



## India at 75 - Part I

**For Prelims:** DPSP and related articles in the constitution, Fundamental Rights and related articles in the constitution, Major Constitutional Amendments, Right to Privacy, Right to Education, Right to Information, Uniform Civil Code (UCC), Ninth Schedule, Tenth Schedule

**For Mains:** Implications of the Constitutional Amendments, 'Constitutional Morality' and DPSP, challenges in implementing the DPSP, Essence of Fundamental Rights in Indian Constitution versus in the Constitution of other countries, Significance of various Constitutional Amendments

### Expansion of Fundamental Rights

#### What is the Context?

- Indian citizens, under the Constitution of India, were initially guaranteed **six fundamental rights** - the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, right to property and right to constitutional remedies.
  - However, since Independence, the Supreme Court of India has **expanded the scope of Fundamental rights** by adding the rights to education, information, privacy etc.

#### What are the Basic Fundamental Rights?

Under **Articles 14-32** of the Indian Constitution, Indian citizens were granted the six fundamental rights:

- **Right to Equality:** Under **Articles 14-18**, citizens are guaranteed **equality before the law, protections against discrimination** on the grounds of religion, race, caste, sex, place of birth, and **equal opportunity in public employment**.
  - Under these articles, **untouchability is abolished**, and its enforcement is deemed a punishable offence, citizens are prohibited from accepting any titles (except military or academic) and people holding office are **prohibited from accepting emoluments from any foreign state** unless consented to by the President.
- **Right to Freedom: Articles 19-22** grant citizens the **right to freedom of speech and expression**, to **assemble peacefully without arms, form associations or unions, move freely throughout India**, reside and settle in any part of India, **practice any occupation, trade or business**.
  - Under this right, **no citizen can be convicted of any offence not covered by a law in force**, be forced to stand witness against himself (**self-incrimination**), or **be deprived of personal liberty (right to life)**.
- **Right Against Exploitation:** Under **Articles 23 and 24**, Indians are protected from forced labour and children below the age of fourteen (**child labour**) are prohibited from working in any factory or mine and from other hazardous work.
- **Right to Freedom of Religion: Articles 25-28** allow all Indians to **profess, practise and propagate any religion** freely.
  - Communities can establish and maintain institutions for religious and charitable purposes, manage their own affairs, acquire property and are not compelled to pay taxes for

practising their religion.

- **Cultural and Educational Rights:** Under **Articles 29 and 30**, all sections of Indian society have a [right to a distinct language, script or culture of their own](#) and cannot be denied admission into any government educational institution.
  - All minorities have the **right to establish and administer educational institutions** and cannot be discriminated against by the State.
- **Right to Constitutional Remedies:** Under [Article 32](#), Indians have the **right to move the Supreme Court for the enforcement of their rights**.
  - The apex Court is empowered to issue directions or orders for enforcing the same, **except for pleas challenging the constitutional validity** of state laws (as reinforced by the [forty-third constitutional amendment, 1977](#)).

## What is the Status of Right to Property?

- The [right to property](#) was listed as a fundamental right under **Article 31**.
  - It was **omitted by the Forty-fourth Amendment** to the Indian Constitution in 1978.
- However, the **right to property is still a constitutional right** – prohibiting state governments from compulsorily acquiring citizens' property **unless it is for a public purpose or a legal authority provides for compensation**.

## How have Fundamental Rights been Expanded since Independence?

Successive Supreme Court judgments and amendments have upheld and expanded the scope of the protection afforded to Indian citizens under Part III of the Indian Constitution. Some of the rights that the SC has read as a part of fundamental rights include:

- **Right to Food:** The [right to food](#) as a basic amenity has been interpreted as part of the **right to life under Article 21** by the Supreme Court in multiple judgements.
  - The Government of India has taken steps to incorporate this in their programmes such as the [National Food Security Act](#) and the [Targeted Public Distribution System \(TPDS\)](#).
- **Right to Water, Shelter and Electricity:** Right to water, shelter and electricity have also been **declared as part of Article 21**.
  - Right to clean drinking water, which has been suggested implicitly by the drafters of the Constitution of India as a fundamental resource, also finds several other mentions in the articles of the Constitution.
    - [Article 39 \(b\) and Article 47](#) which task the State to make policies to distribute material resources among the people, raise nutrition levels and the standard of living of citizens.
    - [Article 262](#) which empowers Parliament to make laws to solve inter-state river disputes.
    - [Article 51\(A\)](#) which tasks citizens with the fundamental duty of preserving the environment.
  - Similarly, the **right to shelter has been declared a part of Article 21** and has been reinforced by several national laws -
    - [Recognition of Forest Rights Act \(2006\)](#)
    - [Right to Fair Compensation and Transparency in Land Acquisition Act \(2013\)](#)
    - [Protection of Human Rights Act \(1993\)](#)
    - [Slum Areas Act \(1956\)](#)
    - [Street Vendors Act \(2014\)](#)
  - In March 2021, the **Kerala High Court** ruled that **electricity connection was an integral part of the fundamental right to life** (Article 21).
- **Right to Education:** [Free and compulsory education of children](#) in the 6 to 14 age group became a fundamental right when Article 21-A was inserted in the [86<sup>th</sup> Amendment to the Constitution in 2002](#).

- While Indians have been granted educational rights under Articles 29 and 30, in 2009, the **Right to Education Act** was passed granting free and compulsory education to **all children of the age of six to fourteen years**, devoid of any kind of fee or charges or expenses.
  - Under the Act, **no school is allowed to hold back or expel any student** from the school till he completes **elementary education**.
  - Physical punishment and mental harassment of children is also prohibited.
- **Right to Information:** The [right to information](#) has now been enshrined under **Article 19**, which guarantees the freedom of speech.
  - The [Right to Information \(RTI\) Act](#) was passed in 2005 empowering citizens to **access government information** and mandating a **timely response to citizen requests for such data**.
    - Information which will affect national security, endanger another person or invade their privacy, or which may be contempt of court or breach of Parliamentary privileges are **exempted under the RTI Act**.
      - Further, trade secrets, intellectual property, cabinet papers, or data received from foreign governments in confidence, are exempted from disclosure under the Act.
- **Right to Privacy:** Holding that the [right to privacy](#) was “**intrinsic**” to the fundamental right to life under Article 21, a nine-judge Supreme Court bench in 2017 paved the way for protecting Indian citizens’ privacy.
  - To define privacy and to protect citizens’ personal data, the Government of India introduced the [Personal Data Protection Bill, 2019](#) in Parliament.
    - However, the [bill was withdrawn in August 2022](#) as a more **comprehensive legal framework** as suggested by the [Joint Committee of Parliament](#) is being considered.

## UPSC Civil Services Examination, Previous Year Questions (PYQs)

### Prelims

**Q1. A legislation that confers on the executive or administrative authority an unguided and uncontrolled discretionary power in the matter of the application of law violates which one of the following Articles of the Constitution of India?**

- (a) Article 14
- (b) Article 28
- (c) Article 32
- (d) Article 44

**Ans: (a)**

**Q2. Which one of the following categories of Fundamental Rights incorporates protection against untouchability as a form of discrimination? (2020)**

- (a) Right against Exploitation
- (b) Right to Freedom
- (c) Right to Constitutional Remedies
- (d) Right to Equality

**Ans: (d)**

**Q3. Right to vote and to be elected in India is a (2017)**

- (a) Fundamental Right
- (b) Natural Right
- (c) Constitutional Right
- (d) Legal Right

Ans: (c)

## Mains

**Q1.** Analyse the distinguishing features of the notion of Right to Equality in the Constitutions of the USA and India. (2021)

**Q2.** Recent amendments to the Right to Information Act will have a profound impact on the autonomy and independence of the Information Commission". Discuss (2020)

**Q3.** Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. (2017)

## DPSPs in India's Policy Making

### What is the Context?

- The **President of India**, during her address on the **76<sup>th</sup> Independence Day**, directed the nation towards its **next milestone - to give shape to the vision of India's Constitution** by the completion of 100 years of independence.
- **Dr. Bhimrao Ambedkar**, speaking in the Constituent Assembly (1948), said about the **Directive Principles of State Policy (DPSP)** that **future legislature and executive bodies should make them the basis of all of their actions** in matters of the country's governance rather than merely reiterating them time and again.

### Why were Directive Principles Added to the Constitution?

- **About:** Contained in **Part IV** of the Indian Constitution (**Articles 36-51**), the DPSP lays down various **goals that the state should strive to achieve** while governing the country.
  - **Directive Principles are affirmative directions**, they indicate what the State shall do unlike the **Fundamental Rights** which are prohibitive in nature (put limitations on the State).
  - **Article 37 of the Indian Constitution** states that the DPSPs shall not be enforceable by any court, but the principles laid down are fundamental in the governance of the country and it is the duty of the government to apply these principles in making laws.
    - BR Ambedkar described DPSP as **"socialistic" and a "novel feature" of the Constitution.**
- **Background:** At the time of framing the Constitution, the challenge before its drafters was to satisfy all the people of India, laying down the foundations of an equitable society and welfare state, and striking a balance between individualism and socialism.
  - This is what led them to **borrow the concept of DPSPs from the 1937 Constitution of Ireland.**
  - It needs to be noted that the **source of the concept of DPSP is the Spanish Constitution** and from there it came in the Irish Constitution.
- **Apprehensions about DPSP:** Many members of the 1948 Constituent Assembly argued that without legal enforceability, these principles would **remain mere "pious wishes"**.
  - It was contended that socio-economic principles such as these had been ignored and exploited under colonial rule and it was **necessary to give them effect in independent India.**
  - Multiple Supreme Court judgements too have given importance to DPSPs in the past, arguing that they **give meaning to Fundamental Rights and the two should be harmonised and balanced** if they were to maintain social order and empower people.

### What about Implementing DPSP in Government Policies?

- **Article 38:** It directs the state to promote the welfare of people by creating a social order where there is social, political, and economic justice. The state shall strive to minimise income inequalities and those in status and opportunities among people and regions.
  - Multiple governments have enacted welfare schemes such as [Mahatma Gandhi National Rural Employment Guarantee Act \(MGNREGA\)](#), the national [Public Distribution System](#), the [Mid-day Meal Scheme](#), the [National Food Security Act](#), and [farm and gas subsidies](#) in an attempt to bring the poor and marginalised at par with the rest of the society.
  - A disappointing fact is that despite such initiatives, India is still among the most unequal countries in the world as per the [World Inequality Report 2022](#).
    - 57% of national income was accumulated in the hands of the affluent top 10% of the population.
- **Article 39:** The [42<sup>nd</sup> Amendment to the Indian Constitution](#) inserted Article 39A to provide “equal justice and free legal aid”.
  - To this end, the [Legal Services Authorities Act, 1987](#), was enacted by Parliament “to provide free and competent legal services to weaker sections of the society” and to “organise [Lok Adalats](#) to secure justice on the basis of equal opportunity”.
    - National Lok Adalat (NLA) is an [alternate dispute resolution \(ADR\) mechanism](#), regularly organised to help parties reach a compromise.
    - As per the National Legal Services Authority (NALSA), as of 2021, Lok Adalats organised across the country from 2016 to 2020 disposed of 52,46,415 cases, demonstrating speed and efficiency.
  - However, experts have long been **concerned about the quality of justice in Lok Adalats**. The SC, in *State of Punjab vs Jai Singh (2008)*, held that a Lok Adalat is purely conciliatory, and it has no adjudicatory or judicial function.
    - As **compromise is its central idea**, there is a valid concern that in the endeavour for speedy disposal of cases, it **undermines the idea of justice**.
- **Article 43:** It calls for **providing a living wage, suitable working conditions, and a decent standard of living for all workers** - industrial, agricultural or otherwise.
  - Dr. Ambedkar inculcated in the DPSPs the idea of “**real economic freedom**” under which they are not forced to take up any job paying less than minimum wage owing to economic compulsions.
  - [Indian labour laws](#) have been criticised for setting up a **labour bureaucracy prone to corruption**, for workers losing jobs under the cover of liberalisation and globalisation, and for inefficient adjudicatory mechanisms.
    - Also, India is among the countries with the **lowest participation of women in the national labour workforce**.
- **Article 44:** It pertains to securing a [Uniform Civil Code](#) or a **uniform law for all religious communities in personal matters** of divorce, marriage, succession and so on.
  - Dr Ambedkar in the Constituent Assembly debate expressed that a **UCC was desirable but should, for the moment, remain voluntary**.
    - The stand has survived the years and **India still does not have a UCC**.
  - Currently, each religion has a separate set of personal laws and the codification of personal laws has historically generated protests.
    - In the *Shah Bano case of 1985*, the Supreme Court lamented that Article 44 remained a “**dead letter**”.
  - As of now, **only one State - Goa has a UCC**.
    - In May 2022, an expert committee was constituted by [Uttarakhand to implement UCC](#) and for checking all the relevant laws that control personal matters for those living in Uttarakhand.
    - Earlier, the [Allahabad HC also called upon the Central government to initiate the process for implementation of UCC](#).
- **Article 45:** It says that the State should endeavour to **provide free and compulsory education**, within 10 years of the Constitution’s commencement, for all children until they complete 14 years of age.
  - In 2002, with the **86<sup>th</sup> Amendment of the Constitution**, [Article 21A](#) was added, making free and compulsory education for children aged six to 14 years a Fundamental Right.
    - In 2009, the **Right of Education (RTE) Act** was passed.
  - However, in August 2021, while 35 crore children were getting educated in schools, about

15 crore children were still out-of-school in the country.

- **India has not achieved the goal of inclusive education.**
- UNESCO estimated that 1.3 billion children and young people (i.e., 70% of the world's student population) were affected by **Covid-related closures of educational institutions.**

- **Other Provisions:** The remaining DPSPs relate to maternity-related provisions, equal pay for equal work, setting up of **co-operative societies** and village panchayats, increasing **child nutrition** levels, **environmental protection law** and respecting international law.
  - Some of these principles were also translated in the early years of Independence such as the separation of the judiciary from the executive and the setting up of village panchayats.
  - **Maternal welfare schemes** have also been launched, fulfilling some of the mandates of the DPSPs.

## UPSC Civil Services Examination, Previous Year Questions (PYQs)

### Prelims

**Q1. Which part of the Constitution of India declares the ideal of Welfare State? (2020)**

- (a) Directive Principles of State Policy
- (b) Fundamental Rights
- (c) Preamble
- (d) Seventh Schedule

**Ans: (a)**

**Q2. Other than the Fundamental Rights, which of the following parts of the Constitution of India reflect/ reflects the principles and provisions of the Universal Declaration of Human Rights (1948)? (2020)**

1. Preamble
2. Directive Principles of State Policy
3. Fundamental Duties

**Select the correct answer using the code given below:**

- (a) 1 and 2 only
- (b) 2 only
- (c) 1 and 3 only
- (d) 1, 2 and 3

**Ans: (d)**

### Mains

**Q1.** 'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions. **(2021)**

**Q2.** Discuss the possible factors that inhibit India from enacting for its citizen a uniform civil code as provided for in the Directive Principles of State Policy. **(2015)**

## Changes in the Indian Constitution

**What is the Context?**

- Since the Constitution of India came into force, **105 amendments have been made** by the Parliament.
  - Originally (1949), the Constitution of India contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. At present, it consists of a Preamble, about 470 Articles (divided into 25 Parts) and 12 Schedules.

### What Major Amendments have been Made to the Indian Constitution

Constitutional Amendment	Salient Features
<b>1<sup>st</sup> Amendment</b>	<ul style="list-style-type: none"> <li>▪ It altered <b>articles 15, 15 (3), 46, 341, 342, 372 and 376</b>, empowering the state to make laws for the <b>advancement of any socially and educationally backward classes of citizens, especially the Scheduled Tribes</b>.               <ul style="list-style-type: none"> <li>◦ However, the state is <b>prevented from enacting laws curbing citizens' rights in any trade, occupation or business</b>.</li> <li>◦ It also prevents States from making laws permitting them to <b>acquire the land of any citizen</b>.</li> </ul> </li> <li>▪ It also <b>added a ninth schedule</b> to the Constitution, listing a number of States and Territories.</li> <li>▪ The amendment introduced three new <b>exceptions to the right to free speech</b> if their words:               <ul style="list-style-type: none"> <li>◦ imperilled "public order"</li> <li>◦ incited the commission of an offence,</li> <li>◦ affected "friendly relations with foreign States".</li> </ul> </li> <li>▪ Other changes brought by this amendment include:               <ul style="list-style-type: none"> <li>◦ Empowerment of the <b>President/Governor to summon or prorogue the State Legislatures</b> for a period of six months.</li> <li>◦ <b>Prohibition of appointment of judges</b>, who are not Indian citizens, to any other court.</li> <li>◦ <b>Prohibition of the President from modifying any law within the limits of the Constitution</b>.</li> </ul> </li> </ul>
<b>4<sup>th</sup>, 25<sup>th</sup> and 44<sup>th</sup> Amendments</b>	<ul style="list-style-type: none"> <li>▪ It introduced <b>changes to articles 31, 31A, 305 and the ninth schedule</b>.               <ul style="list-style-type: none"> <li>◦ It <b>ratified the citizens' right to property</b> saying that no property shall be taken from any citizen unless it is for a public purpose and compensation is paid.</li> </ul> </li> <li>▪ The <b>25<sup>th</sup> amendment (1971) added exceptions to the 4<sup>th</sup> amendment</b>.               <ul style="list-style-type: none"> <li>◦ It allows the state to <b>compulsorily acquire land of an educational institution</b> if the amount of compensation is fixed.</li> </ul> </li> <li>▪ This Right to Property (which was a fundamental right till then under Article 31) <b>was made a constitutional right instead</b>.</li> </ul>
<b>7<sup>th</sup> Amendment</b>	<ul style="list-style-type: none"> <li>▪ The 7<sup>th</sup> Amendment Act, 1956 <b>abolished the distribution of States into States and Territories of India</b>.</li> <li>▪ It <b>listed out all the states and divided them on a linguistic basis as per the recommendations of the States Reorganisation Commission</b>.</li> </ul>
<b>52<sup>nd</sup> and 91<sup>st</sup> Amendments</b>	<ul style="list-style-type: none"> <li>▪ The 52<sup>nd</sup> amendment to the Indian Constitution <b>provided for disqualification of members of State legislatures on the ground of defection</b>.               <ul style="list-style-type: none"> <li>◦ It <b>added a new Tenth Schedule</b> in the Constitution containing the provisions for disqualification of members of State legislatures on the ground of defection.</li> </ul> </li> <li>▪ This move was further strengthened in 2003 with the 91<sup>st</sup> amendment, which <b>prohibited any member of the Parliament from holding any remunerative political post</b>.               <ul style="list-style-type: none"> <li>◦ It also fixed the total number of Ministers (including PM) in the Council of Ministers to be not more than 15% of the total number of members of both Houses of Parliament.</li> <li>◦ A similar limit was applied to State cabinets too.</li> </ul> </li> </ul>
<b>61<sup>st</sup> Amendment</b>	<ul style="list-style-type: none"> <li>▪ It reduced the voting age from 21 years to 18 years, making the <b>right to vote a fundamental right</b>.</li> </ul>
<b>101<sup>st</sup> Amendment</b>	<ul style="list-style-type: none"> <li>▪ It altered article 246 to empower the Parliament to make laws with respect to goods and services tax, while State legislatures can make laws with respect to goods and services tax.</li> </ul>
<b>103<sup>rd</sup> Amendment</b>	<ul style="list-style-type: none"> <li>▪ It allotted a maximum of <b>10% reservation for Economically Weaker Sections (EWS)</b> in articles (4) and (5) of Article 15 i.e - socially and educationally backward classes (SEBC).               <ul style="list-style-type: none"> <li>◦ However, this definition for EWS quota has been challenged in the Supreme Court.</li> </ul> </li> </ul>

Click here for [Major Constitutional Amendments: Part 1](#)

Click here for [Major Constitutional Amendments: Part 2](#)

Click here for [Major Constitutional Amendments: Part 3](#)

## UPSC Civil Services Examination, Previous Year Questions (PYQs)

### Prelims

**Q1. What is the position of the Right to Property in India?**

- (a) Legal right available to citizens only
- (b) Legal right available to any person
- (c) Fundamental Right available to citizens only
- (d) Neither Fundamental Right nor legal right

**Ans: (b)**

**Q2. The Ninth Schedule was introduced in the Constitution of India during the prime ministership of (2019)**

- (a) Jawaharlal Nehru
- (b) Lal Bahadur Shastri
- (c) Indira Gandhi
- (d) Morarji Desai

**Ans: (a)**

**Q3. Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and appropriately imply the above statement? (2018)**

- (a) Article 14 and the provisions under the 42<sup>nd</sup> Amendment to the Constitution.
- (b) Article 17 and the Directive Principles of State Policy in Part IV.
- (c) Article 21 and the freedoms guaranteed in Part III.
- (d) Article 24 and the provisions under the 44<sup>th</sup> Amendment to the Constitution.

**Ans: (c)**

**Q4. Which principle among the following was added to the Directive Principles of State Policy by the 42<sup>nd</sup> Amendment to the Constitution? (2017)**

- (a) Equal pay for equal work for both men and women
- (b) Participation of workers in the management of industries
- (c) Right to work, education and public assistance
- (d) Securing living wage and human conditions of work to workers

**Ans: (b)**

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### Mains

**Q1. "Recent amendments to the Right to Information Act will have a profound impact on the autonomy and independence of the Information Commission". Discuss. (2020)**

**Q2. Discuss the essentials of the 69th Constitutional Amendment Act and anomalies, if any, that have led to recent reported conflicts between the elected representatives and the institution of the Lieutenant Governor in the administration of Delhi. Do you think that this will give rise to a new trend in the functioning of the Indian federal politics? (2016)**

**Q3. 'The Supreme Court of India keeps a check on arbitrary power of the Parliament in amending the Constitution.' Discuss critically. (2013)**



