

# All India Bar Examination (AIBE)

## Constitutional Law

### Key Concepts - Study Material

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#### Constitutional Law

- Salient Features of the Indian Constitution
  - Fundamental Rights
  - Legislative Process
  - Directive Principle of State Policy
  - Emergency Powers
  - Federalism
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The Indian Constitution is the supreme law of the land, establishing the framework for governance and protecting the rights of citizens. For the AIBE exam, it is crucial to have a comprehensive understanding of the fundamental concepts within **Constitutional Law**, as outlined below. These topics form the foundation of India's legal system and governance structure.

#### I. SALIENT FEATURES OF THE INDIAN CONSTITUTION

The Indian Constitution is distinct and complex, combining federal and unitary elements. Some of its key features include:

##### 1. Longest Constitution in the World:

- India's Constitution is the longest written constitution globally, with **395 articles** in 22 parts, 12 schedules, and numerous amendments (currently 105).

##### 2. Drawn from Various Sources:

- The Indian Constitution has borrowed features from various global constitutions, such as the **UK, US, Canada, Ireland, and Australia**. For example, the **Parliamentary system** is modelled after the British system, while **Fundamental Rights** are inspired by the US Bill of Rights.

##### 3. Federal System with a Unitary Bias:

- The Indian Constitution establishes a federal system with powers divided between the **Centre** and the **States** (Schedule VII). However, during emergencies, India becomes a **unitary state**, giving greater powers to the Central government.

#### 4. Parliamentary Sovereignty:

- India follows the **Westminster model**, meaning the **Parliament** is sovereign and the executive is accountable to it.

#### 5. Fundamental Rights and Duties:

- The Constitution guarantees **Fundamental Rights** (Part III) and outlines the **Fundamental Duties** (Part IVA) for all citizens.

#### 6. Directive Principles of State Policy (DPSP):

- Part IV contains **DPSPs**, which provide guidelines for the government to achieve social justice and economic welfare.

#### 7. Rigid and Flexible:

- The Indian Constitution is both **rigid** and **flexible**, with provisions that can be amended by simple or special majorities depending on the subject.

#### 8. Single Citizenship:

- Unlike the US, India provides **single citizenship** for all its citizens, fostering unity.

#### 9. Secular State:

- India is a **secular country**, which means there is no state religion, and all religions are treated equally.

#### Key Terms

- **Written Constitution:** A detailed and formal document outlining the structure and powers of government.
- **Federalism:** Division of power between the central and state governments.
- **Parliamentary Sovereignty:** The principle that Parliament is the supreme legal authority.
- **Secularism:** The state does not favour or endorse any religion.
- **Single Citizenship:** Only one citizenship for all Indians, regardless of the state.
- **Amendment Process:** Procedure for making changes to the Constitution.

#### Review Questions

1. What are the key sources from which the Indian Constitution borrows its features?
  2. How does the Indian Constitution balance federal and unitary principles?
  3. Explain the significance of single citizenship in India.
  4. What is the role of the Parliament in the legislative process?
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## **II. FUNDAMENTAL RIGHTS (Part III, Articles 12–35)**

**Fundamental Rights** are essential for the development and protection of individuals in a democratic society. They are enforceable by the courts and safeguard the liberties of Indian citizens.

The main categories of Fundamental Rights include:

### **1. Right to Equality (Articles 14–18):**

- **Article 14** guarantees equality before the law and equal protection of the laws.
- **Article 15** prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.
- **Article 16** provides for equality of opportunity in matters of public employment.
- **Article 17** abolishes untouchability.
- **Article 18** abolishes titles except for military and academic distinctions.

### **2. Right to Freedom (Articles 19–22):**

- **Article 19** guarantees six freedoms, including freedom of speech and expression, assembly, association, movement, residence, and the right to practice any profession.
- **Article 20** protects individuals in respect of conviction for offenses.
- **Article 21** guarantees protection of life and personal liberty.
- **Article 21A** ensures the right to education.
- **Article 22** provides protection against arbitrary arrest and detention.

### **3. Right against Exploitation (Articles 23–24):**

- **Article 23** prohibits human trafficking and forced labor.
- **Article 24** prohibits the employment of children under 14 years in hazardous industries.

### **4. Right to Freedom of Religion (Articles 25–28):**

- **Article 25** guarantees freedom of conscience and the right to practice, profess, and propagate religion.
- **Article 26** allows religious denominations to manage their own affairs.
- **Articles 27 and 28** ensure the secular nature of the state, prohibiting taxation for religious purposes and ensuring freedom in religious instruction.

### **5. Cultural and Educational Rights (Articles 29–30):**

- **Article 29** protects the interests of minorities in preserving their culture, language, and script.

- **Article 30** allows minorities to establish and administer educational institutions.

#### 6. Right to Constitutional Remedies (Article 32):

- Described as the "heart and soul" of the Constitution by Dr. B.R. Ambedkar, **Article 32** empowers citizens to approach the Supreme Court for the enforcement of Fundamental Rights. The courts can issue writs like **habeas corpus, mandamus, prohibition, certiorari, and quo warranto**.

#### Key Terms

- **Equality Before Law:** Equal treatment of all persons in similar conditions.
- **Prohibition of Discrimination:** Banning discrimination based on religion, race, caste, sex, or place of birth.
- **Freedom of Speech:** The right to express opinions without censorship.
- **Writs:** Legal orders issued by courts (habeas corpus, mandamus, etc.).
- **Right to Life and Liberty:** Protection from unlawful deprivation of life or personal liberty.
- **Right to Constitutional Remedies:** Right to approach courts to enforce Fundamental Rights.

#### Review Questions

1. What is the significance of Article 32 in the Indian Constitution?
2. List the six freedoms guaranteed under Article 19.
3. How does Article 21 guarantee the right to life and personal liberty?
4. What are the different types of writs issued by Indian courts?

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### III. LEGISLATIVE PROCESS

India's legislative process is integral to democracy, involving multiple stages of discussion, debate, and approval. The process differs slightly for **ordinary bills, money bills, and constitutional amendments**.

#### 1. Stages of Passing a Bill:

- **Introduction:** A bill is introduced in either the **Lok Sabha** or the **Rajya Sabha**, except for money bills, which must be introduced in the Lok Sabha.
- **First Reading:** The bill is introduced and published in the Gazette.
- **Second Reading:** Detailed examination and discussion of the bill take place. The bill is referred to a **standing committee** or discussed in the House.

- **Third Reading:** The bill is discussed and voted on. If passed by one House, it moves to the other.
- **Presidential Assent:** After both Houses pass the bill, it is sent to the **President**, who can either sign, withhold, or return the bill (except money bills).

## 2. Money Bills:

- **Money bills** can only be introduced in the Lok Sabha and must receive the President's prior recommendation. The **Rajya Sabha** has limited powers over money bills, being able to only make recommendations.

## 3. Constitutional Amendments:

- Amending the Constitution requires a **special majority** in Parliament. Some amendments also require ratification by half of the State legislatures.

### Key Terms

- **Bill:** A proposal for new legislation.
- **Money Bill:** A bill related solely to taxation or government spending.
- **Special Majority:** A higher threshold of votes is required for passing constitutional amendments.
- **First Reading:** The introduction and general discussion of a bill.
- **Committee Stage:** Detailed examination of the bill by a parliamentary committee.
- **Presidential Assent:** The President's approval, is required for a bill to become law.

### Review Questions

1. What are the steps involved in the passage of an ordinary bill in Parliament?
2. How does a money bill differ from an ordinary bill?
3. What is the role of the President in the legislative process?
4. How are constitutional amendments passed in Parliament?

## IV. DIRECTIVE PRINCIPLES OF STATE POLICY (Part IV, Articles 36–51)

The **Directive Principles of State Policy (DPSP)** are guidelines for the state to follow to promote social welfare and economic justice. Although not enforceable by courts, they aim to create a just society.

### 1. Social and Economic Welfare:

- **Article 38** promotes the welfare of the people by securing a social order with justice, social, economic, and political.

- **Article 39** directs the state to ensure equal distribution of wealth and resources, adequate means of livelihood, and equal pay for equal work for men and women.

## **2. Right to Work and Education:**

- **Article 41** directs the state to provide the right to work, education, and public assistance.
- **Article 45** mandates free and compulsory education for children under the age of 14.

## **3. Promotion of Public Health:**

- **Article 47** directs the state to raise the level of nutrition, public health, and the standard of living of people.

## **4. Uniform Civil Code:**

- **Article 44** encourages the state to work towards a **Uniform Civil Code** for all citizens, thus ensuring equal personal laws.

### **Key Terms**

- **Non-Justiciable:** Principles that are not enforceable by courts but guide government policy.
- **Social Justice:** The aim of providing equal opportunities and reducing inequalities.
- **Right to Work:** The principle of ensuring employment opportunities for all citizens.
- **Uniform Civil Code:** A proposed law to replace personal laws based on religion with a common set of laws for all citizens.
- **Economic Welfare:** The government's responsibility to improve the living standards of citizens.
- **Public Health:** The state's duty to improve nutrition and promote public health.

### **Review Questions**

1. How do the Directive Principles differ from Fundamental Rights?
2. Explain the significance of Article 39 in promoting social and economic justice.
3. What is the purpose of Article 44 in the Indian Constitution?
4. How do Directive Principles influence government policy despite being non-justiciable?

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## **V. EMERGENCY POWERS (Part XVIII, Articles 352–360)**

The Constitution provides the Central government with extraordinary powers to deal with emergencies. There are three types of emergencies:

### 1. National Emergency (Article 352):

- A national emergency can be declared in case of **war, external aggression, or armed rebellion**. During a national emergency, the fundamental rights under **Articles 19** can be suspended, and the distribution of powers between the Centre and States can be altered.

### 2. State Emergency (Article 356):

- Also known as **President's Rule**, a state emergency can be declared if the President believes that the government in a state cannot function according to the Constitution. The state legislature is dissolved or suspended, and the Centre takes over.

### 3. Financial Emergency (Article 360):

- This can be declared if the financial stability or credit of India or any part of it is in danger. During this emergency, the salaries of government officials, including judges, can be reduced.

#### Key Terms

- **National Emergency (Article 352):** Declared in cases of war, external aggression, or armed rebellion.
- **President's Rule (Article 356):** Central control of a state due to the failure of constitutional governance.
- **Financial Emergency (Article 360):** Declared when the financial stability of India is threatened.
- **Suspension of Fundamental Rights:** Certain rights can be suspended during a national emergency.
- **Parliamentary Approval:** Requirement for emergency declarations to be approved by Parliament within a specific time frame.
- **Unitary Features:** The shift in power from states to the Centre during emergencies.

#### Review Questions

1. Under what circumstances can a National Emergency be declared?
  2. How does the President's Rule affect the governance of a state?
  3. What are the financial implications of a Financial Emergency?
  4. What changes occur in the distribution of powers during a National Emergency?
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## VI. FEDERALISM

**Federalism** refers to the division of powers between the central and state governments. The Indian Constitution establishes a quasi-federal structure, often described as a **federation with a unitary bias**.

### 1. Division of Powers:

- The powers are divided between the **Union** and **State** governments through three lists: **Union List**, **State List**, and **Concurrent List** (Schedule VII).
- The **Union List** consists of subjects on which only the Centre can legislate (e.g., defence, foreign affairs).
- The **State List** contains subjects on which only States can legislate (e.g., police, agriculture).
- The **Concurrent List** allows both the Centre and States to legislate (e.g., education, criminal law).

### 2. Residuary Powers:

- Any subject not mentioned in any of the lists comes under the **residuary powers** of the Centre.

### 3. Role of Judiciary:

- The **Supreme Court** resolves disputes between the Centre and the States, ensuring a balance of power.

### 4. Cooperative Federalism:

- India's federal structure promotes **cooperative federalism**, where both the Centre and States work together to address issues like economic development and national security.

### Key Terms

- **Union List:** Subjects on which only the Centre can legislate (e.g., defence, foreign affairs).
- **State List:** Subjects on which only state governments can legislate (e.g., police, public health).
- **Concurrent List:** Subjects on which both the Centre and States can legislate (e.g., education).
- **Residuary Powers:** Powers not mentioned in any of the lists, vested in the Centre.
- **Supremacy of Constitution:** The Constitution is the highest law, overriding state and central laws.



- **Cooperative Federalism:** A system where the Centre and States work together on national issues.

### **Review Questions**

1. How does the Indian Constitution ensure a balance between federal and unitary principles?
  2. What is the significance of the Union, State, and Concurrent Lists in India's federal structure?
  3. Explain the concept of residuary powers in the context of Indian federalism.
  4. What role does the Supreme Court play in resolving disputes between the Centre and States?
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