



**BITSMUN '23**

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**BACKGROUND  
GUIDE**



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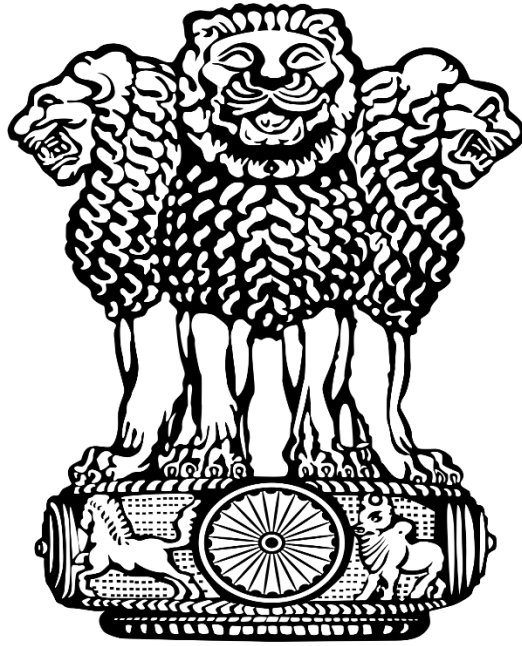


# AIPPM

ALL INDIA  
POLITICAL  
PARTIES MEET

BITS MUN – 2023

COMMITTEE: ALL INDIA POLITICAL PARTY MEET



सत्यमेव जयते

AGENDA:

*1) One Nation, One Election*

*2) Reviewing the Fundamental Rights of the Indian Constitution*

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## **LETTER FROM THE EXECUTIVE BOARD**

Dear Members,

We take this honour to welcome you all to All India Political Party Meet (AIPPM) Committee of BITS MUN. We appreciate you all for having chosen AIPPM as your committee preference. Though this is a committee that flows unconventional to the concept of Model United Nations, the sanctity this committee holds is something that is of super most nature. As the future change makers of the society or global leaders of tomorrow it is expedient and necessary that in order to solve the global crisis one must have the ability to solve the crisis that exists in our own vicinity, as the famous English quote goes “*Charity begins at home*” it is tremendously significant for us to know the current affairs that tends to dominate in our country and a dynamic change maker is the one who not only respects the happenings that takes place at the international diaspora but significantly the one who has exceptional knowledge about his Country, his State, his Municipality etc. This committee is a platform for placing national interest above everything else.

The agendas have been chosen in consonance with the present-day developments in Indian politics to ease out and encourage productive debate. We expect all the Members to go through this background guide and make note that this background guide holds significant importance. However, please make note that the background guide is just your starting point for your research and it is the tip of the ice berg.

From the words of Swami Vivekananda “*Courage and Confidence is the biggest armor for a man to pave his way for his success*”. Wishing all of you a best of luck for your endeavor and would be glad to provide assistance at any given point.

Looking forward to connecting with you all soon. Stay safe and don't let your guard down

Yours Sincerely,

Naman Vankdari, *Chairperson, AIPPM (namanvankdari@gmail.com)*

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# AGENDA - 1

## ONE NATION ONE ELECTION

### INTRODUCTION

The Republic of India is a nation that is widely considered as a nation which houses the world's largest democracy and the elections that happens in the nation once in 5 years for central, state and local self government is the most vibrant, most celebrated and most spoken about elections across the globe and that puts India safely position where one can consider that no other democracy in the globe can come close to that of ours. Understanding our democracy this is a nation that stands on the philosophy of "WE THE PEOPLE" and that being mentioned so there are plethora of laws which regulate the conduct of elections in India and now considering that we are a federal nation with a unitary bias what keeps this principle of Republic of India alive is the spirit of the federal states and its pledged patriotism to the Center called as Republic of India and the democratic nature of this government is such that this nations celebrates and takes pride in its multi-party system and that has further given emergence to plethora of regional parties across all the states in India who play a pivotal role in running the governments both in the central and the state, unlike many countries where bi-party system holds the fulcrum of their politics.

In India too many political observers tried to establish the same concept keeping in view the two dominant national parties (*One which claims large party of having won freedom for this nation and the other which believes in reviving the cultural glory this nation once had in its command in the past*) but plethora of elections have proved the point that the so called national parties are toothless tigers without the support of various regional parties, in fact many governments in the center have tasted bitter defeat when they have ignored the cause of these regional parties and some have lost confidence of the house by a margin of one vote when they don't take into account the significance of the regional parties, twice in our past the leaders of our regional parties have gone on to become the Prime Minister of India and even to this day just my being a member of the coalition alliance captained by the national parties they enjoy to hold plum positions in the government and keeping the same significance in mind and also

the politico- socio-economic effect it has on this country we have to understand how these plethora of elections happens at multiple times and hence the discussion of “One Nation One election” has been mooted by various bodies of the government since 1983, but owing to the chronology many argue that it truly challenges the federal spirit of the nation as multiple states go for elections multiple times and that means either the state or the central governments(s) have to put a foot down and have to compromise on their tenures, which shall be a true litmus test to the entire Constitutional machinery of India and this background guide aims to provide details trying to analyze both the ends of the spectrum and the Committee shall debate and deliberate on the practical plausibility’s of the concept of One nation – One election.

## **HISTORY**

After the Independence in the year 1947 and after India had its own constitution to govern the country, she gave herself to her maiden elections in the year 1951-1952 and since then till 1967 India followed the concept of one nation one elections, wherein there used to be simultaneous elections all across the nation, wherein members of the Universal adult franchise voted for a government in the Central, State and the Panchayath or the local self-governments, but back in the days except a state or two major parts of India had a single party domination as the political party which had the habit of winning election after election and did so for almost two decades had charismatic leadership both at the central and the state level and more importantly they had taken complete credit of having won India its much desired Independence and also drafting an unique Constitution that was never experimented by any nation of great reputation in the past, but this illuminati could not last for long as multiple regional parties came to dethrone the incumbent regimes and started displaying themselves as the true representatives of their people and this magic worked to a large extent in southern parts of India with the rise of Dravidian ideology and the sentiments of the people of South India and followed by the establishment of parties like Telugu Desam Party in the then largest Southern Indian State of Andhra Pradesh and establishment of All India Anna Dravida Munnetra Kazhagam in the most flourishing state of Tamil Nadu hence multiple rise and fall in central and State government resulted in the damage of the streak.

The first dent was in the year 1968, followed by 1969 and 1971 respectively wherein multiple regional parties dissolved and following by the unforgivable Constitutional blunder of 1976, where the draconian laws of emergency was invoked in India just to satisfy the power lust of

one family which was very powerful at the center did further damage to the democracy and completely annihilated the process of democracy. But now the current central government with the able guidance of NITI Ayog has again brought the implementation of one nation – one election to the charts, the feasibility of which shall be decided in the committee.

### **IS THERE A NEED FOR ONE NATION – ONE ELECTION.?**

For those who argue that there is a need for implementation of one nation – one election fundamentally base their arguments on the basis of

1) Financial aspect

Elections basically is an expensive affair in India, be it recruiting electoral officers to supervise over the booths or to recruit staff for counting the votes or recruit police officers to ensure that there is free and fearless elections and candidates/parties/supporters do not indulge into election malpractice and hosting plethora of awareness programs to ensure that voters come out and vote or ensuring that everyone gets their voter Ids, election is indeed a herculean task the preparations of which takes at least 9 months to 3 months of hectic schedule and expenditure has always been double or thrice owing to the fact that there are multiple elections happening at multiple times throughout the year. Hence if there is one One nation one elections a lot of money can be saved by having simultaneous elections.

2) Administrative aspect.

Be it the Prime Minister or Chief Minister or any leader who holds a constitutional office, at the end of the day if he/she is accountable to something it is the political party he/she belongs to and owing to the fact that the leaders who hold legislative constitutional offices have owe significant loyalty to their parties and hold prominent positions in the party as well and the nature of Indian politics is such that there are multiple elections happening in India round the clock and throughout the year and these leaders have to focus on running the nation on one hand and travel to multiple states, cities, districts, villages etc to campaign for elections which keeps them deviated from functioning and even in some cases for I.A.S officers or other executives, District commissioners etc even they would have to face the wrath of multiple elections on one side they have the task of executing various laws implemented by the state and the

central government and the State government and on the other hand ensure that the elections happen spick and span and understanding the fact that during election time the model code of conduct would be in place and no political leader will be in power and the authority of the District Commissioner is the law of the land. Hence to reduce the burden and to ensure that the administrative machibery of the nation focuses more on the polity, many opine that it is important to have one nation one elections.

### 3) Legal aspect.

As per the Representation of the peoples Act 1951, before the elections on a particular date the election commission shall declare the imposition of model code of conduct which means that the Government in authority cannot launch new schemes, cannot inaugurate new buildings, lay foundation stones etc to put it in simple terms the entire legislative machinery shall become partially paralytic and won't enjoy the power and autonomy they did for the past five years or the days when they assumed charge and in order to ensure that there is no complete paralysis of the functioning of the government the MCC provides flexibility for the government to administer over already implemented schemes and sanction funds and complete stock of the situation during the times of crisis, natural calamity, disaster or any unforeseen emergency, but owing to multiple elections the effective implementation of MCC or any other equivalent laws are not happening to its full effect.

## **DOES ONE NATION – ONE ELECTION AFFECT THE BASIC STRUCTURE OF OUR CONSTITUTION?**

Basic Structure' is a judicial innovation which was used for the first time in the case of Kesavananda Bharati & Ors. V/s State of Kerala 1973.

It includes:

- The supremacy of the Constitution.
- Republican and Democratic form of Government and sovereignty of the country.
- Secular and federal character of the Constitution.
- Demarcation of power between the legislature, the executive and the judiciary.



- The dignity of the individual (secured by the various freedoms and basic rights in Part III) and the mandate to build a welfare State contained in Part IV The unity and the integrity of the nation.

Doctrine of basic structure has evolved over the years. Features were added over time through various SC verdicts which gave progressive judgment and innovated to preserve the basic substance of the constitution. Supreme Court in *Sajjan Kumar vs State of Rajasthan* 1965 observed that the Constitution "formulated a solemn and dignified preamble which appears to be an epitome of the basic features of the Constitution". Fundamental rights were included in basic structure in *Minnerva mills v/s Union of India* 1980 where SC calls them "transcendental, inalienable and primordial" and if the elements are damaged or destroyed, would rob the Constitution of its identity so that it would cease to be the existing Constitution but would become a different Constitution. "One cannot legally use the Constitution to destroy itself", as the doctrine of constitutional identity requires.

The theory of basic structure is based on the principle that a change in the thing does not involve its destruction, and destruction of a thing is a matter of substance and not of form. Free and fair elections were seen as an essential postulate of democracy hence it was also called a basic feature by SC in *Indira Gandhi v/s Raj Narain* case 1975. The court also struck down the Clause (4) of Article 329A which provided for special provision as to elections to Parliament in the case of Prime Minister and Speaker, on the ground that it damaged the democratic structure of the Constitution. The said Clause (4) had taken away the power of judicial review of the courts as it abolished the forum without providing for another forum for going into the dispute relating to the validity of election of the Prime Minister and the Speaker.

In *S.R. Bommai v. Union of India*, 1994 SC held that secularism was an essential feature of the Constitution and part of its basic structure.

In *M Nagaraj & Ors. v. Union of India* 2007 the Constitution Bench of the Supreme observed that "axioms like secularism, democracy, reasonableness, social justice, etc. are overarching principles" which links factor for principles of fundamental rights like Articles 14, 19 and 21. These principles are beyond the amending power of Parliament.

In *I.R. Coelho V/s. State of T.N*, 2007, a Nine Judge Bench of the Supreme Court laid down the concrete criteria for basic structure principle.

Stated that the power to amend the constitution was not unlimited, any changes that destroy the identity of the constitution, would be void. Every improper enhancement of its own power by Parliament, be it clauses 4 and 5 of Article 329A, or Section 4 of 42nd Amendment, have been held to be incompatible with basic structure doctrine. Thus, Basic means the base of a thing on which it stands and on the failure of which it falls. It is not a vague concept or abstract ideals found to be outside the provisions of the Constitution. Therefore, the meaning/extent of basic structure needs to be construed in view of the specific provision(s) under consideration, its object and purpose, and the consequences of its denial on the integrity of the Constitution as a fundamental instrument of governance of the country.

### **FEDERALISM**

In the introduction the authors did give you an understanding of the power of regional parties who command huge influence in their respective states and now understanding the theory and legality of federalism.

- In a federal system of government there is a division of power between the Central (Federal) Government and State Governments, in contrast to the unitary system of Government.
- In case of the United States which is a federal state, the separate and independent States first formed a Confederation (1781) and then transformed into a Federation (1789). The States have their own constitution; the federal Constitution is the supreme law and binding on all the States. Any amendment to the American Constitution is required to be ratified by three-fourths of the States.

The Indian Constitution provides for a dual system of government consisting of the center and the State with clear division of powers between them. Constitution is the fundamental law of the land and is guarded and interpreted by the higher judiciary. Federal feature for the first time was laid down in the GOI Act, 1956, providing for distribution of legislative powers between the Union and the States, which was subsequently adopted in the Constitution of India as three lists under the Seventh Schedule. Indian federalism provides systematic and structural principles connecting various provisions of the Constitution. Supreme Court on Indian Federalism Though India not being Federal in the traditional sense of the term, Supreme Court has consistently held that federalism is one of the basic structures of the Indian Constitution. However it does contain some traditional

characteristics of the federal system, namely supremacy of Constitution, Division of Power between the Union and the States and existence of an Independent Judiciary.

*In Re. Berubari Union and Exchange of Enclaves Reference under Article 143(1) of the Constitution of India, Supreme Court observed:*

“The constituent units of the federation deliberately had no organic roots in the past. Hence, in the Indian Constitution the emphasis on the preservation of the territorial integrity of the constituent States is absent. Indian constitution does not propound absolute federalism despite a decentralized authority which is largely due to the arduous task of governing the large territory”

Residuary powers that were not given to anyone in GOI Act 1935 but under the Constitution, by virtue of Article 248, read with Entry 97 in List I of the Seventh Schedule, has been conferred on the Union.

*SC in state of Karnataka V/s union of India 1978*

“Our constitution is not only pragmatic federal but it has also strong unitary bias which is exhibited by lodging in Parliament the residuary legislative powers, and in the Central Government the executive power of appointing certain constitutional functionaries including High Court and Supreme Court Judges etc”.

*SR Bommai V/s Union of India*

SC called Indian Constitution, 'quasi federal' where the end aim of the essential character of the Indian federalism is to place the nation as a whole under control of a national Government, while the States are allowed to exercise their sovereign power within their legislative and coextensive executive and administrative sphere. Indian Constitution is not true to any traditional pattern of federalism where the Indian Union has been described as the “holding together” of different areas by the Constitution-framers, unlike the “coming together” of constituent units as in the case of USA and the confederation of Canada.

*Unitary nature of the Constitution*

It is evident that the Indian Constitution is not federal in a strict legal sense. The term Federalism is used in liberal sense as the Constitution provides for division of legislative powers, labeling it as quasi-federalism, pragmatic federalism, collaborative federalism or

cooperative federalism. The States have been carved out for administrative convenience. The Central Government on assessment of the situation can either move either on the federal or unitary basis. Extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated politically and economically coordinated, and socially uplifted. Constitution of India is “amphibian”, in the sense that it can move either on the federal or unitary plane according to the needs of the situation and circumstances of the case. It is solely for the Union Government itself to decide and no one else.

### **ONE NATION ONE ELECTION IN OTHER COUNTRIES**

#### *South Africa*

- In South Africa elections are held for National Assembly, Provincial Legislature and Municipal Councils in a five-year cycle. The electoral system is based on party-list "proportional representation", which means that parties are represented in the proportion of electoral support to them.
- Municipal Councils, elections are not held along with National and Provincial elections, there is a ‘mixed-member system’ in which, wards elect individual councilors alongside those named from party-lists.

#### *Sweden*

They employ PR system. Elections to Sweden’s County Councils and Municipal Councils occur simultaneously with the general election whereas, elections to the Municipal Assemblies occur on the second Sunday of September after every five years.

#### *Belgium*

In Belgium one can vote in five different types of elections:

- European elections: representatives for the European Parliament
- Federal elections: for the Federal Parliament (the Chamber of Representatives)
- Regional elections: for the legislative bodies of the federated regions
- Provincial elections
- Municipal elections

#### *Indonesia*

Indonesia will hold the presidential elections and legislative elections concurrently starting 2019.

### *Germany*

Bundestag (i.e. Lower House) cannot simply remove the Chancellor with a vote of no-confidence, as the opponents must not only disagree with his or her governance but also agree on a replacement (constructive vote of no-confidence).

This Basic law of the Federal Republic of Germany, 1949 set up has provisions with regard to elections and stability of the Government, which are definitely imitable.

### *United Kingdom (Fixed Term Parliament)*

Parliament of Westminster introduced a fixed term for the Parliament by enacting Fixed Term Act 2011, which provides a term of 5 years for general elections.

The Act 2011 specifies that early elections can be held only if a motion for it is agreed either by at least two-thirds of the whole House or without division; or if a motion of no confidence is passed and no alternative government is confirmed by the Commons within 14 days thereof.

## **VARIOUS REPORTS AND THEIR OPINIONS ON HAVING ONE NATION ONE ELECTION.**

### *First Annual Report of the Election Commission of India, 1983*

- Report supported holding simultaneous election due to reduced expenditure, effective use of manpower and Human Resource, continuous elections also affects the day to day functioning of the govt. both at state and the centre creating hardships for common people as the entire administrative machinery freezes.
- Separate election also result in duplication of expenditure.
- The Elections Commission in the report suggested that a stage has come for evolving a system by convention, if it was not possible or feasible to bring about a legislation for holding election simultaneously.

### *170th Report of the Law Commission of India, Reform of Electoral Laws (1999)*

The report highlighted that elections after 1967 got disturbed due to frequent use of Article 356 of the Constitution, the dissolution of the State Assembly by the Governor on recommendation of the Chief Minister of the State which was a case of exception instead became a norm.

*Report of the National Commission to Review the Working of the Constitution, 2002 (NCRWC Report)*

A NCRWC was appointed to examine, as to how best the Constitution could respond to the changing needs of an efficient, smooth and effective system of governance and to the socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes without tinkering with the basic structure of the constitution.

*255th Report of the Law Commission of India "Electoral Reforms", (2015)*

The report dealt with the anti defection law recommending the power to decide on questions of disqualification on the ground of defection be vested to the President or the Governor, who shall act on the advice of the ECI, instead of Speaker or the Chairman.

*79th Report of Parliamentary Standing Committee, 2015*

- Committee in its Report on “Feasibility of holding simultaneous elections to the House of the People (Lok Sabha) and State Legislative Assemblies” noted several justifications for holding simultaneous elections, such as expenditure, policy paralysis during MCC, burden on manpower etc.
- Impact on delivery of essential services: Holding of political rallies disrupts road traffic and also leads to noise pollution. Simultaneous election will bring it down significantly.

*NITI Aayog*

Working paper titled “Analysis of Simultaneous elections: the What, Why and How” by Niti Ayog highlighted the importance of simultaneous election which focused on heterogeneous needs of the nation as the national parties will focus on regional issues and regional parties will fight for national issues.

## **AGENDA - 2**

### **REVIEWING THE FUNDAMENTAL RIGHTS OF THE INDIAN CONSTITUTION**

#### **MEANING, SCOPE AND DEVELOPMENT OF FUNDAMENTAL RIGHTS**

Fundamental Rights are those rights which are so intrinsic to every person's life and recognized by the Constitution. They are rights recognized by the Constitution to prevent encroachment of the same by the Government. Fundamental Rights provide standards of conduct, citizenship, justice and fair play. They serve as a check on the government.<sup>10</sup>

The need for a constitution originally was to end arbitrary and dictatorial government of either a monarch or an assembly. This would effectively protect the interests and the rights of the people. The *Magna Carta* of 1215 is considered to be one of the first documents which codified the rights of people. The writ of Habeas Corpus has evolved from the *magna carta* of 1215. It was not practiced until 1688 when bill of rights was sanctioned by the King in Parliament. The Constitution of USA was amended in 1791 to incorporate a body of rights which the government was barred from transgressing. Several countries which went on to draft a constitution made it a practice to codify the fundamental rights of its citizens.

In the 19<sup>th</sup> and 20<sup>th</sup> century, several countries wrote their own constitutions after the end of the colonial and imperial rule. India was one among those countries which fought against the imperial powers. Under the totalitarian acts such as the Rowlatt act and after seeing the response to the Sepoy mutiny, the Constitution makers had a genuine reason to place such importance on fundamental rights. The constitution makers knew the need to codify the rights of Indians after their rights were subjugated by the totalitarian rule of the British.

#### **CONCEPT OF NATURAL RIGHTS**

Political thinker John Locke is considered as a champion of natural rights. He proposes that right to life, liberty, and property are natural rights. He says that these rights are

inherent to every individual and are also inalienable since it cannot be taken away by any person or authority. He argues that the State cannot take from any man any part of his property without his own consent. Several other philosophers later contributed to the concept of natural rights which has now been widely recognised as fundamental rights in many countries across the world.

## **FUNDAMENTAL RIGHTS IN INDIA**

The crux of the fundamental rights in the Indian Constitution was drafted in the year 1885<sup>11</sup> which is popularly known as “Indian bill of rights”. And as human rights became a prevailing concept the Motilal Nehru report of 1908 and 1911 respectively played a pivotal role in the Constituent Assembly in drafting the content for the Fundamental rights. But it is equally significant to take into consideration that the members of the Drafting committee did credit the Universal Declaration of Human rights<sup>12</sup> which has similar provisions of what you can see in the Constitution even to this day.

Part III of the Indian Constitution talks about the Fundamental Rights which are guaranteed to the people. It starts from Article 12 of the constitution and goes until Article 35 of the constitution. Some of the significant/ Prominent rights enumerated in the Indian Constitution is mentioned below.

*Article 12:* This provides the scope of what comes within the definition of State. It includes the Government of India, state governments, local bodies, constitutional and statutory bodies.

*Article 13:* Laws which violate the Fundamental Rights are void. Laws include, Ordinance, order, bye-law, rule, regulation, notification, custom or usage.

*Article 14:* This ensures equality of all persons before the law. It also means that equals should be treated equally and unequals ought not to be treated equally.

*Article 15:* This prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Clause 3 enables the State to make special provisions for the advancement of women and children.

*Article 16:* This provides for equality of opportunity in matters concerning public employment. Clause 4 of this Article provides for reservation policy in favour of



backward class of citizens.

*Article 17:* This abolishes untouchability in all forms and practice. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is based on Article 17.

*Article 19:* This article lists certain freedoms which citizens shall enjoy. They include, freedom of speech and expression, freedom to assemble peacefully, freedom to form associations, freedom to move across the country, freedom to reside anywhere across the country, and freedom to practise any profession. However, these freedoms are subject to reasonable restrictions.

*Article 21:* This Article provides for Protection of Life and Liberty. It can be taken away only according to procedure established by law. This right is available for non-citizens as well. This not only embraces physical existence of man, but also includes quality of life.

*Article 25:* People have the right to profess, practice and propagate any religion of their choice. However, this is subject to public order, law and morality.

*Article 26:* This confers the right to every religious denomination to manage religious affairs of their institutions. This also includes the right to administer their property.

*Article 29 & 30:* These two Articles provide for minority rights. Every section of society having a distinguished culture and language will have the right to conserve the same. It was held by the Supreme Court that Article 29(1) does not include religious communities. Under Article 30, linguistic and religious minorities have the right to administer their educational institutions of their choice.

*Article 31:* This provided for the right to own property. It was omitted by the 44th Constitutional Amendment.

*Article 32:* This Article is termed as the 'Heart & Soul' of the Constitution. It provides for Constitutional remedies. When an individual's Fundamental Right is violated, s/he can move the Supreme Court by enforcing a writ. There are five writs, namely:

- a. Habeas Corpus: This is enforced in cases of illegal and unlawful detention. It means to 'produce the body'.
- b. Mandamus: It means 'we command'. A higher court can issue a writ of mandamus to a government official when the official has failed to perform his statutory duty and

direct him to do the same.

- c. Prohibition: When a lower court does not have jurisdiction to hear the case, a higher court may direct the lower court to cease the matter.
- d. Quo Warranto: It means ‘by what authority’. This writ is issued to government officials when they breach the jurisdiction within which they have to perform the duties.
- e. Certiorari: This can be issued by a higher court to a tribunal or a subordinate court to transmit to the higher court the record of proceedings for scrutiny.

### **DELIBERATION ON THE NEED TO INCLUDE DIRECTIVE PRINCIPLES OF STATE POLICY IN THE CONSTITUTION**

*“A king who observes his duty of protecting his people justly and according to law will go to heaven, whereas one who does not protect them or inflicts unjust punishment will not”*

- *Kautilya’s Arthashastra*

The objective of the Constitution is not just to have a democratic political system. It extends to the concept of a welfare state where every need of a man is taken care of by the government from “womb to tomb”. Even during the Kautilyan time period, the king had certain duties to fulfil. The preamble of the Constitution idealizes a welfare state. Hence, in order to achieve socio-economic justice, the framers of the Constitution included certain guidelines for the government to follow while framing policies. They are non-justiciable and fundamental for the governance of the country. Even though they are not legally binding and merely present to serve as a collection of suggestions that the state may accord to, to properly address the various problems that the state may face and also to ensure that the state holistically develops. It is aimed at securing social and economic freedom by appropriate state action. This part contains guidelines such as “The state shall make provisions for securing just and humane conditions of work for maternity relief”.

Some scholars opine that while the fundamental rights enumerated in Part III of the constitution talk of the negative aspect of rights i.e. the rights which the State is forbidden

from violating, Directive Principles of State Policy under Part IV aim at the positive aspects of rights. By this, DPSPs cast an obligation on the State to actively take actions to secure certain rights enumerated in Part III.

Putting things in perspective it has to be taken into consideration that Fundamental Rights are those mandatory rights that the Government has to obey by all means to ensure its citizens basic amenities that it is duty bound to for decent, humane and dignified living. Directive Principles of State policy is a series of those policies which provides a direction to the state to establish a welfare state. If the argument now arises to why the framers of the Constitution did not include the Directive principles of State policy into fundamental rights the Directive Principles of State policy included monetary obligations which India could not afford back in the time hence it was unanimously opined that these directive principles will have a separate mentioning in the Constitution and once the state is able to afford the said aspects in practicality these directive principles should be given legal effect.

Article 37 of the Indian Constitution reads, “The provisions contained in this part.... (are) fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”. Hence, the usage of word “shall” makes it obligatory for the government to follow these principles while making laws and policies for the country. However, no person can approach the judiciary seeking directions to enforce the provisions mentioned in this part.

### **SOME IMPORTANT DIRECTIVE PRINCIPLES OF STATE POLICIES**

1. *Article 38*: The State is obligated to secure a social order for the purpose of general welfare. It should work towards bringing about economic equality, and eliminate other forms of inequalities.
2. *Article 39*: The State should work towards reducing the gender pay gap and prevent concentration of wealth among a few individuals.
3. *Article 41*: The State should provide for effective provisions to ensure the right to work and to education. It should also make policies to provide support in cases of unemployment.
4. *Article 42*: The State is obligated to ensure minimum working conditions at workplace.

5. *Article 44:* The State should take initiatives to implement a Uniform Civil Code throughout India.
6. *Article 46:* The State should take special care of Scheduled Castes, Scheduled Tribes, and other weaker sections of the society and provide them social justice.
7. *Article 47:* It is the duty of the State to improve the standard of living viz. improving nutrition levels and public health.
8. *Article 48:* The State is supposed to frame policies to organise agriculture on modern and scientific lines. It is also supposed to preserve breeds of cattle and prohibit the slaughter of cows.
9. *Article 49:* The State is required to take necessary measures to protect the environment and safeguard the forests.
10. *Article 50:* The State should take necessary measures to protect the independence of the judiciary.
11. *Article 51:* The State is required to promote international peace and security, encourage settling of disputes through arbitration, and foster respect for international laws.

expects from the committee is that the delegates should not preferably include directive principles of state policy as a separate segment for debate but rather debate on how the provisions in the Directive principles of State policy can be made as a fundamental right and what should be inclusive and what should be exclusive should be the core of the debate.

## **CHALLENGES TO FUNDAMENTAL RIGHTS**

Fundamental Rights in the Indian Constitution are not without their challenges. While they are designed to protect individual liberties and promote social justice, various contemporary issues and concerns pose challenges to the effective realization of these rights.

### **1. Freedom of Speech and Expression**

The Right to Freedom of Speech and Expression (Article 19) is one of the most cherished Fundamental Rights. However, the advent of the digital age has brought about a new set of challenges. The ease of communication and the widespread use of social media platforms have raised questions about regulating content. Key issues include:

- **Misinformation and Fake News:** The rapid spread of misinformation poses a threat to public discourse. Balancing the right to free speech with the need to combat disinformation is a complex challenge.
- **Online Harassment and Hate Speech:** The internet has provided a platform for hate speech, cyberbullying, and harassment. Protecting individuals from online abuse without infringing upon free speech is a delicate balance.
- **Privacy Concerns:** Ensuring privacy in the digital age is vital. The conflict between the right to privacy (as affirmed in the Puttaswamy case) and national security concerns, like data surveillance, presents a significant challenge.

## 2. Right to Privacy

The recognition of the Right to Privacy as a fundamental right (Puttaswamy case) has opened new debates and challenges, particularly in the context of technology and data protection:

- **Data Privacy and Surveillance:** Government initiatives and private sector data collection practices have raised concerns about data privacy. Balancing national security and individual privacy is a crucial challenge.
- **Biometric Data:** The use of biometric data (e.g., Aadhaar) has been a subject of controversy. Questions about the security of such data and potential misuse present challenges to privacy rights.
- **Digital Surveillance:** The increased use of surveillance technology for law enforcement and counterterrorism often infringes upon the right to privacy. Striking a balance between security and privacy is a significant challenge.

## 3. Gender and Fundamental Rights

The protection of women's rights is an ongoing challenge concerning Fundamental Rights:

- **Marital Rape:** The Indian Penal Code does not recognize marital rape as a criminal offense, which raises questions about the right to life and personal liberty under Article 21. Balancing spousal privacy with the rights of the spouse is a complex issue.
- **Triple Talaq:** The issue of triple talaq and its constitutionality (Shayara Bano case) underlines the tension between personal laws, religious practices, and gender equality.

- **Gender-Based Violence:** Despite legal protections, gender-based violence remains a significant challenge. The implementation and enforcement of these rights in the context of women's safety is an ongoing concern.

#### 4. Technology and Emerging Challenges

Advancements in technology, while enabling many aspects of modern life, also challenge Fundamental Rights:

- **Artificial Intelligence and Bias:** The use of AI in decision-making, such as predictive policing or credit scoring, may discriminate against specific groups, raising questions about equality and non-discrimination rights.
- **Internet Shutdowns:** The frequent shutdown of internet services in response to protests or unrest limits access to information and communication, infringing upon freedom of speech and expression.
- **Big Data and Profiling:** The use of big data for profiling individuals can potentially violate privacy rights. The misuse of personal information poses challenges to data protection.

### AMENDMENTS AND CONTROVERSIES OF FUNDAMENTAL RIGHTS

The Fundamental Rights enshrined in the Indian Constitution are not static. They have evolved over the years, and their interpretation has been influenced by constitutional amendments and controversies. This section explores some of the key amendments and controversies that have shaped the landscape of Fundamental Rights in India.

#### 1. The 42nd Amendment Act, 1976

One of the most controversial episodes related to Fundamental Rights was the 42nd Amendment Act, often referred to as the "mini-constitution." It introduced several changes, including:

- **Suspension of the Right to Constitutional Remedies:** Article 359 was amended to allow the suspension of the Right to Constitutional Remedies during a state of emergency, rendering citizens temporarily powerless to seek legal recourse against any violation of their Fundamental Rights.

- **Restrictions on Freedom of Speech:** The amendment imposed restrictions on the freedom of speech and expression, allowing for censorship and limitations on media.
- **Supremacy of Directive Principles:** It emphasized the supremacy of Directive Principles over Fundamental Rights, leading to a potential conflict between the two.

The 42nd Amendment Act sparked significant controversy, with critics arguing that it undermined the core values of the Indian Constitution. It is noteworthy that several provisions of this amendment were later rolled back.

## 2. The Kesavananda Bharati Case

The Kesavananda Bharati case (AIR 1973 SC 1461) is one of the most pivotal cases in Indian constitutional history. It revolved around the power of Parliament to amend the Constitution and its impact on Fundamental Rights. The Supreme Court delivered a historic judgment, establishing the doctrine of the "basic structure" of the Constitution. This doctrine implies that while Parliament can amend the Constitution, it cannot alter its basic structure, which includes Fundamental Rights.

This case is essential in understanding how the judiciary has acted as a safeguard against potential misuse of constitutional amendments to dilute Fundamental Rights. It reinforced the idea that certain rights are beyond the reach of amendment.

## 3. Controversies Surrounding the Right to Privacy

The recognition of the Right to Privacy as a fundamental right in the Puttaswamy case (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017) stirred significant debate. The controversy largely centers on striking a balance between privacy and state interests, particularly in the following areas:

- **Aadhaar and Biometric Data:** The use of Aadhaar for various services raised questions about the security of biometric data and its potential misuse, leading to a landmark judgment restricting its mandatory use.
- **Data Protection:** The absence of a comprehensive data protection law has raised concerns about the privacy of personal data, particularly in the digital age where data is routinely collected and analyzed.

#### 4. Balancing Fundamental Rights and Directive Principles

One of the perpetual challenges in Indian constitutional jurisprudence is the balancing act between Fundamental Rights and Directive Principles of State Policy. While Fundamental Rights provide for individual liberties, Directive Principles guide the state in achieving socio-economic justice. Controversies have emerged over this tension in areas such as:

- **Reservation Policies:** Affirmative action policies, while promoting social justice, sometimes raise concerns about violating the rights of certain groups, leading to debates about the balance between equality and affirmative action.
- **Land Acquisition and Property Rights:** Land acquisition for public purposes often puts the right to property in conflict with the state's responsibility to promote economic development and social welfare, resulting in legal disputes.

#### 5. Emerging Challenges

As India undergoes rapid economic and technological changes, new challenges emerge:

- **Digital Age Challenges:** Technology, data privacy, surveillance, and internet freedoms are raising complex questions about how Fundamental Rights can be interpreted in the context of a modern, digital India.
- **Security and Individual Rights:** Ensuring national security while protecting individual rights is an ongoing challenge, especially in matters like surveillance, counterterrorism, and freedom of speech.

### BALANCING FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

#### 1. Directive Principles of State Policy

Directive Principles (DPSP) are a set of guidelines for the government's policy-making and decision-making processes. They are enshrined in Part IV of the Indian Constitution. These principles are non-justiciable, meaning they cannot be enforced in a court of law. However, they are fundamental in the governance of the country, and the state is expected to apply them while making laws and policies.



## **2. Fundamental Rights**

Fundamental Rights, on the other hand, are justiciable and protect individual liberties and freedoms. They are enshrined in Part III of the Constitution and can be enforced in a court of law if violated.

## **3. Balancing Act**

Balancing Directive Principles with Fundamental Rights is a challenging task for policymakers and the judiciary, as these two sets of principles sometimes appear to be in conflict. Here are some key areas where this balancing act is evident:

**Reservation Policies:** Affirmative action policies, such as reservation in education and employment for marginalized groups, are an example of this balance. While Fundamental Rights guarantee equal treatment and non-discrimination, Directive Principles call for the upliftment of socially and educationally backward classes. The challenge is to implement reservation policies in a way that promotes social justice without violating the rights of other citizens.

**Property Rights:** Balancing the right to property (a Fundamental Right) with the state's authority to acquire property for public purposes is another example. The Land Acquisition Act and similar legislation have been the subject of controversies, with landowners often feeling their property rights are violated in the name of public welfare.

**Religious and Cultural Rights:** India's commitment to secularism and the promotion of cultural and religious rights (both under Fundamental Rights and Directive Principles) can sometimes lead to conflicts. For instance, the protection of religious institutions, practices, and religious freedom can sometimes be in tension with efforts to enact a uniform civil code.

## **4. Judicial Interpretation**

The judiciary plays a vital role in striking the balance between Fundamental Rights and Directive Principles. The Indian Supreme Court has often been called upon to adjudicate cases involving this conflict. The famous Kesavananda Bharati case (1973) established the doctrine that the "basic structure" of the Constitution is inviolable and cannot be amended. This doctrine ensures that certain fundamental principles, including the protection of Fundamental Rights, cannot be altered in favor of Directive Principles.

In cases where there is a conflict, the courts have been tasked with interpreting and harmonizing the two sets of principles. They often resort to a "reasonable classification" test, wherein policies that differentiate between different groups are evaluated to ensure that they meet the criteria of reasonableness, justness, and fairness.

## **5. Social Justice and Welfare**

Balancing Fundamental Rights and Directive Principles ultimately revolves around achieving social justice and welfare. India's commitment to social and economic justice is a reflection of the principle of distributive justice, where the state has a duty to ensure that resources and opportunities are fairly distributed among its citizens.

Achieving this balance involves crafting policies that promote social and economic welfare while respecting the rights and freedoms of individuals. It's a continuous challenge that calls for nuanced policy-making and robust judicial interpretation.

## **CLASH BETWEEN EXECUTIVE, LEGISLATURE, AND JUDICIARY ON FUNDAMENTAL RIGHTS**

### **1. Legislative Action**

**Laws and Regulations:** The legislature plays a critical role in shaping laws and regulations that may impact Fundamental Rights. Occasionally, laws enacted by the legislature are perceived as infringing upon these rights. For example, laws related to censorship, sedition, and defamation have historically triggered debates about the freedom of speech and expression (Article 19).

**Reservation Policies:** The legislature has also been responsible for enacting reservation policies. While these policies aim to achieve social justice, they have at times been challenged for potentially infringing on the right to equality (Article 14).

## **2. Executive Action**

**Enforcement of Laws:** The executive branch is responsible for enforcing the laws and regulations enacted by the legislature. This includes actions like the enforcement of security laws, which may restrict freedom of movement and assembly, often sparking controversies about civil liberties (Article 19).

**Emergency Powers:** In times of national emergency, the executive can exercise extraordinary powers. The imposition of a state of emergency can lead to the suspension of Fundamental Rights, as seen during the Emergency declared in 1975, leading to a significant clash between the executive and citizens.

**Policy Implementation:** The executive's role in implementing government policies, particularly social and economic policies, has a direct bearing on Directive Principles of State Policy. Balancing these policies with the protection of Fundamental Rights is an ongoing challenge.

## **3. Judicial Review**

**The Role of the Judiciary:** The judiciary, especially the Supreme Court, serves as the ultimate interpreter and protector of Fundamental Rights. It often gets involved in cases where individuals or groups challenge the constitutionality of laws and executive actions.

**Landmark Cases:** Several landmark cases have tested the limits of executive and legislative actions. For example, the Maneka Gandhi case (AIR 1978 SC 597) underscored the significance of the right to be heard before one's passport was impounded. The Kesavananda Bharati case (AIR 1973 SC 1461) reinforced the idea that the "basic structure" of the Constitution, including Fundamental Rights, cannot be altered by the legislature.

**Striking Down Legislation:** In cases where laws or executive actions are deemed to be in violation of Fundamental Rights, the judiciary has the authority to strike them down. This dynamic can lead to tensions and perceived overreach by the judiciary in legislative and executive matters.

## **4. Clashes and Resolutions**

Clashes between the branches are not uncommon. These disputes sometimes result in legal battles and protracted controversies. However, India's system of checks and balances allows for resolution:

**Judicial Pronouncements:** Landmark judgments often serve to clarify the boundaries of government action concerning Fundamental Rights. They provide a framework for future legislation and executive action.

**Public Opinion:** Public opinion, media scrutiny, and civil society play a crucial role in shaping the response of the executive and legislature to judicial decisions and defending citizens' rights.

**Constitutional Amendments:** In certain cases, the legislature may seek to address contentious issues through constitutional amendments. These amendments require a rigorous process, often involving broad political consensus.

**Dialogue and Cooperation:** The branches of government can work cooperatively to address societal challenges, balancing Fundamental Rights and the broader welfare of the nation.

## **LANDMARK CASES ON FUNDAMENTAL RIGHTS**

### **1. Kesavananda Bharati v. State of Kerala (AIR 1973 SC 1461)**

The Kesavananda Bharati case is arguably the most influential case in Indian constitutional history. It revolved around the power of Parliament to amend the Constitution and its impact on Fundamental Rights. The Supreme Court delivered a historic judgment, establishing the doctrine of the "basic structure" of the Constitution. This doctrine implies that while Parliament can amend the Constitution, it cannot alter its basic structure, which includes Fundamental Rights. This case underlines the paramount importance of Fundamental Rights in preserving the core values of the Indian Constitution.

### **2. Maneka Gandhi v. Union of India (AIR 1978 SC 597)**

The Maneka Gandhi case is a pivotal case regarding the Right to Personal Liberty (Article 21). It expanded the scope of Article 21 by emphasizing that the procedure established by law, mentioned in Article 21, must be reasonable, fair, and just. This decision reaffirmed the significance of Article 21 as a potent tool for citizens to protect their Fundamental Rights.

### **3. Golaknath v. State of Punjab (AIR 1967 SC 1643)**

The Golaknath case was a significant milestone in the protection of Fundamental Rights. The case held that Parliament could not amend Part III of the Constitution to take away or abridge Fundamental Rights. However, this judgment was later overruled in the Kesavananda Bharati case, which introduced the concept of the "basic structure."

### **4. Puttaswamy (Privacy) Case (Justice K.S. Puttaswamy (Retd.) v. Union of India, 2017)**

This case recognized the Right to Privacy as a Fundamental Right. It affirmed that the right to privacy is an intrinsic part of the right to life and personal liberty under Article 21. This judgment has far-reaching implications in the digital age, as it addresses issues of data protection and surveillance.

### **5. S.R. Bommai v. Union of India (1994) and Kihoto Hollohan v. Zachillhu (1992)**

These cases dealt with the balance between the exercise of Fundamental Rights and the constitutional power of the state to impose President's Rule in states. They established important principles related to federalism and the protection of state governments from arbitrary dismissal.

### **6. Indra Sawhney v. Union of India (AIR 1993 SC 477)**

The Indra Sawhney case, also known as the Mandal case, was pivotal in the interpretation of Article 16 related to reservation policies. The judgment upheld the government's right to provide reservation for socially and educationally backward classes, but with a cap of 50%. It underscores the challenge of balancing the right to equality and affirmative action.

### **7. ADM Jabalpur v. Shiv Kant Shukla (AIR 1976 SC 1207)**

This case, often referred to as the "Habeas Corpus case," was decided during the Emergency period in India. It dealt with the suspension of the Right to Constitutional Remedies (Article 32) during a state of emergency. The judgment upheld the government's right to suspend citizens' access to courts during an emergency, highlighting the potential conflict between the state's authority and individual rights.