INTRODUCTION TO CONSTITUTION AND ADMINISTRATIVE LAW

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Evolution of Modern Constitutions

- Constitution -Supreme law of the land
- A Nation's Constitution – **Legal heir of its past and testator of its future**
- Evolution- USA ,1787- Switzerland 1848-Australia,1900- Canada 1867 etc
- Classification- Written and Unwritten, Unitary and Federal-Rigid and Flexible
- Drafted by the Drafting Committee of the Constituent Assembly (389 members-292 elected & 93 nominated)
- Committee– **headed by Dr.Ambedkar** and consisted of N.Gopalaswami Ayyangar, Alladi Krishnaswami Ayyar, K. M.Munshi, Md.Sadadulla, N. Madhav Rao, T. T. Krishnamachari (in place of D. P. Khaitan)
- Sir B.N.Rau - the Constitutional Advisor to the Drafting Committee

Constitution of India

- Background
- The Constitution of every country has certain special features because the historical background ,social, economic and political conditions influence the making of the constitution.
- All these factors have contributed in the making of the Constitution of India
- Constitution of India is the supreme law of India.
- It lays down the framework defining fundamental political principles, establishing the structure, procedures, powers and duties, of the government and spells out the fundamental rights, directive principles and duties of citizens.
- Passed by the Constituent Assembly on 26 November 1949, it came into effect on 26 January 1950.
- The Date 26 January was chosen to commemorate the declaration of independence of 1930.

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Uniqueness of Indian Constitution

- The Constitution of India is the longest in the world. Originally it had 395 Articles divided into 22 parts and 8 Schedules. A number of amendments (more than 100), passed since its enforcement in 1950, have also become a part of the Constitution.
- Today it has 448 Articles divided into 24 parts and 12 Schedules. The constitution of USA has 7 Articles, of China 138, Japanese 103, and Canadian 107 Articles. LONGEST CONSTITUTION
- Whether a constitution is rigid or flexible depends on the nature of amendments. Some provisions of our Constitution can be amended by the Parliament with simple majority. The amendment of most other provisions of the constitution requires a special majority in both houses of the parliament.
- There are some other provisions of constitution which cannot be amended by the parliament alone. These different amendment procedures make our constitution partly flexible and rigid. A RIGID YET FLEXIBLE CONSTITUTION

Constitution Law: Introduction

- It came into effect on January 26, 1950, the day that India celebrates each year as the Republic Day
- **Key reforms of the Government of India Acts 1919** were the establishment of a dual form of government with limited powers for the major provinces.
- The imperial legislative council was transformed into a bicameral legislature for all India.
- Finally, the Act established the position of a High Commissioner with residence in London to Represent India in the United Kingdom.
- **The Government of India Act of 1935**

- Abolition of the dual form of government or diarchy and the granting of a larger degree of autonomy for the provinces
- Establishment of a Federation of India
- Membership of the provincial assemblies was altered so as to include more elected Indian representatives, who were now able to form majorities and be appointed to form governments
- The establishment of a Federal Court

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CONSTITUTION DRAWN FROM VARIOUS SOURCES

- The objective of the Constituent Assembly was not to enact an original constitution rather to enact a good and workable constitution.
- Parliamentary Government and Rule of Law are the influences of the British Constitution.
- The Fundamental Rights and the special position of the judiciary is the influence of the constitution of U.S.A
- The Directive Principles of State Policy have been borrowed from the constitution of Ireland.
- 4. The Federal system of India is the influence of Canadian Constitution.
- 5. The method of the amendment of the constitution and the method of the election of the members of Rajya Sabha have been borrowed from the constitution of South Africa.
- 6. The Emergency powers of the President are the influence of the Weimer Constitution of Germany.

The Constituent Assembly of 1948 and the Constitution of 1950

- In 1946, the British decided to examine the possibility of granting independence to India.
- As a result, a British cabinet mission was dispatched to India to (1) hold discussions with the representatives of British India and the Indian States in order to agree on the framework for writing a constitution, and (2), set up a constituent body and an executive council.
- Following this mission and the ensuing negotiations, a Constituent Assembly was indirectly elected by the provincial legislatures comprising 278 representatives and 15 women.
- Parties represented in the CA were the Congress Party which had a majority, Muslim League, Scheduled Caste Federation, the Indian Communist Party and the Union Party.
- The CA met for the first time in December 1946 and by November 1949 the draft constitution was approved. The constitution went into effect in January 1950 and the CA was transformed into a Provisional Parliament.

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What is Constitution?

- The Constitution is the Basic law of the land. All other laws have to conform to the Constitution.
- The constitution contains laws concerning the government and its relations with the people.
- A constitution is concerned with 2 main aspects:-
- The relation between the different levels of government and
- Between the government and the citizens.
- A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed.
- These rules together make up, i.e. constitute, what the entity is. When these principles are written down into a single collection or set of legal documents, those documents may be said to comprise a written constitution.

Why We Need Constitution?

- We need a constitution to govern a country properly.
- The constitution defines the nature of political system of a country.
- sometimes we feel strongly about an issue that might go against our larger interests and the constitution helps us guard against this.
- All the 3 organs of government (executive, legislature and judiciary) functions within the constitution.
- All the 3 organs of government, including ordinary citizens, derive their power and authority (i.e. Fundamental Right) from the constitution. If they act against it, it is unconstitutional and unlawful.
- So constitution is required to have authoritative allocation of power and function, and also to restrict them within its limit.

Why We Need Constitution Cont..

- **To perform following Functions we need Constitution-**
- The first function of a constitution is to provide **a set of basic rules** that allow for minimal coordination amongst members of a society.
- The second function of a constitution is **to specify who has the power to make decisions in a society**. It decides how the government will be constituted.
- The third function of a constitution is **to set some limits on what a government can impose on its citizens**. These limits are fundamental in the sense that government may ever trespass them.
- The fourth function of a constitution is **to enable the government to fulfill the separations of a society and create conditions for a just society.**

Indian Construction- Brief

- Preamble (1) - The Preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document.
- Parts (25) – The individual Articles of the Constitution are grouped together into the following Parts:
- Part I – Union and its Territory
- Part II – Citizenship.
- Part III – Fundamental Rights.
- Part IV – Directive Principles of State Policy.
- Part IVA – Fundamental Duties.
- Part V – The Union.
- Part VI – The States.
- Part VII – States in the B part of the First schedule (Repealed).
- Part VIII – The Union Territories
- Part IX – The Panchayats.

Indian Construction- Brief

- Part IXA – The Municipalities. (Part IXB – The Cooperative Societies
- Part X – The scheduled and Tribal Areas
- Part XI – Relations between the Union and the States.
- Part XII – Finance, Property, Contracts and Suits
- Part XIII – Trade and Commerce within the territory of India
- Part XIV – Services Under the Union, the States.
- Part XIVA – Tribunals.
- Part XV – Elections
- Part XVI – Special Provisions Relating to certain Classes.
- Part XVII – Languages
- Part XVIII – Emergency Provisions
- Part XIX – Miscellaneous
- Part XX – Amendment of the Constitution
- Part XXI – Temporary, Transitional and Special Provisions
- Part XXII – Short title, date of commencement, Authoritative text in Hindi and Repeals

Indian Constitution

- Presently Indian Constitution Consists of 448 articles in 25 parts and 12 schedules, and more than 100 amendments, making it the longest Constitution in the world, befitting the world's largest democracy.
- Constitution of India is the framework demarcating the code, procedures, rights, duties, rules and regulations to be followed and adopted by the citizens and government.
- B. R. Ambedkar was the chief architect and known as the "Father of Indian constitution".
- Probably, no other democratic constitution in the world has faced so many challenges as our supreme lexi loci.
- Right from the first year of its working, there have been more than 100 amendments to the Constitution of India.

Indian Constitution

- They include those relating to special provisions for the advancement of any socially and educationally backward classes or for the Scheduled Castes and the Scheduled Tribes, land reforms, reorganization of states and union territories, correcting regional imbalances, realizing the goals of directive principles, imposition of the President's rule in certain States, conferring constitutional status on National Commissions of SC,ST and BC, abolition of right to property as a fundamental right, insertion of fundamental duties, anti-defection law, proposal to establish national judicial appointments commission(NJAC), GST and 10% reservation for EWS etc.
- This list is only illustrative

Preamble to the Constitution of India

- These are the opening words of the preamble to the Indian Constitution
- "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.

Preamble to the Constitution of India

- The preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document.
- Main objective mentioned in the preamble is to eliminate social, economic and political inequality in society.
- There are 85 words in the Indian constitution
- The Preamble to a Constitution embodies the fundamental values and the philosophy, on which the Constitution is based, and the aims and objectives, which the founding fathers of the Constitution enjoined the polity to strive to achieve.
- The Preamble to our Constitution serves, two purposes:

❖ It indicates the source from which the constitution derives its authority

❖ It also states the objects which the constitution seeks to establish

Crucial principles imbibed in the Preamble

- ***Sovereign:*** The word sovereign means supreme or independent. India is internally and externally sovereign - externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people.
- ***Socialist***: It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds only of caste, color, creed, sex, religion, or language.
- ***Secular:*** It implies equality of all religions and religious tolerance. India therefore does not have an official state religion.
- ***Democratic:*** India is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult suffrage.
- ***Republic:*** A democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years.

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Crucial principles imbibed in the Preamble

- ***Justice:*** The term Justice in the Preamble embraces three distinct forms: Social, economic and political, secured through various provisions of the Fundamental and Directive Principles.
- ***Liberty:*** Liberty implies absence of restraints or domination on the activities of an individual such as freedom from slavery, serfdom, imprisonment, despotism etc. The Preamble provides for liberty of thought, expression, belief, faith and worship.
- ***Equality:*** Equality means absence of privileges or discrimination against any section of the society. The Preamble provides for equality of status and opportunity to all the people of the country.
- ***Fraternity:*** Fraternity means feeling of brotherhood. The Preamble seeks to promote fraternity among the people assuring the dignity of the individual and the unity and integrity of the nation.
- ***Fundamental Rights:*** Every person by virtue of being a human is entitled to certain inalienable and exclusive rights.

Salient features of Indian Constitution

- Longest written constitution (Originally 395 Articles & 8 Schedules). At about 145,000 words, (1,17,369 words).
- Sovereign, Socialist, Secular, Democratic, Republic
- Parliamentary System of Government
- Partly Federal and partly Unitary
- Fundamental Rights
- Directive Principles of State Policy
- Fundamental Duties
- Independent Judiciary
- Emergency Provisions
- Partly Rigid and Partly Flexible etc.

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Salient features of Indian Constitution

- The Indian Constitution shows Federal as well as Unitary System.
- 1. Federal System- powers are divided and/or shared between state and central governments
- 2. Union System- power concentration in central government with weak state Government
- **Federal Features-**
- 1. Supremacy of the Constitution,
- 2. Division of power between the Union (central Governments) and State, and
- 3. The existence of an independent judiciary in the Indian Constitution.

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Salient features of Indian Constitution

- Unitary Features-
- 1. Single Citizenship
- 2. Single Constitution
- 3. Power of union to override on the state matters
- 4. During emergency the system became virtually unitary
- 5. Changes in the names and boundaries of the states by the Parliament
- 6. Integrated Judiciary System
- 7. Centre appoints the Governors
- 8. Dependence of states on the center for economic assistance and grants.

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FEDERAL IN FORM , UNITARY IN SPIRIT

- The Constitution of India provides for <<CENTRALISED FEDERALISM>>. There is no doubt that federal system has been adopted in India, but keeping in mind certain special situations, the centre is made more powerful or strong. Federal features :

1. Written Constitution
2. Rigid constitution
3. Supremacy of the constitution
4. Division of subjects
5. Independent judiciary etc
6. UNIVERSAL ADULT FRANCHISE
7. Article-326 provides for universal adult franchise and evry citizen including both male and female who is 18 years of age is given the right to vote without making any discrimination on the basis of sex, caste, colour religion etc.

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BI-CAMERAL LEGISLATURE

- According to Article 168 for every state there shall be legislature which shall consist of Governor and legislative Council and legislative assembly. Article-169 provides for the abolition and creation of Legislative Council which is known as the upper house of State Legislature and at present there is bi-cameral legislature in the states of Bihar, Maharashtra, Andhra Pradesh, Karnataka, Uttar Pradesh and Jammu and Kashmir whereas there is one house in all other states.
- LIMITED POWERS OF THE PARLIAMENT
  - Indian Parliament is non-sovereign. There are limitations on the powers of the Parliament-

1. It can pass laws on those subjects which have been entrusted to it by the constitution.
2. The bills passed by the Parliament need the approval of the President.
3. The supreme court can exercise the powers of judicial review over the laws passed by the parliament and can declare unconstitutional the laws which it considers are against the constitution

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SINGLE-INTEGRATED JUDICIAL SYSTEM

- The entire judicial system of India is organized into an hierarchical order. Supreme Court is at the top of judicial administration below that there are high courts at the state level and there are district courts at the district level. All the courts of India are bound to accept the decisions of the supreme court.
- INDEPENDENT JUDICIARY
- The constitution of India makes provisions for the independence of judiciary because only independent judiciary can safeguard the rights and liberties of the people, can protect the supremacy of the constitution-

1. An impartial method has been adopted for the appointment of the judges
2. High qualifications have been fixed for the judges
3. The judges of the Supreme Court stay in office till 65 years of age and of High courts till 62 years of age
4. Difficult method has been adopted for the removal of the judges as they can be removed only through impeachment by the union parliament
5. There is prohibition of practice after the retirement of the judges

Fundamental Rights

- The Fundamental Rights are defined as the basic human rights of all citizens.
- These rights, defined in part Ill of the Constitution, applied irrespective of race, place of birth, religion, caste, creed, or gender.
- They are enforceable by the courts, subject to specific restrictions as necessary for the protection of public interest
- Right to Equality (Articles 14-18)
- Right to Freedoms (Articles 19-22)
- Right against Exploitation (Articles 23-24)
- Right to Freedom of Religion (Articles 25-28)
- Cultural and Educational Rights (Articles 29-30)
- Right to Constitutional Remedies (Articles 32-35)

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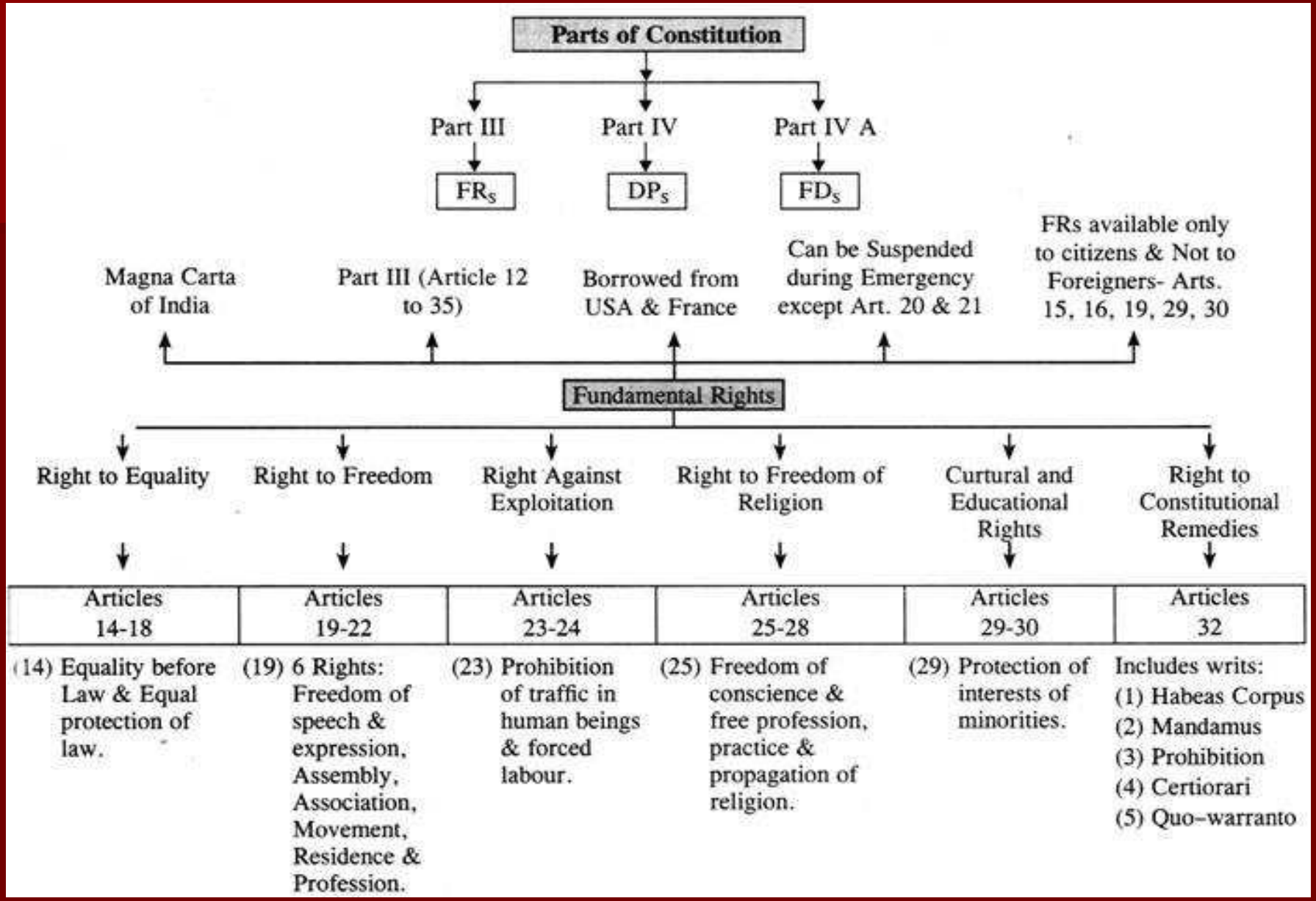

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Constitution of India
Part III: Fundamental Rights

Right to Equality

- √ Equality before law
  - equal protection of laws
- √ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
  - equal access to shops, hotels, wells, tanks, bathing ghats, roads etc.
- √ Equality of opportunity in public employment
- √ Abolition of Untouchability
- √ Abolition of titles

Right to Freedom

- √ Protection of Right to
  - freedom of speech and expression;
  - assemble peacefully;
  - form associations/unions;
  - move freely throughout the territory of India;
  - reside and settle in any part of India;
  - practise any profession, or to carry on any occupation, trade or business.
- √ Protection in respect of conviction for offences
- √ Right to life and personal liberty
- √ Right to education
- √ Protection against arrest and detention in certain cases

Right against Exploitation

- √ Prohibition of traffic in human beings and forced labour
- √ Prohibition of employment of children in hazardous jobs

Right to Freedom of Religion

- √ Freedom of conscience and free profession, practice and propagation of religion
- √ Freedom to manage religious affairs
- √ Freedom to pay taxes for promotion of any particular religion
- √ Freedom to attend religious instruction or worship in certain educational institutions

Cultural and Educational Rights

- √ Protection of language, culture of minorities
- √ Right of minorities to establish educational institutions

Right to Constitutional Remedies

- √ Right to move the courts to issue directions/orders/writs for enforcement of rights

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Writs under Indian Constitution

- Writs are a written order from the Supreme Court or High Court that commands constitutional remedies for Indian Citizens against the violation of their fundamental rights.
- Article 32 in the Indian Constitution deals with constitutional remedies that an Indian citizen can seek from the Supreme Court and High Court against the violation of his/her fundamental rights.
- The same article gives the Supreme Court power to issue writs for the enforcement of rights whereas the High Court has the same power under Article 226.
- There are total 5 types of Writs namely
- *Habeas Corpus*
- *Mandamus*
- *Prohibition*
- *Certiorari*
- *Quo-Warranto*

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Writs under Indian Constitution

- **Habeas Corpus:** The Latin meaning of the word 'Habeas Corpus' is 'To have the body of.' This writ is used to enforce the fundamental right of individual liberty against unlawful detention.
- **Mandamus:** The literal meaning of this writ is 'We command.' This writ is used by the court to order the public official who has failed to perform his duty or refused to do his duty, to resume his work.
- **Prohibition:** The literal meaning of 'Prohibition' is 'To forbid.' A court that is higher in position issues a Prohibition writ against a court that is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess.
- **Certiorari:** The literal meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.' This writ is issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or quash their order in a case.
- **Quo-Warranto:** The literal meaning of the writ of 'Quo-Warranto' is 'By what authority or warrant.' Supreme Court or High Court issue this writ to prevent illegal usurpation of a public office by a person. Through this writ, the court enquires into the legality of a claim of a person to a public office.

DIRECTIVE PRINCIPLES OF STATE POLICY

- The framers of the constitution provided every state with some guiding principles which are meant for promoting the ideal of social and economic democracy.
- These guiding principles have been named as *Directive Principles of State Policy*. These directive principles ensure to avoid the violation of fundamental rights of the citizen of a state.
- They are meant to establish a 'welfare state'. The directive principles are non-justifiable in nature.
- They cannot be enforced by the court of law for their violation. However, these directive principles have been declared as the fundamental principles in the governance of the country and it shall be the duty of the state to apply these principles in making laws.
- Hence, they impose a moral responsibility on the state authorities for their application

Classification of The Directive Principles

- The classification of Directive Principles of State Policy have not been mentioned in the constitution of India.
- On the basis of their direction in various perspectives, we can divide them into three categories, i.e. *socialistic, Gandhian and liberal–intellectual.*
- **Socialistic Principles**
- These principles reflect the ideology of socialism. They lay down the framework of a democratic socialist state, aim at providing social and economic justice, and set the path towards welfare state.
- **Article 38:** To promote the welfare of the people by securing a social order permeated by justice social, economic and political and to minimise inequalities in income, status, facilities and opportunities.
- **Article 39:** To secure the right to adequate means of livelihood for all citizens;
- **Article 39 A:** To promote equal justice and to provide free legal aid to the poor.
- **Article 41:** To secure the right to work, to education

Classification of The Directive Principles

- **Gandhian Principles**
- These principles are based on Gandhian ideology. They represent the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included as Directive Principles.
- Following Articles state the guidelines of Gandhian Principles of state policy:
- **Article 40:** To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government.
- **Article 43:** To promote cottage industries on an individual or co-operation basis in rural areas.
- **Article 47:** To prohibit the consumption of intoxicating drinks and drugs which are injurious to health.
- **Article 48:** To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

Classification of The Directive Principles

- **Liberal–Intellectual Principles**
- The principles counted in this category signify the ideology of liberalism. Following articles state the guidelines of Liberal–Intellectual Principles of state policy:
- **Article 44:** To secure for all citizens a uniform civil code throughout the country.
- **Article 45:** To provide early childhood care and education for all children until they complete the age of six years.
- **Article 48:** To organise agriculture and animal husbandry
- **Article 48-A:** To protect and improve the environment and to safeguard forests and wild life.
- **Article 49:** To protect monuments, places and objects of artistic or historic interest which are declared to be of national importance.
- **Article 50:** To separate the judiciary from the executive in the public services of the State.

Difference Between FR and DPSPs

- Fundamental Rights are justifiable and enforceable rights while directive principles are non -justifiable and cannot override fundamental rights.
- Fundamental rights provide political rights whereas social and economic rights are provided through DPSP.
- According to Article 37, they are not enforceable by the courts.
- It just lays down the fundamental principles and guidelines on which they are based are fundamental guidelines for governance that the State need to follow while designing the laws.
- Emphasis is on the Welfare of State Model.
- Fundamental Rights are mentioned in the articles from 12 to 35 while directive principles are mentioned from article 36 to 51

Fundamental Duties

- Added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee.
- These duties set in part IV-A of the Constitution of India.
- They are not legally enforceable.
- They are held by the Supreme Court to be obligatory for all citizens.
- Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002.
- Fundamental Duties
- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- To cherish and follow the noble ideals which inspired our national struggle for freedom.To uphold and protect the sovereignty, unity and integrity of India.
- To defend the country and render national service when called upon to do so.

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Fundamental Duties Cont..

- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
- To value and preserve the rich heritage of our composite culture.
- To protect and improve the natural environment i.e. forests, lakes, rivers and wild life & to have compassion for living creatures.
- To develop the scientific temper, humanism and the spirit of inquiry and reform.
- To safeguard public property and to abjure violence.
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.
- Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Relationship between Centre and State

- The legislative relations between the Centre and the states determined in accordance with the provisions of the Article 246 of the Constitution.
- The legislative powers are categorized in three lists—Union List with 98 subjects previously, (originally it had 97), States List with 61 (originally it had 66) and Concurrent List with 52 (originally it had 47).
- All the issues/matters that are important for the nation and those requiring uniformity of legislation nationwide are included in the Union List
- The dominance of Union List over State List is secured by the Constitution of India as in any conflict between the two or overlapping, the Union List prevails
- Law made by the Parliament on a subject of the Union List can confer powers and impose duties on a state, or authorise the conferring of powers and imposition of duties by the Centre upon a state
- Supreme Court's jurisdiction and powers with respect to matters in the Union list can be enlarged by the Parliament

Separation of powers

- For the preservation of the political liberty of the individuals and democracy, it becomes necessary in a state to establish special organs for the exercise of powers.
- i. Enact laws i.e., powers of the Legislature.
- ii. Interpret laws i.e. powers of the Judiciary.
- iii. Enforce laws i.e. powers of the Executive.
- The legislature exercises some form of control over the judiciary in that it can legislate on the constitution, jurisdiction and powers of the courts, and can also impeach judges.
- The judiciary has wide powers to review and strike down unconstitutional executive and legislative decisions and actions.
- The legislature can make such rulings ineffective by amending the law while staying within the constitutional limits (a concept known as "legislative overruling").
- Despite the fact that the three branches interconnect and have functional overlaps, the Indian judiciary has recognised the doctrine of separation of powers as a basic feature of the Constitution and an essential part of the rule of law.

Emergencies under the Indian Constitution

- **National emergency:** National emergency can be declared if there is a threat to the security of India or a part of India. It must be subsequently approved by Parliament within one month, and can be repeatedly extended. All fundamental rights under the Constitution (except the rights to life and personal liberty) are automatically suspended. National emergencies have been declared three times in India's history, two of which were during wars.
- **State emergency:** State emergency can be declared in a state if it is found that the "constitutional machinery" of the state has failed (that is, the governance cannot be carried out in a constitutional manner). Loss of majority of the ruling party in the state government, collapse of coalition or death of the chief minister of a state have been the most prominent causes of imposition of state emergency in India. State emergency must be approved by Parliament within two months and can be extended for a maximum period of three years.
- **Financial emergency:** Financial emergency can be declared if the financial stability or the credit of India (or of any part of it) is threatened. Normally, financial emergency can be declared for a period of two months but can be extended with parliamentary approval.

Amendments

- The amendment provision of the constitution refers to the process of altering the provisions of the Indian Constitution. The said procedure is laid down under Article 368 of the Indian constitution.
- It can be done in several ways, such as simple majority, special majority and special majority with further ratification.
- Amendments to the Constitution of India require a special majority of the Parliament (that is, more than half of the total membership and two-thirds majority of those present and voting).
- In a few cases relating to the federal structure of the Constitution, amendments require further ratification by at least half of the states (in addition to the special majority of the Parliament).
- There are also some changes which may be carried out by a simple majority of the Parliament (one-half majority of those present and voting).
- This last category of changes is, however, not formally considered to be an "amendment" to the Constitution.
- As of October 2021, there have been 105 amendments of the Constitution of India since it was first enacted in 1950.

Important Amendments

- On analyzing the working of our constitution during the last seven decades, we notice that the political executive has made certain significant efforts to implement the objects of constitution in letter and spirit though a certain kind of authoritarianism had emerged in the early 1970s and it has been raising its head sporadically since then
- The 24th Constitutional amendment (1971) proposed to dilute the effect of the *I.C.Golaknath v.State of Punjab (1967)* which gave primacy to fundamental rights over the constitutional amendments , since they are within the purview of law.
- The 39th Constitutional amendment which proposed to shield the elections of the prime minister and other holders of constitutional positions from judicial review was struck down in *Indira Nehru Gandhi vs. Raj Narain (1975)* leading to imposition of the infamous national emergency in June 1975.
- It reiterated that rule of law and judicial review are basic features of the constitution.

Important Amendments Cont..

- The 42nd amendment made significant changes like introduction of fundamental duties, giving primacy to directive principles over fundamental rights while making laws, and amending the Preamble to include the words socialist and secular before republic etc.
- 43rd and 44th amendment, 1978 had undone some of the changes made by the 42nd amendment during the Janata Government.
- In *Minerva Mills v.Union of India (1980)*, the Supreme Court declared that harmony between fundamental rights and directive principles is a basic feature of the constitution.
- *Maneka Gandhi v.Union of India (1978)* expanded the horizons of life and personal liberty in India thanks to the judgments of Justice P.N.Bhagwati and Js.Krishna Iyer

Important Amendments Cont..

- Anti Defection Law was introduced by 52nd amendment, 1985 to arrest the immoral and undemocratic trend of legislators elected on political party ticket defecting to other political parties though it made an exception in the form of split and merger.
- The 91st amendment (2004) strengthened the anti defection law to some extent by removing splits as an exception, and also restricted the size of ministry to one fifteenth of legislators of the concerned lower house.
- The 99th amendment proposed to introduce the NJAC in place of the Supreme Court introduced Collegium system in 1993 but the same was struck down as an affront to independence of judiciary, a basic feature of the constitution in 2015.
- The 101st amendment introduced the Goods and Services Act (GST) as an exercise of cooperative federalism to streamline the indirect taxes in India.

Important Amendments Cont..

- The 103rd amendment(2019) introduced 10% reservations to Economically Weaker Sections (EWS).
- The year 2019 also witnessed the abolition of Article 370 which conferred special status on Jammu and Kashmir, and also the trifurcation of the State into union territories
- A look at the above 100 plus amendments shows that Indian Constitution has been formally changed more than 100 times during 70 years of its working.
- The US Constitution of 1787 has been amended only 27 times since 1789 and the Australian Constitution of 1900 has been amended only 8 times till now.
- The Indian experience should be taken as either as the dynamic character of our constitution or as the compulsion of political expediency.

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Important doctrines : Basic structure

- The basic structure doctrine is an Indian judicial principle that the Constitution of India has certain basic features that cannot be altered or destroyed through amendments by the parliament.
- The question whether fundamental rights can be amended under article 368 came for consideration in the Supreme Court in ***Shankari Prasad case*** whereas the Court held that Article 368 contains the power to amend including the fundamental rights. However this was overruled in the ***Golaknath case***.
- The Supreme Court in the Landmark case *Kesavanada Bharati case*, declared that Article 368 did not enable Parliament to alter the basic structure or framework of the Constitution and parliament could not use its amending powers under Article 368 to ***'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure' or framework of the constitution.***
- The court by majority overruled the Golak Nath case which denied parliament the power to amend fundamental rights of the citizens.

Other Important doctrines

i. Doctrine of Pith and Substance: One of the proven methods of examining the legislative competence of a legislature with regard to an enactment is by the application of the doctrine of pith and substance.

This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists.

ii. Doctrine of severability: It provides that only that part of the law will be declared invalid which is inconsistent with the fundamental rights and the rest of the law will stand.

However, invalid part of the law will be severed only if it is severable, i.e., if after separating the invalid part, the valid part is capable of giving effect to the legislature‘s intent, then only it will survive otherwise the court shall declare the entire law as invalid.

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Other Important doctrines

iii. Doctrine of waiver: It provides that a person has the liberty to waive the enjoyment of such rights as are conferred on him by the state, provide that such person must have the knowledge of his rights and the waiver should be voluntarily. However, citizens cannot waive of any of the fundamental rights.

iv. Doctrine of Eclipse: It provides that a law made before the commencement of the constitution remains eclipsed or dormant to be extent in comes under the shadow of fundamental rights i.e., is inconsistency brought about by the fundamental rights is removed by the amendment to the Constitution of India.

PART II

ADMINISTRATIVE LAW

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ADMINISTRATIVE LAW

- Administrative law is the bye-product of the growing socio-economic functions of the State and the increased powers of the government.
- After independence, India adopted to become a welfare state, which henceforth increased the state activities.
- As the activities and powers of the Government and administrative authorities increased so did the need for 'Rule of Law' and 'Judicial Review of State actions'.
- Administrative law in India attempts to regulate administrative actions by controlling delegated legislation and subjecting administrative discretionary actions to judicial review. It also provides for the constitution of tribunals and their composition.

Growth of Administrative law

- **The concept of a welfare state:** As the States changed their nature from laissez-faire to that of a welfare state, government activities increased and thus the need to regulate the same. Thus, this branch of law developed.
- **The inadequacy of legislature:** The legislature has no time to legislate upon the day-to-day ever-changing needs of the society. Even if it does, the lengthy and time-taking legislating procedure would render the rule so legislated of no use as the needs would have changed by the time the rule is implemented.
- **The inefficiency of Judiciary:** The judicial procedure of adjudicating matters is very slow, costly complex and formal. Furthermore, there are so many cases already lined up that speedy disposal of suites is not possible. Hence, the need for tribunals arose.
- **Scope for the experiment:** As administrative law is not a codified law there is a scope of modifying it as per the requirement of the State machinery. Hence, it is more flexible. The rigid legislating procedures need not be followed again and again.

Difference between Constitutional law and Administrative Law

- A Constitution is the supreme law of the land. No law is above the constitution and hence must satisfy its provisions and not be in its violation.
- Administrative law hence is subordinate to constitutional law. In other words, while Constitution is the genus, administrative law is a species.
- Constitution deals with the structure of the State and its various organs.
- Administrative law, on the other hand, deals only with the administration.
- While Constitution touches all branches of law and deals with general principles relating to organisation and powers of the various organs of the State;
- administrative law deals only with the powers and functions of the administrative authorities.

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Definition of Administrative Law

- ***Austin*** has defined administrative Law *as the law, which determines the ends and modes to which the sovereign power shall be exercised.*
- ***Dicey*** in 19th century defines it as. *Firstly, portion of a nation's legal system which determines the legal statues and liabilities of all State officials. Secondly, defines the right and liabilities of private individuals in their dealings with public officials. Thirdly, specifies the procedure by which those rights and liabilities are enforced.*
- ***K.C. Davis*** has defined administrative law in the following words: *Administrative Law is the law concerning the powers and procedures of administrative agencies including specially the law governing judicial review of administrative action.*

Classification of Administrative Functions

- Rule application function- Adm. function proper-
- Quasi-legislative functions - Delegated Legislation
- Quasi-judicial functions - Adjudicatory Functions
- Ministerial & Discretionary

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Delegated Legislation

- Delegated legislation/ secondary legislation /subordinate legislation - law made by executive authority under powers given to them by primary/parent legislation in order to implement and administer the requirements of that primary legislation
- Law made by person / body other than legislature but with legislature's authority
- When the functions of Legislature is entrusted to organs other than the legislature by the legislature itself, the legislation made up by such organ is called Delegated Legislation.

Rule of Law

- In 1885, Professor A.V Dicey developed this concept of Coke and propounded three principles or postulates of the rule of law in his classic book 'Law and the Constitution.'
- According to Professor A.V Dicey, for achieving supremacy of law three principles of postulates must be followed which are as follows:
- Supremacy of law,
- Equality before law
- Predominance of Legal Spirit

Principles of Rule of Law

- **Supremacy of law:** As per the first postulate, rule of law refers to the lacking of arbitrariness or wide discretionary power. In order to understand it simply, every man should be governed by law.
- **Equality before Law**: According to the second principle of Dicey, equality before law and equal subjection of all classes to the ordinary law of land to be administered by the ordinary law courts and this principle emphasizes everyone which included government as well irrespective of their position or rank.
- **Predominance of Legal Spirit:** According to the third principle of Dicey, general principles of the Indian Constitution are the result of the decisions of the Indian judiciary which determine to file rights of private persons in particular cases.

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Rule of Law under Indian Constitution

- In order to develop Indian democracy, rule of law has played a great role. At the time of framing of Constitution, the framers had two options i.e. USA and England.
- Indian Constitution is considered to be supreme and no one is above Indian Constitution. Rule of law is also given impliedly in the preamble and such concept is enshrined in Part III of the Indian Constitution.
- In case of violation of such rights, one can approach Supreme Court or High Court under Article 32 and 226 of the Indian Constitution.
- The Constitution of India is enriched with the principles of law i.e. justice, equality and liberty. Any law made by the Central government or State government must be complied in accordance with the Constitution of India.

Role of Indian Judiciary

There are a plethora of cases where the concept of rule of law was discussed and came into light. Some of the cases are as follows:

ADM Jabalpur v. Shivkant Shukla: This case is also known as "Habeas Corpus case". It is one of the most importantcase when comes to rule of law. The question that was raised before the hon'ble court was that whether there was any rule of law in India apart from Article 21 of the Indian Constitution. It was in context relating to the proclamation of emergency where the enforcement of Articles 14, 21 and 22 were suspended.

Kesavanand Bharti Case: In this case, the Supreme Court enunciated the concept of rule of law as one of the most important aspects of doctrine of basic structure.

Union of India v. Raghubir Singh: In this case it was held by the court that a considerable degree that governs the lives of the people and regulates the State function flows from the decision of the superior courts.

Som Raj v. State of Haryana: In this case it was held that the absence of arbitrary power is the postulate of rule of law upon which the whole constitutional edifice is dependent.

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Principles of Natural Justice

i. Rules not generally embodied & not fixed by any code
ii. Have been developed to secure justice and to prevent miscarriage of justice
iii. Based on the maxim - Justice should not only be done but should manifestly be seen to be done
iv. Encompass Rule against bias & Rule of fair hearing
v. Applicable to administrative and quasi-judicial proceedings

Rule for Fair Hearing

- Based on the maxim – ***Audi alteram partem*** (no man shall be condemned unheard) – hear the other side
- Rule of fair hearing
- Ingredients – notice, right to disclosure of evidence, right to legal representation, right to produce evidence, opportunity to rebut and cross examine, one who decides must hear & reasoned decision, Post decisional hearing
- **Important cases:** ***Nalini Satpathy V. P.L.Dani,*** the court held that the accused must be allowed legal representation during custodial interrogation and the police must wait for a reasonable time for the arrival of a lawyer.
- ***Maharashtra State Financial Corpn. V Suvarna Board Mill,*** the court held that a notice calling upon the party to repay dues within 15 days failing which factory would be taken over is sufficient for taking over the factory and no fresh notice is required for pulling down an unauthorised structure when notice for removing such structure has already been given.

Rule against bias

- Originates from maxim- ***Nemo debet esse judex in propria sua causa*** (no man can be a judge in his own cause)
- The rule disqualifies a person from deciding a dispute in which he has- pecuniary bias; personal bias; or bias relating to subject matter
- Includes pre-conceived notion bias
- Instances: personal bias -***A.K. Kraipak vs. UoI*** [AIR 1970 SC 150]; pecuniary bias- ***Dimes v. Grand Junction Canal & Co*** [1852,H. of Lords]- the decision of LC in favour of the Canal company-quashed by House of Lords since he was a shareholder in the co. See ***Jeejeebhoy vs. Asst. Collector of Thana*** [AIR 1965 SC 1096] Js Gajendragadkar reconstituted the Bench for hearing a case on the ground that he was a member of the cooperative society for which the land in dispute was acquired. ***G Sarana V university of Lucknow and Ors.*** (1976 AIR 2428), if there exists any actual bias, it acts as sufficient ground to quash any inquiry. Moreover, anybody who has a personal interest should be distant from the inquiry.

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Types of Rule against bias

- **Bias relating to subject matter** – Gullapalli Nageswara Rao v.APSRTC 1959,SC – scheme for nationalization of motor transport notified by State Govt.-quashed since the Secretary who initiated scheme and who heard objections was the same
- Bias – No need of actual/real likelihood
- Even reasonable likelihood is a vitiating factor.
- **Personal Bias:** Any relationship arising between the adjudicating authority and the parties can lead to personal bias. The Adjudicating authority might be a friend, relative or might have any professional relations.
- **Pecuniary Bias:** When the adjudicating authority has any monetary or financial interest in the dispute, pecuniary bias arises. Any kind of pecuniary interest in the dispute will invalidate the proceedings and disqualify the person acting as a judge.

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Exclusion to the Rule of Natural Justice

- May be express or implied
- By statutory provisions – e.g: urgent land acquisition
- By constitutional provisions – e.g: second proviso to Art.311(2)
- In case of legislative acts
- Exclusion in public interest
- In case urgency/necessity
- In case of impracticability
- In case of confidentiality
- In case of academic adjudication etc.

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Judicial Review

- Judicial review deals with three aspects-
- Judicial review of legislative action.
- Judicial review of the judicial action.
- Judicial review of administrative action.
- When it comes to administrative law judicial review of administrative action becomes a vital part of it.
- An administrative authority must have discretionary powers to resolve real-time issues. However, the decisions taken by exercising these discretionary powers must be reasonable.
- Judicial review ensures the legality of the administrative action and keeps the administrative authority within its bounds.
- Jurisdiction of SC under Art.32 &136
- Jurisdiction of HCs under Art.226 & 227

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Thank you

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