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DIVINE IAS ACADEMY

(A UNIT OF DIVINE GROUP OF INSTITUTIONS)

INDIAN POLITY & CONSTITUTION



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CONSTITUTION OF INDIA

PREAMBLE	UNION AND ITS TERRITORY P- I (ART. 1-4)	CITIZEN (P-II) (ART. 5 -11)	GOVERNMENT	CONTITUTIONAL AMENDMENT P- XX ART. 368
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RIGHTS	FUNDAMENTA DUTIES P-IV A ART 51-A
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FUNDAMENTAL RIGHTS P - III (ART 12-35)	DPSP P- VI (ART 36-51)
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UNION GOVT. P- V (ART- 52-151)	STATE GOVT. P- VI (ART - 152-237)	UT GOVT. P- VIII (ART 239-242)	LOCAL GOVT.	SCHEDULE & TRIBAL AREAS P-X (ART 244-244-A)
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EXECUTIVE ART 52-78
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1. SALIENT FEATURES OF THE CONSTITUTION

CONSTITUTION :- Constitution means a document having special legal sanctity, which sets out the framework and principal functions of the Government.

There are various forms of Government prevalent across the world. Constitution of a country gives idea about the basic structure of the political system under which its people are to be governed.

Indian constitution is almost borrowed from every country of the world, so it has unique features that distinguish it from the constitutions of other countries. The framers of our constitution studied other constitutions, selected their valuable features and put them with necessary modifications in our constitution. Indian constitution is not a borrowed constitution, though it has been influenced by other constitutions.

1. Longiest and Written Constitution:- Indian Constitution is very comprehensive, elaborate and detailed document therefore It is the lengthiest of all the written constitutions of the world. Constitutions of most countries came into existence as a result of conscious decision to have such a document.

There are two types of constitutions in the world.

1. **Written constitution - American constitution**, which are provide institutional arrangements and procedure.
2. **Unwritten - British constitution**, it comprises the constitutional conventions that act as precedents for the working of institutions and other document such as the statutes and Acts of Parliament.

This is an example of the most flexible form of constitution.

INDIAN INDEPENDENCE ACT OF 1947

- Till 1947, the Government of India functioned under the provisions of the 1919 Act only, the provisions of 1935 act relating to Federation and Dyarchy were never implemented.
- The executive Council provided by the 1919 act continued to advice the Governor- General till 1947
- It declared India as an Independent and Sovereign State
- Established responsible Governments at both the centre and the provinces
- Designated the Governor-General of India and the Provincial Governor as the constitutional Head(Nominal Heads)
- It assigned dual functions (Constituent and legislative) to the constituent Assembly and declared this dominion legislature as a sovereign body

Originally:- 395 Articles, XXII Parts and 8 Schedule (26 November 1949 adopt and enact, 26 January 1950 enforce)

At Present:- 450+ Articles, XXV Parts and 12 Schedule

There are some factors that have contributed to the big size of our constitution.

- (a) The constitutional makers put everything in long winded and in lucid manner.
- (b) Geographical factor, that is, the vastness of the country and its diversity.
- (c) In other federations, there are two constitutions: one for the federation and the other for the states. In India, the states do not have separate constitutions. The powers of states along with the powers of the federation have been stated in one constitution.
- (c) The Government of India Act, 1935 was in operation when India got independence. Our leaders were familiar with this Act. They borrowed heavily from this lengthy Act while framing our constitution.
- (d) India is a country of great diversity. It is a country of several minorities; it has many languages, castes, races and religions. The problems and interests of these different groups have found place in the constitution.



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- (e) Good features of other constitutions have been included, with necessary modifications, in our constitution. For example, we have brought the 'bill of rights' from the American constitution, parliamentary system of government from the British constitution and Directive Principles of State Policy from the Irish constitution. While including these elements of other constitutions in our constitution Ambedkar said the framers of our constitution tried to remove their faults and suit them to our conditions.
- (f) Many members of the Constituent Assembly were "lawyer-politicians". They have made the constitution not only long, but also extremely complicated.
- (g) Dominance of legal luminaries in the Constituent Assembly.

Ivora Jennings has described our constitution as a 'lawyer's paradise'.

Jennings says that a constitution should be intelligible to common people, but they fail to clearly understand the Indian constitution which is very complex. Every article of this constitution can be interpreted by the higher judiciary, and lawyers, while interpreting, different articles, further complicate the constitution.

2. DRAWN FROM DIFFERENT SOURCES:- Critics of the Constitution have described it as a 'bag of borrowings, or as, 'a glorified edition of the Act of 1935' or as 'a hotch-potch of elements drawn from various sources'. But such criticism is baseless. In fact, our constitution-framers wanted to have the best from various constitutions and then to mould it according to Indian lot from the India Act of conditions. The Constitution derives a 1935. "Both in language and substance" remarks Prof. Srinivasan, almost two-thirds of the it is a close copy of the Act of 1935 constitution owes its origin to this Act with modifications in the context of the new conditions obtainable in the country" However, is not merely a glorified and enlarged edition of the Act of 1935. It has been modified to suit our needs.

BORROWED FEATURES OF CONSTITUTION

Following are the borrowed features of constitution from different countries.

From Government of India Act 1935	<ul style="list-style-type: none"> ● Federal Scheme ● Office of Governor ● Judiciary ● Public Service Commission ● Emergency provisions and administrative details
From U.K.	<ul style="list-style-type: none"> ● Nominal Head President (like Queen) ● Cabinet System of Ministers ● Post of PM ● Parliamentary Type of Govt. ● Bicameral Parliament ● Lower House more powerful ● Legislative procedure ● Prerogative* writs ● Council of Ministers responsible to Lowe House ● Speaker in Lok Sabha ● Rule of Law
From U.S.	<ul style="list-style-type: none"> ● Written Constitution ● Executive head of state known as President and his being the Supreme Commander of the Armed Forces



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	<ul style="list-style-type: none"> • Impeachment of president • Post of the Vice- President and act as the ex-officio Chairman of Rajya Sabha • Fundamental Rights • Supreme Court • Provision of States • Independence of Judiciary and judicial review • Preamble • Removal of Supreme court and High court Judges
From USSR	<ul style="list-style-type: none"> • Fundamental Duties • Ideal of justice(social, economic and political) • Five year Plan
From AUSTRALIA	<ul style="list-style-type: none"> • Concurrent list • Language of the preamble • Joint sitting of the two houses of Parliament • Provision regarding trade, commerce and intercourse
From JAPAN	<ul style="list-style-type: none"> • Law on which the Supreme Court function, procedure established by law
From WEIMAR CONSTITUTION OF GERMANY	<ul style="list-style-type: none"> • Suspension of Fundamental Rights during the emergency
From CANADA	<ul style="list-style-type: none"> • Scheme of federation with a strong centre • Distribution of powers between centre and the states and placing. Residuary Powers with the centre • Advisory jurisdiction of the supreme court.
From IRELAND	<ul style="list-style-type: none"> • Concept of Directive Principles of States Policy(Ireland borrowed it from SPAIN) • Method of election of President • Nomination of members in the Rajya Sabha by the President

3. A FEDERAL POLITY WITH A UNITARY BIAS:- In **federal set-up** there has been a two government division of powers between the Centre and the States , written constitution, supremacy of constitution, rigidity of the constitution, independent judiciary and bi-cameralism. . There are Central List, State List, Concurrent List and then some residuary powers given upon the centre. The residuary power to make laws on subjects that are not mentioned in any of the lists, like the cyber laws, rest completely with the Centre.

However, the Indian constitution also contains

1. **Unitary or non-federal features** viz. A strong centre a single constitution, single citizenship, flexibility of the constitution integrated judiciary appointment of the state Governor by the centre, All India Services, Emergency provisions and so on.

2. Moreover, the term **federation** has no where been used in the constitution. Article 1, on the other hand, describes India as a 'India that is Bharat, Union of states' Which implies two things; 1, Indian federation is not the result of an agreement by the states and to, no state has the right to secede the federation.

- Quasi federal - K C Wheare
- Bargaining federalism - Morris Jones
- Cooperative federalism - Granville Austin

4. MORE FLEXIBLE THAN RIGID:- Constitution are also classified into rigid and flexible. A rigid is one that requires a **special procedure** for its Amendment, The amendment of only a few of the provisions of the



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Constitution requires ratification by the State Legislatures and even then ratification by only 1/2 of them would suffice (while the American Constitution requires ratification by 3/4 of the States). The flexibility of our Constitution is illustrated by the fact that since its working, it has been amended 100 times (till July 2017). The Constitution of **India is neither rigid nor flexible but a synthesis of both**. Article 368 provides for two types of amendment.

- (a) some provisions can be amended by special majority of the parliament.
- (b) Some other provision can be amended by a special majority of the parliament and with the ratification by half of the total states.

At the same, some provisions of the constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. Notably therefore amendments do not come under article 368, shows that Indian Constitution is flexible as well.

5. PARLIAMENTARY FORM OF GOVERNMENT

- Based on principle of cooperation and coordination between the legislative and the executive organs
- Based on British pattern
- Also known as Westminster model, responsible government, cabinet government
- Features of parliamentary government in India:
 - a. Presence of nominal and real executives
 - b. Majority party rule
 - c. Collective responsibility of the executive to the legislature
 - d. Membership of the ministers in the legislature
 - e. Leadership of the prime minister or the chief minister and dissolution of Lok Sabha.

6. SINGLE CITIZENSHIP:- In a federation there is usually dual citizenship. A citizen belongs to the state in which he is born and also enjoys the citizenship rights of the federation. This is on the basic principle that the states in a federation are of course units but do not, at the same time, give up their individual entity. But in India there is only one citizenship. Citizens belong to the Indian Union and not to any state

7. SYNTHESIS OF PARLIAMENTARY SOVEREIGNTY AND JUDICIAL SUPREMACY

- Parliamentary sovereignty from British system while judicial supremacy from American constitution
- Supreme Court can declare the parliamentary law as unconstitutional through power of judicial review. Parliament can amend the major portion of the constitution through its constituent power
- Scope of judicial review of Supreme Court is narrower than that of U.S. because American constitution provides for due process of law against that of procedure established by law contained in the Indian constitution

8. UNIVERSAL ADULT FRANCHISE

- Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, sex, religion, literacy, wealth, etc. Voting age was reduced from 21 to 18 by 61st constitutional amendment 1988
- Universal adult franchise makes democracy broad based, enhances self respect and prestige of the common people, upholds the principle of equality, enables minorities to protect their interests.
- Article 326 of the Constitution provides that the election to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage.
- Every person who is a citizen of India and who is not otherwise disqualified is entitled to be registered as a voter in any such election. Adult suffrage is an acceptance of the fullest implication of democracy.

9. SECULAR STATE:- A multi-religious nation like India has to be a secular state. The word "Secular" was missing in our Constitution till the 42nd Amendment of the Constitution was passed. Secularism in India does not mean an irreligious or an anti-religious state.



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It only means: (i) there is no official religion for India and the Parliament has no right of imposing a particular religion as an official religion, (ii) It also means that all citizens, irrespective of their religious beliefs, are to be considered and treated as equal and (iii) no discrimination is to be shown by the State against any person on account of his/her religion either for participation in political affairs or entry into government service or admission into educational institutions.

10. FUNDAMENTAL RIGHTS:- The Fundamental Rights are guaranteed to the individuals by our constitution. These are enumerated in Part III of the constitution. These rights are fundamental because they are basic to the moral and spiritual development of the individual and these rights cannot be easily abridged by the parliament.

Now the citizen enjoys six fundamental rights, originally there were seven fundamental rights. One of them was taken away from Part III of the constitution by the Forty-fourth Amendment Act, 1978. As a result, the Right to Property is no longer a fundamental right. Since 1978, it has become a legal right.

An individual can now own property; he can enjoy it or dispose of it. But when the government takes it away, he cannot go for a writ challenging the validity of the government's action.

The six fundamental rights are - (1) Right to Equality, (2) Right to Freedom, (3) Right against Exploitation, (4) Right to Freedom of Religion, (5) Cultural and Educational Rights and (6) Right to Constitutional Remedies. The Fundamental Rights are subject to some restrictions.

The idea of fundamental rights has been borrowed from the American Constitution.

Any citizen of India can seek the help of High Court or Supreme Court of India if any of his fundamental rights is undermined by the government or any institution or any other government. The fundamental rights, granted to the citizen, cannot be amended in the normal manner. They can be amended with two-third majority in each house of the Parliament.

11. FUNDAMENTAL DUTIES:- Fundamental Duties did not form part of the constitution. Ten Fundamental Duties were inserted in **Part IV A** of the constitution 42nd Amendment Act, 1976 with the recommendation of **Swaran Singh Committee**. Some of the important Fundamental Duties are:

(1) To abide by the constitution and respect the ideals and institutions, the national flag and the national anthem; (2) To uphold and protect the sovereignty, unity and integrity of India; (3) To defend the country and render national service; (4) To protect and improve the natural environment; (5) To safeguard public property and to abjure violence.

A new Article - **Article 51-A** enumerates ten Fundamental Duties. These duties are assigned only to citizens and not to aliens. These duties are not justifiable, but, in case of conflict, they will prevail over Fundamental Rights.

12. DIRECTIVE PRINCIPLES FOR A WELFARE STATE:- These are well-prepared guidelines available to the government that can become fundamental for the governance of the country. The objective of the Constitution-makers was to draft a Constitution with social and economic justice accompanied by equality that underline a welfare state model.

The basic aim of a Welfare State was clearly foreshadowed in the Preamble to the Constitution, and virtually in the Part IV of the constitution containing the Directive Principles of State Policy.

The essence of justice is the attainment of happiness and good for all, as distinguished from the happiness and good of individuals or even for the majority of them. Justice in this sense cannot be secured unless there is a society of equals in status and opportunity.



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Equality of status and opportunity are not available unless all sections of the people are equally in a position and circumstances to benefit from the social order that prevails. The Constitution of India not only prohibits discrimination on grounds of birth, sex, religion, caste and creed, but also adequately provides for the promotion of the interests of the Backward Classes and areas.

It seeks to remove all inequalities created by inequalities in the possession of wealth and opportunity, race, gender, caste and religion by providing just and humane conditions of work, maternity relief, leisure and cultural opportunity to every individual, prevention of exploitation in labour and industry, free education for all and the like.

13. INTEGRATED AND INDEPENDENT JUDICIARY

- Integrated: hierarchy of Supreme Court - high courts - district courts - lower courts. Enforce both central and state laws
- Independent: security of tenure of judges, fixed service conditions, all expenses of SC charged on the Consolidated Fund of India, prohibition on the discussion of judges in legislatures, ban on practice after retirement, separation of judiciary from executive, etc.

14. INDEPENDENT BODIES

- Election Commission - to ensure free and fair elections to the Parliament, the state legislatures, the office of the President and the Vice President
- Comptroller and Auditor General - to audit the accounts of the central and state governments.
- Union Public Service Commission - to conduct examinations for recruitment to all India services and higher central services.

15. EMERGENCY PROVISIONS

- To enable the President to meet any extraordinary situation effectively - to safeguard the sovereignty, unity, integrity and security of the country
- Three types of emergencies:
 - a. **National emergency** on the ground of war or external aggression or armed rebellion(art 352)
 - b. **State emergency**(President's Rule) on the ground of failure of constitutional machinery in the states(art 356) or failure to comply with the directions of the centre(art 365)
 - c. **Financial emergency** on the ground of threat to the financial stability of the country or credit of India(art 360)
- Emergency converts federal structure into unitary without a formal amendment. This transformation is a unique feature of the Indian constitution

16. THREE-TIER GOVERNMENT

- Initially dual polity - power distribution between Centre and the states
- 73rd and 74th Constitutional amendments (1992) added a third tier - local which is not found in any other constitution of the world.
- 73rd - constitutional recognition to panchayats(rural), added a new part IX and a new Schedule 11
- 74th - constitutional recognition to municipalities(urban), added a new part IX-A and a new Schedule 12

BASIC STRUCTURE OF THE CONSTITUTION

In 1973, the Supreme Court decided in the case of Keshavanada Bharati that while the Parliament was competent to amend the fundamental rights, it was not competent to change the basic structure of the Constitution. This position was reiterated by the Supreme Court in Minerva Mills Case in 1980. What is the basic structure? Some of the judges of the Supreme court held that (i) the supremacy of the Constitution, (ii) the republican and democratic form of government, (iii) secular and federal character of the government (iv) demarcation of powers between the legislature, executive and the judiciary, (v) the freedoms enshrined in Part III and the principles embodied in Part IV were the basic features. Other judges



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included these and a few other features as basic. Any how, in the 44th amendment, a few of the basic features were detailed. It said that the secular and democratic character, fundamental rights, fair elections, adult franchise, independence of the judiciary were basic features. Thus it seems as if there is no consensus as to what constitutes the basic structure. The controversy has not yet ended, and continues to be widely debated

The Parts of the Indian Constitution are given below:-

Parts	Subject Matter	Articles Covered
I	The Union and its territory	1 to 4
II	Citizenship	5 to 11
III	Fundamental Rights	12 to 35
IV	Directive Principles of State Policy	36 to 51
IV-A	Fundamental Duties	51-A
V	The Union Government	52 to 151
	Chapter I - The Executive	52 to 78
	Chapter II – Parliament	79 to 122
	Chapter III - Legislative Powers of President	123
	Chapter IV - The Union Judiciary	124 to 147
	Chapter V - Comptroller and Auditor-General of India	148 to 151
VI	The State Governments	152 to 237
	Chapter I – General	152
	Chapter II - The Executive	153 to 167
	Chapter III - The State Legislature	168 to 212
	Chapter IV - Legislative Powers of Governor	213
	Chapter V - The High Courts	214 to 232
	Chapter VI - Subordinate Courts	233 to 237
VIII	The Union Territories	239 to 242
IX	The Panchayats	243 to 243-O
IX-A	The Municipalities	243-P to 243-ZG
IX-B	The Co-operative Societies	243-ZH to 243-ZT
X	The Scheduled and Tribal Areas	244 to 244-A
XI	Relations between the Union and the States	245 to 263
	Chapter I - Legislative Relations	245 to 255
	Chapter II - Administrative Relations	256 to 263
XII	Finance, Property, Contracts and Suits	264 to 300-A
	Chapter I – Finance	264 to 291
	Chapter II – Borrowing	292 to 293
	Chapter III - Property, Contracts, Rights, Liabilities, Obligations and Suits	294 to 300
	Chapter IV - Right to Property	300-A
XIII	Trade, Commerce and Intercourse within the Territory of India	301 to 307



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XIV	Services under the Union and the States	308 to 323
	Chapter I – Services	308 to 314
	Chapter II - Public Service Commissions	315 to 323
XIV-A	Tribunals	323-A to 323-B
XV	Elections	324 to 329-A
XVI	Special Provisions relating to Certain Classes	330 to 342
XVII	Official Language	343 to 351
	Chapter I - Language of the Union	343 to 344
	Chapter II - Regional Languages	345 to 347
	Chapter III-Language of the Supreme Court, High Courts, and so on	348 to 349
	Chapter IV-Special Directives	350 to 351
XVIII	Emergency Provisions	352 to 360
XIX	Miscellaneous	361 to 367
XX	Amendment of the Constitution	368
XXI	Temporary, Transitional and Special Provisions	369 to 392
XXII	Short title, Commencement, Authoritative Text in Hindi and Repeals	393 to 395

NOTE:- In the course of time due to various amendments 21 articles and one part i.e Part VII has been repealed while 90 new articles, 4 part i.e(IVA,IXA,IXB and IXVA) and 4 schedules (IX,X,XI and XII) has been added to the constitution.

The added Articles are given a suffix of alphabets, hence the number in the articles in the original Constitution remains the same i.e, 395 Articles but the number of Articles increased. So at present, through last article is numbered 395 and last numbered part is 22 yet the actual Articles are 464 in numbered and it is divided in to 25 parts and contains 12 schedules.

(note if question is asked in an examination how many articles in the constitution then you answer 395 article. Part VII (dealing with Part - B states) was deleted by the 7th Amendment Act (1956). On the other hand, both Part IV - A and Part XIV - A were added by the 42nd Amendment Act (1976), while Part OX-A was added by the 74th Amendment Act (1992), and Part IX-B was added by the 97th Amendment Act (2011).

SCHEDULE OF THE CONSTITUTION

First Schedule	<ul style="list-style-type: none"> List of States & Union Territories
Second Schedule	<ul style="list-style-type: none"> Salary of President, Governors, Chief Judges, Judges of High Court and Supreme court, Comptroller and Auditor General
Third Schedule	<ul style="list-style-type: none"> Forms of Oaths and affirmations
Fourth Schedule	<ul style="list-style-type: none"> Allocate seats for each state of India in Rajya Sabha
Fifth Schedule	<ul style="list-style-type: none"> Administration and control of scheduled areas and tribes
Sixth Schedule	<ul style="list-style-type: none"> Provisions for administration of Tribal Area in Asom, Meghalaya, Tripura, Mizoram & Arunachal Pradesh



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Seventh Schedule	<ul style="list-style-type: none"> • Gives allocation of powers and functions between Union & States. It contains 3 lists <ol style="list-style-type: none"> 1. Union List (For central Govt) 97 Subjects. 2. States List (Powers of State Govt) 66 subjects 3. Concurrent List (Both Union & States) 47 subjects. 																								
Eighth Schedule	<ul style="list-style-type: none"> • List of 22 languages of India recognized by Constitution <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">1. Assamese</td> <td style="width: 33%;">2. Bengali</td> <td style="width: 33%;">3. Gujarati</td> </tr> <tr> <td>4. Hindi</td> <td>5. Kannada</td> <td>6. Kashmiri</td> </tr> <tr> <td>7. Manipuri</td> <td>8. Malayalam</td> <td>9. Konkani</td> </tr> <tr> <td>10. Marathi</td> <td>11. Nepali</td> <td>12. Oriya</td> </tr> <tr> <td>13. Punjabi</td> <td>14. Sanskrit</td> <td>15. Sindhi</td> </tr> <tr> <td>16. Tamil</td> <td>17. Telugu</td> <td>18. Urdu</td> </tr> <tr> <td>19. Santhali</td> <td>20. Bodo</td> <td>21. Maithili</td> </tr> <tr> <td>22. Dogri</td> <td></td> <td></td> </tr> </table> <ul style="list-style-type: none"> • Sindhi was added in 1967 by 21 Amendment • Konkani, Manipuri and Nepali were added in 1992 by 71 amendment Santhali, Maithili, Bodo and Dogri were added in 2003 by 92 amendment <p>(Note:- classical language added in constitution :- 2004- Tamil, 2005 – Sanskrit 2008- telugu , 2008-kannada, 2013- Malayalam, 2014- Oriya)</p>	1. Assamese	2. Bengali	3. Gujarati	4. Hindi	5. Kannada	6. Kashmiri	7. Manipuri	8. Malayalam	9. Konkani	10. Marathi	11. Nepali	12. Oriya	13. Punjabi	14. Sanskrit	15. Sindhi	16. Tamil	17. Telugu	18. Urdu	19. Santhali	20. Bodo	21. Maithili	22. Dogri		
1. Assamese	2. Bengali	3. Gujarati																							
4. Hindi	5. Kannada	6. Kashmiri																							
7. Manipuri	8. Malayalam	9. Konkani																							
10. Marathi	11. Nepali	12. Oriya																							
13. Punjabi	14. Sanskrit	15. Sindhi																							
16. Tamil	17. Telugu	18. Urdu																							
19. Santhali	20. Bodo	21. Maithili																							
22. Dogri																									
Ninth Schedule	<ul style="list-style-type: none"> • Added by 1st amendment in 1951. Contains acts & orders related to land tenure, land tax, railways, industries. {Right of property not a fundamental right now} 																								
Tenth Schedule	<ul style="list-style-type: none"> • Added by 52nd amendment in 1985. Contains provisions of disqualification of grounds of defection 																								
Eleventh Schedule	<ul style="list-style-type: none"> • By 73rd amendment in 1992. Contains provisions of Panchayati Raj. 																								
Twelfth Schedule	<ul style="list-style-type: none"> • By 74th amendment in 1992. Contains provisions of Municipal Corporation. 																								