

Mumbai University  
3 Years LLB- Semester II (Sept 2022).  
Pattern: MCQ-30 Marks; DCQ- 30 Marks (10 Quest of 3 Marks)  
Constitutional Law  
Descriptive Questions & Answers complied by RK

**Q1) What is the meaning of term constitution?**

The term "constitution" is a french term and refers to the set of fundamental rules and regulations that govern the functioning of a nation-state or any other organization. A state's constitution is the supreme law of the land and thus requires higher standards of legitimacy and integrity. It outlines a state's fundamental principles, administrative structures, procedures, and fundamental rights of individuals while defining the directions for a state's development.

A constitution is a basic design, which deals with the structure and powers of government. It also includes the rights and duties of citizens. Often a 'constitution' is understood as a document that is written and accepted at a particular time, but it is not the true meaning of the constitution, the constitution may be written or unwritten.

Sometimes it is found as an established body of rules, maxims, traditions, and practices according to which its government is organized and its powers are being exercised. Every country should have a constitution because it helps and guides in the operation of a country. History suggests that since the origin of countries there have been some sort of rules and laws to maintain order and harmony. In every country it is necessary to be democratic or autocratic that rules should be accepted which will determine the role and organization of political institutions to save the society from chaos. And now, in modern states, these rules took the form of a constitution.

The constitution is the fundamental law of the land.

Constitution may be written or unwritten.

The constitution deals with the structure and power of government.

The constitution deals with the rights of citizens.

The constitution deals with the relationship between governments and people.

The constitution is the supreme law that must be followed.

**Q2) When constitutional day is celebrated?**

**Ans) It is celebrated on 26 November and is also known as Samvidhan Divas or National Law Day or National Constitution Day. On 26 November 1949, the Constitution of India was adopted and came into force on 26 January 1950. To acknowledge the contribution of the framers of the Constitution and to aggravate the people regarding the prominent values, 26 November is celebrated as "Constitution Day"**

**Q3.) What is preamble to our Constitution?**

**Ans) The preamble states that**

**" 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, 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."**

**Q4) What do we mean by Soveriegn State?**

**Ans) India declared by the preamble itself as 'Sovereign'. The word sovereign means supremacy of the nation. Sovereign power is also described as that power which is absolute and uncontrolled. Both internally**

and externally India is sovereign. India at present is not under the control of any other nation as it maintains its own sovereignty.

**Q5) What do you mean by republic as used in our preamble?**

**Ans) The term Republic used in the preamble of our constitution signifies that India has elected representatives as the head of the state. The president of India is the elected head of the state. The President of India is not a hereditary monarch. He is an elected person, chosen for a limited period, usually for 5 years.**

**Q6) What are the leading case laws relating to Preamble of Constitution?**

**Ans ) In Beru Bari Case, the Supreme Court held that the preamble was not a part of the constitution, and so, it could never be regarded as a source of any substantive powers. It has limited application and can be resorted to where there is any ambiguity in the statute. If the terms used in the constitution are ambiguous or capable of two meanings in interpreting them some assistance may be taken from the objectives enshrined in the constitution. 2. In Keshavananda Bharati Case, the Supreme Court rejected the above view and held that the preamble is the part of the constitution. All importance has to be attached to the preamble in a constitution and it should be read and interpreted in the light of the grand and noble vision expressed in the preamble.**

**Indira Gandhi V/S Raj Naraian case: Indira Gandhi, the then Prime Minister and Raj Naraian were the rivals in a General Elections of Parliament. To protect the seat of Prime Minister ship, the Parliament inserted Article 329-A protecting Prime Minister and Speaker from any election disputes and guaranteed for their term. Raj Narain filed a case against Indira Gandhi contending that she misappropriated her power in the elections.**

**The Allahabad High Court quashed the election of Indira Gandhi as void. The Supreme Court held that certain provision of Article 329- A is against**

the Basic Structure Theory, and it is against the essential element of "Democracy" mentioned in the preamble. The Supreme Court, therefore, struck down certain provisions Article 329- A as unconstitutional.

**Q7) What is the meaning of "State"**

**Ans) Article 12 of Indian Constitution defines the term 'State' as used in Articles of Part III of the Constitution.**

**It says unless the context otherwise requires the term 'State' includes the following :-**

- 1. The Government and Parliament of India i.e. Executives and legislature of the Union.**
- 2. The Government and the legislature of each State i.e. Executives and legislature of States.**
- 3. All local and other authorities within the territory of India.**
- 4. All local and other authorities under the control of Government of India.**

**The term state thus includes executive as well as legislative organs of the Union and States ( Municipalities and panchayats). It is, therefore, the actions of these bodies that can be challenged before the Courts as violating fundamental rights.**

**Q8) Doctrine of Severability?**

**Ans) Article 13 of the Constitution lays down as follows :-**

**(1) All laws in force in the territory of India immediately before the commencement of Indian Constitution, in so far as they are inconsistent with the provisions of Part III of the Constitution shall be void to the extent of such inconsistency.**

**(2) The State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of this clause/chapter to the extent of the contravention shall be void.**

**Doctrine of Severability** It is not the whole Act which would be held invalid by being inconsistent with Part III of the Constitution but only such provisions of it which are violative of the fundamental rights, provided that the part which violates the fundamental rights is separable from that which does not isolate them. But if the valid portion is so closely mixed up with invalid portion that it cannot be separated without leaving an incomplete or more or less mingled remainder, the court will declare the entire Act void. This process is known as doctrine of severability or separability.

**Q9) What is doctrine of Eclipse?**

**Ans)** The Doctrine of Eclipse is based on the principle that a law which violates fundamental rights, is not nullity or void ab initio but becomes, only unenforceable i.e. remains in a moribund condition. "It is overshadowed by the fundamental rights and remains dormant, but it is not dead." Such laws are not wiped out entirely from the statute book. They exist for all post transactions and for the enforcement of the rights acquired and liabilities incurred before the commencement of the Constitution. It is only against the citizens that they remain in a dormant or moribund condition but they remain in operation as against non-citizens who are not entitled to fundamental rights.

**Q10) What is doctrine of basic structure?**

**Ans)** As per 24th Constitutional Amendment Act, Article 13 and 368 was amended which gave the Parliament the power to amend Fundamental Rights through Constitutional Amendment. This was challenged in the Supreme Court in Keshavananda Bharati vs. State of Kerala (1979) case. The Supreme Court upheld the validity of 24th Amendment Act. However, the Supreme Court held that the Parliament's amendment power is limited and is subject to "Basic Structure" of the Constitution. The Supreme Court has not explicitly defined the term "Basic Structure". However, in

various judgments, the Supreme Court has held that the following concepts form a part of Basic Structure

Supremacy of the Constitution

Secular character of the Constitution

Federalism

Separation of Powers

Power of Judicial Review

The mandate to build a welfare state

**Q11) What are 6 Fundamental Rights in Indian Constitution?**

**Ans)** Part-III of Constitution of India contains the list of Fundamental Rights available to Citizen of India. This chapter of Constitution has been described as 'Magna Carta' of India. The inclusion of chapter of Fundamental rights in the Constitution of India is in accordance with the trend of modern democratic thoughts. Fundamental rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their Government. The fundamental rights given in Indian Constitution are as under:

Right To Equality (Article 14-18)

Right To Freedom (Article 19-22)

Right against exploitation (Article 23-24)

Right To Freedom of Religion (Article 25-28)

Cultural and Educational Rights (Article 29-30)

Right To Constitution Remedies (Article 32-35)

**Q12) Name the features of our constitution which are taken from other constitution?**

**Name of Countries      Features of the Constitution**

**Britain**

**1. Parliamentary Government**

**2. Rule of Law**

3. Legislative procedure
4. Single citizenship
5. Cabinet system
6. Prerogative writs
7. Parliamentary privileges
8. Bicameralism

#### **Ireland**

1. Directive Principles of State Policy
2. Method of Election of the president
3. Members nomination to the Rajya Sabha by the President

#### **U.S.A**

1. Impeachment of the president
2. Functions of president and vice-president
3. Removal of Supreme Court and High court judges
4. Fundamental Rights
5. Judicial review
6. Independence of judiciary
7. The preamble of the constitution

#### **Canada**

1. Centrifugal form of federalism where the centre is stronger than the states.
2. Residuary powers vest with the centre
3. Centre appoints the Governors at the states
4. Advisory jurisdiction of the supreme court

#### **Australia**

1. Concept of Concurrent list
2. Article 108 i.e. Joint sitting of the two houses
3. Freedom of trade and commerce

#### **USSR (Now Russia)**

1. Fundamental duties

2. The ideals of justice (social, economic, and political), expressed in the Preamble.

France

1. Concept of "Republic"
2. Ideals of Liberty, Equality, and Fraternity(contained in the Preamble)

Germany

1. Fundamental Rights are suspended during Emergency

South Africa

1. Election of members of the Rajya Sabha
2. Procedure of Amendment of the Constitution

Japan

1. Concept of "procedure established by Law"

Government of India Act of 1935

Federal Scheme

Office of the governor

Judiciary

Public Service Commissions

Emergency provisions

Administrative details

Weimer Constitution    Emergency Constitution

Q13) What are the 12 schedules of Indian Constitution?

**SCHEDULE WHAT IT CONTAINS CONCERNED ARTICLES**

**First Schedule**

List of States and Union territories and their respective territories  
Articles 1 and 2

**Second Schedule**

Provisions relating to emoluments, allowances and privileges of President,



**Governor of States, Judges of Supreme Court and High Court etc.**  
**Articles 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164 (5), 186 and 221**

**Third Schedule**

**Forms of Oaths or affirmations Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219**

**Fourth Schedule**

**Allocation of seats in the Council of States Articles 4(1) and 80(2)**

**Fifth Schedule**

**Provisions as to administration and control of Scheduled Areas and Scheduled Tribes**

**Article 244(1)**

**Sixth Schedule**

**Provisions as to administration and control of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram Article 244(2) and 275(1)**

**Seventh Schedule**

**The three lists namely Union List, State List and Concurrent List dealing with subject-matter of legislations Article 246**

**Eighth Schedule**

**Languages Article 344(1) and 35**

**Ninth Schedule**

**Validation of certain acts and regulations i.e. list of Acts under Article 31B Article 31B**

### **Tenth Schedule**

**Provisions as to disqualification on ground of defection Article 102(2) and 191(2)**

### **Eleventh Schedule**

**Matters in respect of which schemes for economic development and social justice are to be implemented by Panchayats i.e. powers and responsibilities of Panchayats Article 243G**

### **Twelfth Schedule**

**Matters in respect of which Municipalities have been endowed powers and authority to enable them to function as institution of self-government i.e. powers and responsibility of Municipalities Article 243W**

**Q14) What are the Historical & Constitutional developments between 1857 to 1947?**

**Ans) The history of constitutional development in India begins from the passing of the Regulating Act in 1773. The Pitt's India Act of 1784 and the successive Charter Acts from 1793 to 1853 form part of the constitutional changes under the East India Company's rule.**

**The Revolt of 1857 brought about important changes in the British administration in India. The rule of the East India Company came to an end. The administration of India came under the direct control of the British Crown.**

**These changes were announced in the Government of India Act of 1858. The 'Proclamation of Queen Victoria' assured the Indians a benevolent administration. Thereafter, important development had taken place in constitutional history of India as a result of the Indian National Movement.**

**Government of India Act of 1858**

The Government of India Act of 1858 was passed by the Parliament of England and received royal assent on 2nd August 1858. Following are the main provisions of the Act:

East India Company's rule came to an end and the Indian administration came under the direct control of the Crown.

In England, the Court of Directors and Board of Control were abolished. In their place came the Secretary of State for India and India Council were established. The Secretary of State would be a member of the British cabinet. Sir Charles Wood was made the first Secretary of State for India. India Council consisting of 15 members would assist him.

The Governor General of India was also made the Viceroy of India. The first Viceroy of India was Lord Canning.

All the previous treaties were accepted and honoured by the Act.

#### Queen Victoria's Proclamation

On 1 November 1858 the Proclamation of Queen Victoria was announced by Lord Canning at Allahabad. This royal Proclamation was translated into Indian languages and publicly read in many important places. It announced the end of Company's rule in India and the Queen's assumption of the Government of India.

It endorsed the treaty made by the Company with Indian princes and promised to respect their rights, dignity and honour. It assured the Indian people equal and impartial protection of law and freedom of religion and social practices. The Proclamation of Queen Victoria gave a practical shape to the Act of 1858.

#### Indian Councils Act of 1861

The Indian Councils Act of 1861 increased the number of members in the Governor-General's executive Council from 4 to 5. Further the Governor-General's Executive Council was enlarged into a Central Legislative Council. Six to twelve "additional members" were to be nominated by the Governor-General. Not less than half of these members were to be non-officials. Thus, a provision was made for the inclusion of Indians in the Legislative

Council. The functions of these members were strictly limited to making legislation and they were forbidden from interfering in the matters of the Executive Council. They did not possess powers of administration and finance.

Legislative Councils were also established in the provinces. The number of additional members in the provinces was fixed between four to eight. So, this Act was an important constitutional development and the people of India came to be involved in the law-making process. The mechanism of Indian legislation developed slowly and reinforced further by the Acts of 1892 and 1909.

#### **Indian Councils Act of 1892**

The Indian Councils Act of 1892 was the first achievement of the Indian National Congress. It had increased the number of "additional members" in the Central Legislative Council. They were to be not less than 10 and not more than 16.

It had also increased the proportion of non-officials - 6 officials and 10 non-officials. The members were allowed to discuss the budget and criticize the financial policy of the government. In the provinces also the number of additional members was increased with additional powers.

#### **Minto- Morley Reforms of 1909**

The Indian Councils Act of 1909 was also known as Minto- Morley Reforms in the names of Lord Morley, the Secretary of State for India and Lord Minto, the Governor-General of India. Both were responsible for the passing of this Act. It was passed to win the support of the Moderates in the Congress. The important provisions of this Act were:

The number of "additional members" of the Central Legislative Council was increased to a maximum of 60. Elected members were to be 27 and among the remaining 33 nominated members not more than 28 were to be officials.

The principle of election to the councils was legally recognized. But communal representation was for the first time introduced in the interests of Muslims. Separate electorates were provided for the Muslims.

The number of members in provincial legislative councils of major provinces was raised to 50.

The Councils were given right to discuss and pass resolutions on the Budget and on all matters of public interest. However, the Governor-General had the power to disallow discussion on the budget.

An Indian member was appointed for the first time to the Governor-General's Executive Council. Sir S. P. Sinha was- the first Indian to be appointed thus.

In Bombay and Madras, the number of members of the Executive Councils was raised from 2 to 4. The practice of appointing Indians to these Councils began.

Two Indians were also appointed to the India Council [in England].

The Minto- Morley reforms never desired to set up a parliamentary form of government in India. However, the Moderates welcomed the reforms as fairly liberal measures. The principle of separate electorates had ultimately led to the partition of India in 1947.

#### Montague-Chelmsford Reforms of 1919

The political developments in India during the First World War such as the Home Rule Movement led to the August Declaration. On 20th August, 1917 Montague, the Secretary of State for India made a momentous declaration in the House of Commons. His declaration assured the introduction of responsible government in India in different stages. As a first measure the Government of India Act of 1919 was passed by the Parliament of England. This Act is popularly known as Montague-Chelmsford Reforms. At that time Lord Chelmsford was the Viceroy of India.

The main features of the Act were:

Dyarchy was introduced in the provinces. Provincial subjects were divided into "Reserved Subjects" such as police, jails, land revenue, irrigation and forests and "Transferred Subjects" such as education, local self-government, public health, sanitation, agriculture and industries. The Reserved subjects were to be administered by the Governor and his Executive Council. The Transferred subjects by the Governor and his ministers.

A bicameral (Two Chambers) legislature was set up at the centre. It consisted of the Council of States and the Legislative Assembly. The total member in the Legislative Assembly was to be a maximum of 145, out of which 105 were to be elected and the remaining nominated. In the Council of States there would be a maximum of 60 members out of which 34 were elected and the remaining nominated.

The salaries of the Secretary of State for India and his assistants were to be paid out of the British revenues. So far, they were paid out of the Indian revenues.

A High Commissioner for India at London was appointed.

The most important defect in this Act was the division of powers under the system of Dyarchy in the provinces.

**The Government of India Act of 1935**

The Government of India Act of 1935 was passed on the basis of the report of the Simon Commission, the outcome of the Round Table Conferences and the White Paper issued by the British Government in 1933. This Act contained many important changes over the previous Act of 1919.

Following were the salient features of this Act.

Provision for the establishment of an All India Federation at the Centre, consisting of the Provinces of British India and the Princely States. (It did not come into existence since the Princely States refused to give their consent for the union.)

Division of powers into three lists: Federal, Provincial and Concurrent.

Introduction of Dyarchy at the Centre. The Governor-General and his councillors administered the "Reserved subjects". The Council of Ministers were responsible for the "Transferred" subjects.

Abolition of Dyarchy and the introduction of Provincial Autonomy in the provinces. The Governor was made the head of the Provincial Executive but he was expected to run the administration on the advice of the Council of Ministers. Thus, provincial government was entrusted to the elected Ministers. They were responsible to the popularly elected Legislative Assemblies.

Provincial Legislatures of Bengal, Madras, Bombay, United Provinces, Bihar and Assam were made bicameral.

Extension of the principle of Separate Electorates to Sikhs, Europeans, Indian Christians and Anglo Indians.

Establishment of a Federal Court at Delhi with a Chief Justice and 6 judges.

The working of the provincial autonomy was not successful. The Governors were not bound to accept the advice of the ministers. In reality, the real power in the Provincial Government was with the Governor. But, despite these drawbacks in the scheme, the Congress decided to take part in the elections to the Provincial Legislatures with the consideration that it was an improvement over the previous Acts.

In accordance with the provisions of the Government of India Act of 1935 elections to the Provincial Legislatures were held in February 1937. The Congress had virtually swept the polls. On 7 July 1937, after the Viceroy Lord Linlithgow, assured the Congress of his cooperation, the party formed its ministries in seven provinces.

**Q15) What is bicameral legislature?**

It is a legislative body with two houses. India is one such example where there are two houses both at union and also at 6 of its 28 states. In a bicameral legislature, the function to administer and implement the laws are shared between the two houses.

At the central level, the Indian Parliament has two houses:

Lok Sabha (Lower House)

Rajya Sabha (Upper House).

At the state level, six of the 28 state legislatures have two houses:

Legislative Assembly (Vidhan Sabha)

Legislative Council (Vidhan Parishad)

The names of the six states having bicameral legislature are:

Andhra Pradesh

Bihar

Karnataka

Maharashtra

Telangana

Uttar Pradesh

The major advantage of a bicameral system is that it can provide for checks and balances and prevent potential abuses of power, it can also lead to gridlock that makes the passage of laws difficult. A major advantage of a unicameral system is that laws can be passed more efficiently.

Q 16) Distinguish between rigid constitution and flexible constitution.

Rigid constitution	Flexible constitution
A rigid constitution cannot be easily amended. It has very complex modification procedures	A flexible constitution can be amended with the same ease as the general laws.



<p>A rigid constitution cannot be accommodated according to the changing needs of society. No legislature can tamper with them, because they are superior to the common law</p>	<p>A flexible constitution can be adjusted to suit the changing needs of people and society.</p>
<p>A rigid constitution is essentially a written constitution composed by experienced and learned people. Thus it is a symbol of national efficiency</p>	<p>A flexible constitution is very useful for a developing country because it will not be a hindrance to progress due to its adaptability.</p>
<p>A rigid constitution does not develop and expand. People consider it as a sacred document and they are ready to work according to its provisions.</p>	<p>A flexible constitution grows and expands as nature matures.</p>
<p>A rigid constitution does not reflect the changing pulse of public opinion. In other words it represents the minds of experienced and learned people who initially implicated it.</p>	<p>A flexible constitution reflects the changing pulse of public opinion. In other words it represents the mind of the people.</p>
<p>Accordingly, legislatures should not have a constitution in their hands. So, a rigid constitution is based on the assumption that it is the perfect constitution for all time.</p>	<p>A flexible constitution is based on the sound assumption that there cannot be a right constitution for all time.</p>

**Q17) What are the salient features of Indian Constitution?**

**Ans) Salient features of Indian Constitution,**

As we all know Constitution is the supreme law of the country and every citizen of our country has to follow the constitution. The Indian constitution is a very detailed constitution. The Constitution of India is one of the finest-crafted Constitutions in the World. This Constitution is made by the Constituent Assembly under the Cabinet mission plan. This Constituent Assembly started its work from 26 November 1946. That's why every year we celebrate Constitution Day on 26 November. It took 2 years, 11 months and 18 days to complete our Constitution. It was on 26th November 1949 that the Indian Constitution was finally adopted, after close to 3 years of intense debates and discussions among the members of the Constituent Assembly, and it came into force on 26th January 1950.

The Salient Features of Constitution of India: -

The Preamble

Fundamental Rights and Duties

Directive Principles

Parliamentary System and Amendment Procedures

Judicial Review and Basic Structure doctrine

The Constitution of India is considered as a distinctive constitution around the globe. It is the largest written liberal democratic constitution of the world. It offers for a mixture of federalism and Unitarianism, and flexibility and with rigidity.

Following are the salient features of the Indian constitution: -

Written and Detailed constitution: -

The constitution is a fully written document incorporating the constitutional law of India. It was enacted by the constituent assembly of India. The assembly took 2 years, 11 months and 18 days to write and enact the constitution.

The Indian constitution is a very detailed constitution. It originally consisted of 395 articles divided into 22 parts with 12 schedules which have now increased to 448 articles after 105 amendments, as of August

2021. It is a constitution of both the centre and the states of the Indian union. It is actually much larger than the US Constitution, with only the articles of law and the French constitution itself. There are 6 articles.

Self-made and enacted constitution: -

The Indian constitution is the constitution of the people of India functioning through their elected and representative body: - the constituent assembly which was organized in December 1946. Its first session was held on December 9, 1946. It passed the objective resolution on 22 January. 1947.

Subsequently, it started the constitution-making process correctly and on 26 November 1949 was in a position to finally pass and adopt the constitution. The constitution became fully operational from 26 January 1950. We celebrate this day as our Republic Day.

Preamble of the constitution: -

The Preamble to the constitution of India is a well-written document that states the philosophy of the constitution. The constitution declares India a sovereign socialist secular democratic republic and a welfare state to secure justice, liberty and equality for the people and to promote brotherhood, for the dignity of the individual and the unity and integrity of the nation.

India is a Democratic socialist state: -

Although the Indian constitution fully reflected the spirit of democratic socialism from the beginning, it was only in 1976 that the Preamble was amended which included the term 'socialism'. It is now considered a major feature of the Indian state.

India promotes social, economic and political justice with the intention to end all forms of exploitation of all its people and securing equal distribution of income, resources and wealth. It is to be secured by peaceful, constitutional and democratic means.

India is a secular state: -

India gives special status to no religion. There is no such thing as the official religion of India

Furthermore, Indian secularism guarantees equal freedom to all religions.

The constitution gives the right to religious freedom to all citizens.

India is a Democratic state: -

The constitution of India provides for a democratic system. The authority of the government rests on the sovereignty of the people. The public enjoys equal political rights. On the basis of these rights, people freely participate in the process of politics. They elect their government.

There are free and regular elections for electing governments. The public can change their government through elections. No government can remain in power that does not enjoy the trust of the people.

India is a republic: -

The preamble declares India a republic. India does not have the rule of an emperor or a nominated chief. India has an elected head of state (the President of India), who holds the office for a fixed period of 5 years. The people of India indirectly elect their President, after every five years.

India is a union of states: -

'The Term Union of State' shows two important facts: -

It is not the result of a voluntary agreement between the sovereign states of the Indian Union, and

States of India do not enjoy the right to secede (withdraw) from the Union. The Indian centre now has 28 states and 7 union territories.

Mixture of Federalism and Unitarianism: -

Describing India as a union of states, the constitution provides a federal structure with a unitary spirit. Scholars have described India as co-quasi-federation or as a federation with a unitary bias, or even as a unitary union.

Like the Federation, the constitution of India provides for: -

Division of powers between centre and states, A written, rigid and supreme constitution,

Independent judiciary with power to decide centre-state disputes and Dual administration i.e. central and state administration.

India is a federation with few Unitarian facilities. This mixture of federalism-unitism has been taken into account both due to the pluralistic nature of society and the presence of regional variations, as well as the need to preserve the unity and integrity of the nation.

Mixture of rigidity and flexibility: -

The Constitution of India is somewhere rigid. Some of its provisions can be amended in a difficult way while others can be amended very easily. In some cases, the Central Parliament may amend parts of the Constitution by passing a simple law.

Article 368 of the Constitution provides two special methods of amendment: -

Most of the provisions of the constitution can be amended by the Central Parliament, by passing the amendment bill by a majority of the total membership and 2/3 majority of the members present and voting in its two houses.

For the modification of some specified parts, a very rigorous method has been provided. Under this, first the central parliament passes the amendment bill by a majority of the total membership and 2/3 majority of the members.

The amendment is passed only when it is approved by more than half of the many states of the union.

Thus the constitution of India is partly rigid and partly flexible.

Fundamental Rights: -

Under its Part (IIIC Articles, 12-35), the constitution of India guarantees fundamental rights to its citizens. This is called the Indian rights bill. Initially, 7 fundamental rights were granted, but after the removal of

the right to property from the list of fundamental rights (44th amendment act 1979) their number was reduced to six.

The six fundamental rights are: -

**Right to equality:** - this right provides equality before the law, its object is to end of discrimination, equality of opportunity, abolition of untouchability and abolition of titles.

**Right to freedom:** - It consists of six fundamental freedoms- speech and expression, freedom to form associations, freedom to assemble peacefully without arms, freedom to move freely in India, freedom of residence in any part, and any profession or freedom to adopt a business or occupation. This ensures personal freedom and protection in relation to punishment for certain crimes.

**Right against exploitation:** - This fundamental right prohibits the sale and purchase of human beings, forced labor (beggars) and the employment of children in dangerous jobs and factories.

**Right to freedom of religion:** - The grant of this right includes freedom of conscience, religion and worship. Any person can follow any religion. It gives freedom to all religions to establish and maintain their religious institutions. No person can be obliged to pay any tax for the promotion of any religion. The state cannot levy tax for any religion and the constitution prohibits the imposition of religious instructions in schools and colleges.

**Cultural and educational rights:** - The constitution under this category guarantees the rights of minorities to maintain and develop their languages and cultures. It also confers the right to establish, maintain and administer their educational institutions.

**Right to constitutional remedies (Art. 32):** - This fundamental right is the soul and heart of the entire Bill of Rights. This right provides for the enforcement and protection of all fundamental rights by the courts. It empowers the Supreme Court and the High Courts to issue writ for the enforcement of these rights.

**National Human Rights Commission (NHRC) and State Human Rights Commission and Protection of Human Rights: -**

**Protection of Human Rights Act was enacted to protect the human rights of all the people in 1993 it was passed by the Central Parliament. The National Human Rights Commission was established under this. It is headed by the former Chief Justice of India. It functions as an independent commission with a civil court status. It works to prevent the violation of human rights of the people.**

**In its cases of human rights violations, the NHRC may order compensation to the victims. Several states, human rights commissions are also working to protect human rights. India is fully committed to protecting the human rights of all the people of the world.**

**Fundamental Duties of the citizens: -**

**The Constitution in its Part IVA (Article 51A) describes the following fundamental duties of the citizen: -**

**Honoring the constitution, national flag and national anthem;**

**To cherish the noble ideals of the freedom struggle;**

**Maintaining and protecting the sovereignty, unity and integrity of India;**

**Protecting the country and providing national service when called;**

**Promote the common brotherhood of all the people of India and make any practice derogatory to the dignity of women;**

**To preserve the rich heritage of the nation's overall culture;**

**Project the natural environment and have compassion for living beings;**

**To develop scientific temperament, humanism and spirit of inquiry and reform;**

**Protection of public property and preventing violence; and**

**Strive for excellence in all individual and collective activity.**

**It is the duty of a parent to send their children to schools to receive education.**

**Fundamental duties, however, are not enforceable by the courts.**

**Directive principles of state policy: -**

One of the most important features of the Indian constitution is to work with the 'Directive Principles of State Policy' provided in part IV of the constitution. The Directive Principles direct the state to achieve the objectives of socio-economic development through its policies. These are to be implemented by both the associations for the states.

For example, the directive principles directed the state to ensure adequate means of livelihood of the people, fair distribution of funds, equal pay for equal work, protection of children, women, workers and youth, old age pension, social security, protect the interests of the weaker sections of society; promoting cottage industries, rural development, international and peace friendship and cooperation with other states etc.

Bi-cameral union parliament: -

The constitution provides for a bicameral legislature at the union level and names it as the central parliament. It has two houses: Lok Sabha and Rajya Sabha. The lok sabha is the lower, popular, directly elected house of parliament. It represents the people of India.

Its maximum strength is constant at 550. The lok sabha currently has 545 members. There are 21 seats in orissa out of which some seats are reserved for SC and ST class people.

Members of the lok sabha are directly elected by the people of India. All men and women 18 years of age and above, whose names are listed in the voter lists, vote for the election of members of the lok sabha.

Voters 25 years of age or older are eligible to contest in the lok sabha. The term of the lok sabha is 5 years. But the President working under the advice of the Prime Minister can dissolve it even earlier.

Parliamentary system: -

The constitution of India provides for a parliamentary system of government in each state of the union as well as the center. The President of India is the constitutional head with nominal powers. The Union council of ministers headed by the Prime Minister is the de facto executive. Ministers are essentially members of the central Parliament.



The Council of Ministers is collectively responsible before the Lok Sabha for all its policies and decisions. The Lok Sabha can remove the ministry by passing a no-confidence motion. The cabinet, indeed the Prime Minister, has the power to dissolve the Lok Sabha by the President. A parliamentary government is also working in every state along the same lines.

Universal-Adult Franchise: -

Another feature of the constitution is that it provides for universal adult suffrage. All men and women have equal rights to vote. Every adult man and woman over the age of 18 has the right to vote. All registered voters have the opportunity to vote in elections.

Single integrated state with single citizenship: -

India is a single, independent and sovereign unified state. It currently has 28 states and 7 union territories. All citizens enjoy equal citizenship. They are entitled to equal rights and freedoms, and equal protection of the state.

Single Integrated Judiciary: -

The Constitution provides for a single unified judicial system for the Union and the States. The Supreme Court of India operates at the top level, the High Court at the state level and other courts operate under the High Courts.

There are 21 State High Courts functioning in all parts of India. The Orissa High Court has been in existence since 1948 and is located in Cuttack. The Supreme Court is the Supreme Court of the land. It controls and runs the judicial administration of India.

Independence of judiciary: -

The Indian Constitution makes the judiciary truly independent. This is clear from the following facts: -

Judges are appointed by the President,

Only persons with high legal qualifications and experience are appointed as judges,

Judges of the Supreme Court cannot be removed from office except in an extremely difficult process of implementation.

The salary of judges is very high,

The Supreme Court has its own staff. The Indian judiciary has an autonomous organization and status. It operates as an independent and powerful judiciary.

Judicial review: -

The constitution is the supreme law of the land. The Supreme Court acts as the custodian and interpreter of the constitution. It also works as the protector of the fundamental rights of the citizen of India.

It exercises the power of judicial review for this purpose. By this, the Supreme Court determines the constitutional validity of all laws made by legislatures. It can reject any law that is found to be unconstitutional.

Judicial activism: -

At present, the Indian judiciary is becoming more and more active towards the performance of its social obligations.

Through a more active exercise of its powers vis-à-vis the Public Interest Litigation System (PIL), the Indian judiciary is now very actively trying to secure all public demands and needs under state laws and policies.

Emergency provisions: -

The Constitution of India has special provisions to deal with emergencies.

It identifies three types of potential emergencies: -

National Emergency (Article 352); emergency arising from war against India or external aggression or threat of external aggression or armed rebellion within or any part of India;

Constitutional Emergency in a State (Article 356); emergency arising due to failure of constitutional machinery in a state; or some states and

Financial emergency (Article 360) is an emergency, which is a threat to India's financial stability.

The President of India has been empowered to take appropriate steps to deal with these emergencies. During the period of an emergency, the

powers of the President, in fact the PM and the Union Council of Ministers are a tremendous increase. The President can take all steps necessary to meet an emergency. These are called emergency powers of the President.

Special provisions relating to scheduled castes and scheduled tribes: -

With a view to protect the interests of the scheduled castes and scheduled tribes, the constitution advocates certain special provisions. It provides for reservation of seats in the assemblies for the scheduled castes and scheduled tribes.

The President may nominate the Lok Sabha, in the event of the Anglo-Indian community having no more than two members, he opines that the community does not have adequate representation in the House.

Provisions regarding language: -

The constitution makes special provisions for defining the language of the Union, the regional languages and the language of the Supreme court and High courts.

It states that Hindi will be the official language of the Sangh in Devanagari script. But at the same time, it also provides for the continuation of the English language. A state legislature may adopt the language of the province as its official language.

English remains the language of the Supreme Court and High Courts. The constitution gives a directive to the Sangh to develop and popularize Hindi. In its eighth schedule, the constitution recognizes 22 modern Indian languages: - Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Nepali, Manipuri, Konkani, Sanskrit, Sindhi, Tamil, Telugu, Urdu, Dogri, Maithili and Santali.

A constitution drawn from several sources: -

In framing the constitution of India, the founding fathers used many sources. The values and ideals of the national movement guided his path. The national movement influenced him to adopt secularism as an ideal. Some of the provisions of the Government of India Act 1935 were used

by them and many of the features of foreign structures influenced them, and were adopted by them

**Q18) Federalism of Indian Constitution?**

**Ans) Article 1 of the Constitution provides that 'India, that is Bharat, shall be a union of States.'" Nowhere has the Constitution been described to be federal; yet there are certain basic characteristics of federalism in the Indian Constitution. Therefore, to examine whether the Constitution of India is federal or not, it is necessary to first examine certain fundamental principles of federalism**

**Federation is a form of Government where two sets of Government operate and function simultaneously, as in the United States of America. Thus, each State has its own government, which functions independently in local matters like education, health, police, etc. But matters of national importance (e.g., defence, coins and currency. foreign affairs) are not left in the hands of the State Governments These are managed by the Central (or Federal) Government in common for all the States.**

**The following are thus the main characteristics of a federal Constitution:**

**(1) Dual Government.-in a federal State, there are two Governments, - the national or federal Government and the Government of each State. (2) Distribution of Powers.-There is distribution of legislative and executive powers between the federal Government and the State Governments. (3) Supremacy of the Constitution.-As there is division of power, such division must be evidenced in a written document. The Constitution, which provides for such division of power, is a document of fundamental importance, and it is from such a Constitution that a federal polity derives its existence. (4) Authority of Courts.- in a federal state, the supremacy of the Constitution is essential to the existence of the federal system. Therefore, the interpretation of the Constitution assumes great importance in the successful working of a federal Constitution. This power of interpretation is vested in the Courts. The Courts are empowered**

to declare any action on the part of the Government to be ultra vires, if such action violates the provisions of the Constitution. Therefore, the judiciary, acting as the custodian and guardian of the Constitution, assumes immense importance in a federal State.

### Federal Characteristics of the Indian Constitution

#### (1) Formation of the Constitution

Federations elsewhere have been the result of a voluntary agreement between a number of sovereign and independent States coming under a common administration for certain specific purposes. But, in India, federation was not a process of integration, but a process of decentralisation. The former imperialistic unitary State was converted into a democratic union by the Constitution. Therefore, it is not surprising that the Indian Constitution differs from other federations in many vital respects.

#### (2) Distribution of Powers

The scheme of distribution of legislative power contained in the Constitution can be summarised as follows (a) Union List.—With respect to any of the matters enumerated in List I in the Seventh Schedule (viz., the Union List), the Parliament (viz., the Union Legislature) has exclusive power to make laws. (b) State List—With respect to any of the matters enumerated in List II in the Seventh Schedule (viz., the State List), the Legislature of a State has exclusive power to make laws. (c) Concurrent List—With respect to any of the matters enumerated in List III in the Seventh Schedule (viz., the Concurrent List), both the Parliament and the Legislature of any State have power to make laws. However, if there is any conflict between any State law and a Central law, the latter will prevail. (d) Residuary power—The Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or in the State List. (e) Legislation for giving effect to international agreements.— Notwithstanding the abovementioned scheme of distribution of powers, the Parliament also has the power to make any law for

implementing any international agreement. It may also be noted that this scheme of legislative powers can be altered when there is a proclamation of emergency, on the ground that there has been a threat to the security of India by internal disturbance or external aggression. Further, even during peace-time, by a resolution of the Council of States (Rajya Sabha) passed with a two-thirds majority, a subject in the State List can be deemed to be in the Concurrent List for a period of one year. Thus, there is a federal scheme of distribution of powers, which can be altered either in national interest or during a proclamation of emergency. From what is stated above, the irresistible conclusion is that the Constitution has created a fairly strong Centre

### **(3) Citizenship**

There is a single citizenship for the whole Union and there is no citizenship for the State. (In the United States, for example, citizenship is of both the particular State of the citizen, as for instance, of Texas or of California, and of the United States as a whole)

### **(4) Judiciary**

There is no bifurcation of the judiciary between the Federal and State Governments. The same system of Courts, headed by the Supreme Court, administer both the Union laws and the State laws as are applicable to the cases coming up for adjudication. This is again in contrast to the American system, where there are Federal Courts and State Courts.

### **(5) Election, Accounts & Audit**

The machinery for election, accounts and audit is similarly integrated and unified. The Union Government may give directions to a State Government to ensure due compliance with the legislative and administrative action of the Union.

### **(6) Failure of Constitutional Machinery**

Where there is a failure of the constitutional machinery in a State, the President can suspend the Constitution of the State and assume

responsibility for administration of the State. In such circumstances, the Parliament may legislate for such a State.

**(7) The Council of States**

The Council of States is not constituted on the principle of equal representation of the States.

**(8) Formation of New States**

The Union Legislature, namely the Parliament, has the power to form new States, to increase or diminish the area of existing States and to alter their boundaries or names.

**Conclusion**

Thus, it can be seen that the Indian Constitution has some federal characteristics and some unitary features, and the latter are more pronounced during times of national emergency. Even in normal times, the Union and the States are not equal partners, the former possessing more authority and control than the latter.

**Q 19) What is double jeopardy?**

**Ans)** The constitution of India in Article 20(2) has the principles of "autrefois convict" or Double jeopardy which means that person must not be punished twice for the same offence. Thus, one cannot be tried and punished for the same crime twice. The law of the land is that there cannot be second trial for punishing an offence for which he or she has already been prosecuted or convicted earlier.

**Q 20) Write short note on fundamental duties?**

**Ans)** The provisions relating to Fundamental Duties of the citizens are given in Part IVA (Article 51A) of the Constitution which are as under:

Honoring the constitution, national flag and national anthem;

To cherish the noble ideals of the freedom struggle;

Maintaining and protecting the sovereignty, unity and integrity of India;

Protecting the country and providing national service when called;

Promote the common brotherhood of all the people of India and make any practice derogatory to the dignity of women;

To preserve the rich heritage of the nation's overall culture;

Project the natural environment and have compassion for living beings;

To develop scientific temperament, humanism and spirit of inquiry and reform;

Protection of public property and preventing violence; and

Strive for excellence in all individual and collective activity.

It is the duty of a parent to send their children to schools to receive education.

Fundamental duties, however, are not enforceable by the courts.

**Q21) What is democracy and Republic?**

**Ans)** A form of government where all citizens have the right to equal participation, directly or through their elected representatives, in the development and law making is known as a democracy. In this form of government, the voice of the majority is given preference over the minority, and the people are able to choose their own government. Once the majority government is established, the minorities have no say. Moving back to the origin of the word democracy; it is derived from the Greek words 'demos' meaning people and 'kratos' meaning rule. In simpler words we can say that democracy means "rule by the people". Democracy allows the people to take part in the government and its political agendas. Back in November 1863, Abraham Lincoln gave a definition of democracy that was widely accepted by the world. The definition says, "...a government of the people, by the people, for the people

**Q22) What does socialist mean?**

**Ans)** The word socialist was added to the Preamble of the Indian Constitution by the 42nd amendment act of 1976. It implies social and



economic equality. Social equality in this context means the absence of discrimination on the grounds only of caste, colour, creed, sex, religion, or language. Under social equality, everyone has equal status and opportunities. Economic equality in this context means that the government will endeavour to make the distribution of wealth more equal and provide a decent standard of living for all.

**Q23) What is meant by Judicial activism?**

**Ans)** The judiciary plays an important role in upholding and promoting the rights of citizens in a country. The active role of the judiciary in upholding the rights of citizens and preserving the constitutional and legal system of the country is known as judicial activism.

Judicial activism signifies the proactive role of the Judiciary in protecting the rights of citizens. The practice of Judicial Activism first originated and developed in the USA. In India, the Supreme Court and the High courts are vested with the power to examine the constitutionality of any law, and if such a law is found to be inconsistent with the provisions of the constitution, the court can declare the law as unconstitutional.

It has to be noted that the subordinate courts do not have the power to review constitutionality of laws. The foundation of Judicial Activism in India was laid down by Justice V.R Krishna Iyer, Justice P.N Bhagwati, Justice O.Chinnappa Reddy, and Justice D.A Desai.

**Q24) What are the characteristics of federal constitution?**

**Ans)** The American Constitution is universally regarded as an example of federal Constitution. It establish dual polity or dual form of Government. A Federal Constitution usually has following essential characteristics :-  
Distribution of Powers. - A federal Constitution defines and demarcates the sphere of the Central and State Government. Each government has to

act within its own sphere and cannot encroach upon the field of others. The basis of such distribution of powers between Centre and state is that the matters which are of national importance and in which uniform policy is desirable are given to the Centre and the matters which are of local importance are given to the states for legislation and control.

**A written Constitution.** - A federal Constitution is necessarily a written Constitution. Distribution of powers can be made between the Central and State governments only when there is a written Constitution. All organs of the government derive their powers from the Constitution and have to function within the defined limits. The validity of all legislative enactments is tested according to the provisions of the Constitution.

**Supremacy of the Constitution.** - Under a federal system, Constitution is supreme. All organs of the government have to work within the spheres assigned to them by the Constitution and they cannot encroach upon the jurisdiction of other organs. The judiciary has to interpret the Constitution and has to see that there is no contravention of jurisdiction by different organs of the government in the spheres assigned to others. The disputes between different organs of the government are settled according to the provisions of the Constitution.

**Effective Role of the Courts.** - The courts under a federal Constitution, have the final authority to interpret the Constitution and maintain the supremacy of the Constitution. They decide the disputes between the Central and state governments. Their decisions on inter-governmental disputes are final. Besides, the courts are the saviour of fundamental rights of the citizens of the country.

**Rigidity** - A natural corollary of a Written Constitution is its rigidity. In a rigid Constitution, procedure for its amendment is very complicated. This, however, does not mean that Constitution would be legally unalterable. It simply means that power to amend Constitution should not remain exclusively with either Central or State Government.

The Constitution of India possesses all the above stated characteristics of a federal Constitution. Constitution of India also provides for dual polity, system of Governance at Central level and State level and there is division of power at Centre and State level and each level of Government is supreme in its sphere. Similarly Indian Constitution is written and Supreme and procedure of its amendment is difficult as per federal character. Constitution establish Supreme Court of India to decide dispute between centre and State or States inter se, other constitutional matters.

**Q25) What are the characteristics of Unitary Constitution?**

**Ans) Constitutions of this nature exist in a state where a government is formed after a union of two or more sovereign states. A state is governed as a one single unit in which the central government is supreme and any administrative divisions exercise only powers which their government chooses to delegate, e.g. Tanzania (Zanzibar and Mainland Tanzania), U.K (Scotland, Wales, N. Ireland and England) and etc.**

**Some major characteristics of the unitary constitution are stated below:-**

**Most Effective Form of Constitution:** The unitary constitution is said to be the most effective form of constitution. In the unitary system, the uniformity of law, policy and administration exists throughout the country. It promotes national harmony among the citizens of the country.

**Single Citizenship:** In a unitary constitution, a citizen enjoys single citizenship.

**Efficient in Defence and Foreign Affairs:** In the field of defence and foreign affairs the unitary constitution is manifest. The clear cut policies can be executed in foreign policies and securities of the country.

**Single Government:** In a unitary system, there is only one central government and the sovereign power belongs to the central government.

**Flexible:** The unitary constitution is flexible. It can be easily changed according to circumstances.

**Q 26) Difference between a unitary and federal constitution:-**

A constitution Lays down the forms of the government it regulates the distribution of power to various organs of governments. Constitution have been classified as unitary and Federal constitution. The major difference between unitary and federal constitution are stated below:-

In a unitary constitution, all the powers of the government are concentrated in the central authority. Whereas the federal constitution means that the government shares power in a country with all state levels and units of other agencies.

**Citizenship:** In a unitary constitution, a citizen can be entitled to single citizenship. He does not enjoy the rights of another country/state. On the other hand, in the federal constitution, a citizen can enjoy dual citizenship. He must obey the rights of both countries/states.

**Government:** In unitary constitution, there is a single power known as a central government and it controls the entire government indeed all the power and administrative authority reside in the central place. On the other hand, In the Federal constitution, there is a dual government i.e central government and state government.

**Changeable:** A unitary constitution is easily changeable, where the amendment can be as simple as passing a simple part of the law. Whereas, A federal constitution is not easily changeable. It can be only amended by special circumstances.

**Codified and Uncodified:** A unitary constitution is an uncodified constitution that is not coded structurally. The constitutions have evolved day by day and a new set of laws and guidelines are being added over time. On the other hand, federal constitution is coded in a specific document. The constitution is the highest form of law in the country and no other law or country can violate the constitution. The constitution generally defines the power of the state, the organs of the state, and

the functions of each, the relationship between each other, and the rights of the people.

**Q27) Write Short note on Citizenship?**

**Ans) The population of a country can be divided into two classes namely**  
**1. Citizens and 2. Aliens. A citizen of a state is a person who enjoys full civil and political rights. Citizens are different from aliens who do not enjoy all these rights. Citizenship carries with it certain advantages conferred by the Constitution. Part- II Articles 5 to 11 of the constitution deals with the Citizenship. Citizenship is membership of a society living under the one Government. It confers the status and carries with it certain privileges of the state. Citizenship may also be defined as the legal relationship between an individual and the state under which an individual pledges his loyalty to the state, and the state offers protection to the individual. Citizenship is confined to only natural or physical persons. It is not extended to Corporations and juristic persons.**

**Q28) What are the different modes of Citizenship in India?**

**Ans) Modes of Acquiring Citizenship:**

**Citizenship at the commencement of the Constitution**

- 1. Citizenship by Domicile**
- 2. Citizenship of Migrants to India from Pakistan**
- 3. Citizenship of Migrants of Pakistan.**
- 4. Citizenship of persons of Indian residing outside India**

**Citizenship under the Citizenship Act- 1955**

**By Birth**

**By Descent**

**By Registration**

**Naturalization**

By Incorporation of territory.

**Q29) Write note on acquisition of citizenship by domicile?**

**Ans ) Article-5 of the Constitution deals with the provisions relating to Acquisition of Citizenship by Domicile. Domicile of a person is his permanent home. No person can be without a domicile and no person may have more than one operative domicile. Domicile denotes the connection of a person with a territorial system of law. There is only one citizenship, which is of the Union of India, there is no separate state Citizenship as in the United States of America.**

**According to Article-5 a person entitled to citizenship by domicile if he fulfills the following 2 conditions:**

**He must be at the commencement of the constitution, have his domicile in the territory of India.**

**Or such person must fulfill any one of the 3 conditions laid down in that article, namely:**

**He was born in India**

**Either his parents was born in India**

**He must have been ordinarily resident in the territory of India for not less than 5 yrs immediately before the commencement of the constitution.**

**Q30) Short note on Right of Equality?**

**Ans) The constitution of all countries gives to their citizens certain rights called fundamental rights. Indian constitution also has conferred a number of fundamental rights on the citizens of the country, and which are essential for a man to lead a decent and respectable life and to attain the fullest development of human personality.**

**Part- III of the constitution deals with fundamental rights from Articles 14 to 35. The fundamental rights are conferred to every citizen against the Government. If any of the fundamental rights are violated, the citizen of India can sue the state.**

## Right of Equality

Equality is one of the basic elements of democracy. Right to equality means equality in all its forms i.e. legal civil and social. An article 14 to 18 of the constitution guarantees the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. Article 14 uses two expressions "equality before law" and "equal protection of law"

Equality before the law means that among equals the laws should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizen of full age without distinctions of race, religion, wealth, social status or political influence

Equal protection of law is a positive concept, implying equality of treatment under equal or similar circumstances. No one can be favoured more and no one can be unfavoured more. Equal law should be applied to all persons in the same situation. There should not be any discrimination between one person to another

Q31) What is doctrine of pleasure?

Ans ) The doctrine of pleasure has its origins in English law. In England, the moral rule is that a civil servant of the Crown holds office during the pleasure of the Crown. This means his services can be terminated at any time by the Crown, without assigning any reason.

According to Article 310, except for the provisions provided by the Constitution, a civil servant of the Union works at the pleasure of the President and a civil servant under a State works at the pleasure of the Governor of that State. This implies that the operation of the Doctrine of Pleasure can be limited by constitutional provisions. As per Article 311 of Indian Constitution , no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an

authority subordinate to that by which he was appointed. Under the constitution, the following are excluded from the operation of this doctrine:

Judges of the Supreme Court;

Judges of the High Courts;

Chief Election Commissioner; and

Comptroller and Auditor General of India.

**Q32) When can financial emergency be declared?**

**Ans)** Part XVIII (Article 352-360) of the Constitution of Indian speaks about the Emergency Provisions. There are three types of emergency:

**National Emergency - Article 352**

Emergency due to the failure of the constitutional machinery in the states  
- President's Rule - Article 356.

**Financial emergency- Article 360 :**

Article 360 of the Indian Constitution empowers the President to invoke financial emergency.

**Grounds of declaration -** If the President is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.

**38th Amendment Act of 1975 -** The satisfaction of the president in declaring a Financial Emergency is final and conclusive and not questionable in any court on any ground. However, **44th Amendment Act of 1978 -** deleted the provision added by the 38th Amendment Act of 1975, which implies that the satisfaction of the president is not beyond judicial review (that is, it can be challenged in court).

**Q33) What is uniform civil code?**

**Ans)** Article 44 deals with Directive Principles of State Policy (DPSP) which inter-alia mentions that State shall endeavor to provide for its citizens, a uniform civil code (UCC) throughout the territory of India. A



Uniform Civil Code means that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall be applicable to all uniformly. They cover areas like- Marriage, divorce, maintenance, inheritance, adoption and succession of the property. It is based on the premise that there is no connection between religion and law in modern civilization.

However, Article 37 of the Constitution itself makes it clear the DPSP "shall not be enforceable by any court". Nevertheless, they are "fundamental in the governance of the country". This indicates that although our constitution itself believes that a Uniform Civil Code should be implemented in some manner, it does not make this implementation mandatory.

**Q34) What are the functions of election commission?**

**Ans) The Constitution provides the Election Commission of India with the power of direction, superintendence, and control of elections to parliament, state legislatures, the office of president of India and the office of vice-president of India. The same is dealt in Article 324 of Indian Constitution. The functions of election commission are as under:**

**To direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.**

**To decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections**

**To decide on the location of polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters**

**To prepare electoral roll and issues Electronic Photo Identity Card (EPIC)**

**To grant recognition to political parties & allot election symbols to them along with settling disputes related to it**

To sets limits of campaign expenditure per candidate to all the political parties, and also monitors the same

To advise in the matter of post-election disqualification of sitting members of Parliament and State Legislatures.

To issue the Model Code of Conduct in the election for political parties and candidates so that no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.

Q35) Explain president powers in India?

Ans) The Indian President is the head of the state and he is also called the first citizen of India. He is a part of Union Executive. The provisions relating to president of India are given in Article 52-62 of Indian Constitution . Under these articles, information on how a President is elected, his powers and functions, and also his impeachment process is given.

The powers of president are classified in following heads:

**Executive powers of President.**

For every executive action that the Indian government takes, is to be taken in his name

He may/may not make rules to simplify the transaction of business of the central government

He appoints the attorney general of India and determines his remuneration

He appoints the following people: Comptroller and Auditor General of India (CAG); Chief Election Commissioner and other Election Commissioners; Chairman and members of the Union Public Service Commission; State Governors; Finance Commission of India chairman and members

He appoints National Commissions of SC, ST and OBC.

Legislative Powers of President

He summons or defers Parliament and dissolve the Lok Sabha

He summons a joint sitting of Lok Sabha and Rajya Sabha in case of deadlock

He addresses the Indian Parliament at the commencement of the first session after every general election

He appoints speaker, deputy speaker of Lok Sabha, and chairman/deputy chairman of Rajya Sabha when the seats fall vacant.

He nominates 12 members of the Rajya Sabha

He can nominate two members to the Lok Sabha from the Anglo-Indian Community

He consults the Election Commission of India on questions of disqualifications of MPs.

He recommends/ permits the introduction of certain types of bills.

He promulgates ordinances.

#### Financial Powers of President

To introduce the money bill, his prior recommendation is a must

He causes Union Budget to be laid before the Parliament

To make a demand for grants, his recommendation is a pre-requisite

Contingency Fund of India is under his control

He constitutes the Finance Commission every five years.

#### Judicial Powers of President

Appointment of Chief Justice and Supreme Court/High Court Judges are on him

He takes advice from the Supreme Court, however, the advice is not binding on him

He has pardoning power: Under article 72, he has been conferred with power to grant pardon against punishment for an offence against union law, punishment by a martial court, or death sentence.

#### Diplomatic Powers of President

International Treaties and agreements that are approved by the Parliament are negotiated and concluded in his name

He is the representative of India in international forums and affairs

#### Military Powers of President

He is the commander of the defence forces of India. He appoints:

Chief of the Army

Chief of the Navy

Chief of the Air Force.

Emergency Powers of President

He deals with three types of emergencies given in the Indian Constitution:

National Emergency (Article 352)

President's Rule (Article 356 & 365)

Financial Emergency (Article 360)

**Q36) What is right to Freedom of Speech and Expression?**

**Ans)** The Right to Freedom is one of the Fundamental Rights guaranteed by the Constitution of India. The provisions of Right to Freedom are given in Article 19 to 22 of Indian Constitution. According to Article 19(1)(a): All citizens shall have the right to freedom of speech and expression. This implies that all citizens have the right to express their views and opinions freely. This includes not only words of mouth, but also a speech by way of writings, pictures, movies, banners, etc. The right to speech also includes the right not to speak. In 2004, the SC held that hoisting the national flag is also a form of this freedom. This right also includes the right to access information because this right is meaningless when others are prevented from knowing/listening. It is according to this interpretation that the Right to Information (RTI) is a fundamental right. Freedom of speech is not absolute. Article 19(2) imposes restrictions on the right to freedom of speech and expression. The reasons for such restrictions are in the interests of Security, Sovereignty and integrity of the country, Friendly relations with foreign countries, Public order, Decency or morality, Hate speech, Defamation, Contempt of court.

**Q37) What are the freedoms guarantee by Article 19 of Indian Constitution?**

The freedoms guarantee by Article 19 of Indian Constitution are:

- a) Freedom of speech and expression
- b) Freedom to assemble
- c) Freedom to form associations/unions/cooperative societies
- d) Freedom to move freely
- e) Freedom of residence
- f) Freedom of profession

**Q38) Write a note on Right to Life and Liberty?**

**Ans) According to Article 21 of Indian Constitution: "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law." This fundamental right is available to every person, citizens and foreigners alike. The fundamental right provided by Article 21 is one of the most important rights that the Constitution guarantees. The Supreme Court of India has described this right as the 'heart of fundamental rights'. This right has been provided against the State only. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc. Any private individual encroaching on these rights of another individual does not amount to a violation of Article 21. The remedy for the victim, in this case, would be under Article 226 or under general law. The right to life is not just about the right to survive. It also entails being able to live a complete life of dignity and meaning.**

**Q39) What is joint Session of parliament?**

**The Constitution of India provides for a joint session of the Parliament. India has a bicameral Parliament. To pass any bill, both the Houses (the Lok Sabha and the Rajya Sabha) must concur. The bill has to be passed by both Houses before the President can give his/her assent. The drafters of Indian Constitution foresaw situations where there could be a deadlock between both Houses of Parliament. Therefore, they**

provided for a constitutional mechanism to break this deadlock, in the form of joint sittings.

The joint sitting is called by the President. The Speaker presides over a joint sitting. In the absence of the Speaker, the Deputy Speaker of the Lok Sabha presides over it, and in his absence, the sitting is presided over by the Deputy Chairman of the Rajya Sabha. If any of the above-mentioned people are not available, any Member of Parliament (MP) can preside over the sitting by consensus of both Houses. The quorum to constitute a joint sitting: 1/10th of the total number of members of the House.

Article 108 of the Indian Constitution provides for a joint sitting of both Houses of Parliament. Accordingly, a joint session can be summoned when If after a bill is passed by one House and transmitted to the other House and the other House rejects this bill, or the Houses do not agree on the amendments made to the bill, or more than six months elapse with the bill being received by the other House without it being passed. In such circumstances, the President can summon a joint sitting unless the bill had elapsed because of the Lok Sabha's dissolution.

According to Article 118, the President can make rules for the procedure of the joint sitting after due consultation with the Lok Sabha Speaker and Rajya Sabha Chairman. In a joint sitting, any new amendment cannot be proposed in the bill, excepting those which have been passed by one House and refused by the other. The bill in a joint sitting is passed by a simple majority.

Q40) Under which instances, President can specifically address joint sitting of both houses?

Ans) According to Article 87 of the Constitution, there are two instances when the country's President specifically addresses a joint sitting of both Houses. They are:

- a) At the start of the first session after a general election. This is when the reconstituted Lok Sabha meets for the first time after being elected.
- b) At the start of the first session every year.

Q41) Write short note on Comptroller & Auditor general of India?

Ans) Comptroller and Auditor General of India is the apex authority responsible for external and internal audits of the expenses of the National and state governments. It is popularly known as the CAG of India. Part V of the Indian Constitution describes the role and responsibilities of this office.

Article 148 of the Constitution of India establishes the authority of this office. It states the following points in relation to the establishment and powers of CAG:

- The Comptroller and Auditor General is appointed by the President of India and can be removed from office only in the manner and on the grounds that a Judge of the Supreme Court is removed.
- The person appointed to this office should take an oath of office before the President or any other person appointed by the office of the President.
- The salary, service conditions, leaves of absence, pension, and age of retirement are determined by the Parliament of India and specified in the Second Schedule such that the service conditions and salary will not be modified to the disadvantage of the incumbent during their tenure.
- The CAG is not eligible for any further office after the end of their tenure either in the Government of India or any State Government.
- The powers and functions of the CAG are subject to the provisions of the Indian Constitution and any Acts of Parliament, along with the service conditions for the Indian Audits and Accounts Department. The

rules governing these would be prescribed by the President in consultation with the incumbent.

- The expenses on the administration of this office including all allowances, salaries and pensions would be charged to the Consolidated Fund of India.
- The incumbent is appointed for a period of 6 years or until attaining the age of 65 years whichever is earlier.

Articles 148, 149, 150 and 151 of the Constitution of India describe the functions and powers of this office. The Comptroller and Auditor General or his staff can inspect any office of the organizations which are subject to his audit. He and his staff can scrutinize the transactions of the government and question the administration regarding the various aspects of these transactions. After scrutinizing the transactions, the CAG may withdraw his objections or, if he finds them serious, incorporate them in his report which is submitted to the Parliament. To enable the office to perform this function smoothly, he is endowed with full access to all the financial records including books, papers, and documents. Moreover, the CAG has the freedom to ask for relevant information from any person or organization.

**Q42) What is money bill?**

**Ans )** Money Bill is defined in Article 110 of the Indian Constitution. Money bills are concerned with financial matters like taxation, public expenditure, etc. The provisions that make a bill a money bill in India are given below.

- The imposition, abolition, remission, alteration or regulation of any tax
- The regulation of the borrowing of money by the Union government
- The custody of the Consolidated Fund of India or the contingency fund of India, the payment of money into or the withdrawal of money from any such fund
- The appropriation of money out of the Consolidated Fund of India



- Declaration of any expenditure charged on the Consolidated Fund of India or increasing the amount of any such expenditure.
- The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money, or the audit of the accounts of the Union or of a state.
- Any matter incidental to any of the matters specified above.

**Q43) Short Note on Minority Rights Under Article 29 & 30?**

**Ans) Cultural and Educational Rights are provisioned under Articles 29 and 30 of the Indian Constitution.**

**Cultural and Educational Rights state that every Indian citizen, irrespective of religion, race, caste, language, or any other similar factors, has the right to start or run an educational institute within the country.**

**Clause (1) of Article 29 of the Indian Constitution states that every citizen who is a resident of India or any part of it speaks, writes, and practices different languages and cultures, and the script has the right to protect the same. In Clause(2) of the Article, it is further provided that no citizen should be denied the right of admission to any state-run or state-aided educational institution solely on religion, race, caste, language, or other similar factors.**

**Clause (1) Article 30 states that all minority communities in the country have the right to start and run educational institutions of their choice. In providing aid to educational institutions, the state shall not illustrate any discrimination on the ground of religion and language. Clause (1) of Article 30 states that no countrymen should be denied the right to admission to any state-run or aided educational institutions based on race, caste, creed, or language.**

**Q 44) Write a note on Right to Education?**

Ans ) The Constitution 86th Amendment Act, 2002 has added a new Article 21-A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. It provides that "the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law determine"

It is well known that education is a basic human right for the success of democratic system of government, education is one of the elements. The framers of the Constitution realising the importance of education have imposed a duty on the state under Article 45 as one of the directive principle of state policy to provide free and compulsory education to all children. The object was abolish illiteracy from the country. But it is unfortunate that even after the lapse of so many years from the commencement of the constitution they did not take any concrete steps to implement this 40% of the population of the country is still illiterate. The right to life under Article 21 and the dignity of the individual cannot be realized unless it is accompanied by the right of education.

Q45) What are the constitutional provisions relating to ex-post facto laws?

Ans) Article 20(1) of the constitution says, " No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor he subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence. This means that person can only be convicted of an offence if the act was charged against him was an offence under the law in force at the date of commission of the act. However it does not prohibit the imposition of civil liabilities retrospectively. So a tax can be imposed with effect from a past date Article 20(1) corresponds to the provisions against ex-post-facto laws of the American constitution. Ex-post-facto-laws are laws which impose and enhanced penalties upon acts already done i.e. retrospectively.

**Q 46) What is writ of prohibition?**

**Ans) Writ of Prohibition is issued to a subordinate to cease doing something which it is not supposed to do as per law. Normally, this writ is issued by the superior courts to the lower courts when the lower court tries to exceed the limit of jurisdiction vested in it. Likewise, if the court acts in absence of jurisdiction, this writ can be issued. Once this writ is issued the lower court is under an obligation to stop its proceedings.**

**Q 47) Writ of Mandamus?**

**Ans) The term "Mandamus" in Latin means " We command". This writ is issued to a public official who refrains from performing his public duties which he is obliged to do. This writ can also be issued to any public authority (including the government, corporation and Court) who commits an act which is detrimental to the welfare of the general public. This writ however cannot be issued against the President and the Governor.**

**Q 48) Writ of Habeas Corpus?**

**Ans ) One of the valuable writs for personal liberty is "Habeas Corpus" which means "You may have the body". If any person is detained in prison or a private custody without legal justification; this writ is issued to the authority confining such person, to produce him/her before the Court. The Court intervenes here and asks the authority to provide the reasons for such detention and if there is no justification, the person detained is set free. The applicant for this writ can either be the person in detention or any person acting on his/her behalf to protect his/her liberty. This writ provides for immediate relief in case of unlawful detention.**

**Q 49) Why India is referred to as union of States instead of federation of States?**

Ans) Our country is not a result of any type of contract between formerly independent states like USA. Further, Once a territory becomes part of Indian Territory they do not have the power of succession i.e. such states cannot opt out of the union. As such India is referred to as union of States instead of federation of States.

Q50) How citizenship can be acquired by naturalization?

Ans ) As per Indian Citizenship Act 1955, Citizenship of India by naturalization can be acquired by a foreigner who has resided in India continuously for a period of 1 year and prior to this 1 year in the past 14 years the person should have stayed in India for atleast 11 years. Also person should not be a citizen of a country which does not allow Indians to become its citizens by Naturalisation and person should renounce citizenship of parent country.

**Q51) What is freedom of Press?**

**Ans) Freedom of press or media refers to the rights given by the Constitution of India under the freedom and expression of speech in Article 19(1)(a). It encourages independent journalism and promotes democracy by letting the people voice their opinions for or against the government's actions.**

**Freedom of the Press is nowhere mentioned in the Constitution. However, It is believed to be covered under Freedom of Speech and Expression (Article 19) which states "Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Freedom of press and media is widely recognised in India. It does have reasonable restrictions under Article 19(2) to protect the safety of the people of the nation. These restrictions include causing threat against sovereignty & integrity of India, security of state, contempt of court, defamation, causing threat to friendly relations with foreign states etc.**

**Q52) Write short note on Abolition of Titles?**

**Ans) In India, through article 18 the titles like "Maharaja", "Raja" and "Rao Bahadur" are abolished. The main cause of this abolition of the title is to express equality in the country and there's regulation. Article 18 reads as follows:**

**"No title, not being a military or academic distinction, shall be conferred by the State." "No citizen of India shall accept any title from any foreign State."**

**However, Titles like "Bharat Ratna ", "Padma Vibhushan ", "Padma Shri " and many more are not prohibited under "Article 18". This article does not restrict any power of any person but prohibits any special title. This prohibition of titles is done to establish equality in the country. It also**

says any Indian citizen is not allowed to accept any special titles from any foreign state as this is not under the rule of article 18. This abolition is done as those titles express oppression and domination on the common people of the states.

**Q 53) What is reasonable classification?**

**Ans) Article 14 of the constitution guarantee the right to equality to every citizen of India. Article 14 declares that 'the State shall not deny to any person equality before the law or equal protection of law within the territory of India.**

The above rule of equality is however not an absolute rule and there are number exception to it. 'Equality of Law' does not mean the power of the private citizens are the same as the power of the public officials. Thus a police officer has the power to arrest you while no other private person has this power. This is not violation of rule of law. But rule of law does require that these powers should be clearly defined by law and that abuse of authority by public officers must be punished by ordinary courts.

The rule of law does not prevent certain class of persons being subject to special rules. Thus members of armed forces are controlled by military rules. Similarly medical practitioners are controlled by medical council of India

Certain members of society are governed by special rules in their profession i.e. lawyers, doctors, nurses, members of armed forces and police. Such classes of people are treated differently from ordinary citizens.

While Article 14 frobids class legislation it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary ,artificial or evasive". It must always rest upon some real and substantial distinction. Classification to be reasonable must fulfil the following two conditions

Firstly the classification must be founded on the intelligible differentia which distinguishes persons or thing that are grouped together from others left out of the group. Secondly the differentia must have a rational relation to the object sought to be achieved by the act. The differentia which is the basis of the classification and the object of the act are two distinct things.

**Q54) Write short note on Public Interest Litigation?**

**Ans) The expression 'Public Interest Litigation' has been borrowed from American jurisprudence, where it was designed to provide legal representation to previously unrepresented groups like the poor, the racial minorities, unorganised consumers, citizens who were passionate about the environmental issues, etc.**

**PIL means litigation filed in a court of law, for the protection of "Public Interest", such as Pollution, Terrorism, Road safety, Constructional hazards etc. Any matter where the interest of public at large is affected can be redressed by filing a Public Interest Litigation in a court of law.**

**Public interest litigation is the power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation. The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public spirited individual.**

**Some of the matters which are entertained under PIL are: -Bonded Labour matters, Neglected Children, Non-payment of minimum wages to workers and exploitation of casual workers, Atrocities on women, Environmental pollution and disturbance of ecological balance, Maintenance of heritage and culture.**

**The first reported case of PIL was Hussainara Khaton vs. State of Bihar (1979) that focused on the inhuman conditions of prisons and under**

trial prisoners that led to the release of more than 40,000 under trial prisoners.

**M.C Mehta vs. Union of India:** In a Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water. Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.

**Vishaka v. State of Rajasthan:** The judgement of the case recognized sexual harassment as a violation of the fundamental constitutional rights of Article 14, Article 15 and Article 21. The guidelines also directed for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

**Q 55) Who can file a PIL & against whom?**

**Ans) Any citizen can file a public case by filing a petition:**

- Under Art 32 of the Indian Constitution, in the Supreme Court.
- Under Art 226 of the Indian Constitution, in the High Court.
- Under sec. 133 of the Criminal Procedure Code, in the Court of Magistrate.

**A Public Interest Litigation can be filed against a State/ Central Govt., Municipal Authorities, and not any private party.**

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