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CONTENTS

■ Articles related to Fundamental Rights	01-09
➤ ARTICLE 15.....	1
➤ ARTICLE 16 (4)	3
➤ ARTICLE 19(1)(a).....	4
➤ Article 21	7
➤ Article 30	8
➤ Article 32	10
■ Article related to Legislature	12-12
➤ Article 105	12
■ Articles related to Centre-State Relation	14-20
➤ Article 131	14
➤ Article 370A & 35a	15
➤ Article 263	18
➤ Art 338 and Sixth Schedule of the Constitution.....	19
■ Articles related to Judiciary.....	20-21
➤ Art 124(1)	20
➤ Art 222 (1) and Article 223.....	20
■ Understanding Collegium system	21-22
■ Miscellaneous.....	22
➤ Art 334.....	22
■ Amendments of the Constitutions	23



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Constitutional Articles in News

India is a Sovereign Socialist Secular Democratic Republic with a parliamentary system of government. The Republic is governed in terms of the Constitution of India. The final draft of the Indian Constitution which is the longest in the world, was adopted on 26 November 1949 after almost 2 years, 11 months and 17 days. It was legally enforced on 26 January 1950. Starting with 395 Articles and 8 Schedules, it now stands at over 450 Articles and 12 Schedules—a result of 104 amendments.

Indian Constitution assumes significance for UPSC Civil Services Examination. Questions are directly asked and especially from Articles of the Indian Constitution which are in news.

Below is the list of important articles of the Indian Constitution for UPSC 2020:

Articles related to Fundamental Rights

ARTICLE 15

■ What does the Constitution say about Article 15?

- ▶ **Article 15(1)** provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
- ▶ **Article 15(2)** elaborates that no Indian citizen can be discriminated against on basis of religion, race, caste, sex, place of birth. It states that no citizen shall **be denied access to shops, public restaurants, hotels and places of public entertainment**. It also **adds that no citizen shall be subject to any disability, liability, restriction or condition with the use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public**.

Note: There are four exceptions to this general rule of non-discrimination.

■ Why in news?

Recently a **bill providing 10% reservation in jobs and educational institutions to the economically weaker sections in the general category** was given assent by Indian President. The legislation is known as **the Constitution (103 Amendment) Act, 2019**.

• 103rd Constitutional Amendment Act

- The act added **amended Article 15**. It added a provision of **reservation that can be availed by the persons belonging to EWSs who are not covered under any of the existing schemes of reservations for SCs, STs and OBCs**. The state is now empowered to make any special provision for the advancement of any economically weaker sections of citizens. Further, the state is allowed to make a provision for the reservation of up to 10% of seats for such sections in admission to educational institutions including private educational institutions, whether aided or unaided by the state, except the minority educational institutions. This reservation of up to 10% would be in addition to the existing reservations
- **The Act also amended Article 16 of the Constitution**. It added a **provision for the reservation of up to 10% of appointments or posts in favor of any economically weaker sections of citizens. This reservation of up to 10% would be in addition to the existing reservation**. The benefit of this reservation **can be availed by the persons belonging to EWSs who are not covered under any of the existing schemes of reservation for SCs, STs and OBCs**.

The concerns related to the 103rd Constitutional Amendment Act

- **103 CAA raises concerns that** introduces special measures and reservations for '**economically weaker sections**' (EWS). The strongest constitutional challenge might not be to the amendment itself but to the manner in which governments implement it. It was also challenged on the ground of **violating the basic structure of the Constitution**.
- **Article 46 (DPSP)** says that the **state shall promote educational and economic interests of "weaker sections", in particular SCs and STs, and protect them from "social injustices" and "all forms of exploitation"**. While the **103rd CAA mentions Article 46 in its statement and objects**, it seems the government overlooked the fact that **upper castes neither face social injustice nor are subjected to any form of exploitation**.
- Moreover, the **Constitution makes provisions for commissions to look into matters relating to implementation of constitutional safeguards for Scheduled Castes (Article 338), Scheduled Tribes (338A) and Socially and Educationally Backward Classes (339), but has not created any commission for the economically backward classes**.
- **How will the court decide if economic reservation violates basic structure?**
 - To determine this, the Supreme Court has to examine the principles on which affirmative action is based. **As per M Nagaraj (2006)**, It would include examination of four issues — **quantitative limitations such as violation of the 50% ceiling** for all reservations taken together; (ii) **exclusion of creamy layer or qualitative exclusion**; (iii) **compelling reasons such as backwardness of the economically weaker sections** for whom this reservation has been made; (iv) that **overall administrative efficiency is not obliterated by the new reservation**.
 - The court also has to examine the **equality code of the Constitution and whether the state has considered and valued the circumstances justifying it, to make reservation**. This would require that the state's decision is rational and non-arbitrary. The state has to **show quantifiable data to satisfy the court as to inadequacy of representation of economically backward classes**.

- It is clear from the Constitution that **reservation can be for a caste or a class**. In fact, caste is a social class and cannot be for individuals; **103 CAA has made it for the individual**. Similarly, the government **has to justify “compelling reasons” of going beyond the 50% limit**. In some states, upper castes number less than 10% and this scheme may be difficult to justify as for 52% backward classes there is just 27% OBC reservation

ARTICLE 16 (4)

■ What does the Constitution say about Article 16?

Article 16 assures **citizens equality of opportunity in employment or appointment to any government office**. No citizen **can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence**.

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State
3. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment
4. Nothing in this article **shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which**, in the opinion of the State, is not adequately represented in the services under the State.
 - **77th Amendment Act added a new clause (4A)** to Article 16, empowering the state to make provisions for **reservation in matters of promotion to Scheduled Caste/Scheduled Tribe employees if the state feels they are not adequately represented in services**.
5. Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

■ Why in news?

Recently Supreme Court ruled that **Reservation in job promotions not fundamental right. It observed that:**

- Article 16 (4) and 16 (4-A) **are in the nature of enabling provisions**.
- It is the **discretion on the State Government to consider providing reservations**, if the circumstances so warrant. Article 16 (4) and 16 (4-A) empower the State to make reservation in promotion for SC, ST **but it is for the state government to decide whether this was necessary**.
- The **State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in matters of promotions**.
- **However, if a State wishes to exercise its discretion and make reservation in promotions, it has to first collect quantifiable data showing inadequacy of representation of a class or community in public services**.

Background

- ▶ A second Backward Class Commission was appointed under the chairmanship of **B.P. Mandal** in 1979 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 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%.
- ▶ In 1990, the Government declared reservation of 27% government jobs for the OBCs.
- ▶ Again in 1991, the Narasimha Rao **Government introduced two changes:**
 - (a) **preference to the poorer sections among the OBCs in the 27% quota**, i.e., adoption of the economic criteria in granting reservation
 - (b) **reservation of another 10% of jobs for poorer (economically backward) sections of higher castes who are not covered by any existing schemes of reservation.**
- ▶ However, in the famous Mandal case (1992), the Court **rejected the additional reservation of 10% for poorer sections of higher castes, it upheld the constitutional validity of 27% reservation for the OBCs with certain conditions.**
- ▶ However, the **77th Amendment Act was enacted in 1995 in order to nullify the ruling with regard to reservation in promotions.**
 - It added a new provision in Article 16 that empowers the State to provide for reservation in promotions of any services under the State in favor of the SCs and STs that are not adequately represented in the state services.
- ▶ Again, **the 85th Amendment Act of 2001 was enacted** that provides for 'consequential seniority' in the case of promotion by virtue of rule of reservation for the government servants belonging to the SCs and STs with retrospective effect from June 1995.

ARTICLE 19(1)(a)

■ What does the Constitution say?

Article 19 guarantees to all citizens 'Right to Freedom'. It lays down the six rights. These are:

- (a) Right to freedom of speech and expression.
- (b) Right to assemble peaceably and without arms.
- (c) Right to form associations or unions or co-operative societies.^{10a}
- (d) Right to move freely throughout the territory of India.
- (e) Right to reside and settle in any part of the territory of India.
- (f) Omitted
- (g) Right to practice any profession or to carry on any occupation, trade or business.
- These six rights **are protected against only state action and not private individuals.**
- Moreover, these 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.**
- The State **can impose 'reasonable' restrictions on the enjoyment of these six rights only on the grounds mentioned** in the Article 19 itself and not on any other grounds.

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- **Article 19(2) confers the right on the State to 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.
- **Article 19(6) confers the right on the State to impose reasonable restrictions on the exercise of Freedom of Profession** in the interest of the general public. Further, the State is empowered to:
 - prescribe professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business; and
 - carry on by itself any trade, business, industry or service whether to the exclusion (complete or partial) of citizens or otherwise

■ Why in news?

Recently, **Supreme Court has delivered verdict on a bunch of petitions challenging the restrictions imposed on internet services and movement of people in Jammu and Kashmir.**

• Supreme Court's observation:

- **Freedom of speech and expression** and the **freedom to practice any profession or carry on any trade, business or occupation over the medium of internet enjoys constitutional protection** under **Article 19(1)(a) and Article 19(1)(g).**
- The restriction **upon such fundamental rights should be in consonance with the mandate under Article 19 (2) and (6) of the Constitution**, inclusive of **the test of proportionality.**
- **On Section 144 of CrPC:** The court also directed the **Centre to publish all prohibitory orders in force**, future orders under Section 144 of the CrPC and **orders suspending telecom services**, including the internet, **so that affected citizens can challenge them in the high court or another appropriate forum.**
 - ◆ When Sec 144 is imposed for reasons of **apprehended danger, that danger must be an "emergency".**
 - ◆ Powers under Sec 144 **should be exercised in a reasonable and bona fide manner**, and the order must state material facts **in order to enable judicial review.**

Note: Recently Supreme Court ordered setting up of a high-powered committee headed by the Secretary, Ministry of Home Affairs (MHA), to consider pleas seeking restoration of 4G internet services in the Union Territory of Jammu and Kashmir.

Internet as Fundamental Right and its implications in India

The phrase 'Right to Internet' may be conceived as having twofold explications: the primary being over the issue of access to the content over the Internet and reasonable restrictions; and the secondary being the issue of availability of necessary infrastructure and technologies to access the Internet in the first place. The latter issue is indispensable for achieving the former, hence 'Right to Internet' is a positive right.

- Internet is a conduit which paves way for realization of **Fundamental Rights** guaranteed under **Articles 19(1) (a), (g) and Article 21A of the Constitution of India**.
- Judiciary declaring Internet as FR would **update a crucial aspect of democratic existence to the information age. It would** place India in the **league of progressive jurisdictions**, and begin to **harmonize our legal outlook with that of the United Nations Human Rights Council, which upheld net access as a human right in 2016**.
- However, we know that **rights are not absolute in India and it comes with a reasonable restrictions” under specified circumstances**.
- It is a well-settled principle that individual freedoms are **granted only so long as they do not violate the rights of others**. Freedom of speech, for example, must not clash with other imperatives like law and order. For example, **hate speech** that promotes enmity between different groups is explicitly **banned under Section 153A of the Indian Penal Code**.
- The judiciary while declaring Internet is a FR has given **administrations space to restrict its access** on the condition **that it's proportionate to the problem identified**.
- Therefore, government's while formulating clear guidelines on internet shutdowns would ensure that the guidelines are in consonance with the Court's ruling.

Article 21

■ What does the Constitution say?

- **Article 21** 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.
- **Article 21 A** declares that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may determine.
 - This provision was added by the **86th Constitutional Amendment Act of 2002**

■ Why in news?

Recently the Kerala High Court held that **the right to have access to the Internet is part of the fundamental right to education as well as the right to privacy under Article 21 of the Constitution**.

View of Judiciary

- The Supreme Court in **Gopalan case (1950)**, held that the **protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. This meant that the State can deprive the right to life and personal liberty of a person based on a law**.
- However, in **Menaka Gandhi case (1978)**, the Supreme Court **overruled its judgement in the Gopalan case by taking a wider interpretation of the Article 21**. It ruled that the **right to life and personal liberty of a person can be deprived by a law provided the procedure prescribed by that law is reasonable, fair and just**. It introduced the American expression 'due process of law'.

- **The court held that the 'right to life'** as embodied in Article 21 is not merely confined to animal existence or survival but it **includes within its ambit the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living.**
- The Supreme Court has reaffirmed its judgement in the Menaka case in the subsequent cases. It has declared **the following rights as part of Article 21.**
 - 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**, Right to shelter, Right to health, Right to free education up to 14 years of age, Right to free legal aid, Right against solitary confinement, Right to speedy trial, Right against handcuffing, Right against inhuman treatment, Right against delayed execution, Right to travel abroad, Right against bonded labour, Right against custodial harassment

Article 30

■ What does the constitution say?

- **Article 30** of the Constitution deals with the Right of minorities to establish and administer educational institutions.
 - **Under Article 30 (1)**, all minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice.
 - **Article 30 (2)** prohibits the state in discriminating against Minority Educational Institutions in granting aid on the ground that it is under the management of minority.

Note: The protection under Article 30 is confined only to minorities (religious or linguistic). However, the term '**minority**' has not been defined anywhere in the Constitution. The right under Article 30 also includes the right of a minority to impart education to its children in its own language.

■ Why in news?

Recently, the **Supreme Court has held that state can regulate minority institutions in national interest.**

Minority Educational Institutions

- **Under National Commission for Minority Educational Institutions (NCMEI) Act** "Minority Educational Institution" means a college or an educational institution established and administered by a minority or minorities.
- The NCMEI Act defines minority means a community notified as such by the Central Government.
- As per notification of the Government of India, there are **6 notified religious minority communities** - Muslim, Sikh, Christian, Buddhist, Parsis and Jain.
- Once conferred a status of minority educational institution, there is no need for its renewal periodically.

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- The **State Government can prescribe percentage of the minority community to be admitted** in a minority educational institution **taking into account the population and educational needs of the area in which the institution is located.**
- There **cannot be a common rule or regulation or order** in respect of **types of educational institutions from primary to college level** and for the entire **State fixing the uniform ceiling in the matter of admission of students in minority educational institutions.**
- The **State Government is also empowered** under the (NCMEI) Act **to prescribe percentage governing admissions in a minority educational institution.**
- **Central Educational Institutions (Reservation in Admission) Act, 2006, defines a minority educational institution as under:** -Minority Educational Institution" means an institution
 - established and administered by the minorities under clause (1) of article 30 of the Constitution
 - declared by an Act of Parliament or by the Central Government or
 - declared as a minority educational institution under the National Commission for Minority Educational Institutions Act.

Status of Minority Educational Institution as stated by the Judiciary

- **In Azeez Basha vs. Union of India 1968**, the Supreme Court observed that the expression **"establish and administer"** used in **Article 30(1) should fulfill two requirements:**
 - that the institution was established by the
 - community and its administration was vested in the community
- In **S.P. Mittal vs. Union of India (1983)**: The Supreme Court has held that in order to claim the benefit of article 30(1), **the community must show:**
 - That it is a **religious/linguistic minority**
 - That the **institution was established by it.**

Without specifying above two conditions **it cannot claim the guaranteed rights to administer it.**

- **St. Stephen's College vs. University of Delhi (1992)**: The Supreme Court has declared the St. Stephen's College as a minority educational institution on the ground that it was established and administered by members of the Christian Community.

Thus, **these were the indicia laid down by the Supreme Court for determining the status of a minority educational institution** and they have also been incorporated in Section 2(g) of the **National Commission for Minority Educational Institutions (NCMEI) Act.**

Article 32

■ What does the Constitution say?

- Article 32 gives the right to individuals to move to the Supreme Court to seek justice when they feel that their right has been 'unduly deprived'.

■ Why in news?

- ▶ Republic TV's Editor-in-Chief Arnab Goswami recently approached the Supreme Court **under Article 32 of the Constitution** vide a criminal writ petition seeking, among other reliefs, quashing of the FIRs/complaints of defamation and incitement of violence that came to be lodged against him.

Understanding Article 32

- ▶ The Fundamental Right to constitutional remedies under Article 32 of the Constitution of India is described as the "**cornerstone of the democratic edifice**" and the "**soul of the Constitution**".
- ▶ It is the provision **that allows any citizen of the country to directly approach the Supreme Court of India in a writ petition** if the fundamental rights of any person are being violated.
- ▶ Issues such as:
 - Illegal detention (which is a violation of the right to life and liberty),
 - Compensation for victims of a disaster, environmental degradation
 - Creating a system of Public Interest Litigation (PIL)

The Supreme Court of India has taken up such cases while considering the protection of the fundamental rights of the people.

- ▶ Any case filed before the SC in which a person claims that their fundamental right has been violated, is filed under Article 32.
- ▶ The Apex court has the power not only to **prevent the infringement of fundamental right, but also to provide relief and remedy if a breach of the fundamental right is committed**.
- ▶ This is done by **issuing orders or "writs" to enforce the rights**.
- ▶ The Supreme court held that Article 32 can be utilized to enforce fundamental rights, "whether the violation of fundamental right arises out of an executive action/inaction or action of the legislature."

Few Landmark cases from the past:

- ◉ Bandhua Mukti Morcha vs Union of India (1984)
 - ▶ The Supreme Court of India took up the case of bonded labourers being forced to work in stone quarries in Faridabad on the basis of a letter sent as a complaint by an NGO to the Court.
 - ▶ This case **laid the foundation of Public Interest Litigation (PIL) in the country**. The court said that "in a country like India, where there is so much of poverty, ignorance, exploitation etc, any insistence on a rigid formula of proceeding" would "place **enforcement of fundamental rights beyond the reach of the common man**."
- ◉ MC Mehta vs Union of India — Chlorine Gas leak case (1987)
 - ▶ The Supreme Court **directed the government to pay compensation after leakage** of chlorine gas from the Sriram Food and Fertilizer company plant that led to several deaths and health problems for workers.
 - ▶ According to the Court, Article 32 **does not merely confer power to issue direction, order or writ** for enforcement of the fundamental rights **but it also lays a constitutional obligation** to protect the fundamental rights of the people

Article related to Legislature

Article 105

■ What does the Constitution say?

Article 105 deals with powers, privileges of the Houses of Parliament and of the members and committees thereof.

■ Why in news?

On the Rafale fighter jet deal issue, **a breach of privilege motion was moved against Prime Minister and Defence Minister.**

■ What are Privileges?

- Privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament and State legislature, their committees and their members.
- Privileges can be classified into two broad categories:
 - Collective
 - Individual Privilege

■ What is a privilege motion?

- When any of **rights and immunities are disregarded** by the member of Parliament, the offence is called a breach of privilege and is punishable under law of Parliament.
- A notice is **moved in the form of a motion by any member of either House against those** being held guilty of breach of privilege.
- Each House also claims the right to punish as contempt actions which, while not breach of any specific privilege, are offences against its authority and dignity.

Rules governing privilege

- Rule No 222 in Chapter 20 of the Lok Sabha Rule Book and correspondingly Rule 187 in Chapter 16 of the Rajya Sabha rulebook governs privilege.
- It says that **a member may, with the consent of the Speaker or the Chairperson**, raise a question involving a breach of privilege either of a member or of the House or of a committee thereof.
- The **Speaker/Chairman can decide on the privilege motion** himself or herself or refer it to the **privileges committee of Parliament.**

Examples from the past

- ◉ The most significant case was in **1978 when Indira Gandhi was expelled from the House.** The then **home minister Charan Singh moved a resolution of breach of privilege against her** following **observations made by the Justice Shah Commission which probed excesses during the Emergency.**



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- Another case was **expulsion of Subramanian Swamy from the Rajya Sabha in 1976**. He was **charged with bringing disrepute to Parliament** by his activities through interviews in foreign publications that were construed as anti-India propaganda.
- In December 2005, **11 “tainted” MPs, who were caught in a sting over the cash for query scandal**, were expelled from the House.

Articles related to Centre-State Relation

Article 131

■ What does the Constitution Say?

Article 131 deals with the Original jurisdiction of the Supreme Court. The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in dispute:

- ▶ between the Government of India and one or more States; or
- ▶ between the Government of India and any State or States on one side and one or more other States on the other; or
- ▶ between two or more States,

In the above federal disputes, the **Supreme Court has exclusive original jurisdiction**. Exclusive means, **no other court can decide such disputes and original means**, the power to hear such disputes in the first instance, not by way of appeal.

However, this **jurisdiction of the Supreme Court does not extend to the following**:

- ▶ A dispute arising out of any **pre-Constitution treaty, agreement, covenant, engagement, sanad** or other similar instrument.
- ▶ A dispute arising out of any treaty, agreement, etc., which **specifically provides that the said jurisdiction does not extend to such a dispute**.
- ▶ Inter-state water disputes.
- ▶ Matters referred to the Finance Commission.
- ▶ Adjustment of certain expenses and pensions between the Centre and the states.
- ▶ Ordinary dispute of Commercial nature between the Centre and the states.
- ▶ Recovery of damages by a state against the Centre

■ Why in news?

Recently **Kerala and Chhattisgarh filed a suit in the Supreme Court** challenging the **constitutional validity of various central laws** under Article 131 of the Indian Constitution.

Justification on invoking Article 131

- ▶ Kerala became the first state to **challenge the Citizenship (Amendment) Act (CAA)** before the Supreme Court **under Article 131 of the Constitution**.
- ▶ Chhattisgarh government filed a suit in the **Supreme Court under Article 131, challenging the National Investigation Agency (NIA) Act** on the ground that it encroaches upon the state's powers

to maintain law and order

- For a dispute to qualify as a dispute under Article 131, **it has to necessarily be between states and the Centre, and must involve a question of law or fact** on which the existence of a legal right of the state or the Centre depends.
- **In a 1978 judgment, State of Karnataka v Union of India**, Justice P N Bhagwati had said that for the Supreme Court to accept a suit under Article 131, **the state need not show that its legal right is violated, but only that the dispute involves a legal question.**
- Article 131 **cannot be used to settle political differences** between state and central governments headed by different parties.
- There are **other petitions too challenging CAA** but these petitions challenging the **CAA have been filed under Article 32 of the Constitution**, which gives the court the **power to issue writs when fundamental rights are violated.**
- A **state government cannot move the court under this provision because only people and citizens can claim fundamental rights.**
- Under Article 131, **the challenge is made when the rights and power of a state or the Centre are in question.**

Has it happened before?

- **State of Jharkhand vs. State of Bihar: It is currently pending for consideration** by a larger Bench of the court can be studied for the answer. The case deals with the **issue of liability of Bihar to pay pension to employees of Jharkhand for the period of their employment in the former**, undivided Bihar state.
 - Here, the Bench said it was unable to **accept the view that the constitutionality of a law cannot be raised in a suit under Article 131**. Therefore, the matter was referred to a larger Bench for an authoritative pronouncement.
- In 2011, in **State of Madhya Pradesh v. Union of India and Another**: The court observed that when the Central laws can be challenged in the State High Courts as well as before Supreme Court under Article 32, normally, **no recourse can be permitted to challenge the validity of a Central law under the exclusive original jurisdiction of supreme Court provided under Article 131.**

Article 370A & 35a

Article 370

■ What did the Constitution say?

Article 370 dealt with temporary provisions with respect to the State of Jammu and Kashmir. It gave special powers to the state allowing it to have its own Constitution.

Article 35A

- Article 35A enabled **the J&K Assembly to define 'permanent residents'** and allowed it to give PRC (**Permanent Resident Certificate**) to people in J&K.

- The PRC holders were entitled to various rights and privileges, which are denied to the non-PRC persons. It gave them special rights and privileges regarding employment with the state government, acquisition of property in the state, settling in the state, and the right to scholarships and other forms of aid that the state government provides.
- To guarantee these special rights and privileges, the Article says no act of the state legislature that comes under it can be challenged for violating the Constitution or any other laws.
- Article 35A as that part of the Constitution of India which was added by the President of India without getting it discussed and approved by the Parliament of India.

■ Why in News?

Indian President declared the **abrogation of the provisions of Article 370 of the Constitution**, which gave special status to Jammu and Kashmir on August 7th 2019.

The former state of Jammu & Kashmir has **been reorganized as the new Union Territory of Jammu and Kashmir and the new Union Territory of Ladakh**.

Drawbacks of Article 370 and positive outcomes of abrogation of Article 370?

- Because of Article 370, there are very less industries, which is directly **related to employment**. This means that because of this provision, people **have to migrate to other states in search of jobs**.
- It also **become a terrorist prone region** because of this Article. Due to Article 370, **RTE, RTI, CAG and many Indian laws aren't applicable in Kashmir**.
- The region will **prosper economically and socially** after removal of 370.
- **Social amalgamation will reduce the threat of militancy**.
- **Kashmir could be one of the top tourist destinations** after complete development.
- It will also prove to be **good diplomacy to deal with Pakistan over territorial disputes**.
- It will **politically give chance to all parties to rule the state and allow its development**.

Drawback of Article 35A

- **No one, except those defined as 'permanent residents' with PRC are entitled to property rights**; employment in state government; participation in Panchayat, municipalities, and legislative assembly elections; admission to government-run technical education institutions; scholarships and other social benefits, voting rights, right to join central services.
 - Thus, **it discriminates against the rest of the Indian citizens**.
 - This Article has denied all the above-mentioned rights to **various communities, like the Scheduled Caste Valmikies from Punjab, West Pakistan Refugees, Gorkhas, Women living in Jammu-Kashmir for the past six decades**.
- The **Indian Administrative Services (IAS) officers**, who retire after working in J & K for 30-32 years to ensure smooth administration of the state, **cannot even buy a house in the state. Nor can their children study or work in any govt. institutions of the state**.
- Article 35-A has **denied the women of J&K of their right to property on marrying outsiders** as also putting **limitations on the constitutional and educational rights of their children**.
- **No industrialists invest here as they cannot own the land for his factory**, which, if allowed, could provide employment to the locals.

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Examination Date Announcements**

- **Tribals comprise nearly 15% of the State's population**, but **political reservations for Scheduled Tribes are non-existent** and they are denied social justice and equitable distribution of opportunities.
- **Qualified doctors, specialists and researchers from other states do not work in J&K.** There is an acute shortage of doctors in super specialty hospitals and professors in the Medical Colleges.

Article 263

■ What does the Constitution say?

- Article **263** **contemplates the establishment of an Inter-State Council** to effect coordination between the states and between Centre and states.
- The **President can establish such a council if at any time it appears to him that the public interest would be served by its establishment.** He can define the nature of duties to be performed by such a council and its organization and procedure.
- Article 263 specifies the **duties that can be assigned to it in the following manner:**
 - enquiring into and advising upon disputes which may arise between states
 - investigating and discussing subjects in which the states or the Centre and the states have a common interest
 - making recommendations upon any such subject, and particularly for the better co-ordination of policy and action on it.

■ Why in news?

Recently, **Inter-State Council (ISC) has been reconstituted.**

About Inter-State Council (ISC)

- The Sarkaria Commission on **Centre-State Relations (1983–88)** made a strong case for the establishment of a permanent Inter-State Council under Article 263 of the Constitution.
- It consists of the following members:
 - Prime Minister as the Chairman
 - Chief ministers of all the states
 - Chief ministers of union territories having legislative assemblies
 - Administrators of union territories not having legislative assemblies
 - Governors of States under President's rule
 - Six Central cabinet ministers, including the home minister, to be nominated by the Prime Minister.
- The council **is a recommendatory body** on issues **relating to interstate, Centre-state and Centre-union territories relations.** It aims at promoting coordination between them by examining, discussing and deliberating on such issues. Its **duties are as follows:**
 - investigating and discussing such subjects in which the states or the centre have a common interest

- making recommendations upon any such subject for the better coordination of policy and action on it
 - deliberating upon such other matters of general interest to the states as may be referred to it by the chairman
- The Council may meet at **least thrice in a year**.

Art 338 and Sixth Schedule of the Constitution

■ What does the Constitution say?

- Article 338 A deals with National Commission for STs.
- **89th Constitutional Amendment Act of 2003 Amended Article 338** and inserted a new Article 338-A in the Constitution.
- **Members:** It consists of:
 - Chairperson, a vice-chairperson and three other members.
 - They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President.

■ Why in news?

Recently **National Commission for Scheduled Tribes (Art 338A)** has recommended Union Territory of Ladakh to be declared as a "tribal area" under the **Sixth Schedule of the Constitution**.

Understanding Sixth Schedule

• Sixth Schedule

- The Sixth Schedule consists of provisions for the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram, according to **Article 244 of the Indian Constitution** (Administration of Scheduled Areas and Tribal Areas)
- It seeks **to safeguard the rights of tribal population through the formation of Autonomous District Councils (ADC)**. ADCs are bodies representing a district to which the Constitution has given varying degrees of autonomy within the state legislature.
- **The governors of these states are empowered** to reorganize boundaries of the tribal areas.
- In simpler terms, she or he can choose to include or exclude any area, increase or decrease the boundaries and unite two or more autonomous districts into one. They can also alter or change the names of autonomous regions without a separate legislation.

• Autonomous District Council

- The tribal areas in the four states of Assam, Meghalaya, Tripura and Mizoram have been constituted as autonomous districts.
- **Each autonomous district has a district council consisting of 30 members**, of whom four are nominated by the governor and the remaining 26 are elected on the basis of adult franchise. Each autonomous region also has a separate regional council.

- The district and regional councils **administer the areas under their jurisdiction. They can make laws on certain specified** matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor.
- The district and regional councils are empowered to assess and collect land revenue and to impose certain specified taxes.

Articles related to Judiciary

Art 124(1)

■ What does the Constitution say?

It deals with the Establishment and Constitution of Supreme Court. **Article 124 (1)** provides the power to the Parliament to increase the number of judges if it deems necessary.

Appointment of Judges

- ▶ The judges of the Supreme Court **are appointed by the president.**
- ▶ The chief justice is appointed by the president after consultation with such judges of the Supreme Court and high courts as he deems necessary.
- ▶ The other judges are appointed by president after consultation with the chief justice and such other judges of the Supreme Court and the high courts as he deems necessary.
- ▶ The consultation with the chief justice is obligatory in the case of appointment of a judge other than Chief justice.

■ Why in news?

Parliament has recently passed the legislation to **increase the sanctioned strength of the Supreme Court from 31 to 34 including the Chief Justice of India.** This followed the **enactment of the Supreme Court (Number of Judges) Amendment Act, 2019.**

Background

- Originally, **the strength of the Supreme Court was fixed at eight** (one chief justice and seven other judges).
- The Parliament **has increased this number of other judges progressively to ten in 1956, to thirteen in 1960, to seventeen in 1977, to twenty-five in 1986, to thirty in 2008 and to thirty-three in 2019.**

Art 222 (1) and Article 223

■ What does the Constitution say?

- ▶ **Article 222(1)** deals with **transfer of a judge from one High Court to another.**

- The President can transfer a judge from one high court to another after consulting the Chief Justice of India. On transfer, he is entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament.
- **Article 223** deals with the **appointment of acting Chief Justice**. The **President can appoint a judge of a high court** as an acting chief justice of the high court when:
 - the office of chief justice of the high court is vacant
 - the chief justice of the high court is temporarily absent
 - the chief justice of the high court is unable to perform the duties of his office

■ Why in news?

- Recently, **Chief Justice of the Madras High Court was transferred to Meghalaya High Court**. The transfer again brought to the fore a long-standing debate on the functioning of the '**Collegium**' of **judges that makes appointments and transfers in the higher judiciary**.
- Recently **Supreme Court has ruled that a judge who retired as an Acting Chief Justice of a High Court cannot claim the pension of a regular Chief Justice (CJ)**.

Understanding Collegium system

- The President of India appoints the CJI and the other SC judges. As far as the CJI is concerned, the outgoing CJI recommends his successor.
- The **Collegium of judges is the Supreme Court's invention. It is not mentioned in the Constitution of India**.
- It is a system under which judges are **appointed by an institution comprising judges**. After some judges were **superseded in the appointment of the Chief Justice of India in the 1970s**, and attempts made subsequently to affect a mass transfer of High Court judges across the country, there was a perception **that the independence of the judiciary was under threat**.
- This resulted in a series of cases over the years.
 - The 'First Judges Case' (1981) ruled that the "**consultation**" with the **CJI in the matter of appointments must be full and effective**. However, it rejected the idea that the CJI's opinion, albeit carrying great weight, should have primacy.
 - The **Second Judges Case (1993) introduced the Collegium system**, holding that "**consultation**" **really meant "concurrence"**. It added that it was not the CJI's individual opinion, but an institutional opinion formed in consultation with the two senior-most judges in the Supreme Court.
 - On a Presidential Reference for its opinion, the Supreme Court, in the **Third Judges Case (1998) expanded the Collegium to a five-member body, comprising the CJI and four of his senior-most colleagues**.

Collegium recommending transfers

- Collegium also recommends the transfer **of Chief Justices and other judges**.
- When a Chief Justice is transferred, a replacement must also be simultaneously found for the High Court concerned.
- In matters of transfers, the opinion of the Chief Justice of India "**is determinative**", and the **consent of the judge concerned is not required**.

- The CJI should take into account **the views of the CJ of the High Court concerned and the views of one or more SC judges who are in a position to do so.**

Miscellaneous

Art 334

What does the Constitution say?

Article 334:

- ▶ Article 334 of the Constitution lays down that the provisions of the Constitution relating to the reservation of seats for the Scheduled Castes and the Scheduled Tribes and the representation of the Anglo-Indian community by nomination in the House of the People and the Legislative Assemblies of the States.
- ▶ The original Constitution provided that this Article would cease to have effect after twenty years from the commencement of the Constitution, but this was extended to 1970 by the 8th Amendment.
 - The period of reservation was extended to 1980, 1990, 2000 and 2010 by the 23rd, 45th, 62nd and 79th Amendments respectively.
 - The 95th Amendment extended the period of the reservation to 2020.

■ Why in news?

- ▶ 104th Constitutional Amendment Act (126th Constitutional Amendment Bill) was enacted to amend Article 334 and **extending reservation only for Scheduled castes (SC) and Scheduled Tribes (ST) to Lok Sabha and legislative bodies till 25th January, 2030** (which was expiring in 2020).
- ▶ It **ended the provision for nomination of two Anglo-Indians to the Lower House and assemblies.**

■ About Anglo-Indians

- ▶ The Anglo-Indian community in India **traces its origins to an official policy of the British East India Company to encourage marriages of its officers with local women.**
- ▶ The term Anglo Indian is defined in the Government of India Act, 1935.
- ▶ Anglo-Indian is considered to be someone who lives in India and whose father or any of the male ancestors belong to the British lineage Anglo-Indian, in India, a citizen of mixed Indian and, through the paternal line, European ancestry. It is defined under **Article 366(2) of the** Constitution of India.
- ▶ There are total 552 seats in the Lok Sabha in the country, out of which only 2 are reserved for the Anglo-Indian community.
- ▶ The number of people who identified themselves as **Anglo-Indian was 296, according to the 2011 Census.** However, it has **been objected by the All India Anglo-Indian Association.**
- ▶ **Under Article 331 President can nominate two members of Anglo-Indian community in Lok Sabha, if not adequately represented**
- ▶ **Article 333 deals** with representation of the Anglo-Indian community in Legislative Assemblies.

- ▶ Currently, some Assemblies have one Anglo-Indian member each: Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Tamil Nadu, Telangana, Uttar Pradesh, Uttarakhand and West Bengal. The Amendment does away with this as well.
- ▶ According to **the 10th Schedule of the Constitution, Anglo-Indian members** of Lok Sabha and state Assemblies **can take the membership of any party within six months of their nomination.**

But, once they do so, **they are bound by their party whip.** The Anglo-Indian members enjoy the **same powers as others, but they cannot vote in the Presidential election because they are nominated by the President.**

Amendments to the Constitution

Flexibility in amending the Constitution is considered to be one of the biggest factors for the Indian Constitution's endurance. Since its inception, the Indian Constitution has been amended 104 times.

Recent Amendments to Constitution	
104th CAA	Extended reservation for Scheduled castes (SC) and Scheduled Tribes (ST) to Lok Sabha and legislative bodies.
103rd CAA	10% Reservation for Economically Weaker Sections (EWSs)
102nd CAA	Constitutional status to National Commission for Backward Classes
101st CAA	Introduced the GST
100th CAA	Exchange of enclave territories with Bangladesh and conferment of citizenship rights to residents of enclaves.

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