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## **VAJIRAM & RAVI** **Hand Written Constitution**

- The original copy of Indian Constitution was **handwritten and calligraphed** in both English and Hindi.
- It was **handcrafted by artists of Shantiniketan** under the **guidance of Acharya Nandalal Bose**.
- **Calligraphy texts** done by **Prem Behari Narain Raizada** in Delhi.
- The original copies of the Constitution are kept in **special helium-filled cases** in the Library of the Parliament.
- Each part of the Constitution begins with a depiction of a phase or scene from India's national history.
- It is the **longest written Constitution** in world containing 395 Articles, 22 Parts, and 12 Schedules.

### **Safeguarding Human Rights**

*"Human rights are not a privilege conferred by the government. They are every human being's entitlement by virtue of his humanity." – Mother Teresa*

- Human rights are the rights which are possessed by every human being, simply by virtue of being a human.
- Human rights and fundamental freedom **allow us to fully develop and use our human qualities**, our intelligence, our talents, and our conscience and to satisfy our physical, spiritual and other needs.

### **International Efforts to Ensure Human Rights**

- The **Universal Declaration of Human Rights** specifically exhorted all the countries to act as the guardians of human rights.
- By 1966, the **United Nations General Assembly adopted two important covenants**, one dealing with **civil and political rights** and the other with **economic, social and cultural rights**.
- The **International Covenant on Civil and Political Rights**, and the **Optional Protocol** dealt with the rights of equality, personal liberty, freedom from arbitrary arrest and detention, freedom of expression and conscience, right to participate in the administration of the country etc.
- The **International Covenant on Economic, Social and Cultural Rights** deals with the right to work, the right to fair wages, the right to collective bargaining, the right to carry on trade or profession, the right to establish institutions to conserve culture etc.

### **Human Rights & India**

- Long before these international covenants came into force, the Indian Constitution has guaranteed several rights for its citizens which are known as fundamental rights as **enshrined in Part III of the Constitution**.
- These rights are guaranteed in the Constitution in the **form of six broad categories** of Fundamental Rights, **which are justiciable**. Article 12 to 35 contained in Part III of the Constitution deals with Fundamental Rights.

### **Judicial Pronouncements and Fundamental Rights**

- The SC in the **Kesavanand Bharti case, Minerva Mills and I.R. Coelho** case have upheld that though fundamental rights, as such, are **not immune from amendment**, particular rights or part thereof may be **held as basic features which cannot be amended** by exercising the power of amendment under Article 368 of the Constitution of India.
- Prior to the decision in **Maneka Gandhi case, in 1978**, *Article 21 of the Constitution of India was construed narrowly only as a guarantee against executive action unsupported by law.*

- But this case opened up a new dimension. It imposed a **limitation upon law-making as well**, that while prescribing a procedure for depriving a person of his life or personal liberty, it must **prescribe a procedure which is reasonable, fair, and just**.
- The Supreme Court in its various decisions has stated that Right to Life, enshrined in **Article 21 means something more than mere survival or animal existence**.
- **Part IV of the Constitution** lays down the Directive Principles of State Policy which are fundamental in the governance of the country.

**Human Rights Jurisprudence In India**

- Judiciary through its power of Judicial review has made human rights of the people as fundamental edifices of social, political and cultural milieu.
- Some of them are outlined below:
  - The right of a person not to be subjected to “bonded labour”
  - The right of a bonded labourer to rehabilitation
  - Right to livelihood
  - Right to a decent environment and a reasonable accommodation
  - An obligation upon the State to preserve the life of every person, regardless of the question whether he is innocent or guilty. **The criminal law operates after the life of the injured is saved.**
  - Right to good health; Right to food; Right to water; Right to education.
  - As applied to a prisoner, it would include his right to bare necessities of life to reputation; Right of women to be treated with decency and proper dignity; Right to speedy trial; Right against handcuffing
  - Right against custodial violence; Right to privacy; Right to freedom from malnutrition; Right to information.
- In **Ranjitsing Brahmajeetsing Sharma** case, the SC opined that gender injustice, malnutrition, social ostracism of dalits are various forms of violations of human rights.
- The presumption of innocence is also a human right.

**Challenges in Promoting and Protecting Human Rights**

- Failure in taking action by the police
- Unlawful detention
- False implication
- Custodial violence
- Illegal arrest
- Custodial deaths
- Encounter deaths
- Harassment of prisoners; jail conditions
- Atrocities on SCs and STs
- Bonded labour; child labour
- Child marriage
- Communal violence
- Dowry death or its attempt; dowry demand
- Sexual harassment indignity to women
- Exploitation of women
- Discrimination against persons with disabilities
- Discrimination against persons with HIV/AIDS
- Discrimination against sex workers etc.

**Recent Judgements:**

- In the case of **National Legal Services Authority v. Union of India**, the SC declared **transgender people to be a ‘third gender’** and affirmed that the **fundamental rights granted** under the Constitution of India will be equally applicable to transgender people.
- The Supreme Court in **Navtej Singh Johar v. Union of India** gave unanimous decision on **Section 377** of the Indian Penal Code, **decriminalising homosexuality**.

**Other Institutions:**

- The constitution of **National Human Rights Commission (NHRC)**, State Human Rights Commission in states and Human Rights Courts for protection of Human Rights.

- The NHRC came into being in **October, 1993**. It is in conformity with the **Paris Principles**, adopted at **first international workshop on national institutions for the promotion and protection of human rights** held in October 1991, and endorsed by the General Assembly of the United Nations in December, 1993.
- One of the main functions of the NHRC is to inquire into complaints of human rights violations.
- The NHRC has also focused on other human rights issues like rights of the elderly, women, children, transgender, elimination of bonded labour, mental health and silicosis.
- The Commission has issued guidelines on important issues of custodial deaths, custodial rapes, encounter deaths during the course of police action.

#### **Recent Innovations by NHRC:**

- Online complaint registration through HRCNet portal
- Conducting video conferencing with the States to follow up the submission of reports, involving around three lakhs common Service Centres for registration of complaints
- A dedicated MADAD counter which assists the complainants in filing complaints.

#### **Conclusion:**

The Executive, Legislature, Judiciary and the autonomous institutions like NHRC etc. have all contributed towards creating a social framework where human rights are ensured to all.

### **Balancing Fundamental Rights and Duties**

- Indian Constitution is built on the foundations of certain fundamental values that have been embedded in it to ensure that there should be fairness and justice for every citizen of India.
- The inclusion of the Fundamental Rights in the Constitution is in furtherance of the same thought. The object is to ensure the inviolability of certain essential rights against political vicissitudes.
- However, it has been made very clear that:
  - lot of restraint is required while exercising this freedom.
  - the absolute freedom is an illusion and cannot survive alone.
  - the fundamental rights need to be paired with fundamental duties.

#### **Insertion of Duties**

- The Constitution (**Forty-Second) Amendment Act** 1976 introduced the concept of fundamental duties by adding Part IV-A, consisting of the sole Article 51A.
- It was inserted after the **recommendations of the Swaran Singh Committee**. This insertion **was in line with Article 29(1) of the Universal Declaration of Human Rights** which states, "Everyone has duties to the community in which alone the free and full development of the personality is possible".

#### **Balancing OF FRs:**

- The balancing of **fundamental rights is a constitutional necessity** as every right gives rise to a corresponding duty. In the **words of Mahatma Gandhi**: "*The true source of right is duty. If we all discharge our duties, rights will not be far to seek.*"
- The fundamental duties are the mechanism that aims at striking a balance between individual freedom and social interests.

- In a judgment, the Supreme Court held that Fundamental Duties are as important as Fundamental Rights.
- It further said that though **Article 51A does not expressly cast any fundamental duty on the State**, the **duty of every citizen of India is the collective duty of the state**- its de facto enforceability in the sense that Article 51A is a yardstick against which the action of the State may be assessed.

#### **Various Contours of Article 51A through Judgements:**

- In **Union of India v Naveen Jindal**, the SC observed that fundamental duties are implicit in the concept of fundamental rights, the former providing certain restrictions on the exercise of the latter.
- In **Shyam Narayan Chouksey v UOI**, the SC stated that Article 51A(a) enjoins a duty on every citizen of India the duty **to respect ideals and institutions, including the national flag and national anthem**.
- This was the case in which the Apex Court of India passed a judgment regarding **compulsory display of the national anthem prior to screening any movie** in the theatres or cinema halls. The SC made it mandatory for **all patrons to rise for the duration of this feature presentation**.
- In yet another case, the **SC relied on Article 51A (d)** to state that any citizen may bring it to the notice of the Court if any Act of the legislature provides shelter and protection to the illegal foreign nationals.
- **Article 51A(k) was introduced as a fundamental duty in 2002**, along with Article 21A as a fundamental right. Through these articles the State and the parents are made to share obligation with regard to education of the children.
- Right to hoist the national flag has been granted to the citizens subject to the restrictions specified in the Article 51A (c).
- The unenforceable duties have got a **booster dose of contents** as well as **some sort of enforceability** through increased references in **various judicial pronouncements**.
- In certain situations, where the Courts have been called upon to **examine the reasonableness of any legislative restriction** on the exercise of a freedom, the fundamental duties are of relevant consideration.

#### **Way Forward:**

- It is extremely important to create a conducive environment where **dissemination of the precepts of duty** may be taken care of at a priority level.
- The **grassroot approach** should be to work earnestly and **give practical expression to both the rights and the duties that democracy entails**.
- The **Universal Declaration of Human Rights** also declares: "*Everyone has duties to the community in which alone the free and full development of the personality is possible.*"
- In 1999, the **Justice Verma committee** had suggested ways and means to make fundamental duties more effective. It should be followed.

#### **Conclusion:**

- Various current crises related to environment, mob-violence and terrorism etc. could have been regulated to a large extent if the human values could be inculcated right from the formative period of life so as to lay a strong foundation for effectuation of Fundamental Duties along with the strong desire to avail the rights.

- The **fine relationship between the Duties and Rights** may be summarised in the following words of **Lippmann**:

*“For every Right that you cherish you have a duty which you must fulfil. For every hope that you entertain, you have a task you must perform. For every good that you wish could happen... you will have to sacrifice your comfort and ease. There is nothing for nothing any longer.”*

### **Objectives and Challenges**

- The Constitution of India provides for fundamental rights guaranteed under Part III, and thus the duty lies upon the state to protect those rights.
- On the other hand, the Constitution categorically provides for certain fundamental duties enshrined under Part IV A, to be performed by its citizens.

#### **Fulfilling the Objectives of Duties: A challenge**

- The insertion of the fundamental duties certainly had an object but it cannot be denied that the same has not been achieved effectively till date.
- The **‘National Commission to Review the Working of the Constitution (NCRWC)’** was set up by Government in the year 2000 under the **Chairmanship of Justice M.N. Venkatachaliah**.
- The Commission submitted its report in which **it emphasised upon the importance and enforcement of the Fundamental Duties**.
- The Verma Committee (1999) categorically made **certain recommendations for the effectiveness of the Fundamental Duties**.

#### **Concept of Duty already Existed in the Text of the Constitution**

- The **Preamble of the Constitution** affirms “liberty of thought, expression, belief, faith and worship”; and also dictates securing “Justice- Social, Economic and Political”, Equality and Fraternity.
- It shoulders upon every individual, **duty to respect the sovereignty of India and protect the Unity of the Nation**.
- Also, the preamble itself incorporates the objective resolution of the Constituent Assembly which inherently had duties in it.

#### **Need for Insertion of Fundamental Duties:**

- **Justice Verma Committee on Fundamental Duties** observed, “with the lapse of time, degradation of values, particularly values in public life became blatantly evident and the nation felt the need to amend the Constitution and incorporate these values specifically as the Fundamental Duties of every citizens”.
- **Justice Rangnath Mishra in a letter to the Chief Justice** of India wrote, “If society becomes duty based, everyone in India should turn attention on performance of duties and through such performance ensure and be entitled to the rights of a citizen”.

#### **SC View (Before insertion of Part IV A)**

- The Supreme Court in the case of **Chandra Bhavan Boarding v. The State of Mysore (1969)** observed that it is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country.

- It found **no conflict** on the whole between the provisions contained in Part III and Part IV. They are **complementary and supplementary** to each other.
- According to the judgement, the **provisions of Part IV enable the legislatures** and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented.

#### **Enforcement of the Fundamental Duties of Citizens**

- There is **no provision for enforcement of the Fundamental Duties**, nor there is any sanction for the violation of the duties under the Constitution.
- At the same time, there are provisions under the Indian Penal Code, 1860 which punishes for the act done against the sovereignty and integrity of the State.
- The penal code also punishes for the outrageous acts committed against women, acts damaging the public property etc. There are laws for the protection of forests, environment, and wildlife.

#### **SC View on Enforceability of Fundamental Duties:**

- The apex court in A.I.I.M.S. Students Union v. A.I.I.M.S. case observed that:
  - Fundamental duties, as defined in Article 51A, are **not made enforceable** by a writ of court just as the fundamental rights are, but it **cannot be lost sight of that duties in Part IVA - Article 51A are prefixed by the same word fundamental** which was prefixed by the founding fathers of the Constitution to rights in Part III.
  - State is, all the citizens placed together and hence, though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State
- The Supreme Court in **Union of India v. Naveen Jindal (2004) case** reiterated the **observation made by the Verma Committee** that it may be necessary to enact suitable legislation wherever necessary to require obedience of obligations by the citizens.
- If the existing laws are inadequate to enforce the needed discipline, the legislative vacuum needs to be filled. The desired enforceability can be better achieved by providing not merely for legal sanctions but also combining it with social sanctions and to facilitate the performance of the task through exemplar, role models.

#### **Conclusion:**

- Even though the Indian society has largely been duty-based, lot of emphasis has been given on the rights in the recent past.
- From the point of **social contract theory of Locke**, it may be reasonably expected from the state by its citizens that the state protect their rights and **the citizens too have a duty towards the state for its making and welfare.**
- Teaching of Fundamental Duties in every institution of the country shall be made mandatory as a part of either curricular or co-curricular activity. The state is duty bound to educate its citizens about their duties, as a right balance can be maintained between the rights and the duties.

### **Mending Court Judgments: The First Constitutional Amendment**

First amendment to the Constitution of India was undoubtedly a momentous one.

**Why these Amendments became imminent so early?**

- The need arose on account of some judgments of High Courts and the Supreme Court that **interpreted the constitution vastly differently** from the manner the ruling class came to interpret it or wanted it to be interpreted.
- These judgments gave a feeling that the judiciary was making unwarranted intrusions into the power of the executive.
- It was this **collective angst of the parliament against judgments** of the High Courts and the Supreme Court that **lead to the First amendment to our constitution**.
- These Judgements have been mentioned below:

**A. Romesh Thapar Vs. State of Madras**

- The SC in this case held that **securing “public order”** was not one of the enumerated exceptions to free speech under Article 19(2).

**B. Kameshwar Singh v. State of Bihar**

- The other area in which courts differed with the executive, was in the realm of land reform. To end the zamindari oppression, some states gave the zamindars low compensation and to appropriated their land.
- Such measure was held unconstitutional by some high courts notably the Patna High Court in Kameshwar Singh v. State of Bihar.
- The Patna HC held that the **Bihar Land Reforms Act was invalid** as it violated Article 14 of the Constitution. The court held that **Article 14 guaranteed equal protection under the law** and therefore it did not allow discrimination against the richer zamindars.

**Criticism of the 1<sup>st</sup> Amendment:**

- Till the end of 1951, the elections that were to be held under the constitution we had adopted had not been held. Critics of the Amendment **therefore charged the Parliament with lack of representative capacity to bring in the amendments**.
- However, it must be remembered that under the **provisions of the Indian Independence Act of 1947**, the constituent assembly **was empowered to sit in a legislative capacity** until the new constitution came into force and to exercise its powers.
- In effect therefore the constitutional amendments were debated by the very people who had framed the constitution.

**The First Amendment**

- The **main objects of this Bill** are, accordingly to **amend article 19** and to insert **provisions fully securing the constitutional validity of zamindari abolition** laws in general and certain specified State Acts in particular.
- The First Amendment Act therefore went on to amend articles 15, 19, 85, 87, 174, 176, 341, 342, 372 and 376. It inserted articles 31A and 31B.
- The **Ninth schedule to the constitution** was also added in this amendment vide Article 31B.
- It is relevant to note that at this point of time there were 7 groups of rights guaranteed which included Right to Property.
- However, vide the 44th Constitutional Amendment (1978) **Right to Property was taken away from the list of Fundamental rights** and placed in a new Article 300A as an ordinary legal right. Thus, currently there only 6 groups of rights exist.

**Impact:**

- **Any law included in the Ninth Schedule was protected from judicial review**, even if it was unconstitutional and violating Fundamental Rights.
- What started as a list of 13 laws enabling land reforms has since expanded to protect 282 laws enabling nationalization, currency controls, price and quantity controls, and even the excesses of the Emergency.

**Aftermath:**

- The **amended Article 19 (2)** came to be first interpreted by the Supreme Court in **Ramji Lal Modi Vs State of U.P.**
- At issue was a **challenge to Section 295A of the Indian Penal Code**, which criminalised insulting religious beliefs with an intent to outrage religious feelings of any class.
- The court upheld this section. It went on to hold that the **calculated tendency of any speech or expression** aimed at outraging religious feelings was, indeed, to cause public disorder and consequently, the section was unconstitutional.
- In **S.Rangarajan Vs. P.Jagjivan Ram** the Supreme Court required proximity between the expression and the likelihood of the same causing public disorder to be akin to a “spark in a powder keg”.
- Most recently, in **Arup Bhuyan Vs. State of Assam**, *the court read down a provision in the TADA criminalising membership of a banned association to only apply to cases where an individual was responsible for incitement to imminent violence.*
- In **striking down Section 66 A of the Information Technology Act** in **Shreya Singhal Vs Union of India** the Court once again assertively established its constitutional role as protector of freedom of speech and expression.
- Section 66A empowered authorities to punish for sending “offensive” messages through a computer or any other communication device.

**Conclusion:**

- Very few amendments to our constitution have had such wide ranging effect on the common man as the First Amendment.

### The Indian Parliament: Performance and Challenges

- As the central legislative body in India, the Parliament has four main roles—it makes laws, it holds the executive to account for its actions, it allocates government finances, and represents the interests and aspirations of citizens.

**Functioning of Parliament**

- The number of **sitting days has declined** from 125-140 in the 1950s to about 70 days in the last twenty years.
- Also, **disruptions have further reduced the amount of time available** for discussion in Parliament. During the period of the 15<sup>th</sup> Lok Sabha, **one third of the scheduled time was lost to disruptions.**
- An important **casualty is Question Hour**. The time lost in Question Hour is never made up. As a result, only a few questions listed for oral answers are actually answered on the floor, and the rest get a written reply.
- The shortage of time has also **affected discussion on bills.**



## Areas of Reform

- These include the **repeal of the anti-defection law, recording all votes on bills and major debates, referring all bills to committees and strengthening the support system for committees.**

### A. The Anti-Defection Law

- The Constitution **Tenth Schedule** of the added was in 1985 through the **fifty second amendment**. In brief, it **provides for the disqualification of an MP** if he defects from his party or if he does not vote in accordance with the whip issued by his party.
- Effectively, this gives control to the party leadership over the votes of all its members.
- The anti-defection law goes **against the very concept of representative democracy**. It has weakened the role of Parliament as a body that scrutinizes legislative proposals and that oversees the functioning of the executive.
- In the parliamentary form of government **accountability was done on a daily basis** through questions, resolutions, no-confidence motions, adjournment motions and debates on addresses.
- The **anti-defection law negates this principle**. It reduces the role of the member to follow the instructions given by the party leader.
- If a party has a majority in Parliament, this implies that there is no effective discussion on or challenge to a Government bill or motion.
- In our representative system, the member has to justify his votes in the legislature to the citizens, who may express their displeasure by voting against him. This **system of accountability breaks down with the anti-defection law** as the representative can justify his actions—which may go against the interests of his constituency.
- Interestingly, the **anti-defection law has had limited effect during no confidence motions**. We have seen several instances in the recent past in states such as Karnataka, Uttarakhand and Arunachal Pradesh, where this provision has failed to maintain party discipline.
- It therefore **anti-defection appears that the law has weakened** the power of Parliament to oversee the work of the executive. It has also reduced the accountability of the representative to citizens.

### B. Recorded Voting

- In democracies such as USA and UK, the **voting records of legislators are easily available to citizens**. Voters as well as the media question representatives on the position taken by them on various issues and require them to justify their choices.
- **In our Parliament**, most Bills and motions are **passed by voice votes**. The votes of individual members are recorded (called a division) **only if any MP demands so**.
- The exception is for bills that amend the Constitution. As a result, only a few bills or motions go through a division.
- There was a **division when the Criminal Laws Amendment Bill was discussed** in the aftermath of the Delhi gang rape incident of 2012.

### C. Committee System

- Parliament has constituted several committees, each to scrutinize various issues and make recommendations to the full House.
- During the process of examination of any issue, committees often engage with experts. This **enables Parliament to access external expertise** and also to understand the concerns of people who may

be impacted by an issue or a bill. The committee system also enables MPs to **negotiate across conflicting priorities and positions.**

#### **D. Financial Committees**

- There are three financial Accounts the committees. The **Public Accounts Committee (PAC)** examines the reports of the CAG. The **Committee on Public Undertakings (CoPU)** performs a similar role with respect to public sector enterprises.
- **The Estimates Committee** looks at whether funds were allocated efficiently for various priorities.

#### **E. Departmentally Related Standing Committees**

- The Parliament has constituted 24 such committees, each of which examines the functioning of a set of Ministries and departments.

#### **F. Committee on Subordinate Legislation**

- While Parliament passes a bill into an Act, it often delegates details to be laid out by the Government through rules or statutory bodies through regulation.
- The committee on subordinate legislation examines rules and regulations to ensure that they follow the legislative intent in letter and spirit.

#### **Way Forward:**

- There is a need to strengthen the working of parliamentary committees. They do not have expert research staff to assist the members.
- Often important bills are not referred to these committees; it may be time to revisit parliamentary processes to make this a mandatory step. The attendance of members is close to 50%, much thinner than the 80% plus in the House.

#### **Conclusion:**

- Parliament plays a central role in the Indian system of representative governance, affecting all aspects of lives of citizens.
- Many social reforms and economic progress have been led by Parliament. However, there are ways in which its effectiveness can be improved.
- These include revocation of the anti-defection law, making recorded voting mandatory and strengthening system.

### **Panchayati Raj System**

#### **Constituent Assembly and Panchayati Raj**

- The Constituent Assembly preferred two-tier system of governance. Dr. B. R. Ambedkar, had favoured the provincialism.
- According to him, village republics in India are **dominant by casteism and localism**. Reforming Indian villages and bringing social development at the grassroots level requires a lot of time and effort.
- India's resources at the time of independence to be spent on developing global status of India and to solve the national problems such as providing food, shelter and clothing, health etc., of the public, **rather than strengthening and reengineering the villages.**

#### **Earlier Effort**

- In 1957, **Balwant Rai Mehta Committee** was constituted, which submitted the report stating that, 'Public participation in community works should be organised through statutory representative bodies.'

- National Development Council was established on the basis of the **principle of democratic decentralisation**, which **spread the word 'Panchayati Raj'** into the main frame of discussion about the rural development.
- **First three-tier Panchayati Raj system** was inaugurated on 2 October 1959 in Nagaur, Rajasthan.
- The **Jayaprakash Narayan Committee** further strengthened the idea of Panchayati Raj and the Ministry of Community Development was brought under the Ministry of Food and Agriculture in 1971 and the word '**Community Development**' was replaced with the '**Rural Development**'.
- The **Ashok Mehta Committee, 1978** is the one which recommended for introducing the **Panchayati Raj as a Constitutional institution** through an amendment.

#### **64<sup>th</sup> Amendment Bill**

- The **64<sup>th</sup> Amendment Bill** was introduced for **Panchayat Raj** as an important facet of democracy. Later, the 64th Amendment Bill was followed by **65<sup>th</sup> Amendment Bill** that sought to **endow urban local bodies** in similar lines of Panchayat Raj.
- Though both the bills received the required constitutional majority, the bills failed to take the shape of amendment legislation.

#### **Constitution (73rd Amendment) Act, 1993**

- In the year 1992-93, **73<sup>rd</sup> and the 74<sup>th</sup> amendments** were brought into the Indian Constitution which recognised local self-governance as the third stratum of government.
- Recognising that Panchayat Raj Institution in India should be granted certainty, continuity and strength for acquiring the national development, **Part IX was introduced which consists of the provisions relating to Panchayats**.

#### **Post 73<sup>rd</sup> Amendment**

- After 73<sup>rd</sup> Amendment, **Nagaur district of Rajasthan followed by Andhra Pradesh conducted the first elections for Panchayat Raj**.
- The incorporation of Panchayat Raj system into the constitutional framework brought the **disadvantages section of population into the mainstream social and political empowerment** through 2.4 lakh Panchayats and 2.8 million elected representatives.
- The digitalisation process of Gram Panchayats brought in transparency and good governance.
- Ombudsman, Social Audit, Model Accounting System, Panchayat Performance Assessment initiatives were introduced to develop discipline and progress within the institution.
- Policies such as MGNREGA were introduced which **mandates Panchayats as the planning and implementing agency**.
- **Backward Region Grant Fund (BRGF)** has been introduced as a financial backup for the Panchayats for promoting decentralisation, bridging critical gaps in the development and implementation of schemes and to build capacity of the Panchayats.
- The **13<sup>th</sup> Central Finance Commission** award has brought radical changes in the Panchayat Raj System by devolving a share of the divisible tax pool for panchayats, by granting them **de facto recognition as third tier of governance**.

#### **Way forward**

- Providing sufficient staff, office space and infrastructure.
- Allocating funds sufficient for carrying out the objectives of the Panchayati Raj Institutions.

- Removing the word 'Discretion' [Article 243G] and 'creating mandatory obligation upon the States for devolution of 3Fs.
- Implementing the Provisions of the Panchayats (Extension to Scheduled Areas) Act (PESA) to address the demands of the tribal population living in rural areas.
- Urgent need of the **effective functioning of the State Finance Commission** with a priority of sustenance of PRIs.
- Special focus to be laid down on North Eastern States, 6<sup>th</sup> Schedule Areas.
- Focusing more on the effective functioning of Gram Sabhas.

### Checks and Balances

- The Constitution of any democratic country seeks to establish the fundamental organs of the government with well-defined duties and specific powers making them answerable to the people.
- Accountability is ensured through periodic elections and internal checks and balances.

### **Idea Behind Separation Of Power**

- In the words of **Lord Acton**, "power corrupts and absolute power tends to corrupt absolutely". **Aristotle strongly believed** that a good government has to be a limited one.
- The doctrine of **separation of powers propounded by the French thinker, Montesquieu**, to maintain checks and balances, became the guiding principle of the constitutions of modern democratic states.

### **The Spirit of Constitutionalism**

- The areas of governance generally have been classified into the **legislative** (enactment of laws), the **executive** (enforcement of laws); and **the judicial** or the resolution of disputes relating to the enactment, enforcement, and application of laws.
- **Constitutionalism envisages checks and balances** and puts the powers of the legislature, executive and judiciary under restraint.
- The very essence of constitutionalism is that **no organ of the state may arrogate powers to itself**, beyond what is specified in the Constitution.

### **Indian Constitution and Constitutionalism**

- The Indian Constitution provides a **third and distinct model** of separation of powers.
- The other two commonly followed models include - **the American Constitution** with a **rigid separation of powers** among the three organs, giving judiciary a unique position and the **Constitution of UK** (Westminster model) with a loose separation based on the **principle of supremacy of the Parliament**.
- In India, the **Constitution is the ultimate sovereign** and if anything goes beyond the provisions of the Constitution, it will automatically be considered as null, void and unconstitutional.
- The Supreme Court in **Kesavananda Bharati v. The State of Kerala (1973)** held that any amendment tampering with the basic features of the Constitution will be struck down as unconstitutional.
- In India, Parliament derives its mandate from the Constitution and has no unfettered or arbitrary jurisdiction to override the Constitution.

**A. Functional Overlap: Legislature and Executive**

- The Indian Constitution **does not strictly follow the principle of separation of powers**. The **executive is part of the legislature** and is responsible to it.
- Functionally, the President's or the Governor's assent is required at the centre and states respectively for all legislations. The **President (Article 123) or the Governor (Article 213)** has the **power of making ordinances** when both houses of the legislature are not in session, which has the same status as that of a law of the legislature.
- **Article 311** allows the executive to hold an enquiry into charges against any person holding a civil post under the Union or the State and to award punishment.
- The President or the Governor has the **power to grant pardon or modify the punishment** of a convicted person.
- The **legislature performs judicial function as Parliament can punish** members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment.
- **Executive is dependent on the legislature** while it performs some form legislative of functions **subordinate in the legislation**. The legislature which controls the executive and can even remove it, also performs some **executive functions such as those required for maintaining order in the House**.
- The **42<sup>nd</sup> Amendment (1976) introduced Articles 323A and 323B** which authorise Parliament and the state legislatures, respectively, to create tribunals.
- The jurisdiction of the courts is excluded in respect of those subjects. The Articles also made it possible to totally **exclude the powers of judicial review under Articles 32 and 226 and vest such powers in tribunals legislatively**.
- The Parliament has the right to legislate on the constitution, organisation, jurisdiction and powers of the **Supreme Court and High Courts**. The **power of impeachment** of judges is reserved to Parliament.
- The functional overlap allows the executive to perform key legislative and judicial functions.
- Under the Constitution, **it is left to the President to decide the number of judges** to be appointed to High Courts as well as to decide finally who is to be appointed as a judge, whether of the Supreme Court or the High Court.
- Perhaps, the most unusual form of legislative powers granted under the Constitution to the **executive are listed under emergency provisions** (Articles 352, 356 and 360).

**B. The Role of Judiciary**

- The application of **judicial review to determine constitutionality** of the legislation and to review the executive decision sometimes creates conflict among the three pillars of democracy.
- Article 32 of the Constitution makes it the **guardian of the inviolable fundamental rights** guaranteed to citizens for the protection of which it can issue writs.
- Even High Courts enjoy this power **under Article 226** for the protection of not only fundamental rights but also other legal rights.
- **Article 141** provides that the law declared by Supreme Court shall be binding on all courts of India.
- **Under Article 142**, it may pass such decree or make such order as is necessary for providing complete justice in any cause or matter pending before it, and **Article 144** mandates that all authorities, civil and judicial, shall work in the aid of the Supreme Court.

- This imposes restrictions on the constituent power of Parliament that the basic structure of the Constitution is not amendable.
- A nine-judge Constitution bench of the Apex Court ruled that **presidential satisfaction for dismissing state governments is judicially reviewable**. In 2006, the dissolution of the Bihar Assembly was declared as unconstitutional.
- The President's or the Governor's decision **in cases of pardon of convicts sentenced to death would be subject to the judicial review**.
- The verdict of the **Supreme Court Constitution Amendment Act and the National Judicial Appointments Commission (NJAC)**, declaring them to be ultra vires the Constitution is another glaring example when any parliamentary Act is overturned as unconstitutional on the principle of judicial review.
- The recent judgment of the Supreme Court on the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989** and the populist response of the Parliament in **enacting Section 18A** in the said Act virtually circumvented the dicta of the judgment passed by the Supreme Court.

### Judicial Activism V Overreach

- **Judicial activism is a judicial response to a situation warranting immediate remedial measures**. In recent decades, the judiciary has been frequently charged with overstepping (judicial overreach) into the arenas of other wings by interpreting laws in a particular way.
- The courts often try to frame laws not by interpreting the existing laws but by directing the State to formulate and implement policies which are required to be in conformity and in consonance with the views of the particular court or courts. Contrary to this, the judiciary also feels that the government tries to control it.
- In the name of upholding the rule of law and the independence of the judiciary, some judgments of the Apex Court clearly breach the boundary line usurping the role assigned to others.
- It laid down principles and norms to be followed in **adoption of Indian children by foreigners** and procedure to be followed for **allowing passive euthanasia**.
- The Supreme Court acknowledging **legislative vacuum in Vishakha vs State of Rajasthan** showed its concern for women safety and laid down guidelines for protection of women from sexual harassment at workplace.
- Similarly, in **D. K. Basu V. State of West Bengal** the SC gave detailed **guidelines to be observed while making arrests**, defined the arrestee's rights including the right against torture.
- Further, it ruled that if there is a legislative vacuum, the executive should fill it, and if it does not do, the judiciary should do so. However, it contradicts the principle enunciated in **D. C. Wadhwa v. State of Bihar** that, ordinances cannot replace legislations though the executive was filling a legislative vacuum.
- The Court directed the Union government **to create an All-India Judicial Service** so as to bring about uniformity in the services of the subordinate judiciary throughout the country.
- The **court is not competent** to do this as it is in **contravention of Article 312** under which Parliament alone has the power to create All-India Services by law.

### Special Powers of the Supreme Court

- The Constitution confers through of India **Article 142 on Supreme Court**, a special **power to do complete justice**.

- The Supreme Court in **2G Spectrum scam** passed an order that no court shall impede the investigation being carried out by the Central Bureau of Investigation and Directorate of Enforcement.
- A similar court monitored investigation was also undertaken in the Coal Blocks Case.
- The entire **environmental jurisprudence** in India evolved through the invocation of Article 142 by the Supreme Court.
- The Apex Court **not only saved the marbles of Taj Mahal from yellowing** due to sulphur fumes from the surrounding industries but provided relief to the aggrieved and affected people in many cases.
- The Supreme Court interventions were appreciated when a five bench judge headed by Venkatachaliah, former Chief Justice of India awarded **compensation in Bhopal gas leak tragedy**, well beyond the limits created by the statutory provisions.
- The Apex Court armoured with the weapon of Article 142 has come out proactively to dispense justice to those who are deprived of it due to various social, educational and economic backgrounds.
- It has played a pivotal role in the evolution of judicial system in India by becoming the voice of the poor and voiceless.

### **Conclusion**

- The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated.
- Every organ of the government is required to perform all the three types of functions namely, the legislative, executive and judicial. Further, each organ in some respects is dependent on the other organs which keep a check and balance it.
- This does not mean that the principle of separation of powers is together discarded. The principle that one organ should not perform functions; which essentially belong to the other, is followed except where the Constitution has vested power in a body.
- India maintains the supremacy of the Constitution, where the powers of the Parliament are circumscribed within the limits set by the Constitution.
- The **question is not of parliamentary supremacy or judicial supremacy**, rather the **question is of striking the balance among various pillars** without any encroachment on each other's area and providing effective governance to nurture and strengthen democratic set up, where the public interests are consciously upheld and considered paramount.

### **Foreign Relations and Indian Constitution**

- Globalisation has resulted in the **widening and deepening of systemic interdependencies** amongst nations. However, the ideal of just world order will not be realised without adherence to international rule of law.
- This goal necessitates finding common approaches to counter problems of terrorism, human rights, environmental degradation, international trade and utilisation of natural resources beyond national jurisdiction.
- Therefore, the sovereign States are **actively participating in international negotiations for framing of treaties** at international, regional and subregional levels.

**Constitution and International Relations**

- The Constitution of India lays down clearly the bases on which foreign policy should be framed and respected.
- The basic thrust of **Article 51 is to maintain international peace and security**, international relations and international obligations, matters which, under the Indian Constitution, fall exclusively within the domain of the Union. Under the Constitution, the constituent units of the Indian Union do not enjoy any international standing.
- Although this Article **falls in the Part IV** of the Constitution which is **non-justiciable**, nonetheless, it occupies an important position in the determination policy in India.
- In reality, **Article 51(c) does not deal with the enforcement of treaties**, it only obligates the **State to foster respect for** “international law and treaty obligations” in interstate relations.
- The **treaties are not self-executing in India** and to **make a treaty enforceable** in the court, the **Parliament has to adopt legislation under the Article 253 of the Constitution**.

**Indian Judiciary and International Law**

- Obligations arising from treaties are **not judicially enforceable in India unless backed by legislation**.
- Nevertheless, **a number of judgments have shown** that *there is no need to incorporate a treaty into law if its implementation is possible at the administrative level and without legislative endorsement*.
- The provisions of the international treaties were invoked in Courts for the purpose of interpreting the domestic law. This can be seen in the Human Right jurisprudence in India.
- The **Maneka Gandhi decision** gave a new direction to human rights jurisprudence. It laid down that not merely should there be procedure established by law, but the **procedure itself must also be reasonable, fair and just**, otherwise the law would be violative of Article 21.
- The Supreme Court has time and again made it clear that the **rules of international law must be incorporated into the national law**, even without legislation, provided they do not conflict with acts of Parliament.
- When they did conflict, the sovereignty and integrity of the Republic and the supremacy of the constituted legislatures in making the laws could not be subjected to external rules.
- **Relying upon Articles 14,15,19(1)(g)** of the Constitution, the court observed that “any **international convention not inconsistent with the fundamental rights** and in harmony with this spirit must be read into these provisions to enlarge the meaning and content thereof to promote the object of the constitutional guarantee”.

<b>Epistolary jurisdiction</b> wherein the courts act even on the basis of postcards or telegrams received from individuals or of stories or reports published in magazines or newspapers
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**Conclusion**

Article 51 of the Constitution brought good name and respect for the country by the international community and also helped in strengthening to espouse the causes of developing nations before international organisations.

**Gender Rights: Reflection, Commitment and Action**

The principles of the Constitution in the Preamble also assures social justice and promotes the dignity of the women.



**Constitutional Provisions Promoting Gender Equality**

- Preamble, Article 14, Article 15(1), Article 15(3), Article 16(2), Article 38, Article 39 (a), Article 39A, Article 42, Article 51A(e)
- Articles 243D (3) & (4) 243T (3) & (4): Reservation of seats for women candidates in Panchayats and Municipalities

**Legislative Provisions Promoting Gender Equality**

- Indian Penal Code: Section 376 – Rape; Section 363 to 373 – Kidnapping and abduction for different purposes;
- Section 302/304-B – Homicide for dowry, dowry deaths or their attempts; Section 498-A – Torture, both mental and physical
- Section 354 – Molestation; Section 509 – Sexual harassment
- The Maternity Benefit Act, 1961
- The Prohibition of Child Marriage Act, 2006
- The Protection of Women from Domestic Violence Act, 2005
- The Protection of Children from Sexual (POCSO) Act, 2012
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
- Criminal Law (Amendment) Act, 2018

**Other Initiatives of Government of India**

- Pan India - Emergency Response Support System (ERSS), single internationally recognized number – 112 for all emergencies with artificial intelligence to identify the location of distress,
- National Policy for the Empowerment of Women 2001,
- **National Database of Sexual Offenders** (launched in September 2018) for facilitating the investigation and tracking the habitual sexual offenders
- Launched '**Investigation Tracking System for Sexual Offences (ITSSO)**' in February 2019 to monitor and track time-bound investigation of sexual assault cases according to Criminal law (Amendment) Act, 2018
- **One Stop Centers** to provide medical aid, police assistance, legal and psycho-social counseling, court case management etc.
- In January 2015, the Government of India **introduced Beti Bachao, Beti Padhao** initiative to create awareness about the importance of female in the society.

**International Commitment**

- Universal Declaration of Human Rights, 1948
- International Covenant on Civil and Political Rights, 1966
- International Covenant on Economic, Social and Cultural Rights, 1966
- Beijing Principles of the independence of judiciary
- Convention on the Political Rights of Women, 1954
- The Declaration on Elimination of Violence against Women (DEVW) 1993
- Convention on Elimination of all forms of Discrimination against Women (CEDAW)
- The UN Committee on the Elimination of all

- UN Women
- UN Security Council Resolution on Women, Peace and Security
- Beijing Declaration and Platform for Action, 1995 and 2020 etc.
- India is committed to achieve the **Sustainable Development Goals** (SDGs), which offers opportunity for historical transformation of gender equality.

**Conclusion:**

The empowering women will bring them into the mainstream decision-making, entrepreneurship, etc., which will contribute in the enhancement of the economy.

**Schemes and Policies for Minorities**

- The Ministry in particular implements programmes/schemes for the six centrally notified minority communities namely, Buddhists, Christians, Jains, Muslims, Parsis and Sikhs as under:
  - **Pre-Matric Scholarship Scheme**, Post-Matric Scholarship Scheme, and Merit-cum-Means based Scholarship Scheme for educational empowerment of students.
  - **Maulana Azad National Fellowship Scheme**
  - **Naya Savera**- Free Coaching and Allied Scheme
  - **Padho Pardesh**- Scheme of interest subsidy to students of minority communities on educational loans for overseas higher studies
  - **Nai Udaan**- Support for students clearing Prelims conducted by Union Public Service Commission, State Public Service Commission Staff Selection Commission etc.
  - **Nai Roshni**- Leadership development of women belonging to minority communities
  - **Seekho Aur Kamao**- Skill development scheme for youth of 14-35 years age group and aiming at improving the employability of existing workers, school dropouts etc
  - **Jiyo Parsi**- Scheme for containing population decline of Parsis in India.
  - **USTTAD** (Upgrading the Skills and Training in Traditional Arts/Crafts for Development) launched in May 2015.
- In addition to the above, the Government also implements schemes for strengthening State Waqf Boards and coordinates arrangements for annual Haj pilgrimage.
- The Ministry of Minority Affairs implements **Pradhan Mantri Jan Vikas Karyakram (PMJVK)** a centrally sponsored scheme, in identified Minority Concentration Areas of the country with the objective of developing socio-economic assets and basic amenities in these areas to bring them at par with other parts of the country.
- The thrust of the PMJVK programme is to allocate at least 80% of the resources for education, health and skill development and at least 33-40% of the resources for women-centric projects.