

## CMA Inter Law – Dec 24 – Exam Oriented Marathons

1. **Starting from:** 23<sup>rd</sup> Oct 2024 (Wednesday)
2. **Platform:** Arjun Chhabra Tutorial YT Channel (Click here to land on YT Channel) (No Back up – only live stream in YT)
3. **Timing:** 04:00 PM onwards (Roughly 3 hours daily)

## Features of Exam Oriented Marathons

1. Comprehensive coverage of entire syllabus of Law in least possible time.
2. Covering all Important questions of Commercial Laws, Corporate Laws, Industrial Laws and Ethics.
3. MCQ Practice from ICAI MCQ Bank – 30 Marks Coverage Click here to get MCQ Bank
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5. Covering all Past exam paper | Model Question Paper | MTP | RTP | Postal Test Paper
6. Telegram group to stay connected with Arjun Sir: [Click here to Join Group](#)

## Schedule of Exam Oriented Marathons

Date	Topic	Coverage	Link	Timing
23/10	Contract	16 Marks	<a href="#">YT Link</a>	04:00 PM Onwards
24/10	Soga   Partnership   Nego   LLP	14 Marks	<a href="#">YT Link</a>	04:00 PM Onwards
25/10	Director & Constitution of India	25 Marks	<a href="#">YT Link</a>	04:00 PM Onwards
26 /10	Companies Act   Auditor	15 Marks	<a href="#">YT Link</a>	04:00 PM Onwards
27/10	Industrial Law	15 Marks	<a href="#">YT Link</a>	04:00 PM Onwards
-	MCQ Practice	30 Marks	<a href="#">YT Link</a>	-
-	Ethics	15 Marks	<a href="#">YT Link</a>	-

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## Introduction to The Constitution of India

### 1. Longest Written Constitution

### 2. Blend of Rigidity and Flexibility:

- **Rigidity:** Certain amendments require a two-thirds majority in Parliament and ratification by at least half of the State legislatures.
- **Flexibility:** Some amendments can be made with a simple majority in Parliament, making it easier to adapt the Constitution to changing needs.
- **Example:** The amendment of Article 368, which itself deals with the process of amending the Constitution, shows the flexibility and rigidity depending on the subject matter.

### 3. Federal System with Unitary Features:

India is a federal system, meaning power is divided between the central government and state governments. However, in certain situations, it can function as a unitary state.

**Example:** During an emergency, the central government can override state powers, and the union becomes more powerful than states.

**Example:** States have their own legislatures, but central laws like the GST (Goods and Services Tax) apply uniformly across the country, reflecting unitary features.

### 4. Parliamentary Form of Government

### 5. Independent Judiciary:

**Example:** The Supreme Court can strike down laws passed by Parliament if they violate the basic structure of the Constitution (as seen in the Kesavananda Bharati case, 1973).

### 6. Emergency Provisions:

The Constitution provides for emergency provisions, allowing the central government to take control during situations like war, external aggression, or internal rebellion.

**Example:** During the **1975 Emergency**, the President declared a national emergency based on "internal disturbance," allowing the central government to bypass normal constitutional procedures.

**Preamble:** - The preamble to the constitution was adopted by constituent assembly and it reads as follows:

**WE, THE PEOPLE OF INDIA**, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens:

**JUSTICE**, social, economic and political;

**LIBERTY** of thought, expression, belief, faith and worship;

**EQUALITY** of status and of opportunity; and to promote among them all

**FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation;

**"IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."**

### **1. "WE, THE PEOPLE OF INDIA"**

The Preamble begins with this phrase to emphasize that the Constitution derives its authority from the people of India. It signifies that the ultimate power in a democracy lies with its citizens.

**Example:** Every law enacted, policy implemented, or government formed is accountable to the citizens. In elections, the people exercise their sovereign right by voting and choosing their representatives.

### **2. "SOVEREIGN"**

India is a sovereign nation, meaning it has full control over its own affairs, both internal and external, without interference from any external power.

**Example:** India makes its own laws, foreign policies, and decisions regarding defense without being influenced or controlled by any other country. The signing of international agreements like the Paris Climate Agreement on India's terms reflects its sovereignty.

### **3. "SOCIALIST"**

The term socialist was added to the Preamble by the 42nd Amendment in 1976. It refers to the ideal of economic and social equality where wealth and resources are distributed more equally, and there is minimal disparity between the rich and the poor.

**Example:** Government programs like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), which provides employment to rural populations, aim at reducing inequality. Schemes like public distribution systems (PDS) ensure food is accessible to the economically weaker sections.

### **4. "SECULAR"**

Secularism means that the state has no official religion and treats all religions equally. It ensures that the government does not favor any religion over another.

**Example:** India celebrates diverse religious festivals (like Diwali, Eid, and Christmas) with official holidays. The Constitution ensures freedom of religion under Article 25, allowing every individual to practice, profess, and propagate their religion freely.

### **5. "DEMOCRATIC"**

India follows a democratic system of governance, where representatives are elected by the people through free and fair elections, and they govern on behalf of the people.

**Example:** India conducts regular elections at the national, state, and local levels, where citizens can vote for their leaders. The 2019 general elections, where over 600 million people voted, illustrate the vast democratic process of India.

### **6. "REPUBLIC"**

As a republic, India has an elected head of state. The President of India is not a monarch or hereditary ruler but is elected by an electoral college for a fixed term of five years.

**Example:** The election of Droupadi Murmu as the President of India in 2022 shows that anyone, regardless of their background, can be elected to the highest constitutional office, reinforcing the republican principle.

#### **7. "JUSTICE – Social, Economic, and Political"**

The Preamble aims to provide **justice** in all spheres of life:

- **Social justice** aims to remove inequalities in society, such as caste, gender, or religion-based discrimination.
- **Economic justice** ensures equitable distribution of wealth and resources.
- **Political justice** guarantees that all citizens have equal political rights and opportunities to participate in the political process.

**Example:** The Reservation system in education and jobs provides opportunities to marginalized sections like Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC), ensuring social and economic justice. Free and fair elections ensure political justice.

#### **8. "LIBERTY of Thought, Expression, Belief, Faith, and Worship"**

The Preamble guarantees liberty or freedom to individuals to think, express their opinions, and practice their beliefs and faith without any undue restrictions from the state.

**Example:** The freedom of speech and expression under Article 19 allows citizens to voice their opinions freely, whether it is through media, protests, or writings. Freedom of religion under Article 25 allows citizens to practice their faith, like Hindus, Muslims, Christians, and others worshipping without interference from the government.

#### **9. "EQUALITY of Status and of Opportunity"**

Equality means that all citizens, regardless of their background (caste, religion, gender, or wealth), should have equal opportunities and treatment before the law.

**Example:** Article 14 guarantees equality before the law, meaning no one is above the law. Programs like Beti Bachao Beti Padhao aim to uplift the status of women and provide equal opportunities for girls in education and employment.

#### **10. "FRATERNITY Assuring the Dignity of the Individual and the Unity and Integrity of the Nation"**

Fraternity promotes a **sense of brotherhood and national unity** among citizens while respecting individual dignity.

The Constitution seeks to promote unity in diversity, recognizing that India is home to various cultures, languages, and religions.

**Example:** After India's independence, the reorganization of states based on linguistic lines in 1956 allowed people to maintain their cultural identity while promoting national unity. Programs like Swachh Bharat Abhiyan focus on dignity by improving hygiene and sanitation for all citizens.

#### **"IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."**

This statement signifies that the Constitution was **adopted on November 26, 1949**, by the Constituent Assembly, and it **came into force on January 26, 1950**.

The phrase "give to ourselves" reflects the democratic principle that the Constitution was created by the people for the people, emphasizing the self-governing nature of the document.

**Purpose of the Preamble:** - The preamble to the constitution is a key to open the minds of the makers and shows the general purpose for which they made the several provisions in the constitution. Preamble serves the following purposes:

1. It discloses the source of the constitution.
2. It lays down the date of the commencement of the constitution.
3. It set out the rights and freedoms which the people of India wished to secure for themselves.
4. It declares the nature of the government

In the case of **Kesavananda Bharti vs. State of Kerala**, the Supreme Court has held that preamble is part of the constitution. Preamble is of extreme importance and the constitution should be read and interpreted in the light of grand and noble vision expressed in the preamble. However, the preamble is neither a source of power to legislature nor creates a prohibition upon the powers of legislature. It is not enforceable in courts of law.

### **Kesavananda Bharti vs. State of Kerala**

The case was filed by Kesavananda Bharati, the head of a Hindu monastery who challenged the Kerala government's attempt to take over the land of the monastery under Article 26, which gives citizens the right to manage religiously owned property without government interference. However, the scope of the case became larger and it turned out to become a constitutional matter as it questioned the powers of the Parliament to amend the Constitution.

### **Background**

Kesavananda Bharati was the head of a Hindu monastery in the Kasaragod district of Kerala. He owned land in Mutt. In 1969, the Kerala government passed the Land Reforms Amendment Act which suggested that the government has the right to acquire some lands belonging to the Mutt.

In March 1970, Bharati challenged the Supreme Court to impose the fundamental rights he holds under Article 14, the right to equality, Article 19(1)(f), the freedom to acquire property, Article 25, the right to practice and propagate religion, Article 26, the right to manage religious affairs and Article 31, the compulsory acquisition of property.

### **Kesavananda Bharati Case Judgement**

On 24th April 1973, the Supreme Court passed the final verdict by a majority of 7:6 suggesting that the Parliament's power to amend any provision of the Indian Constitution as long these amendments do not alter the "basic structure" or framework of the Constitution. Therefore, certain fundamental features of the Constitution including the supremacy of the Constitution, law-making bodies, the separation of powers, and the independence of the judiciary, were part of the basic structure, which could not be amended by the Parliament.

### **What was the Doctrine of the basic structure?**

According to the Doctrine of the basic structure, the Parliament holds unlimited power to make amends in the Constitution provided that such amendments don't interfere with the basic structure of the Constitution. Also, it suggested that every amendment made by the Constitution has to

undergo the 'basic structure test to ensure that the basic structure of the Constitution does not change.

## Fundamental Rights

The aim of Fundamental Rights is that certain elementary rights such as **right to life, liberty, freedom of speech and freedom of faith** and so on should be regarded as inviolable under all circumstances and that the shifting majority in legislatures of the country should not have a free hand in interfering with fundamental rights. Fundamental right is called the **Magna Carta of India**. (a legal document that established the rule of law and individual rights)

In **E. P. Royappa v. State of Tamil Nadu** the new concept of equality in the following words - "Equality is a dynamic concept with many aspects and dimensions and it cannot be described, Cabined and confined" within traditional limits from a positivistic point of view, **equality is antithesis to arbitrariness (equality and arbitrariness cannot coexist).**

### **E. P. Royappa v. State of Tamil Nadu**

E.P. Royappa, a senior Indian Administrative Service (IAS) officer, challenged his transfer from the position of Chief Secretary to a lesser post. He alleged that the transfer was done arbitrarily and was a result of political bias and victimization. He claimed this violated his fundamental right to equality under **Article 14 (Equality before law)**.

The main issue was whether the transfer of Royappa was arbitrary and violated Article 14, which guarantees equality before the law and protection against arbitrary state actions.

### **Maneka Gandhi v. Union of India (1978)**

Landmark judgement of the Supreme Court of India that significantly expanded the scope of the Right to Life and Personal Liberty under Article 21 of the Indian Constitution.

#### **Brief Facts:**

In this case, the Indian government impounded (seizure of the Passport) Maneka Gandhi's passport under the **Passport Act, 1967**, without providing her reasons for the action. Maneka Gandhi challenged the government's order, arguing that it violated her **fundamental rights**, particularly her right to personal liberty under **Article 21**, as well as **Articles 14** (Right to Equality) and **Article 19** (Freedom of Speech and Expression).

#### **Key Issues:**

1. Whether the government's action of impounding the passport violated her **right to personal liberty** under Article 21.
2. Whether the phrase "**procedure established by law**" in Article 21 should include **just, fair, and reasonable procedures**, not arbitrary or oppressive ones.

#### **Court's Decision:**

The Supreme Court ruled in favor of **Maneka Gandhi**, holding that:

1. **Article 21** (Right to Life and Personal Liberty) is not limited to mere physical existence but includes the right to live with dignity, and any procedure that curtails liberty must be **fair, just, and reasonable**.
2. The court ruled that **no law** or procedure that violates the principles of **natural justice** or is arbitrary can be considered constitutionally valid under Article 21. Thus, the government's

action in impounding her passport without giving her reasons was arbitrary and violated her rights.

3. **Arbitrary Actions Affecting Freedoms:** The Court emphasized that **arbitrary actions by the government**—such as impounding Maneka Gandhi's passport without reason—can infringe not only on the right to personal liberty but also on the freedom of speech and expression. If a person's ability to travel (for instance, to speak or express ideas internationally) is restricted, it directly impacts their freedom of expression.

### **Exceptions to the equality before law- Article 361 of the Constitution permits the following exceptions to this rule -**

1. The President or the Governor of a State shall not be answerable to any court.
2. No criminal proceeding whatsoever shall be instituted or continued against the President or a Governor in any court during his term of office.
3. No Civil Proceeding in which relief is claimed against the President or the Governor of a state shall be instituted during his term of office in any Court in respect of any act done or purporting to be done by him in his personal capacity.

**Example:** If a Governor makes a decision in their official capacity, such as appointing a Chief Minister or issuing orders related to the administration, they cannot be sued in civil court for those decisions. However, if the Governor were to engage in a personal business venture and was sued for breach of contract, that suit could proceed because it is outside the scope of their official duties.

### **Prohibition of Discrimination – Article 15**

#### **Article 15(1): Prohibition of Discrimination**

Article 15(1) states that the State shall not discriminate against any citizen on the following grounds:

- Religion
- Race
- Caste
- Sex
- Place of birth
- Any of them

**Example:** If a government job application process discriminates against candidates based on their religion (e.g., not allowing individuals of a particular religion to apply), it would violate Article 15(1).

#### **Article 15(2): Access to Public Places**

Article 15(2) prohibits discrimination in access to certain public places, stating that no citizen shall be subject to any disability, liability, restriction, or condition with respect to: a) Access to shops, public restaurants, hotels, and places of public entertainment. b) 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 general public.



**Explanation:**

This article ensures that all citizens can access public amenities and services without discrimination based on the grounds mentioned in Article 15(1).

**Example:**

If a restaurant refuses to serve customers of a particular caste or religion, this would be a violation of Article 15(2), as it denies access based on discriminatory grounds.

**Exceptions under Articles 15(3), 15(4), and 15(5)**

**1. Article 15(3):**

- Allows the State to make special provisions for **women and children**.
- **Example:** Laws aimed at providing maternity benefits or ensuring safe environments for children in public spaces would be permissible under this article.

**2. Article 15(4):**

- Permits the State to make special provisions for the advancement of **socially and educationally backward classes** of citizens or **Scheduled Castes (SCs)**.
- **Example:** Reservation policies in government jobs or educational institutions for SCs and other backward classes are examples of provisions made under Article 15(4).

**3. Article 15(5):**

- Specifically provides for special provisions for the admission of **socially and educationally backward classes, Scheduled Castes, or Scheduled Tribes** to educational institutions, including private institutions (excluding minority institutions).
- **Example:** A state law providing for a certain percentage of reserved seats for SC/ST candidates in a public university is in line with Article 15(5).

## **Equality of Opportunity in Public Employment – Article 16**

**1. Equality of Opportunity:**

- **Article 16(1)** guarantees that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. This means that recruitment to public services must be based on merit and qualifications rather than any discriminatory factors.

**2. Prohibition of Discrimination:**

- **Article 16(2)** states that no citizen shall be ineligible for, or discriminated against in respect of, any employment or office under the State on grounds only of:
  - Religion
  - Race
  - Caste
  - Sex
  - Descent
  - Place of birth
  - Residence
  - Any of them

### **Exceptions to Article 16**

#### **1. Residence Requirement:**

Article 16(3) allows Parliament to make laws requiring a certain class or classes of employment to have a residence requirement within a particular State or Union Territory prior to employment or appointment.

**Example:** A state government may enact a law requiring candidates for certain government jobs to have resided in that state for a specific period to promote local employment.

#### **2. Reservation for Backward Classes:**

Article 16(4) permits the State to make provisions for the reservation of appointments or posts in favor of any backward class of citizens that is not adequately represented in the services under the State.

**Example:** If a certain caste or community is underrepresented in government jobs, the state may reserve a certain percentage of positions for candidates from that community to enhance their representation.

#### **3. Reservation in Promotions:**

Article 16(4A) allows for the reservation of promotions, with consequential seniority, for Scheduled Castes (SCs) and Scheduled Tribes (STs) if they are not adequately represented in the services under the State.

**Example:** A government department may implement a policy that reserves a percentage of promotion opportunities for SC/ST employees, allowing them to advance in their careers despite lower representation in higher ranks.

#### **4. Religious or Denominational Institutions:**

Article 16(5) states that the provision shall not affect any law that requires the incumbent of an office in connection with the affairs of a religious or denominational institution to be a person professing a particular religion or belonging to a particular denomination.

**Example:** A temple committee may legally require that the head priest be a person of a specific religion, reflecting the community's religious identity.

### **Abolition of Untouchability - Article 17**

- "Untouchability" is abolished and its practice in any form is forbidden.
- The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.
- The term "Untouchability" is not defined under the Constitution.
- However, it refers to the social disabilities imposed on certain class of person by reason of their birth in certain caste. However, it does not cover social boycott of a few individuals.
- **Example:** Untouchability was a practice in which certain communities, mainly Dalits (previously referred to as "untouchables"), were treated as impure and subjected to severe social exclusion. These individuals were denied basic rights, like access to public places, temples, wells, and other services. Their mere touch was considered polluting to people from higher castes. If someone attempts to enforce such exclusion today, it would be considered a violation of Article 17 and would lead to legal consequences. However, if a person is socially boycotted due to reasons unrelated to caste (like personal misconduct or conflicts within a community), such actions would not fall under the ambit of untouchability, as defined in Article 17.

## Abolition of Titles - Article 18

The abolition of titles is outlined under Article 18 of the Indian Constitution, which aims to uphold the principle of equality and prevent the State from conferring titles that create distinctions in society.

**1. No title, not being a military or academic distinction, shall be conferred by the State.**

- This clause means that the Indian government cannot bestow titles such as "Sir," "Lord," or any hereditary titles. However, **military distinctions** (like ranks in the army) and **academic distinctions** (such as a Ph.D. or honorary degrees) are exempt from this prohibition.
- **Example:** The British-era practice of conferring titles like "Sir" was abolished after independence. However, military titles such as "Major General" or academic honors like "Doctor" are allowed.

**2. No citizen of India shall accept any title from any foreign State.**

**3. No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.**

- **Example:** If a foreign national holds a high-ranking position in India (such as a consultant in a government project) and is offered a title like "Baron" from another country, they would need the President's consent before accepting.

**4. No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.**

- **Example:** An Indian diplomat working for the government cannot accept a position as an honorary ambassador or any monetary gifts from a foreign government without prior approval from the President.

## Right to Freedom - Article 19

**(1) All citizens shall have the right—**

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions or co-operative societies;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) omitted
- (g) to practise any profession, or to carry on any occupation, trade or business.

These six freedoms are however not absolute, and subject to reasonable restrictions which are as follows: -

- i. Security of the State
- ii. Friendly relations with foreign states
- iii. Public order
- iv. Decency and Morality - Obscene content in movies or art can be restricted under the guidelines of decency.
- v. Contempt of Court - Publicly accusing a judge of corruption without evidence can lead to contempt of court proceedings.
- vi. Defamation

- |              |  |
|--------------|--|
| <b>vii.</b>  | Incitement to an offence - A leader giving a speech encouraging followers to riot or commit violence can be held accountable.                                |
| <b>viii.</b> | Sovereignty and Integrity of India - Advocating for the breakup of India or supporting separatist movements can be restricted to protect the nation's unity. |

### Case Laws in relation to Article 19 (1) (a)

- **In Prabhu Dutt vs. Union of India:** Supreme Court held that right to know news and information about the functioning of the Govt., is included in the freedom of Press.
- **In Union of India vs. Association for Democratic Reforms:** Supreme Court held that people have right to know about the candidate before voting. Thus, the law preventing the Election Commission from asking for a candidate's wealth, Assets, liabilities education and other such information is invalid.
- **In Tata Press Ltd. vs. M.T.N.L.** the Supreme Court held that commercial speech (Advertisement) is a part of freedom of speech and expression as per Article 19(1) (a).
- **In Union of India vs. Naveen Jindal,** the Court held that "Flying National Flag" is fundamental Right under Article 19(1) (a)
- Freedom of Silence — Right not to speak
- **In Bijoy Emmanuel vs. State of Kerala:** Freedom not to sing the national anthem, but not to disrespect it. Students belonging to the Apostles' creed Christians did not sing the national anthem as their religion prohibits glorification of anything else other than their God.

### Protection in respect of conviction for offences - Article 20

Article 20 of the Indian Constitution provides protection to individuals in respect of conviction for offences. It contains three key protections:

1. Ex-post facto law
2. Double jeopardy
3. Protection against self-incrimination

#### 1. Ex-post facto law:

- **Explanation:** Ex-post facto law means that a person cannot be convicted or punished for an act that was not considered a crime when it was committed. Also, if a law is changed after the offence was committed, the accused cannot be given a punishment greater than what was prescribed at the time of the offence.
- **Example:** If a person commits an act that is legal today but a law is passed tomorrow making that act illegal, the person cannot be convicted for that act because it was not a crime at the time of the commission.
- **Penalty Limitation Example:** Suppose someone commits a crime in 2020, and the maximum punishment at that time is 2 years imprisonment. In 2021, the punishment is increased to 5 years. The person cannot be sentenced to more than 2 years, as that was the maximum punishment when the crime was committed.

#### 2. Double jeopardy:

- **Explanation:** Double jeopardy means that no person shall be prosecuted and punished for the same offence more than once. This ensures that once a person is acquitted or convicted by a competent court, they cannot be tried again for the same offence.

- **Restrictions:** This protection only applies to judicial proceedings in courts or tribunals. It does not apply to administrative or departmental actions (e.g., if someone is dismissed from service for misconduct, they can still face criminal charges for the same misconduct).
- **Example:** If a person is tried and acquitted for theft, they cannot be tried again in a court of law for the same theft. However, if the person was dismissed from their job for the same theft by a departmental authority, that does not count as double jeopardy since it was not a court trial.

### 3. Protection against self-incrimination:

- **Explanation:** Article 20(3) provides that no person accused of a crime shall be compelled to be a witness against themselves. This protects an accused person from being forced to provide evidence (either oral or documentary) that could prove their guilt.
- **Important Points:**
  - It only applies to the accused in criminal cases, not in civil cases.
  - It protects against forced testimony but does not prevent voluntary confessions or statements.
  - The protection extends to oral testimony as well as documentary evidence.
- **Example:** If a person is arrested for fraud, they cannot be forced by the police or the court to testify that they committed the fraud or produce incriminating documents like personal diaries or records that prove their involvement in the crime. However, if they voluntarily provide the evidence, that is allowed.

## Protection of life and personal liberty - Article 21

Article 21 lays down Right to Life & Personal Liberty "No person shall be deprived of his life or personal liberty except according to Procedure established by law."

In **Maneka Gandhi v. Union of India**. The Court has given the widest possible interpretation of personal liberty.

Right to life includes within its ambit the right to live with human dignity. The Supreme Court held that the right to life defines not only physical existence but the "quality of life." This right is an inclusive right including the following:

- Right to **Travel abroad**. (Satwant Singh v. Assistant Passport officer)
- Right to **livelihood**. (D.K. Yadav v. J.M.A Industries)
- Right to **Shelter**. (Chameli Singh v. State of U.P.)
- Right to **Privacy**. (R.Raja Gopal v. State of T.N.)
- In **PUCL Vs. Union of India**, the S.C. held that telephone tapping is a serious invasion of an individual's right to Privacy which is part of the right to life and personal liberty.
- Right to **Health & Medical Assistance**
- Protection of Ecology and Environmental Pollution
- **Right to education** under Art. 21A Prisoner's Right: The Court held that if the Prisoner died due to beating by Police Officer, his family is entitled to compensation.
- Right to **free Legal Aid**
- Right to **speedy Trial**
- Right **Against Handcuffing**

- **Right against Delayed Execution** - In the Shatrughan Chauhan case (2014), the Supreme Court commuted the death sentences of 15 prisoners due to a delay ranging from 8 to 11 years in deciding their mercy petitions. The Court ruled that such prolonged delay was a form of cruelty and subjected the prisoners to extreme mental agony, thus violating their right to life with dignity under Article 21.
- **Right to food**
- **Right to Marriage** (Lata Singh v. State of U.P.)
- **Right to Reputation**
- **Right to Education-21A** Article 21A declares that 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 decide. Thus, this provision makes only elementary education a fundamental right and not higher or professional education.

### Prohibition of traffic in human beings and forced labour - Article 23

Article 23 prohibits traffic in human beings and other similar forms of forced labour. This right is **available to both citizens and non-citizens**. It **protects the individual not only against state but also against the private person**. However, state may impose compulsory service for public purposes, which are: military service or social service.

**Example:** Sale, transportation, and forced recruitment of people, especially for the purposes of slavery, prostitution, and other exploitative practices.

**Example:** In times of national emergency, the government may require citizens to participate in military service or community service programs. For instance, in many countries, military conscription is mandatory, and in India, this would be allowed under Article 23 as long as it is for a public purpose and does not exploit individuals.

### Prohibition of employment of children in factories etc - Article 24

Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous activities. But it does not prohibit their employment in any harmless innocent work.

### Freedom of conscience and free profession, practice and propagation of religion - Article 25

Article 25 says that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. The implications of these are as follows:

- **Freedom of conscience** - A person may choose to practice Hinduism, convert to Islam, or become an atheist based on their internal convictions without being compelled or coerced by any authority.
- **Right to profess** - A Sikh individual has the right to wear a **turban** as part of their religious belief, or a Muslim woman may choose to wear the **hijab** as a public expression of her faith.
- **Right to propagate** - The right to propagate religion means individuals or groups can **spread their religious beliefs** to others, invite people to join their religion, and educate others about their faith. This does not mean coercion or forced conversion but rather **voluntary sharing** of one's beliefs.

- **Right to practice** - Hindus can celebrate Diwali, Muslims can observe Ramadan and perform Namaz, Christians can attend church services on Sundays, and Sikhs can follow the practice of keeping uncut hair and wearing the five articles of faith.

Article 25 covers not only religious belief but also religious practices. This right is available to all person citizen as well as noncitizen.

### Freedom to manage religious affairs - Article 26

As per Article 26, every religious denomination or any of its section shall have the following right: -

- to establish and maintain institutions for religious and charitable purposes - The **Tirumala Tirupati Devasthanams** (TTD), which manages the famous Tirupati temple, runs various charitable institutions such as hospitals and educational institutions to serve the public in line with its religious objectives.
- to manage its own affairs in matters of religion – The **Jagannath Temple** decides its own religious rituals and customs. The government cannot interfere with how they conduct these ceremonies. A **Catholic Church** decides its religious services, like who becomes a priest and how masses are held, without government interference. **Sikh Gurudwaras** decide how to conduct prayers and manage religious festivals like **Guru Nanak Jayanti** without state interference.
- to own and acquire movable and immovable property - The **Vaishno Devi Shrine Board** owns vast properties, including the temple itself and other facilities for pilgrims. Similarly, the **Sikh Gurudwaras** manage extensive lands and properties that support religious, educational, and charitable activities.
- to administer such property in accordance with law - A **Sikh Gurudwara** receives donations to maintain its property and support charitable activities. The Gurudwara can decide how to use these funds, but the state can audit the accounts to ensure the money is used legally and transparently.

### Freedom as to payment of taxes for promotion of any particular religion - Article 27

Article 27 lays down that no person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion or religious denomination. In other words, the state should not spend the public money collected by way of tax for the promotion or maintenance of any particular religion. This provision prohibits only levy of tax and not a fees.

**Example:** If a religious institution, like a Gurudwara, runs a hospital or school, the government can give money for the hospital or school, but not for religious activities like conducting prayers. The public money must support welfare and secular activities, not religious practices. Public funds can only be used for secular purposes, like schools or hospitals, not for religious promotion.

The government charges a fee for entry into a historical or religious monument like the Tirupati Temple or the Taj Mahal. The fee collected is used for maintaining cleanliness, providing security, and managing the crowds. This fee is not promoting religion but covering administrative costs to manage the site.

## No religious instruction - Article 28

Article 28 provides that no religious instruction shall be provided in any educational institution wholly maintained out of state funds. However, this provision shall not apply to an educational institution administered by the state but established under any endowment or trust requiring imparting of religious instruction in such institution.

**Example:**

**Government School:** In a fully state-funded government school, religious teachings like Bible study, Quran lessons, or Hindu scriptures cannot be taught. Only secular subjects like science and math are allowed.

**School by Religious Trust:** If a school was founded by a religious trust (e.g., a Christian missionary trust), the government can manage it and still allow religious instruction as per the trust's requirement.

**State-Funded College:** A fully state-funded college cannot offer religious courses like the Bhagavad Gita or Bible as part of its core curriculum, but these texts can be studied as part of general education courses like philosophy.

## Protection of interests of minorities - Article 29

Article 29 says any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

**Preserving Language and Culture:**

- **Example:** A **Tamil-speaking community** can run schools to teach in Tamil and promote their culture.

**No Discrimination in Education:**

- **Example:** A **Muslim student** cannot be denied admission to a **government school** based on their religion.

**Tribal Culture:**

- **Example:** A **tribal group** in northeast India can establish schools to preserve their unique language and traditions.

## Right of minorities to establish and administer educational institutions - Article 30

Article 30 mentions about the Right of minorities to establish and administer educational institutions:

**1.** All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice

**1A.** In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.



2. The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

## Remedies for enforcement of rights conferred by this Part - Article 32

Article 32 mentions about the Right to Constitutional Remedies:

1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
2. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part
3. Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)
4. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

### Power of the Supreme Court to Issue Writs

The Supreme Court can issue various types of **writs**:

- **Habeas Corpus**: To release a person unlawfully detained.  
*Example*: A person can petition the Supreme Court if they are held without trial, and the court can order their release.
- **Mandamus**: To direct a public authority to perform a duty.  
*Example*: If a government officer fails to grant a necessary license, the court can compel them to do so.
- **Prohibition**: To prevent a lower court from acting beyond its jurisdiction.  
*Example*: The Supreme Court can stop a lower court from hearing a case that it has no authority over.
- **Quo Warranto**: To question the authority of a person holding a public office.  
*Example*: If someone is unlawfully occupying a government position, the court can question their authority.
- **Certiorari**: To quash the order of a lower court.  
*Example*: If a lower court makes an erroneous decision, the Supreme Court can annul that order.

### Sources of Law

In some of the legal systems, court decisions are binding as law. On the basis of the above discussion, three major sources of law can be identified in any modern society are as follows:

- **Custom** - In rural India, property rights may be passed down through generations based on local customs. For example, in certain communities, the eldest son inherits the family land according to custom. Even if there's no written law, courts may uphold this custom in property disputes.
- **Judicial precedent** - Keshavananda Bharati case

- **Legislation** - The Motor Vehicles Act, 1988 in India regulates road safety, licensing, insurance, and penalties for traffic violations. It is a written law created by the Parliament that applies to everyone using public roads.

## Customs

A **custom** refers to practices or unwritten rules that have been followed for a long period, gaining the force of law when accepted by the community and recognized by the legal system. For a custom to be legally valid, it must be:

- **Continuous:** Practiced consistently over a long time without any interruption.
- **Reasonable:** Must be aligned with public morality and accepted by society.

However, not every custom becomes law unless it meets certain conditions and is recognized by the courts or statutes.

### Example:

In the **Hindu Marriage Act, 1955**, marriages within the prohibited degrees of relationship (e.g., between close relatives like first cousins) are generally forbidden. However, the Act allows marriages within the prohibited degrees if there is a proven custom in a particular community that permits such marriages.

While customs were once the primary source of law in ancient societies, their importance has diminished over time, with **judicial precedents** and **legislation** becoming more significant in modern legal systems.

**Legal custom may be further classified into the following two types:**

### **Kinds of Customs:**

**1. General Customs:** These types of customs prevail throughout the territory of the State.

**Example:** In India, the practice of **shaving one's head** as part of funeral rites in Hindu culture is a general custom. Though not written into law, this custom is widely followed across the country.

**2. Local Customs:** Local customs are applicable to a part of the State, or a particular region of the country.

**Example:** In parts of **Rajasthan**, the custom of **brother-sister marriages** (between first cousins) has been followed in certain communities. While generally prohibited under the Hindu Marriage Act, 1955, this custom is accepted locally in those communities based on their tradition.

**3. Conventional Customs:** Conventional customs are binding on the parties to an agreement. When two or more persons enter into an agreement related to a trade, it is presumed in law that they make the contract in accordance with established convention or usage of that trade.

**Example:** In the shipping industry, there is a customary practice that certain delays due to weather are not held against the shipping company. When a contract is formed for shipping goods, it is generally presumed that the parties are aware of and agree to follow this convention unless stated otherwise.

All customs cannot be accepted as sources of law, nor can all customs be recognized and enforced by the courts. The jurists and courts have laid down some essential tests for customs to be recognized as valid sources of law.

**These tests are summarized as follows:**

1. **Antiquity:** In order to be legally valid customs should have been in existence for a long time, even beyond human memory. However, in India there is no such time limit for deciding the antiquity of the customs. The only condition is that those should have been in practice since time immemorial.

**Example:** The custom of a widow wearing white attire and refraining from jewelry in certain Hindu communities is an ancient practice. Though it is a custom, the courts may not always enforce it unless there is community acceptance.

2. **Continuous:** A custom to be valid should have been in continuous practice. It must have been enjoyed without any kind of interruption. Long intervals and disrupted practice of a custom raise doubts about the validity of the same. Exercised as a matter of right: Custom must be enjoyed openly and with the knowledge of the community. It should not have been practiced secretly. A custom must be proved to be a matter of right. A mere doubtful exercise of a right is not sufficient to a claim as a valid custom.

**Example:** In some communities, there may be a custom of passing on property only to male heirs. If this has been continuously practiced for generations, it could be recognized as a valid custom. However, if at any point female heirs were included, the continuous nature of the male-only inheritance custom would be interrupted, making it difficult to prove as a legally valid custom.

3. **Reasonableness:** A custom must conform to the norms of justice and public utility. A custom, to be valid, should be based on rationality and reason. If a custom is likely to cause more inconvenience and mischief than convenience, such a custom will not be valid. Morality: A custom which is immoral or opposed to public policy cannot be a valid custom. Courts have declared many customs as invalid as they were practiced for immoral purpose.

**Example:** A custom in a community that prevents women from inheriting property would be considered unreasonable and invalid in modern law, as it violates principles of gender equality.

In **Mathura Naikon vs. Esu Naekin** (1880), the Bombay High Court ruled that the custom of adopting a girl for immoral purposes was illegal. Similarly, the **practice of child marriage** has been banned by law, and **adoption laws** have been standardized by legislation.

Custom was the most important source of law in ancient India. Even the British initially adopted the policy of non-intervention in personal matters of Hindus and Muslims.

At the same time, it is important to note that customs were not uniform or universal throughout the country. Some regions of the country had their own customs and usages. After independence, the importance of custom has definitely diminished as a source of law and judicial precedent, and legislation has gained a more significant place. A large part of Indian law, especially personal laws, however, are still governed by the customs.

## Judicial Precedent as a Source of Law

Judicial precedent refers to decisions made by higher courts, like the High Courts and Supreme Court, that lower courts must follow. This system is based on the hierarchy of courts, as established by the Constitution of India. While judicial precedent is a key source of law, it is newer than custom but older than legislation.

In common law countries like India, judicial decisions shape the law by interpreting legislation and applying principles. Judges not only resolve disputes but also create binding legal principles through their rulings, which lower courts must follow.

**1. Supreme Court (SC):** The highest judicial authority in India. Its decisions are binding on all courts but not on itself, nor on decisions of the Privy Council or Federal Court.

**2. High Courts:** Binding on all courts within its own jurisdiction. Only persuasive value for courts outside its own jurisdiction. In case of conflict with decision of same court and bench of equal strength, referred to a higher bench. Decisions of Privy Council and federal court are binding as long as they do not conflict with decisions of SC.

**3. Lower Courts:** Bound to follow decisions of higher courts in its own state, in preference to High Courts of other states.

**Judicial decisions can be divided into following two parts:**

- 1. Ratio decidendi (Reason for decision):** 'Ratio decidendi' refers to the binding part of a judgment. 'Ratio decidendi' literally means reasons for the decision. It is considered as the general principle which is deduced by the courts from the facts of a particular case. It becomes generally binding on the lower courts in future cases involving similar questions of law.
- 2. Obiter dicta:** An 'obiter dictum' refers to parts of judicial decisions which are general observations of the judge and do not have any binding authority. However, obiter of a higher judiciary is given due consideration by lower courts and has persuasive value. Having considered the various aspects of the precedent i.e. ratio and obiter, it is clear that the system of precedent is based on the hierarchy of courts.

## Legislation as a Source of Law

Legislation is regarded as the most important source of law. The term derives from the Latin words legis (law) and latum (to make or set), meaning "making of law." Its significance comes from being backed by sovereign authority and recognized by the State. Legislation encompasses all methods of law-making but, in a strict sense, refers to laws enacted by the sovereign or authorized institutions.

The kinds of legislation can be explained as follows:

### **i) Primary Legislation**

Primary legislation refers to laws that are directly enacted by the sovereign authority, often considered supreme legislation. These laws are not subject to control or review by any other authority.

#### **Features:**

- It is enacted by the supreme legislative body (e.g., Parliament).
- No other authority can check or control its enactment.

**Examples:**

- **British Parliament:** As a sovereign body, any law passed by the British Parliament, such as the **Human Rights Act 1998**, is considered primary legislation.
- **Indian Parliament:** Laws passed by the Indian Parliament, such as the **Goods and Services Tax (GST) Act, 2017**, are also examples of primary legislation. Although the Parliament has the power to enact laws, its actions are regulated by the Indian Constitution.

**ii) Subordinate Legislation**

Subordinate legislation refers to laws made by authorities subordinate to the supreme or sovereign authority. These laws are enacted under the authority delegated by the sovereign.

**Features:**

- The validity and existence of subordinate legislation depend on the will of the sovereign authority.
- It allows for more detailed rules and regulations under the framework established by primary legislation.

**Types of Subordinate Legislation**

**1. Local Laws:**

- **Definition:** Local bodies, like municipalities or panchayats, are given law-making powers within their jurisdictions.
- **Example:** In India, local bodies such as **Municipal Corporations** create bye-laws regulating local issues, like waste management or building regulations. For instance, a Municipal Corporation may enact a bye-law requiring residents to separate wet and dry waste for better waste management.

**2. Laws Made by the Executive:**

- **Definition:** Laws that are enacted by executive authorities or government departments under the powers granted to them by primary legislation.
- **Example:** The **Factories Act, 1948** empowers the government to create rules regarding workplace safety and health standards. The Ministry of Labour and Employment may issue regulations specifying safety protocols that factories must follow, which serve as subordinate legislation.

The three organs of the State—**legislature**, **executive**, and **judiciary**—each have distinct functions. The **legislature** is responsible for law-making, while the **executive** implements these laws. Sometimes, the legislature delegates some of its law-making powers to the executive, resulting in **delegated legislation**, a type of subordinate legislation.

In modern welfare states, the volume of legislation has increased, making it impractical for legislative bodies to address every detail. Consequently, they focus on fundamental aspects while granting the executive discretion to fill in the gaps. Although this trend has faced criticism for potential overreach, delegated legislation is often necessary due to time constraints, legal complexities, and emergencies, leading to its classification as a "necessary evil."

## Primary and Subordinate Legislations

- Primary legislation refers to laws passed by Parliament, like Acts.
- Subordinate legislation, also called delegated legislation, is made by authorities given power by the legislature, such as government bodies. It includes rules, regulations, and bye-laws made within the scope of authority granted by an Act.

**Example:** The Environmental Protection Act (primary legislation) allows the government to create detailed pollution control regulations (subordinate legislation).

The **Supreme Court, in Gwalior Rayon Mills (1974)**, emphasized the importance of subordinate legislation. Modern socio-economic laws set guiding principles, but due to time constraints, legislatures delegate detailed law-making to the executive. This ensures flexibility, speed, and adaptability for a modern welfare state. The legislature defines the policy, while experts handle the specifics through rules, regulations, or bye-laws.

Delegated legislation allows the executive to make detailed rules under the authority of a parent law, without altering the parent law itself. **Indian democracy is said to rest on the acclaimed four pillars and these are the legislature, the executive, the judiciary, and the press.** In India's democracy, the legislature makes laws, the executive enforces them, and the judiciary resolves disputes. Given the legislature's broad responsibilities, it delegates rule-making to the executive for flexibility, speed, and adaptability in a welfare state.

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## Legislatives Processes in India

Every country is governed by laws to maintain order, regulate behavior, and ensure citizens' rights. In India, laws cover everything from citizenship to governance, with the Constitution as the primary source. All laws, whether central, state, or local, must align with the Constitution, which outlines government powers, citizens' rights, and duties. It establishes India as a secular, sovereign, socialist, and democratic republic and ensures its citizens justice, liberty equality among other things. The Constitution can never be overridden by any institution in India.

In India, various ministries propose national policies aligned with the elected government's goals. Before presenting a bill in Parliament, these ministries conduct detailed studies on the social, financial costs, benefits, and challenges of the policy.

**Example:** Before introducing the Goods and Services Tax (GST) Bill, the Ministry of Finance studied its potential impact on businesses, consumers, and the economy.

Before a law is passed in India, it goes through several stages:

1. **Legislative Proposal:** The concerned ministry formulates a legislative proposal after consulting key stakeholders, considering financial, social, and administrative aspects, and justifying the need for the law. **For example,** the Ministry of Health may propose a bill to regulate tobacco use after consulting public health experts and analyzing the health and economic impact.
2. **Pre-Legislative Consultation Policy:** Adopted in 2014, this policy requires the ministry to publish the proposed legislation with an explanatory note for public feedback, usually for at least 30 days. If a law affects a specific group, it is published in a way that reaches them. **For instance,** a labor law would be made available to unions and workers for feedback before drafting the bill.
3. **Legal and Constitutional Review:** The Ministry of Law and Justice reviews the proposal to ensure it is legally sound and constitutionally valid, without delving into the merits of the law. **For example,** when proposing the Goods and Services Tax (GST) Bill, the Ministry of Law checked its compatibility with existing taxation laws and the Constitution.
4. **Drafting the Bill:** After receiving all relevant documents, the Ministry of Law and Justice prepares a draft bill. The concerned ministry reviews and, if necessary, sends the draft back for revisions. Once finalized, the ministry sends it to the Cabinet Secretary for approval. **For example,** the Ministry of Finance drafted and revised the GST Bill before sending it for cabinet approval.
5. **Cabinet Approval and Further Revisions:** The Cabinet reviews the draft and suggests any changes, which the ministry incorporates before finalizing the bill. **For example,** if the Cabinet suggests changes to an environmental law, the Ministry of Environment adjusts the bill before it is finalized.
6. **Introducing the Bill in Parliament:** After final approval, the ministry prepares the bill for introduction in Parliament. A money bill, such as the budget, must first be introduced in the Lok Sabha (House of People), according to Articles 109, 110(1), and 117(1) of the Constitution. For other bills, the Ministry of Parliamentary Affairs decides which house the bill will be introduced in.

**Example:** The Finance Ministry, after drafting the GST Bill, introduced it in the Lok Sabha as a money bill. After debates, feedback, and amendments, the bill was passed and became law.

## Article 107: Provisions as to introduction and passing of Bills

### 1. Origination of Bills (Clause 1):

- A Bill can originate in either the **Lok Sabha (House of the People)** or the **Rajya Sabha (Council of States)**, except for **Money Bills** and certain **Financial Bills**, which have specific rules under **Articles 109 and 117**.
- **Example:** A Bill on healthcare reforms can be introduced either in the **Lok Sabha** or the **Rajya Sabha**. However, a **Money Bill** such as the **Union Budget** can only be introduced in the **Lok Sabha**.

### 2. Agreement by Both Houses (Clause 2):

- A Bill is not considered passed by Parliament until both the **Lok Sabha** and the **Rajya Sabha** agree on the Bill in the same form. If either House suggests amendments, the other House must agree to them before the Bill can be passed.
- **Example:** If the **Lok Sabha** passes a Bill on environmental protection, and the **Rajya Sabha** suggests amendments, the **Lok Sabha** must agree to these amendments, or they need to reach a common version of the Bill for it to pass.

### 3. Effect of Prorogation on Bills (Clause 3):

- When Parliament is **prorogued** (i.e., temporarily closed), any Bill that is under discussion does not lapse. This means the Bill remains valid and can continue to be debated when Parliament resumes.
- **Example:** If a Bill on education reforms is being debated and Parliament is prorogued, the Bill will not lapse and can be taken up when Parliament reconvenes.

### 4. Effect of Dissolution on Bills Pending in Rajya Sabha (Clause 4):

- If a Bill is pending in the **Rajya Sabha** and has not yet been passed by the **Lok Sabha**, the Bill does not lapse when the **Lok Sabha** is dissolved.
- **Example:** If a Bill is being debated in the **Rajya Sabha** and the **Lok Sabha** is dissolved before passing it, the Bill will not lapse and can be considered by the newly elected **Lok Sabha**.

### 5. Effect of Dissolution on Bills Pending in Lok Sabha (Clause 5):

- If a Bill is pending in the **Lok Sabha**, or has been passed by the **Lok Sabha** but is pending in the **Rajya Sabha**, it **lapses** upon the dissolution of the **Lok Sabha**. An exception to this is provided in **Article 108**, which relates to the summoning of a joint session of both Houses to resolve disagreements over Bills.
- **Example:** If the **Lok Sabha** has passed a Bill on digital infrastructure and it is still under consideration by the **Rajya Sabha** at the time of the **Lok Sabha's dissolution**, the Bill will lapse and would need to be reintroduced in the new Parliament.

## Article 108: Joint sitting of both Houses in certain cases

### 1. Conditions for Joint Sitting (Article 108(1))

- A joint sitting can be called by the President when any of the following occurs after one House has passed a bill and transmitted it to the other House:
  - a) **The other House rejects the bill:** If the Lok Sabha passes a bill and the Rajya Sabha rejects it, the President may call for a joint sitting.
  - b) **The Houses disagree on amendments:** If the Lok Sabha and Rajya Sabha cannot agree on amendments to a bill, a joint sitting can be called.



c) **The other House does not act on the bill for six months:** If the Rajya Sabha does not pass the bill within six months of receiving it from the Lok Sabha, the President can summon both Houses for a joint sitting. This period excludes any prorogation or adjournments for more than four days.

d) **Example:** Suppose the Lok Sabha passes a bill on data protection, but the Rajya Sabha rejects it. If the two Houses cannot resolve their disagreement, or the Rajya Sabha does not pass it within six months, the President can call for a joint sitting to resolve the issue.

## **2.Exclusion of Prorogation Period (Article 108(2))**

- When calculating the six-month period mentioned in clause (1)(c), any time during which the Rajya Sabha is prorogued or adjourned for more than four consecutive days is not counted. This ensures that a House cannot delay a bill indefinitely by staying in recess.
- **Example:** If the Rajya Sabha is prorogued for two months, that period is not counted in the six-month window for the bill to be passed.

## **3.Effect of President's Notification (Article 108(3))**

- Once the President issues a notification for a joint sitting, neither House can continue to proceed with the bill separately. The President can summon the joint sitting at any time, and both Houses must meet for deliberation and voting.

## **4. Passage at Joint Sitting (Article 108(4))**

- At the joint sitting, if a majority of members present and voting from both Houses pass the bill, it is considered passed.
- **Proviso (a):** If the bill was not amended and returned to the original House by the other House, no new amendments can be proposed except those necessary due to the delay.
- **Proviso (b):** If the bill has been amended and returned by the other House, only the disagreements between the two Houses on those specific amendments can be addressed.
- The presiding officer of the joint sitting will decide which amendments are admissible, and their decision is final.
- **Example:** Suppose the Lok Sabha passes a bill on national security, and the Rajya Sabha amends it before returning it to the Lok Sabha. If the two Houses cannot agree on these amendments, the bill can be taken up at a joint sitting, where only relevant amendments related to the disagreements are allowed.

## **5.Joint Sitting Despite Dissolution of Lok Sabha (Article 108(5))**

- Even if the Lok Sabha is dissolved after the President has notified his intention to summon a joint sitting, the sitting can still be held, and the bill can be passed. This provision ensures that a bill is not halted due to the dissolution of the Lok Sabha.
- **Example:** If the Lok Sabha is dissolved after the President has notified for a joint sitting to resolve a bill on health reforms, the joint sitting can still take place with the new Lok Sabha, and the bill can be passed.

## Article 109: Special procedure in respect of Money Bills

### 1. Introduction in Lok Sabha (House of the People):

- A Money Bill **cannot be introduced in the Rajya Sabha** (Council of States). It is introduced only in the Lok Sabha.

### 2. Rajya Sabha's Role:

- After the Lok Sabha passes a Money Bill, it is sent to the Rajya Sabha for its **recommendations**. The Rajya Sabha has **14 days** to suggest changes, but these are not binding on the Lok Sabha.

### 3. Lok Sabha's Power to Accept or Reject Recommendations:

- If the Lok Sabha accepts any recommendations from the Rajya Sabha, the bill is considered passed by both houses, including those changes.
- If the Lok Sabha **rejects the recommendations**, the bill is considered passed in the form it was initially approved by the Lok Sabha.

### 4. No Action by Rajya Sabha:

- If the Rajya Sabha does not return the bill within 14 days, the bill is **automatically considered passed** by both houses in the original form passed by the Lok Sabha.
- **Example:** When the **Union Budget** (a Money Bill) is introduced, it is first passed by the Lok Sabha. The bill is then sent to the Rajya Sabha for recommendations. If the Rajya Sabha suggests changes, the Lok Sabha can either accept or reject them.
- In 2017, the **Finance Bill**, a Money Bill, was passed by the Lok Sabha and sent to the Rajya Sabha. The Rajya Sabha suggested amendments, but the Lok Sabha chose to reject them. As a result, the bill was deemed passed in its original form by the Lok Sabha.

## Article 111: Assent to Bills

### 1. Bill Presented to the President:

- Once a bill has been passed by both houses of Parliament (Lok Sabha and Rajya Sabha), it is sent to the **President** for approval.
- The President can either **approve** (give assent) or **withhold** (reject) the bill.

### 2. Returning a Non-Money Bill:

- If the bill is **not a Money Bill**, the President can return it to Parliament with suggestions for reconsideration, asking the houses to review specific provisions or consider amendments.
- Parliament then **reconsiders** the bill. If both houses pass the bill again, either with or without amendments, the President **must** give assent and cannot withhold approval.

### 3. Publishing the Law:

- Once the President gives assent, the bill becomes law. The **Ministry of Law & Justice** then publishes the law in the **Gazette of India** (a government publication), making it official.
- The Ministry also forwards copies to all state governments for publication in their official gazettes and makes printed copies available for public sale.

## Legal Methods including Judicial Alternative Dispute Resolution (ADR) Process in India

Disputes can be resolved through various methods, including courts or alternative mechanisms like arbitration, mediation, conciliation, and negotiation. Historically, conflicts were often settled through warfare, but as societies evolved, more peaceful methods gained prominence.

Dispute resolution methods are divided into two categories:

1. **Adjudicative Processes:** A **judge or arbitrator** makes a binding decision. For example, in arbitration, an independent arbitrator decides the outcome of a business dispute.
2. **Consensual Processes:** Parties work towards an agreement, often with a **mediator's** help. For instance, in mediation, two companies may negotiate a settlement in a contract dispute.

These processes are crucial in contracts and treaties to ensure the protection of rights and obligations.

Basis	Arbitrator	Mediator
<b>1. Role</b>	An arbitrator acts like a private judge who hears both sides of the dispute and makes a decision, which is usually legally binding on the parties.	A mediator helps the parties communicate and work together to find a mutually acceptable solution to their dispute. The mediator does not make any binding decisions.
<b>2. Process</b>	This process is called <b>arbitration</b> , where both parties present evidence and arguments. After hearing both sides, the arbitrator issues an award, which resolves the dispute.	This process is called <b>mediation</b> , where the mediator facilitates dialogue, but the final decision rests with the parties. The mediator's role is to assist in negotiation, not to impose a solution.
<b>3. Example</b>	In a business contract dispute, the arbitrator listens to both companies' positions and then decides who is at fault. The decision is final and enforceable by law.	In a family business conflict, the mediator helps the family members discuss their issues and encourages them to reach a compromise on their own.
<b>4. Costs</b>	Expensive Process	Economical Process
<b>5. Control</b>	In arbitration, control shifts to the arbitrator	Whereas in mediation, the parties retain control over the outcome.
<b>6. Binding Decision</b>	An arbitrator gives a binding decision.	While a mediator helps parties reach a voluntary agreement.

**Litigation** is the most common form of judicial dispute resolution, where one party files a lawsuit against another. It follows formal procedures and is overseen by impartial judges who decide the case based on facts and law. The court's decision is binding, though parties can appeal to higher courts. Litigation is adversarial, meaning each side seeks a favorable outcome.

Many prefer alternative dispute resolution methods, like arbitration or mediation, because they are faster and more private, though sometimes costlier.

**Example:** In a contract breach, a company may sue the other party in court (litigation) or choose arbitration for a quicker resolution.

**Alternative Dispute Resolution (ADR)** refers to various methods for resolving disputes outside of traditional court litigation. ADR is based on the agreement of the parties involved, either before or after a dispute arises, and is increasingly favored for its flexibility and speed compared to court proceedings, which can be delayed for years due to backlogged dockets.

ADR methods include:

- **Arbitration:** A neutral arbitrator makes a binding decision after hearing both sides.
- **Mediation:** A mediator facilitates discussions between parties to help them reach a voluntary agreement.
- **Conciliation:** Similar to mediation, but the conciliator may suggest solutions.
- **Lok Adalats:** Informal courts that aim to settle disputes quickly and amicably.

The Law Commission of India has recommended that courts encourage parties to appear in person to seek amicable settlements.

**Example:** A business dispute over a contract might be resolved through mediation, where a mediator helps both parties negotiate a settlement without going to court, saving time and resources.

## Arbitration

- Arbitration, a **form of alternative dispute resolution (ADR)**, is a **technique for the resolution** of disputes **outside the courts**, where the **parties** to a dispute refer it to one or more arbitrators, by whose decision they **agree to be bound**.
- It is a resolution technique in which a **third party reviews the evidence** in the case and **imposes a decision that is legally binding for both sides and enforceable**.
- There are **limited rights of review and appeal** of arbitration awards.
- Arbitration is **not the same** as judicial proceedings or any other kind of alternate dispute resolution method.
- Arbitration can be **either voluntary or mandatory**. It can be referred to by the courts also.

The advantages of arbitration can be summarized as follows:

- a) It is often faster than litigation in Court
- b) Arbitral proceedings and an arbitral award are generally non-public, and can be made confidential
- c) If the subject matter of the dispute is highly technical, arbitrators with an appropriate degree of expertise can be appointed as one cannot choose judge in litigation.

The Arbitration and Conciliation Act, 1996 lays down provisions relating to arbitration and conciliation procedures. Without an arbitration agreement, usually recourse to arbitration does not happen.

## Conciliation

- Conciliation is an **alternative dispute resolution process** whereby the parties to a dispute use a conciliator, who meets with the parties separately in order to resolve their differences.
- They do this by interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement.
- Conciliation is **voluntary** where the parties involved agree and choose to resolve their differences by conciliation.

- The process is flexible, allowing parties to define the time, structure and content of the conciliation proceedings. These proceedings are not public.
- The conciliator is usually a **trained and qualified neutral person** who facilitates negotiations between disputing parties.
- The process is **risk free and not binding on the parties till they arrive at and sign the agreement.**
- According to procedure, usually one conciliator is appointed to resolve the dispute between the parties. The parties can appoint the sole conciliator by mutual consent.
- There is no bar to the appointment of two or more conciliators. In conciliation proceedings with three conciliators, each party appoints one conciliator.
- The third conciliator is appointed by the parties by mutual consent.
- The conciliator is **not bound by the rules of procedure and evidence.**
- The conciliator **does not give any award or order.**
- If no consensus could be arrived at between the parties and the **conciliation proceedings fail, the parties can then resort to arbitration.**

## Mediation

- Dispute settlement through mediation is a **voluntary and relatively informal process of dispute resolution.**
- It includes a party centric approach where a **neutral third party assists the parties in amicably resolving their disputes by using specified communication and negotiation techniques.**
- Involvement of parties in the control over the whole process is peculiar to this dispute resolution method.
- The **mediator only acts as a facilitator** in helping the parties to reach a negotiated settlement of their dispute.
- The mediator **makes no decisions or awards.**
- In the mediation process, each side meets with an experienced neutral mediator. The session begins with each side describing the problem and the resolution they desire which is ameliorated by conducting separate and joint meetings culminating finally in an agreement of both parties.
- The advantages of the mediation are that the agreement which is that of the parties themselves; the **dispute is quickly resolved without great stress and expenditure**; the **relationship between the parties are preserved**; and the **confidentiality is maintained.**

## Lok Adalats

- Lok Adalats or people's courts have been **established by the government to settle disputes by way of compromise or conciliation.**
- This is **another way of alternate dispute resolution** that has been provided for.
- It is a **judicial institution and a dispute settlement agency** developed by the people themselves for social justice based on settlement or compromise reached through systematic negotiations.
- **Lok-Adalats accept even cases pending in the regular courts within their jurisdiction.**
- Section 89 of the Civil Procedure Code also provides for referring disputes to Lok Adalat wherein provisions of the Legal Services Authorities Act, 1987 gets applied.

Aspect	Arbitration	Conciliation	Mediation	Lok Adalat
<b>Nature</b>	Legally binding decision imposed by arbitrator(s).	Voluntary and non-binding unless a settlement agreement is signed.	Voluntary, with a focus on facilitating a settlement.	Settlement or compromise-driven, often involving judicial input.
<b>Role of Third Party</b>	Arbitrator imposes a decision based on the evidence.	Conciliator helps the parties negotiate and suggest solutions.	Mediator facilitates negotiation but does not suggest or impose decisions.	Lok Adalat facilitates settlement through negotiation and compromise.
<b>Decision/Outcome</b>	Binding award issued by arbitrator(s).	No binding decision unless the parties agree to a settlement.	No binding decision; the parties reach their own agreement.	Binding settlement if parties agree; treated like a court decree.
<b>Procedure</b>	Formal, resembling a court procedure; governed by Arbitration and Conciliation Act, 1996.	Informal, flexible, parties decide the structure and process.	Informal, voluntary, and flexible.	Less formal, proceedings resemble systematic negotiations.
<b>Confidentiality</b>	Proceedings are private and confidential.	Confidential; proceedings are not public.	Confidential process.	Public, since it can involve cases pending in courts.
<b>Appointment of Third Party</b>	Arbitrators are mutually appointed by parties, or by the court.	Conciliator is appointed by mutual consent of parties.	Mediator is selected by mutual consent or recommended by court.	Lok Adalats are conducted by the judiciary, with judicial officers and appointed members.
<b>Control of Process</b>	Arbitrator controls the process and imposes the decision.	Parties maintain control over the outcome with conciliator's assistance.	Parties control the process, mediator facilitates discussions.	Lok Adalat officials help facilitate settlement.
<b>Scope of Appeal</b>	Limited rights to appeal an arbitration award.	No appeal since there is no award unless a settlement is reached.	No scope of appeal, as no binding decision is made.	Once a settlement is reached, no appeal; treated as a final order.
<b>Legal Framework</b>	Governed by Arbitration and Conciliation Act, 1996.	Governed by Arbitration and Conciliation Act, 1996.	Not governed by a formal legal framework; based on voluntary process.	Governed by Legal Services Authority Act, 1987.

<b>Role of Court</b>	Can be referred by courts; award enforceable like a court decree.	Can be referred by courts, but no enforceable decision without settlement.	Can be referred by courts; agreement enforceable if signed.	Referred by courts, settlement is legally enforceable.
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### Section 89 of the Civil Procedure Code lays down

- Settlement of disputes outside the court:** Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:
  - arbitration;
  - conciliation;
  - judicial settlement including settlement through Lok Adalat; or
  - mediation
- When a dispute is referred for out-of-court settlement under **Section 89 of the CPC to:**
  - Arbitration/Conciliation:** The **Arbitration and Conciliation Act, 1996** applies.
  - Lok Adalat:** Referred under the **Legal Services Authority Act, 1987**.
  - Judicial Settlement:** Treated as Lok Adalat under the **Legal Services Authority Act, 1987**.
  - Mediation:** The court assists in compromise following prescribed procedures.

As per the **Court Fees Act, 1870**, if a dispute is referred for any of these settlements, the plaintiff is entitled to a full refund of the court fees, authorized by a certificate from the court.

### Section 7 Arbitration agreement

- In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
- An arbitration agreement may be in the form of **an arbitration clause in a contract or in the form of a separate agreement**.
- An arbitration agreement shall be in **writing**.
- An arbitration agreement is in writing if it is contained in:
  - a document **signed by the parties**;
  - an **exchange of letters, telex, telegrams or other means of telecommunication** [including communication through electronic means] which **provide a record of the agreement**; or
  - an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- The **reference in a contract to a document containing an arbitration clause** constitutes an arbitration agreement **if the contract is in writing** and the reference is such as to make that arbitration clause part of the contract.

## Section 8 Power to refer parties to arbitration where there is an arbitration agreement

Section 8 of the Arbitration and Conciliation Act, 1996 grants judicial authorities the power to refer parties to arbitration when an arbitration agreement exists, even if a case has already been filed in court.

### 1. Referral to Arbitration:

- If a dispute is brought before a court, and the matter is covered by an arbitration agreement, either party can request the court to refer the case to arbitration.
- The application must be made before the party submits their first substantive statement on the dispute, i.e., before arguing the case in court.
- The court **must** refer the case to arbitration unless it finds that no valid arbitration agreement exists.

### 2. Submission of Arbitration Agreement:

- The party applying for arbitration must submit the **original arbitration agreement** or a **certified copy** with their request.
- If the original or certified copy is held by the other party, the applicant can file a petition asking the court to direct the opposing party to produce the original or certified copy.

### 3. Arbitration Proceedings Can Continue:

- Even if the matter is pending before the court, arbitration can proceed, and an arbitral award can be made. While this application is being processed, arbitration proceedings between parties can still continue, and the arbitrators may even issue an award.
- **Section 8** ensures that courts uphold arbitration agreements and prioritize arbitration over litigation, as long as the agreement is valid and invoked at the right time.
- The method of appointing arbitrators is also mentioned within the Act.

## Section 10 Number of arbitrators

**Section 10 of the Arbitration and Conciliation Act, 1996** provides flexibility to the parties in deciding the number of arbitrators but with certain guidelines:

### 1. Freedom to Choose the Number:

- The parties involved in the arbitration can mutually decide on the number of arbitrators. However, the number cannot be **even** (to avoid the possibility of a deadlock in decision-making).

### 2. Default Provision:

- If the parties do not decide on the number of arbitrators, the default rule is that the arbitral tribunal will consist of a **sole arbitrator**.



## Section 11 Appointment of arbitrators

This section of the **Arbitration and Conciliation Act, 1996** deals with the appointment of arbitrators and the procedure involved when parties fail to agree on the arbitrators or the appointment process.

### Key Points:

#### 1. Nationality of Arbitrator:

- Unless otherwise agreed by the parties, a person of **any nationality** can be appointed as an arbitrator. This ensures flexibility in international arbitrations.

#### 2. Freedom to Agree on Appointment Procedure:

- The parties are free to agree on how they wish to appoint the arbitrator(s), which can be specified in their contract.

#### 3. Procedure for Appointment When Agreement Fails:

- **Three Arbitrators:** If there is no agreement on the procedure, in arbitrations with three arbitrators:
- Each party appoints **one arbitrator**, and the two arbitrators together appoint the **third arbitrator**, who will act as the **presiding arbitrator**.

#### 4. Court Intervention in Case of Delay:

- If one party fails to appoint their arbitrator within **30 days** of receiving a request from the other party, or if the two appointed arbitrators cannot agree on the third arbitrator within **30 days**, a party can request the **Supreme Court** or **High Court** to appoint the arbitrator.

#### 5. Single Arbitrator:

- If there is no agreement on a sole arbitrator, and the parties fail to agree on one within **30 days**, the court (Supreme or High Court) can be approached for the appointment.

#### 6. Court Intervention When Agreed Procedure Fails:

- If the agreed procedure between the parties fails (e.g., a party doesn't act, or the appointed arbitrators can't agree on the third arbitrator), a party can request the Supreme Court or High Court to step in, unless the arbitration agreement provides an alternative method for securing the appointment.

#### 7. Court's Role:

- When the Supreme Court or High Court is asked to appoint an arbitrator, their role is limited to checking whether a valid arbitration agreement exists.
- The court's decision on appointing the arbitrator is **final**, and no appeals including Letters Patent Appeal are allowed against this decision.
- A Letters Patent Appeal is an intra-court appeal, meaning it is filed within the same High Court. Typically, the appeal is from the decision of a single judge to a Division Bench (a bench of two or more judges) of the same court.