

IMPORTANT LONG AND SHORTS ON CONSTITUTIONAL LAW-I BY AJITABH MISHRA ASSISTANT PROFESSOR OF LAW

S. No.	LONG ANSWERS	LINK
1.	PREAMBLE OF THE INDIAN CONSTITUTION	VIEW
2.	CITIZENSHIP IN INDIA	VIEW
3.	FREEDOM OF SPEECH AND EXPRESSION (ARTICLE 19(1)(a))	VIEW
4.	LAW PERTAINING TO RESERVATION OF SEATS IN REFERENCE TO FUNDAMENTAL RIGHTS	VIEW
5.	RIGHT TO LIFE AND PERSONAL LIBERTY (ARTICLES 20–22): EXPANSIVE INTERPRETATION	VIEW
6.	FREEDOM OF RELIGION; CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES (ARTICLES 25–30)	VIEW
7.	DIRECTIVE PRINCIPLES OF STATE POLICY (ARTICLES 37–51)	VIEW
8.	INTER-RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND	<i>VIEW</i>

NOTES ON CONSTITUTIONAL LAW -I

	DIRECTIVE PRINCIPLES OF STATE POLICY	
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S. No.	SHORT ANSWERS	LINK
1.	Unit 1	VIEW
2.	Unit 2	VIEW
3.	Unit 3	VIEW
4.	Unit 4	VIEW

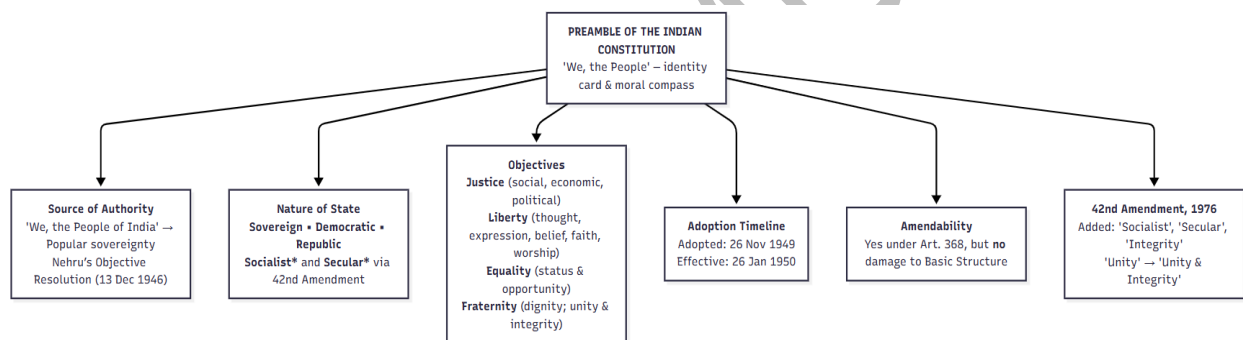
TOPIC:

PREAMBLE OF THE INDIAN CONSTITUTION

Answer:

Introduction

The Preamble of the Indian Constitution is the philosophical key to the document. It serves as an **introductory statement of purpose**, setting out the guiding principles and ideals on which the Indian Republic is founded. Drafted under the chairmanship of **Dr. B.R. Ambedkar** and adopted on **26 November 1949**, it embodies the aspirations of the people and the moral vision of the Constituent Assembly. Often described as the **“identity card of the Constitution”**, the Preamble reflects the soul and spirit of the nation. It was influenced by the **Objective Resolution** moved by **Pandit Jawaharlal Nehru on 13 December 1946**, which laid the foundation for the ideals later incorporated into the Preamble.



Meaning and Nature of the Preamble

The term **“Preamble”** refers to an introductory part of a statute that states the objects, purposes, and philosophy of the law. In constitutional terms, it represents the **essence of the Constitution** and the vision of its framers. It is not a source of power in itself but a guiding light for interpreting other constitutional provisions.

The Indian Preamble declares that the people of India have solemnly resolved to constitute India into a **“Sovereign Socialist Secular Democratic Republic”** and to secure to all its citizens **Justice, Liberty, Equality, and Fraternity**. It reflects the **ideals of the freedom struggle**, aiming to transform the political independence achieved in 1947 into social and economic emancipation.

Text of the Preamble

“We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: **Justice**, social, economic and political;

Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity; and to promote among them all
Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;
In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby adopt, enact
and give to ourselves this Constitution.”

This text reflects that **sovereignty rests with the people**, and that the Constitution is an act of their collective will — not a gift from any external authority.

Key Components of the Preamble

1. Source of Authority: “We, the People of India”

This opening phrase establishes that **the Constitution derives its authority from the people themselves**. It embodies the concept of **popular sovereignty**, similar to the U.S. Constitution. The framers deliberately chose this phrase to emphasize that the **ultimate power lies in the hands of citizens**, not any monarch or external power.

2. Nature of the Indian State

The Preamble describes the nature of the Indian polity through five adjectives:

- **Sovereign:** India is free to determine its internal and external policies. Its sovereignty is absolute within the framework of international law.
- **Socialist:** Added by the **42nd Amendment (1976)**, this term emphasizes economic equality and the welfare state ideal.
- **Secular:** Also inserted by the 42nd Amendment, it ensures that the State has no official religion and treats all religions equally.
- **Democratic:** It ensures a government of the people, by the people, and for the people — guaranteeing periodic elections and accountability.
- **Republic:** The head of the State is elected, symbolizing the end of hereditary monarchy and the establishment of equality among citizens.

3. Objectives of the Constitution

The Preamble highlights four main objectives — **Justice, Liberty, Equality, and Fraternity** — which correspond to the French Revolution’s ideals.

- **Justice** – social, economic, and political; ensuring fair treatment and opportunities for all.
- **Liberty** – freedom of thought, expression, belief, faith, and worship.
- **Equality** – of status and opportunity, abolishing social hierarchies and discrimination.
- **Fraternity** – promoting unity and integrity while respecting individual dignity.

These objectives form the foundation of the Directive Principles and Fundamental Rights.

4. Date of Adoption

The Preamble records that the Constitution was adopted on **26 November 1949**, though it came into force on **26 January 1950**, chosen to commemorate the declaration of *Purna Swaraj* made in 1930.

Constitutional Significance and Legal Status

Originally, the Preamble was not considered legally enforceable. However, through judicial interpretation, its significance has evolved. It now acts as a **constitutional compass** aiding interpretation of ambiguous provisions. Courts have relied upon it to uphold the spirit and purpose of the Constitution.

Amendability of the Preamble

The question of whether the Preamble can be amended arose in several landmark cases.

1. Berubari Union Case (1960)

Facts: The issue was whether the Preamble could be used for interpreting constitutional provisions regarding the cession of territory to Pakistan.

Held: The Supreme Court held that the Preamble is **not a part of the Constitution**, and thus not enforceable.

Principle: It serves only as a key to interpretation.

2. Kesavananda Bharati v. State of Kerala (1973)

Facts: The validity of the 24th, 25th, and 29th Amendments was challenged as violating the basic structure.

Held: The Supreme Court overruled the Berubari view and held that the **Preamble is indeed a part of the Constitution**. It can be amended under **Article 368**, but not in a way that alters the basic structure.

Principle: The Preamble embodies the fundamental features of the Constitution — **Sovereignty, Democracy, Republic, Justice, Liberty, Equality, and Fraternity** — which form its basic structure.

3. Indira Nehru Gandhi v. Raj Narain (1975)

Facts: The case concerned the validity of the 39th Amendment Act excluding judicial review of the election of the Prime Minister.

Held: The Supreme Court reaffirmed that the **Preamble's principles form part of the basic structure** and cannot be destroyed by constitutional amendments.

Principle: The democratic and rule of law ideals in the Preamble are inviolable.

4. LIC of India v. Consumer Education & Research Centre (1995)

Held: The Court used the Preamble to interpret the right to life and dignity under Article 21 broadly, emphasizing that constitutional interpretation must align with the **goals of justice and equality** envisioned in the Preamble.

Interpretative Value of the Preamble

The Preamble is often used as a **guide to interpret the Constitution**. When the language of a constitutional provision is ambiguous, courts rely on the Preamble to ascertain the intent of the framers. For instance:

- In **Re: Berubari Union**, it was observed that though not a source of power, the Preamble indicates the **objectives** which the Constitution seeks to achieve.
- In **Kesavananda Bharati**, it was held that the Preamble represents the **fundamental philosophy** and is an integral part of the Constitution.

Thus, while the Preamble does not confer powers or impose limitations, it serves as a **beacon of constitutional morality** guiding governance and interpretation.

42nd Amendment and the Preamble

The **42nd Amendment Act, 1976**, known as the “Mini-Constitution,” added three key words to the Preamble — **Socialist, Secular, and Integrity**. This amendment reflected the socio-political philosophy of the time and reinforced the commitment of the State to equality, pluralism, and national unity. The phrase “**Unity of the Nation**” was expanded to “**Unity and Integrity of the Nation.**”

Critical Evaluation

The Preamble has often been debated as to whether it merely states ideals or provides enforceable principles. However, its practical importance is undeniable. It gives life and meaning to the entire constitutional scheme.

- It serves as a **philosophical compass**, guiding the legislature, executive, and judiciary.
- It ensures that constitutional interpretation remains aligned with democratic and egalitarian values.
- It embodies the **aspirations of the Indian people** — from colonial subjugation to democratic nationhood.

Dr. B.R. Ambedkar rightly remarked that while the Constitution may need amendments in future, **its spirit as reflected in the Preamble should remain eternal**.

Conclusion

The Preamble of the Indian Constitution stands as a **magnificent prologue** to the world’s largest written Constitution. It encapsulates the **essence of the Indian democratic experiment**,

balancing individual rights with collective welfare. It represents the **social contract** between the State and its citizens, emphasizing justice, liberty, equality, and fraternity as enduring ideals.

Judicial interpretations have reaffirmed its constitutional sanctity, making it both **a part of the Constitution** and **an interpretative tool** for maintaining its basic structure. In essence, the Preamble continues to be the **moral compass and identity card** of the Indian Republic, symbolizing the nation's resolve to secure dignity, unity, and integrity for all its citizens.

BY AJITABH MISHRA

TOPIC:

CITIZENSHIP IN INDIA

(Articles 5 to 11, Constitution of India & The Citizenship Act, 1955)

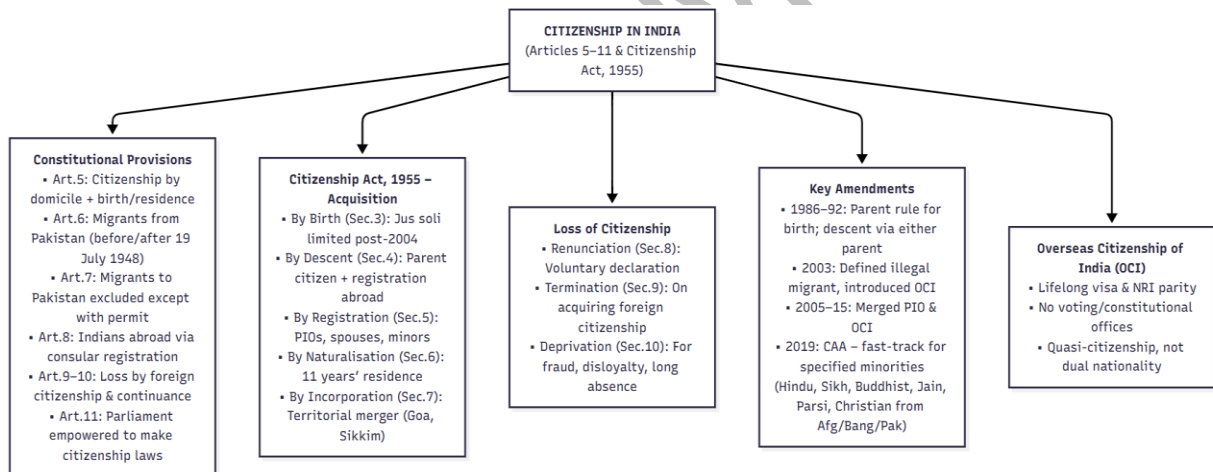
Answer:

Introduction

Citizenship signifies the **legal relationship between an individual and the State**, determining full membership in the Indian Union. It confers **civil and political rights**, imposes duties, and establishes **allegiance**.

The **Constitution of India (Part II, Articles 5–11)** deals with citizenship **at the commencement of the Constitution**, while **Article 11** empowers Parliament to make laws for future acquisition and termination — which led to the **Citizenship Act, 1955**.

The framers faced complex issues due to **partition and migration**, so the Constitution laid temporary provisions while entrusting the long-term framework to Parliament.



Constitutional Framework (Articles 5–11)

Article	Provision / Essence
Art. 5	Citizenship by domicile: a person domiciled in India and either born in India, or having a parent born in India, or residing in India for 5 years before 26 Jan 1950.
Art. 6	Migrants from Pakistan before 19 July 1948 — citizens automatically; after that, only by registration.
Art. 7	Migrants to Pakistan after 1 March 1947 — not citizens unless returning with resettlement permits.

Art. 8	Persons of Indian origin abroad could register as citizens through Indian consulates.
Art. 9	Persons voluntarily acquiring foreign citizenship lose Indian citizenship.
Art.10	Citizenship under Constitution continues unless altered by law.
Art.11	Parliament empowered to regulate citizenship by legislation.

These provisions were **transitional**, addressing immediate post-partition situations.

The Citizenship Act, 1955

Enacted under Article 11, the Act governs **acquisition, termination, and supplementary matters** relating to Indian citizenship. It has been amended several times — notably in **1986, 1992, 2003, 2005, 2015, and 2019** — to adapt to changing realities.

Modes of Acquisition of Citizenship

1. By Birth (Section 3)

- **1950–1987:** Anyone born in India became a citizen (*jus soli*).
- **1987–2004:** One parent must be a citizen.
- **After 2004:** One parent citizen **and** the other not an illegal migrant.

2. By Descent (Section 4)

A person born outside India is a citizen if either parent is Indian and birth is **registered at an Indian consulate** within one year.

3. By Registration (Section 5)

Granted to persons of Indian origin, spouses of Indian citizens, and minor children who meet residence and good-character requirements (generally **7 years' residence**).

4. By Naturalisation (Section 6)

A foreigner can acquire citizenship after **11 years' residence** in India (out of 14), good conduct, and intent to reside permanently. The Government may relax this in special cases.

5. By Incorporation of Territory (Section 7)

When new territory becomes part of India (e.g., Goa in 1961, Sikkim in 1975), its residents become citizens by **Government notification**.

Loss of Citizenship

1. Renunciation (Section 8)

Voluntary declaration of relinquishment by a citizen of full age and capacity. Minor children lose citizenship with the parent but can resume on majority.

2. Termination (Section 9)

Automatic loss when an Indian **acquires foreign citizenship** voluntarily.

3. Deprivation (Section 10)

Citizenship may be withdrawn by the Government if obtained by **fraud, disloyalty, or residing abroad without permission**.

Important Amendments

- **1986:** Introduced parent-citizen requirement (restricted *jus soli*).
- **1992:** Allowed citizenship by descent through **either parent**.
- **2003:** Defined “illegal migrant” and laid basis for NRC; created **Overseas Citizenship of India (OCI)**.
- **2005 & 2015:** Merged **Person of Indian Origin (PIO)** and **OCI** categories.
- **2019 – Citizenship (Amendment) Act (CAA):** Granted citizenship to **Hindus, Sikhs, Buddhists, Jains, Parsis, Christians** from **Afghanistan, Bangladesh, Pakistan** who entered India on or before 31 Dec 2014; residence requirement reduced from 11 to 5 years. Excluded Muslims and regions under Sixth Schedule & Inner Line Permit areas. **Challenge:** Alleged violation of **Articles 14 & secularism**; under judicial review in *Indian Union Muslim League v. Union of India (2020)*.

Overseas Citizenship of India (OCI)

Introduced in 2003 and formalised in 2005.

Privileges: Multiple-entry lifelong visa, parity with NRIs in education and property rights.

Limitations: No voting, government jobs, or constitutional offices. It is **not dual citizenship**, but a form of **permanent residency** for Indian diaspora.

Judicial Pronouncements

1. State of Bihar v. Kumar Amar Singh (1955 SC)

- **Facts:** Citizenship dispute of a migrant after partition.
- **Held:** Domicile requires both residence and intention to reside permanently.
- **Principle:** *Animus manendi* (intention to stay) + *factum manendi* (actual residence) decide domicile.

2. **Izhar Ahmad Khan v. Union of India (1962 SC)**

- **Held:** Article 7 overrides Article 6; persons migrating to Pakistan lose Indian citizenship unless they re-enter with valid permit.

3. **Govt. of India v. Mohammad Ayub Khan (1965 SC)**

- **Held:** Citizenship must be proved strictly under the Act; mere residence is insufficient.

4. **Pradeep Jain v. Union of India (1984 SC)**

- **Held:** Citizenship and domicile are distinct; fundamental rights belong to citizens, while domicile determines state benefits.

5. **Indian Union Muslim League v. Union of India (2020, pending)**

- **Issue:** Validity of CAA 2019 on grounds of religious discrimination and violation of equality.

Conclusion

The concept of citizenship in India reflects the country's **constitutional ideals of unity, equality, and secularism**. Articles 5–11 provided a transitional base, while the **Citizenship Act, 1955** created an enduring framework balancing inclusion and security. Subsequent amendments, especially the **CAA 2019**, show how citizenship remains a dynamic and evolving legal area influenced by demographic, political, and humanitarian factors.

In essence, **citizenship is not just a legal status but a moral bond** signifying belonging, allegiance, and participation in India's constitutional democracy.

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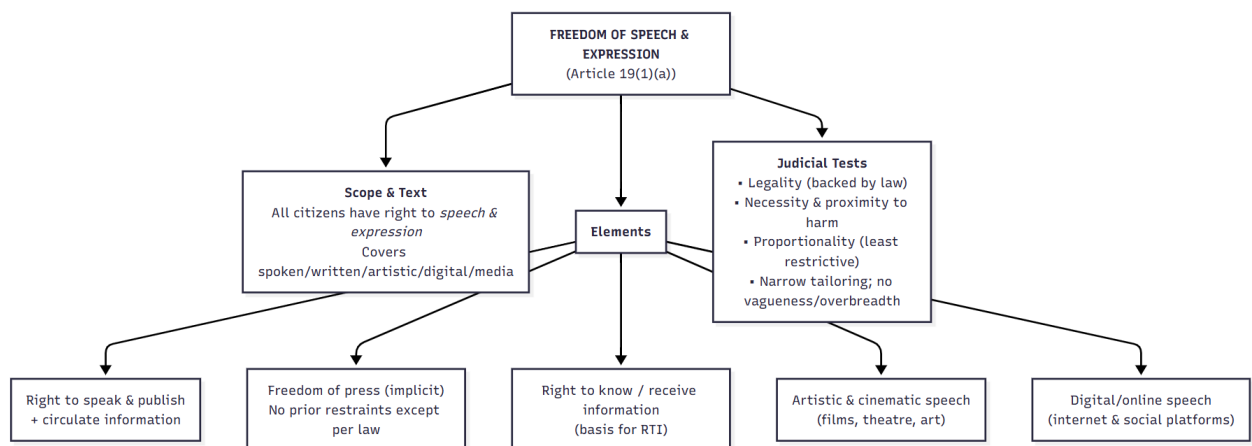
FREEDOM OF SPEECH AND EXPRESSION (ARTICLE 19(1)(a))

Answer:

Introduction

Freedom of speech and expression forms the **cornerstone of democracy**. It enables citizens to participate in public affairs, express opinions, question authority, and contribute to national development. The framers of the Indian Constitution, inspired by democratic traditions across the world, enshrined this right as a **fundamental guarantee** under **Article 19(1)(a)** of the Constitution of India.

It ensures the **free flow of ideas and opinions** essential for the functioning of a democratic society. However, this freedom is **not absolute** and is subject to reasonable restrictions under **Article 19(2)** in the interests of public order, morality, and national security.



Constitutional Provision

Article 19(1)(a):

“All citizens shall have the right to freedom of speech and expression.”

Article 19(2):

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of—

- the **sovereignty and integrity of India**,
- the **security of the State**,
- **friendly relations with foreign States**,

- **public order,**
- **decency or morality,**
- **contempt of court,**
- **defamation, or**
- **incitement to an offence.**

Meaning and Scope

Freedom of speech and expression means the **right to express one's convictions and opinions freely** by words of mouth, writing, printing, pictures, gestures, or any other manner. It covers the **freedom of communication and circulation** of ideas without interference from public authorities.

The Supreme Court has given **liberal interpretation** to Article 19(1)(a), expanding its scope to include various modern forms of expression such as **art, cinema, journalism, protests, the Internet, and social media.**

Essential Elements

1. **Freedom of Speech:**
The liberty to speak one's mind freely, orally or otherwise, without fear of punishment or censorship.
Example: Public discussions, debates, interviews, and speeches.
2. **Freedom of Expression:**
A wider concept encompassing not only speech but also artistic, literary, visual, and digital forms of expression — through art, media, publications, theatre, films, and online content.
3. **Right to Information:**
Freedom of speech and expression includes the **right to receive information**, as access to information is necessary for making informed opinions and choices.
4. **Freedom of the Press:**
Though not separately mentioned, the Supreme Court has recognized it as part of Article 19(1)(a). The press acts as the **fourth pillar of democracy**, ensuring transparency and accountability in governance.

Landmark Case: Romesh Thappar v. State of Madras (AIR 1950 SC 124)

Facts:

The Government of Madras imposed a ban on the entry and circulation of the journal *Cross Roads*, edited by Romesh Thappar, on grounds of public safety.

Issue:

Whether such a restriction was valid under Article 19(2) as it stood before the First Amendment.

Held:

The Supreme Court held that the ban violated the freedom of speech and expression. The Court ruled that “public safety” was not a ground mentioned in Article 19(2) at that time. The term “security of the State” refers to **grave acts endangering the foundations of the State**, not ordinary public order issues.

Principle:

The Court emphasized that freedom of speech and expression is **indispensable for democracy**, and restrictions must be narrowly construed. This judgment led to the **First Constitutional Amendment (1951)**, adding new grounds like “public order” and “friendly relations with foreign states” to Article 19(2).

Judicial Expansion of Article 19(1)(a)

The Supreme Court has interpreted this freedom expansively, recognizing several dimensions within its ambit:

1. Freedom of the Press

- Recognized in **Bennett Coleman & Co. v. Union of India (1973)**, where restrictions on newsprint quantity were struck down as violating Article 19(1)(a).
- The Court held that the **freedom of the press includes freedom of circulation**, publication, and independence from governmental interference.

2. Right to Know / Right to Information

- In **State of U.P. v. Raj Narain (1975)**, the Court held that the right to know is a **derivative of Article 19(1)(a)**, essential for participatory democracy.
- It laid the foundation for the **Right to Information Act, 2005**.

3. Freedom of Artistic Expression

- **K.A. Abbas v. Union of India (1971)**: Film censorship is permissible but should be reasonable and necessary for public order or morality.
- Artistic freedom includes films, theatre, and creative works expressing ideas within constitutional limits.

4. Right to Protest and Dissent

- Peaceful demonstrations are part of freedom of expression (as in **Maneka Gandhi v. Union of India**, 1978).
- However, protests cannot disturb public order or obstruct daily life.

5. Freedom on the Internet

- **Shreya Singhal v. Union of India (2015)**: Section 66A of the IT Act was struck down for violating Article 19(1)(a), as it criminalized vague expressions on social media.
- The Court held that restrictions must be “**reasonable and narrowly tailored**” to fit within Article 19(2).

Reasonable Restrictions under Article 19(2)

Freedom of speech is not absolute. It is balanced with societal interests through reasonable restrictions:

1. **Sovereignty and Integrity of India:**
Prevents expressions that promote secessionism or threaten national unity (e.g., sedition laws under Section 124A IPC).
2. **Security of the State:**
Applies to speech inciting violence, rebellion, or espionage.
3. **Friendly Relations with Foreign States:**
Restricts expressions likely to harm diplomatic relations.
4. **Public Order:**
Restrains speech that may lead to violence, riots, or unrest (e.g., *Babulal Parate v. State of Maharashtra*, 1961).
5. **Decency or Morality:**
Prohibits obscene or indecent publications (e.g., *Ranjit D. Udeshi v. State of Maharashtra*, 1965).
6. **Contempt of Court:**
Ensures respect for judicial authority and fair administration of justice.
7. **Defamation:**
Protects individual reputation from false or harmful statements.
8. **Incitement to an Offence:**
Restricts speech provoking illegal acts or hatred among communities.

Each restriction must satisfy the **test of reasonableness**, ensuring that it is not arbitrary, excessive, or disproportionate.

Relationship with Other Fundamental Rights

1. **With Article 21 (Right to Life and Liberty):**

Freedom of speech forms part of personal liberty — as held in *Maneka Gandhi v. Union of India* (1978) — creating a linkage between free expression and human dignity.

2. **With Article 25 (Freedom of Religion):**

Religious preaching and propagation are protected under Article 19(1)(a) but subject to morality and public order.

3. **With Article 32 and 226 (Right to Remedies):**

Violation of free speech can be challenged directly before the Supreme Court or High Courts via writ petitions.

Modern Dimensions

- **Social Media Regulation:** Balancing free speech with prevention of hate speech and fake news.
- **Media Trials:** Ensuring freedom of press without prejudicing judicial proceedings.
- **Hate Speech Jurisprudence:** Courts emphasize distinction between legitimate criticism and inflammatory speech.

The right has evolved to address **digital freedom**, **citizen journalism**, and **whistle-blower protections**, extending Article 19(1)(a) into the 21st century.

Conclusion

Freedom of speech and expression is not merely a constitutional privilege but the **lifeblood of democracy**. It enables intellectual development, political participation, and societal progress. However, it coexists with the duty to respect public order, decency, and national integrity.

As judicial precedents like **Romesh Thappar**, **Bennett Coleman**, and **Shreya Singhal** illustrate, Indian courts have zealously guarded this freedom against arbitrary State interference while maintaining a balance with public interests.

In essence, **Article 19(1)(a)** embodies the **spirit of democratic dialogue**, ensuring that every citizen has the right to voice opinions freely, responsibly, and fearlessly — for a nation that silences its citizens cannot call itself truly free.

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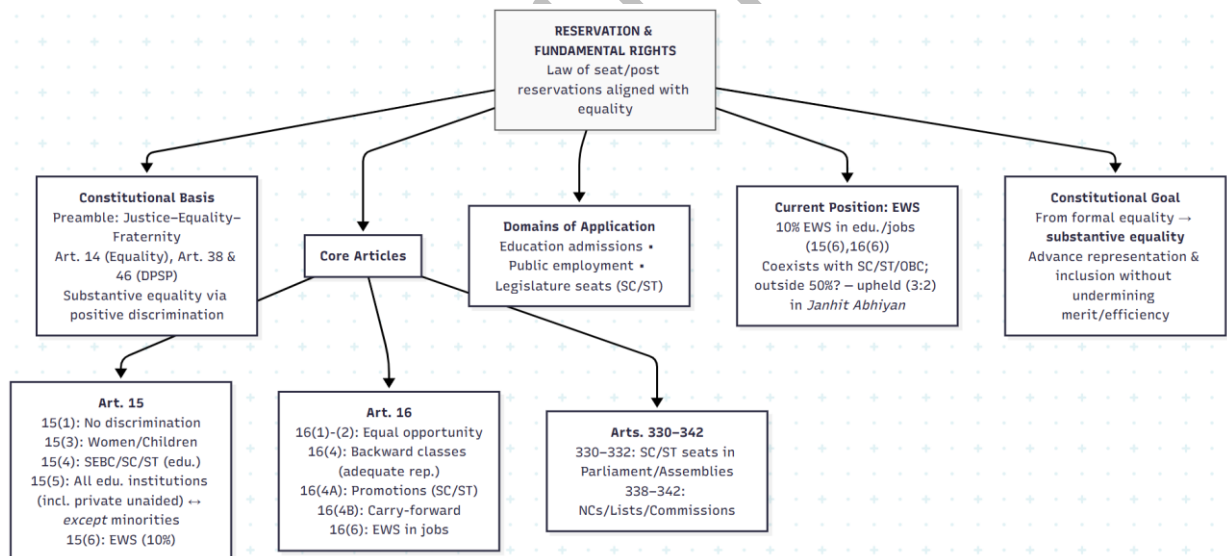
LAW PERTAINING TO RESERVATION OF SEATS IN REFERENCE TO FUNDAMENTAL RIGHTS

Answer:

Introduction

The Constitution of India aims to establish a society based on **justice, equality, and fraternity**, as declared in the Preamble. However, social and historical inequalities necessitated **positive discrimination** to uplift the disadvantaged groups. The mechanism of **reservation of seats** in education, employment, and legislatures is one such instrument of **social justice**, constitutionally sanctioned but judicially regulated to ensure compatibility with **Fundamental Rights**, particularly **Articles 14, 15, 16, and 29(2)**.

The concept of reservation in India thus represents a **balance between equality of opportunity and equality of outcome**, ensuring that the benefits of democracy reach the historically marginalized communities like Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).



Constitutional Provisions for Reservation

1. Article 15 – Prohibition of Discrimination

- **Article 15(1):** Prohibits discrimination by the State on grounds of religion, race, caste, sex, or place of birth.

- **Article 15(3):** Permits special provisions for women and children.
- **Article 15(4)** (Inserted by the **First Amendment, 1951**): Enables the State to make **special provisions for socially and educationally backward classes (SEBCs)** or for SCs and STs regarding **admission to educational institutions**.
- **Article 15(5)** (Inserted by the **93rd Amendment, 2005**): Empowers the State to make reservations in **educational institutions, including private aided and unaided institutions**, except minority institutions under Article 30(1).
- **Article 15(6)** (Added by the **103rd Amendment, 2019**): Introduces **10% reservation for Economically Weaker Sections (EWS)** of society, irrespective of caste or religion.

2. Article 16 – Equality of Opportunity in Public Employment

- **Article 16(1)–(2):** Guarantee equality in matters of public employment.
- **Article 16(4):** Permits reservation of appointments or posts in favour of any **backward class** not adequately represented in State services.
- **Article 16(4A)** (Inserted by the **77th Amendment, 1995**): Provides for **reservation in promotions** for SCs and STs.
- **Article 16(4B)** (Inserted by the **81st Amendment, 2000**): Allows carrying forward unfilled reserved vacancies.
- **Article 16(6)** (103rd Amendment, 2019): Enables **EWS reservation** in employment.

3. Articles 330 & 332 – Reservation in Legislatures

- **Article 330:** Reservation of seats for SCs and STs in the **Lok Sabha**.
- **Article 332:** Reservation of seats for SCs and STs in the **State Legislative Assemblies**.

Objective of Reservation

The aim is not to perpetuate caste-based divisions but to **bridge historical gaps** by ensuring **adequate representation** of marginalized communities in public institutions. Reservation policies are grounded in the **principle of compensatory discrimination**, seeking **real equality (substantive equality)** rather than mere formal equality.

Judicial Interpretation and Landmark Cases

The judiciary has played a crucial role in defining the limits of reservation to ensure it aligns with the **Fundamental Rights of equality and non-discrimination**.

1. State of Madras v. Champakam Dorairajan (1951)

Facts:

The Madras Government reserved seats in educational institutions for different communities under a communal Government Order.

Held:

The Supreme Court struck down the order, holding that **reservation based solely on religion, race, or caste** violated **Article 29(2)** (non-discrimination in educational institutions).

Principle:

This case led to the **First Constitutional Amendment (1951)**, inserting **Article 15(4)** to permit reservation for backward classes, reconciling **Directive Principles (Art. 46)** with Fundamental Rights.

2. M.R. Balaji v. State of Mysore (1963)

Facts:

The State reserved 68% of seats in educational institutions for backward classes.

Held:

The Court held that reservation must be **reasonable** and not excessive; 68% was unconstitutional. The term “backward classes” should be based on both **social and educational backwardness**.

Principle:

Reservation should not exceed the limit of **reasonable equality** and must promote educational advancement without compromising merit.

3. Indra Sawhney v. Union of India (1992) – The Mandal Commission Case

Facts:

The 27% reservation for OBCs in central government services was challenged on the grounds of violating equality.

Held:

A nine-judge Bench upheld **27% reservation for OBCs** under Article 16(4) but imposed vital restrictions:

- **Total reservation cannot exceed 50%.**
- **Creamy layer** among OBCs must be excluded.
- **Reservation in promotion** not permitted (later restored by 77th Amendment).
- Article 16(4) is **not an exception** but an **emphatic restatement of equality**.

Principle:

Reservation is valid for achieving substantive equality, but must not compromise **administrative efficiency** or exceed reasonable limits.

4. M. Nagaraj v. Union of India (2006)

Facts:

Constitutional validity of the 77th, 81st, 82nd, and 85th Amendments (pertaining to reservation in promotion) was challenged.

Held:

The Court upheld these amendments but ruled that the State must demonstrate:

1. **Backwardness** of the class,
2. **Inadequate representation**, and
3. **Impact on administrative efficiency** (Article 335).

Principle:

Reservation in promotion is not automatic; it must be supported by quantifiable data and comply with constitutional requirements.

5. Ashoka Kumar Thakur v. Union of India (2008)

Facts:

The validity of **93rd Amendment** (Article 15(5)) enabling reservation in private educational institutions was challenged.

Held:

The Court upheld the Amendment, stating that it **does not violate the basic structure**. However, **minority institutions** are exempt under Article 30(1).

Principle:

Reservation in education aims to achieve inclusive development and does not breach equality, provided it is rational and proportionate.

6. Janhit Abhiyan v. Union of India (2022) – EWS Reservation

Facts:

The **103rd Constitutional Amendment** introducing **10% reservation for EWS** (excluding SCs, STs, and OBCs) was challenged for violating the basic structure.

Held:

By a 3:2 majority, the Supreme Court upheld the amendment, holding that **economic criteria** can be a valid basis for reservation.

Principle:

Reservation for economically weaker sections **does not violate Articles 14, 15, or 16**, and does not breach the **basic structure** of the Constitution.

Balancing Reservation and Fundamental Rights

1. Article 14 – Equality Before Law

Reservation must not destroy the **essence of equality**; it can classify but not discriminate arbitrarily. The classification must be **reasonable** and **based on intelligible differentia**.

2. Article 15 – Non-Discrimination

While Article 15(1) prohibits discrimination, Articles 15(4) and 15(5) **allow special treatment** for socially and educationally backward groups, harmonizing the **formal and substantive equality** principles.

3. Article 16 – Equality of Opportunity

Article 16(4) permits reservation in services, ensuring **representation-based equality** without eroding efficiency (Art. 335).

4. Article 29(2) – Educational Rights

No citizen shall be denied admission to State-aided institutions solely on grounds of religion, race, caste, or language; but special provisions under Article 15(4) form a **constitutional exception**.

Permissible Limits and Judicial Guidelines

- **Reservation should not exceed 50%** (Indra Sawhney).
- **Creamy layer exclusion** mandatory for OBCs.
- **Quantifiable data** required for reservation in promotions (M. Nagaraj).
- **Economic criteria** permissible for reservation (Janhit Abhiyan).
- **Minority institutions** exempted from reservation mandates.
- Reservation is a **temporary measure**, subject to periodic review.

Conclusion

The Indian constitutional scheme on **reservation of seats** strikes a delicate balance between **individual rights and collective justice**. While **Articles 14–16** enshrine equality, the enabling provisions in **Articles 15(4), 15(5), and 16(4)** represent a pragmatic approach to achieve **real equality** by addressing social and educational disadvantages.

Judicial pronouncements from **Champakam Dorairajan** to **Janhit Abhiyan** demonstrate that reservation, though constitutionally valid, must adhere to the principles of **reasonableness, proportionality, and efficiency**. It is not a privilege but a **means of empowerment**, aimed at fulfilling the constitutional vision of an **inclusive and egalitarian society** where equality is not merely formal but substantive and real.

TOPIC:

RIGHT TO LIFE AND PERSONAL LIBERTY (ARTICLES 20–22): EXPANSIVE INTERPRETATION

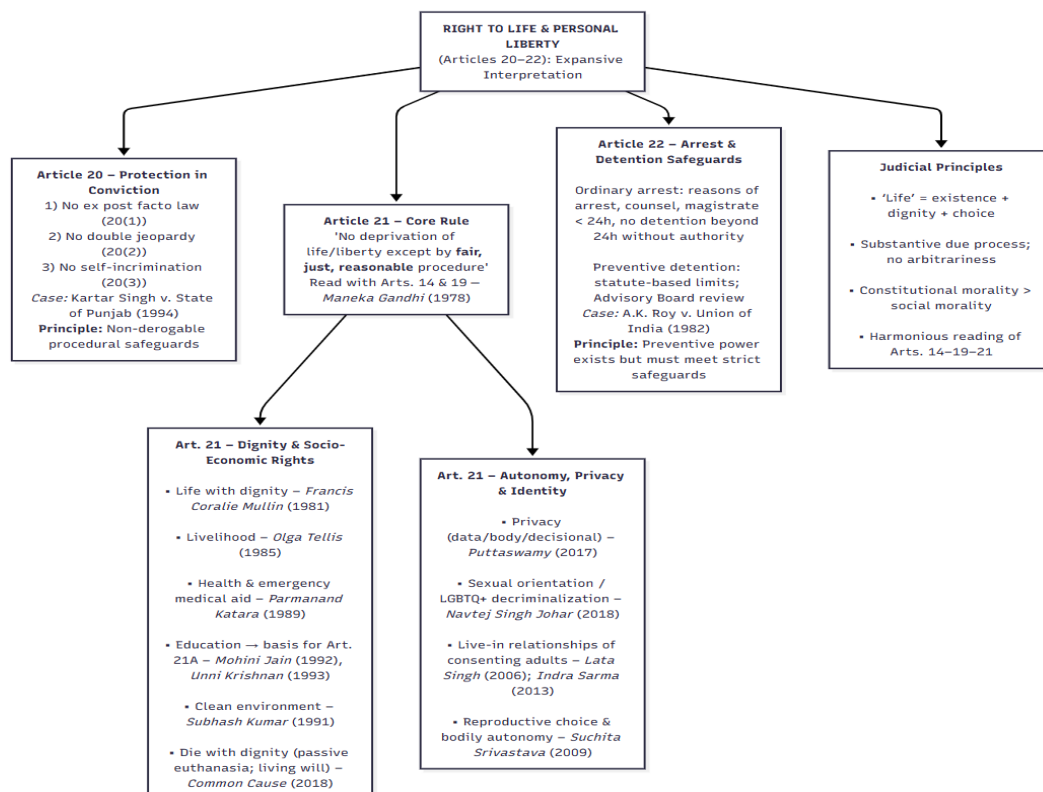
Answer:

Introduction

The **Right to Life and Personal Liberty** under Articles 20, 21, and 22 of the Indian Constitution forms the **core of Fundamental Rights**. These Articles collectively protect individuals against arbitrary State action and uphold the **dignity, freedom, and security** of every person.

While Articles 20 and 22 ensure **specific procedural safeguards** against unfair punishment and preventive detention, **Article 21** has become the most dynamic provision of the Constitution. Through judicial interpretation, it has expanded from mere physical survival to include **a life of dignity, privacy, autonomy, and freedom of choice**.

Thus, the Indian judiciary has interpreted Article 21 as the **“heart of the Constitution”**, encompassing various derivative rights such as the **right to privacy, right to die with dignity, right to sexual orientation, right to live-in relationship**, and more.



ARTICLE 20 – PROTECTION IN CONVICTION FOR OFFENCES

Article 20 protects individuals in criminal proceedings and ensures fairness in the process of punishment.

Key Provisions:

1. **Article 20(1):** No person shall be convicted under an **ex post facto law** (no retrospective criminal law).
2. **Article 20(2):** Protection against **double jeopardy** – no one shall be punished twice for the same offence.
3. **Article 20(3):** Protection against **self-incrimination** – no person accused shall be compelled to be a witness against himself.

Significance:

- These safeguards are available to both citizens and non-citizens.
- They protect individuals from **arbitrary legislative or executive actions**.

Case Law – *Kartar Singh v. State of Punjab*, AIR 1994 SC 1734

Held: Article 20 ensures procedural fairness in criminal trials and cannot be suspended even during emergencies.

Principle: These provisions guarantee the protection of individual liberty from excessive punishment and abuse of legal power.

ARTICLE 21 – RIGHT TO LIFE AND PERSONAL LIBERTY

Text of Article 21:

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

Initially interpreted narrowly in **A.K. Gopalan v. State of Madras (1950)**, the meaning of “procedure established by law” was confined to **legislative procedure**, even if unfair. However, the landmark case **Maneka Gandhi v. Union of India (1978)** transformed Article 21 into a **source of multiple fundamental human rights**, introducing the concept of “**just, fair, and reasonable procedure**”.

Maneka Gandhi Case (1978):
The Supreme Court held that the procedure depriving life or liberty must be “**fair, just, and reasonable**” and must conform to Articles **14 (equality)** and **19 (freedom)**.
Principle: Article 21 cannot be interpreted in isolation; it includes all rights that make life meaningful and dignified.

EXPANSIVE INTERPRETATION OF ARTICLE 21

Over the years, the Supreme Court has expanded Article 21 to include several derivative and unenumerated rights essential for a dignified existence.

Right to Live with Human Dignity

Case – Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981)

Held: The right to life includes the right to live with dignity, which includes basic necessities like food, clothing, shelter, and medical care.

Principle: Life is not mere animal existence; it includes the right to live with human dignity.

Right to Livelihood

Case – Olga Tellis v. Bombay Municipal Corporation (1985)

Facts: Pavement dwellers challenged their eviction without alternative shelter.

Held: The Court ruled that the right to livelihood is part of the right to life, as no person can live without the means of living.

Principle: Deprivation of livelihood without just and fair procedure violates Article 21.

Right to Health and Medical Care

Case – Parmanand Katara v. Union of India (1989)

Held: The right to emergency medical treatment is part of the right to life. Every doctor is duty-bound to give immediate medical aid to preserve life.

Principle: The State must protect and improve public health under Article 21 read with Article 47.

Right to Education

Case – Mohini Jain v. State of Karnataka (1992) and Unni Krishnan v. State of A.P. (1993)

Held: Education is integral to human development and essential for meaningful enjoyment of life.

Principle: Right to education flows from Article 21, later constitutionalized under **Article 21A (86th Amendment, 2002)**.

Right to Privacy

Case – Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)

Facts: The validity of the Aadhaar scheme was challenged as violating privacy.

Held: A **nine-judge bench** unanimously held that the **Right to Privacy** is a **fundamental right** under Article 21.

Principle: Privacy includes autonomy over one's body, personal data, sexual orientation, and decisions, and is intrinsic to life and liberty.

Significance: This case became the constitutional foundation for recognizing **gay rights, reproductive rights, and digital privacy**.

Right to Sexual Orientation (Gay Rights)

Case – Navtej Singh Johar v. Union of India (2018)

Facts: Section 377 IPC criminalized consensual homosexual acts.

Held: The Supreme Court decriminalized same-sex relations among consenting adults, holding that sexual orientation is an essential attribute of privacy and dignity.

Principle: The right to choose one's sexual partner and orientation is protected under Articles 14, 15, and 21.

Impact: The decision marked a **historic affirmation of LGBTQ+ rights**, reinforcing equality and constitutional morality.

7. Right to Live-in Relationship

Case – *Lata Singh v. State of U.P.* (2006)

Facts: A major woman faced threats for living with a man of another caste.

Held: The Court upheld her right to live with a person of her choice, even without marriage.

Principle: Live-in relationships between consenting adults are neither illegal nor immoral; they fall under personal liberty guaranteed by Article 21.

Further Development: *Indra Sarma v. V.K.V. Sarma* (2013) recognized live-in relationships as a social reality entitled to legal protection under the Domestic Violence Act, 2005.

8. Right to Reproductive Choice

Case – *Suchita Srivastava v. Chandigarh Administration* (2009)

Held: Reproductive choice forms part of personal liberty under Article 21. Women have autonomy to decide whether to conceive or terminate pregnancy.

Principle: Bodily integrity and reproductive freedom are integral to the right to privacy and dignity.

9. Right to Die with Dignity (Euthanasia)

Case – *Common Cause v. Union of India* (2018)

Held: The right to life includes the right to die with dignity. Passive euthanasia and “living wills” were recognized under Article 21.

Principle: Life with dignity includes the right to end one’s life naturally and peacefully in cases of terminal illness.

ARTICLE 22 – PROTECTION IN CASES OF ARREST AND DETENTION

Objective:

Article 22 provides **procedural safeguards** to protect individuals from arbitrary arrest and detention. It deals with both **ordinary arrest** and **preventive detention**.

Rights of an Arrested Person (Clauses 1–2):

1. Right to be informed of the reasons for arrest.
2. Right to consult and be defended by a legal practitioner.
3. Right to be produced before a magistrate within 24 hours.
4. Protection against detention beyond 24 hours without judicial sanction.

Preventive Detention (Clauses 3–7):

- Allows detention to prevent future threats to public order or security.
- Parliament and State Legislatures may prescribe maximum periods.
- Advisory Boards review detentions within three months.

Case – A.K. Roy v. Union of India (1982)

Held: Preventive detention is constitutional but must strictly adhere to safeguards and cannot be misused.

Principle: The State's preventive powers must be balanced with personal liberty and judicial oversight.

JUDICIAL PRINCIPLES EMERGING FROM ARTICLES 20–22

1. **Life** under Article 21 means **life with dignity**, not mere animal existence.
2. **Personal liberty** includes **freedom of thought, movement, expression, and choice**.
3. **Substantive due process:** Procedure depriving liberty must be just, fair, and reasonable.
4. **Constitutional morality** prevails over societal or religious morality.
5. **Judicial creativity** has transformed Article 21 into a living instrument of human rights.

Conclusion

The evolution of **Articles 20–22** marks the journey from **procedural protection** to **substantive human rights**. While Articles 20 and 22 secure fair legal processes, Article 21 has become the **soul of the Constitution**, guaranteeing dignity, autonomy, and personal choice.

Through cases like **Maneka Gandhi**, **Puttaswamy**, and **Navtej Singh Johar**, the Supreme Court has expanded the meaning of life to encompass **privacy, equality, and identity**, ensuring that every individual lives not merely to exist, but to live with **freedom, respect, and dignity**.

Hence, the right to life and personal liberty today represents **the constitutional promise of a humane and progressive society**, aligning law with evolving social realities and human values.

TOPIC:

FREEDOM OF RELIGION; CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES (ARTICLES 25–30)

Answer:

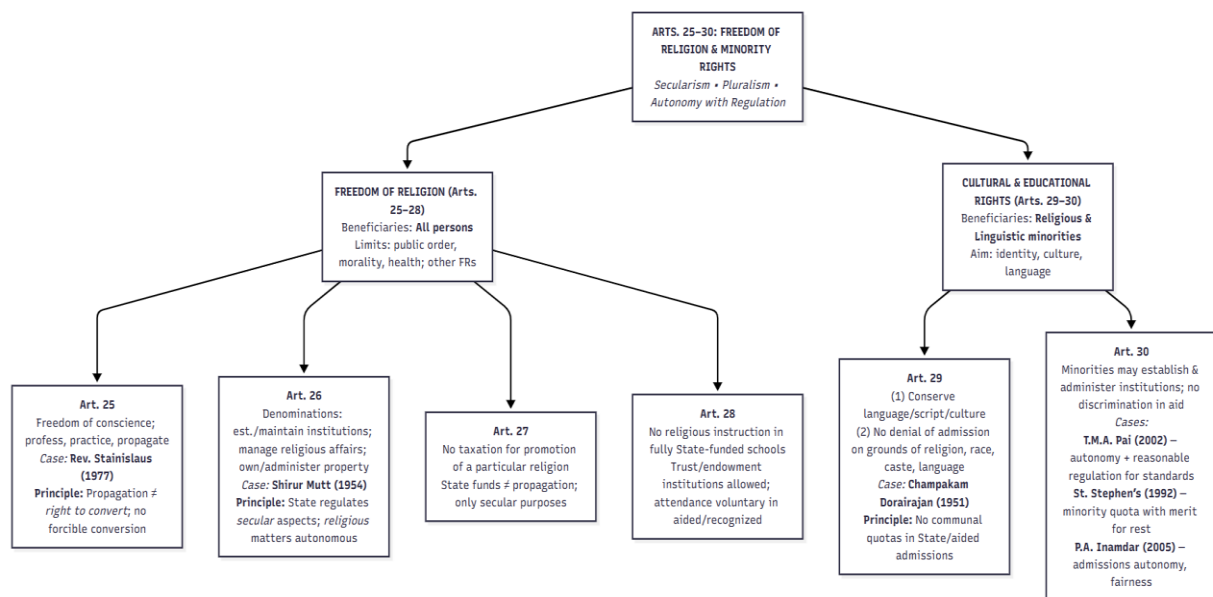
Introduction

India is a **secular State**, which means that the State has **no religion of its own**, and all religions are treated with equal respect. The Constitution guarantees to every individual **freedom of conscience and the right to profess, practice, and propagate religion**.

Part III of the Constitution ensures this through **Articles 25 to 28**, forming the basis of **Freedom of Religion**, and **Articles 29 to 30**, which secure the **Cultural and Educational Rights of Minorities**.

Together, these Articles aim to uphold the **principle of secularism**, which has been recognized as part of the **basic structure of the Constitution (S.R. Bommai v. Union of India, 1994)**.

FREEDOM OF RELIGION (ARTICLES 25–28)



1. Article 25 – Freedom of Conscience and Free Profession, Practice and Propagation of Religion

Provision:

Article 25(1) guarantees that all persons are equally entitled to:

“Freedom of conscience and the right freely to profess, practice and propagate religion,” subject to public order, morality, health, and other fundamental rights.

Key Elements:

- **Freedom of Conscience:** Inner freedom to believe or not believe in any religion.
- **Profession:** Declaration of faith openly and freely.
- **Practice:** Performing religious duties, rituals, and worship.
- **Propagation:** Spreading one's religious beliefs but **not forcing conversions**.

Restrictions:

Freedom under Article 25 is **not absolute**; it is subject to:

1. **Public order, morality, and health,**
2. **Other fundamental rights,** and
3. State's power to **regulate secular activities** associated with religious practice.

Case – Rev. Stainislaus v. State of Madhya Pradesh (1977)

Facts: State laws prohibited forcible religious conversions.

Held: The Supreme Court upheld the laws, stating that the right to “propagate” does not include the right to convert another person.

Principle: Religious freedom does not extend to coercive conversions; propagation means persuasion, not compulsion.

2. Article 26 – Freedom to Manage Religious Affairs

Provision:

Every religious denomination or its section shall have the right:

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property;
- (d) to administer such property in accordance with law.

Significance:

- Ensures **collective religious autonomy**.
- Protects the **organizational independence** of religious groups.

Case – Shirur Mutt Case (The Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar, AIR 1954 SC 282)

Held: The Supreme Court defined “religious denomination” and ruled that the State cannot interfere in **religious matters**, though it can regulate **secular aspects** like property management.

Principle: Matters of religion are to be determined by the tenets of that religion itself.

3. Article 27 – Freedom from Taxation for Promotion of a Particular Religion

Provision:

No person shall be compelled to pay taxes for the promotion or maintenance of any particular religion or religious denomination.

Meaning:

- This ensures **financial neutrality of the State**.
- Public funds cannot be used to promote religious activities.

Example:

The State can collect taxes for **secular purposes** like maintenance of public temples or heritage, but not for **propagation** of a religion.

4. Article 28 – Freedom from Attending Religious Instruction

Provisions:

1. No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
2. Religious instruction may be provided in institutions managed by the State but established under endowment or trust.
3. Attendance at religious instruction or worship is optional in institutions recognized or aided by the State.

Principle:

This Article upholds **secular education** and the **freedom of conscience** of students, preventing State-sponsored religious indoctrination.

CULTURAL AND EDUCATIONAL RIGHTS OF MINORITIES (ARTICLES 29–30)

1. Article 29 – Protection of Interests of Minorities

Article

29(1):

Provides that any section of citizens having a **distinct language, script, or culture** has the right to conserve the same.

Article

29(2):

Prohibits denial of admission into educational institutions maintained by the State or aided by State funds on grounds of **religion, race, caste, language, or any of them**.

Key Points:

- Protects both **religious and linguistic minorities**.
- Ensures **non-discrimination** in access to education.
- Aims to preserve India's **cultural pluralism**.

Case – State of Madras v. Champakam Dorairajan (1951)

Facts: Communal reservation of seats in State colleges based on religion and caste was challenged.

Held: The Supreme Court held it unconstitutional as it violated Article 29(2).

Principle: No citizen can be denied admission solely on the basis of religion, race, caste, or language.

2. Article 30 – Right of Minorities to Establish and Administer Educational Institutions

Provision:

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

Purpose:

- To ensure that minorities can **preserve their culture, language, and faith** through education.
- Safeguards **educational autonomy** for religious and linguistic minorities.

Scope:

- Includes right to **admit students, appoint staff, and manage administration**, subject to **reasonable regulations**.
- State can impose conditions for maintaining **academic standards**, but not interfere in **core management**.

Case – T.M.A. Pai Foundation v. State of Karnataka (2002)

Facts: Question arose on the extent of State control over minority educational institutions.

Held: The Supreme Court clarified that minority institutions have the **right to establish and administer**, but the State may regulate in the interest of **academic excellence and transparency**.

Principle: Autonomy of minority institutions must be preserved, but subject to reasonable regulations ensuring quality education.

Further Cases:

- *P.A. Inamdar v. State of Maharashtra* (2005): Minority institutions can admit students of their choice but cannot claim absolute immunity from regulations ensuring merit and fairness.
- *St. Stephen's College v. University of Delhi* (1992): Minority institutions may reserve up to 50% seats for their community while admitting others on merit.

SECULARISM AND STATE REGULATION

Although the Constitution guarantees freedom of religion and minority rights, the State retains the power to **regulate secular activities** connected to religion to ensure:

- **Public order and morality,**
- **Social welfare and reform, and**
- **Educational excellence and merit-based access.**

Case – *Bijoe Emmanuel v. State of Kerala* (1986)

Facts: Jehovah's Witness students expelled for refusing to sing the national anthem due to religious beliefs.

Held: The Court upheld their expulsion as unconstitutional.

Principle: The right to freedom of religion includes the right to remain silent on grounds of genuine faith; the State must respect conscientious belief.

Conclusion

Articles 25–30 embody the **secular and pluralistic spirit** of the Indian Constitution. While **Articles 25–28** safeguard **freedom of conscience and religion**, **Articles 29–30** ensure the **protection of cultural and educational rights** of minorities.

The Supreme Court, through decisions like *Shirur Mutt*, *Rev. Stainislaus*, and *T.M.A. Pai*, has balanced **religious autonomy with State regulation** and **minority rights with national integration**.

These provisions collectively uphold India's commitment to being a **sovereign, socialist, secular, and democratic republic**, where every person — irrespective of faith, culture, or language — enjoys the **freedom to live with dignity, equality, and harmony**.

TOPIC:

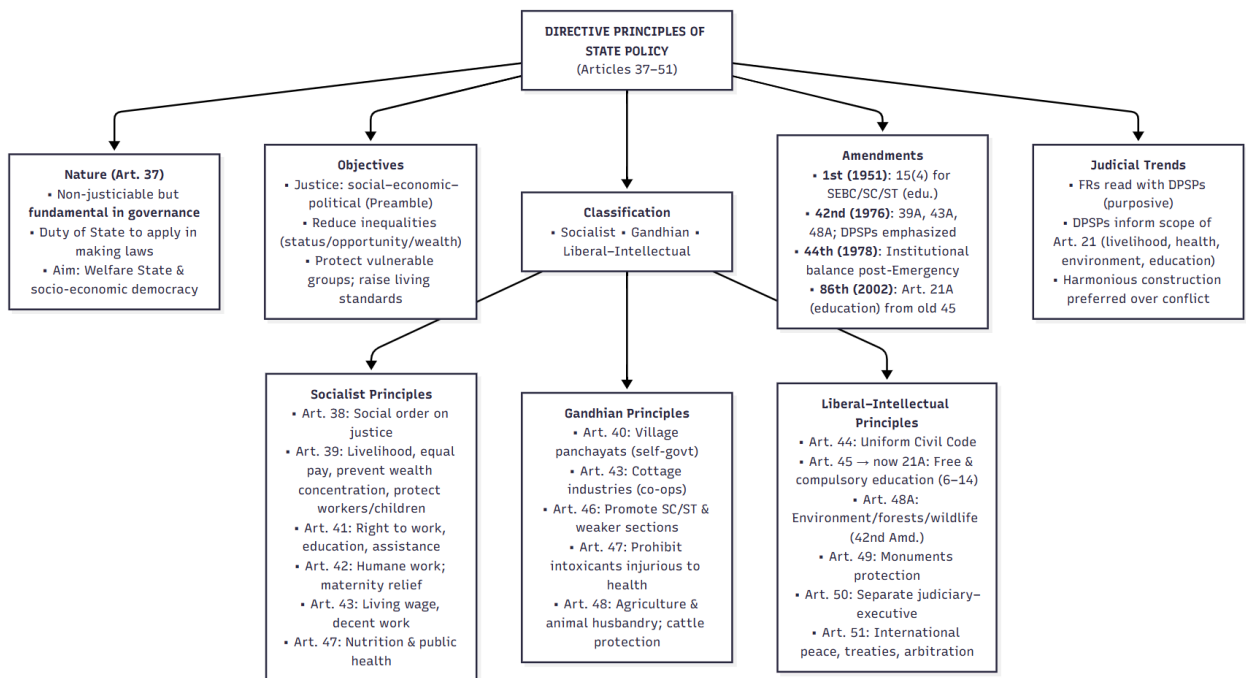
DIRECTIVE PRINCIPLES OF STATE POLICY (ARTICLES 37–51)

Answer:

Introduction

The **Directive Principles of State Policy (DPSPs)**, contained in **Part IV (Articles 36–51)** of the Indian Constitution, constitute the **moral and socio-economic charter** for governance. They are the **non-justiciable principles** that guide the State in policymaking and legislative functions to achieve the **goals of justice, equality, and welfare** envisioned in the Preamble.

Inspired by the **Irish Constitution**, the DPSPs reflect the ideals of **socialism, Gandhian philosophy, and liberalism**, making India not just a political democracy but also a **social and economic democracy**.



Meaning and Nature

- **Meaning:** Directive Principles are **directions or instructions** given to the State for establishing a just social order.
- **Nature:**
 - They are **non-justiciable** (cannot be enforced in a court of law).
 - But they are **fundamental in the governance** of the country (Article 37).
 - They act as a **yardstick for governmental performance** and serve as a **moral obligation** upon the State.

Article 37 explicitly provides:

“The provisions contained in this Part shall not be enforceable by any court, but the principles therein are nevertheless fundamental in the governance of the country, and it shall be the duty of the State to apply these principles in making laws.”

Objectives of DPSPs

1. To establish a **welfare state**.
2. To promote **social and economic democracy**.
3. To reduce inequalities in wealth, status, and opportunities.
4. To secure a **just social order** based on equality and dignity.
5. To guide the State in legislative and administrative policies.

Classification of Directive Principles

The DPSPs can be classified broadly into **three categories**, based on their ideological origins: **(A) Socialist Principles**, **(B) Gandhian Principles**, and **(C) Liberal–Intellectual (Western) Principles**.

A. Socialist Principles

These aim to achieve **economic equality and social justice** to build a welfare state. They focus on eliminating inequality and ensuring equitable distribution of resources.

Article	Provision
Art. 38	State to secure a social order based on justice — social, economic, and political.
Art. 39	Principles of policy: adequate livelihood, equitable distribution of wealth, prevention of concentration of wealth, equal pay for equal work, protection of workers and children.
Art. 41	Right to work, education, and public assistance in cases of unemployment, old age, sickness, and disability.
Art. 42	Just and humane conditions of work and maternity relief.
Art. 43	Living wage and decent conditions for workers.
Art. 47	Duty of the State to raise the level of nutrition and public health.

Example: These Articles form the basis for laws like the **Minimum Wages Act**, **Maternity Benefit Act**, and various welfare legislations.

B. Gandhian Principles

These are based on **Mahatma Gandhi's ideology of Sarvodaya (welfare of all)**, promoting rural self-reliance and social harmony.

Article	Provision
Art. 40	Organization of village panchayats as units of self-government.
Art. 43	Promotion of cottage industries on cooperative basis in rural areas.
Art. 46	Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and weaker sections.
Art. 47	Prohibition of intoxicating drinks and drugs injurious to health.
Art. 48	Organization of agriculture and animal husbandry; prohibition of cow slaughter.

Example: Implementation of **Panchayati Raj (73rd Amendment, 1992)** and **Khadi and Village Industries** reflect Gandhian influence.

C. Liberal–Intellectual (Western) Principles

These principles aim to establish political democracy, international peace, and liberal governance, influenced by modern democratic thought.

Article	Provision
Art. 44	Uniform Civil Code for citizens.
Art. 45	Free and compulsory education for children (later made Fundamental Right under Art. 21A by 86th Amendment, 2002).
Art. 48A	Protection and improvement of the environment and safeguarding of forests and wildlife (added by 42nd Amendment, 1976).
Art. 49	Protection of monuments and places of national importance.
Art. 50	Separation of judiciary from executive.
Art. 51	Promotion of international peace, respect for international law, and settlement of disputes through arbitration.

Example: Laws like the **Environmental Protection Act, 1986**, and **Foreign Policy of Peaceful Coexistence (Panchsheel)** emanate from these directives.

Constitutional Status and Importance

Although **non-justiciable**, the DPSPs have been accorded a **quasi-legal and constitutional status**:

- They serve as **guiding principles** for governance.
- They have been implemented through **legislations, constitutional amendments, and judicial interpretation**.
- They promote **harmonious balance** between liberty (Fundamental Rights) and equality (Directive Principles).

Judicial Interpretation and Enforcement

Initially considered **subordinate to Fundamental Rights**, the judiciary has progressively elevated the status of DPSPs, interpreting them **in harmony** with Fundamental Rights.

Case – State of Madras v. Champakam Dorairajan (1951)

Facts: A communal G.O. reserving seats in educational institutions based on caste was struck down as violating Article 29(2).

Held: The Supreme Court held that **Fundamental Rights prevail over Directive Principles** in case of conflict.

Impact: This led to the **First Amendment**, inserting **Article 15(4)** for backward class reservations.

Case – Kesavananda Bharati v. State of Kerala (1973)

Held: The Court ruled that the **harmony between Fundamental Rights and DPSPs** forms part of the **Basic Structure of the Constitution**.

Principle: Both Parts III and IV are **complementary and co-equal**; neither is superior.

Case – Minerva Mills Ltd. v. Union of India (1980)

Facts: The 42nd Amendment giving primacy to DPSPs over Fundamental Rights was challenged.

Held: The Supreme Court struck down the amendment, holding that destroying the balance between Parts III and IV violates the basic structure.

Principle: Harmony between FRs and DPSPs is **essential to the constitutional equilibrium**.

Implementation of DPSPs

Over the years, numerous laws and policies have been enacted to implement the Directive Principles:

Area	Example
------	---------

Social welfare	MGNREGA, Right to Food Act, Old Age Pension Schemes
Labour welfare	Minimum Wages Act, Maternity Benefit Act
Environment	Environment Protection Act (1986), Forest Act (1980)
Education	Right to Education Act (2009)
Panchayati Raj	73rd & 74th Constitutional Amendments
Health & Nutrition	National Food Security Act (2013), Ayushman Bharat

Significance of DPSPs

1. Provide a **philosophical foundation** for legislative policy.
2. Serve as **measures of government performance**.
3. Act as a **moral compass** for political accountability.
4. Help realize the ideals of the **Preamble**—justice, equality, and fraternity.
5. Transform **political democracy into socio-economic democracy**.

Limitations

1. **Non-justiciable nature** – not legally enforceable.
2. **Dependence on resources and political will**.
3. **Conflict with Fundamental Rights** at times.
4. **Lack of uniformity** in implementation by States.

Despite these, DPSPs remain a **constitutional imperative** rather than mere moral exhortations.

Recent Developments

- Courts increasingly use DPSPs to **expand the scope of Fundamental Rights**, especially Article 21 (life and liberty).
- Government welfare programs such as **Digital India, Beti Bachao Beti Padhao, Skill India**, and **National Education Policy 2020** align with DPSP objectives.
- Environmental protection (Art. 48A) and promotion of international peace (Art. 51) have gained **global relevance**.

Conclusion

The **Directive Principles of State Policy** are the **cornerstones of India's social and economic transformation**. They represent the **goals of governance**, while Fundamental Rights represent the **means to achieve them**.

As the Supreme Court observed in *Minerva Mills*,

“The Indian Constitution aims to harmonize individual liberty with social and economic justice.”

Therefore, though **non-enforceable**, DPSPs are **fundamental to the spirit of the Constitution**, guiding the State to build an **egalitarian society** where justice—social, economic, and political—is not a distant ideal but a living reality.

BY AJITABH MISHRA

TOPIC:

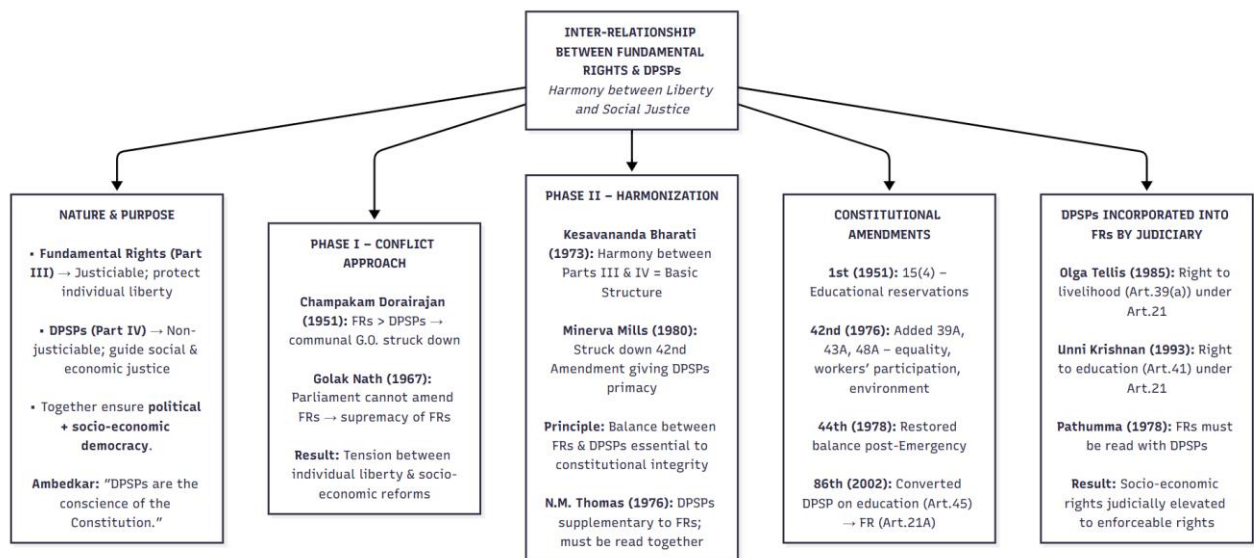
INTER-RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

Answer:

Introduction

The Constitution of India, a unique blend of **individual rights** and **collective responsibilities**, seeks to establish a **welfare state** through harmony between **Fundamental Rights (FRs)** and **Directive Principles of State Policy (DPSPs)**. While **Fundamental Rights (Part III, Articles 12–35)** guarantee civil and political freedoms to individuals, **Directive Principles (Part IV, Articles 36–51)** aim to ensure socio-economic justice and the upliftment of weaker sections.

The interrelationship between the two represents the **dynamic balance between rights and duties**, individual liberty and social justice — the two essential pillars of Indian democracy.



Nature and Purpose of Fundamental Rights

Fundamental Rights are **justiciable** — they are enforceable in courts. They protect individuals against arbitrary State action and promote equality, liberty, and dignity.

Purpose:

- To limit the powers of the State.
- To ensure protection of individual freedom.
- To maintain the rule of law.

- To establish a government of laws and not of men.

Key Articles:

- **Right to Equality (Art. 14–18)**
- **Right to Freedom (Art. 19–22)**
- **Right against Exploitation (Art. 23–24)**
- **Right to Freedom of Religion (Art. 25–28)**
- **Cultural & Educational Rights (Art. 29–30)**
- **Right to Constitutional Remedies (Art. 32)**

Nature and Purpose of Directive Principles

Directive Principles are **non-justiciable** but **fundamental in the governance** of the country. They represent the **social and economic goals** that the State must strive to achieve to establish a welfare society.

Purpose:

- To ensure socio-economic democracy.
- To guide legislative and executive policies.
- To complement Fundamental Rights with positive obligations.

Key Articles:

- **Social and Economic Welfare:** Arts. 38, 39, 41, 42, 43.
- **Gandhian Principles:** Arts. 40, 43, 46, 47, 48.
- **Liberal-Intellectual Principles:** Arts. 44, 45, 50, 51.

Constitutional Philosophy: Harmony, Not Conflict

The framers of the Constitution envisaged FRs and DPSPs as **complementary, not antagonistic**. Both were intended to operate together — Fundamental Rights providing **means of liberty**, and Directive Principles setting **ends of social welfare**.

Dr. B.R. Ambedkar stated in the Constituent Assembly that:

“The Directive Principles are like the instrument of instructions to the legislature and the executive; they form the conscience of the Constitution.”

Thus, while Fundamental Rights ensure **political democracy**, Directive Principles aim to achieve **economic and social democracy** — together constituting the foundation of the Indian polity.

Judicial Interpretation: From Conflict to Reconciliation

Initially, the courts adopted a **narrow and literal approach**, prioritizing Fundamental Rights over Directive Principles. However, over time, judicial interpretation evolved toward **harmonization**.

(a) Early Phase – Conflict Approach

Case – *State of Madras v. Champakam Dorairajan* (1951)

Facts: The communal G.O. reserving seats in educational institutions based on caste was challenged as violative of Article 29(2).

Held: The Supreme Court struck down the order, holding that **Fundamental Rights prevail over Directive Principles** in case of conflict.

Principle: Directive Principles cannot override Fundamental Rights.

Impact: This led to the **First Constitutional Amendment (1951)**, inserting **Article 15(4)** to allow special provisions for backward classes.

(b) Second Phase – Reconciliation Approach

Case – *Golak Nath v. State of Punjab* (1967)

Facts: Petitioners challenged the validity of constitutional amendments curtailing property rights.

Held: The Supreme Court held that Parliament **cannot amend Fundamental Rights**, treating them as “transcendental and immutable.”

Principle: FRs were given supremacy over DPSPs.

Impact: This rigid interpretation led to tension between individual rights and socio-economic goals.

(c) Third Phase – Harmonization and Balance

Case – *Kesavananda Bharati v. State of Kerala* (1973)

Facts: The validity of the 24th, 25th, and 29th Amendments, which sought to give precedence to DPSPs, was challenged.

Held:

- Parliament’s power to amend the Constitution is wide but **cannot destroy its basic structure**.
 - **Harmony between Fundamental Rights and DPSPs** is part of the basic structure.
- Principle:** Neither is subordinate; both must coexist and complement each other.

Impact: This landmark judgment laid the foundation for the doctrine of **harmonious construction**.

Fourth Phase – DPSPs as Complementary Tools

Case – *Minerva Mills Ltd. v. Union of India* (1980)

Facts: The validity of clauses added by the 42nd Amendment (giving absolute primacy to DPSPs over FRs) was challenged.

Held:

- The Court struck down the amendment, holding that giving uncontrolled precedence to DPSPs would destroy the balance of the Constitution.
- Both FRs and DPSPs are **equally important**.
Principle: “Harmony and balance between Fundamental Rights and Directive Principles is the basic feature of the Constitution.”

Impact: This case restored **equilibrium between liberty and social justice**.

Later Judicial Trends – DPSPs Strengthened through Interpretation

1. ***Pathumma v. State of Kerala* (1978):**
The Court held that Fundamental Rights must be **interpreted in the light of Directive Principles**.
2. ***State of Kerala v. N.M. Thomas* (1976):**
The Court emphasized that DPSPs are **supplementary and complementary** to FRs.
3. ***Unni Krishnan v. State of A.P.* (1993):**
The right to education under Article 41 (DPSP) was read into Article 21 (FR).
4. ***Olga Tellis v. Bombay Municipal Corporation* (1985):**
The right to livelihood under Article 39(a) was derived from Article 21.

Principle: The modern judicial approach integrates socio-economic rights (DPSPs) into Fundamental Rights to achieve **substantive equality and justice**.

Areas of Convergence between Fundamental Rights and DPSPs

Fundamental Right (Part III)	Directive Principle (Part IV)	Common Objective
Article 14 (Equality)	Article 38 (Social order based on equality)	Equality & social justice
Article 21 (Life & Liberty)	Article 39(a), 41, 47	Livelihood, health, and standard of life
Article 23–24 (Abolition of exploitation)	Article 39(e)–(f)	Protection of workers and children

NOTES ON CONSTITUTIONAL LAW -I

Article 25 (Freedom of religion)	Article 48 & 48A	Ethical and environmental duties
Article 32 (Remedies)	Article 37 (DPSPs fundamental in governance)	Ensuring rule of law & accountability

Constitutional Amendments Strengthening DPSPs

1. **42nd Amendment (1976):**

Added new principles like protection of environment (Art. 48A), equal justice (Art. 39A), and workers' participation (Art. 43A).

It also emphasized that DPSPs shall be **fundamental in governance**.

2. **44th Amendment (1978):**

Restored balance after the Emergency and reaffirmed FR–DPSP harmony.

3. **86th Amendment (2002):**

Made **education for children (6–14 years)** a Fundamental Right (Art. 21A), reflecting the **integration of a Directive Principle (Art. 45)** into Part III.

Leading Case – *Minerva Mills Ltd. v. Union of India* (1980)

Facts: Clauses (4) and (5) inserted in Article 31C by the 42nd Amendment gave primacy to DPSPs over FRs.

Held: The Supreme Court struck down the provisions, holding that:

- The **Constitution is founded on the balance between Parts III and IV.**
 - The destruction of that balance destroys the **basic structure**.
- Principle:** The harmony between Fundamental Rights and Directive Principles is an **essential feature of the Constitution**.

Conclusion

The inter-relationship between Fundamental Rights and Directive Principles embodies the **philosophy of the Indian Constitution** — a synthesis of **liberty and equality, individual and collective welfare**.

Fundamental Rights provide the **legal means** to safeguard individual freedom, while Directive Principles provide the **moral ends** for building a just social order. Through progressive judicial interpretation and constitutional amendments, the two have been **reconciled and harmonized**, reflecting the ideal of “**welfare democracy**.”

As the Supreme Court observed in *Minerva Mills*:

“The Indian Constitution aims to create a welfare state where Fundamental Rights and Directive Principles are complementary and not antagonistic.”

Thus, both together ensure that **political democracy leads to social and economic democracy**, fulfilling the ultimate vision of **justice, liberty, equality, and fraternity** enshrined in the Preamble.

BY AJITABH MISHRA

UNIT 1

TOPIC:

1. Can the Preamble be amended?
2. Creation of new States in India
3. Changing boundaries of State in India
4. Termination of Indian Citizenship
5. The Berubari Union And Exchange of Enclaves v. Unknown, AIR 1960 SC 845
6. Mr. Louis De Raedt v. Union of India, AIR 1991 SC 1886.

Answer:

1. Can the Preamble be Amended?

Introduction:

The Preamble forms the soul of the Indian Constitution, expressing its philosophy, purpose, and objectives. Though it is not a source of power, it plays a vital interpretative role in understanding constitutional provisions. The question of whether it can be amended arose in landmark constitutional cases.

Meaning:

Amendment means a formal change or addition made to the Constitution under **Article 368**. Since the Preamble embodies the essence of the Constitution, its amendability became a matter of judicial interpretation.

Judicial

View:

In **Re: Berubari Union (1960)**, the Supreme Court held that the Preamble is not a part of the Constitution, and hence cannot be the source of substantive power. However, this view was later reconsidered.

Case Law: *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225

Facts: The petitioner challenged the 24th, 25th, and 29th Amendments, arguing they violated fundamental rights.

Held: The Supreme Court held that the **Preamble is an integral part of the Constitution** and can be amended under Article 368. However, such amendment **cannot destroy or alter the basic structure** of the Constitution.

Principle: The ideals of the Preamble — Sovereignty, Democracy, Republic, Justice, Liberty, Equality, and Fraternity — form the **basic structure**, and any amendment infringing them is unconstitutional.

Conclusion:

Thus, the Preamble is **amendable but within limits**. The **42nd Amendment Act, 1976** validly inserted the words “*Socialist*,” “*Secular*,” and “*Integrity*”, reinforcing constitutional ideals

without violating the basic structure. Hence, the Preamble remains dynamic but inviolable in spirit.

2. Creation of New States in India

Introduction:

The Indian Constitution provides a flexible framework for the creation of new States to accommodate political, linguistic, and administrative needs within the Union of India.

Constitutional

Provision:

Article 2 empowers Parliament to **admit new States** into the Union or establish new ones on such terms as it deems fit. Article 3 empowers Parliament to **form new States** by separation, uniting territories, or altering existing State boundaries.

Procedure:

- A **Bill** for creating a new State can be introduced **only in Parliament** with the **President's prior recommendation**.
- The **President refers the Bill** to the concerned State Legislature for its views.
- However, the **opinion of the State Legislature is not binding** on Parliament.

Case Law: *Babulal Parate v. State of Bombay*, AIR 1960 SC 51

Facts: The petitioner challenged the formation of the new Bombay State without adequate consultation.

Held: The Supreme Court held that the procedure under Article 3 is **constitutional and valid**, and the **State's opinion is advisory**, not mandatory.

Principle: Parliament has supreme legislative competence in the reorganization or creation of States.

Examples:

States such as **Andhra Pradesh (1953)**, **Chhattisgarh (2000)**, **Telangana (2014)** were created through this constitutional mechanism.

Conclusion:

The creation of new States demonstrates the **elasticity of the Indian federal system**, allowing the Union to adjust to the nation's diversity while preserving unity.

3. Changing Boundaries of States in India

Introduction:

The Constitution empowers Parliament to alter the geographical boundaries of existing States to maintain administrative efficiency and national integrity.

Constitutional

Basis:

Article 3 authorizes Parliament to **increase, diminish, or alter boundaries** of any State or Union Territory. This reflects the **unitary bias** of the Indian federation, where States exist not by right but by constitutional design.

Procedure:

1. The Bill must be introduced in Parliament with **Presidential recommendation**.
2. The **President refers** it to the concerned State Legislature for its opinion.
3. **Parliament may or may not accept** the State's view.

Case Law: *Re: Berubari Union and Exchange of Enclaves*, AIR 1960 SC 845

Facts: The issue was whether Parliament could cede Indian territory to Pakistan by executive action or under Article 3.

Held: The Supreme Court ruled that **cession of territory to a foreign State** cannot be done under Article 3; it **requires a constitutional amendment under Article 368**.

Principle: Alteration of internal boundaries falls under Article 3, but **cession of national territory** needs amendment.

Examples:

Formation of **Jharkhand (2000)** and **Telangana (2014)** involved alteration of State boundaries under Article 3.

Conclusion:

The power to change State boundaries shows the **flexibility of Indian federalism**, balancing unity with regional aspirations under parliamentary supremacy.

4. Termination of Indian Citizenship

Introduction:

Indian citizenship can be terminated if a person voluntarily gives up Indian nationality or acquires foreign citizenship. The **Citizenship Act, 1955** outlines these provisions.

Modes of Termination:

1. **Renunciation (Section 8):** Any Indian citizen of full age and capacity can renounce citizenship by declaration.
2. **Termination (Section 9):** Automatic termination occurs when a person **voluntarily acquires citizenship of another country**.
3. **Deprivation (Section 10):** The Central Government may deprive citizenship if obtained by **fraud, disloyalty, or unlawful trade with an enemy**.

Case Law: *Mr. Louis De Raedt v. Union of India*, AIR 1991 SC 1886

Facts: The petitioners, Belgian missionaries residing in India, challenged the government's refusal to renew their visas and alleged violation of their fundamental rights.

Held: The Supreme Court held that **foreigners have no fundamental right to reside in India**, and their stay depends entirely on government permission.

Principle: The right to citizenship or residence in India is **not absolute** and is subject to national interest and sovereignty.

Conclusion:

Termination of Indian citizenship ensures that **loyalty to the nation remains paramount**. The Act prevents dual citizenship and upholds the **sovereignty and integrity** of India.

5. The Berubari Union and Exchange of Enclaves, AIR 1960 SC 845

Facts:

The dispute arose when the Government of India decided to **cede Berubari Union (part of West Bengal) and exchange enclaves** with Pakistan under the **Indo-Pak Agreement (1958)**. The issue was whether this could be done under **Article 3** or required a **constitutional amendment**.

Issue:

Can the Government of India cede territory to another country without amending the Constitution?

Held:

The Supreme Court held that **cession of Indian territory** to a foreign State is **not covered under Article 3**, which applies only to internal adjustments of State boundaries. Such cession affects the sovereignty of India and therefore **requires an amendment under Article 368**.

Principle:

The **Preamble and Article 1** describe India as a Union of States; thus, no part can be surrendered except through constitutional amendment.

Outcome:

Following this judgment, the **9th Constitutional Amendment Act, 1960** was enacted to give effect to the Indo-Pak Agreement.

Conclusion:

The case clarified the constitutional procedure for **territorial changes involving foreign States**, ensuring that **India's sovereignty and territorial integrity** remain protected under constitutional authority.

6. Mr. Louis De Raedt v. Union of India, AIR 1991 SC 1886

Facts:

Mr. Louis De Raedt and others, Belgian missionaries, lived in India for over 20 years. When their visas expired, the Government of India refused renewal, leading to a challenge under Articles 19 and 21.

Issue:

Do foreign nationals have a fundamental right to reside or continue to stay in India?

Held:

The Supreme Court held that **foreigners do not enjoy the fundamental right to reside and settle in India** under Article 19(1)(e). Their stay depends entirely on the **executive discretion**

of the Government. However, they are entitled to **protection under Article 21** (life and personal liberty) during lawful stay.

Principle:

The right to citizenship and residence in India is **not absolute**. National sovereignty empowers the State to control the entry, residence, and departure of foreigners in the national interest.

Conclusion:

The judgment reinforces that **citizenship and residence are privileges, not entitlements**, and that the State retains supreme authority to regulate them in the **interest of security and sovereignty** of India.

BY AJITABH MISHRA

UNIT 2

TOPIC:

1. Definition of Law under Article 13
2. Doctrine of Eclipse
3. Doctrine of Severability,
4. Doctrine of Waiver
5. Doctrine of Reasonable Classification
6. Principle of Absence of Arbitrariness
7. Doctrine of Legitimate Expectation
8. Right to Property under Constitution
9. M. Nagraj v. Union of India, AIR 2007 SC 71.
10. Justice K S Puttaswamy (Retd.) and anr. v. Union of India and ors., (2017) 10 SCC 1.

Answer:

1. Definition of Law under Article 13

Introduction:

Article 13 of the Indian Constitution acts as the **guardian of Fundamental Rights**, ensuring that no law violates the basic freedoms enshrined in Part III. It gives a clear definition of what constitutes "law" for the purpose of constitutional scrutiny.

Meaning:

Article 13(1) declares that all **pre-constitutional laws** inconsistent with Fundamental Rights shall be void to the extent of inconsistency. Article 13(2) prohibits the State from making any law which **takes away or abridges Fundamental Rights**.

Article 13(3) broadly defines "law" to include:

- Ordinances, orders, bye-laws, rules, regulations, notifications, and customs or usages having the force of law.
- Article 13(4), added by the **24th Amendment (1971)**, clarified that **constitutional amendments** made under Article 368 are not "law" within the meaning of Article 13.

Case Law – Keshavan Madhava Menon v. State of Bombay, AIR 1951 SC 128

Facts: The petitioner was prosecuted under a pre-Constitution law for publishing a pamphlet.

Held: The Supreme Court held that Article 13(1) applies only prospectively; pre-Constitution laws inconsistent with Fundamental Rights become void **after** the Constitution came into force,

not invalid from inception.

Principle: Article 13 ensures **constitutional supremacy**, not legislative superiority.

Conclusion:

Article 13 forms the **foundation of judicial review** in India. It empowers courts to strike down any legislation violating Fundamental Rights, thus maintaining the supremacy of the Constitution.

2. Doctrine of Eclipse

Introduction:

The **Doctrine of Eclipse** explains the effect of Fundamental Rights on pre-Constitutional laws inconsistent with them. It is based on the idea that such laws are not dead but remain eclipsed.

Meaning:

A pre-Constitution law inconsistent with Fundamental Rights is not void ab initio but becomes **inoperative** (eclipsed) to the extent of inconsistency. Once the inconsistency is removed — either by constitutional amendment or change in circumstances — the law revives.

Case Law – *Bhikaji Narain Dhakras v. State of M.P.*, AIR 1955 SC 781

Facts: A pre-Constitution law giving monopoly in transport to the State was challenged as violative of Article 19(1)(g).

Held: The Court held that such a law was valid when enacted, but after the Constitution, it became **dormant** (eclipsed) to the extent it conflicted with Article 19(1)(g). Later, when Article 19(6) was amended to permit State monopolies, the law revived.

Principle: Pre-constitutional laws inconsistent with Fundamental Rights are **not dead but dormant** and can revive when inconsistency is removed.

Conclusion:

This doctrine preserves legislative continuity and balances constitutional supremacy with legislative intent.

3. Doctrine of Severability

Introduction:

The Doctrine of Severability determines whether an unconstitutional provision in a statute invalidates the entire law or only the offending part.

Meaning:

If a portion of a law violates Fundamental Rights but the rest can stand independently, the invalid part may be **severed**, keeping the rest valid. The test is whether the remaining part is enforceable and capable of functioning without the invalid section.

Case Law – *R.M.D.C. v. Union of India*, AIR 1957 SC 628

Facts: The petitioner challenged the Prize Competitions Act, 1955, arguing it violated Fundamental Rights.

Held: The Supreme Court applied the doctrine and upheld valid portions regulating gambling while striking down only the unconstitutional parts.

Principle: Only the offending provisions inconsistent with Fundamental Rights are void; the rest of the statute remains effective if separable.

Conclusion:

This doctrine prevents unnecessary invalidation of entire legislation, maintaining legislative intent while protecting constitutional rights.

4. Doctrine of Waiver

Introduction:

The Doctrine of Waiver concerns whether an individual can voluntarily give up Fundamental Rights guaranteed by the Constitution.

Meaning:

In India, Fundamental Rights are not merely individual privileges but **public obligations**. Therefore, they **cannot be waived** by any person, even voluntarily, since they protect both individuals and public interest.

Case Law – *Basheshar Nath v. CIT*, AIR 1959 SC 149

Facts: The petitioner argued that he had waived his right under Article 14 by entering into a tax settlement.

Held: The Supreme Court held that Fundamental Rights cannot be waived because they are **mandatory constitutional guarantees** forming part of the basic structure.

Principle: No individual can waive Fundamental Rights; any such waiver is void ab initio.

Conclusion:

This doctrine reinforces the **non-derogable nature** of Fundamental Rights, ensuring constitutional supremacy and protection for all citizens.

5. Doctrine of Reasonable Classification

Introduction:

Article 14 guarantees **equality before law** and **equal protection of laws**. However, it permits reasonable classification for achieving legitimate objectives.

Meaning:

The classification must:

1. Be founded on **intelligible differentia**, distinguishing those grouped from others.
2. Have a **rational nexus** between the differentia and the object sought to be achieved.

Case Law – *State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75

Facts: The West Bengal Special Courts Act empowered the government to refer any case to a special court.

Held: The Act was struck down as it gave **arbitrary discretion** to the executive without reasonable classification.

Principle: Classification must not be arbitrary or discriminatory; it must be reasonable and relate to the law's objective.

Conclusion:

This doctrine allows the State flexibility while ensuring **non-arbitrariness and fairness**, thereby harmonizing equality with practical governance.

6. Principle of Absence of Arbitrariness

Introduction:

The principle of non-arbitrariness flows from Article 14. It mandates that State action must be based on reason and fairness, not whims or caprice.

Meaning:

Article 14 strikes at arbitrariness in State action, whether legislative, executive, or administrative. Equality before law implies **absence of arbitrary power**.

Case Law – *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555

Facts: The petitioner challenged his transfer as Chief Secretary, claiming it was arbitrary.

Held: The Court held that **arbitrariness and equality are sworn enemies**; arbitrary action violates Article 14.

Principle: Equality is antithetical to arbitrariness; any arbitrary State action is unconstitutional.

Conclusion:

This principle has transformed Article 14 into a **guarantee of fairness**, making it the cornerstone of administrative and constitutional law.

7. Doctrine of Legitimate Expectation

Introduction:

The doctrine of legitimate expectation protects individuals' expectations arising from consistent government practice or promises.

Meaning:

If a public authority has followed a particular practice or made a promise, individuals can expect it to continue unless a rational reason justifies deviation. Though not a legal right, it ensures **fairness in administrative actions**.

Case Law – *Navjyoti Co-op. Group Housing Society v. Union of India*, AIR 1993 SC 155

Facts: A sudden change in land allotment policy affected the petitioner's position.

Held: The Court held that abrupt changes without notice violated legitimate expectation.

Principle: Public authorities must act fairly, and departures from established practices must be justified by public interest.

Conclusion:

The doctrine promotes **good governance and procedural fairness**, ensuring citizens' faith in the State's consistency.

8. Right to Property under the Constitution

Introduction:

Originally a Fundamental Right, the **right to property** underwent major constitutional changes post-independence.

Meaning:

Initially protected under **Articles 19(1)(f) and 31**, the right to property allowed citizens to own, acquire, and dispose of property. However, to implement land reforms and social justice, it was removed from Fundamental Rights by the **44th Amendment, 1978**, and introduced as a **legal right under Article 300A**.

Case Law – *Jilubhai Nanbhai Khachar v. State of Gujarat*, AIR 1995 SC 142

Held: The Court held that right to property is no longer fundamental but **constitutional and legal**, and deprivation must follow due process and authority of law.

Principle: Property can be taken only through a valid law; arbitrary deprivation violates Article 300A.

Conclusion:

Though no longer fundamental, the right to property remains protected as a **constitutional safeguard against arbitrary expropriation**.

9. M. Nagaraj v. Union of India, AIR 2007 SC 71

Introduction:

This case examined the constitutional validity of reservations in promotions for Scheduled Castes and Scheduled Tribes.

Facts:

Petitioners challenged the **77th, 81st, 82nd, and 85th Amendments**, which provided reservation and consequential seniority in promotions.

Held:

The Supreme Court upheld the amendments, holding that reservation in promotions is valid but subject to **three conditions**:

1. The State must demonstrate **backwardness** of the class.
2. Show **inadequate representation** in services.
3. Ensure that efficiency under **Article 335** is not compromised.

Principle:

Reservation policy must be based on **quantifiable data**; the equality principle under Article 14 is part of the **basic structure**.

Conclusion:

M. Nagaraj reaffirmed the delicate balance between **social justice and administrative efficiency**, ensuring data-driven affirmative action.

10. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

Introduction:

This landmark judgment recognized the **Right to Privacy** as a Fundamental Right under the Constitution.

Facts:

The petitioner, Justice K.S. Puttaswamy, challenged the constitutional validity of the **Aadhaar scheme**, contending it violated privacy rights.

Held:

A nine-judge bench unanimously held that **privacy is a part of the right to life and personal liberty under Article 21** and part of the freedoms guaranteed by Articles 19 and 14. Privacy includes autonomy over personal data, body, choices, and identity.

Principle:

The Court overruled *M.P. Sharma (1954)* and *Kharak Singh (1963)*, declaring privacy as an **intrinsic aspect of human dignity and liberty**, forming part of the **basic structure**.

Conclusion:

The *Puttaswamy* judgment expanded the scope of Fundamental Rights, ensuring protection of citizens' personal autonomy in the digital age.

UNIT 3

TOPIC:

1. Right against Exploitation
2. Forced Labour,
3. Child Employment
4. Human Trafficking
5. Right to Education
6. Is Narco Analysis covered under protection of article 20(3)
7. Freedom to free and compulsory education
8. Double jeopardy
9. Navtej Singh Johar & Ors. v. Union of India, Writ Petition (Criminal) No. 76 of 2016.
10. Joseph Shine v. Union of India, (2018) 7 SCC 192.

Answer:

1. Right Against Exploitation (Articles 23–24)

Introduction:

The **Right against Exploitation** under **Articles 23 and 24** of the Constitution seeks to eliminate all forms of human exploitation, ensuring dignity and freedom to every individual. It embodies the ideals of **social justice and human rights**, protecting individuals from forced labour, human trafficking, and child exploitation.

Article 23:
Prohibits **traffic in human beings, begar (forced labour), and similar forms of servitude.**

- Applicable to **State and private individuals.**
- Allows State to impose **compulsory public service** (e.g., military service) without discrimination.

Article 24:
Prohibits **employment of children below 14 years** in factories, mines, or hazardous occupations.

Case Law – People’s Union for Democratic Rights v. Union of India (1982)

Facts: Construction workers of Asian Games projects were paid below minimum wages.

Held: The Supreme Court held this as **forced labour** under Article 23.

Principle: Non-payment of minimum wages violates the Right against Exploitation; economic compulsion equals coercion.

Conclusion:

The Right against Exploitation ensures that human beings are treated as ends, not means. It safeguards freedom, dignity, and fair working conditions — the essence of a humane society.

2. Forced Labour (Article 23)

Introduction:

Forced labour, prohibited under **Article 23**, refers to any work extracted under coercion, threat, or without fair compensation. The article safeguards against both physical and economic compulsion.

Scope:

- Covers **bonded labour, begar**, and labour extracted under threat or economic duress.
- Applies against **State and private individuals** alike.
- The **Bonded Labour System (Abolition) Act, 1976** enforces this prohibition.

Exceptions:

- **Compulsory public service** (e.g., conscription, disaster relief) permitted if non-discriminatory.
- Community or voluntary service not considered forced labour.

Case Law – *People’s Union for Democratic Rights v. Union of India* (1982)

Held: Payment of wages below the legal minimum amounts to forced labour.

Principle: Even economic necessity can constitute coercion; State must protect labour dignity.

Conclusion:

Article 23 transforms India’s labour system into one respecting equality and human dignity. It ensures that no citizen is reduced to a tool of exploitation in any form.

3. Child Employment (Article 24)

Introduction:

Article 24 prohibits the employment of children below 14 years in factories, mines, or any hazardous work, ensuring the protection and development of children.

Purpose:

- To safeguard children’s health, safety, and education.
- To end exploitation at an age meant for learning and growth.

Implementation:

- **Child Labour (Prohibition and Regulation) Act, 1986** and its 2016 amendment prohibit child labour in all occupations and regulate adolescent labour.

- Integrated with **Right to Education (Article 21A)** to ensure schooling instead of employment.

Case Law – *M.C. Mehta v. State of Tamil Nadu* (1996)

Facts: Child labourers in Sivakasi match industries worked in hazardous conditions.

Held: Court ordered their withdrawal from hazardous industries and rehabilitation with education and financial support.

Principle: Child labour violates Articles 24, 39(e), and 39(f); State must ensure education and welfare.

Conclusion:

Article 24 protects the future of the nation by ensuring that every child enjoys the right to safety, health, and education free from exploitation.

4. Human Trafficking (Article 23)

Introduction:

Human trafficking involves the illegal trade and exploitation of human beings for forced labour, prostitution, or other immoral purposes. It is explicitly prohibited under **Article 23**.

Scope:

- Covers **sale, transport, or use** of humans through coercion or deceit.
- Violates the right to dignity and personal liberty.
- Penalized under **Sections 370–373 of the IPC** and the **Immoral Traffic (Prevention) Act, 1956**.

Case Law – *Bodhisattwa Gautam v. Subhra Chakraborty* (1996)

Facts: Victim of sexual exploitation sought compensation.

Held: Court recognized sexual exploitation as a violation of Article 21 and 23, directing interim compensation.

Principle: Right against trafficking ensures dignity; victims are entitled to remedial protection and rehabilitation.

Conclusion:

Human trafficking is an attack on humanity. Article 23, supported by penal laws, ensures that no person is commodified or deprived of dignity through forced exploitation.

5. Right to Education (Article 21A)

Introduction:

The **Right to Education** became a Fundamental Right under **Article 21A** through the **86th Constitutional Amendment Act, 2002**. It ensures **free and compulsory education for children aged 6–14 years**.

Objective:

- To promote literacy and equality.
- To make education a tool for socio-economic empowerment.

Implementation:

- Enforced through the **Right of Children to Free and Compulsory Education Act, 2009** (RTE Act).
- Ensures neighbourhood schools, qualified teachers, and 25% reservation for weaker sections in private schools.

Case Law – Unni Krishnan v. State of Andhra Pradesh (1993)

Held: The Supreme Court recognized the right to education as implicit in Article 21.

Principle: Education is essential for dignity and liberty; it is a necessary condition for the meaningful exercise of other rights.

Conclusion:

The Right to Education realizes the goal of **social justice and equality of opportunity**, ensuring that every child has access to education as a right, not a privilege.

6. Is Narco Analysis Covered under Article 20(3)?

Introduction:

Article 20(3) provides that *no person accused of any offence shall be compelled to be a witness against himself*. This is the constitutional guarantee against **self-incrimination**.

Narco

Analysis:

It involves administering drugs to induce semi-consciousness, compelling the accused to reveal information. It raises concerns about **voluntariness and privacy**.

Case Law – Selvi v. State of Karnataka (2010)

Held: The Supreme Court held that involuntary Narco Analysis, polygraph, and brain-mapping tests violate **Article 20(3)** and **Article 21 (personal liberty)** unless consented to.

Principle: Test results obtained without consent are inadmissible; they infringe upon mental privacy and the right against self-incrimination.

Conclusion:

Narco Analysis without consent is unconstitutional. It violates the accused's dignity, mental integrity, and the constitutional protection under Articles 20(3) and 21.

7. Freedom to Free and Compulsory Education (Article 21A)

Introduction:

Article 21A, inserted by the **86th Amendment (2002)**, guarantees **free and compulsory education** for all children between **6 and 14 years of age**.

Meaning:

- “Free” means no child shall pay any fee hindering access to education.
- “Compulsory” means the State must ensure admission, attendance, and completion of elementary education.

Implementation:

- **RTE Act, 2009** operationalizes the right.
- Mandates standards for schools, teacher qualifications, and prohibits discrimination or expulsion.

Case Law – *Society for Unaided Private Schools v. Union of India* (2012)

Held: The Supreme Court upheld the constitutional validity of the RTE Act, including 25% reservation for disadvantaged children in private schools.

Principle: The right to education extends to all children, and private institutions share responsibility in achieving equality.

Conclusion:

The Right to Education ensures every child’s empowerment, reinforcing the constitutional ideal of justice and equality through universal literacy.

8. Double Jeopardy (Article 20(2))

Introduction:

Article 20(2) protects individuals from being tried or punished twice for the same offence — known as the **rule against double jeopardy**.

Scope:

- Applies only when the same person is **prosecuted and punished** for the same offence under the same law.
- Does not apply to departmental or disciplinary proceedings.

Case Law – *Maqbool Hussain v. State of Bombay* (1953)

Facts: Customs authority confiscated gold; later, criminal prosecution was launched.

Held: The Court ruled that departmental action by customs is not “prosecution” under Article 20(2).

Principle: Double jeopardy applies only where a person has been prosecuted and punished in a court of law.

Conclusion:

Article 20(2) ensures fairness in criminal law by protecting individuals from repeated prosecution for the same act, upholding the principle of justice and legal certainty.

9. *Navtej Singh Johar v. Union of India*, W.P. (Criminal) No. 76 of 2016

Introduction:

This landmark case decriminalized **homosexuality** in India by reading down **Section 377 IPC** as unconstitutional for consensual adult relations.

Facts:

Petitioners challenged Section 377 for violating rights to equality, dignity, and privacy.

Held:

A five-judge bench of the Supreme Court unanimously struck down Section 377 to the extent it criminalized consensual sexual acts between adults.

Principle:

- **Right to Privacy (Article 21)** includes sexual orientation.
- Constitutional morality must prevail over societal morality.
- Discrimination based on sexual orientation violates **Articles 14, 15, and 21**.

Impact:

The judgment affirmed **LGBTQ+ equality**, human dignity, and inclusivity under constitutional values.

Conclusion:

Navtej Johar is a milestone in India's human rights jurisprudence, marking the triumph of liberty, equality, and privacy over prejudice and stigma.

10. Joseph Shine v. Union of India, (2018) 7 SCC 192

Introduction:

This case struck down **Section 497 IPC**, which criminalized **adultery** and treated women as property of husbands, violating gender equality.

Facts:

Petitioner challenged adultery law for being arbitrary and discriminatory.

Held:

The Supreme Court declared Section 497 unconstitutional for violating **Articles 14, 15, and 21**. Adultery remains a **civil wrong**, not a criminal offence.

Principle:

- Adultery law was based on patriarchal notions inconsistent with equality.
- Women are equal citizens, not subordinates in marriage.
- Marriage does not strip individuals of liberty or dignity.

Conclusion:

Joseph Shine reaffirmed women's autonomy and equality, marking another progressive step toward gender justice and constitutional morality in India.

UNIT 4

TOPIC:

1. Fundamental Duties
2. Writ of Habeas Corpus
3. Writ of Mandamus
4. Writ of Certiorari
5. Writ of Prohibition
6. Writ of Quo warranto
7. Animal Welfare Board of India v. A. Nagaraja & Ors., (2014) 7 SCC 547.
8. Shyam Narayan Choudhary v. Union of India, AIR 2018 SC 357.

Answer:

1. Fundamental Duties (Article 51A)

Introduction:

The **Fundamental Duties**, enumerated in **Article 51A** under **Part IV-A**, were added by the **42nd Constitutional Amendment Act, 1976** on the recommendation of the **Swaran Singh Committee**. They prescribe the **moral obligations of all citizens** to promote the spirit of patriotism and uphold the unity of India.

Nature and Purpose:

- These duties act as a **constant reminder** that rights and freedoms come with responsibilities.
- They serve as a **code of civic conduct** and aim to build responsible citizenship.
- Although **non-justiciable**, courts can interpret them to support legislation enforcing public duties.

List of Duties (Article 51A):
There are **11 Fundamental Duties**, including:

1. Respect for the Constitution, National Flag, and National Anthem.
2. Protection of sovereignty, unity, and integrity of India.
3. Promotion of harmony and brotherhood.
4. Preservation of environment, forests, and wildlife.

5. Striving for excellence in all spheres of activity.

The **86th Amendment (2002)** added the 11th duty — to provide education opportunities to children between 6–14 years.

Case Law – *AIIMS Students' Union v. AIIMS*, (2001) 10 SCC 292

Held: The Supreme Court emphasized that Fundamental Duties are equally important as Fundamental Rights. They are meant to instill a sense of discipline and commitment among citizens.

Principle: Fundamental Duties, though non-enforceable, must be respected by all citizens and can be judicially invoked to interpret rights.

Conclusion:

Fundamental Duties are the **ethical foundation of democracy**, reinforcing the balance between individual rights and social responsibilities, ensuring a **responsible and participatory citizenry**.

2. Writ of Habeas Corpus

Introduction:

The **Writ of Habeas Corpus** means “**you may have the body**.” It is a judicial remedy under **Articles 32 and 226** for securing **personal liberty**. It commands authorities to produce a detained person before the court and justify the detention.

Purpose:

- To **release a person** unlawfully detained or imprisoned.
- To prevent **arbitrary deprivation** of liberty.

Conditions:

- It can be filed by the detainee or any other person on their behalf.
- It can be issued against **public authorities or private individuals** who detain unlawfully.

Case Law – *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207

Facts: During the Emergency (1975–77), the right to life and liberty was suspended, and several detentions occurred.

Held: The Supreme Court (majority) upheld that Habeas Corpus was not maintainable during an Emergency.

Principle: This judgment curtailed liberty but was later overruled in *Maneka Gandhi v. Union of India* and *Puttaswamy v. Union of India*, reaffirming that liberty is inviolable even in emergencies.

Conclusion:

Habeas Corpus is the **bulwark of individual liberty** — it protects against illegal detention and ensures that **no person is deprived of freedom without due process of law**.

3. Writ of Mandamus

Introduction:

The term “**Mandamus**” means “**We Command.**” It is a **command from a superior court to a public authority** directing the performance of a **public duty** or prohibiting the doing of an unlawful act.

Purpose:

- To ensure that public authorities discharge **statutory obligations**.
- To prevent **inaction, arbitrariness, or neglect** of legal duties.

Conditions:

- There must be a **legal duty** imposed on the respondent.
- Duty must be **public and mandatory**, not discretionary.
- Cannot be issued against **private individuals**, the **President**, or **Governors**.

Case Law – Praga Tools Corporation v. C.A. Imanual, AIR 1969 SC 1306

Facts: Employees sought Mandamus against a private company.

Held: The Supreme Court held that Mandamus cannot be issued to enforce a private contract or against private entities.

Principle: Mandamus applies only to **statutory and public duties** imposed by law, not private obligations.

Conclusion:

The Writ of Mandamus enforces **administrative accountability** and strengthens the **rule of law**, ensuring that no public authority can act beyond or contrary to its legal duties.

4. Writ of Certiorari

Introduction:

The term “**Certiorari**” means “**to be certified.**” It is issued by a **superior court to quash an order** passed by a subordinate court, tribunal, or quasi-judicial body acting **without or in excess of jurisdiction** or **in violation of natural justice**.

Purpose:

- To **quash unlawful or arbitrary judicial decisions**.
- To correct errors of jurisdiction or law.

Conditions:

- Issued against judicial, quasi-judicial, or administrative bodies.
- Cannot be issued against **legislative bodies or private individuals**.

Case Law – *State of U.P. v. Mohammad Nooh*, AIR 1958 SC 86

Facts: A departmental inquiry was held against an employee without observing natural justice.

Held: The Court quashed the dismissal order for denial of fair hearing.

Principle: Certiorari lies when a tribunal acts **without jurisdiction or violates natural justice**, ensuring procedural fairness.

Conclusion:

The Writ of Certiorari maintains **judicial control over inferior authorities**, ensuring legality, fairness, and jurisdictional discipline in administrative decisions.

5. Writ of Prohibition

Introduction:

The term “**Prohibition**” means “**to forbid**.” It is a **preventive writ** issued by a **higher court** to a **lower court or tribunal**, restraining it from exceeding its jurisdiction or acting contrary to law.

Purpose:

- To prevent **jurisdictional overreach** by inferior courts or tribunals.
- To ensure that authorities act **within the scope of their legal powers**.

Conditions:

- It is issued **before the act is done**, unlike Certiorari, which is corrective.
- Lies only against **judicial or quasi-judicial authorities**, not administrative or legislative bodies.

Case Law – *East India Commercial Co. Ltd. v. Collector of Customs*, AIR 1962 SC 1893

Facts: Customs authority exceeded its jurisdiction.

Held: The Supreme Court prohibited the authority from continuing proceedings beyond jurisdiction.

Principle: The writ prevents **unlawful exercise of jurisdiction** and preserves legal order.

Conclusion:

Prohibition safeguards **rule of law and judicial propriety**, preventing subordinate courts from committing jurisdictional or procedural errors before they occur.

6. Writ of Quo Warranto

Introduction:

The term “**Quo Warranto**” means “**By what authority**.” It is issued to **inquire into the legality of a person’s claim** to a public office and to **oust** him if he has no valid title to hold it.

Purpose:

- To prevent **usurpation of public office**.
- To ensure that public offices are held **lawfully and constitutionally**.

Conditions:

- The office must be **public and substantive**.
- The person must be **in actual possession of the office**.
- Writ can be filed by **any person** (not necessarily aggrieved).

Case Law – *University of Mysore v. Govinda Rao*, AIR 1965 SC 491

Facts: Appointment of a professor was challenged for lack of qualifications.

Held: The Court held that Quo Warranto ensures only duly qualified persons hold public office.

Principle: The writ upholds **public accountability and transparency** in appointments.

Conclusion:

Quo Warranto is an **instrument of constitutional control**, preventing unlawful occupation of public offices and ensuring **merit-based and legal appointments**.

1. *Animal Welfare Board of India v. A. Nagaraja & Ors.*, (2014) 7 SCC 547

Introduction:

This landmark judgment concerned the practice of **Jallikattu** (bull-taming) and **bullock-cart races** conducted in Tamil Nadu and Maharashtra. The **Animal Welfare Board of India (AWBI)** challenged these practices as being **cruel and violative of the Prevention of Cruelty to Animals Act, 1960 (PCA Act)** and **Article 21** (Right to Life — including life of animals).

Facts:

- The AWBI filed a petition seeking a ban on Jallikattu, arguing that it caused unnecessary suffering to animals.
- The Tamil Nadu government defended the tradition as part of cultural heritage and enacted the **Tamil Nadu Regulation of Jallikattu Act, 2009** to permit it under regulation.

Held:

The Supreme Court **banned Jallikattu and bullock-cart races**, holding them **unconstitutional and illegal** under the PCA Act.

The Court extended the **Right to Life under Article 21** to include **the life and well-being of animals**, emphasizing that animals also have **intrinsic dignity** and the right to live free from cruelty.

Principle:

1. The doctrine of “**parens patriae**” obligates the State to protect animals.

2. The concept of “**life**” under Article 21 includes all forms of life — human and non-human.
3. The **PCA Act** must be interpreted in light of **Articles 48A and 51A(g)**, which mandate compassion for living creatures.

Conclusion:

The judgment marked a significant evolution in **environmental and animal rights jurisprudence**, recognizing **animals as sentient beings** with the right to live with dignity. It reaffirmed that **tradition cannot override constitutional morality**, laying the foundation for animal welfare as part of the **Right to Life and environmental protection** under the Constitution.

2. *Shyam Narayan Chouksey v. Union of India*, AIR 2018 SC 357

Introduction:

This case revolved around the issue of **playing the National Anthem in cinema halls** and the **duty of citizens to show respect** under **Article 51A(a)** of the Constitution, which enjoins every citizen to respect the National Flag and National Anthem.

Facts:

- The petitioner sought directions to make it mandatory for all cinema halls to play the National Anthem before screening films and for audiences to stand as a mark of respect.
- In 2016, the Supreme Court passed an interim order making it compulsory to play the anthem in all cinema halls.
- The order sparked public debate about **patriotism and individual liberty**.

Held:

In its **final judgment (2018)**, the Supreme Court **modified its earlier order**, making the playing of the National Anthem **optional**, not mandatory. The Court directed that the **Union Government** frame appropriate guidelines on the matter.

Principle:

1. **Respect for the National Anthem** is a **Fundamental Duty (Art. 51A(a))**, but it **cannot be enforced by coercion**.
2. Patriotism is **not to be measured by visible acts** but must flow from free will and inner respect.
3. The State must **balance individual liberty with national honor** in a democratic framework.

Conclusion:

The Court upheld the essence of **constitutional patriotism**, emphasizing that **true respect**

cannot be legislated. While every citizen must honor national symbols, the act of standing for the anthem should stem from **voluntary reverence, not legal compulsion**, thereby balancing **fundamental duties with personal freedoms**.

BY AJTABH MISHRA