



JUDICIAL DISHA
PAVING YOUR PATH TOWARDS JUDICIAL SERVICES

CONSTITUTIONAL LAW



CONTENT

1.1 Constitution & Constitutionalism.....	2-22
1.2 Territory and Citizenship.....	23-36
1.3 Fundamental Rights (Introduction).....	37-49
1.4 Right to Equality.....	50-87
1.5 Right to Freedom (PART-I).....	88-126
1.6 Right to Freedom (PART-II).....	127-155
1.7 Right Against Exploitation.....	156-159
1.8 Right to Freedom of Religion.....	160-177
1.9 Cultural & Educational Rights.....	178-194
1.10 Right to Constitutional Remedies, PIL & Judicial Review.....	195-218
1.11 Relationship Between Directive Principles, Fundamental Rights and Fundamental Duties.....	219-228
1.12 Amendment of The Constitution.....	229-248
1.13 Emergency Provisions.....	249-272
1.14 The Union & The States.....	273-311
1.15 Relations Between the Union and the States.....	312-338
1.16 The Judiciary.....	339-397
1.17 Legislative Powers, Privileges and Immunities.....	398-405
1.18 Services Under the Union and The States.....	406-437
1.19 Local Bodies.....	438-465
1.20 Anti- Defection Law; Administrative Tribunals & Right To Property.....	466-484

1.1

CONSTITUTION & CONSTITUTIONALISM

Synopsis

S. No	Topic
1	The Constitution of India: Introduction
2	Constitutionalism
3	Constitutional Conventions
4	Federalism
5	Preamble
6	Previous Years Questions (Judiciary)

1. The Constitution of India: Introduction

- On 18th July 1947 British Parliament passed the Indian Independence Act, 1947 providing for the setting up of two dominions-India and Pakistan-as on 15th August 1947, for the lapse of British paramountcy over the princely States in India and for the transfer of full sovereign powers, including the right to quit the British Commonwealth, to the Constituent Assemblies of the two dominions.
- The Act abolished the then-existing Central Legislative Assembly of undivided India. The Constituent Assembly of each of the two dominions was to be the legislature of the respective dominion. Thus, besides being a sovereign constitution-making body, the Constituent Assembly of India also became the supreme legislature of the country having full power to make laws.
- Under the provisions of the Indian Independence Act, 1947, **the Constituent Assembly, which had its first sitting on 9th December 1946**, was to be the Constituent Assembly of India - a body fully sovereign and successor to the British Parliament's plenary authority in the country. On the midnight of 14-15 August 1947, power was transferred to Indian hands.
- India became free and joined the comity of independent nations. At the momentous 14-15 August 1947 sitting of the Constituent Assembly of India at 11.00 P.M. on 14th August 1947, the President of the Assembly, Dr Rajendra Prasad, referred to the solemnity of that hour in India's history when after many years of struggle and sacrifice, the representatives of the people of India gathered in their Constituent Assembly were taking over the governance of the country.
- Shortly before midnight, Jawaharlal Nehru moved that it be resolved that after the last stroke of midnight, all members of the Constituent Assembly take a pledge of dedication to the service of India and her people.
- As the clock struck midnight hour, the President and all the members of the Assembly stood up and took the solemn pledge. The first sitting of the Constituent Assembly was adjourned in the early hours of 15th August for a few hours. The Assembly again met at 10 a.m. the same day.
- An essential attribute of national freedom is the right of the **people to give to themselves a constitution of their choice- a constitution most suited to their genius, ethos and aspiration**. The President of the Assembly announced the **personnel and terms of reference** of an Advisory committee to consider the precise functions of the Constituent Assembly under the Independence Act of 1947.
- The Advisory Committee recommended a federal Constitution with a strong centre**. After going through various recommendations and Supplementary Reports of the Advisory Committee a resolution was moved Advisory Committee and several resolutions of the Assembly and a few August 1947 for the appointment of Drafting Committee.

- The Drafting committee prepared a Draft Constitution. **One hundred and fourteen days** were spent on the consideration of the Draft Constitution. The Drafting Committee, since its election on 29th August 1947, sat for one hundred and forty-one days.
- Not only the members of the Drafting Committee but also other members of the Assembly were vigilant and scrutinized the Draft in all its details. Not only each article in the Draft but practically every sentence and sometimes, every word in every article had to be considered by the Assembly. The **First Draft** Constitution as prepared by the Drafting Committee to the Constituent Assembly contained **315 articles and 8 Schedules**.
- At the end of the clause-by-clause consideration, it contained 386 articles. **In its final form, it contained 395 articles and 8 Schedules**. On the **26th day of November 1949**, the Constituent Assembly adopted, enacted and gave to ourselves the Constitution of India.
- At present, the constitution has a preamble and **470 articles**, which are **divided into 25 parts**. It has been **amended 105 times** and **has 12 Schedules and 5 Appendices**.
- On 24th January 1950 three copies of the Constitution were laid on the table of the House. One copy was in English completely handwritten and illuminated by artists. The second was in print in English and the third handwritten in Hindi. All the copies were signed by all the members of the Assembly.

Meaning of “Constitution”

- A Constitution is a document of people’s faith and aspirations possessing a special legal sanctity.
- It is the fundamental law of a country and all other laws and customs of the country in order to be legally valid shall conform to the constitution. It is the supreme law of the land. It prescribes the extent of the sovereign powers of the organs of the government and the manner of its exercise.
- In short, a Constitution is the rule book of a nation codifying the Rule of Law.
- Most of the countries in the world have a Constitution, **whether written or unwritten**, including China and North Korea, but the **mere existence of a Constitution is not enough, rather conformity with a Constitution with respect to the essential functions of the organs of the government is imperative so as to protect and safeguard the precious democratic fabric of the country**.
- There are many **written or unwritten rules, principles, values, customs and usages** which are additional to or necessary to govern a country truly in accordance with the Constitution, and so **the principles of Constitutionalism and Constitutional conventions** are part of that.
- The **Constitution of India**, being a written Constitution, **is the fundamental law of the land**.
- The Constitution is a document having a **special legal sanctity** which **sets out the framework and the principal functions of the organs of the Government within the state and declares the principles by which those organs viz, the Executive, Legislature and Judiciary must operate**.
- Constitution also sets out the norms, standards, principles and relationships between the government and the people of the country which is called citizenship.
- **“The beauty of the Indian Constitution is that the entire structure of the country is based thereupon. It is the very pillar upon which the democracy of India stands.”**

- Justice V.N. Khare, in *Union of India v. Naveen Jindal*.

2. Constitutionalism

- **Constitutionalism** is a **political philosophy** in which the **functions of the government of a State must be in accordance with the provisions of the Constitution meaning thereby the actions of the government must reflect Constitutionality**.
- Therefore, Constitutionalism is **trust, belief, and faith in the knowledge that power will not be misused. Therefore, it favours the rule of law, rather than the rule of men**.
- In any country, the government could start viewing itself as a master of all and it could turn a blind eye to the goals and purposes for which it has been created and given power. Therefore, there must be some defence mechanism over and above the State Power. This **arrangement, which forces the rulers within the jurisdiction by means of a constitution, is called Constitutionalism**.

- A country may have a constitution, but not necessarily 'constitutionalism.'
- For Example, a country where the dictator's word is the law can be said to have a constitution, but not constitutionalism. A Constitution does not merely confer powers to various organs of the government but also seeks to restrain these powers.
- **Constitutionalism envisages checks and balances and puts powers of legislature and executive under some restraint**, otherwise freedom of people would be jeopardized, leading to an authoritarian rule by an oppressive government. Therefore, to preserve the basic freedom of the individual and to maintain dignity and personality, Constitution should be permeated with Constitutionalism; that is, it should have in-built restrictions and mechanisms within its own provisions to limit and put fetters on such powers of governance. It will not be wrong to say that **Constitutionalism provides limited governance within the parameters set out by the Constitution.**

Positive and Negative Constitutionalism

- **Positive or welfare Constitutionalism** sees the Constitution as an instrument of **positive benefits** such as **national security, national prosperity, and equal opportunity.**
- Positive Constitutionalism hopes to bring logical connections to our constitutional understanding, along with new categories of constitutional analysis, and new research agendas, and it includes a new policy agenda i.e., a constitutionalist policy agenda.
- From a realistic point of view, **Positive Constitutionalism refers to social reforms or collective good, the exercise of power towards socially desirable ends and putting democracy to work.**
- **For example**, the freedom to criticize the government's foreign policy is an integral part of achieving national security and it is helpful for any government to know when any act done by the government is wrong.
- **Putting Positive duty on**
 - **The State** to have secured nation and order in the Society, e.g., **Directive Principles of State Policy.**
 - **The Citizens**, e.g., **Fundamental Duties**
- On the other hand, **Negative Constitutionalism** sees the Constitution as a set of institutions for transforming popular preferences into law in a manner consistent with constitutional rights.
- This **Negative Constitutionalism** sees constitutional rights as exemptions from governmental power and it emphasizes private rights over public purposes. Therefore, Negative Constitutionalism controls what most of us think about the Constitution.
- Negative constitutionalism infers the idea of limited government. It emerged in the backdrop of the historical experience of tyrannical rule witnessed by western countries.
- Negative constitutionalism includes constraints on both the legislative and executive powers through judicial review. Overall, it is against the existence of an authoritarian State, safeguards individual liberties, and renders more importance to private rights than public welfare.
- **Sotirios Barber** in his book **Fallacies of States' Rights (Harvard, 2013)** differentiated between Negative and Positive Constitutionalism as Constitutional rights and Constitutional powers respectively. **"Positive constitutionalism, as constitutional powers secure certain ends such as national security and prosperity. Such powers are absent in Negative Constitutionalism, instead, it promotes rights that restraints powers."**
- The focus of Negative Constitutionalism is on personal economic well-being, unlike Positive Constitutionalism which focuses on public purposes.

Features of "Constitutionalism in India"

- Not all Constitutions strictly fit in the model of Positive and Negative Constitutionalism and therefore they adopt the features of both positive as well as negative constitutionalism.
- Indian Constitutionalism incorporates **both Negative and Positive Constitutionalism** and the features of Constitutionalism in India are as follows:
 - 1. Constitutionalism puts limitations on the government:**
 - Constitutionalism is regarded as synonymous with a limited government. The principles of Constitutionalism put restrictions on the authorities to exercise their power and authority within the four corners of a true Constitution.

- Under Constitutionalism, including in the Indian context, we strive to put **two limitations on the government**:
 - **Power prescribed:** It enables only those exercises of power by the Constitutional authorities which are expressly mentioned in the Constitution. e.g., Power of President or Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases **Articles (72, 161)**, Extent of executive power of the Union and States (**Articles 73, 162**), Power of Deputy Chairman or Deputy Speaker or another person to perform the duties of the office of or to act as, as the case may be, Chairman or Speaker (**Articles 91, 95**) etc.
 - **Procedure prescribed:** In the exercise of power prescribed in the Constitution, the adopted procedure must be within the four corners of the limitations provided in the Constitution itself. e.g., Procedure for impeachment of the President (**Article 61**), Procedure in Parliament with respect to estimates (**Article 109**), Special procedure in respect of Money Bills (**Article 113**), Special procedure for enactment of certain laws relating to language (**Article 349**), Power of Parliament to amend the Constitution and procedure therefor (**Article 368**), etc.
- 2. Constitutionalism favours checks and balances:**
- Separation of power and checks and balances among the branches of the government is core to establishing the principle of Constitutionalism.
 - In **Navtej Singh Johar v. Union of India, (2018) 1 SCC 791**, the Supreme Court said, “the principle of Constitutionalism advocates a check and balance model of the separation of powers. It requires a diffusion of powers, necessitating different independent centres of decision making.”
- 3. Constitutionalism protects democratic principles:**
- The Constitution of India is fully enriched textually with democratic principles but the existence of Constitutionalism makes it a reality.
 - In the case of **I.R. Coelho v. the State of Tamil Nadu, (2007) 2 SCC 1**, a 9 Judges Bench, said, “*the principle of constitutionalism is now a legal principle which requires control over the exercise of Governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights.*”
- 4. Existence of a Constitution is not enough:**
- Mere existence of the Constitution or rule as per the constitution is not a guarantee to Constitutionalism, e.g., in the Hitler era, Germany had a constitution but there was no Constitutionalism at all.
 - In **RC Poudyal v. Union of India, AIR 1993 SC 1804**, it was said by the Supreme Court, “mere existence of a constitution, by itself, does not ensure constitutionalism or a constitutional culture. It is the political maturity and traditions of the people that import meaning to a constitution which otherwise merely embodies political hopes and ideals.”
- 5. Constitutionalism may be in the written or unwritten form:**
- Constitutionalism implies the exercise of political power should be bound by limitations, controls, checks and rules whether these existed in the form of a written or unwritten Constitution.
- 6. Division of Power is a necessity of Constitutionalism:**
- Centralized power endorses the authoritative form of government, which is the antithesis of Constitutionalism. The Constitution of India provides a division of power between Union, State and Panchayats/Municipalities.
 - In reference to decentralized power, the Supreme Court in **Government of NCT Delhi v. Union of India, (2018) 8 SCC 50**, observed that “the essence of constitutionalism is the control of power by its distribution among several state organs or offices in such a way that they are each subjected to reciprocal controls and forced to cooperate in formulating the will of the State.”
- 7. Constitutionalism should be of transformative nature:**
- The purpose of having the Constitution is to transform society for the better over time and it is only possible by the principle of Transformative Constitutionalism which is backed by the preamble itself.
 - In **Navtej Singh Johar v. Union of India, (2018) 1 SCC 791 supra**, the Supreme Court said, “to understand the concept of transformative constitutionalism with some degree of definiteness, the ideals enshrined in the Preamble to our Constitution would be a guiding laser beam. The ultimate goal of our magnificent Constitution is to make right the upheaval which existed in the Indian society before the adoption of the Constitution.”

Way to put Constitutionalism in a Constitution

- **By Political way**
 - Separation of Power among the branches of the government.
 - No centralized power in the government.
- **By Judicial way**
 - Independence of Judiciary.
 - Judicial Review of the administrative and legislative power.

3. Constitutional Conventions

- The constitutional law of a country consists of both 'legal' as well as 'non-legal' norms.
- '**Legal' norms** are enforced and applied by the courts on the other hand '**non-legal' norms** arise in course of time as a result of practices followed over and over again. Such norms are called "**Conventions or usages**".
- There may be nothing in the constitution sanctioning them, nevertheless, they exist. The conventions grow from long-standing accepted practices or agreements in areas where the law is silent and such a convention would not breach the law but fill the gap.
- Conventions play a more significant role in a country which has an unwritten constitution, like Britain, than a country with a written constitution like India. The British Constitution is characterized as an "unwritten constitution" because it is not embodied in one comprehensive constitutional document. It is governed through court decisions, common law principles and conventions and usages.
- **In India**, though conventions operate in several areas, **because of having a codified constitution, it has a limited aspect**. The most significant use of the Convention is in the area of the relationship between the Executive and the legislature.
- For e.g., Article 75 of the constitution, that authorizes the President to appoint Prime Minister and the Council of Ministers. But the convention is that the leader of the Majority party is appointed as Prime Minister and the final say in the formation and appointment of the Council of Ministers lies with Prime Minister.
- With the judicial recognition of conventions, the distinction between Law and Conventions has become blurred in the course of time.
- Judgements of several cases such as **Ram Jawaya v. State of Punjab, Shamsheer Singh v. State of Punjab**, etc. show that conventions do influence judicial decisions to some extent.
- Though the Indian Constitution is the lengthiest constitution in the world, the framers of the Conventions, can be interpreted as informal, uncodified and unwritten procedural agreements.
- These Constitutional Conventions are as important as the written texts in the Constitution.
- Most Indian Constitutional Conventions are generally incorporated from the British Constitution.

Features of the Constitutional Conventions

1. Constitutional Conventions are requisite:

- It is undesirable to write down everything in the Constitution because it would stop the authority to take decisions as per need of the time being. Written forms incorporate rigidity in the Constitution.
- The main purpose of the Constitutional conventions is to ensure that the legal framework of the Constitution retains its flexibility to operate in tune with the prevailing constitutional values of the time. Therefore, it is a necessity to have some scope, in the form of developed conventions, to function the institutions properly.

2. Constitutional Conventions lead to discretion in the authority:

- As constitutional conventions are developed by way of custom and usages and not written in the Constitution therefore it leads to giving the holders of constitutional offices some extra powers of discretion in respect of such circumstantial matters.

3. Constitutional conventions ensure flexibility:

- Constitutional Conventions are formed by the State to tackle the situations which have not been well incorporated into the Constitution.

- The main purpose to have the Constitutional Conventions is that these conventions ensure that the legal framework of the Constitution retains its flexibility to operate in tune with the prevailing Constitutional value of the period.
4. **Constitutional Conventions lead discretion in the authority:**
 - As constitutional conventions are developed by way of custom and usages and not written in the Constitution therefore it leads to giving the holders of constitutional offices some extra room and leverage of discretion in respect of such circumstantial matters.
 5. **Conventions evolve or change over time:**
 - Constitutional conventions take time to evolve, however, they may change if the circumstances require.
 6. **Constitutional Convention should not breach Constitutional Principles:**
 - There are some fundamental principles incorporated in a constitution which are beyond the limits of any authority, institution and or custom.
 - The Supreme Court, in **SP Gupta v. Union of India, AIR 1982 SC 149**, observed that any convention contrary to the constitutional principles and against the basic intendment cannot be admitted as a constitutional convention and its genesis must be proved within its provisions itself.
 7. **Constitutional Convention may be inseparable from Constitution:**
 - In certain circumstances the constitutional convention may be inseparable from constitutional provisions in such a situation it has to consider part of the Constitution.
 - In **State of Rajasthan v. Union of India, AIR 1977 SC 1361**, it was said, “constitutional practice and convention become so interlinked with or attached to constitutional provisions and are often so important and vital for grasping the real purpose and function of constitutional provisions that the two cannot often be viewed apart.”
 8. **Legally unenforceable:**
 - The Constitution of a country comprises both written rules enforced by courts, and “unwritten” rules or principles necessary for constitutional government. These **Conventions are not legally enforceable generally**. It only has **moral and political sanctions**.
 9. **Constitutional Conventions may also be binding:**
 - Sometimes, Constitutional Conventions may have a binding effect as Constitutional Law.
 - The Supreme Court, in **Advocates-on-Records Association v. Union of India, (1993) 4 SCC 441**, said “**there is no distinction between the ‘Constitutional law’ and an established ‘Constitutional Convention’** and both are binding in the field of their operation. Once it is established to the satisfaction of the court that a particular convention exists and is operating then the convention becomes a part of the ‘Constitutional law’ of the land and can be enforced in the like manner.”

Instances of Constitutional Convention in the Constitution

- **In the Indian Constitution following are, inter alia, primarily left to deal with by Constitutional Conventions:**
- **Appointment of Prime Minister or Chief Minister, as the case may be, by the President or Governor:** There is a provision to appoint the Prime Minister by the President (Article 75(1)) however, there is no guidance as to who should be appointed as Prime Minister. Such situations are dealt with by Constitutional Conventions. Similar provisions are with regard to the States as well.
- **Options in Hung Lok Sabha/Assemblies:** If a party has a clear majority, then its recognized leader would be the Prime Minister/Chief Minister. But where no party has the majority in the legislature, the role of Constitutional Conventions comes into play.
- **Dissolution of the House:** The Constitution has given the power to dissolve the Lok Sabha (**Article 85**) to the President but there is no mention of procedure and circumstances it would be dissolved within 5 years. It is totally left on the Constitutional Conventions. Similarly, it is in the case of States.
- **Discretion of President/Governor:** In **Samsher Singh v. State of Punjab, AIR 1974 SC 2192**, it was observed by the Supreme Court that “there are certain exceptions in which the President was not obligated to act in accordance with the advice given by the Council of Ministers and was required to exercise his discretion.” During the exercise of such discretions, the President is guided by Constitutional Conventions. Similarly, the Governor’ act in their States.

- **Appointment of senior-most Judge as Chief Justice:** Convention of appointment of senior-most Judge as Chief Justice of the Supreme Court was interpreted with **Article 124(1)**, where consultation with the Chief Justice of India is mandated, in First Judges case [**SP Gupta v. Union of India, AIR 1982 SC 149**], Second Judges case [**Advocates-on-Records Association v. Union of India, 1993 4 SCC 441**] and Third Judges case [**In Re Under Article 143(1) of the Constitution, AIR 1999 SC 1**] which has become procedure, in the form of new Convention, to appoint the next Chief Justice by the Collegium, which includes incumbent Chief Justice.
- Similarly, it is done in the reference of appointment of other Judges including High Court Judges, Chief Justice of the High Courts, transfer Judges etc.

4. Federalism

Definition

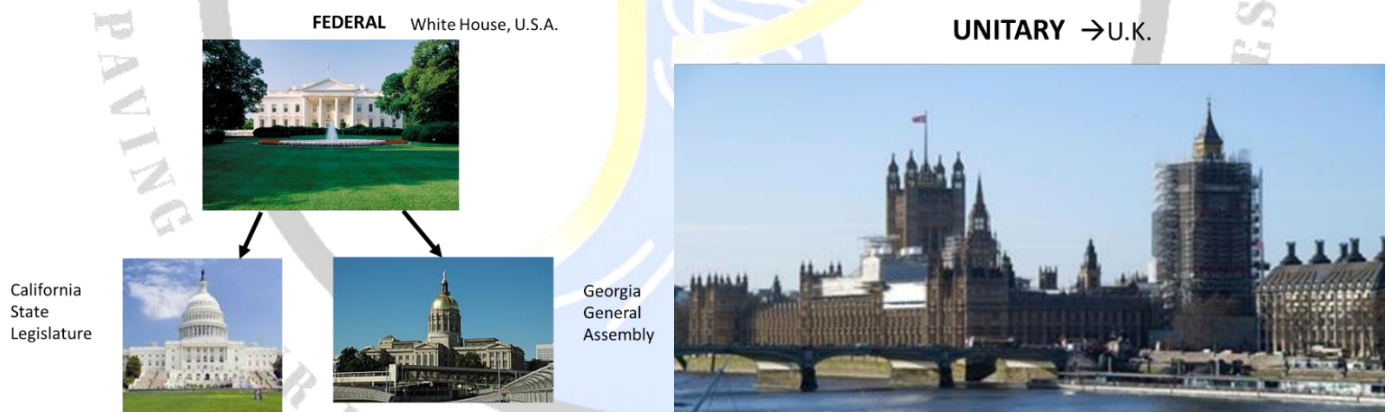
- According to **K. C. Wheare**, “In a federal Constitution the powers of government are divided between a government for the whole country and governments for parts of the country in such a way that each government is legally independent within its own sphere.”

Meaning and Concept of Federalism

- The term “**Federalism**” is derived from the **Latin** word “**foedus**”, which means “**agreement**.”
- **Professor Birch** defined “**Federalism** as the system of government in which there is a division of power between one general and several regional authorities each of them is independent in their respective areas.”
- Federalism is a **system of government** in which powers have been divided between **the Centre and its constituent parts such as States or provinces**.
- It is an **institutional mechanism** to accommodate two sets of politics:
 - (i) **One at the Centre or National level;** and
 - (ii) **Second at the Regional or Provincial level.**

How Federal System Is Different from Unitary System?

- **Sovereignty is constitutionally split between two territorial levels.**
- **Each level can act independently of the others in some areas.**



Essential Features of a Federation

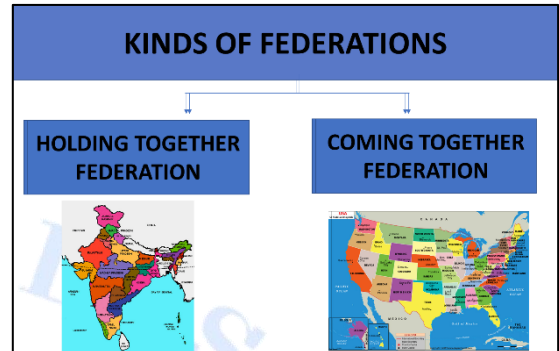
- 1. Existence of a dual government:**
 - In a federation we have **two sets of government:** Firstly, the federal or national or Central or the union government and **secondly**, the regional or State or provincial governments.
- 2. Division of powers:**
 - There is a division of powers between the Centre and the States in a federation. However, a study of different federal Constitutions reveals that there is no uniform approach to the division of power.
- 3. Written Constitution:**
 - This division of power is through a constitution which is written and supreme because of the fact that the division of power has to be done in a very precise manner.

4. Independent and impartial judiciary:

- The federal system envisages an independent and impartial judiciary. The judiciary acts as the guardian and protector of the Constitution. The final interpretation of the Constitution vests with the judiciary so as to maintain the balance between the Centre and States so that they function within the limits prescribed by the Constitution.
- In a federation system, there are **two seats of power** that are autonomous in their own spheres. There are **two kinds** of federations:

(i) **Holding Together Federation** – in this type of Federalism, powers are shared between various constituent parts to accommodate the diversity in the whole entity. Here, powers are generally tilted towards the Central authority. Examples: India, Spain, Belgium, etc.

(ii) **Coming Together Federation** – in this type of Federalism, independent States come together to form a larger unit. Here, States enjoy more autonomy as compared to the holding together kind of federation. Example: USA, Australia, Switzerland etc.



- In **S.R. Bommai v. Union of India, AIR 1994** it was held that:

“The essence of a federation is the existence of the Union and the States and the distribution of powers between them.”

- Justice Y.V. Chandrachud, in **State of Rajasthan v. Union of India, AIR 1977**, held that *“In a federation, whether classical or quasi-classical, the states are vitally interested in the definition of the power of the Federal Government on one hand and their own on the other. A dispute bearing upon the delineation of those powers is precisely the one in which the federating states, no less than the federal government itself, are interested. States, therefore, have the locus and the interest to contest and seek an adjudication of the claim set up by the union government.”*

Federal and Unitary Government

• Federal Government:

- In **State of West Bengal v. Union of India, AIR 1963 SC 1241**, it was said: *“a truly federal form of Government envisages a **contract or agreement between independent and sovereign units to surrender partially their authority in their common interest and vesting it in a Union and retaining the residue of the authority in the constituent units.**”* The federal system of the USA is the oldest and is considered as a standard of true Federalism.

• Unitary Government:

- A unitary form of Government, like Britain, which is governed as a **single entity wherein the Central Government is ultimately supreme**. The Central Government may create or abolish administrative divisions or sub-national units.

Federalism Around the World

USA

- There is a single enumeration of powers- The Constitution simply enumerates the powers specially assigned to the Federal Legislature
- The residuary powers were reserved for the States.

Australia

- Australian federation is modelled on the US federation.
- For example, residuary powers are with the states, Governors of the states are elected by the people and formally appointed by the British Queen.
- In Australia, there has been a growth of Cooperative Federalism.

Canada

- The division of powers between the federal government and the provincial governments is based on the principle of exhaustive distribution.
- Residuary powers lie with the center.

Evolution Of Federalism: Unitary Structure to Federal Structure

1. Government of India Act, 1858

- Highly centralized and unitary setup
- All India Civil Services were created

2. Government of India Act, 1919

- Diarchy [dual form of Government] was introduced at the provincial level, with some devolution of powers
- Bicameral Legislature
 - Upper House: Council of States
 - Lower House: Legislature Assembly

3. Government of India Act, 1935

- Ending the system of diarchy and a large measure of autonomy to provinces of British India
 - Establishment of "**Federal Court**"
 - Larger degree of responsible Provincial Government
 - More powers to the Provincial Government

4. Constitution of India

Features of Federalism in India

Below are the features of Federalism in India:

- **UNITARY FEATURES:** Unitary features of the Constitution are:
 - Alternation of the States' Boundaries by Parliament:**
 - The **fundamental of Federalism is the sovereignty of the States**. What appears to militate against the theory regarding the sovereignty of the States in the Constitution is the wide power with which the Parliament (i.e., federal) is invested to alter the boundaries of States, and even to extinguish the existence of a State without the consent of the concerned State (Articles 2, 3, 4).
 - Single Citizenship:**
 - The Constitution of India under Article 9 recognise the concept of single citizenship.
 - Centre's supremacy in Legislative Powers:**
 - In **State of West Bengal v. Union of India, AIR 1963 SC 1241**, 5 judges bench observed that "the basis of the distribution of powers between the Union and States is that only those powers and authorities which are concerned with the regulation of local problems are vested in the States and otherwise all power is given to the Centre."
 - Integrated judiciary:**
 - The Indian Constitution provides for an **independent and integrated judicial system**. The lower courts and the district courts are at the local level, High Courts at the State level and the Supreme Court is the apex court of the country.
 - Centre's paramountcy in Emergency:**
 - In an emergency, whether under **Articles 352, 356 or 360**, the Centre gets certain extraordinary powers under **Articles 353, 354, 357 and 360** to deal with the situations including the power to legislate on matters enumerated in the State List.
 - Amending power of Parliament:**
 - **Article 368** confers powers on Parliament to amend the Constitution, by a specified majority.

(g) State's dependency on the Centre in financial matters:

- **Article 275** provides for the giving of grants by the Union to certain States. Additionally, the appointment of the Finance Commission (Article 280), which is for making several recommendations including distribution of the net proceeds of taxes or duties (Article 270), is done by the Centre.

(h) Centre's dominance in some other matters

- Appointment of Governor: by the Centre (through the President);
 - Establishment of All India Services: **Article 312**;
 - Establishment of Inter-State Council: **Article 263**;
 - Appointment of the authority: **Article 307** (to regulate Freedom of Trade, Commerce and Intercourse);
 - Executive power of States governed by Union Laws (**Articles 256, 257, 258**).
- The **Sarkaria Commission** which studied Centre-State Relations made certain recommendations because there was no effective consultation between the Central government with the Chief Ministers of the States when the Governors are appointed, so it was recommended that the Governors should be some eminent person from some walk of life.
 - In **Rameshwar Prasad v. Union of India, AIR 1994**, popularly known as **Bihar Assembly Dissolution Case**, Supreme Court declared the dissolution of the Assembly as unconstitutional because President's Rule was imposed in Bihar after the elections as no political party was in the position to form the government but when there was a possibility of formation of government the Governor sent a report to the Centre that the Assembly should be dissolved.
 - In **B.P. Singhal v. Union of India, AIR 2010** the Supreme Court held that a Governor cannot be removed by the Central government on the grounds that he is not in sync with the policies of the Central government or the ideology of the ruling party.
 - Thus, this power to appoint Governors who would be the head of the respective States, is an important unitary feature of the Indian Constitution.

Federal Features

- Nonetheless having some minor exceptions, the federal principle is also prevalent in our Constitution and the principle of Federalism has not been watered down entirely due to the following reasons:

(a) Written Constitution:

- Federal system cannot exist without a written constitution.
- India has a written constitution; the U.K. does not have a written constitution and so it is not a federal country.
- The States in a federal setup, come together and enter into a treaty and the terms of the treaty are required to be reduced into writing in the form of a written constitution.
- Ours being a rigid Constitution, it cannot be amended by the national legislature unilaterally without the participation of the states.
- In India, federal provisions i.e., the provisions which deal with centre-state relations cannot be amended without it being ratified by at least ½ of the states.

(b) States are sovereign in their own sphere: (power of States to Legislate on the matters enlisted in the State List i.e., List II- 7th Schedule)

- The division of internal sovereignty by a distribution of legislative powers is an essential feature of Federalism which our Constitution possesses.

(c) Dual polity and Bicameralism:

- Centre and States have their own separate setups as per a written Constitution, which nullifies any possibility of overlapping and uncertainty. Moreover, the existence of representation of States in Rajya Sabha ensures the participation of States in the Federal Government.

(d) Federal character of the Constitution cannot be amended:

- In the case of **Kesavanada Bharti v. State of Kerala, AIR 1973** it was held that "**Federalism is a part of the Basic structure of the Constitution and therefore cannot be amended as under Article 368 of the Constitution of India.**"

(e) Division of powers:

- In India, the division of governmental powers is done into national and regional governments by the way of **3 lists – the Union, State and the Concurrent lists provided in the 7th Schedule to the Constitution.** Only the Centre deals with the issues mentioned in the Union List, States on the areas mentioned in the State List while the Concurrent List contains areas where both the Centre and the State can legislate.

(f) Independent Judiciary upholds the Federalism:

- Independent Judiciary upholds the prominent feature of **“federalism”** in India. As it was held in the case of **Kesavanada Bharti v. State of Kerala, AIR 1973** that “federalism is a part of the basic structure of the Constitution of India.
- In the case of **S.R. Bommai v. Union of India, AIR 1994 SC 1918**, it was observed that *“It would thus seem that the Indian Constitution has in it, not only features of a pragmatic federalism which, while distributing legislative powers and indicating the spheres of governmental powers of State and Central Governments, is overlaid by strongly ‘unitary’ features.”*
- The same was reiterated in the case **State (NCT of Delhi) v. Union of India (2018)**
- The above discussion, thus shows that the States have an independent Constitutional existence and they have as important a role to play in the political, social, educational, and cultural life of the people, as the Union.

Nature of Indian Federalism

- **Article 1 of the Constitution** states, **“India, that is Bharat, shall be a Union of States”.**
- According to **K.C. Wheare**, *“in practice, the Constitution of India is quasi-federal in nature and not strictly federal.”*
- In the words of **D.D. Basu**, *“the Constitution of India is neither purely federal nor unitary, but it is a combination of both.”*
- Throughout the Constitution, emphasis is laid on the fact that India is a single united nation. India is described as a ‘Union of States’ under **Article 1 of the Constitution** constituted into a sovereign, secular, socialist and democratic republic.
- In **State of West Bengal v. Union of India, AIR 1962** the apex court held that decentralization of authority in India was primarily to facilitate smooth governance of a large nation and therefore, it contains many centralizing features also. Thus, the Indian Constitution is not a ‘traditional federal constitution.’
- In **S.R. Bommai v. Union of India, AIR 1994**, **Justice Ahmadi** opined that the essence of the federation is the existence of distribution of power between the Union and the States. However, the absence of the terms ‘federal’ or ‘federation’ and the presence of unitary features such as residuary powers, single citizenship, integrated judiciary, etc. can help us conclude that the Constitution of India is more ‘quasi-federal’ than ‘federal’ or ‘unitary’.
- Finally, on a careful analysis of the federal and unitary features of the constitution, this aspect is not hard to miss that in every federal feature, there was an ultimate centralizing force which is existing.
- Therefore, it would not be wrong to conclude that the **Constitution of India is federal in structure and unitary in spirit i.e., it is quasi-federal in nature** as Indian Federalism is unique in nature and is tailored according to the specific needs of the country. Federalism is a basic feature of the Constitution of India in which the Union of India is permanent and indestructible.
- In the case of **State of West Bengal v. Union of India, AIR 1962**, the Supreme Court held that the Indian Constitution does not provide for absolute Federalism and the individual State has no power to amend the Constitution which is vested only in the parliament.

Co-Operative Federalism and Competitive Federalism

- The concept of federalism can be classified into two types based on the relationship between the Union Government and the State governments.
- They are:
 - (i) Co-operative Federalism, and
 - (ii) Competitive Federalism.

Meaning of Co-operative Federalism

- Cooperative federalism involves the Centre and State governments “cooperating with each other” for the overall development of the nation.
- It involves the participation of all the States in the creation and implementation of the national policies of the country. It is the horizontal relationship between the Centre and the States.
- The Supreme Court in **State of Rajasthan v. Union of India, AIR 1977 SC 1361** quoted **Granville Austin**, wherein it was said “the Indian federation is an example of cooperative Federalism. India has created a strong Central government; it has not made the State government weak.”

Provisions denoting Cooperative Federalism

- **Article 252** (provision for enabling Parliament to Legislate in the State area on the request of two or more States).
- **Article 307** (creation of agencies for the purpose of Articles 301 to 304).
- **Article 261** (full faith and credit clause).
- **Article 312** (establishment of All India Services on the recommendation of Rajya Sabha).
- **Article 263** (establishment of Inter-State Council).
- **Articles 275 and 282** (grants from the Union to States).
- **Zonal Councils** (State Reorganisation Act, 1956).
- In **State of Rajasthan v. Union of India (AIR 1977 SC 1361)** it was observed “Indian federation is an example of cooperative federalism. India has created a strong central government; it has not made the state government weak.” (Granville Austin)

Meaning of Competitive Federalism

- The term “**Competitive Federalism**” has not been defined in the Constitution of India. In **Competitive Federalism, States need to compete among themselves and also with the Centre for benefits.**
- **States compete with each other to attract funds and investment, which facilitates efficiency in administration and enhances developmental activities.**
- Union government devolves funds to the States on the basis of usage of previously allocated funds. To enhance the flow of funds and investments, the states work to ensure strong and stable governance and also create a favourable investment environment, because the investors prefer more developed States for investing their money.

Challenges of Cooperative and Competitive Federalism

- **Cooperative Federalism:**
 - The Indian government is called “**quasi-federal**” because it integrates the characteristics of both the Union and the Federal governments. The Centre exercises superior legislative powers through residuary and legislative precedence. These are the powers that the Union enjoys under the Constitution. This creates an atmosphere of mistrust between the Centre and the States.
 - Taxation powers between the Centre and the States are a contentious issue. Most of the disputes between the Centre and the State on taxation issues have been won by the former due to provisions of the constitution.
- **Competitive Federalism:**
 - Despite the increase in the States’ Central Tax revenue, the states are getting lesser revenue than anticipated. Thus, the funds for welfare schemes have come down. The competition between the States is increasing the gap between the developed and under-developed states. The economic growth and development of India are not uniform in nature. They differ from state to state. The economically weaker states must not be treated as equals to that the rich states. They must be given special attention by the Central government so that they can cooperate with those state governments for the overall development of the nation. One cannot assume that all states will perform uniformly by giving them financial independence.

Uncooperative Federalism

- The concept was introduced by the **Supreme Court** in **Union of India and Anr v. M/s Mohit Minerals, 2018**. The judgment authored by **Justice D.Y. Chandrachud** stated that:
- *“The functioning of Centre and States is not in practice always collaborative or cooperative, and political contestation between Centre and States is imperative. This is known as **Uncooperative Federalism**. It is permitted by the Constitution and furthers both the principles of democracy and federalism. The States which possess lesser power could use licenced dissent, e.g., dissent by using regulatory gaps or by civil disobedience such as passing a resolution against the decision of the Central Government as means of contestation.”*
- In **Union of India v. M/s Mohit Minerals, the Supreme Court** on May 19, 2022; on deciding on the petition relating to the levy of Integrated Goods and Services Tax (IGST), held that **the recommendations of the GST Council are not binding on the Centre and the States**.
- IGST is charged when the movement of goods and services from one state to another. For example, if goods are moved from Tamil Nadu to Kerala, IGST is levied on such goods. The revenue of IGST is shared by the State government and Central government as per the rates fixed by the authorities.
- **Equal powers for Centre and States on GST:** In the context of GST, the Court said that Article 246A of the Constitution confers equal power to the Parliament and the State Legislatures to legislate on GST.
- Though the Constitution has a **“centralising drift”** with a larger share of powers to the Union, there are provisions like **Article 246A** which give equal power to both the Centre and States.

Competitive Federalism

- States work to ensure strong and stable governance and also create a favourable investment environment. Investors prefer more developed States for investment.
- This idea gained significance post **Liberalisation, Privatisation and Globalisation (LPG)** in the **1990s**.
- In a free-market economy, the endowments of States, available resource base and their comparative advantages all foster a spirit of competition.
- Healthy competition strives to improve physical and social infrastructure within the State.
- Directives of the NITI Aayog ensure the implementation of competitive Federalism.
- Swachh Bharat Ranking System is another such tool to increase competitiveness among the states.

Coercive Federalism

- Coercive federalism is characterized by substantial growth in the power of the federal government relative to the states and by the ability of the federal government to override state powers and impose policies on the states.
- This is a form of governance that the United States has followed on some issues since the 1960s.
- The term refers to the predominant mode of federal-state relations, especially in policymaking. It is the tightest form of federal control.
- It involves a strong centralized national government which exercises strict control over its states through the use of mandates or orders, often without providing the funding to carry out those requirements.
- **Instances of Coercive Federalism in India:**
 - **Article 256** lays down that it shall be the duty of the State to exercise its executive power so as to ensure that due effect is given within the State to every Act of Parliament and to every existing law which applies in that State.
 - **Article 257** gives authority to the Union to issue directions to the States in certain matters, such as:
 - (i) The manner in which the executive power of the State shall be exercised, so as not to impede or abridge the executive power of the Union.
 - (ii) The construction and maintenance of means of communication, declared to be of national or military importance; and
 - (iii) Measures to be taken for the protection of railways within the State.

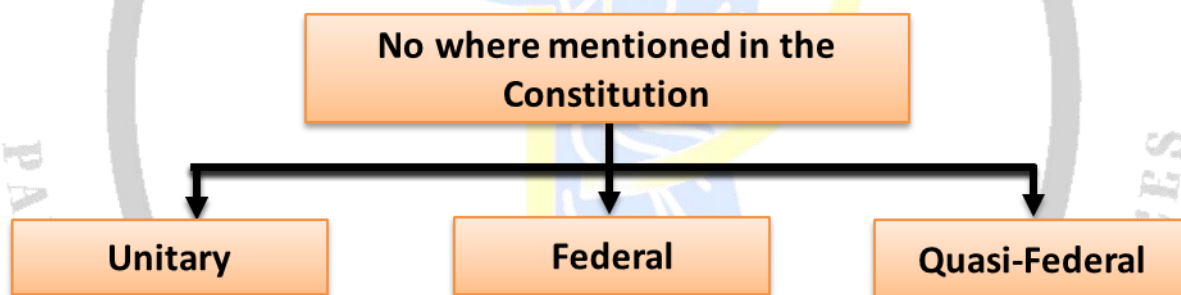
- **Recent Example:**
 - “The Agricultural Produce Market Committee laws of various states were developed to minimise the exploitation of farmers by middlemen and moneylenders. State control of sales at these centres ensured a modicum of fairness for the farmer.
 - Post-market globalisation, there is pressure from international multilateral institutions for trade and big local corporates to “*open up*” the sector and create an Indian Union-wide common agricultural market where big buyers can deal directly with farmers to the extent of even dictating what crop they should sow. Various state Agricultural Produce Market Committee laws prohibit this. Many state governments contend that the opening up of this sector will threaten food security and ensure total corporate control of the agricultural market.”
 - Here is the coercion ploy that the Union government is using to arm-twist states to change their Agricultural Produce Market Committee laws.
 - **However, on 29th November 2021, the Indian parliament passed the bill to repeal farm laws in the country.**

Novel Features of Indian Federalism

- Indian Federalism is very unique in nature and is said to be tailored to the peculiar needs of our country.
- Constitution of India, being inspired by the Constitution of various other countries of the world, incorporates in its fabric, unique features in order to suit the ever-changing and evolving dynamics of the society.
- According to **K.C. Wheare**, “*the framers of the Indian Constitution wanted to avoid the difficulties faced by the federal Constitutions of U.S.A, Canada and Australia and incorporate certain unique features in the working of the Indian Constitution.*”
- Federalism is a basic feature of the Constitution of India as held in the case of **S. R. Bommai v. Union of India, 1994**, wherein the Union of India is permanent and indestructible.
- The Centre and the States operate as a cooperating and coordinating institution having independence and ought to exercise their respective powers with mutual adjustment and accommodation, thereby promoting cooperative federalism. However, in order to counter any conflicts, Indian federalism is specifically devised with a strong Centre.
- Therefore, in practice the Constitution of India is **quasi-federal in nature and not strictly federal**. This makes the **Indian federation a union or a composite of a novel type in the words of D.D. Basu**.
- India is a member of the family of federations, of which the better-known members are the **U.S.A., Canada and Australia**. Indian Federalism has been designed after a close and careful study of the contemporary trends in these federations.
- Along with adopting some of the techniques developed in other federations for making the federal fabric viable, it also breaks much new ground and develops some novel expedients and techniques of its own, and is thus characterized by several distinctive features as compared with other federal countries.
- Instead of the word ‘**federation**’ the word ‘**Union**’ was deliberately selected by the Drafting Committees of the Constituent Assembly to indicate two things, as follows:
 - (a) that the Indian Union is not the result of an agreement by the states, and
 - (b) the component states; have no freedom to secede from it.
- Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source. Unlike, American federalism, which is placed in a tight mould of federalism, Indian **Federalism is sui-generis in the sense that, it can be both unitary as well as federal according to the time and circumstances**. For instance, in normal times, it is framed to work as a federal system. But in times of war, it is so designed as to make it work as though it was a unitary system.
- **India is a dual polity but has only a single citizenship**, viz. the Indian citizenship, and there is no separate State citizenship. This is in contrast to the American pattern of dual citizenship—the citizenship of the USA and that of each State. This creates the problem that a State may, in certain cases, discriminate in favour of its own citizens in some matters, such as the right to hold a public office, to vote, to obtain employment, or to secure licences for practising such professions as law or medicine in the State.

- The concept of one citizenship in India seeks to avoid some of these difficulties. By and large, an Indian enjoys practically the same political and civil rights of citizenship throughout the country no matter in which State he resides.
- While each State of the U.S.A. is free to draft its own Constitution covering matters within its competence, it is not so in India where the Constitution is a single frame which applies to the Centre as well as the States, from which neither can get out and within which each must work. India has achieved and seeks to maintain, uniformity in basic civil and criminal laws. In other federations, the duality of government produces a diversity of laws. This diversity may be all right up to a point of being an attempt to accommodate the laws to local needs and circumstances. But then, beyond a certain point, it may cause confusion among the people. It may also retard the movement of people from one place to another because something which is lawful in one State may be regarded as unlawful in another State. Such a situation has been largely avoided in India.
- Before 1935, India was governed as a unitary state, and a uniform system of laws had been established in many areas like civil procedure, criminal procedure, crimes, evidence, transfer of property, marriage, divorce, and inheritance. The Constitution places these subjects in the Concurrent List so that uniformity may be preserved in these laws which are at the basis of civil and corporate life without impairing the federal system.
- Taking into consideration, the practical needs of the country, the Constitution-makers designed for India a federal structure, not with a view to its conformity with some static or theoretical pattern, but to subserve the needs of a vast and diverse country like India.
- Furthermore, the uniqueness of our federation is that it gives the states a temporary identity because **Article 3** of the Constitution states that the Parliament may form a new state by law or may increase or diminish the area of any state. It also gives the power to the parliament to alter the boundaries or the name of any state. In this way, the Indian federal system differs from the typical systems of the world, specifically the U.S.A., where the States are independent and indestructible.
- Most important is the feature of Integrated and independent judiciary which stands out prominently in front of all the federations of the world.

How Is India Quasi-Federal?



- This interpretation of the Indian Federal Structure was done by analysing unique features of the Constitution.
- Primarily Federal but with strong Unitary characteristics.
- According to **K.C. Wheare** - *“In practice, the Constitution of India is quasi-federal in nature and not strictly federal.”*
- According to **Prof. D.D. Basu** - *“The Constitution of India is neither purely federal nor unitary, but it is a combination of both”.*
- The **Chairman of the Drafting Committee, Dr Ambedkar** – *“Our Constitution would be both unitary as well as federal according to the requirements of time and circumstances”.*



Leading Characters of a completely developed Federalism mentioned by Dicey

- Federalism is a system of government in which the power is divided between a central authority and various constituent units of the country. Usually, a federation has two levels of government. One is the government for the entire country which is usually responsible for a few subjects of common national interest. The others are governments at the level of provinces or states that look after much of the day-to-day administering of their state. Both these levels of government enjoy their power independently of the other.

- According to **A.V Dicey**, there are three leading characteristics of a fully developed Federalism. They are briefly discussed below:
 - (i) Distribution of powers among governmental bodies:** In a federation, there should be a clear division of powers among the central and state government, each with limited and coordinated powers so that the units and the centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of others. This requisite is evident in the Indian Constitution.
 - (ii) Supremacy of the constitution:** There should be the supremacy of the Constitution of the nation which is not the hand-made of either the Centre or of the States. In case of any violation of the provisions of the Constitutional provisions, the courts of law are there to ensure that the dignity of the Constitution is upheld at all costs.
 - (iii) Authority of the courts as the interpreters of the constitution:** In a federal constitution, the court of law has the authority to act as the interpreters of the constitution and its provisions. In India, the Constitution has provided for a Supreme Court and every effort has been made to see that the judiciary in India is independent and supreme. The Supreme Court of India can declare a law as unconstitutional or ultra vires if it contravenes any provisions of the Constitution.

Merits and demerits of a Federal Constitution

- Following are the outlined merits and demerits of a Federal Constitution:
 - (I) Merits:**
 1. It is suitable for nations having a diversity of races, religions, and languages.
 2. It effectively meets the local needs, with a better understanding of their issues and demands.
 3. It lessens the burden and responsibilities of the Central government,
 4. Small states have dignity in a federal form of government and have protection against Tyranny.
 5. State Governments Can be More Responsive to Citizen Needs.
 - (II) Demerits:**
 1. It is highly expensive due to the allocation of powers and budgets.
 2. There is always scope for conflict of the authority between the Union and State governments and between the national and local interests.
 3. It is inefficient because of the diversity of law and administration.

5. Preamble

“WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC** and to secure to all its citizens:

- **JUSTICE, social, economic and political;**
- **LIBERTY of thought, expression, belief, faith and worship;**

EQUALITY of status and of opportunity;

- And to promote among them all
- **FRATERNITY** assuring the **dignity of the individual** and the **unity and integrity of the Nation;**

IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”**

- Important amendments have been made in the Preamble by **Constitution (42nd Amendment) Act, 1976** as follows:
 - (i) “SOVEREIGN DEMOCRATIC REPUBLIC”** substituted by **“SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC”**; and
 - (ii) ‘Unity of the Nation’** substituted by **‘Unity and integrity of the Nation’**.
- These amendments were held to be valid in the **Minerva Mills Ltd. v. UOI, AIR 1980 SC 123**.

Object and Scope of the Preamble

- **“Preamble is the horoscope of the Constitution.” – K.M. Munshi**
- The object of the preamble to an Act is to set out the main objectives which the legislation is intended to achieve.
- **The Preamble expresses, “what we had thought or dreamt of for so long.”- Sir Alladi Krishnaswami.**
- The constitution makers gave the Preamble **“the place of pride.”**
- **Granville Austin** has described the **Indian Constitution as, first and foremost, a social document.**
- The Preamble of India **aims at establishing a better society** on the basis of **justice, liberty, equality, and fraternity.**
- The Preamble has sought to establish **what Mahatma Gandhi** described as, *the “India of my dreams”*.
- **Dr Ambedkar** provided constitutional guarantees and protections for a wide range of civil liberties for individual citizens, including **freedom of religion, the abolition of untouchability** and the **outlawing of all forms of discrimination.**
- Proper Function of a Preamble of any statute is to explain which are necessary to be explained before enactments contained in Act can be understood.
- Contains a recital of the facts or state of the law.
- It is the cornerstone of people’s edifice of their destiny and hope. Without any shadow of a doubt, the constitutional edifice is built on the pillars of these preambular promises.
- In **the Re Berubari Union, AIR 1969 SC 845**, the SC has said that it is **“a key to open the mind of the makers”**.
- Thus, the Preamble serves the following purpose:
 - (a) It indicates the **sources** from which the Constitution comes, viz., **the people of India.**
 - (b) It contains the **enacting clause which brings into force the Constitution.**
 - (c) It declares the great rights and freedoms which the people of India intended to **secure to all the citizens and the basic type of government and polity which was to be established.** (*Kesavananda Bharti v. State of Kerala, 1973*).
- Therefore, we can say that the preamble **contains the aims and objectives of the Indian Republic and enshrines the whole philosophy of the Indian Constitution in a nutshell.** It is a sort of value-laden introduction to the statute. The Constitution of India is **the fundamental law of the land.** The signature tune of the Constitution of India is the **socio-economic justice.**

Key terms of the Preamble

**WE THE PEOPLE
OF INDIA**

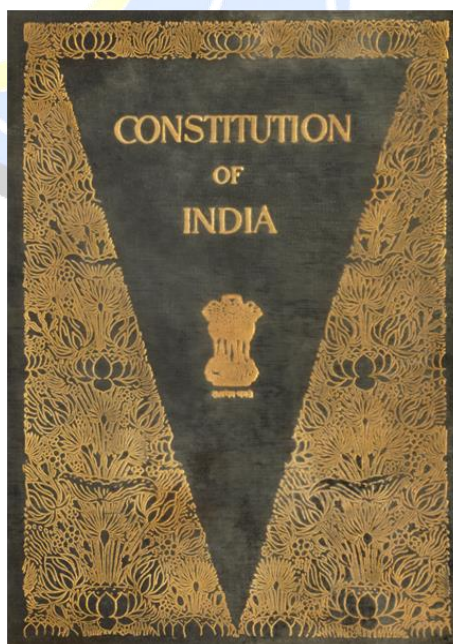
SOVEREIGN

SOCIALIST

SECULAR

DEMOCRATIC

REPUBLIC



JUSTICE

LIBERTY

EQUALITY

FRATERNITY

1. **We the people of India:** indicates the source i.e., **it is the people of India who have given themselves this Constitution**; given to themselves through the 'Constituent Assembly' [**AK. Gopalan v. State of Madras, AIR 1950 SC 27**].
 - 'We, the people of India', means in other words, 'we, the citizens of India', whether voters or non-voters.
 - There is a moral legitimacy to using the word, 'we the people' in the Preamble to the Constitution of India as it sets out the aims and aspirations of the people of India.
 - Suggests that sovereignty resides with the people and all the power flows from the people.
2. **Sovereign:** The word '**sovereign**' means that the State has the power to legislate on any subject in conformity with constitutional limitations, as held in **Synthetics & Chemicals Ltd. v. State of Uttar Pradesh, (1990) 1 SCC 109**.
 - Supreme power which is absolute and uncontrolled within its own sphere.
 - Has the power to legislate on any subject in conformity with Constitutional limitations.
 - India is free from any type of external control.
 - Can acquire foreign territory.
 - Cede a part of the territory in favour of a foreign State.
 - Reflection of the spirit of independence.
 - **Sovereignty means the independent authority of a State. It has two aspects –**
 - (a) **External (in international affairs); and**
 - (b) **Internal (in national affairs).**
 - **Sardar Vallabhbhai Patel made it clear that – 'India's status of Sovereign Independent Republic is, by no means, affected, because there is no question of allegiance to His Majesty the King who will merely remain a symbol of our association as he would of other members'.**
3. **Socialist:** The implication of the word '**socialistic**' introduced by the **42nd Amendment Act, 1976** is clearly to set up a '**vibrant throbbing socialist welfare society in place of a feudal exploited society.**'
 - The word **Socialistic** signifies that the ownership & control of the material resources of the community are distributed as best to sub-serve the common good & decentralization of material resources of wealth [**Article 39 (b) & (c)**]. This makes India a welfare state. The socialism envisaged in India does not mean the abolition of private property or nationalization of all means of production.
 - **Balances the collective and individual interests.**
 - Pandit Jawaharlal Nehru borrowed the concept of **Socialism from the Russians. It is the floodlight illuminating the path to be pursued by the state, now expressing the high ideals of socialism. The principal aim of a socialist state is to eliminate inequality, income, status and standards of life. (Articles 38 and 39 of the Directive Principles of State Policy)**
4. **Secularism:** The State **has no official religion**. Secularism pervades its provisions which give **full opportunity to all persons to profess, practice and propagate the religion of their choice**.
 - **Introduced by the 42nd Amendment Act, 1976.**
 - **Dr B.R. Ambedkar stated that "a secular State means that the Parliament should not be competent to impose any particular religion on the rest of the people."**
 - In **S.R. Bommai v. Union of India, AIR 1994 SC 2081**, it was held that "*secularism is part of fundamental law and an inalienable segment of the basic structure of the Constitution which can neither be abridged nor defaced. The word "secular" has not been defined in the Constitution because it is a very elastic term not capable of a precise definition.*"
 - **Pandit Laxmi Kanta Maitra– "in the affairs of the State, the preferring of any particular religion will not be taken into consideration at all".**
 - In **Indian Young Lawyers Association v. State of Kerala (2018) Popularly known as "Sabarimala Judgment"**, it was observed that "*Secularism treats all religions on an even platform and allows to each individual the fullest liberty to believe or not to believe. The Constitution is meant as much for the agnostic as it is for the worshipper. It values and protects the conscience of the atheist. The founding faith upon which the Constitution is based is the belief that it is in the dignity of each individual that the pursuit of happiness is founded.*"

- In **Smt. Resham And Another v. State of Karnataka and Others (2022)**, the Karnataka High Court while upholding the ban on wearing hijab in government colleges, observed that the prescription of a uniform for all students will promote a sense of “constitutional secularism” within its institution. **The prescription of uniforms is only a reasonable restriction constitutionally permissible which the students cannot object to.**
- 5. Democratic:** Adult universal franchise and free and fair elections under the direct supervision and control of the Election Commission of India is the hallmark of our democratic system of elective Government.
- A form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system.
 - Political participation of the people in running the administration of the government. Equal right of participation in the polity.
- 6. Republic:** The term Republic implies an elected head of the state. In **R.C. Poudyal v. Union of India, AIR 1993 SC 1804** it was held, a ‘**democratic republic**’ refers to the political participation of the people in running the administration of the Government. Each citizen is assured of the right of equal participation in the polity.
- The President of India is elected by an electoral college consisting of the elected members of the Legislative Assemblies of the States.
 - The process and manner of election as incorporated in Article 55 is commonly known as a proportionate representation by a single transferrable vote.
- 7. Justice:** The justice delivery system is based on **the Rule of Law** i.e., there is the supremacy of law and nobody is above law. **Justice is not restricted to any particular form or section but covers all aspects of life social, economic and political to the citizens of India which are given as follows -**
- (a) **Social justice** leads to the list of ideals. Discrimination on any ground such as caste, race, religion, sex, rich or poor is illegal.
 - (b) **Economic justice** provides **equal opportunities in employment to one and all**. Pandit Jawaharlal Nehru said that **“The first task of this assembly is to free India through a constitution, to feed the starving people, to clothes the naked masses and to give every Indian the fullest opportunity to his capacity”**.
 - (c) **Political justice** ensures **free and fair participation of all citizens in the political process of the country, without any distinction of caste, race, religion, sex, place of birth, rich or poor etc.** through the exercise of political rights like the right to vote, right to contest elections, right to hold public office etc.
- Justice has been embodied in the Directive Principles in Article 39A, Part-IV
 - Unenforceable unlike the Natural Justice which flows through the entire fabric of fundamental rights in Part-III incorporated under some of the Articles such as **14, 19, 20, 21** and **22**, which are enforceable.
- 8. Liberty:** Liberty as promised in the preamble has been given to the people **in the form of fundamental rights. It is a positive right to liberty of thought, expression, belief, faith and worship. It is the State which is restrained from interfering with freedom of life and liberty except in accordance with the procedure established by law...** **Kartar Singh v. State of Punjab, (1994) 3 SCC 569.**
- 9. Equality of Status and Opportunity:** Equality does not mean all human beings are equal mentally and physically. It means equality of status and opportunity. Any type of discrimination is prohibited. It is the equality of ‘status and opportunity’ as enshrined in the **Declaration of the Rights of Man and Citizen in the French Revolution** that our Constitution professes to offer to the citizens by the Preamble. This objective has been made clear in the body of the Constitution under Articles 15, 16, 17 and 18.
- In **Maneka Gandhi v. UOI (1978)** it was held that **Articles 14, 19 and 21 (Right to Equality, Various Freedoms including freedom of expression etc., and Right to Life and Personal Liberty) are embodied as Fundamental Rights in Part-III.**
 - As held in **Kartar Singh v. State of Punjab** ‘The Indian Constitution not only guarantees the ‘liberty and equality’ envisaged in the Preamble as Fundamental Rights in Part-III, but also empowers the Judiciary to enforce them against all State actions, including legislative.
 - In **Indra Sawhney v. UOI, AIR 1993 SC 477**, it has been held that **“Equality is one of the magnificent cornerstones of Indian Democracy and equality status permeates the basic structure of the Constitution.**
 - In **NALSA v. UOI (2013)**, it was held that **every person is entitled to equality including the transgender community.**

- 10. Fraternity: The word fraternity ensures the dignity of the individual and the unity and integrity of the nation.** It means, a **common feeling of brotherhood**. National unity can be built through the spirit of fraternity.
- The intention of the founding fathers of our constitution was to inculcate the feeling in the heart of every Indian that, **“he/she is the child of the soil of his or her motherland”**.
 - Some provisions of the Constitution of India that are indicative of fraternity are **Articles 5** [Common Citizenship] **and 19(1)(a) to (g)** [The right of citizens to move freely throughout the territory of India to reside].
 - Article 51A(e) imposes on every citizen the Fundamental Duty 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.
- 11. Dignity of the individual:** A fraternity cannot be installed unless the dignity of each of the members is maintained. **The Supreme Court in L.I.C. v. Consumer Centre, AIR 1995 SC 1811, has read the Preamble with Article 21 to come to the conclusion that the right to dignity is a fundamental right.**
- A number of Directives have been included in **Part IV of the Constitution** to ensure dignity to each individual under Article 39(a), Article 42, and Article 43.
 - The State shall, in particular, direct its policy towards securing all citizens, men and women equally, have the *right to an adequate means of livelihood*. **[Article 39(a)]**
 - *“Just and humane conditions of work”* **(Article 42)**.
 - *Decent standard of life and full employment of leisure and social and cultural opportunities.* **(Article 43)**.
- 12. Unity and integrity of the Nation: ‘Unity in diversity’ has been the hall mark of Indian nationalism.** It is intended to put an end to separatist tendencies or disruptive forces. The Preamble points out the prime need for unity and integrity (added by the 42nd Amendment) of the Nation.
- **Article 51-A(c) which deals with the ‘Fundamental Duties’ in Part-IV A of the Constitution says that it shall be the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.**
 - The Supreme Court has said that every citizen has the right to fly the national flag subject to restrictions specified in the Article **[Union of India v. Naveen Jindal, AIR 2004 SC 1559]**.

Preamble: A part of the Constitution of India

- The preamble sets out the purpose, aims and objectives of the Constitution and the aspirations of the people of India.
- The Preamble was adopted by the Constituent Assembly after the draft of the Constitution of India was approved and it was adopted by the same procedure as that of the Constitution.
- The preamble is based on the Objectives Resolution, which was drafted and moved in the Constituent Assembly by Jawaharlal Nehru on 13 December 1946 and adopted by Constituent Assembly on 22 January 1947.
- The simple reason was that the makers of the Constitution wanted to ensure that the basic philosophy of the Constitution should be contained and expressed in few words in the Preamble.
- **In Re: The Berubari Union and Exchange of Enclaves Special Ref. No. 1 of 1959**, Supreme Court held that although the Preamble occupies an important place and is a key to opening the minds of the makers, but it is not a part of the Constitution of India.
- However, in the case of **Keshavananda Bharati v. State of Kerala and Anr, 1973 4 SCC 225**, the Supreme Court held that **“Preamble is the part of the Constitution and all importance is attested to Preamble while interpreting the Constitution.”**
- **Justice Sikri in the Keshavananda Bharati case** observed that **“Every provision of the Constitution including the Preamble can be amended provided that the basic foundation and the basic structure of the Constitution remain intact.”**
- **Though Preamble does not confer any rights or any duties either on the state or the individuals.**
- **It is very much part of the constitution and subject to the amendment but with the restriction of the basic structure doctrine.**
- **Granville Austin describes the Indian constitution as “first and foremost a social document”.**
- **Supreme Court in Minerva Mills Case in 1980** held that whatever changes have been brought about through this amendment only highlight the provisions which are already embodied in the text of the Constitution, thus not affecting or altering the basic structure.

6. Previous Years Questions (Judiciary)

Constitutionalism and Constitutional Conventions

- Q1. What is 'Constitutionalism'? Explain the said concept both in its negative and positive aspects in the context of India's tryst with 'Constitutionalism' and 'Constitutional Governance'.
- Q2. When did the Constitution of India come into force?
- Q3. What extent did the Government of India Act, 1935 contribute to the present Constitution of India? Discuss.
- Q4. 'It has been impossible to resist the growth of 'Conventions of Constitution' in India though the Constitution is a highly comprehensive document which presents every matter in utmost details.' Discuss.

Federalism

- Q1. Discuss briefly the three leading characters of a completely developed Federalism mentioned by Dicey and point out the merits and demerits of a Federal Constitution.
- Q2. It has been observed that since the expression "quasi-federal" is liable to be used as a hide out for lurking federalism, it is appropriate that the fact that the Constitution of India is not federal should be stated and acknowledged in those unambiguous, simple and accurate words. Develop arguments for this view and refute them, giving at the end of your answer own independent views in the matter.
- Q3. "The Indian Constitution is federal in form but unitary in substance". Comment.

Preamble

- Q1. Write short note on Preamble to the Constitution of India.
- Q2. What are the major commitments of the Constitution of India as incorporated in its preamble?
- Q3. Discuss the secular character of the Indian Constitution.

