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BPSC Assistant Engineer Examination:
Indian Polity
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MADE EASY PUBLICATIONS has taken due care in collecting the data and providing the solutions, before publishing this book. Inspite of this, if any inaccuracy or printing error occurs then MADE EASY PUBLICATIONS owes no responsibility. MADE EASY PUBLICATIONS will be grateful if you could point out any such error. Your suggestions will be appreciated.
The compilation of this book Indian Polity was motivated by the desire to provide a concise book which can benefit students who are preparing for Bihar Public Service Commission (BPSC) Assistant Engineer Examination.

This particular textbook of Indian Polity provides all the requirements of the students and this concise presentation will help the readers grasp the theory of this subject with clarity and apply them with ease to solve objective questions quickly. This book not only covers the syllabus of BPSC Assistant Engineer Examination in a holistic manner but is also useful for other competitive examinations. All the topics are given the emphasis they deserve so that mere reading of the book clarifies all the concepts. We have put in our sincere efforts to present detailed theory and MCQs without compromising the accuracy of answers.

Our team has made their best efforts to remove all possible errors of any kind. Nonetheless, we would highly appreciate and acknowledge if you find and share with us any printing and conceptual errors.

It is impossible to thank all the individuals who helped us, but we would like to sincerely thank all the authors, editors and reviewers for putting in their efforts to publish this book.

With Best Wishes

B. Singh
CMD, MADE EASY Group
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Citizenship

“When you single out any particular group of people for secondary citizenship status, that's a violation of basic human rights.”

- Jimmy Carter (39th President of the United States)

The Constitution of India provides for single citizenship for the entire country. The provisions relating to citizenship are contained in Articles 5 to 11 in Part-II of the Constitution of India. Article 5 to 9 of the Constitution determine who are Indian citizens at the commencement of the Constitution, while Article 10 provides for their continuance as such citizens subject to the provisions of any law that may be made by Parliament. Under Article 11, the Constitution saves the power of Parliament to make a law to provide for such provisions.

The Citizenship Act, 1955 provides for acquisition of Indian citizenship, after the commencement of the Constitution by birth, descent, registration, naturalization and incorporation of territory and determination of Indian citizenship. It also makes necessary provisions for the termination and deprivation of Indian citizenship under certain circumstances. The Citizenship Rules, 1956 prescribe the forms and procedure for acquisition of Indian citizenship.

- **Article 9** says no person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state.
- **Article 10** says every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament.
- **Article 11** says Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

**Acquisition of Indian Citizenship**

Indian citizenship can be acquired by birth, descent, registration and naturalization. The conditions and procedure for acquisition of Indian citizenship as per the provision of the Citizenship Act, 1955 are given below:

(1) **By Birth (Section 3)**

(i) A person born in India on or after 26th January 1950 but before 1987, is citizen of India by birth irrespective of the nationality of his parents.

(ii) A person born in India on or after 1st July, 1987 but before 3rd December, 2004 is considered citizen of India by birth if either of his parents is a citizen of India at the time of his birth.

(iii) A person born in India on or after 3rd December, 2004 is considered citizen of India by birth if both the parents are citizens of India or one of the parents is a citizen of India and the other is not an illegal migrant at the time of his birth.

**(Note:)**

An **illegal migrant** as defined in section 2(1)(b) of the Act is a foreigner who entered India

(i) without a valid passport or other prescribed travel documents.

(ii) with a valid passport or other prescribed travel documents but remains in India beyond the permitted period of time.

(2) **By Descent (Section 4)**

(i) A person born outside India on or after 26th January 1950 but before 10th December 1992, is a citizen of India by descent, if his father was a citizen of India by birth at the time of his birth. In case the father was a citizen of India by descent only, that person shall not be a citizen of India, unless his birth is registered at an Indian Consulate within one year from the date of birth or with the permission of the Central Government, after the expiry of the said period.
(ii) A person born outside India on or after 10th December 1992 but before 3rd December 2004, is considered as a citizen of India if either of his parents was a citizen of India by birth at the time of his birth. In case either of the parents was a citizen of India by descent, that person shall not be a citizen of India, unless his birth is registered at an Indian Consulate within one year from the date of birth or with the permission of the Central Government, after the expiry of the said period.

(iii) A person born outside India on or after 3rd December, 2004 shall not be a citizen of India, unless the parents declare that the minor does not hold passport of another country and his birth is registered at an Indian Consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period.

(3) By Registration (Section 5(1))

Indian citizenship by registration can be acquired (not illegal migrant) by following provisions:

(i) Under Section 5(1)(a), Persons of Indian Origin (PIO) who are ordinarily resident in India for seven years before making application (He must be living throughout the period of twelve months immediately before making application and for six years in the aggregate in the eight years preceding the twelve months).

(ii) Under Section 5(1)(b), Persons of Indian Origin (PIO) who are ordinarily resident in any country or place outside undivided India.

(iii) Under Section 5(1)(c), persons who are married to a citizen of India and who are ordinarily resident in India for seven years before making application.

(iv) Under Section 5(1)(d), minor children whose both parents are Indian citizens.

(v) Under Section 5(1)(e), persons of full age whose both parents are registered as citizens of India under section 5(1)(a) or section 6(1), can acquire Indian citizenship.

(vi) Under Section 5(1)(f), persons of full age who or either of the parents were earlier citizen of Independent India and residing in India for one year immediately before making application for citizenship.

(vii) Under Section 5(1)(g), persons of full age and capacity who has been registered as an Overseas Citizen of India (OCI) for five years and residing in India for one year before making application.

Do You Know?

A person shall be deemed to be a person of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th August, 1947.

(4) By Registration (Section 5(4))

Any minor child can be registered as a citizen of India under Section 5(4), if the Central Government is satisfied that there are “special circumstances” justifying such registration. Each case would be considered on merits.

(5) By Naturalisation (Section 6)

Citizenship of India by naturalization can be acquired by a foreigner (not illegal migrant) who is ordinarily resident in India for twelve years (throughout the period of twelve months immediately preceding the date of application and for eleven years in the aggregate in the fourteen years preceding the twelve months) and other qualifications as specified in Third Schedule to the Act.

The Central Government may, on an application, grant a certificate of naturalisation to any person (not being an illegal migrant) if he possesses the following qualifications:

(a) that he is not a subject or citizen of any country where citizens of India are prevented from becoming subjects or citizens of that country by naturalisation

(b) that, if he is a citizen of any country, he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted

(c) That he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution.

NOTE

The Government of India may waive all or any of the above conditions for naturalisation in the case of a person who has rendered distinguished service to the science, philosophy, art, literature, world peace or human progress.

(6) By Incorporation of Territory (Section 7)

If any foreign territory becomes a part of India, the Government of India specifies the persons who among the people of the territory shall be the citizens of India from the notified date.
(7) Special Provisions for Citizenship by the Assam Accord (Section 6A)

The Citizenship (Amendment) Act, 1985, added the following special provisions as to citizenship of persons covered by the Assam Accord (related to the foreigners’ issue):

(a) All persons of Indian origin who came to Assam before the 1st January, 1966 from Bangladesh and who have been ordinarily residents in Assam since the date of their entry into Assam.

(b) All persons of Indian origin who came to Assam on or after the 1st January, 1966 but before the 25th March, 1971 from Bangladesh and who have been ordinarily resident in Assam.

The person who has been detected as foreigner shall register themselves. Such a registered person shall be deemed to be a citizen of India for all rights except voting rights for intervening period of ten years.

Loss of Citizenship

The Citizenship Act, 1955 prescribes three ways of losing citizenship whether acquired under the Act or prior to it under the Constitution viz. Renunciation, termination and deprivation.

(i) Renunciation of Citizenship (Section 8)

- It is a voluntary act by which a person, after acquiring the citizenship of another country, gives up his Indian citizenship. However, if such a declaration is made during a war in which India is engaged, its registration shall be withheld by the Central Government.

- When a person renounces his Indian citizenship, every minor child of that person also loses Indian citizenship. However, when such a child attains the age of eighteen, he may resume Indian citizenship.

(ii) Termination of Citizenship (Section 9)

- It takes place by operation of law when an Indian citizen voluntarily acquires the citizenship of another country. He automatically ceases to be an Indian citizen.

- This provision, however, does not apply during a war in which India is engaged.

(iii) Deprivation of Citizenship (Section 10)

There is a compulsory termination of Indian citizenship by the Central Government, if (a) the citizen has shown disloyalty to the Constitution of India.

(b) the citizen has unlawfully traded or communicated with the enemy during a war.

(c) the citizen has obtained the citizenship by fraud.

(d) the citizen has been ordinarily resident out of India for seven years continuously.

(e) the citizen has, within five years after registration or naturalisation, been imprisoned in any country for two years.

NOTE:

The Constitution of India says, all citizens of India irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country. However, under Article 16, the Parliament can prescribe residence within a state or union territory as a condition for certain employments or appointments in that state or union territory.

Do You Know?

- The Constitution of India does not differentiate between an ordinary and a naturalized citizen as far as eligibility to become President, Prime Minister, Member of Lok Sabha, etc. i.e. a person not born in India, but having acquired citizenship by registration or otherwise can be elected on these constitutional posts.

- In the USA, the Constitution permits naturalised citizens to become members of the Senate only but not the President.

Overseas Citizenship of India

- In September 2000, the Ministry of External Affairs of Government of India had set-up a High Level Committee on the Indian Diaspora under the Chairmanship of L.M. Singhvi.

- The committee submitted its report in January 2002 which recommended the amendment of the Citizenship Act, 1955, to provide for grant of citizenship to the Person of Indian Origin (PIOs) belonging to certain specified countries.

- Subsequently, the Citizenship (Amendment) Act, 2003, made provision for acquisition of Overseas Citizenship of India (OCI) by the PIOs of 16 specified countries other than Pakistan and Bangladesh.

- Later, the Citizenship (Amendment) Act, 2005, expanded the scope of grant of OCI for PIOs of all countries except Pakistan and Bangladesh.
• Recently, the Citizenship (Amendment) Act, 2015, has modified the provisions pertaining to the OCI. The Act has introduced a new scheme called Overseas Citizen of India Cardholder by merging the PIO card scheme and the OCI card scheme.

| Note : |
| The OCI is not actually a dual citizenship as the Indian Constitution forbids dual citizenship or dual nationality. |

| Do You Know? |
| Non-Resident Indian (NRI) |
| An Indian citizen who is ordinarily residing outside India and holds an Indian Passport. |
| Person of Indian Origin (PIO) |
| A person who or whose any of ancestors was an Indian national and who is presently holding another country’s citizenship/nationality i.e. he/she is holding foreign passport. |
| Overseas Citizen of India (OCI) |
| A person registered as Overseas Citizen of India (OCI) Cardholder under the Citizenship Act, 1955. |

**Special Rights to Indian Citizens**

Constitution of India has provided some special rights to the citizens of India only, which are not available to foreigners:

(i) Fundamental Rights mentioned in Article 15, Article 16 and Article 19 of the Constitution belong to citizens alone.

(ii) Only citizens are eligible for following offices viz. (a) The President [Article 58(1) (a)]
(b) The Vice-President [Article 66(3)(a)]
(c) Judge of the Supreme Court [Article 124(3)]
(d) Judge of a High Court [Article 217(2)]
(e) Attorney General [Article 76(2)]
(f) Governor of a State [Article 157]
(g) Advocate General [Article 165]

(iii) Only citizens of India have been given the Right to Vote for election to the Lok Sabha and the Legislative Assembly of every State.

(iv) Only citizens of India have been given the Right to become a Member of Parliament and the Right to become a Member of Legislature of a State.

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**Fundamental Rights**

“We must recognize the Fundamental Rights of man. There can be no true national life in our democracy unless we given unqualified recognition to freedom of religious worship and freedom of education”

- Franklin D. Roosevelt (32nd President of the United States)

Part-III of the Constitution of India from Article 12 to 32 contains Fundamental Rights. This part of the Constitution is called **corner stone of the Constitution** and together with Directive Principles of State Policy (Part-IV), it is known as the **conscience of the Constitution**. Part-III of the Constitution also has been described as the **Magna Carta of India** as it contains a very long and comprehensive list of Fundamental Rights.

The Fundamental Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State. Some of them are available only to the citizens while others are available to all persons including foreigners and corporations or companies. These fundamental rights are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.

• Fundamental Rights are individual rights and these rights are enforceable against the arbitrary invasion by the State except, in the case of Article 15 (2), Article 17, Article 18, Article 23 and Article 24 where these can be enforced against private individuals also.

• Fundamental Rights are not absolute rights and the Parliament can curtail or repeal them but only by a Constitutional Amendment Act and not by an ordinary act. Moreover, as per ruling of Supreme Court, this can be done without affecting the ‘basic structure’ of the Constitution.
The grounds for the restriction may be advancement of SCs, STs, OBCs, women and children; general public order; decency, morality, sovereignty & integrity of India; security of State, friendly relations with foreign States, etc.

- **Article 13** provides for judicial review of all legislations in India. It declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void. This power has been conferred on the Supreme Court (Article 32) and the high courts (Article 226) that can declare a law unconstitutional and invalid on the ground of contravention of any of the Fundamental Rights.

- Absolute Fundamental Rights are given under Article 17 and Article 24.

### Rights outside part III are:

| (i) | Art. 300A : Right to acquire property |
| (ii) | Art. 301 : Freedom of commerce & trade |
| (iii) | Art. 326 : Right to vote |

- According to Article 12 ‘the State’ includes the
  (i) Government and Parliament of India
  (ii) Government and Legislature of States
  (iii) All local or other authorities such as municipalities, panchayats, district boards, improvement trusts, etc. within the territory of India or under the control of Government of India.

- Fundamental Rights are defended and guaranteed by the Supreme Court. Hence, the aggrieved person can directly go to the Supreme Court, not necessarily by way of appeal against the judgement of the high courts.

### Note:

Fundamental Rights can be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21. Further, the six rights guaranteed by Article 19 can be suspended only when emergency is declared on the grounds of war or external aggression (i.e., external emergency) and not on the ground of armed rebellion (i.e., internal emergency).

### Classification of Fundamental Rights

Originally Constitution provided for seven Fundamental Rights viz.

- (i) Right to equality (Articles 14-18)
- (ii) Right to freedom (Articles 19-22)
- (iii) Right against exploitation (Articles 23-24)
- (iv) Right to freedom of religion (Articles 25-28)
- (v) Cultural & educational rights (Articles 29-30)
- (vi) Right to property (Article 31)
- (vii) Right to Constitutional remedies (Art. 32)

But, Right to Property (Article 31) was deleted from the list of the Fundamental Rights by the 44th Constitution Amendment Act, 1978 and after amendment, it was made legal right under Art. 300-A in part-XII of the Constitution. Thus, at present, there are only six Fundamental Rights.

### Right to Equality (Articles 14–18)

**Article 14 (Equality before Law and Equal Protection of Laws)**

- **Article 14** says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- It is available to any person including legal persons, statutory corporation, companies, etc.
- The concept of equality before law is of British origin while the concept of equal protection of laws has been taken from the Constitution of USA.
- The concept of rule of law is a negative concept while the concept of equal protection of laws is a positive concept.
- The concept of equality before law is applicable to all but certain exceptions to it are, the President of India, State Governors, Public Servants, Judges, Foreign Diplomats, etc., who enjoy immunities, protections and special privileges.

### Notes:

1. The Supreme Court held that the ‘Rule of Law’ as embodied in Article 14 is a ‘basic feature’ of the constitution. Hence, it cannot be destroyed even by an amendment.
2. Article 31-C is an exception to Article 14. It provides that the laws made by the state for implementing the Directive Principles of State Policy of Article 39 cannot be challenged on the ground that they are violative of Article 14.
Article 15 (Prohibition of Discrimination on Certain Grounds)

- Article 15 says that the State shall not discriminate against any citizen on grounds only of religion, race, cast, sex, place of birth or any of them.
- Under Article 15 (3) & Article 15 (4), government can make special provisions for women & children and for group of citizens who are economically and socially backward.
- Article 15 also has the second provision which says that no citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, or place of birth with regard to
  (i) access to shops, public restaurants, hotels and places of public entertainment
  (ii) the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly by State funds or dedicated to the use of general public.

This provision prohibits discrimination both by the State and private individuals.

- The 93rd Amendment Act of 2005 added a new provision in which the State is empowered to make any special provision for the advancement of any socially and educationally backward classes, scheduled castes and the scheduled tribes regarding their admission to educational institutions including private educational institutions, irrespective of aided or unaided by the state, except the minority educational institutions.

Subsequently the Centre enacted the Central Educational Institutions (Reservation in Admission) Act,2006, providing a quota of 27% for candidates belonging to the Other Backward Classes (OBCs) in all central higher educational institutions including the Indian Institutes of Technology (IITs) and the Indian Institutes of Management (IIMs).

Creamy Layer

The children of the following different categories of people belong to ‘creamy layer’ among OBCs and thus will not get the quota benefit:

(i) Persons holding constitutional posts like President, Vice-President, Judges of Supreme Court and High Courts, Chairman and members of UPSC and State Public Service Commission, CEC, CAG and so on.
(ii) Group ‘A’/ Class I and Group ‘B’/ Class II Officers of the All India, Central and State Services; and Employees holding equivalent posts in PSUs, Banks, Insurance Organisations, Universities etc., and also in private employment.

(iii) Persons who are in the rank of colonel and above in the Army and equivalent posts in the Navy, the Air Force and the Paramilitary Forces.
(iv) Persons having gross annual income of more than ₹ 4.5 lakhs or possessing wealth above the exemption limit including professionals like doctors, lawyers, engineers, artists, authors, consultants, persons engaged in trade, business and industry, people holding agricultural land above a certain limit and vacant land or buildings in urban areas, etc.

Article 16 (Equality of Opportunity in Public Employment)

- Article 16 says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- It says that no citizen shall be discriminated on the basis of race, religion, caste, sex, descent, place of birth or residence. However, the State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services. This article is confined to the Indian citizens only.
- Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.
- Besides, a law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body can be belong to the particular religion or denomination.

Mandal Commission

- In 1979, the then Union Government under Morarji Desai, appointed the Second Backward Classes Commission under the chairmanship of B P Mandal in terms of Article 340 of the Constitution to investigate the conditions of the socially and educationally backward classes and suggest measures for their advancement. The commission submitted its report in 1980 and identified as many as 3743 castes as socially and educationally backward classes.
The commission recommended for reservation of 27% government jobs for the Other Backward Classes (OBCs) so that the total reservation for all (SCs, STs and OBCs) amounts to 50%.

The recommendations of Mandal Commission were accepted after 10 years (1990) by V P Singh Government.

Do You Know?
The preference of the poorer sections among the OBCs in the 27% quota, i.e., adoption of the economic criteria in granting reservation was introduced by Narsimha Rao Government.

Regarding these provisions, Supreme Court gave following major landmark rulings:

(i) The advanced sections among the OBCs (the creamy layer) should be excluded from the list of beneficiaries of reservation.

Subsequently, Ram Nandan Committee was appointed to identify the creamy layer among the OBCs. It submitted its report in 1993, which was accepted.

(ii) The total reserved quota should not exceed 50% except in some extraordinary situations. This rule should be applied every year.

(iii) A permanent statutory body should be established to examine complaints of over-inclusion and under-inclusion in the list of OBCs. For that purpose, National Commission for Backward Classes was established in 1993 by an act of Parliament. It considers inclusions in and exclusions from the lists of castes notified as backward for the purpose of job reservation.

Article 17 (Abolition of Untouchability)

- Article 17 says that Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

- It refers to the social disabilities imposed on certain classes of persons by reason of their birth in certain castes.

- The Protection of Civil Rights Act 1955 declares the following acts as offences:
  (a) Denying access to any shop, hotel or places of public entertainment.
  (b) Preaching untouchability directly or indirectly.
  (c) Justifying untouchability on traditional, religious, philosophical or other grounds.
  (d) Insulting a person belonging to scheduled caste on the ground of untouchability.
  (e) Preventing any person from entering any place of public worship or from worshipping therein.
  (f) Refusing to admit persons in hospitals, educational institutions or hostels established for public benefit.
  (g) Refusing to sell goods or render services to any person.

Under the Act, the offences committed on the ground of untouchability are punishable either by imprisonment up to six months or by fine up to ₹ 500 or both. A person convicted of the offence of ‘untouchability’ is disqualified for election to the Parliament or state legislature.

Do You Know?
The term ‘untouchability’ has not been defined in the Constitution.

Article 18 (Abolition of Titles)

- Article 18 says that no title, except a military or academic distinction, shall be conferred by the State. Besides, no citizen of India shall accept any title from any foreign State.

- The awards, Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri, called as the national Awards would not amount to title within the meaning of Art. 18. However in 1996, Supreme Court ruled that they should not be used as suffixes or prefixes to the names of awardees. Otherwise, they should forfeit the awards.

- Any citizen or foreigner holding any office of profit or trust under the State cannot accept any present, emolument or office from or under any foreign State without the consent of the president.

Right to Freedom (Article 19 to 22)

Article 19 (Protection of Six Rights)

- Originally, Article 19 contained seven rights. But, the right to acquire, hold and dispose of property was deleted by the 44th Amendment Act of 1978.

- It says that all citizens shall have the right:
  (a) to freedom of speech and expression:
      It implies that every citizen has the right to express his views, opinions, belief and
convictions freely by word of mouth, writing, printing, picturing or in any other manner.

However, the State can impose reasonable restrictions on the exercise of the freedom of speech and expression on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence.

(b) to assemble peacefully and without arms:
It includes the right to hold public meetings, demonstrations and take out processions which must be peaceful and unarmed. However, this right does not include the right to strike.

(f) to practice any profession, or to carry on any occupation, trade or business: All citizens are given the right to practise any profession or to carry on any occupation, trade or business. Most importantly, this right does not include the right to carry on a profession or business or trade or occupation that is immoral (trafficking in women or children) or dangerous (harmful drugs or explosives, etc.). The State can absolutely prohibit these or regulate them through licencing.

- Freedom of press is implicit in Art. 19 (a).
- These six rights are available only to the citizens and to shareholders of a company but not to foreigners or legal persons like companies or corporations, etc.

Do You Know?

Under Section 144 of Criminal Procedure Code (1973), a magistrate can restrain an assembly, meeting or procession if there is a risk of obstruction, annoyance or danger to human life, health or safety or a disturbance of the public tranquility or a riot or any affray.

(c) to form associations or unions: It includes the right to form political parties, companies, partnership firms, societies, clubs, organisations, trade unions or any body of persons.

(d) to move freely throughout the territory of India: A citizen of India can move freely from one state to another or form one place to another within a state. However, the entry of outsiders in tribal areas is restricted to protect the distinctive culture, language, customs and manners of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

(e) to reside and settle in any part of the territory of India: This right is intended to remove internal barriers within the country or between any of its parts. This promotes nationalism and avoids narrow mindedness. The right of outsiders to reside and settle in tribal areas is restricted to protect the distinctive culture, language, customs and manner of scheduled tribes and to safeguard their traditional vocation and properties against exploitation.

Article 20 (Protection in Respect of Conviction for Offences)

- Article 20 deals with protection in respect of conviction for offences. It grants protection against arbitrary and excessive punishment to an accused person, whether citizen or foreigner or legal person like a company or a corporation.
- One of the provisions of Article 20 says that no person shall be prosecuted and punished for the same offence more than once.

Article 21 (Protection of Life and Personal Liberty)

- Article 21 deals with protection of life and personal liberty. It declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens.
- Right to Life and Personal Liberty includes Right to live with human dignity, Right to decent environment including pollution free water and air and protection against hazardous industries, Right to livelihood, Right to privacy, among others.

Article 21 A (Right to Education)

- Article 21 A deals with right to elementary education. It declares that the State shall provide free and compulsory education to all children of the age of 6 to 14 years. Therefore, this provision makes only elementary education a Fundamental Right and not higher or professional education.
- This provision was added by the 86th Constitutional Amendment Act of 2002.
Do You Know?

The Constitution contained a provision for free and compulsory education for children under Article 45 in Part IV. However, being a directive principle, it was not enforceable by the courts. Now, there is scope for judicial intervention in this regard.

Article 22 (Protection Against Arrest and Detention)

- Article 22 deals with protection against arrest and detention in certain cases.
- Article 22 authorises the Parliament to prescribe the circumstances and the classes of cases in which a person can be detained for more than three months under a preventive detention law and the procedure to be followed.
- The Parliament has exclusive authority to make a law of preventive detention for reasons connected with defence, foreign affairs and the security of India. Both the Parliament as well as the state legislatures can concurrently make a law of preventive detention for reasons connected with the security of a state, the maintenance of public order and the maintenance of supplies and services essential to the community.

Note:

- Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court.
- Preventive detention is the detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from committing an offence in the near future.

- The some of the important preventive detention laws made by the Parliament are:
  (ii) Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985 (Repealed in 1995).
  (iii) Prevention of Terrorism Act (POTA), 2002 (Repealed in 2004), etc.

Right Against Exploitation (Article 23 to 24)

Article 23 (Prohibition of Traffic in Human Being and Forced Labour)

- Article 23 deals with prohibition of traffic in human beings and forced labour.
- Any contravention of this provision shall be an offence punishable in accordance with law. This right is available to both citizens and non-citizens. It protects the individual not only against the State but also against private persons.
- The term ‘traffic in human beings’ include selling and buying of men, women and children like goods, immoral traffic in women and children including prostitution, devadasis and slavery.

Article 24 (Prohibition of Employment of Children in Factories, etc.)

- It deals with prohibition of employment of children in factories, etc.
- Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities like construction work or railway. But it does not prohibit their employment in any harmless or innocent work.
- The Commissions for Protection of Child Rights Act, 2005 was enacted to provide for the establishment of a National Commission and State Commissions for Protection of Child Rights and Children’s Courts for providing speedy trial of offences against children or of violation of child rights.
- In 2006, the government banned the employment of children as domestic servants or workers in business establishments like hotels, dhabas, restaurants, shops, factories, resorts, spas, tea-shops and so on. It warned that anyone employing children below 14 years of age would be liable for prosecution and penal action.

The Child Labour (Prohibition & Regulation) Amendment Act, 2016


Features of the Act:

(i) It prohibits the employment of children below 14 years in all occupations and processes.
(ii) It also prohibits the employment of adolescents (14 to 18 years of age) in certain hazardous occupations and process.
(iii) The Act introduces more stringent punishment for the offenders i.e. an imprisonment of 6 months to 2 years, or a fine of 20,000 to 50,000, or both can be imposed. In case of repeated offence, the imprisonment is of 1 year to 3 years.
Right to Freedom of Religion (Art. 25 to 28)

Article 25 (Freedom of Conscience and Free Profession, Practice and Propagation of Religion)
- Article 25 deals with freedom of conscience and free profession, practice and propagation of religion. It covers not only religious beliefs but also religious practices. These rights are available to all persons including citizens as well as Foreigners.
- However, the Article says that State is permitted to regulate or restrict any economic, financial, political or other secular activity associated with religious practice.

Article 26 (Freedom to Manage Religious Affairs)
- Article 26 deals with freedom to manage religious affairs.
- It says that every religious denomination or any of its section shall have the following rights:
  (a) Right to manage its own affairs in matters of religion.
  (b) Right to administer property related to religion in accordance with law.
  (c) Right to own and acquire movable and immovable religious property.
  (d) Right to establish and maintain institutions for religious and charitable purposes.

Article 27 (Freedom from Taxation for Promotion of a Religion)
- Article 27 deals with freedom as to payment of taxes for promotion of any particular religion.
- It prohibits the State from favouring, patronising and supporting one religion over the other. This means that the taxes can be used for the promotion or maintenance of all religions.

Note:
Article 27 prohibits only levy of a tax and not a fee. However, a fee can be levied on pilgrims to provide them some special service or safety measures.

Article 28 (Freedom from Attending Religious Instruction)
- Article 28 deals with freedom as to attendance at religious instruction or religious worship in certain educational institutions.
- It says that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, this provision shall not apply to an educational institution administered by the State but established religious trust.

Cultural & Educational Rights (Art. 29-30)

Article 29 (Protection of Interests of Minorities)
- Article 29 deals with protection of language, script and culture of minorities. It provides that any section of the citizens residing in any part of India having a distinct language, script or culture of its own, shall have the right to conserve the same.
- Article 29 grants protection to both religious minorities as well as linguistic minorities.

Article 30 (Right of Minorities of Establish and Administer Educational Institutions)
- Article 30 deals with right of minorities to establish and administer educational institutions.
- The protection under Article 30 is confined only to minorities (religious or linguistic) and does not extend to any other section of citizens.
- This provision was added by the 44th Amendment Act of 1978 to protect the right of minorities in this regard.
- There are three types of minority educational institutions in India:
  (i) Institutions that seek recognition as well as aid from the State.
  (ii) Institutions that seek only recognition from the State and not aid. (These both types of institutions are subject to the regulatory power of the state with regard to syllabus prescription, academic standards, discipline, sanitation, employment of teaching staff and so on.)
  (iii) Institutions that neither seek recognition nor aid from the State. (These type of institutions are free to administer their affairs but subject to operation of general laws like contract law, labour law, industrial law, tax law, economic regulations, and so on.)

Article 32 (Right to Constitutional Remedies)
- Article 32 confers the right to remedies for the enforcement of the fundamental rights of an aggrieved citizen.
- It deals with right to move to the Supreme Court for the enforcement of Fundamental Rights including the Writs of (i) Habeas corpus,
(ii) Mandamus, (iii) Prohibition, (iv) Certiorari and (v) Quo warranto.

- In case of the enforcement of Fundamental Rights, the jurisdiction of the Supreme Court is original but not exclusive. It is concurrent with the jurisdiction of the high court under Article 226.

<table>
<thead>
<tr>
<th>Do You Know?</th>
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<td>• Dr. Ambedkar called Article 32 as the most important article of the Constitution—<em>an Article without which this constitution would be a nullity. It is the very soul of the Constitution and the very heart of it.</em></td>
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<td>• The Supreme Court has ruled that Article 32 is a basic feature of the Constitution. Hence, it cannot be abridged or taken away even by way of an amendment to the Constitution.</td>
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**Notes:**

1. **Under Article 32,** Parliament can empower any other court to issue directions, orders and writs of all kinds. However, this can be done without prejudice to the powers conferred on the Supreme Court.

2. **Under Article 359,** the Constitution provides that the President can suspend the right to move any court for the enforcement of the fundamental rights during a national emergency.

**Writs**

- The Supreme Court (under Article 32) and the high courts (under Article 226) can issue the writs of *habeas corpus, mandamus, prohibition, certiorari* and *quo warranto.*

1. **Habeas corpus:**
   - It means ‘to have a body of’ i.e. to be produced before the court. It can be issued against State and private individuals.
   - It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it.
   - This writ cannot be issued where the (i) proceeding is for contempt of a legislature or a court (ii) detention is outside the jurisdiction of the court (iii) detention is lawful

2. **Mandamus:**
   - It means ‘we order or we command’. It can be issued against a public authority or inferior courts for purpose of enforcing legal right only. It is a command issued by the court to a public authority to perform official duties that authority had failed or refused to perform.
   - It can not be issued against President and Governors.
   - The writ of mandamus cannot be issued (i) to enforce a contractual obligation (ii) against the chief justice of a high court acting in judicial capacity (iii) to enforce departmental instruction that does not possess statutory force (iv) against a private individual or body (v) when the duty is discretionary and not mandatory

3. **Prohibition:**
   - It means ‘to forbid’. It is issued by the higher courts (Supreme Court or High Court) to the lower courts or quasi judicial bodies (Tribunals, etc.) Forbidding the later to continue proceedings there in excess of its jurisdiction which it is not legally vested.
   - The writ of prohibition can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.

4. **Certiorari:**
   - It means ‘to be informed’ or ‘to be certified’. It is issued to quash the order of a lower court or tribunal in excess of jurisdiction.
   - While the Prohibition is available during the pendency of proceedings and before the order is made, Certiorari can be issued only after the order has been made. Hence we can say that Prohibition is of preventive nature while Certiorari is of curative nature.
   - Like prohibition, certiorari is also not available against legislative bodies and private individuals or bodies.
• However, in 1991 the Supreme Court ruled that the Certiorari can be issued even against administrative authorities affecting right of individuals.

5. **Quo warranto:**

• It means “what is your authority”. It is issued to ensure that the person holding a public office is duly qualified to hold the office. Hence, it prevents illegal usurpation of public office by a person.

• This writ cannot be issued in cases of ministerial office or private office. Unlike the other four writs, this can be sought by any interested person and not necessarily by the aggrieved person.

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<th>Historical Fact:</th>
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<tr>
<td>Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs. Article 226 now empowers all the high courts to issue the writs.</td>
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### Difference between power of writs issued by Supreme Court and High Courts

<table>
<thead>
<tr>
<th>Supreme Court</th>
<th>High Courts</th>
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<tbody>
<tr>
<td>1. The Supreme Court can issue writs only for the enforcement of fundamental rights. (Thus, the writ jurisdiction of the Supreme Court, in this respect, is narrower than that of high court.)</td>
<td>1. A high court can issue writs not only for the enforcement of Fundamental Rights but also for any other purpose (i.e. the enforcement of an ordinary legal right also).</td>
</tr>
<tr>
<td>2. The Supreme Court can issue writs against a person or government throughout the territory of India. (Thus, the territorial jurisdiction of the Supreme Court for the purpose of issuing writs is wider than that of a high court.)</td>
<td>2. A high court can issue writs against a person residing or against a government or authority located within its territorial jurisdiction only or outside its territorial jurisdiction only if the cause of action arises within its territorial jurisdiction.</td>
</tr>
<tr>
<td>3. A remedy under Article 32 is in itself a Fundamental Right and hence, the Supreme Court may not refuse to exercise its writ jurisdiction.</td>
<td>3. A remedy under Article 226 is discretionary and hence, a high court may refuse to exercise its writ jurisdiction.</td>
</tr>
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### Fundamental Rights not Available to Non-citizens

1. Rights not to be discriminated against on grounds of race, caste, religion, sex or place of birth (Article 15).
2. Right to equality of opportunity in public employment (Article 16).
3. Right to six fundamental freedoms (Article 19).
4. Right to suffrage (Article 326).
5. Cultural and education rights (Article 29, Article 30).
6. Rights to hold certain offices i.e. offices of President, Vice-president, Governor of States, Judges of Supreme Court or High Courts, Attorney General of India, Comptroller and Auditor General, etc.

7. Right to contest election and get elected to either House at the Centre or State level.

### Fundamental Rights Available to Any Person (Except Citizens of Enemy Countries)

1. Equality before law and equal protection of law (Article 14).
2. Protection in respect of conviction for offences (Article 20).
3. Protection of life and personal liberty (Article 21).
6. Freedom as to payment of taxes for promotion of any particular religion (Article 27).
### Some Other Fundamental Rights

| Article 33 | - Article 33 empowers the Parliament to restrict or abrogate the fundamental rights of the members of armed forces, para-military forces, police forces, intelligence agencies and analogous forces. The objective of this provision is to ensure the proper discharge of their duties and the maintenance of discipline among them.  
- This Article imposes restrictions on their freedom of speech, right to form associations, right to be members of trade unions or political associations, right to communicate with the press, right to attend public meetings or demonstrations, etc.  
- The power to make laws under Article 33 is conferred only on Parliament and not on state legislatures. Any such law made by Parliament cannot be challenged in any court on the ground of contravention of any of the fundamental rights. |
| Article 34 | - Article 34 provides for the restrictions on fundamental rights while martial law is in force in any area within the territory of India. It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force.  
- However there is also no specific or express provision in the Constitution that authorises the executive to declare martial law. |
| Article 35 | - Article 35 lays down that the power to make laws, to give effect to certain specified fundamental rights shall vest only in the Parliament and not in the state legislatures.  
- The Parliament shall have (and the legislature of a state shall not have) power to make laws with respect to the following matters:  
  (i) Prescribing residence as a condition for certain employments or appointments in a state or union territory or local authority or other authority (Article 16).  
  (ii) Empowering courts other than the Supreme Court and the high courts to issue directions, orders and writs of all kinds for the enforcement of fundamental rights (Article 32).  
  (iii) Restricting or abrogating the application of Fundamental Rights to members of armed forces, police forces, etc. (Article 33).  
  (iv) Indemnifying any government servant or any other person for any act done during the operation of martial law in any area (Article 34).  
- Parliament shall have (and the legislature of a state shall not have) powers to make laws for prescribing punishment for those acts that are declared to be offences under the fundamental rights. |

### Amendability of Fundamental Rights

- In Shankari Prasad Vs Union of India (1952) and Sajjan Singh Vs State of Rajasthan (1965) Cases, Supreme Court held that Parliament can amend FRs by exercising its powers under Article 368.
- In Golaknath V/s State of Punjab (1967) case, Supreme Court held that Fundamental Rights have been given a Transcendental position by the Constitution and are not amendable. However, through 24th Amendment Act, Parliament amended Article 13 and Article 368, and made the Fundamental Rights amendable.
- In Kesavananda Bharti V/s State of Kerala (1973) Case, Supreme Court held that Parliament can amend any provision of the Constitution but amendments shall not be touching the basic structure of the Constitution. Thus, Judiciary evolved the **Theory of Basic Structure** in this case.
- 42nd Amendment, 1976 inserted that Parliament can amend FRs and Judiciary can not interfere in it.
- In Minerva Mills Case 1980, Supreme Court ruled that **Judicial Review** is the basic structure of the Constitution and it can not be amended.
- At present FRs are amendable but keeping basic structure of Constitution untouched.
Practice Questions

Q.1 Regarding equality before law, the Indian Constitution makes exceptions in the case of
1. The President
2. Governors
3. Foreign sovereigns
4. Foreign Diplomats
Select the correct answer using the codes given below:
(a) 1, 2 and 3 only (b) 1, 2 and 4
(c) 1 and 2 only (d) 1, 2, 3 and 4

Q.2 A British citizen staying in India cannot claim Right to:
(a) Freedom of trade and profession
(b) Equality before the Law
(c) Protection of life and personal liberty
(d) Freedom of religion

Q.3 Match List-I with List-II and select the correct answer using the codes given below the lists:

List-I (Article of Indian Constitution)
A. Article 16(2)
B. Article 29(2)
C. Article 30(1)
D. Article 31(1)

List-II (Provisions)
1. No person shall be deprived of his property save by the authority of law.
2. No person can be discriminated against in the matter of public employment on the ground of race, religion or caste.
3. All minorities whether based on religion or language shall have the fundamental right to establish and administer educational institutions of their choice.
4. No citizen shall be denied admission into any educational institution maintained by the State, or receiving State aid, on grounds of religion, race, caste, language or any of them.

A  B  C  D
(a) 2  4  3  1
(b) 3  1  2  4
(c) 2  1  3  4
(d) 3  4  2  1

Q.4 Which one of the following writs can be issued by a High Court to secure liberty of the individual?
(a) Mandamus (b) Quo-warranto
(c) Habeas Corpus (d) Prohibition

Q.5 Which one of the following features of citizenship in India is correct?
(a) Dual citizenship of the State and Nation
(b) Single citizenship of a State
(c) Single citizenship of whole of India
(d) Dual citizenship of India and another Country

Q.6 In the Indian Constitution, the Right to Equality is granted by five Articles. They are
(a) Article 16 to Article 20
(b) Article 15 to Article 19
(c) Article 14 to Article 18
(d) Article 13 to Article 17

Q.7 Which of the following rights conferred by the Constitution of India is also available to non-citizens?
(a) Right to constitutional remedies
(b) Freedom to speech
(c) Freedom to move and settle in any part of the country
(d) Freedom to acquire property

Q.8 Which of the following is given the power to implement the Fundamental Rights by the Constitution?
(a) All Courts in India
(b) The Parliament
(c) The President
(d) The Supreme Court and High Court

Q.9 Which one of the following is not included in the Fundamental Rights?
(a) Right to property
(b) Right to form association
(c) Right of assembly
(d) Right to move and stay in any part of the country

Q.10 The citizenship provided by the Constitution of India is:
(a) Dual citizenship
(b) Single citizenship
(c) Both of the above
(d) None of the above

Q.11 Which among the following Articles of the Constitution provides for the abolition of untouchability in any form?
(a) Article 14 (b) Article 17
(c) Article 19 (d) None of the above
Q.12 Right to property is a:
(a) Fundamental right
(b) Natural right
(c) Constitutional right
(d) Legal right

Q.13 Article 25 of the Indian Constitution refers to:
(a) Right to equality
(b) Right to property
(c) Freedom of religion
(d) Protection of minorities

Q.14 Which Article of the Constitution protects the
‘Right of minorities to establish and administer
educational institutions of their choice’?
(a) Article 19  (b) Article 26
(c) Article 29  (d) Article 30

Q.15 Which of the following Rights can be enforced
under Article 32 of the Indian Constitution:
(a) Constitutional Rights
(b) Fundamental Rights
(c) Statutory Rights
(d) All the above

Q.16 The granting of Fundamental Rights to citizens
aims at ensuring
(a) an independent judiciary
(b) socialistic government
(c) individual liberty
(d) none of these

Q.17 Which one of the following Fundamental Right
was amended as result of the decision of the
Supreme Court of India in ‘State of Madras vs
Champakam Dorairajan case’?
(a) Right to equality before law
(b) Right against discrimination
(c) Right against untouchability
(d) Right to freedom of speech and expression

Q.18 Consider the following statements about the
Fundamental Rights in India:
1. They are a guarantee against state action
2. They are enumerated in Part III of the
Constitution
3. They ensure social, economic and political
justice.
4. They are unlike bill of Rights in the U.S.A.
Select the correct answer from the codes
given below:
Codes:
(a) 1 and 2 only
(b) 2 and 3 only
(c) 1, 2 and 3 only
(d) 2, 3 and 4 only

Q.19 Which of the following have been recognised
as Fundamental Rights by the Supreme Court
of India?
1. Right of shelter
2. Right to travel abroad
3. Right to equal pay for equal work
Select the correct answer from the codes
given below:
Codes:
(a) 1 and 2  (b) 2 and 3
(c) 1 and 3  (d) 1, 2 and 3

Q.20 Which of the following Articles of the
Constitution of India have been declared by
the Supreme court as the ‘Inviolable basic
structure’ of the Constitution:
Select the correct answer for the code given
below:
1. Article 32  2. Article 226
3. Article 227  4. Article 245
Code:
(a) 1, 2 and 3  (b) 1, 3 and 4
(c) 1, 2 and 4  (d) 1, 2, 3 and 4

Q.21 Which of the following enabled the Supreme
Court of India to deduce a fundamental right
to equal pay for equal work:
(a) the word ‘socialist’ used in the preamble
of the Constitution
(b) the word ‘socialist’ used in Article 14 of
the Constitution
(c) the word ‘socialist’ used in Article 16 of
the Constitution
(d) All of the above

Q.22 The main object of the Article 13 of the Indian
Constitution is to secure the paramountcy
of the Constitution in regard to:
(a) Directive Principles of State Policy
(b) Fundamental Rights
(c) Fundamental Duties
(d) All the above

Q.23 Which one of the following articles of the Indian
Constitution belongs to a different category:
(a) Article 14  (b) Article 15
(c) Article 16  (d) Article 19
Q.24 The Constitution of India does not clearly provide for the “Freedom of Press” but this freedom is implicit in the Article:
(a) 19[(i)a]    (b) 19[(i)b]
(c) 19[(i)c]     (d) 19[(i)d]

Q.25 A writ issued by the judiciary enjoining upon the executive to do what it should have done within its stipulated powers, is called :
(a) Habeas Corpus    (b) Mandamus
(c) Prohibition     (d) Quo-warranto

Q.26 Under the provisions of Right to Freedom of religion are included:
I. Right to propagate religion
II. Right of the Sikhs to wear and carry “kirpans”
III. Right of the State to legislate for social reforms
IV. Right of religious bodies to secure conversion of people to their own faith
Select the correct answer from the code given below :
Code :
(a) I, II and III   (b) II, III and IV
(c) III and IV     (d) All of these

Q.27 Which area of the Indian Constitution has been described as the ‘Soul’ of the Constitution ?
(a) Fundamental Duties
(b) Directive Principles of State Policy
(c) The Preamble
(d) Right to Constitutional Remedies

Q.28 The Mandal Commission whose suggestions have given rise to unabated controversy, was constituted by
(a) Indira Gandhi
(b) Morarji Desai
(c) Rajiv Gandhi
(d) Vishwa Nath Pratap Singh

Q.29 Which one of the following writs is issued during the pendency of proceedings in a court ?
(a) Mandamus    (b) Certiorari
(c) Prohibition  (d) Quo warranto

Q.30 In which of the following cases, Supreme Court held that ?
“Fundamental Rights enable a man to chalk out his own life in the manner he likes best.”?
(a) Indira Gandhi vs Raj Narain
(b) Gokal Nath vs State of Punjab
(c) Bank Nationalization Case
(d) Azhar vs Municipal Corporation

Q.31 Which of the following Articles cannot be suspended during the national emergency?
(a) Articles 14 and 15
(b) Articles 19 and 20
(c) Articles 21 and 22
(d) Articles 20 and 21

Q.32 Freedom of the press in India is
(a) available to the people under the law of the Parliament
(b) Specifically provided in the Constitution
(c) Implied in the Right of Freedom of Expression
(d) Available to the people to India under Executive order

Q.33 Which one among the following has the power to regulate the right of citizenship in India?
(a) The Union Cabinet
(b) The Parliament
(c) The Supreme Court
(d) The Law Commission

Q.34 ‘Right to private property’ was dropped from the list of Fundamental Rights by the
(a) 42nd Amendment
(b) 44th Amendment
(c) 52nd Amendment
(d) None of the above

Q.35 Which of the following is correctly matched?
(a) Article 14 : Equality before Law
(b) Article 17 : Equal opportunities
(c) Article 19 : Abolition of titles
(d) Article 28 : Permission of military titles

Answer key
1. (b) 2. (a) 3. (a) 4. (c) 5. (c)
6. (c) 7. (a) 8. (d) 9. (a) 10. (b)
11. (b) 12. (d) 13. (c) 14. (d) 15. (b)
16. (c) 17. (b) 18. (c) 19. (a) 20. (d)
21. (d) 22. (b) 23. (d) 24. (a) 25. (b)
26. (a) 27. (d) 28. (b) 29. (c) 30. (b)
31. (d) 32. (c) 33. (b) 34. (b) 35. (a)