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Total-45 Polity-02

(91)

In 1973, the Supreme Court of India made a landmark judgement in a case involving a 13 Judges bench.

Although the case revolved around religious fundamental rights, it concluded with a complete rehaul in Constitutional interpretation :-

① Basic Structure Doctrine :-

SC ruled that Parliament has unlimited powers to amend any part of the Constitution including

a) Fundamental Rights

b) DPSPs, Fundamental Duties

c) Preamble

amending power of SC  
under Art 368, Order

with only one condition :-

that the basic structure of the Constitution is untouched.

② Minnerva Mills 1980 & other cases continue to add to the "list" of basic features  
eg: judicial review

No need to write these.

Introduce by the mentioning of the key terms of the Kesavanda Bharati case

Underline the key terms and words



प्रश्न संख्या  
(Question No.)

# U.P.S.C.

इस भाग में कुछ  
न लिखें  
(Don't write anything  
in this part)

प्रश्न संख्या  
(Question No.)

③ Strike down ~~the~~ previous Constitutional amendments

eg: 25th Constitutional Amendment  
that gave executive excessive powers.

39th Constitutional Amendment  
that inserted A 329A to keep  
pm and Speaker elections  
beyond judicial review.

④ preservation of India as a

- sovereign
- socialist
- secular
- democratic
- republic

while giving full liberty to law makers to make changes.

⑤ Upholding Constitutionalism

→ the Indian Constitution  
is a living, breathing document  
that must change with the times  
while remaining true to its ideals.

Explain the  
other  
significant  
the judgement  
as well  
discuss



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in this part)

It is  
44th  
Amendment  
Act

The Kesavnanda Bharti Judgment  
of 1973 ensured that India  
returned safely from the dark  
days of Emergency (1975). It  
set a precedent in constitutional  
interpretation and enhanced

↓ integrity of the nation

3 1/2

conclude  
it by adding  
the law does it  
protects the  
political, social,  
economic system  
of the country.

avoid  
the  
factual  
errors  
or  
data



92

mention about the meaning & essentiality of separation of powers.

The doctrine of separation of powers comes from the French political thinker Montesquieu.

### 3 Pillars of Democracy

- ① The Executive, legislative and judiciary have 3 separate functions of implementing law, writing law & interpreting law, respectively.
- ② When all 3 powers are in one hand, it leads to concentration of power & dictatorial tendencies.
- ③ Checks & Balances keep all 3 organs on their toes and ensure a proactive government.
- ④ Any overlap or overreach leads to instability and corruption in governance, weakening the 3 pillars.

How?

you do not need to write it.



## Indian Separation of Powers

① System of checks and balances

eg: Judicial review

to keep an eye on legislative

② Parliamentary means to ensure executive accountability  
(eg: Confidence Motion)

③ Some overlap of functions

eg: Cabinet is both of the Indian executive & legislative organ.

③ Parliamentary form of government puts Prime Minister ahead as in-charge.

④ Parliament is heavily involved in ~~the~~ Cabinet decisions, passage of bills.

## American Separation of Powers

① Complete separation of 3 pillars

a) President = Executive

b) Senate = Legislature

c) se Chief Justice = Judiciary

② no overlap of power/function

eg: President is nominal & executive head

③ Presidential form of government gives direct power to President.

④ Senate has little say in President's decision

discuss the key points of constitutional status of separation of power in India & USA.

regarding what!

work on your sentence for modification

discuss

How?



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in this part)

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Indian democratic structure requires a system that overlaps and self-checks. Nevertheless, India can learn from the complete isolation of the 3 pillars of American democracy as a means to enhance the doctrine of separation of power.

avoid  
the  
critical  
words

conclusion  
should be  
optimistic  
& futuristic

93

93

introduction  
can be  
improved  
further by  
introducing  
of what  
are fundamental  
rights  
in indian  
constitution.

At the commencement of the Constitution, the citizens of India had 7 fundamental Rights. Although one was subsequently removed (Right to Property, 44th Constitutional Amendment Act), the scope & ambit of the fundamental rights has actually increased.

India's fundamental Rights

- 1) Right to Equality (14-18)
- 2) Right to Freedoms (19-22)
- 3) Right Against Exploitation (23-24)
- 4) Religious Rights (25-28)
- 5) Right for Minorities (29-30)
- 6) Right to Constitutional Remedies (32)

gaur

Expansion of Scope of Fundamental Rights

- 1) 1st - Constitutional Amendment Act - (Champakam Dorairajam Case)  
allowed states to reserve seats in educational institutions for backward classes.



# U.P.S.C.

1st CAA also saved many laws from judicial review by establishing 9th Schedule and ensured rights of the landless and other persons.

② Articles 20 & 21 made inalienable even during Emergency. 44th Const. Amendment Act changed "internal disturbance" to "armed rebellion" and restricted <sup>automatic</sup> removal of A19 only to external aggression.

③ Kesavananda Bharti Case 1973 established basic structure doctrine.

④ Expansion of reservation to Economically Weaker Sections (EWS) up till 10%.

⑤ Multiple laws safeguarding Fundamental Rights are duly amended.

⑥ Prevention of sexual Harassment at Workplace (Vishakha Guidelines)

⑦ UAPA

⑧ POHR Act and National Human Rights Commission.

Discuss about the various verdicts of Supreme Court regarding expanding of FRs.

No need to mention about these points.

its next fundamental right related to FRs: mention. Menaka Kalane - Aarohan came Naz fundab.



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anything  
(1)

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in this part)

explains  
implications  
of such  
initiatives

- ⊙ National Commission for SCs  
NCST, etc.
- ⊙ POCSO for protection of children.

The fundamental rights are expanding  
in scope as the Indian Constitution  
is a breathing document, changing  
with the times.

5

→ Suggest the way ahead in  
more detail to improve the  
conclusion part.

good  
add  
more  
key words

84

make it more effective by introducing with Indian constitution's brief description

The Indian Constitution is a mix of the British parliamentary scheme and the American Presidential system.

India is British parliamentary sovereignty

• Both India and UK vest <sup>their</sup> ~~it~~ parliaments with extensive powers of legislation.

• However, in the UK, parliament is supreme

→ no written Constitution

→ Constitutional amendments are similar to ordinary bills.

→ ministers co-sign bills when passed as laws.

→ extremely powerful lower house.

explain

• In India :-

→ Constitution is supreme, written

→ Constitutional amendments are difficult to pass.

→ ministers do not co-sign bills.

→ Relatively weaker lower house.



# India vs American Judicial Supremacy

- Both nations give immense judicial powers to judges: -
  - judicial review  
(eg: A32, Indian Constitution)
  - appointment of judges is centralized & non-transparent
- eg: chosen by President in USA,  
chosen by judges themselves in India.

- However, some differences exist:-
  - India does not accept judicial overreach
  - parliament and executive are equal to judiciary
  - Appeals can be made to SC  
(Review Petition, Curative petition (A147))
  - Integrated judiciary with larger review powers under A226 (HC) than A32 (SC).

you need to explain the points in brief.



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India is thus an amalgamation  
or middle path between  
the Constitutional States of America  
and Britain.

also  
discuss the  
Amalgamation  
& differences  
of both  
the concepts  
in India.

95

The directive principles of state policy were incorporated in the Constitution Part IV by the founding fathers to provide a roadmap for the future governments of India.

good also called the Art 36 to 51

DPSPs consist of :-

well described

- ① socialist principles
  - minimal inequality
  - livelihood
- ② Gandhian principles
  - cottage industries
  - village panchayats
  - animal husbandry
- ③ liberal/modern principles
  - education of children
  - safeguard embowment

Although these principles are non-justiciable, they have played a major role in law making :-

try to discuss the points briefly.

① Labour Code

- right to work
- equal pay equal work

②

73<sup>rd</sup>, 74<sup>th</sup> Constitutional Amendment Act → panchayats, municipalities



### ③ Environmental Laws

*explain!*

- Wildlife Protection Act
- Environmental Protection Act 1986
- Water Act / Air Act
- National Green Tribunal 2010.

### ④ Right to Education (RTE) and New Education Policy 2020

*general*

along with

- Integrated Child Development Scheme (ICDS)
- midday meal scheme
- Vatsalya Scheme

### ⑤ Human Rights

*discuss*

- POCSO Act
- PHRA

*Also discuss  
↓  
maternity benefit  
Act, NALSA.*

### Some controversial laws

- ① Cow vigilantism and cows as a religious symbol

*highlight the supreme court verdicts & their implications.*



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न लिखें  
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in this part)

- ② hate-jihad laws - anti-conversion
- ③ IT Rules and Data Privacy Draft Bill

The directive principles of state  
policy are the blueprint of what  
society ought to be. They were  
inserted as a means to ensure  
social and economic democracy  
according to B. R. Ambedkar.

also  
give the  
criticism  
of  
DPSPs!

goreel

Q5

Justed  
Intro. to  
the part

The fundamental duties were added to the ~~Indian Constitution~~ after the 4<sup>th</sup> Constitutional Amendment as per Saxena Singh Committee recommendations as part IVA of the Constitution.

The fundamental duties were a "reminder" to the citizens that their rights are coupled with duties as citizens of the ~~nation~~.

No legislative backing

Some duties are "encouraging" and open ended:

- ① develop scientific temper
- ② cherish ideals of the national freedom movement
- ③ cultivate fraternity

you do not  
need to  
write  
all the  
fundamental  
duties.



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Comment  
on their  
effectiveness  
in generating  
public consciousness

However, other fundamental duties  
involve legislative backing :-

① Respect National flag, National Anthem, and system, etc.

→ Respect is a punishable offence

② Respect other groups and modesty of women

→ protected through various IPC sections and POSH Act

③ Protect public property

→ IPC sections condemn vandalism and public property mismanagement

Thus, the fundamental duties are not just a "reminder" to citizens they are also backed by laws despite being non-justiciable.

Conclude it by giving holistic coverage of topic.

also describe the steps taken by state to imbibe sense of FDs



You could have briefly introduced the concept of the basic structure

The basic structure doctrine has put simultaneous limits on both the executive and the legislature.

BASIC STRUCTURE OF THE CONSTITUTION

- ① established by Kesavananda Bharti Judgment 1973
- ② Developed by Munira Miller Judgment 1980 with addition of judicial review as part of Basic Structure
- ③ described as the "essence" of the Indian Constitution.

- ④ Includes words like:
  - sovereign
  - socialist
  - secular
  - republic
 } Preamble
  - judicial review (A32)
  - A50 (separation of powers)

you do not need to mention about these points.

give the comprehensive coverage of the points topic

Doctrine of Basic structure

although there is no official, concrete list.

- ⑤ Judiciary may add to the list as & when needed, what!

describe it properly



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in this part)

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in this part)

## Constraints on Executive Power

① ~~Constrain "executive law making"  
or "delegated legislation".~~

② ~~Executive may not take unhuman  
steps even during emergency  
because they are not immune  
from judicial scrutiny.  
eg: disaster management  
AFSPA, power to military.~~

④ Executive within Parliament  
(the Cabinet) must ensure  
accountability and transparent-  
functions that adhere to the  
Constitution.

## prevention of subversion of Constitution by legislative

① ~~India Gandhi's 42nd Amendment  
Act was undone by a subsequent  
Amendment (44th).~~

② ~~Emergency period taught Indians  
democracy many lessons on remaining  
true to the Constitution~~

Write the  
application  
of Basic  
structure

mandal  
case,  
S R Bommai,

Kihoto  
Hollahan  
etc

you  
have  
missed  
the  
context

explains  
how it  
but constrains  
on  
executive

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in this part)

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- ③ ~~limit on powers of A368 and~~  
~~enhancement of powers under A13.~~
- ④ ~~federalism and the Right of~~  
~~the People upheld.~~

The basic structure ensures a  
forward moving country that  
preserves its essence of  
democracy and progress.

make  
it  
effective  
by adding  
more valuable  
points.



5 1/2

88

you  
could have  
introduced  
the  
constitution  
as living  
document

The Constitution of India is often considered to be a living, breathing document.

like an organism, the Constitution changes, adapts to a changing environment and interacts actively with its surroundings.

105

① Over 100 Constitutional Amendments have been made to the Constitution, adjusting according to the needs of the times.

avoid  
factual  
errors

explain  
the features  
of the Indian  
constitution  
that  
make it  
a living  
document.

② multiple interpretation and evaluations of judgments

- Bhu Bai Union Case
- Golaknath case
- K. B. Case
- Mandla Mill Case

Repeated overrulings and corrections

by  
amending  
the  
constitution  
etc.

Judicial interpretation : Judges try to find the path & substance and go by the essence of what is written - not just as a legal document.



④ 3 Day support

Judicial review (A 32,  
A 226)

↑  
Constitution

↙  
Executive  
functions as  
per fundamental  
rights

↘  
Legislative  
law making  
as per DPSPs

Comment  
with n the  
demand  
of the  
question

⑤ Interaction with citizenry  
in the form of fundamental  
rights & fundamental duties.

How it  
relates  
to  
question

Challenges to the living legacy

① Emergency Years (1975-77)

undermined the

- separation of powers
- fundamental rights of  
citizens (A19)
- secto-economic growth

explain  
how

(The dark ages in Indian  
democratic history).



# U.P.S.C.

② Conflict amongst fundamental rights  
eg: religion vs gender parity (A25) (A14)  
→ Sabarnala Case  
→ Triplic Talag Case (Shah Band)

③ Conflict between DPSPs and FRs  
→ ~~12~~ 24th C.A.A. established  
A31C that ruled that  
application of A39 (b) & 39(c)  
may override A19 and other  
fundamental rights.

④ Inadequate judicial interpretation  
(reading literally as opposed to  
"between the lines".)

The Constitution is a living document that needs to be respected and supported in its quest to survive and thrive sustainably.

you have to try to attain all the aspects of the question but make your points more comprehensive.

Conclusion can be improved further



93

The Doctrine of Essentiality refers to the Supreme Court's ruling that some practices are essential to various religions and therefore must be allowed to continue even if they violate other fundamental laws.

avoid using of court's point term.

avoid using of court's point term.

eg: various facts in hinduism  
⊙ kept for boy-child.

⊙ temple rites performed by non-menstruating women.

you can give more balance introduction.

Doctrine of principle of distance is

the Indian principle of secularism in which the government seeks to separate itself as far as possible from religious matters while ensuring watchful ambivalence - reducing intervention.

give the examples of the scope of arbitrary use

↓  
Ayodhya case,

Indian Young Lawyers Association

you have missed the context of the question.



भाग में कुछ  
न लिखें  
(Don't write anything  
in this part)

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इस भाग में कुछ  
न लिखें  
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in this part)

Doctrine of Essentiality vs Principle  
Distance

- ① "Essentiality" has little to no  
criteria.
- ② Subjective interpretation of  
essential practice.
- ③ No meter as to how much  
(to what extent) or Fundamental  
Right can be violated for practice  
to count as essential.

④ No roadmap as to when government  
should step in.

⑤ Religious disharmony and political  
populism make a charged  
atmosphere.

⑥ Public order and religious  
liberty come into conflict.

⑦ Use of intervention to prevent  
conflict, as opposed to curative  
measures after conflict has  
occurred.

write  
the  
more  
relevant  
points  
on  
conflict of  
"Doctrine of  
essentiality"  
with  
doctrine of  
principle  
distance

Key  
to  
relate  
with  
the  
question 2

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eg: Sabainmala Case

women's Rights vs Religious practice

eg: Jallikattu ban

Animal Welfare vs Cultural traditions

81

*you could have added key terms in your conclusion  
↓  
right to privacy, homosexuality etc.*

India is a diverse nation with many practices from ancient times. The government and judiciary have the role of supporting a democratic, liberal state while ensuring safety and the rights to all.



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Q10

5 1/2

The Indian Constitution has provisions to guarantee both individual & community rights.

You could have written brief introduction of both individual & community rights

## Individual Rights

- ① Right to Equality (A14)
- ② Right to Freedom of Expression (A19(a))
- ③ Right against exploitation
  - child labour (A23)
  - human trafficking (A24)

it's not individual right

- ④ Religious rights (A25-28)
  - to profess, propagate one's own thoughts
  - freedom of conscience

- ⑤ Right to Constitutional Remedies (A32)

## Community Rights

Right to freedom of religion  
Art 25-28  
Art 29-30

its individual right

- ① Right of assembly / cooperative societies / peaceful protest / trade unions (A19)

- ② Religious Rights - religious instruction, education



③ minority Rights (A29-30)

*give*

- minority educational institution
- minority safeguards and State support.

④ Tribal Areas Schedules 5 & 6

Grom Sabha and Autonomous Councils - independence and self-rule.

Judiciary: primary of individual and Community Rights

*give a context*

① primary of the individual as part of A21 (life and liberty)  
Puttaswamy Judgement

*also add the aethar case,*

② right to life interpreted as right to choice and dignity of the individual, under maneka Gandhi Case.

*Triple Taluk Judgement*

③ Special Marriage Act allows individuals to override Personal Laws and marry by choice, without religion hindrance.



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न लिखें  
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in this part)

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in this part)

At the same time, the Judiciary has also enhanced community rights through

- ⊙ essential religious practices
- ⊙ community cultural & educational rights
- ⊙ tribal area preservation & publicity of identity
- ⊙ Overall respect for various regional / linguistic / religious communities through

- states - dialects / languages
- folk art / music / dance.

give the examples, Chipko movement

Discuss the implications of these judgements.

The Judiciary of India has helped preserve Indian diversity while simultaneously establishing individual freedom and rights.

ques, condense to the point.

- Bring out more possible dimensions to make it more comprehensive.
- your points are good but justify arguments with examples & facts.

→ make your introduction & conclusion more effective.

→ Revise basic books and notes.

All the Best