

Salient Features of the Constitution

Day 18 of your revision. The constitutional core — Preamble, Rights, Directives, Duties, secularism and constitutional morality — gathered into one pass for fast recall. **Revise → write a little → don't break the chain.**

1 The Constitution as a Social Document

The Indian Constitution is more than a legal text. It is a political settlement, a social document and a transformative framework for a deeply diverse society. It binds together democratic government, fundamental rights, social justice, federal accommodation, secularism, constitutional morality and national unity.

"First and foremost a social document." — Granville Austin

Granville Austin reads its central purpose as the marriage of three aims: **national unity and integrity**; the institutions and spirit of **democracy**; and a **social revolution** to better the masses. The text sits at the meeting point of law, politics, morality and social change.

2 Framing the Constitution — the challenges

The framers worked in a difficult moment.

Partition and national integration

- Partition brought large-scale violence, especially in Punjab and Bengal — communal fear and administrative breakdown.
- More than **500 princely states** had to be integrated; **Junagadh, Hyderabad and Jammu & Kashmir** posed special difficulty.

Diversity and marginalised expectations

- Over 10% of India's Muslim population remained after Partition; minority confidence had to be secured without weakening unity.
- Many languages, faiths, customs, castes and regions had to be welded into one political community.
- The freedom struggle had raised hopes among **SCs, STs, OBCs** and the poor — a promise of a new social order, not only political independence.

Commitment to liberal democracy

- **Jawaharlal Nehru** and others accepted **universal adult franchise** despite doubts about readiness — full democracy, not gradual democracy.
- Democratic government, rule of law, secularism and fundamental rights became core commitments.

3 Sources & Ideological Roots

The Constitution borrowed widely; it copied no single model mechanically.

Source	What it shaped
Government of India Act, 1935	Basic administrative and institutional frame — federal structure, provincial autonomy, judiciary, public services
British model	Parliamentary system, Prime Ministerial government, bicameral legislature, responsible executive
United States	Written form, Fundamental Rights, judicial independence, judicial review
Irish Constitution	Directive Principles — non-justiciable social and economic goals; welfare orientation
Japanese Constitution	"Procedure established by law" in Article 21
Objective Resolution	Moved by Nehru , adopted 22 January 1947; the moral-ideological frame — justice, liberty, equality, fraternity later entered the Preamble

Ideological sources

- **External — Western political modernity:** **A.R. Desai** stressed the impact of Western political ideas; **Dipesh Chakrabarty** used **"political modernity"** for state, citizenship, civil society, human rights, equality before law, democracy and social justice.
- **Internal — the national movement:** Gandhian thought (non-violence, self-reliance, village democracy); **B.R. Ambedkar** (social justice, constitutionalism, safeguards for the oppressed); Left thought (communists and Congress socialists); revivalist Vedantic strands in the Assembly.

4 Colonial Legacy & Administrative Continuity

- **GoI Act, 1919:** introduced **dyarchy** — provincial subjects split between elected Indian ministers and British officials.
- **GoI Act, 1935:** federal ideas and provincial autonomy, but a strong central administrative design preserved.
- **Centralised bureaucracy:** the colonial **"steel frame"** survived into independent India, leaving a command-oriented administrative culture.

Bureaucracy is *"the most modernised section of the society ... vanguard in India's social revolution."* — Jawaharlal Nehru

Continuing legacy: preference for hierarchy; reliance on central direction; secrecy and file-based administration; weak trust in local institutions; a standing tension between decentralisation and administrative control.

5 Constitutionalism & the Foundational Architecture

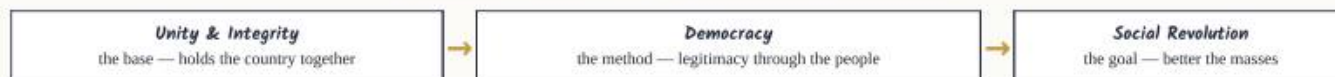
Constitutionalism

Government under higher law. Not the same as merely having a constitution — a state may have a constitution and still be authoritarian. Constitutionalism requires real limits on public power.

Core principles: rule of law · limited government · separation of powers · checks and balances · fundamental rights · judicial review · accountability of rulers · protection of minorities and individuals.

Granville Austin read three interlinked strands, mutually dependent and ranked by urgency: unity gives stability, democracy gives legitimacy, social revolution gives moral purpose. **Gandhi**'s idea of "**Ram Rajya**" shaped the moral imagination of the framers.

Austin's seamless web — the three strands, base to goal



6 Founding Principles of the Constitution

Eleven principles define the constitutional order:

Popular sovereignty · Republicanism · Democracy · Rule of law · Fundamental Rights · Social justice · Secularism · Federalism · strong Union · Independent judiciary · Single citizenship · Fundamental Duties

- **Popular sovereignty** — “We, the People of India”; sovereignty rests with the people, not the Crown, Parliament, states or rulers.
- **Rule of law** — Article 14; public power exercised through known, general and equal rules; no authority above law.
- **Social justice** — reservations, abolition of untouchability and Directive Principles aim at **substantive equality** — social democracy, not only political democracy.
- **Federalism with a strong Union** — Article 246 and the Seventh Schedule; **Ambedkar** described India's federalism as suited to a Union that could hold the country together.

UPSC 2021 · 10 marks Mention the founding principles that define India's Constitution.

7 A Social Document — Promise & Contradiction

The social commitment runs through two Parts. **Fundamental Rights** end coercion by state and society, universalise liberty, abolish untouchability, prohibit discrimination and supply justiciable remedies. **Directive Principles** seek welfare of the masses, social and economic justice, and **positive freedom** by removing poverty and social barriers. The machinery: reservations, abolition of social disabilities, adult franchise, legal remedies, welfare policies and social-reform laws.

“The Constitution's aim is almost entirely political and not at all social or economic.” — **K.T. Shah**

K.T. Shah pointed to non-justiciable social provisions, unenforceable Directive Principles and flexible language that allows weak implementation.

“On 26th January, we are going to enter into a life of contradictions. In politics, we have equality, and in social and economic rights, we have inequality.” — **Dr. B.R. Ambedkar**

Rajeev Bhargava, in *Politics and Ethics of the Indian Constitution*, holds that even non-justiciable principles carry moral authority and empower marginalised groups. **M.C. Chagla** observed that “our country would indeed be a heaven on earth if all these principles are fully carried out.”

UPSC 2023 The Constitution of India is the ‘cornerstone of a nation’ (Granville Austin). Analyze.

8 Constitutional Morality

Constitutional morality means loyalty to the values, procedures and spirit of the Constitution — not merely formal obedience to its text. **Ambedkar** drew the idea from **George Grote**, who described it as “paramount reverence” for constitutional forms, combined with obedience to authority within those forms and free speech within legal limits.

Ambedkar's meaning

Respect for constitutional procedures · self-restraint by political actors · rejection of violence and extra-constitutional methods · acceptance of pluralism · rational debate over hero-worship · commitment to social democracy.

Ambedkar warned against the “**grammar of anarchy**” and against hero-worship in politics. Constitutional morality, he held, is not natural to a society; it has to be cultivated — especially where caste, religion, region, class and minority rights all press on democracy.

Views of scholars

- **Pratap Bhanu Mehta** — it protects democracy from degenerating into majoritarianism.
- **Rajeev Bhargava** — it links institutions with foundational values, not mere procedure.
- **Uppendra Baxi** — it counters executive authoritarianism and protects civil liberties.

- **Faizan Mustafa** — calls it a “normative compass” for judging law and public morality.

The doctrine has done real work in **Puttaswamy** (privacy, autonomy, dignity), **Navtej Singh Johar** (decriminalising consensual same-sex relations) and the **Sabarimala** entry case.

Criticism

- **Abhishek Manu Singhvi**, in *The Trenches*, argues that the subjectivity of constitutional morality can be harmful.
- **K.K. Venugopal** compared it to another divisive doctrine, the Basic Structure.
- **Tushar Mehta** warned it could turn the judiciary into a “Third Chamber”.

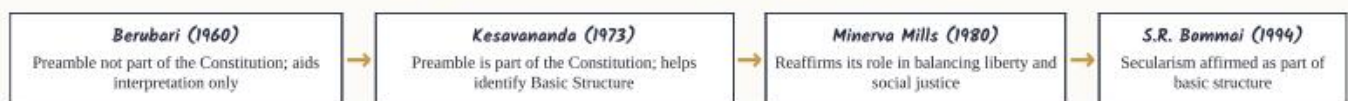
9 The Preamble — Meaning, Status & Amendment

The Preamble declares the purposes and spirit of the Constitution — a compact statement of constitutional philosophy. **K.M. Munshi** called it the “political horoscope” of India; **N.A. Palkhivala**, the “Identity Card of the Constitution”. **Thakur Das Bhargava** called it “the soul of the Constitution” and a “jewel set in the Constitution”; **Alladi Krishnaswami Iyer** said it expressed “what we had thought or dreamt so long”.

It sets out the **source of authority** (the people), the **nature of the polity** (sovereign, socialist, secular, democratic republic), the **goals** (justice, liberty, equality, fraternity) and the **national commitment** to the dignity of the individual and the unity and integrity of the nation.

Status — the judicial arc

From “not part of the Constitution” to a source of basic values



“The Preamble resembles the Declaration of Independence of the United States of America, but is more than a declaration. It is the soul of our Constitution which lays down the pattern of our political society. It contains a solemn resolve which nothing but a revolution can alter.” — M. Hidayatullah

Amendment

The Preamble can be amended, but not so as to destroy the basic structure. The **42nd Amendment Act, 1976** added the words **Socialist**, **Secular** and **Integrity**. The critique: these ideals were already implicit — socialism in planning and welfare, secularism in religious freedom and minority rights, while integrity answered centrifugal tendencies after independence.

10 Preamble — Ideals, Social Contract & Mosaic

The polity rests on five descriptors and four goals.



Socialist — democratic socialism and a mixed economy, not communist socialism. **Secular** — no state religion, equal treatment of faiths, state free to intervene for social reform. **Justice** placed before liberty and equality signals concern for social and economic transformation. **Fraternity** rests on the dignity of the individual and the unity of the nation.

“Social democracy means a way of life which recognizes liberty, equality, and fraternity as a union of trinity. To divorce one from the other is to defeat the very purpose of democracy.” — Dr. B.R. Ambedkar

The Preamble as a social contract

“We, the People of India” shows the Constitution is not imposed from above — it is adopted, enacted and given by the people to themselves. People create political authority, government derives legitimacy from citizens, the state promises justice, liberty, equality and fraternity, and the people retain ultimate sovereignty. The Preamble thus acts as a **constitutional covenant** between citizens and the state.

Thinker	Contribution to the covenant
Thomas Hobbes	Political order and security
John Locke	Limited government and rights
Jean-Jacques Rousseau	General will and popular sovereignty
John Rawls	Justice as fairness
Indian traditions	Manu, Kautilya and Buddhist thought — political obligation and public order

A mosaic of ideologies

The Preamble follows no single doctrine. **Liberalism** supplies liberty of thought and expression, Fundamental Rights, adult franchise and constitutional remedies; the socialist and Gandhian strands and the commitment to social justice complete the weave.

11 Socialism after 1991 — Does the Word Still Belong?

Liberalisation reduced the interventionist state, yet market growth can produce inequality — which is why the socialist commitment retains force. The defence rests on both theory and policy.

Scholar	Argument for continuing relevance
Ronald Dworkin	"Equality is the sovereign virtue."
John Rawls	Justice is the first virtue of institutions, as truth is of systems of thought
Amartya Sen	Development as freedom and capability expansion
Jean Dreze	Active state intervention in health, education and social security
Prabhat Patnaik	The state's duty to protect weaker sections
Deepak Nayyar	Liberalisation often serves governance economics over people's priorities
Suhas Palshikar	"Democratisation of democracy" — welfare deepening in the post-LPG period

The policy footprint is concrete: **MGNREGA**, the **National Food Security Act**, **Right to Education**, **EWS reservation** through the 103rd Amendment, and the **JAM trinity** as a delivery tool.

Criticism

Arvind Panigariya sees the term as outdated in a globalised economy; **Jagdish Bhagwati** stresses growth, efficiency and market-based development; **Fali S. Nariman** was associated with a petition questioning the word "socialist" in the Preamble. **Ambedkar** himself supported state socialism in the sense of "one man, one value" in all walks of life, while opposing the fixing of any single economic model in the Constitution.

UPSC 2015 On the inclusion of 'socialist' in the Preamble of the Indian Constitution.

12 Secularism — the Indian Model

Indian secularism is constitutional before it is philosophical: Articles **14–16** (equality and non-discrimination), **25–28** (freedom of conscience and religion) and **29–30** (minority cultural and educational rights). Gandhi emphasised *Sarva Dharma Sambhava*; Nehru, neutrality and principled distance; Ambedkar, minority protection and "one man, one value".

Western strict separation vs the Indian model of principled distance

Wall of separation

State and religion kept strictly apart; no intervention either way



Principled distance

State may intervene to help or reform religions, without seeking to control or destroy them

"Indian secularism does not erect a wall of separation between state and religion. It allows the state to intervene in religions to help or hinder them without the impulse to control or destroy them." — **Rajeev Bhargava**

Definitions and defences

- Donald Eugene Smith** — a secular state guarantees freedom of religion, treats the individual as a citizen irrespective of religion, and is not constitutionally tied to any faith; India has some features of this but not all.
- S. Radhakrishnan** — secularism is not irreligion; it stresses the universality of spiritual values.
- Rajeev Bhargava** — a multi-value, context-sensitive model of principled distance, alert to intra-religious oppression and inter-religious domination.
- Christophe Jaffrelot**, in *The Fate of Indian Secularism* — it has deeper civilisational roots, not a mere post-1947 invention.
- Amartya Sen** — part of the larger project of recognising heterogeneity.

Critiques

T.N. Madan argues secularisation must precede secularism in deeply religious South Asian societies; **Ashis Nandy** reads it as a Western import lacking cultural grounding; **Partha Chatterjee** highlights the difficulty of applying Western separation to India. From the Hindu Right, **Arun Shourie** and **L.K. Advani** call the model "pseudo-secular". **Pratap Bhanu Mehta** calls principled distance "asymmetrical", leaving all communities insecure; **Romila Thapar** wants a stronger secularism able to counter communalism. **S.R. Bommai** settled secularism as a basic feature.

UPSC 2015 Comment on secularism in the Indian Constitution (150 words).

13 Uniform Civil Code — Article 44

Article 44 places a Uniform Civil Code among the Directive Principles — a common set of personal laws on marriage, divorce, inheritance and succession, to replace religion-based personal laws. The debate is old: the **Rukhmabai case (1884–88)** exposed the tension between custom and modern individual rights, and the **Hindu Code reforms** of the 1950s recast Hindu marriage and inheritance.

The argument, both ways

- **Madhu Kishwar** — codification can weaken the diversity of customary practice.
- **Flavia Agnes** — the politics of women's rights within personal-law reform.
- **Martha Nussbaum** — sex equality must be secured through law.
- **Romila Thapar** — demarcate civil jurisdiction from religious authority.
- **Nivedita Menon** — favour internal reform, new-area legislation and a gender-just framework over a single imposed code.

Judicial references

Case	What the Court signalled
<i>Shah Bano</i>	Article 44 described as a “dead letter”
<i>Sarla Mudgal</i>	Directed attention to Article 44
<i>Ahmedabad Women's Action Group</i>	The Court showed restraint
<i>Lily Thomas</i>	A UCC is desirable, but the social climate must be built first

The **Goa model** — a common civil code derived from Portuguese law, with registration of marriages, communion of assets and equal inheritance — is often cited, though patriarchal practice and community resistance limit it.

14 Fundamental Rights — Scheme, Scope & Limits

Part III is the justiciable core. Originally there were **seven** rights; the **Right to Property** was removed from Part III by the 44th Amendment, 1978 and made a legal right under **Article 300A**. Six categories remain.

Right	Articles
Right to Equality	14–18
Right to Freedom	19–22
Right against Exploitation	23–24
Right to Freedom of Religion	25–28
Cultural and Educational Rights	29–30
Right to Constitutional Remedies	32

“They together form a seamless web reflecting the aims and aspirations of the people.” — **Granville Austin**

Granville Austin called Fundamental Rights and Directive Principles the “conscience of the Constitution”. **Palkhivala** called the rights the “anchor of the Constitution”, providing “the iron framework within which experiments in social and economic changes may be carried out”. The philosophical roots run through **Locke** (natural rights), **Laski** (“conditions of social existence essential for human personality”), **Sen** (rights as capability-expanding freedoms), **Dworkin** (rights as trumps against majority power), **Gautam Bhatia** (transformative constitutionalism) and **Uppendra Baxi** (“lived” and “insurgent” constitutionalism).

Scope — who holds which right

- **Citizens only** — Articles 15, 16, 19, 29.
- **All persons** — Articles 14, 20–22, 21.
- **Horizontal** (even against private persons) — Article 17 (untouchability), 15(2) (public access), 23 (trafficking and forced labour).

Limits and suspension

Rights are not absolute: reasonable restrictions are allowed for sovereignty and integrity, security, public order, decency or morality, contempt, defamation and incitement. **Article 358** suspends Article 19 during a national emergency; **Article 359** suspends the right to move courts for certain rights — but Articles 20 and 21 are protected after the 44th Amendment. **Article 33** lets Parliament restrict the rights of armed forces, police and intelligence agencies for discipline.

Affirmative action — Articles 15 & 16

Case	Holding
<i>Venkataraman v. State of Madras</i>	Reservation for backward sections upheld; unconstitutional divisions rejected
<i>Indra Sawhney v. Union of India</i>	27% OBC reservation upheld; creamy layer and the 50% cap
<i>M. Nagaraj</i>	Backwardness, inadequate representation and administrative efficiency
<i>Jarnail Singh</i>	No quantifiable data needed for SC/ST backwardness in promotions; creamy-layer debate
<i>EWS Reservation</i>	103rd Amendment upheld

Andre Beteille criticises extending reservation to dominant castes — Marathas, Patidars, Jats, Gujjars, Kapus — as weakening the original purpose of affirmative action.

15 The Two Faces of Article 21 — Due Process vs Procedure Established by Law

The framers chose their words with care. Early drafts carried “due process”; the final Article 21 reads: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

	Due Process of Law	Procedure Established by Law
Origin	Magna Carta, Clause 39; US Constitution	Japanese Constitution, Article 31
Test	Law must be fair, just and reasonable	Valid if enacted by proper legislative procedure
Judicial review	Court can invalidate unfair laws	Narrower; fairness not initially examined if procedure is followed

Why India chose the narrower phrase

B.N. Rau feared judicial overreach; due process could block social-reform legislation; communal violence after Partition was thought to require preventive-detention powers; **Govind Ballabh Pant** argued for legislative discretion to maintain order.

How the courts narrowed the gap

A.K. Gopalan gave a narrow reading. **Maneka Gandhi** held that the procedure itself must be fair, just and reasonable — effectively reading procedural due process into Article 21. **Abhinav Chandrachud** argues due process has entered Indian law through interpretation; **Manoj Mate** calls this use of foreign legal principles “judicial borrowing”.

16 Free Speech, Expression & the Right to Protest

Article 19(1)(a) protects speech and expression; 19(1)(b) peaceful assembly; 19(1)(c) association. The pressure points are familiar.

- **Criminal defamation** — IPC Sections 499–500 can suppress criticism of the powerful.
- **Contempt of court** — used against **Prashant Bhushan** and **Kunal Kamra**.
- **Sedition** — Section 124A, used against Tilak and Gandhi.

Section 124A is “the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen.” — **Mahatma Gandhi**

Kedar Nath Singh limited sedition to incitement to violence; **Arup Bhuyan** adopted the Brandenburg test of imminent violence. In the Constituent Assembly, **K.M. Munshi** opposed retaining sedition —

“The essence of democracy is criticism of government.” — **K.M. Munshi**

— and the offence was omitted from Article 19(2). Recent developments: the Supreme Court suspended Section 124A in **May 2022** under CJI N.V. Ramana; the Law Commission in June 2023 recommended retaining sedition with safeguards; and the **Bharatiya Nyaya Sanhita** proposed Section 150 on acts endangering sovereignty, unity and integrity. **Apurva Vishwanath** warns the new provision may be more oppressive; **Upendra Baxi**, **Faizan Mustafa** and **Gautam Bhatia** stress precise legal language to avoid misuse.

The right to protest

Protest is read into Articles 19(1)(a) and 19(1)(b). **Upendra Baxi** and **Faizan Mustafa** stress protest as necessary for a living democracy, even as the state cites public order and shutdowns to limit it.

17 Right to Information

The **Right to Information Act, 2005** built a practical regime for citizens to obtain information from public authorities. Its constitutional basis was laid earlier: **Bennett Coleman & Co. v. Union of India** (free speech includes the right to read and be informed), **Manubhai D. Shah v. LIC** (the people’s right to know) and **PUCI v. Union of India** (RTI tied to free speech).

RTI dismantles secrecy, builds transparency and accountability, empowers citizens and aids participatory governance — helping monitor public funds, welfare, civic services and public projects.

Challenges

Misuse where no locus standi is required; low public awareness; backlog and delay; the **RTI Amendment Act, 2019** and concerns over the tenure and service conditions of information commissioners; political influence in appointments; the clash with the Official Secrets Act, 1923; and weak enforcement powers of Information Commissions.

UPSC 2016 · 15 marks Discuss the Right to Information and underline the challenges being faced in its implementation.

18 Right to Education

Education became a Fundamental Right through the **86th Amendment**. **Article 21A** guarantees free and compulsory education for children aged 6 to 14, operationalised through the **RTE Act, 2009** (in force 1 April 2010).

The Act mandates neighbourhood schools, minimum infrastructure norms, a teacher–student ratio (such as 1:30 in primary), teacher qualifications, Continuous and Comprehensive Evaluation, a no-detention policy up to Class VIII, no capitation fee or admission interview, and a **25% reservation** in private unaided schools for economically weaker and disadvantaged children.

"The destiny of India is now being shaped in the classrooms." — Kothari Commission

The theory draws on **T.H. Green** and **Harold Laski** (positive liberty) and **Amartya Sen** (capability-building). But the access-quality gap is stark: **ASER (Pratham)** reported that only 47.5% of Class V children could read a Class II textbook. **Krishna Kumar** flags the gap between policy and practice; **Yogendra Yadav** argues RTE should extend to early-childhood and secondary education; the **T.S.R. Subramanian Committee** recommended dropping the no-detention policy.

UPSC 2015 On the Right to Education in India.

19 Right to Privacy

Louis Brandeis called privacy "the right to be left alone". The pre-**Puttaswamy** position was uncertain: **M.P. Sharma** and **Kharak Singh** denied or limited it; **Gobind** and **Naz Foundation** prepared the ground.

Justice K.S. Puttaswamy's challenge to Aadhaar produced the landmark 2017 ruling.

"The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as part of the freedoms guaranteed by Part III of the Constitution." — K.S. Puttaswamy v. Union of India (2017)

Alok Prasanna Kumar identifies the core elements as personal autonomy, freedom to make choices and control over personal information. After **Puttaswamy**, the Court used privacy to expand autonomy, dignity, identity, consensual adult relationships, the right to die with dignity and data-protection concerns. The state may restrict privacy, but surveillance must be lawful, necessary and proportionate. Comparatively, the United States infers privacy through amendments and the Privacy Act, 1974; Germany has strict laws shaped by its surveillance history; and the European Union relies on Article 8 ECHR and the GDPR.

UPSC 2017 · 10 marks Right to privacy is an intrinsic part of the right to life. Examine.

20 Right against Climate Change

The Supreme Court recognised a right against the adverse effects of climate change as a distinct fundamental right, anchored in **Article 14** (equality) and **Article 21** (life and personal liberty). CJI **D.Y. Chandrachud** observed that the rights to life and equality cannot be fully realised without a clean and stable environment.

The **Great Indian Bustard case** — in which power transmission lines in Gujarat and Rajasthan threatened the endangered bird — became the occasion for the holding. India has environmental policies but lacks a single comprehensive climate-change law; the absence of such legislation, the Court reasoned, does not negate the right.

21 Right to Constitutional Remedies — Article 32, the Writs & Res Judicata

Article 32 gives the right to move the Supreme Court directly for the enforcement of Fundamental Rights — the enforcement of rights is itself made a right.

"If I was asked to name any particular article in this Constitution as the most important — an article without which this Constitution would be a nullity — I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it." — Dr. B.R. Ambedkar

The five writs

Writ	Function
Habeas Corpus	Protects against unlawful detention
Mandamus	Commands a public authority to perform a public duty
Prohibition	Stops lower courts or tribunals from exceeding jurisdiction
Certiorari	Transfers or quashes orders of lower courts or tribunals
Quo Warranto	Questions the authority to hold a public office

Article 226 gives High Courts a wider writ power — for Fundamental Rights and for any other legal right. **V.R. Krishna Iyer** called Article 32 a transcendental remedy; **P.N. Bhagwati** expanded it through Public Interest Litigation; **Fali S. Nariman** read it as both remedy and command protecting constitutional supremacy; **Rohit De** argued it helped make the Supreme Court a "people's court"; **P.B. Gajendragadkar** highlighted the novelty of making a remedial article itself a Fundamental Right. **L. Chandra Kumar** recognised judicial review as part of the basic structure.

Habeas Corpus — "you shall have the body"

The basic safeguard of personal liberty: the court orders production of the detained person, examines the legality of detention, and orders release if it is unlawful. In **A.D.M. Jabalpur v. S. Shukla**, Justice **H.R. Khanna** described habeas corpus as a process for securing liberty by immediate relief from wrongful or illegal detention. Where custody is ordered by a magistrate, the writ ordinarily cannot be used, the detention being judicially sanctioned.

Res Judicata and Article 32 — "a matter already judged"

Although Article 32 is a Fundamental Right, the Supreme Court has held that res judicata can apply to writ petitions to prevent abuse of process. In **Daryao v. State of U.P.**, a petition dismissed by a High Court under Article 226 cannot be refiled under Article 32 on the same grounds; **Amalgamated Coalfields v. Janapada Sabha** confirmed that res judicata applies to writ proceedings — subject to exceptions such as breach of natural justice or dismissal not on merits.

UPSC 2020 · 10 marks Comment on the Right to constitutional remedies in India.

22 Directive Principles of State Policy

The DPSPs sit in **Part IV, Articles 36–51**. They are non-justiciable, yet **Article 37** declares them “fundamental in the governance of the country”, guiding the state in building a welfare order. The model was borrowed from the Irish Constitution, which in turn drew on Spanish constitutional tradition.

Strand	Key articles
Socialistic	Art 38 (just social order), 39 (livelihood, equitable distribution, equal pay), 41 (work, education, assistance), 42 (humane conditions, maternity relief), 43 (living wage)
Gandhian	Art 40 (village panchayats), 43 (cottage industries), 46 (SC/ST and weaker sections), 47 (nutrition, standard of living)
Liberal-Intellectual	Art 44 (UCC), 45 (early-childhood care), 48 & 48A (agriculture; environment), 49 (monuments), 50 (separation of judiciary from executive), 51 (international peace)

The DPSPs are called the “**kernel of the Constitution**”; **Ambedkar** read Fundamental Rights as political democracy and DPSPs as the foundation of economic democracy. **L.M. Singhvi** called them the “life-giving provisions of the Constitution”.

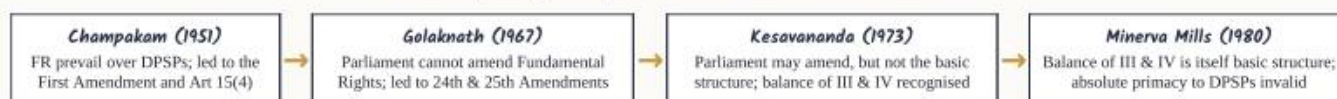
Criticism

Their non-justiciability and vague language draw fire; socio-economic laws may restrict individual rights. **B.N. Rau** argued the Constitution is not the place for moral precepts; **Ivor Jennings** dismissed them as “pious aspirations”; **K.T. Shah** thought the document too political and insufficiently social.

23 Fundamental Rights vs Directive Principles — Conflict to Balance

Different forms, a common constitutional purpose. Fundamental Rights are justiciable, negative limits on the state, protecting liberty and political democracy. DPSPs are non-justiciable positive goals, directing the state toward social and economic democracy. The relationship was settled through a long judicial arc.

From the primacy of rights to the balance of Parts III and IV



The Constitution is founded on the bedrock of the balance between Parts III and IV. — Chief Justice Y.V. Chandrachud, Minerva Mills

The courts later wove the two together: **Olga Tellis** read the right to livelihood into Article 21; **Unni Krishnan** read the right to education into it; **I.R. Coelho** subjected Ninth-Schedule laws to basic-structure review.

Article 31C and private property

Article 31C gives priority to laws implementing **Article 39(b)** (distribution of material resources for the common good) and **39(c)** (preventing concentration of wealth), shielding them from challenge under Articles 14 and 19. Triggered by the Bank Nationalisation case (**R.C. Cooper**, 1970) and introduced by the 25th Amendment, it was upheld in **Kesavananda** (minus the bar on judicial inquiry); the 42nd Amendment’s extension to all DPSPs was struck down in **Minerva Mills**. On 5 November 2024, a nine-judge bench held by 7:2 that Article 31C survives in its original form, and that not all private property is automatically a “material resource of the community”.

UPSC 2021 On reconciling Fundamental Rights with Directive Principles.

UPSC 2024 On whether Directive Principles are more fundamental than Fundamental Rights.

24 Directive Principles in the Era of Neo-Liberalism

Neo-liberalism stresses liberalisation, privatisation, globalisation and a smaller state; the DPSPs stress active state responsibility. The tension is real: a retreating interventionist state, privatised education and health, contractualised labour, weakened worker participation under Article 43A, and market-led inequality all strain the equitable-distribution promise of Article 39.

Yet the principles remain live. **James Chiriyankandath**, **Diego Maiorano**, **James Manor** and **Louise Tillin**, in *The Politics of Poverty Reduction in India: The UPA Government, 2004 to 2014*, show that growth in the neo-liberal period itself enabled welfare programmes — MGNREGA, the National Food Security Act, JNNURM, the Forest Rights Act and the RTE Act, 2009. The state retains regulatory capacity; equal pay and gender justice align with global liberal values; climate change demands intervention under Article 48A; and Articles 41, 42 and 47 reflect non-negotiable human-rights obligations.

25 Fundamental Duties

Fundamental Duties sit in **Part IVA, Article 51A**, added by the **42nd Amendment, 1976** on the recommendation of the **Swaran Singh Committee**. The **86th Amendment, 2002** added the duty of parents or guardians to provide educational opportunities to children aged six to fourteen. There are eleven duties — among them: to abide by the Constitution and respect the National Flag and Anthem; to uphold the sovereignty, unity and integrity of India; to promote harmony and renounce practices derogatory to women’s dignity; to protect the environment; to develop scientific temper and the spirit of inquiry; to safeguard public property and abjure violence; and to strive towards excellence.

They are civic and moral obligations, apply only to citizens, are non-justiciable, and are placed separately from the rights. The Swaran Singh Committee had

also recommended a duty to pay taxes — this was not included.

The Verma Committee and after

After a Supreme Court notice in 1998, the **Justice J.S. Verma Committee** (1999) recommended raising standards in public life and identified existing laws supporting duties — the RP Act 1951, UAPA 1967, Protection of Civil Rights Act 1955, Wildlife Protection Act 1972 and others. **Anupama Rao** criticised the Committee for overemphasising citizens' duties to state and nation, possibly making duty a precondition for citizenship. **V.K.R.V. Rao** argued that without enforceable duties people may lack the will to fulfil them; **Rural Litigation and Entitlement Kendra v. State of U.P.** banned illegal mining and stressed environmental duty; the **Venkatachaliah** Commission recommended awareness campaigns and civic participation.

Scholarly caution

Rajeev Bhargava warns that “composite culture” may be selectively interpreted; **Andre Beteille** notes socio-cultural barriers to scientific temper; **Pratap Bhanu Mehta** sees duties as moralistic and often symbolic. Duties may also collide with religious freedom, as in **Bijoe Emmanuel v. State of Kerala**.

UPSC 2023 · IS marks

Fundamental Duties promote a sense of civic responsibility among citizens. Comment.

26 Power Quotes — Carry These into the Hall

“First and foremost a social document.” — **Granville Austin, on the Constitution**

“They together form a seamless web reflecting the aims and aspirations of the people.” — **Granville Austin, on Rights and Directives**

“On 26th January, we are going to enter into a life of contradictions. In politics, we have equality, and in social and economic rights, we have inequality.” — **Dr. B.R. Ambedkar**

“Social democracy means a way of life which recognizes liberty, equality, and fraternity as a union of trinity.” — **Dr. B.R. Ambedkar**

Article 32 is “the very soul of the Constitution and the very heart of it.” — **Dr. B.R. Ambedkar**

“It is the soul of our Constitution which lays down the pattern of our political society. It contains a solemn resolve which nothing but a revolution can alter.” — **M. Hidayatullah, on the Preamble**

Indian secularism “allows the state to intervene in religions to help or hinder them without the impulse to control or destroy them.” — **Rajeev Bhargava**

“The destiny of India is now being shaped in the classrooms.” — **Kothari Commission**

27 Scholar Index

· L.K. Advani · Flavia Agnes · Alladi Krishnaswami Iyer · Dr. B.R. Ambedkar · Anupama Rao · Granville Austin · Upendra Baxi · Andre Beteille · Jagdish Bhagwati · P.N. Bhagwati · Rajeev Bhargava · Thakur Das Bhargava · Gautam Bhatia · Louis Brandeis · M.C. Chagla · Dipesh Chakrabarty · Abhinav Chandrachud · D.Y. Chandrachud · Y.V. Chandrachud · Neera Chandhoke · Partha Chatterjee · James Chiriyankandath · Rohit De · A.R. Desai · Jean Dreze · Ronald Dworkin · P.B. Gajendragadkar · Mahatma Gandhi · T.H. Green · George Grote · M. Hidayatullah · Thomas Hobbes · Christophe Jaffrelot · Ivor Jennings · H.R. Khanna · Madhu Kishwar · V.R. Krishna Iyer · Alok Prasanna Kumar · Krishna Kumar · Harold Laski · John Locke · T.N. Madan · Diego Maiorano · James Manor · Manoj Mate · Pratap Bhanu Mehta · Tushar Mehta · Nivedita Menon · K.M. Munshi · Faizan Mustafa · Ashis Nandy · Fali S. Nariman · Deepak Nayyar · Jawaharlal Nehru · Martha Nussbaum · N.A. Palkhivala · Suhas Palshikar · Arvind Panagariya · Govind Ballabh Pant · Prabhat Patnaik · S. Radhakrishnan · B.N. Rau · V.K.R.V. Rao · John Rawls · Jean-Jacques Rousseau · Amartya Sen · K.T. Shah · Arun Shourie · Abhishek Manu Singhvi · L.M. Singhvi · Donald Eugene Smith · T.S.R. Subramanian · Romila Thapar · Louise Tillin · M.N. Venkatachaliah · K.K. Venugopal · Apurva Vishwanath · Yogendra Yadav ·

28 How UPSC Asks It

Theme	Year · Marks	Question, as set
Article 368 & basic structure	2016 · 10 marks	'Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution.'
42nd Amendment	2016 · 10 marks	The purpose of the 42nd Constitutional Amendment was to make the economic and social democracy explicitly visible.
Right to Information	2016 · 15 marks	Discuss the Right to Information and underline challenges being posed before it.
Right to privacy	2017 · 10 marks	Right to privacy is an intrinsic part of the right to life.
Parliamentary supremacy vs sovereignty	2017 · 20 marks	Differentiate parliamentary supremacy from parliamentary sovereignty, Would you consider the Indian Parliament as a Sovereign Parliament? Examine.
Right to constitutional remedies	2020 · 10 marks	Comment on the Right to constitutional remedies in India.
Judicial overreach	2020 · 10 marks	Comment on the judicial overreach in India.
Founding principles	2021 · 10 marks	Mention the founding principles that define India's Constitution.
First Amendment	2021 · 10 marks	Underline the significance of the first constitutional amendment.
Preamble as social contract	2022 · 10 marks	The Preamble of the Indian Constitution reflects itself as a 'social contract'. Elucidate.
Fundamental Duties	2023 · 15 marks	The main goal of the Fundamental Duties in the Indian Constitution is to generate civic responsibility among the citizens. Explain.

29 Today's Practice

Three questions, all answerable from this capsule. Write to the marks, then check yourself against the relevant section.

1. **Founding principles** — Mention the founding principles that define India's Constitution. (2021 · 10 marks · Section 6)
2. **Social contract** — The Preamble of the Indian Constitution reflects itself as a 'social contract'. Elucidate. (2022 · 10 marks · Section 10)
3. **Fundamental Duties** — The main goal of the Fundamental Duties is to generate civic responsibility among citizens. Explain. (2023 · 15 marks · Section 25)

Write it before you read the answer. Attempt each question above in your own hand first, then check it against the model answers — they drop tonight on @psirbyamitpratap. Whatever did not come is covered in full in your *Foundation & OGP* class notes. *Don't break the chain.*

See you tomorrow with Day 19 — Principal Organs: Union & State Government.