



Indian Polity

**Important Notes for
Rajasthan Civil Service Examination**

According to RPSC new syllabus

AN INSTITUTE FOR IAS & RAS

Plot A-1, Keshav Vihar, Riddhi Siddhi Chouraha, Gopalpura Bye Pass Jaipur
M.No. : 9636977490, 8955577492, Website : www.springboardindia.org

Index – SBA 03 E

Topic	Page
Introduction to Indian Polity (constitution)	1
The schedules of the constitution	6
Parts of the constitution	8
Integration of India	10
Part 2 – Citizenship	12
Part 3 - Fundamental Rights	14
Part 4 – Directive principles	25
Fundamental duties	27
Part 5 – The Union Government	29
Comptroller and Auditor general of India	62
Part 6 – The state Government	63
Supreme Court	68
High Court	73
Part 18 – Emergency Provisions	77
Centre – State Relations	83
Panchayati Raj System	88
Part 20 – Amendment of the constitution	93
Union territories	99
Election commission	101
Union Public Service Commission	103
Central Vigilance Commission	105
National Human Rights Commission	106
Lokpal and Lokayuktas	109
Role of caste in Indian politics	113-121

Indian Polity

Three Pillars of the Democracy:

Legislative - to make laws

Executive - to implement laws

Judiciary - to review and to ensure the proper implementation of laws.

These three principles mentioned of above were propounded by Montesquieu.

The President

1. Legislative: A) Parliament Lok Sabha.

Rajya Sabha

The Governor

B) State Legislation Legislative Assembly

Legislative Council

Executive: a) Temporary Executive = 'Council of ministers'

Permanent executive = 'Bureaucracy'

3. Judiciary: a) Supreme Court

b) High court

Constituent Assembly:-

Initially the congress demanded for the constituent assembly in 1935.

In 1938 the congress demanded that the constituent assembly should be formed by direct election system.

1940 August Proposal-

Under it the British Government first time accepted that there would be Indian Members in the constituent assembly and those Indian member would frame the constitution.

Cripps Proposal- Under it the procedure of the election of the constituent assembly was determined.

1946 Cabinet Mission- On its recommendation elections of the constituent assembly were held in July-August. 1946. Election of constituent assembly were done by single transferable vote system of the proportional representation by the members of the lower house of the provincial legislations.

Also, members of the constituent assembly were classified into 3 categories-(1) Muslim (2) Sikh (3) General

Composition of the Constituent Assembly

Total Member = 389

296 Members

(From British India and these

were to be elected)

93 Members

Maximum Members were from united Province
(55)

(From the princely states and
were to be nominated)

Maximum Members were From
Mysore (7 members)

Members (elected
from provinces)

4 Members

(Elected from 4 chief commissioner provinces viz.

Delhi

Ajmer- Merwara

Baluchistan

Kurg (Karnataka)

After the elections Muslim league boycotted the constituent assembly. First meeting of the constituent assembly- 9 Dec. 1946

President (Temporary)- Dr. Sachchidanand Sinha.

II meeting of the constituent assembly - 11 Dec. 1946

President (Permanent) Dr. Rajendra Prasad

Vice President - H.C. Mukherjee

Constitutional advisor- B.N. Rau

First draft of the constitution was prepared by B.N. Rau. Main draft of the constitution was prepared by Dr. B. R. Ambedkar.

On 13 December, 1946 Jawaharlal Nehru presented the 'Objectives Resolution' in the assembly which was adopted on 22 January, 1947 by the assembly. 'Objectives Resolution' laid down the fundamentals and philosophy of the constitutional structure.

Constituent Assembly appointed a number of committees to deal with different tasks of constitution making. Out of these, eight were major committees and the others were minor committees

**The major committees were-

Union Powers Committee - Jawaharlal Nehru

Union Constitution Committee - Jawaharlal Nehru

Provincial Constitution Committee - Sardar Patel

Advisory Committee on Fundamental Rights - Sardar Patel Minorities and Tribal and Excluded Areas.

Steering Committee - Dr. Rajendra Prasad

Fundamental Rights Sub-committee - J.B. Kriplani

Minorities Sub-Committee - H.C. Mukherjee

Drafting committee - Dr. B. R. Ambedkar.

Drafting Committee:

It Consisted of seven members. They were-

Dr. B. R. Ambedkar (Chairman)

N Gopaldaswamy Ayyangar

Alladi Krishnaswamy Ayyar

Dr. K.M. Munshi

Sayyed Mohammad Saadullah.

N Madhava Rau (He replaced B.L. Mitter Who Resigned Due to ill-Health)

T. T. Krishnamachari (He replaced D.P. Khaitan who died in 1948.)

After partition of India and Pakistan 15 Aug. 1947 there were 299 members left in the constituent Assembly.

Total Members = 299

229 Member 70 members

(From British India) (From Principle states)

Finally 284 members signed over the constitution.

J.P. Narayan and Tej Bahadur Sapru resigned from the Constituent Assembly due to ill-health.

On 22 July 1947 the national flag was adopted.

Constituent Assembly also worked as the provisional parliament of India after January 26, 1950 and its Chairman was G. V. Mavalankar.

There were 12 women members in the constituent assembly viz. Sarojani Naidu, Usha Mehta, Durga Bai Deshmukh etc.

On 26 November, 1949 the constitution was ready and on the same day 284 members finally signed the constitution and 15 articles came into force on that day itself. The remaining part came into force on 26 Jan, 1950.

The last meeting of the constituent Assembly was held on 24 Jan. 1950 and adopted the national anthem and the national song on that day. It however, did not end, and worked as the provisional parliament of India till the formation of new parliament in 1952.

The original constitution of the constituent Assembly

Parts - 22, Articles 395, Schedules - 8

Presently-

Parts - 24 [3 new parts are 4A, 9A, 14A

7th part was ended by the 7th constitutional amendment.] Articles - 446, Schedules - 12

The Sources of Indian Constitution:

I. Government of India Act- 1935.

It is the prime source of the Indian Constitution.

2/3 articles are derived from it in our constitution.

It includes provisions like system of emergency, division of subjects between centre and states, etc.

II. British Constitution:

Parliamentary government - Single citizenship

Cabinet System - Rule of Law

Prerogative writs - Bicameralism

Address given by president - First past the post system

Collective responsibility
(to gain max. votes to win)

III. U.S. constitution:

Fundamental rights

- Independence of judiciary

Judicial review

- Impeachment of the president

Removal of supreme court and high court judges.

In preamble the starting line 'we the people of.;

Post of Vice president

Due process of law

IV. Irish Constitution.

.Directive Principles of State policy.
Nomination of members to Rajya Sabha
Method of election of president.

V. Australian Constitution:

Concurrent list.
Freedom of trade, Commerce etc.
Format of the preamble.
Joint sitting of the two houses of Parliament.

VI. South African Constitution:

Procedure for amendment of the constitution.
Election of members of Rajya Sabha.

VII. Canadian Constitution:

Federation with a strong centre and vesting of residuary powers in the centre.
Appointment of state governors by the Centre.
Advisory Jurisdiction of the Supreme Court.

VIII. French Constitution:

Republican System
The ideals of liberty, equality and fraternity in the preamble.

IX. Weimar Constitution of Germany:

Suspension of fundamental Rights during Emergency.

X. Soviet Constitution (USSR, now Russia):

Fundamental duties.
The ideals of Justice (Social, economic and political) in the preamble.

XI. Japanese Constitution: Procedure established by Law.

Note:- a) Procedure Established by law = Letter of Law

b) Due process of Law = Letter of law + natural law.

The Schedules of the Constitution

I. First Schedule:

1. Name of the States and their territorial jurisdiction.
2. Name of the union Territories and their extent.

II. Second Schedule:

Provisions relating to the emoluments, allowances, privileges and so on of:

The president of India.

The governors of states

The speaker and the Deputy Speaker of the Lok Sabha.

The chairman and the Deputy chairman of the Rajya Sabha.

The speaker and the Deputy speaker of the Legislative Assembly in the states.

The chairman and the Deputy chairman of the legislative council in the states.

The judges of the Supreme Court.

The judges of the High court.

The comptroller and Auditor - General of India.

During Financial emergency these provisions can be shortened.

III. Third Schedule:

Forms of the oaths or Affirmation for:

The union ministers

The candidates for election to the parliament.

The members of Parliament.

The state ministers.

The candidates for election to the state legislature.

The member of the state legislature.

The comptroller and Auditor-General of India.

The judges of the Supreme Court.

The judges of the High courts.

Note: The third schedule do not contain the oath forms of the president, the Vice president and the Lok Sabha Speaker. the oaths of the president, the vice president and the governors is given in the main constitution There is no oath of the speaker of the Lok Sabha.

IV. Fourth Schedule:

Allocation of seats in the Rajya Sabha to the states and the union territories.

V. Fifth Schedule:

Provisions relating to the administration and control of scheduled areas and scheduled tribes.

VI. Sixth Schedule:

Provisions relating to the administration of tribal areas in the state of Assam, Meghalaya, Tripura and Mizoram.

VII Seventh Schedule:

Division of powers between the union and the states in terms of-

		Number of Subjects	
		Originally	Presently
Union list	-	97	100
State list	-	66	61
Concurrent list	-	47	52

Note: Residuary powers are with centre.

VIII Eighth Schedule:

Language recognized by the Constitution.

Originally it had 14 languages but presently there are 22 languages.

'Sindhi' was added by the 21st Amendment Act. of 1967.

'Konkani' Manipuri and Nepali' were added by the 71st Amendment Act of 1992.

'Bodo' Dogri, Maithili and Santhali were added by the 92nd Amendment Act of 2003.

Note: Both Hindi and English are declared to be official languages.

IX Ninth Schedule:

This schedule was added by the 1st Amendment (1951) in order to protect the laws included in it from the judicial review.

However, in 2007 Supreme court ruled that the laws included in this schedule after 24 April, 1973, are now open to judicial review.

X Tenth Schedule:

Provisions related to defection. This provisions in schedule was added by the 52nd Amendment Act of 1985, also known as Anti-defection Law which was added in this schedule by the 91st Amendment Act of 2003.

XI Eleventh schedule:

It specifies the powers, authority and responsibilities of Panchayats.

It has 29 matters

This schedule was added by the 73rd Amendment Act of 1992.

XII Twelfth Schedule:

It specifies the powers, authority and responsibilities of Municipalities.

It has 18 matters.

This schedule was added by the 74th Amendment Act of 1992.

Parts of the constitution

Part 1	Articles 1-4	- The union and its territory
Part 2	Articles 5-11	- Citizenship
Part 3	Articles 12-35	-Fundamental Rights
Part 4	Articles 36-51	- Directive Principles of state policy
Part 4 (A)	Articles 51(A)	- Fundamental duties
Part 5	Articles 52-151	- union Government, executive, legislative, Judiciary , CAG
Part 6	Article 152-237	- The State Governments
Part 7	- Repealed (7 th amendment 1956)	-
Part 8	Article 239-242	- Union Territories
Part 9	Articles 243-243(0)	- Panchayats
Part 9(A)	Articles 243(P)-243(ZG)	- Municipalities
Part10	Articles244-244(A)	- The Scheduled and Tribal Areas - Relations Between the Union and the States
Part 11	Articles 245-263	
part 12	Articles 264-300(A)	- Finance, Property, Contracts and Suits
Part 13	Articles 301-307	- Trade, Commerce and intercourse within the Territory of India.
Part 14	Articles 308-323	- Services under the union and the States.
Part 14(A)	Article 323(A)-323(B)	- Tribunals
Part 15	Articles 324-329(A)	- Elections - Special Provisions relating to Certain classes
Part 16	Articles 330-342	
Part 17	Articles343-351	- Official Language
Part 18	Articles 352-360	- Emergency Provisions
Part 19	Articles 361-367	- Miscellaneous
Part 20	Articles 368	- Amendment of the Constitution
Part 21	Articles 369-392	- Temporary, Transitional and Special Provisions
Part 22	Articles 393-395	- Short title, Commencement, Authoritative text in Hindi and Repeals.

Preamble of the 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."

Part-1 The Union and its Territory Articles 1-4

Article 1: It describes India as a 'union of states' although the Indian constitution is federal but the word 'federal' is not mentioned in the constitution anywhere.

According to Dr. B.R. Ambedkar the Indian federation is not the result of an agreement among the states like the American federation.

Article 2: Our parliament may include a state by law into the union of India.

Article 3: It authorises the parliament to-

-form a new state by separation of territory from any state or by uniting two or more states or part of states or by uniting any territory to a part of any state.

-increase or diminish the area of any state.

-alter the boundaries of any state.

alter the name of any state.

Note: A bill contemplating the above changes can be introduced in the parliament only with the prior recommendation of the president and before recommending the bill the president has to refer the same to the state legislature concerned for expressing its views within a specified period. President is not bound by the views of the state legislature and may either accept or reject them. Also in this case there is no joint session. It should be passed with simple majority in both houses. The president cannot return it for reconsideration. After the signing of the president the new state comes into existence.

Note: India is described as 'an indestructible union of destructible states'.

Article 4: Law made under Article 2 and 3 to provide for the amendment of the first and the fourth schedules will not be considered as the amendment of the constitution.

Integration of India:

In Oct. 1947 Jammu and Kashmir was merged into India because the ruler Hari Singh signed the instrument of Accession.

In Feb, 1948 Junagarh was integrated by means of referendum.

In Nov, 1948 Hyderabad was merged by means of police action.

In 1954 the French handed over the territory of Puducherry, Karaikal, Mahe and Yanam to India.

In 1954 Dadra and Nagar Haveli was liberated from the Portuguese rule and it was converted into a union territory of India by the 10th constitutional Amendment Act, 1961.

Goa, Daman and Diu were constituted as a union territory by the 12th constitutional Amendment Act, 1962.

Puducherry was made a union territory by the 14th constitutional Amendment Act, 1962.

Reorganisation of India State:

Dhar Commission 1948

Firstly the Dhar Commission was constituted in 1948 for the reorganisation of states and it recommended reorganisation of states on the basis of administrative convenience rather than linguistic factor.

II JVP committee- 1949 (Jawaharlal Nehru + Vallabhbhai Patel + Pattabhi Sitaramayya)

It was constituted to examine the recommendations of Dhar commission.

It formally rejected language as the basis for reorganisation of states and emphasized on administrative convenience. In 1953 the first state created on linguistic basis was Andhra Pradesh.

It was due to a prolonged popular agitation and the death of Potti Sriramulu after a 56 day hunger strike for the cause.

The creation of Andhra Pradesh intensified the demand from other regions for creation of states on linguistic basis.

Thus, in 1953 a three member 'State Reorganisation Commission' under the chairmanship of Fazal Ali was created. Its other two members were KM Panikkar and Hriday Nath Kunjru.

Its recommendations (1955) were:-

-Preservation and strengthening of the unity and security of the country is to be taken in account of reorganisation of states.

-Linguistic and cultural homogeneity.-

-Financial, economic and administrative considerations.

-Planning and promotion of the welfare of the people.

The commission abolished the four fold classification of states. (A,B,C,D) and kept two categories (States and Union territories)

As a result 14 states and 6 union territories were created on November 1, 1956.

IV. New States and Union Territories created after 1956.

In 1960 the bilingual state of Bombay was divided into two separate states- Maharashtra and Gujarat.

In 1963 Nagaland was given the status of state.

In 1966 Haryana (Hindi Speaking), Punjab (Punjabi Speaking) and Chandigarh (Union Territory) were created.

In 1971 Himachal Pradesh was given the status of state.

In 1973 Meghalaya, Manipur and Tripura were given the status of state.

In 1974 Sikkim was given the status of an 'associate state' by the 35th constitutional Amendment Act (1974)

In 1975 by the 36th Constitutional Amendment Act (1975) Sikkim was made a full fledged state of the Indian union.

In 1987 the three new states of Mizoram, Arunachal Pradesh and Goa came into being as the new states. In 2000 three more new states of Chhattisgarh, Uttarakhand and Jharkhand were created out of the territories of Madhya Pradesh, Uttar Pradesh and Bihar respectively.

In 2014 Telangana (from Andhra Pradesh) was given the status of state and it became the 29th state of the Indian union.

Part-2 Citizenship Articles 5-11

Article 11:

It empowers the Parliament to regulate the right of citizenship by law Accordingly the Parliament passed the citizenship Act in 1955. This act has been amended four times in the year 1986, 1992, 2003 and 2005.

Acquisition of Citizenship:

1. By Birth:

A person born in India and both of parents /guardian are citizens of India.

2. By Descent:

A person born outside India and either of his parents is a citizen of India and is registered at an Indian consulate within one year of the date of birth.

3. By Registration:

A person of Indian origin who is resident in India for seven years before making an application for registration. &/or. a person who is married to a citizen of India and is ordinarily resident in India for seven years. Or Whose parents are presently Indian citizens Or

a person or either of his parents, was earlier citizen of independent India and has been residing in India for one year OR ✓

a person who has been registered as an overseas citizen of India (OCI) for five years and has been residing in India for one year OR

a person shall be deemed to be of Indian origin if he or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th august, 1947,

By Naturalization: one should not be a citizen of any country where citizens of India are prevented from becoming citizens of that country. OR

if he is a citizen of any country , he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted OR he has either resided in India or been in the service of a government in India or partly one and partly the other, throughout the period of twelve months immediately preceding the date of the application. OR he is of good character OR

he has an adequate knowledge of a language specified in the Eighth schedule of the constitution OR

in the event of a certificate of naturalisation being granted to him, he intends to reside in India or to enter into or continue in, service under a Government of India or under an international organisation of which India is a member or under a society, company or body of persons established in India OR

the Government of India may provide citizenship to a person who has rendered distinguished service to the science, philosophy, art, literature, world peace or human progress. For example - Dalai Lama, Mother Teresa.

Loss of Citizenship:

1. By Renunciation:

Any citizen of India of full age and capacity can make a written declaration renouncing his Indian citizenship to the Government of India.

2. By Termination:

When an Indian citizen voluntarily acquires the citizenship of another country, his Indian citizenship automatically terminates.

3. By Deprivation:

It is a compulsory termination of Indian citizenship if:-

The citizen has obtained the citizenship by fraud;

The citizen has shown disloyalty to the constitution of India;

The citizen has unlawfully traded or communicated with the enemy during a war;

The citizen has within five years after registration been imprisoned in any country for two years;

The citizen has been ordinarily resident out of India for seven years continuously;

The citizen has married to foreigner without informing the Government of India.

The citizen is working in the service of any other country.

Single Citizenship

In the Indian Constitution there is provision of single citizenship whereas in USA there is double citizenship in which a person is separate citizen of both centre and state Presently in India the double citizenship is considered in other meaning in which some people of Indian origin is given the status of OCI and PIO Therefore people of other countries are given the Indian citizenship in partial form.

Person of Indian Origin (PIO):

Atal Bihari Vajpayee Government Started the Provision of the double citizenship on the recommendation of LM Singhvi Committee and from 2002 the status of PIO is available.

For eligibility of PIO a person or either of his parents or great grandparents was born in and was permanently resident in India before or after 15 Aug. 1947. PIO is not given to the citizens of Pakistan and Bangladesh. The facilities given in PIO are VISA for 15 years in India and also no police verification is required if they stay for 6 months. Also they are given Indian citizenship if they stay for 7 years regularly in India.

Overseas Citizen of India (OCI):

It is started in 2005 and for its eligibility a person who was a citizen of India after 26 Jan. 1950 or his parents, grandparents or great grandparents were the Indian citizens. The benefits given to OCI are:-(i) A multiple entry, multipurpose lifelong visa for visiting India.

They can gain Indian citizenship if stay in India for 1 year.

They can obtain financial and economic advantages in India. There are also some restrictions on them.

They have to take new visa if their passport changes.

They have to take new visa on attaining of age of 21 years.

They have to take new visa on attaining of age of 50 years.

They cannot participate in elections and also cannot buy land for agriculture and horticulture.

Part-3 Fundamental Rights Articles 12 to 35

Article 12 - Definition of State

Article 13 - Laws inconsistent with or in derogation of the fundamental Rights.

Articles 14 to 18 - Right to Equality

Articles 19 to 22 - Right to Freedom

Articles 23 to 24 - Right against Exploitation

Articles 25 to 28 - Right to freedom of Religion

Articles 29 to 30 - Cultural and Educational Rights.

Article 31 - Right to property (Repealed and is 300(A) article)

Article 32 to 35 - Right to constitutional Remedies.

Note:- Articles 15, 16, 19, 29, 30 are for Indian citizens only. Rest of the articles are also valid for non-citizens. ✓

Article 12 : Definition of State

It defines the term 'State' which includes the following:

(i) Government and Parliament of India.

Government and legislative of states.

All local authorities i.e. municipalities, panchayats, district boards, improvement trusts, etc.

All other authorities, i.e., statutory or non statutory authorities like LIC, ONGC, SAIL, etc.

Thus, State has been defined in a wider sense so as to include all its agencies and the actions of these agencies can be challenged in the courts as violating the fundamental Rights. According to the Supreme court, even a private body or an agency working as an instrument of the state fall within the meaning of the 'State' under Article 12.

Article 13 : Laws inconsistent with Fundamental Rights

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. In other words, it expressly provides for the doctrine of judicial review. This power has been conferred on the supreme court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the fundamental Rights.

Similarly all laws made after 26 Jan 1950 would be void up to the limit they violate the fundamental Rights. According to Article 13(2) if fundamental rights are changed by the amendment of constitution and the contradiction with the laws made prior to 26 Jan 1950 ends then these laws again came into existence, but the laws after 26 Jan 1950 would remain as they are.

The term 'law' in Article 13 has been given a wide meaning to include the following-

Permanent laws enacted by the parliament or state legislature.

Temporary laws like ordinances issued by the president or the state governors.

Statutory instruments in the nature of delegated legislation like order, by-law, rule, regulation or notification

Non legislative sources of law.

Articles 14 to 18 : Right to Equality

Article 14: Equality before law and Equal protection of law.

Article 14 says that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This provision confers rights on all persons whether citizens or foreigners. The concept of 'equality before law' is of British origin while the concept of 'equal protection of laws' has been taken from the American constitution.

Article 15 : Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.

No citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex or place of birth with regards to-

(a) Access to shops, public restaurants, hotels and place of public entertainment.

(b) The use of wells, tanks, bathing ghaats, road and places of public resort maintained wholly or partly by State funds or dedicated to the use of general public.

The state is permitted to make any special provision for women and children. for example, reservation of seats for women in local bodies or provision of free education for children.

The State is permitted to make any special provision for the advancement of any socially backward classes of citizens or for the scheduled castes and scheduled tribes.

The State is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes regarding their admission to educational institutions including private educational institutions, whether aided or unaided by the state except the minority educational institutions.

Article 16 : Equality of opportunity in matters of public employment.

Article 16 provides for equality of opportunity for all citizens in matters of employment or appointment to any office under the State and no discrimination on grounds of only religion, race, caste, sex, descent, place of birth or residence.

The state is permitted to make special provisions on basis of residence, reservation in favour of any backward class in case they are not adequately represented in the state services.

A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.

A-1, Keshav Vihar, Riddhi Siddhi main chauraha, Gopalpura Bye pass, Jaipur , M-9636977490

Article 17 : Abolition of untouchability

Article 17 abolishes 'untouchability' and forbids its practice in any form.

the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

Article 18 : Abolition of Titles.

Article 18 abolishes titles and makes four provisions in that regard:-

It prohibits the state from conferring any title except a military or academic distinction on any body whether a citizen or a foreigner.

It prohibits a citizen of India from accepting any title from any foreign state.

A foreigner holding any office of profit or trust under the state cannot accept any title from any foreign state without the consent of the president.

No citizen or foreigner holding any office of profit or trust under the state is to accept any present, emolument or office from or under any foreign state without the consent of the president.

Articles 19 to 22 Right to Freedom

Article 19 : Protection of six rights regarding freedom of:

(i) Speech and expression (ii) Assembly (iii) Association (iv) Movement (v) residence, and (vi) Profession.

Article 19 guarantees to all citizens the six rights. These are:

Right to freedom of speech and expression.

Right to assemble peacefully and without arms.

Right to form association or unions or cooperative societies.

Right to move freely throughout the territory of India.

Right to reside and settle in any part of the territory of India.

Right to practice any profession or to carry on any occupation, trade or business.

(i) 19(A) : Right to freedom of speech and expression.

Supreme Court held that the freedom of speech and expression includes the following:-

Right to propagate one's view as well as views of others.

Freedom of the press.

Freedom of commercial advertisements.

Right against tapping of telephonic conversation.

Right to telecast, i.e. government has no monopoly on electronic media.

Right against bundh called by a political party or organisation.

Right to know about government activities.

Freedom of silence.

Right against imposition of pre-censorship on a newspaper.
Right to demonstration or picketing but not right to strike.

The state can impose reasonable restrictions on the exercise of the freedom of speech and expression on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offence.

(ii) Right to assemble peacefully and without arms-

It includes the right to hold public meetings, demonstrations and take out processions.

The state can impose reasonable restrictions on the exercise of right of assembly on two grounds, namely, sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned.

(iii) Right to freedom of Association:-

All citizens have the right to form associations or unions or cooperative societies it includes the right to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons it not only includes the right to start an association or union but also to continue with the association or union as such.

Reasonable restrictions can be imposed on the exercise of this right by the state on the grounds of sovereignty and integrity of India, public order and morality.

Supreme Court held that the trade unions have no guaranteed right to effective bargaining or right to strike or right to declare a lock out.

(iv) Right to move freely throughout the territory of India:-

Freedom of movement entitles every citizen to move freely throughout the territory of the country he can move freely from one state to another or from one place to another within a state. This right emphasise that India is one unit for all citizens.

The grounds of imposing reasonable restrictions on this freedom are two, namely, the interests of general public and protection of interests of any scheduled tribe.

(v) Right to freedom of Residence:

Every citizen has the right to reside and settle in any part of the territory of the country. This right has two parts:-

(a) The right to reside in any part of the country which means to stay at any place permanently.

The right to settle in any part of the country which means to set up a home or domicile at any place permanently.

The state can impose reasonable restrictions on the exercise of this right on two grounds, namely the interest of general public and the protection of interests of any scheduled tribes.

(vi) Freedom of Profession etc.

All citizens are given the right to practice any profession or to carry on any occupation, trade or business.

Article 20 : Protection in respect of conviction for offences.

It contains three provisions:-

No ex-post facto law i.e. no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act, also nor subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act.

No double jeopardy i.e. no person shall be prosecuted and punished for the same offence more than once.

No self- incrimination i.e. no person accused of any offence shall be compelled to be a witness against himself.

Article 21 : Protection of life and personal liberty.

Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizen and non- citizens.

Before 1978

Gopalan V/s Madras State case:

Supreme Court gave decision according to which the expression 'procedure established by law' was given importance and it held that the protection under Article 21 is available only against arbitrary executive action.

After 1978.

Case:- Menaka Gandhi V/s Government of India.

In this case the Supreme Court overruled its judgement in the Gopalan case and introduced the American expression 'due process of law' Thus, the protection under Article 21 should be available not only against arbitrary executive action but also against arbitrary legislative action. It emphasises on natural justice along with law full words. It establishes judicial review.

After the implementation of the constitution Supreme Court highly interpreted the Article 21. According to Supreme Court Article 21 is not merely confined to survival but it includes the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living. Thus, it included 27 objects in the Article 21.

Article 21(A) Right to Education

Article 21A declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as that State may determine. Thus, this provision makes only elementary education a fundamental Right and not higher or professional education.

Article 22: Protection against arrest and detention in certain cases.

Article 22 has two parts-

I. The first part deals with the cases of ordinary law and it provides the following rights to a person who is arrested or detained under an ordinary law-

Right to be informed of the grounds of arrest.

Right to consult and be defended by a legal practitioner.

Right to be produced before a magistrate within 24 hours, excluding the journey time.

These safeguards are not available to an alien or a person arrested or detained under a preventive detention law.

The second part deals with the cases of preventive detention law. Article 22(2) authorises parliament and the State legislatures to make a law of preventive detention for reasons connected with the security of a state, the maintenance of public order and the maintenance of supplies and services essential to the community. According to it a person can be arrested before he perform offence and can be arrested in absence of evidences and only on the basis of doubts the detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention The board is to consist of judges of a high court.

The preventive detention laws made by the parliament are:-

(a) Preventive Detention Act, 1950 which expired in 1969.

(b) Maintenance of Internal Security Act (MISA), 1971. Repealed in 1987.

(c) Conservation of foreign exchange and prevention of smuggling Activities Act (COFE POSA), 1974.

(d) National Security Act (NASA), 1980

(e) Prevention of Black marketing and maintenance of Supplies of Essential commodities Act (PBMSECA), 1980.

(f) Terrorist and Disruptive Activities (Prevention) Act. (TADA), 1985 Repealed in 1995.

(g) Prevention of Terrorism Act, (POTA), 2002. Repealed in 2004.

(h) Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act (PITNDP-SA), 1988.

Articles 23 to 24 : Right against exploitation

Article 23:- Prohibition of traffic in human beings and forced labour.

Article 23 Prohibits traffic in human beings, begaar (forced labour.) and other similar forms of forced labour. This right is available to both citizens and non-citizens. It protects the individual not only against the state but also against private persons.

It permits the state to impose compulsory service for public purposes. However. imposing such service, the State is not permitted to make any discrimination on grounds only of religion, race, caste or class.

Article 24: Prohibition of employment of children in factories etc.

Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway.

In 2006, the government banned the employment of children as domestic servants or workers in business establishments like hotels, dhabas, restaurants, shops, factories, resorts, spa, tea shops etc..

Amendments include increasing the age of prohibition for employment of children and adolescents in hazardous occupations, such as mining from 14 to 18.

Article 25 to 28: Right to freedom of religion

Article 25: Freedom of conscience and free profession, practice and propagation of religion.

Freedom of conscience - Inner freedom of an individual to mould his relation with God or creatures in whatever way he desires.

Right to profess - Declaration of one's religious beliefs and faith openly and freely.

Right to practice - Performance of religious worships, rituals, ceremonies and exhibition of beliefs and ideas.

Right to propagate - Transmission and dissemination of one's religious beliefs to others or exposition of the tenets of one's religion.

However, these rights are subject to public order, morality, health and other provisions relating to fundamental rights.

Article 26: Freedom to manage religious affairs

Right to establish and maintain institutions for religious and charitable purposes.

Right to manage its own affairs in matter of religion.

Right to own and acquire movable and immovable property.

Right to administer such property in accordance with law.

Article 27: Freedom from payment of taxes for promotion of any religion.

Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination.

Article 28 freedom from attaining religious instruction or worship in certain educational institutions.

Under Article 28, no religious instruction shall be provided in any educational institution wholly maintained out of state funds.

No person shall be compelled to participate in religious education or worship without his consent.

Religious instruction is completely prohibited in government institutions.

Religious instruction is permitted in private institutions.

(c) Religious instruction is permitted on a voluntary basis.

Articles 29 to 30: Cultural and educational Rights.

Article 29: Protection of language, script and culture of minorities.

Article 29 provides that all minorities shall have the right to conserve their language, script or culture and make special measures to do so.

Article 30: Right of minorities to establish and administer educational institutions.

All minorities shall have the right to establish and administer educational institutions of their choice to protect their language, script and culture.

Thus, the objective of the Article 29 to 30 is to generate security feelings in minorities and to protect cultural diversity.

Article 31 : Right to property

It has been repealed By the 44th Amendment Act it is given under the article 300(A)

Article 31(A)- Saving of laws providing for acquisition of estates etc.

Article 31(B)- Validation of certain acts and regulations included in the 9th schedule.

Article 31(C)- Saving of laws giving effect to certain directive principles Article 31(C) is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) and clause (c) of Article 39 cannot be challenged on the grounds that they are violative of Article 14.

Article 32-35: Article 32- Right to constitutional remedies.

Dr. B.R. Ambedkar called it as the very soul of the constitution and the very heart of it.

Right to issue writs by the Supreme Court.

(a) Habeas Corpus

It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it The court then examines the cause and legality of detention. The Writ of 'Habeas Corpus' can be issued against both public authorities as well as private individuals.

(b) Mandamus:

It is a command issued by the court to a public official asking him to perform his official duties that he has failed or refused to perform. It cannot be issued against the President and the Governors.

(C) Prohibition

It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction that it does not possess.

(D) Certiorari

It is issued by a higher court to a lower court or tribunal either to transfer a case pending with the latter to itself or to squash the order of the latter in a case. It is issued on the grounds of excess of jurisdiction or lack of jurisdiction or error of law. It can be issued even against administrative authorities except the parliament and the state legislatures. ✓

(E) Quo- Warranto

It is issued by the court to enquire into the legality of claim of a person to a public office. It cannot be issued only against the person holding the office and not against person appointing him.

Note:- differences of issuing writs between the Supreme Court and the High Courts:-

Supreme court

1. SC can issue writs only for the enforcement of fundamental Rights
2. Article 32 is itself a fundamental Right so the SC is bound to issue writs
3. During emergency if the president suspends Article 32 then the SC cannot issue writs.

High Court

1. HC can issue writs not only for FR but also for other purposes.
2. Article 226 is discretionary so a HC can issue writs on its own discretion.
3. During emergency Article 226 is not suspended so a HC can issue writs.

The territorial jurisdiction of the SC is shorter. 4. The territorial jurisdiction of a HC is wider. than the SC.

Article 33:- It empowers the parliament to restrict or abrogate the fundamental rights of the members of armed forces, paramilitary forces, police forces, intelligence agencies and analogous forces.

Article 34:- It provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India.

Article 35:- It lays down that the power to make laws to give effect to certain fundamental rights shall vest only in the parliament and not in the state legislatures.

The issue of the amendment in the fundamental rights

With the implementation of the constitution the issue of amendment in the fundamental rights was raised because-

Article 13(2) provisioned that the parliament cannot minimise the fundamental rights by laws.

Whereas Article 368 empowers the parliament to amend any part of the constitution.

Therefore, question arises that 'can the parliament minimise the fundamental rights under the article

368.'? or in other words whether to consider the amendments done by the article 368 as law or not.

1.) Shankari prasad V/s Government of India 1951.

The question whether fundamental rights can be amended by the parliament under Article 368 came for consideration of the Supreme Court within a year of the constitution coming into force.

The Supreme court ruled that the power of the parliament to amend the constitution under article 368 also includes the power to amend fundamental Rights and article 13(2) is applicable on article 368 because a constitutional amendment act is also a law.

Thus, the Supreme Court provided decision that the amendment under the article 368 is not a law and the parliament is not restricted to amend the fundamental rights.

2.) Sajjan Singh V/s Government of Rajasthan 1965:

In this case also the Supreme Court approved its previous decision and repeated that the amendment under the article 368 is not a law. thus, the parliament is fully empowered to amend the fundamental rights.

3.) Golaknath V/s Government of Punjab case 1967:

In this case the Supreme Court reversed its both previous decisions and declared that the amendments under the article 368 is a type of law so article 13(2) prevents it. Therefore, the fundamental rights cannot be amended and presented the concept of futuristic effect according to which the effect of decision would be only on amendments to be done in future i.e. earlier amendments would be as they are.

4.) 24th Constitutional Amendment Act. (1971):

In it article 13(4) and 368(1) were added According to article 13(4) it is provisioned that the amendment through article 368 is not a law and through it the fundamental rights can be amended.

In article 368(1) it is provisioned that article 13(2) will not disturb the limit of the article 368.

5.) 25th constitutional Amendment Act 1971.

Under it the article 31(C) was added and it is provisioned in it that if the parliament makes any laws to fulfil the objectives of article 39(b) and 39(c) and there is violation of fundamental rights namely article 14, 19, 31 then it would not be considered as violation.

Note:- Through the 26th constitutional amendment the titles of kings were abolished.

6.) Keshavananda Bharati V/s Government of Kerala case 1973.

In it the court followed the middle path. Although the 24th and 25th constitutional amendments acts were declared to be constitutional and it was accepted that article 13(2) cannot stop the article 368 and the parliament can amend the fundamental rights.

But at the same time it laid down a new doctrine of the 'basic structure' of the constitution which cannot be altered by the parliament. Thus the Supreme court applied new restriction on the power of the parliament to amend the constitution.

Note:- Some of the elements of the basic structure are sovereign, democratic and republican nature of the Indian polity, rule of law, Supremacy of the constitution. secular character of the constitution, Judicial review. etc.

7) 42nd Constitutional Amendment Act (1976):-

A-1, Keshav Vihar, Riddhi Siddhi main chauraha, Gopalpura Bye pass, Jaipur , M-9636977490

Under it in article 368(4) it is provisioned that the amendments done by the parliament cannot be challenged in the court i.e. the parliament consist of infinite power to amend the constitution and also it cannot be judicially reviewed.

Minerva mills V/s Government of India Act 1980:-

Under it the Supreme Court declared the article 368(4) to be unconstitutional or invalid or void and considered that the article 368(4) prohibits the judicial review and the Judicial review is a part of the basic structure. Presently also there is same condition that the parliament can amend any part of the constitution but cannot amend the basic structure of the constitution.

Springb
ard
ACADEMY