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(For filling by Examiners only)

S.No.	Max. mark	Max. Obtained	S.No.	Max. mark	Max. Obtained
1.	10		11.	15	
2.	10		12.	15	
3.	10		13.	15	
4.	10		14.	15	
5.	10 15		15.	15	
6.	10 15		16.	15	
7.	10 15		17.	15	
8.	10 15		18.	15	
9.	10 15		19.	15	
10.	10 15		20.	15	

Total Marks Obtained:

Mentor's Comments:

- Note:
1. This booklet is to be used for attempting assessment tests and revision tests only.
 2. This page needs to be attached as first page of every uploaded test.

Q.1 How does the Indian Constitution harmoniously blends borrowed elements with indigenous needs?

A- Indian Constitution has been formed after "ransacking almost all the major Constitutions of the world" (B.R. Ambedkar)
for eg: Parliamentary system from British.
FRs from USA. etc

Blending of elements

- ① Blending of Parliamentary Sovereignty and Judicial Supremacy: Indian Constⁿ is neither favours parliament -ary supremacy like Britain nor Judicial Supremacy like USA.
- ② Democratic Socialism: India adopted democratic socialism instead of Marxist socialism of Russia. In India both private and public sector co-exists.
eg: LPG reforms.
- ③ both equality before law (British) and equal protection of law (USA)

ex: Reservation policies for SC, ST etc

(4) NO strict separation of power like USA.
All organs cooperate with checks & balances. (Article 50)

(5) federal with Unitary bias: To
protect State's Autonomy as well
as Integrity of Nation.

ex: Emergency provisions (A-352, 356).

(6) Independent and Integrated
Judiciary to cater to federal
needs of India.

(7) Welfare State to cater needs
of poor, backward classes etc
but also made it non-justiciable
to avoid judicial activism.

K.C. Wheare, a Constitutional expert
pointed that this kind of innovation
is "rarely found".

The innovative blending led
to elephantine size of Indian
Constitution but also survived the
democracy for more than 75 years.

Q.2 Preamble is the mirror that reflects the mission & vision of Constitution makers. Explain.

As per N.K. Palkhivala, a Constitutional expert, Preamble is the "Identity Card of Indian Constitution".

Preamble reflects vision & mission for it shows what India aspires to achieve.

Mission & Vision

- ① Nature: Sovereign, Socialist, Secular, democratic, republic.
- ② Liberty: of thought, expression (Article 19), belief, faith & worship (Article 25-30).
- ③ Justice: Social: No distinction based on Caste, sex, religion, etc. (eg: Articles 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100).

Economic

: Elimination of inequality in wealth & income (eg: DPSP)

Political

: All have equal access to political office.

④ Equality

↳ Civic: Article 14, 15, 17, 18

↳ Political: Article 325: Electoral roll without discrimination

↳ Article 326: Universal adult suffrage.

↳ Economic: equal pay for equal work. (Art 32)

⑤ Fraternity: (Brotherhood) It indicates unity and integrity of the Nation. Not only territorial but also psychological. Ex: National Integration Council.

Preamble also shows that the Constitution derives power from the people.

The date of adoption is 26 November 1949.

Preamble reflects the vision of our forefathers. It is something which we always wanted during freedom struggle. It is the Soul of Constitution.

Q.3. What is rule of law? Compare & Contrast the implementation of the rule of law in India & UK?

A. "Rule of law" is originated from British system. It has been modified as per need of Indians.

Comparison

Indian	UK
1) <u>Article 14</u> provides for both <u>equality before law</u> and <u>equal protection of law</u> .	1) Only equality before law is operated.
2) equal protection of law taken from USA. It means <u>equal application of law to similarly situated people</u> .	

Rule of law in British system means "three things": (A.V. Dicey)

(a) Absence of arbitrary power, that is,

no punishment except for breach of law.

(b) Equality before the law : equal

Subjugation of all citizens (rich, poor, high, low) to ordinary law.

(c) Constitution is the result of rights of the individual.

④ (a), (b) are applicable in Indian system but (c) is not applicable because in India's "Rights of the individuals are sourced from Constitution"

There are various exceptions to Right to equality in India like Immunity to president, governor etc.

In UK, parliament is above Constitution, it can make any law.

In India's parliament is limited by Constitution.

Supreme Court held that Rule of law in Article 14 as a 'basic feature' of Constitution.

Q.4 FDs are a reminder that citizenship is not merely a passive status but active engagement. Discuss what are the challenges in legal enforcement?

A- Fundamental duties were included in Constitution by 42nd Amendment based on Swaran Singh Committee report. It was amended in 2006 once (86th CAA).

Not passive but active.

- ① Mahatma Gandhi said - "Rights that do not flow from Duties well performed are not worth having".
- ② Moral responsibility of citizens to protect Constitution and property of country.
- ③ Constant reminder that both rights & duties go hand in hand.
- ④ Many duties like cherishing ideals of freedom struggle develops a sense of patriotism.

- ⑤ Duties like "Renouncing practices derogatory to dignity of women" makes India a safer place.

Challenges in legal enforcement $\frac{5}{5}$

- ① Non justiciable by Courts but can be enforced by parliament by making a law.
 - ② Verma Committee observed certain laws like National Honour act which enforce it
 - ③ Vague wordings: difficult to understand & much scope for judicial activism
 - ④ SC in Rangnath Mishra Judgement held that FDs should be enforced by both legal & moral sanction.
 - ⑤ AJMS Students case: FDs equally important to Fundamental Rights.
- Fundamental duties show that there cannot be daily democracy without daily citizenship.

Q.5 Unchecked Hate speech emboldens hatred & fosters fear and animosity. Does the problem of hate speech in India stem from lack of laws or poor implementation of law?

Litigations related to hate speech are on rise in India. (NCRB Report).

Hate speech refers to anything said orally or in written form which subjects any person, community to derogatory remarks.

Reasons

(a) Lack of law?

(1) India has sufficient number of laws to deal with hate speech. eg! Section 124A of IPC, National security act, etc.

(2) Various fundamental rights like Article 25, Article 19 etc through which people can seek justice.

(b) Poor implementation of law?

① → Multiple problems exists at

implementation of laws, like:

- (i) Corruption.
- (ii) Politically motivated arrests.
- (iii) "Vague wordings" in laws
- (iv) Weak criminal justice system.
- (v) Poor training of officials
- (vi) Outdated forensic instruments.

Other reasons

- ↳ Rising Jingoism.
- ↳ Majoritarian politics.
- ↳ Vote bank politics.

So the problem of hate speech is multifaceted and it needs reforms at various levels, ranging from social, economic, legal & political.

Hate speech is like a Cancer in democratic Country like India. 21st Century should be defined by technological and moral advancement in India to make it 'Vishvavaru'

Q.6 Examine the distinct notions of Equality in the Constitution of the USA & India.

Article 14 of Indian Constitution provides for Right to equality.

Article 14 (Both)

- ↳ ① Equality before law (British system)
- ↳ ② Equal protection of law (American system)

Distinct Notions

① Equality before law

(a) Absence of any special privilege in favour of any person.

(b) Equal subjugation of all persons to ordinary law enforced by ordinary court

for eg: Rich or poor committing crime like illegal trafficking of wildlife will be tried alike under wildlife protect act 1972.

(c) No person (Rich, poor, high law) is above the law.

It is even applicable on officials implementing it.

Eg! Recent case of Sameer Wankhede questioned by CBI for alleged corruption.

② Equal protection of law :

(a) Equality of treatment under equal circumstances both in privileges & liabilities imposed by law.

for eg! SC, ST are historically deprived Community, they are not equal to upper castes in social and educational field. So both Article 15(4), 16(4) provides reservation in education and employment to SC, STs.

(b) Similar application of same laws to persons who are similarly situated.

Eg! All the women, no matter in which organization they work enjoy "maternity benefit" during

Pregnancy, and men do not get such benefit.

(c) Like should be treated alike without discrimination.

③ Equality before law is negative concept and equal protection of law is a positive concept.

④ However, both aspire to establish equality of legal status, opportunity & justice.

⑤ SC held that where equals and unequals are treated differently Article 14 does not apply.

⑥ Article 14 forbids class legislation but it permits reasonable classification based on "Intelligible differential" and "Substantial distinction"
e.g. → Various tax slabs for different income.

India adopted unique combination of both notions of equality to cater to its unique need among vast socio-cultural diversity.

Q-7

Basic Structure Doctrine is a North Star that guides interpreters of Constitution". Analyze the above statement & also highlight the elements that constitute BS through various judgements.

Justice DY Chandrachud said that Basic Structure is a North Star in Constitutional interpretation.

Why North Star?

- ① Basic Structure doctrine saved the Indian democracy from the tyranny of legislative and executive organs of government.
- ② Basic Structures are such fundamental Principles of Indian Constitution which can not be changed by amendments.
for eg: federalism, secularism etc.
- ③ Judicial activism: It gives enough room to judiciary to act and innovate new ideas in a given circumstances.
eg: Public interest litigation.

④ Fills the Gap created by poor functioning of legislature & executive.
eg: Visakh guidelines.

⑤ Changing needs of 21st Century India. New rights and aspirations like LGBTQ+ rights, environmental rights etc.

Major Concerns

① Judicial overreach: Many criticise judiciary for its over activism

eg: Banning liquor on highway

eg: Striking of NJAC act which intended to replace Collegium system

② Blurring "Separation of power" doctrine : Article 50 (b/w Executive & judiciary)

eg: Commanding legislature to frame a law.

Various Judgements →

- ① BS doctrine emerged in famous Kesavananda Bharati Case (1973).
Since then its scope has increased as SC has not given any fixed definition of BS. In this case
- ② BS = a) Separation of power, (b) welfare state, (c) secular, (d) federal
- ③ Indira Nehru Gandhi Case :
Judicial review, Rule of law
- ④ Minerva Mills Case
Harmony between FRs & DPSPs.
- ⑤ Bhim Singh Case : welfare state
- ⑥ Kumar Padma Prasad : Independence of judiciary.
- ⑦ M. Nagaraj Case : Principle of Equality.

Basic structure doctrine indicates that nothing is fixed and change is the only constant in emerging democracy like India, whose needs are wide. However Judicial overreach should be avoided.

Q-8 Constitutional amendments empower citizens to shape — — — — —

— organic evolution.

Ans Since Independence, Indian Constitution has gone through more than hundreds of Constitutional amendments. It is testament to its living, organic nature of Constitution.

1) Empowers the citizens

- a) → Rights of citizens.
- b) → Limits on Arbitrariness of laws.

2) Shaping destiny of Nation

- a) → Changing needs accommodated.
- b) → Redundancies deleted.

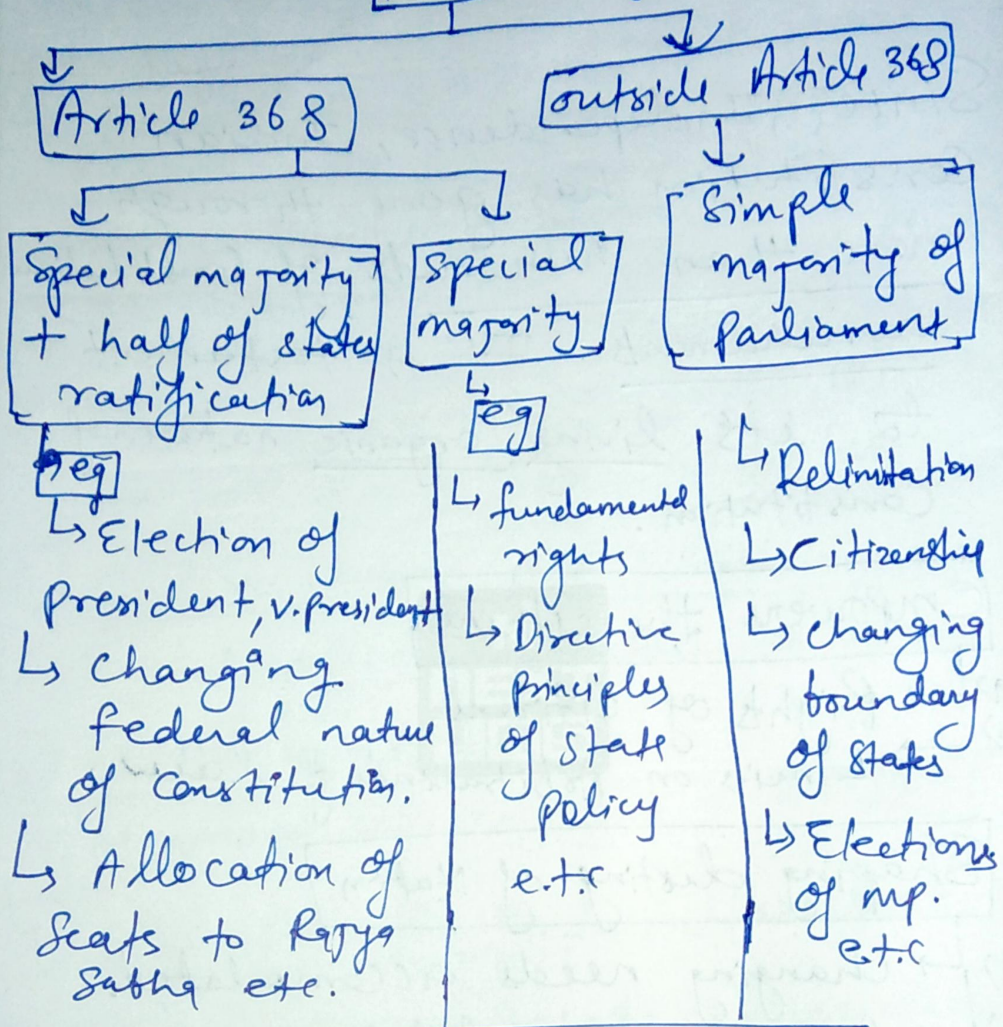
3) Living document

- a) → flexible as well as Rigid.
- b) → Amended more than 100 times.

Constitutional framework

Q Constitution of India can be

amended in two ways



- ② Constitutional amendment can only be initiated by parliament.
- ③ No prior recommendation of president is required. President has to ^{must} give assent when CA Act is presented to him.
- ④ No provision for joint sitting in case of deadlock.
- ⑤ can be initiated in any house by any member.

Organic evolution : major amendments

- ① 1st CAA introduced 9th schedule.
- ② 7th CAA : Reorganization of states.
- ③ 92nd CAA : (Mini Constitution)
↳ Changes in preamble, fundamental Duties added, Administrative tribunals added, new DPSPs added etc.
- ④ 44th : Corrected 42nd CAA. Deleted Right to property.
- ⑤ 52nd CAA : Anti defection law.
- ⑥ 61st CAA : Reduced voting age (21 → 18)
- ⑦ 72nd & 73rd CAA : Third tier govt.
- ⑧ 86th CAA : Right to education
- ⑨ 97th CAA : Cooperative Societies.
- ⑩ 103rd CAA : Reservation to EWS.

Parliament can amend any part of Constitution subject to "basic structure" doctrine (Kesavananda Bharati case).

Q.9

The expression "equal respect for all religions" does not capture the complexities of Indian Secularism. Analyze, also discuss the challenges in implementation of UCC.

A⇒

Secularism refers to separation of religion and state.

Article 25-28 provides for right to religion. Article 29-30 provides for cultural and educational rights of minorities.

Equal respect for all religions $\Rightarrow$

- ① India is most diverse Country as it is home to all major religions of the world.
- ② Indian Secularism is a positive secularism in which state gives equal respect to all religion & does not discriminate on basis of religion,
- ③ This expression doesn't capture complexities because $\rightarrow$

- (a) Various personal laws of each religion.
- (b) Essential religious practices of each religion Contradicting Constitutional morality.
eg: Female genital mutilation in Dawoodi Bohra Muslims.
- (c) Discrimination against women in various religious practices.
eg: Sabarmati temple entry issue.
- (d) Inconsistency in laws related to inheritance, adoption, marriage etc in various religions.
- (e) Plethora of litigations.

Uniform civil Code: Article 40 of Indian Constitution requires the State to take steps towards creation of UCC.

⊛ UCC refers to creation of Common rules and laws for all religions with respect to marriage, inheritance, adoption etc.

Challenges in Implementation of UCC $\frac{P}{5}$

- ① Against Right to religion (25-28).
- ② Difficult to reach Consensus on wide ranging issues.
- ③ Majoritarian politics further Complicates the matter.
- ④ Supreme Court has said many times about the need of bringing ~~law~~ UCC but law Commission has said that "UCC at present time is neither necessary, neither desirable".
- ⑤ Lack of institutional and political will

There is more urgent need to reform the personal laws of each religion. Sufficient Consultation, multipronged and multidimensional approach is needed to resolve the deadlock.

Goa is the only state in Country to implement UCC. It shows bringing UCC is not impossible & can be done.

Q. In light of recent SC judgement on the Right to Privacy, examine the scope of FRs in India.

A: Supreme Court in puttaswamy judgement said the Right to privacy is fundamental right under Article 21 of Indian Constitution.

Scope of FRs

① In A.K Gopalan V State of Madras : various rights under part III are not to be interlinked.

② In Maneka Gandhi's case, however, the SC repeated the earlier view & held that the role of SC should be to interpret these rights in widest possible sense.

③ Justice Bhagwati - "There is no watertight compartment

between various fundamental rights⁴.

④ In Mandla Gandhi's case SC gave primacy to Due process of law over procedure established by law as given in Article 21.

⑤ Law must be fair, just and reasonable along with following required procedure.

⑥ SC has interpreted Article 21 as most widest of all FRs.

Article 21 not only includes life & liberty but also those right that give meaning to life like

↳ Right to clean environment.

↳ Right to sleep.

↳ Right to livelihood

↳ Right to health etc

Reasonable restrictions

⑦ FRs are not absolute but qualified.

for eg: Article 19(2) imposed reasonable restriction on right to freedom of speech & expression; based on various grounds like:

- ↳ Sovereignty of state
- ↳ Public order
- ↳ Decency
- ↳ Contempt of Court etc.

eg: Article 25 has reasonable restriction on the ground of public order, health, decency.

⑧ Some FRs also available against private players eg: Article 17, 23, 15.

⑨ Their application is restricted in case of armed forces & during Martial law

Fundamental rights are called as 'Magna Carta', & they ensure a government of law and not of men.