

CONSTITUTION OF INDIA FOR MADHYA PRADESH JUDICIAL SERVICES

MODULE 1 & 2 : INTRODUCTION, DISTINCTIVE FEATURES OF CONSTITUTION OF INDIA INCLUDING PREAMBLE AND CITIZENSHIP

When did the constitution of India come into force?

Most of the colonial India was under British rule from 1857 to 1947. From 1947 to 1950, the same legislation continued to be implemented as India was a dominion of Britain for these three years.

The Constitution was adopted on 26 November 1949.

The constitution of India repealed the Indian Independence Act 1947 and Government of India Act 1935 when it became effective on 26 January 1950. India ceased to be a dominion of the British Crown and became a sovereign democratic republic with the constitution. Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, 393, and 394 of the constitution came into force on 26 November 1949, and the remaining articles became effective on 26 January 1950.

WHAT IS CONSTITUTION : A Constitution is a compact document that comprises a number of articles about the state, specifying how the state is to be constituted and what norms it should follow. It is concerned with two main aspects the relation between the different levels of government and between the government and the citizens.

5 ESSENTIAL FUNCTIONS OF ANY CONSTITUTION

1. Constitution is the BASIC/FUNDAMENTAL LAW of the land.
2. Constitution provides ORGANIZATIONAL FRAMEWORK for the governments. It defines the functions legislature, executive and judiciary, their inter-relationship, restrictions on their authority etc.
3. Constitution explains the DIFFERENT LEVELS of the Government and its NATURE (federal, confederal or unitary) and their respective powers.
4. Constitution reflects the IDEOLOGY and PHILOSOPHY of a nation state.
5. Constitution provides the SYSTEM OF AMENDMENT. As the system may collapse, if it did not to change according to changing times.

CONCEPT OF CONSTITUTIONALISM

Constitutionalism means LIMITED GOVT ; it means that powers of executive & legislature are limited & not - uncontrolled or arbitrary.

IS THIS CONCEPT APPLICABLE IN INDIA ?

- Constitutionalism is the *primary edifice* on which the Indian democracy stands.
- Modern constitutionalism, to which Germany is a major contributor too, especially in terms of the *basic structure doctrine*, specifies that powers vested in any organ of the State have to be exercised within the four corners of the Constitution, and further that organs created by a constitution cannot change the identity of the constitution itself.

KEY PRINCIPLES FROM JUDICIAL DECISIONS : Constitution of India is the Constitutional Law incorporating the Constitutionalism.¹

- The constitutionalism or constitutional system of Government abhors absolutism.²
- No organ of the state may arrogate to itself powers beyond what is specified in the Constitution.³
- Protects FRs.
- Ensures the Doctrine of Separation of powers with check + balances.

DISTINCTIVE FEATURES OF CONSTITUTION OF INDIA

A. **INTRODUCTION:** Constituent Assembly declared in the preamble that : "WE THE PEOPLE OF INDIA " – to secure to every citizen justice, social, economic and political, equality of status and of opportunity and to promote among them fraternity and dignity of the individual in a united and integrated Bharat.

- Chapter III of Fundamental Rights – secures political justice
- Chapter IV of the Directive Principles – accords socio-economic justice
- 42nd Amendment : Wanted to achieve **egalitarian social order** in *Sovereign Democratic Republic* which later was amended by Constitution 42nd (Amendment) Act as *Sovereign Socialist Secular Democratic Republic*

B. FEATURES:

1) MODERN CONSTITUTION : As we have drafted in the constitution in Mid-20th century, by seeing the various constitutional processes operating in different countries of the world, we are able to achieve a modern, workable constitution suited to the political, social and economic conditions in India. It is not just carbon copy of other Constitutions, but various provisions strikes new paths, new approaches and patterns, in several directions. Eg : Centre-State relationship

¹ India has a written Constitution with constitutionalism firmly embedded in it. *M. Gopalan vs State Of Kerala 2002*.

² Maru Ram v. Union of India & Ors. [(1981) 1 SCC 107]

³ I.R.Coelho V. State of Tamil Nadu AIR 2007 SC 861

- 2) **WRITTEN CONSTITUTION :** India's Constitution is a lengthy, elaborate and detailed document. Originally it consisted of 395 Articles arranged under 22 Parts and eight Schedules. Written constitution doesn't mean that a country will have constitutionalism. Say for an example U.K.⁴ Constitution of U.S.A. contains just 7 Articles, that of Australia 128 and that of Canada 47 Articles. The 395 Articles of Indian Constitution were divided into 22 parts.

WHY IS IT VOLUMINOUS ?

1. It deals with Central + State Government unlike U.S. Constitution & also detailed norms in Centre-State relationship
2. Unwritten conventions finds itself in COI.
3. To eliminate mutual distrust + bring in harmony- detailed provisions on Fundamental Rights, safeguards to minorities, Scheduled Tribes, Scheduled Castes and Backward Classes
4. To ensure the social welfare, DPSP is included in Part IV.
5. Not only the fundamental principles of governance but also many Administrative Details : as the provisions regarding citizenship, official language, government services, electoral machinery, etc

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What are the major commitments of the Constitution of India as incorporated in Preamble? MPJS 2014

Write a short note on Preamble. MPJS 2012.

PREAMBLE

MEMORIZE THE WAY IT IS. VERY IMPORTANT FOR PRELIMS & MAINS JUDICIAL SERVICES

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

⁴ The British Government does not possess a document called 'The Royal Constitution'. There are number of different documents that are part of the body of what is referred to as British Constitutional Law, including: 1. Magna Carta 1215 2. Petition of Right of 1628 3. Bill of Rights 1689 4. The Act of Settlement 1701 and 5. Certain special Acts of Parliament.

the Nation];

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

Preamble reflects the philosophy of our constitution. Ours was based on objective resolution adopted by J.Nehru.

PHILOSOPHY OF OUR CONSTITUTION : The fundamentals of the Indian Constitution are contained in the Preamble which secures its citizens, Justice, social, economic and political, Liberty of thought, expression, belief, faith and worship, Equality of status and opportunity, and to promote among them all Fraternity assuring. These objectives are achieved through various provisions of COI.

42nd Amendment (1976) and the Preamble.-

The amendment has inserted three new words in the Preamble, i.e., Secularism, Socialism and Integrity. These concepts were already implicit in the Constitution. The amendment merely spells out clearly these concepts in the Preamble.

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WHY PREAMBLE :

A. SOURCE OF THE CONSTITUTION : Preamble indicates the source of the Constitution. Ours – People of India.⁵ It is essential to note that the ultimate source for the validity of, and the sanction behind the Constitution is the will of the people; that the Constitution has not been imposed on them by any external authority, but is the handiwork of the Indians themselves.⁶ Their will is imposed through duly elected representative in the various union and states legislatures.⁷

B. ENACTING CLAUSE : It has the enacting clause, which brings the COI into force.

C. FR + DPSP + FD : It imposes Fundamental rights and F.D. on Citizens, DPSP on states.

D. TYPE OF POLITY : It indicates the type of government and polity to be established.

E. It delineates the grand objectives and socio-economic goals to be achieve. (Refer Philosophy) : “The Constitution envisions to establish an egalitarian social order rendering to every citizen, social, economic and political justice in a social and economic democracy of the Bharat Republic.” *Samatha v. State of Andhra Pradesh, AIR 1997 SC at 3326 : (1997) 8 SCC 191.*

⁵ The words in the Preamble, “We the people of India...in our Constituent Assembly...do hereby adopt, enact and give to ourselves this Constitution : This is modelled after U.S., Ireland etc..

⁶ *Motilal v Uttar Pradesh Government* AIR 1951 ALL 257 (Paras 185, 188) (FB) affirmed in *State of W.B. V Anwar Ali* AIR 1952 SC 75.

⁷ *Ram Nandan v State* AIR 1959 ALL 101.

WHETHER PREAMBLE IS PART OF A CONSTITUTION OR NOT ?

CASE LAW 1 #Berubari case (1960) 3 S.C.R. 250 = Preamble is not a part of the Constitution'

CASE LAW 2 #Kesavananda v. State of Kerala (1973) = Preamble is a part of the Constitution.

SIKRI, C.J., has observed "It seems to me that the Preamble to our Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble."

SHELAT and GROVER, J.J., have observed in the same case: "Our Court has consistently looked to the Preamble for guidance and given it a transcendental position while interpreting the Constitution or other laws"

NATURE OF POLITY : SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC**SOVEREIGN**

- A country cannot have its own constitution without being sovereign . It means absolute independence, i.e., a government which is not controlled by any other power : internal or external.
- Sovereign = India is subject to no external authority and that the state has power to legislate on any subject in conformity with constitutional limitations. It can frame its policies. India is free to formulate its own foreign policy.

SOCIALIST

Social justice so as to attain substantial degree of social, economic and political equality. Social justice and equality are complimentary to each other. (*Air India Statutory Corp. v. United labour Union, AIR 1997 SC 645 : (1997) 9 SCC 377*)

ORIGIN : Not originally present in the Preamble = was added to the Preamble by the 42nd Amendment of the Constitution in 1976. The word '*Socialism*' had been used in the context of **economic planning**. It signifies major role in the economy. It also means commitment to attain ideals like removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work.

DEFINTION AND INTERPRERTATIONS GIVEN BY SC :

- a) Socialism is “Establishment of the egalitarian social order through rule of law is the basic structure of the Constitution”.⁸
- b) It held that the basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others are on economic side envisaged economic equality and equitable distribution of income.⁹
- c) Court also considered the effect of the word ‘socialist’ in the Preamble. The Court held that addition of the word “Socialist” might enable the courts to lean more in favor of nationalization and state ownership of an industry.¹⁰
- d) By reading the word ‘socialist’ in the Preamble with the Fundamental Rights contained in Arts. 14 and 16, the Supreme Court has deduced the Fundamental Right to *equal pay for equal work and compassionate appointment*.¹¹

Does not mean : abolition of private ownership, total exclusion of private enterprise and complete state ownership of material resources of the Nation. Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity. India is a mixed Economy : where both public and private sectors co-exist side by side. Anyway latter are rigorously controlled by the government. *Art. 19(1)(g)* and *Art. 301*.

SECULARISM

DEFINITION OF SECULARISM : *D.E. Smith's* definition of secular state is as following: ‘the secular state is a state that guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion, nor seeks either to promote or interfere with religion.’¹²

3 ELEMENTS OF SECULAR STATE : According to him, secular state involves three distinct but interrelated sets of relationships concerning the state, religion, and the individual. The three sets of relations are: *religion and the individual (freedom of religion)*, *the state and the individual (citizenship)*, *the state and religion (separation of state and religion)*. In the other words, according to Chatterjee, three principles are usually mentioned in the liberal-democratic doctrine on secular state: *liberty, equality and neutrality*.

INDIAN SECULARISM: Secularism is held to be basic feature under Indian constitution.¹³

- ‘*India is neither religious, nor irreligious nor anti-religious*’. It implies that in India there will be no ‘State’ religion – the ‘State’ will not support any particular religion out of public fund.

⁸ *Samatha v. State of Andhra Pradesh*

⁹ *D.S. Nakara v. Union of India*

¹⁰ *Excel Wear v. Union of India*

¹¹ *Balbir Kaur v. Steel Authority of India*, AIR 2000 SC 1596 : (2000) 6 SCC 493

¹² D. E. Smith, “India as a Secular State,” in *Secularism and its Critics*, ed. Rajeev Bhargava (New Delhi: Oxford University Press, 2010), 177.

¹³ *Kesavananda v. State of Kerala*, AIR 1973 SC 1461 : (1973) 4 SCC 225; *S.R. Bommai v. Union of India*, AIR 1994 SC 1918.

- This has two implications, a) every individual is free to believe in, and practice, any religion he/ she belongs to, and, b) State will not discriminate against any individual or group on the basis of religion.

Secularism opposes two things : A. *Inter-religious domination* B. *Intra-Religious Domination*.

India is a country of religions = with multifarious religious groups in the country but, in spite of this, the Constitution stands for a secular state of India. It means that the State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic State.

- The state does not identify itself with, or favour, any particular religion. Thus, there is no official religion in India. There is no state recognised church or religion.

MEANING OF SECULARISM :

- Secularism has a positive meaning that is developing, understanding and respect towards different religions.¹⁴
- There is no mysticism in the secular character of the State. Secularism is not anti-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion.¹⁵
- Although the words 'SECULAR STATE' are not expressly mentioned in the Constitution but there can be no doubt that Constitution-makers wanted to establish such a state" and accordingly Articles 25 to 28 have been included in the Constitution.¹⁶

MEANING OF RELIGION: Religion is a matter of faith with individuals or communities and it is not necessarily theistic.¹⁷ The freedom of religion guaranteed under Indian Constitution is not confined to its citizen but extends to all persons including alien.¹⁸

THREE PRINCIPLES OF INDIAN SECULARISM :

1. **LIBERTY :** It implies a right of freedom of religion and even religious denomination or any section thereof. It gives to citizens the profession, practice of their respective religion and their propagation, to manage religious affairs, to payment of taxes for promotion of any particular religion, to attendance at religious instruction or religious worship in certain educational institutions, including their 'right ... to establish and administer educational institutions. These are not absolute and subject to reasonable restrictions.
2. **EQUALITY :** It forbids the state from discriminating against any citizen on the basis of religion or caste, except positive discrimination when it makes special provisions for the advancement of socially and educationally backward classes or for Scheduled Castes and

¹⁴ Aruna Roy v. Union of India.

¹⁵ Ahmedabad St. Xaviers College V State of Gujarat AIR 1974 SC 1389 (PARA 75)

¹⁶ St. Xaviers College v. State of Gujarat

¹⁷ Commissioner H.R.E v. L.T. Swammiar 1954 AIR 282.

¹⁸ Ratilal Panchand V. State of Bombay 1954 AIR 388, 1954 SCR 1035.

Scheduled Tribes. Therefore, all laws passed by the state shall be equally applicable to all Indian citizens, irrespective of the religion to which they belong.

3. SEPARATION AND RELIGION : The third principle of the secular state, as mentioned, was the separation of state and religion. It has also been recognized in the Indian Constitution, and the state of India proclaimed itself as secular through the 42nd amendment in 1976.

WHY SECULARISM WAS NOT INCLUDED IN CONSTITUTION OF INDIA ORIGINALLY?¹⁹

Ambedkar remained silent on this issue. But he firmly opposed the entry of the word 'socialism' on the ground that future generations should have the freedom to choose their economic path. But His writings²⁰ would indicate a particular brand of secularism, very distinct from the Nehruvian or the Gandhian one. His secularism is about human dignity, and his idea of secular political culture is to contribute to the emancipation of human beings from all kinds of man-made suffering inflicted in the name of religion.

DEMOCRATIC, REPUBLIC

Democratic = India has a responsible and parliamentary form of government which is accountable to an elected legislature. Democracy is a basic feature #*S.R. Bommai v. Union of India*, AIR 1994 SC 1918 : (1994) 3 SCC 1. The democratic principles : provisions of universal adult franchise, elections, fundamental rights, and responsible government.

'Republic' = the head of the state is not a hereditary monarch, but an elected functionary.

LIBERTY

In *Kesavananda Bharati v. State of Kerala* : *Jaganmohan Reddy, J.*, stated clearly that "Liberty of thought, expression, belief, faith and worship" could not be amended at any cost as they are part of the **basic features of the Constitution**.

S.S. Bola v B.D. Sardana (1997) 8 SCC 522 : The Supreme Court has emphasized the importance of liberty for progress, and has observed that the judiciary must act as guardians of the liberties of the people, protecting them against executive, or even legislative arbitrariness or despotism.

Liberty, Equality and Fraternity are not to be treated as separate entities but a trinity. They form a union in that and to divorce one from the other is to defeat the very purpose of Democracy.

FEDERALISM

¹⁹ "Why diversity needs secularism", The Hindu , November 02, 2016.

²⁰ "I was born Hindu, but won't die as one" or "Hinduism is not a religion."

TRACING THE ORIGIN OF FEDERALISM :

1930	Indian Statutory commission/ Simon Commission recommended the evolution of India into “a federation of self-governing units
1930-32	1 ST Round Table Conference : representatives of Princely states declared that they would join an “All India federation with a self-governing British India”.
1935	GOI Act - was ready for making India to become a federation with 11 Governor’s Provinces and 650 Native States, who supposed to have fifty per cent seats in Council of States. It did not materialise though.
1946	Cabinet Mission Plan : contemplated the division of the country into three Zones, Zone A, Zone B and Zone C, based on the concentration of Hindus and Muslims.
1947	Partition Scheme of Lord Mount batten insisted the major parties to agree for partition to have the federation with a strong center, instead of weak center as contemplated in Cabinet Mission Plan.

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ESSENTIALS OF FEDERALISM :

1. . The Constitution must be written	4. There must be division or distribution of powers between the Union or Federal Government and the various States or Provinces
2. It must be rigid	
3. It must be supreme law of the land	5. There must be an independent and impartial judiciary to interpret the Constitution and the Laws

FEDERAL FEATURES UNDER CONSTITUTION OF INDIA

1. Distribution of powers among the <i>centre and states</i> with matters of national importance being entrusted with the Union, and matters of local concern remain with the States.
2. Every individual or the institution or system derives power from the Constitution, which is supreme.
3. The written constitution is another feature of federation. Foundations of federation lies in the complicated terms reduced into writing.

4. Constitution is a supreme law of the land. Amending it is not impossible, but difficult.

5. To maintain the division of powers between two levels of the Government, an *independent and impartial authority* above all the ordinary bodies, the judiciary is established. The judiciary has the final power of interpretation of and guarding the provisions of the Constitution.

UNITARY FEATURES UNDER CONSTITUTION OF INDIA

1. The union appoints its agents as Governors for the states, in whose name the entire administration runs. They are answerable to the President.

2. Parliament has power to legislate for the states in national interests.

3. The Union decides the fate of the states. Parliament can form new states and alter boundaries of existing states.

4. The Constitution gives more powers to the Union during emergencies. There are three types of emergencies. 1. Emergency caused by war or external aggression, 2. Emergency caused by failure or constitutional machinery of the states.

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INDIA IS NOT A TRUE FEDERATION

In *West Bengal v. Union of India* AIR 1963 SC 1241 the Supreme Court observed: "The Indian Union is not a true federation"

1. Instead of the word "federation" the word "Union" was deliberately selected by the Drafting Committees of the Constituent Assembly to indicate two things viz. (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.
2. Indian federalism = is No strict / orthodox/ Conventional/ Simple federalism.
3. After a close and careful study of the contemporary trends in the family of federations, of which the better known members are the *U.S.A., Canada and Australia* = Indian federal scheme while incorporating the advantages of a federal structure, yet seeks to mitigate some of its *usual weaknesses of rigidity and legalism*. For example : U.S. Constitution Does not have 3 lists. Just one simple and exhaustive list and rest(residuary powers) is with Federal Units.
4. In *State of Rajasthan v. Union of India* (AIR 1977 SC 1361) it was held that states could not assert any right based on the supposed federal character of the Constitution.

Supreme Court said: "The Constitution is amphibian in sense that it can move either on the federal or the unitary plane. When action is taken under Article 356 the movement is on the unitary plane."

NOVEL PROVISIONS WITH RESPECT TO INDIAN CONSTITUTION ON FEDERALISM

1. TRANSFORMATION: During emergency it can transform from federal to unitary.
2. DUAL POLITY, BUT SINGLE CITIZENSHIP : 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 concept of one citizenship in India seeks to avoid the problem of discrimination 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. 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.
3. UNIFORMITY IN LAW : 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, 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.

PART I : UNION AND ITS TERRITORY (ARTICLE 1-4)

Article 1. Name and territory of the Union.

- (1) India, that is Bharat, shall be a Union of States.
- (2) The States and the territories thereof shall be as specified in the First Schedule.
- (3) The territory of India shall comprise— (a) the territories of the States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired.

- Article 1 of the Constitution declares that the sovereign democratic Republic of India '*shall be the **Union of states***'
- The name of the Union is **India, that is Bharat.**
- The members of the Union at present are the States specified in the First Schedule.
- The territory of India falls under three categories : (1) State territories; (2) Union territories, (3) Territories which may be acquired by Government of India.

7TH AMENDMENT : Before the Constitution **(7th Amendment) Act, 1956**, the Union consisted of States which were classified into four main categories, Parts A, B, C, and D of the First Schedule. Thus at the time of the commencement of the Constitution, the Union of India consisted of 10 Part A States, 8 Part B States, 9 Part C States and 1 Part D State.

In the enactment of **States Reorganization Act, 1956**, Constitution (7th Amendment) Act, 1956, has abolished the three categories and placed **all the States of the Union on the same footing**.

EVOLUTION OF STATES AND UNION TERRITORIES :

- British India → India + Pakistan.
 - 552 princely states joined India. [Hyderabad, Junagarh, Kashmir – first refused to join, but it was integrated into India]
 - 1950 COI – PART A, B, C, D classification.
 - S K Dhar + JVP Committee = rejected language as the basis for reorganisation of state.
 - First linguistic state, known as Andhra Pradesh after death of Potti Sriramulu,
 - Fazl Ali (chair) + K M Panikkar and H N Kunzru (members) : gave four major factors for re-organisation + abolition of the four-fold classification of states.
- New States and Union Territories Created After 1956**

Article 2. Admission or establishment of new States

Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Article 2 empowers the Parliament

- to admit into the Union New States, and
- to establish new States

Article 2 vests complete discretion on Parliament to admit or establish new States "*on such terms and conditions as it thinks fit*".

Article 3 deals with *Formation of new States and alteration of areas, boundaries or names of existing States*.

Parliament may by law— (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; (b) increase the area of any State; (c) diminish the area of any State; (d) alter the boundaries of any State; (e) alter the name of any State.

The power to form new States under Article 3 (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory. The word 'State' in Article 3, Clauses (a) to (e) includes a 'Union territory' also.

PROCEDURE FOR FORMATION OF NEW STATES, ALTERING AREA ETC.

Parliament can form new States, and can alter the area, boundaries or names of the existing States by a law passed by simple majority.

1. No Bill for the formation of new States or the alteration of the boundaries or the names of the existing State shall be introduced in *either House of the Parliament except on the recommendation of the President*.
2. If the Bill affects the *area, boundaries or names of the States* the President is required to refer the Bill to the Legislature of the State, so affected for expressing its views *within the period specified by the President including the power to extend the period so specified*
3. In case concerned State Legislature, does not express any views within the period so specified or extended, regardless of it, parliament can introduce such bill.
4. In case concerned State Legislature has expressed its views within the time so specified or extended, the **Parliament is not bound to accept or act upon the views of the State Legislature**.
5. Additionally, no fresh reference is required to made to State Legislature every time an amendment to the Bill is proposed and accepted.

Whether the power of Parliament to diminish the area of any State under Art.3(c) include also the power to cede Indian territory to a foreign State?

Reference by the President of India under Article 143, AIR 1960 SC 845 : The Supreme Court held that transfer agreement involved cession of territory included in the Schedule and it was outside the scope of Parliamentary legislation. This question was with respect to Indo-Pakistan Agreement entered into in 1958 in exchange of *Berubari of West Bengal* for old *Cooch-Bihar enclaves*. Held that The power of Parliament under Article 3 to diminish the area of any State does not cover ceding of Indian territory to a foreign State.

HOW CAN IT BE DONE? It can be done by an amendment of the Constitution in accordance with Article 368. The Constitution (9th Amendment) Act, 1960, was passed for giving effect to the transfer of certain territory to Pakistan under an agreement entered into between the Governments of India and Pakistan.

Maganbhai v. Union of India AIR 1969 SC 783. An agreement to refer the dispute to a Tribunal did not amount to cession of territory to a foreign country

CITIZENSHIP | PART II | ARTICLE 5-11

Explain the meaning, scope and extent of term 'citizen' within the purview of Constitution of India. MPJS 2014,2019

A 'citizen' is different from an 'alien'. Citizen of a state is one who enjoys all civil and political rights guaranteed by the constitution. Whereas an alien is not entitled to such rights. In case of a friendly alien, he may be entitled to certain civil rights including fundamental rights. However, an enemy alien may be deprived of such rights.

There are certain rights and constitutional privileges which are available only to citizens.

- Protection from discrimination on grounds only of religion, race, caste, sex or place of birth (Article 15).
- Equality of opportunity in matters of public employment (Article 16).
- Freedoms of speech, assembly, association, movement, residence and profession (Article 19).
- Cultural and educational rights of minorities (Articles 29 and 30).

India being a republic, various constitutional offices are to be filled by the citizens only. Being a citizen of India, the primary qualification for holding the office of President or Prime Minister or members of Parliament, etc.

The President of India is termed the First Citizen of India.

1. CITIZENS V. ALIENS : Citizens are full members i.e., they enjoy all civil and political rights whereas aliens do not. Aliens – can be friendly or enemy (country that is at war with India + they enjoy can be detained under Art.22).
2. RIGHTS MEANT ONLY FOR CITIZENS : Rights only enjoyed by citizens (by birth/naturalisation) : Art.15,16,19,29,30 + Right to vote + contest + eligibility to hold public offices.

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Article 5 specify the *Citizenship at the commencement of the Constitution*

At the commencement of this Constitution, every person who has his domicile in the territory of India and— (a) who was born in the territory of India; or (b) either of whose parents was born in the territory of India; or (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India

The Indian nationality law largely follows the *jus sanguinis* (citizenship by descent) as opposed to the *jus soli* (citizenship by right of birth within the territory).

3. CONSTITUTIONAL PROVISIONS: Deal with the citizenship of (a) persons domiciled in India (Art.5) ; (b) persons migrated to India from Pakistan (Art.6); (c) persons migrated to Pakistan but later returned(Art.7) ; and (d) persons of Indian origin residing outside India(Art.8)
 - Persons voluntarily acquiring citizenship of a foreign State are not Indian Citizens (Art.9)
 - Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.(Art.10)
 - Acquisition and termination of citizenship and all other matters relating to citizenship = power of parliament (Art.11) ²¹

²¹ Parliament to regulate the right of citizenship by law.—

4. CITIZENSHIP ACT, 1955 : The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution. This Act has been amended so far **SIX** times by the following Acts (1986, 1992, 2003, 2005, 2015, 2019)

- ACQUISITION OF CITIZENSHIP : By Birth/ Descent / Registration/ Naturalisation / Incorporation of Territory. The provisions are listed under sections 3, 4, 5(1) and 5(4) of the Citizenship Act, 1955.
- LOSS OF CITIZENSHIP : By renunciation/ Termination/ Deprivation.

RECENT UPDATES : The Citizenship (Amendment) Act, 2019 was passed by the Parliament of India on 11 December 2019. It amended the Citizenship Act, 1955 by providing a path to Indian citizenship for illegal migrants of *Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious minorities*, who had fled persecution from Pakistan, Bangladesh and Afghanistan before December 2014. Muslims from those countries were not given such eligibility.

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