. Union of India*)
- (b) The right to know, '**receive and impart information**' has been recognized within the right to freedom of speech and expression.
- (c) The Court had held that the freedom of speech and expression under Article 19(1)(a) includes the **right to remain silent**. (*Bijoe Emmanuel v. State of Kerala*)

<u>Permissible restrictions</u>	• Sovereignty and integrity of India.
	• Security of the State.
	• Friendly relations with foreign States.
	• Public Order.
	• Decency or morality or
	• Contempt of court.
	• Defamation or
	• Incitement to an offence.

The Supreme Court, expressed the view that a **Corporation** is **not** a **citizen** within the meaning of Article 19 and, therefore, cannot invoke this Article, *but if the State action impaired the rights of the shareholders as well as of the company*, the Court will not deny itself jurisdiction to grant relief.

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Supreme Court in **Cricket Association of Bengal v. Ministry of Information & Broadcasting** has held that the right to communicate through any media – print, electronic and audio visual is included under Article 19(1)(a) of the Constitution.

Supreme Court in **Union of India v. Naveen Jindal** has held that **right to fly the National Flag freely** with respect and dignity is a fundamental right of a citizen within the meaning of Article 19(1)(a) of the Constitution being an expression and manifestation of his allegiance and feelings and sentiments of pride for the nation.

➤ **RIGHT TO FREEDOM OF ASSEMBLY**

The next right is the right of citizens to **assemble peacefully and without arms** [Art. 19(1)(b)].

This right is also, however, subject to reasonable restrictions which the State may impose in the interests of:-	(a) the sovereignty and integrity of India,
	(b) public order.

➤ **RIGHT TO FORM AN ASSOCIATION**

Right to form associations for unions is guaranteed so that people are free to have the members entertaining similar views [Art. 19(1)(c)].

This right is also, however, subject to reasonable restrictions which the State may impose in the interests of:-	(a) the sovereignty and integrity of India, or
	(b) public order, or
	(c) morality

Right to form associations also “implies a right not to form an association, this right necessarily implies a right not to be a member of an association. (*Sitharamachary v. Sr. Dy. Inspector of Schools*)

➤ **RIGHT TO FREEDOM OF MOVEMENT**

Right to move freely throughout the territory of India is another right guaranteed under Article 19(1)(d).

It is also subject to the reasonable restrictions which the State may impose:-	(a) in the interests of the general public,
	(b) for the protection of the interests of any scheduled tribe.

➤ **RIGHT TO FREEDOM OF RESIDENCE**

Article 19(1)(e) guarantees to a citizens the right to reside and settle in any part of the territory of India.

This freedom is also subject to reasonable restrictions:-	(a) in the interests of general public, or
	(b) for the protection of the interests of any Scheduled Tribe under Article 19(5).

➤ **RIGHT TO FREEDOM TO TRADE AND OCCUPATIONS**

Article 19(1)(g) of the Constitution guarantees that all citizens have the **right to practice any profession or to carry on any occupation or trade or business**. This freedom is also subject to reasonable restrictions:-

(a) in the interests of the general public;
(b) for prescribing professional or technical qualifications necessary for carrying on any profession, trade or business;
(c) which enables the State to carry on any trade or business which may leads to the exclusion of private citizens, wholly or partially.(creation of State monopoly).

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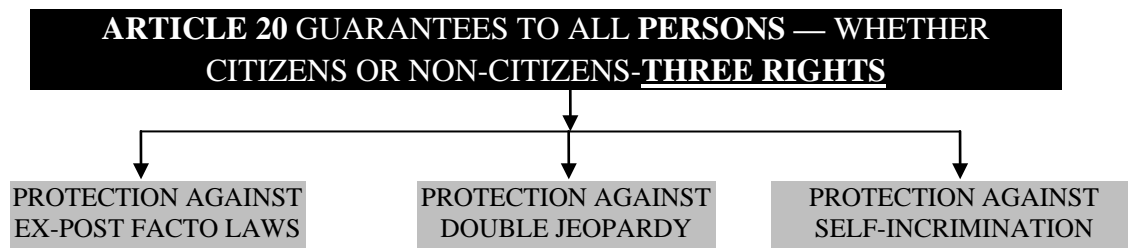
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PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES

ARTICLE 20



(1) PROTECTION AGAINST EX-POST FACTO LAWS

Ex-post facto laws are laws which punished what had been lawful when done. If a particular act was not an offence according to the law of the land at the time when the person did that act, then he cannot be convicted under a law which with retrospective declares that act as an offence.

This protection is **not available with respect to procedural law**. Thus, no one has a vested right in procedure.

(2) PROTECTION AGAINST DOUBLE JEOPARDY

Double jeopardy means **punishment for more than once for the same offence**. No person can be prosecuted and punished for the same offence more than once. It is, however, to be noted that the conjunction "and" is used between the words prosecuted and punished, and therefore, if a person has been let off after prosecution without being punished, he can be prosecuted again

(3) PROTECTION AGAINST SELF-INCRIMINATION

A person accused of any offence cannot be compelled to be a **witness against himself**. In other words, an accused cannot be compelled to state anything which goes against him.

PROTECTION OF LIFE AND PERSONAL LIBERTY

ARTICLE 21

Article 21 confers on every person the fundamental right to life and personal liberty. It says that:-

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

The **right to life includes those things which make life meaningful**. For example, the right of a couple to adopt a son is a constitutional right guaranteed under Article 21 of the Constitution (*Philips Alfred Malvin v. Y.J. Gonsalvis*)

The expression ‘liberty’ has been given a very wide meaning. The restricted interpretation of the expression ‘personal liberty’ preferred by the majority judgement in *A.K. Gopalan’s* case namely, that the expression ‘personal liberty’ means only liberty relating to or concerning the person or body of the individual, has not been accepted by the Supreme Court in subsequent cases.

That the expression ‘personal liberty’ is not limited to bodily restraint or to confinement to prison, only is well illustrated in *Kharak Singh v. State of U.P.* In that case the question raised was of the validity of the police regulations authorising the police to conduct what are called as **domiciliary visits against bad characters and to have surveillance over them**. The court held that such **visits were an invasion**, on the part of the police, of the **sanctity of a man’s home and an intrusion into his personal security and his right to sleep**, and therefore violative of the personal liberty of the individual, unless authorised by a valid law.

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The expression 'personal liberty' is an **inclusive concept** and it **includes various rights** like, right to information, right to bail, right to get free legal aid, right to have clean environment etc.

In *Fahima Shareen RK v. State of Kerala* and others the **High Court of Kerala** on September 19, 2019 upheld that '**Right to Internet Access**' as a fundamental right. The Court declared that the right to have access to Internet becomes the part of right to education as well as right to privacy under Article 21 of the Constitution of India.

Procedure established by law:- The expression 'procedure established by law' means procedure laid down **by statute or procedure prescribed by the law of the State**.

ARTICLE 21A: RIGHT TO EDUCATION

This was introduced by the **Constitution (Eighty sixth Amendment) Act, 2002**.

According to this, the State shall provide **free and compulsory education to all children of the age of six to fourteen years** in such manner as the State may, by law, determine.

PROTECTION AGAINST ARBITRARY ARREST AND DETENTION

Article 22 provides the following **safeguards** against arbitrary arrest and detention:-

- (I) A person who is arrested cannot be detained in custody unless he has been **informed**, as soon as may be, of the **grounds** for such arrest.
- (ii) Such person shall have the right to consult and to be defended by a **legal practitioner** of his choice.
- (iii) A person who is arrested and detained must be produced before the nearest **magistrate** within a period of **twenty-four hours** of such arrest, *excluding the time of journey*. And such a person shall not be detained in custody beyond twenty-four hours without the authority of magistrate.

However, Article 22 does **not apply** to following persons:-

- | |
|---|
| (a) alien enemies, |
| (b) person arrested or detained under preventive detention law. |

PREVENTIVE DETENTION

Preventive detention means **detention** of a person **without trial**. The object of preventive detention is not to punish a person for having done something but to prevent him from doing it.

Safeguards against Preventive Detention

Article 22 contains following safeguards against preventive detention:-

- | |
|---|
| (i) such a person cannot be detained for a longer period than three months unless an Advisory Board constituted of persons who are or have been or are qualified to be High Court judges has reported, before the expiration of the said period of three months that there is, in its opinion sufficient cause for such detention. |
| (ii) The authority ordering the detention of a person under the preventive detention law shall communicate to him, as soon as may be, the grounds on which the order for his detention has been made, and afford him the earliest opportunity of making the representation against the order. |

It may, however, be noted that while the grounds for making the order are to be supplied, the authority making such order is **not bound to disclose** those facts which it considers to be against the **public interest**.

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RIGHT AGAINST EXPLOITATION

ARTICLES 23 AND 24

➤ PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR

Article 23 imposes a **complete ban on traffic in human** beings, federal and other similar forms of forced labour. The contravention of these provisions is declared punishable by law.

‘Traffic’ in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose them off. ‘Begar’ means involuntary work without payment.

➤ PROHIBITION OF EMPLOYMENT OF CHILDREN

Article 24 prohibits the employment of children **below the age of fourteen** in any factory or mine.

RIGHT TO FREEDOM OF RELIGION

ARTICLE 25

Article 25 gives to **every person** the:-

- | |
|--|
| (i) freedom of conscience, and |
| (ii) the right freely to profess, practice and propagate religion. |

But this freedom is subject to restrictions imposed by the State on the grounds of public order, morality and health.

SECULARISM

The Supreme Court in *State of Karnataka v. Dr. Praveen Bhai Thogadia*, held that **secularism means that State should have no religion of its own** and each person, whatever his religion, must get an assurance from the State that he has the protection of law to freely profess, practise and propagate his religion and freedom of conscience.

➤ FREEDOM TO MANAGE RELIGIOUS AFFAIRS

It grants to every religious denomination or any sect thereof the right:—

- | |
|--|
| (i) to establish and maintain institutions of religious and charitable purposes; |
| (ii) to manage its own affairs in matters of religion; |
| (iii) to own and acquire movable and immovable property; and |
| (iv) to administer such property in accordance with law. |

All these rights are subject to public order, morality

➤ FREEDOM AS TO PAYMENT OF TAX FOR THE PROMOTION OF ANY PARTICULAR RELIGION

According to Article 27, **no person can be compelled to pay any taxes**, the proceeds of which are specially appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

➤ FREEDOM AS TO ATTENDANCE AT RELIGIOUS INSTRUCTION OR RELIGIOUS WORSHIP IN EDUCATIONAL INSTITUTIONS

Article 28 states that no religious instruction can be provided in any educational institution wholly maintained out of State funds. **However**, this prohibition does not extend to an educational institution which is administered by the State but has been established under **any endowment or trust** which requires that religious instruction shall be imparted in such institution.

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CULTURAL AND EDUCATIONAL RIGHTS / RIGHTS OF MINORITIES

ARTICLES 29 AND 30

MINORITY

The word 'minority' has **not been defined** in the Constitution.

However the determination of minority should be based on the **area of operation of a particular piece of legislation**.

If it is a **State law**, the *population of the State* should be kept in mind and

if it is a **Central Law** the *population of the whole of India* should be taken into account.

Article 29 guarantees two rights:-

- (i) Any section of the **citizens** residing in the territory of Indian or any part thereof having a distinct language, script or culture of its own has the right of **conserve** the same.
- (ii) **No citizen** can be **denied admission** into any educational institution **maintained** by the **State** or receiving aid out of State funds on grounds only of religion, race, caste, language, or any of them.

An **exception** is made to this right to the effect that if a special provision is made for the admission of persons belonging to educationally or/and socially **backward classes** or scheduled castes or scheduled tribes it shall be valid.

RIGHT OF MINORITIES TO ESTABLISH AND ADMINISTER EDUCATIONAL INSTITUTIONS

ARTICLE 30

- (i) The **State cannot**, in granting aid to educational institutions, **discriminate** against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.
- (ii) **All minorities**, whether based on religion or on language, shall have the **right to establish** and administer educational institutions of their choice.

In **T.M.A. Pai Foundation v. State of Karnataka**, while interpreting Article 30, the Supreme Court held that **minority includes both linguistic and religious minorities** and or determination of minority status, the **unit would be the State and not whole of India**. Further, the right of minority to establish and administer educational institutions (including professional education) **was not absolute and regulatory measures could be imposed for ensuring educational standards and maintaining excellence** thereof. Right of minorities included right to determine the procedure and method of admission and selection of students, which should be fair and transparent and based merit.

ARTICLES 31A, 31B AND 31C RELATING TO PROPERTY

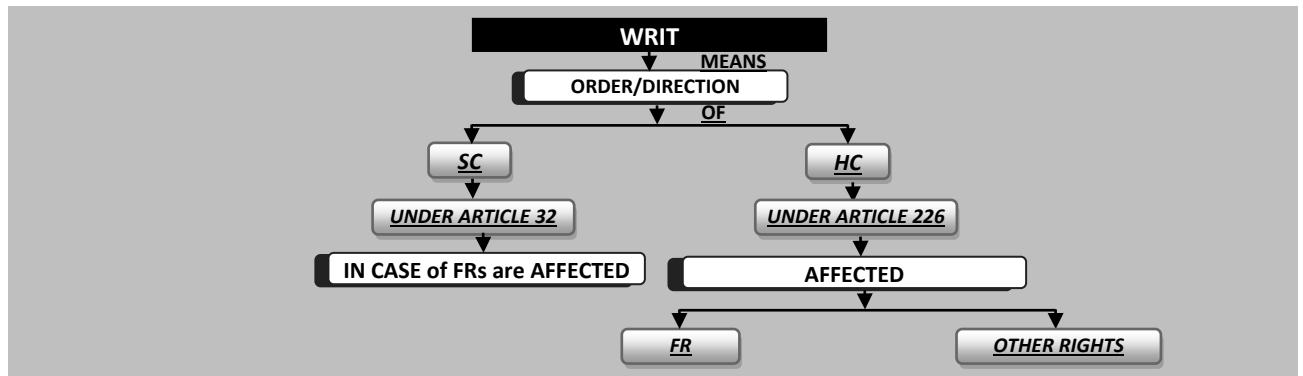
Right to property is **no more a fundamental right** which was previously guaranteed under Part III of the Constitution by Article 31.

But the right to property has been inserted by **Article 300A** under Part XII of the Constitution. Article 300A reads – “*No person shall be deprived of his property save by authority of law*”.

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RIGHT TO CONSTITUTIONAL REMEDIES

ARTICLE 32

Article 32 guarantees the **enforcement of Fundamental Rights**.

Article 32 makes it a **fundamental right** that a person whose fundamental right is violated has the right to move the **Supreme Court** by appropriate proceedings for the enforcement of this fundamental right.

A person ***need not first exhaust the other remedies and then go to the Supreme Court***. On the other hand, he can directly raise the matter before highest Court of the land and the Supreme Court is empowered to issue directions or orders or writ.

The right guaranteed by Article 32 **cannot be suspended** except as provided in the Constitution. Constitution does not contemplate such suspension except by way of President's order under Article 359 when a proclamation of **Emergency** is in force.

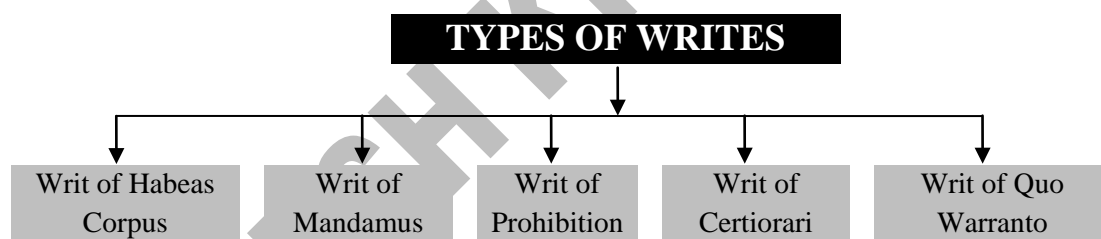
WRITS

Anyone whose rights are affected is empowered to seek writs from **Supreme Court** under **Article 32** and from **High Court** under **Article 226**. However under Article 32 Supreme Court can issue Writs only in the case of violations of Fundamental Rights.

Remedies under writ is provided only if:-

- | |
|---|
| (i) there is no remedy available under the ordinary law, or |
| (ii) the remedy available is inadequate. |

TYPES OF WRITES



1. WRIT OF HABEAS CORPUS

The words 'Habeas Corpus' literally mean "**to have the body**".

The writ of habeas Corpus is in the nature of an **order calling upon the person who has detained another**, to produce the latter before the court in order to let the court know the ground of his detention and to set him free if there is no legal justifications.

The writ of Habeas corpus is a remedy available to a person who is confined without legal justification.

The disobedience to this writ is met with by punishment for contempt of Court under the Contempt of Courts Act

2. WRIT OF MANDAMUS

The word 'Mandamus' **literally means- command**. The writ of mandamus is, a command issued to direct any person, corporation, inferior court, or Government **requiring him or it do a particular thing** specified therein which pertains to his or its office and is further in the nature of a public duty.

Mandamus can be issued against any **public authority**. The writ is used for securing judicial enforcement of public duties.

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Mandamus **does not lie** against the **President or the Governor** of a State for the exercise of their duties and power (Article 361).

3. **WRIT OF PROHIBITION**

A writ of prohibition is **issued to an Inferior Court preventing the latter from usurping jurisdiction** which is not legally vested in it. When a tribunal acts without or in excess of jurisdiction, or in violation of rules or law, a writ of prohibition can be asked for. It is generally issued before the trial of the case.

It is available only against judicial or quasi judicial authorities and is not available against a public officer who is not vested with judicial functions.

4. **WRIT OF CERTIORARI**

It is a writ issued by the Supreme Court and High Court *to an inferior court forbidding the later to continue proceedings in excess of its jurisdiction*.

All Courts can issue the writ of certiorari throughout their territorial jurisdiction when the subordinate judicial authority acts:-

- | |
|--|
| (i) without or in excess of jurisdiction or in |
| (ii) contravention of the rules of natural justice or |
| (iii) commits an error apparent on the face of the record. |

Although the object of both the writs of prohibition and of certiorari is the same, **prohibition** is available at an **earlier stage** whereas **certiorari** is available at a **later stage** i.e. Certiorari is issued after authority has exercised its powers.

5. **WRIT OF QUO WARRANTO**

Under this the holder of the office has to show to the court under **what authority he holds the office**.

It is issued when:-

- | |
|--|
| (i) the office is of public and of a substantive nature, or is |
| (ii) created by statute or by the Constitution itself, and |
| (iii) The respondent has asserted his claim to the office. |

It can be issued even though he has not assumed the charge of the office.

The fundamental basis of the proceeding of Quo warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office

DIRECTIVE PRINCIPLES OF STATE POLICY

ARTICLES 36 TO 51

The Articles included in Part IV of the Constitution (Articles 36 to 51) contain certain **Directives** which are the **guidelines** for the **Government** to **lead** the country.

Some of the important Directive Principles are enumerated below:-

- | |
|--|
| (a) State to secure a social order for the promotion of welfare of the people: |
| (b) The State must strive to promote the welfare of the people . |
| (c) Certain principles of policy to be followed by the State. The State, particularly, must <u>direct its policy towards securing</u> :- |
| ➤ that the ownership and control of the material resources of the community are so distributed as best to subserve the common goods; |

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- that the operation of the economic systems does not result in the **concentration of wealth** and means of production to the common detriment;
- **equal pay** for equal work for both men and women;
- that childhood, and youth are protected against exploitation .

(d)	The State must take steps to organise the Village Panchayats .
(e)	State must make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, etc.
(f)	The State must endeavour to provide a uniform civil code for all Indian citizens.
(g)	Provision for free and compulsory education for all children up to the age of fourteen years.
(h)	The State must promote the educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections .
(i)	The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.
(j)	The State must separate executive from judiciary in the public services of the State.
(k)	In international matters the State must endeavour to promote peace and security, maintain just and honourable relations in respect of international law between nations.

CONFLICT BETWEEN FUNDAMENTAL RIGHT AND A DIRECTIVE PRINCIPLE

What will be the legal position if a law enacted to enforce a Directive Principle violates a Fundamental Right?

Initially, the Courts, adopted a strict view in this respect and ruled that a Directive Principle could not override a Fundamental Right, and in case of conflict between the two, a Fundamental Right would prevail over the Directive Principle.

CASE LAW



When the matter came before the Supreme Court in *State of Madras v. Champakram Dorairajan*, where the validity of a Government order alleged to be made to give effect to a Directive Principle was challenged as being violative of a Fundamental Right, the Supreme Court made the observation that :-

*“The Directive Principles of State Policy **have to conform to and run as subsidiary** to the chapter of **Fundamental Rights**”.*

However, insertion of **Article 31-C** led to a different legal situation as it provides that if any law is passed to give effect to any Directive Principles, it cannot be challenged even if it violates Fundamental Rights under Article 14 or 19.

DIFFERENCE & RELATION BETWEEN DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS

DIRECTIVE PRINCIPLES	FUNDAMENTAL RIGHTS
Directive Principles in part IV contain positive commands to the State to promote what may be called a social and welfare State.	Fundamental Rights in Part, III contain negative injunctions to the State not to do various things .
Directive principles are not enforceable by the courts	Fundamental Rights are enforceable by the courts
In case of any conflict between fundamental rights and Directive Principles, the Directive Principles will not prevail .	In case of any conflict between fundamental rights and Directive Principles, the Fundamental Rights would prevail .

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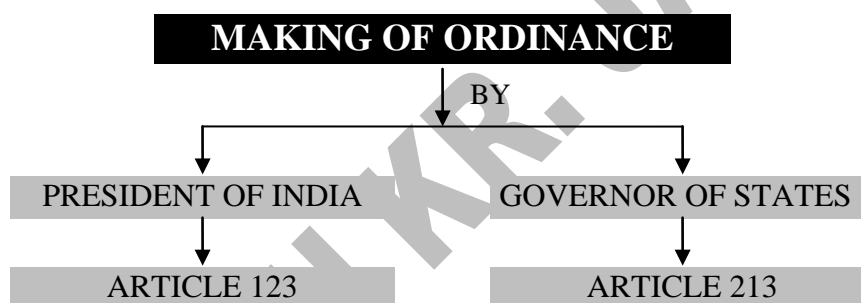
FUNDAMENTAL DUTIES

ARTICLE 51A

Article 51A imposes certain fundamental duties on every citizen of India. Following are some of the fundamental duties:-	(a) to abide by the constitution and respect its ideals and institutions, the National flag & anthem
	(b) to uphold and protect the sovereignty, unity and integrity of India ;
	(c) to defend the country and render national service when called upon to do so;
	(d) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
	(e) to value and preserve the rich heritage of our composite culture;
	(f) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
	(g) to safeguard public property .

Since the duties are imposed upon the citizens and not upon the States, legislation is necessary for their implementation.

ORDINANCE-MAKING POWER



➤ ORDINANCE-MAKING POWER OF PRESIDENT

ARTICLE 123

The most important legislative power conferred on the President is to promulgate Ordinances. Article 123 of the Constitution provides that the President shall have the power to legislate by Ordinances at any time when it is not possible to have a parliamentary enactment on the subject, immediately.

On the other hand, according to Article 13(3)(a) “**Law**” includes an “**Ordinance**”. But an Ordinance shall be of **temporary duration**.

This independent power of the president to legislate by Ordinance has the following peculiarities/conditions:-

(a) it may relate to any subject in respect of which parliament has the right to legislate and is subject to the same constitutional limitations as legislation by Parliament.
(b) He must be satisfied that circumstances exist which render it necessary to take immediate action .
(c) President can do it only if Parliament is not functioning .
(d) this power is to be exercised by the President on the advice of his Council of Ministers .
(e) the Ordinance must be laid before Parliament when it re-assembles , and shall automatically cease to have effect at the expiration of 6 weeks from the date of re-assembly or before resolutions have been passed disapproving the Ordinance .

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➤ **ORDINANCE-MAKING POWER OF GOVERNOR**

ARTICLE 213

The Governor's power to make Ordinances as given under Article 213 is similar to the Ordinance making power of the President and have the force of an Act of the State Legislature.

This independent power of Governor to legislate by Ordinance has the following peculiarities/conditions:-

(a)	He can make Ordinance only when the state Legislature or either of the two Houses is not in session.
(b)	He must be satisfied that circumstances exist which render it necessary to take immediate action .
(c)	While exercising this power Governor must act with the aid and advise of the Council of Ministers .
(d)	The Ordinance must be laid before the state legislature (when it re-assembles) and shall automatically cease to have effect at the expiration of six weeks from the date of the re-assembly unless disapproved earlier by that legislature

SEPARATION OF POWERS / THREE MAIN ORGANS OF THE GOVERNMENT IN STATE

It is generally accepted that there are three main categories of governmental functions –

(i)	the Legislative,
(ii)	the Executive, and
(iii)	the Judicial.

At the same time, there are **three main organs of the Government** in State, i.e., legislature, executive and judiciary.

According to the theory of separation of powers, these three powers and functions of the Government must, in a free democracy, **always be kept separate and exercised by separate organs** of the Government.

Thus, the legislature cannot exercise executive or judicial power; the executive cannot exercise legislative or judicial power of the Government.

LEGISLATIVE FUNCTIONS

BILL

A Bill is a **draft statute** which becomes law after it is passed by both the Houses of Parliament and assented to by the President. All legislative proposals are brought before Parliament in the forms of Bills.

TYPES OF BILLS AND THEIR SPECIFIC FEATURES

(1)	Bills may be broadly classified into <u>Government Bills and Private Members' Bills</u> depending upon their initiation in the House by a Minister or a Private Member.
(2)	Content wise , Bills are further classified into:
(a)	Original Bills which embody new proposals, ideas or policies,
(b)	Amending Bills which seek to modify, amend or revise existing Acts,

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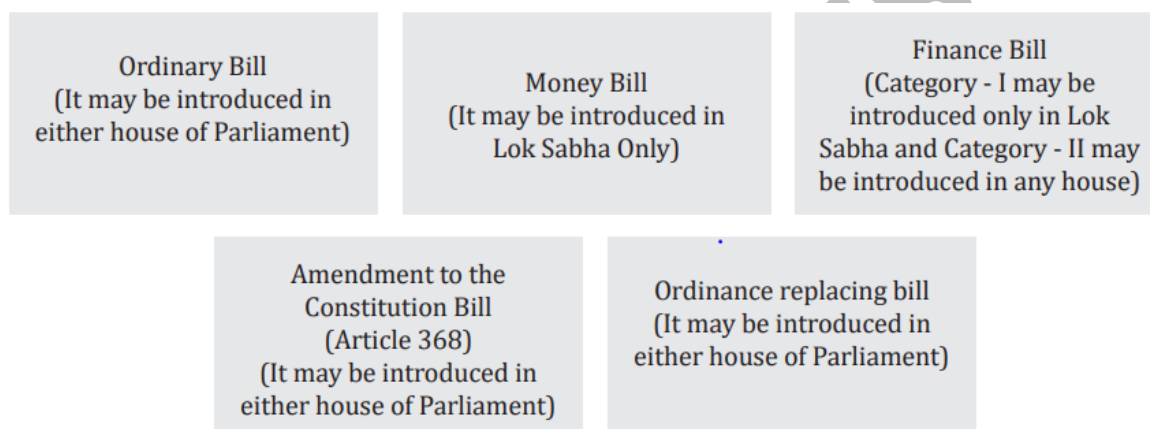
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(c) Consolidating Bills which seek to consolidate existing law/enactments on a particular subject,
(d) Expiring Laws (Continuance) Bills which seek to continue Acts which, otherwise, would expire on a specified date,
(e) Repealing and amending Bill to cleanse the Statute Book,
(f) Validating Acts to give validity to certain actions,
(g) Bills to replace Ordinances ,
(h) Money and Financial Bills , and
(i) Constitution Amendment Bills .
(3) However, procedurally , the Bills are classified as
(a) Ordinary Bills
(b) Money Bills and Financial Bills
(c) Ordinance Replacing Bills and
(d) Constitution Amendment Bills.



LAW MAKING PROCESS (HOW A BILL BECOMES AN ACT)

A Bill undergoes **three readings** in each House of Parliament

The **First Reading** consists of the **Introduction of a Bill**. Bills, are referred to *Department-related Parliamentary Standing Committees for examination* and report within three months

The next stage on a Bill, i.e., **second reading** start only after the **Committee submits its report** on the Bill to the Houses

The **Third Reading** refers to the **discussion on the motion** that the Bill (or the Bill as amended) *be passed or returned* (to the Lok Sabha, in the case of a Money Bill) wherein the **arguments are based against or in favour of the Bill**. After a Bill has been **passed by one House**, it is sent to the other House where it goes through the same procedure.

ACT

After a **Bill has been passed by both Houses**, it is presented to the **President for his assent**. A Bill becomes an Act of Parliament after being passed by both the Houses of Parliament and assented to by the President.

PARLIAMENTARY COMMITTEES

The work done by the Parliament in modern times is **not only varied in nature, but considerable in volume**. The time at its disposal is limited. It cannot, therefore, give close consideration to all the legislative and other matters that come up before it. A good deal of its business is, therefore, transacted by what are called the Parliamentary Committees.

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Parliamentary Committees play a vital role in the Parliamentary System. They are a **vibrant link between the Parliament, the Executive and the general public**

AD HOC AND STANDING COMMITTEES

Parliamentary Committees are of **two kinds**: Ad hoc Committees and the Standing Committees.

Ad hoc Committees are appointed for a **specific purpose and they cease to exist when they finish the task** assigned to them and submit a report

.Apart from the Ad hoc Committees, each House of Parliament has **Standing Committees** like the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges and the Rules Committee, etc

LEGISLATIVE POWERS OF THE UNION AND THE STATES

Constitution provides for two Sets of Government – Central and State. There is distribution of powers between Central and State Governments.

Article 246 provides for the following lists:-	List I - Union List.
	List II- State List and
	List III- Concurrent List.

Each list contains a number of entries in which the subjects of legislation have been separately and distinctly mentioned. The **number of entries** in the respective lists is **97, 66 and 47**.

With respect to the subject enumerated in the Union i.e., **List I**, the Union **Parliament** has the exclusive power to make laws.

With respect to the subjects enumerated in the State List, i.e., **List II**, the **legislature of a State** has exclusive power to make laws. Therefore Parliament cannot make any law on any of these subjects, whether the State makes or does not make any law.

With respect to the subjects enumerated in the Concurrent List, i.e., **List III**, **Parliament and the State Legislatures both** have powers to make laws. Thus, both of them can make a law even with respect to the same subject and both the laws shall be valid in so far as they are not repugnant to each other. **However, in case of conflict** between such laws then the law made by Parliament shall prevail over the law made by the State Legislature.

EXCEPTION

State legislatures have the exclusive powers to make laws with respect to the subjects included in the State List and Parliament has no power to encroach upon them. However, *our Constitution makes a few exceptions to this general rule by authorising Parliament to make law even on the subjects enumerated in the State List.*

Following are the **exceptions** which the Constitution so recognises:-

(a)	In the National Interest
(b)	During a proclamation of emergency
(c)	Breakdown of Constitutional Machinery in a State
(d)	On the request of two or more States
(e)	Legislation for enforcing international agreements

NKJ-CLASSROOM PRACTICE



Q. 1. Write short notes on Separation of Powers.

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➤ PLENARY POWERS

When a legislative power is given with respect to any subject, the legislatures have the power to make laws on such subject and **also any matter incidental to such subject**. This is called giving plenary of powers. **For Example**, when a power is given on tax matter, the legislatures have the power to make law for imposition of tax, refund of tax, and also not to impose and collect tax.

➤ PITH AND SUBSTANCE RULE

The term 'Pith and substance' is used in law to ascertain the essential part of the law which the legislature mean the most important in framing the law. While making any law on any matter contained in union, state or concurrent list, the legislature may slightly encroach other list. If challenged, the court by applying the Pith and substance rule may determine the validity of law.

➤ COLOURABLE LEGISLATION

Sometimes a legislature may pass a law in such a way that it gives it a colour of constitutionality while, in reality, that law aims at achieving something which the legislature could not do. Such legislation is called colourable piece of legislation and is invalid.

In Kameshwar Singh v. State of Bihar, the **Bihar Land Reforms Act, 1950** provided that the unpaid rents of the tenants shall be collected by the state and one half of them shall be paid back by the State to the landlord as compensation for acquisition. According to the provision in the State List under which the above law was passed, **no property should be acquired without payment of compensation**.

The Supreme Court found that aforesaid Act passed by the State legislature was a colourable legislation, because "the taking of the whole and returning a half does not amount to compensation.

➤ DELEGATED LEGISLATION

Delegated legislation means legislation by authorities other than the legislature, where the former acting on the express delegated authority and power from the latter (legislature).

Parliament and state legislature have the exclusive legislative powers which can be exercised by them.

The increasing complexity of modern administration have made it necessary for the legislatures to delegate its powers.

The three relevant justifications for delegated legislation are:-

- | |
|--|
| (a) the limits of the time of the legislature; |
| (b) the limits of the amplitude (<i>width, dimension</i>) of the legislature, |
| (c) the need of some weapon for coping with situations created by emergency. |

➤ CLASSIFICATION OF DELEGATED LEGISLATION

legislation is either **supreme or subordinate**.

The Supreme Law or Legislation is that which proceeds from supreme or sovereign power in the state and is therefore incapable of being repealed, annulled or controlled by any other legislative authority.

Subordinate legislation is that which proceeds from any authority other than the sovereign power , and is, therefore, dependent for its continued existence and validity on some sovereign or supreme authority.
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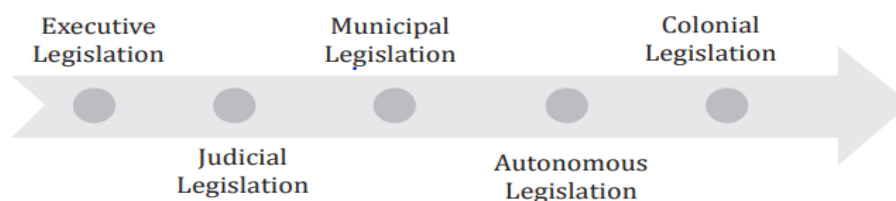
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➤ CLASSIFICATION OF SUBORDINATE LEGISLATION



Executive Legislation

The tendency of modern legislation has been in the direction of placing in the body of an Act only few general rules or statements and relegating details to statutory rules. This system empowers the executive to make rules and orders which do not require express confirmation by the legislature. Thus, the **rules framed by the Government** fall under the category.

Judicial Legislation

Under various statutes, the **High Courts are authorised to frame rules** for regulating the procedure to be followed in courts

Municipal Legislation

Municipal authorities are entrusted with limited and sub-ordinate powers of establishing special laws applicable to the whole or any part of the area under their administration known as bye-laws.

Autonomous Legislation

Under this head fall the regulations which **autonomous bodies** such as Universities make in respect of matters which concern themselves.

Colonial Legislation

The laws made by **colonies under the control of some other nation**, which are subject to supreme legislation of the country under whose control they are.

FREEDOM OF TRADE, COMMERCE AND INTERCOURSE

ARTICLES 301 TO 305

This heading has been given to Part XIII of the Constitution. This part consists of 5 articles — Articles 301 to 305.

Article 301 in real sense, creates an overall comprehensive limitation on all legislative powers of the Union and the State which affect the freedom of trade, commerce and intercourse.

The freedom guaranteed by Article 301 is not made absolute and is to be read **subject to the following exceptions as provided in Articles 302-305**

➤ PARLIAMENT TO IMPOSE RESTRICTION IN THE PUBLIC INTEREST

According to Article 302 Parliament may, by law, impose such restrictions on the freedom of trade, commerce and intercourse as may be required in the public interest.

➤ PARLIAMENT TO MAKE PREFERENCE OR DISCRIMINATION

Parliament cannot by making any law give preference to one State over the other or make discrimination between the States **except when it is declared by that law that it is necessary to do so** for the purpose of dealing with a situation arising from **scarcity of goods in any part of the territory of India** [Article 303 (1) and (2)].

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➤ **POWER OF THE STATE LEGISLATURE TO IMPOSE TAX**

The Legislature of a **State may by law impose on goods imported from other States or the Union territories** any tax to which similar goods manufactured or produced in that State are subject to such taxes.

However, no bill or amendment for making a law falling in this provision can be introduced or moved in the Legislature of a State without the previous sanction of the President. [Article 304]

➤ **SAVING OF LAWS PROVIDING FOR STATE MONOPOLY**

The laws which create **State monopoly** in any trade, etc. are saved from attack under Article 301, i.e., they are valid irrespective of the fact that they directly impede or restrict the freedom of trade and commerce.

NKJ-CLASSROOM PRACTICE



Q. 1. Does a law made by a State to create monopoly rights in favour of a person to carry on any business affect the freedom of trade?

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Bill

A Bill is a draft statute which becomes law after it is passed by both the Houses of Parliament and assented to by the President. All legislative proposals are brought before Parliament in the forms of Bills.

Types of Bills and their Specific Features

- (i) Bills may be broadly classified into Government Bills and Private Members' Bills depending upon their initiation in the House by a Minister or a Private Member. (ii)

Content wise, Bills are further classified into: (a) Original Bills which embody new proposals, ideas or policies, (b) Amending Bills which seek to modify, amend or revise existing Acts, (c) Consolidating Bills which seek to consolidate existing law/enactments on a particular subject, (d) Expiring Laws (Continuance) Bills which seek to continue Acts which, otherwise, would expire on a specified date, (e) Repealing and amending Bill to cleanse the Statute Book, (f) Validating Acts to give validity to certain actions, (g) Bills to replace Ordinances, (h) Money and Financial Bills, and (i) Constitution Amendment Bills.

However, procedurally, the Bills are classified as

- (a) Ordinary Bills (b) Money Bills and Financial Bills (c) Ordinance Replacing Bills and (d) Constitution Amendment Bills.

Money Bills are those Bills which contain only provisions dealing with all or any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 of the Constitution. **Financial Bills** can be further classified as Financial Bills Categories A and B. Category A Bills contain provisions dealing with any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 and other matters and Category B Bills involve expenditure from the Consolidated Fund of India. Except Money Bills and Financial Bills, Category A, which can be introduced only in the Lok Sabha

NKJ-CLASSROOM PRACTICE



Q. 1. The Constitution of India is—federal in character but with unitary features|. Comment.

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Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 1:-

CS NITESH KR. JAISWAL