



## **TNPSC GROUP I / II - PRELIMINARY**

### **AMENDMENT TO CONSTITUTION**

#### **BASIC CONCEPT**

Is neither as easy as in Britain nor as difficult as in USA, neither flexible nor rigid but a synthesis of both.

Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure.

The Parliament cannot amend those provisions which form the 'basic structure' of the Constitution. This was ruled by the Supreme Court in the Kesavananda Bharati case (1973).

Source of procedure to amend: South African Constitution

#### **PROCEDURE FOR AMENDMENT**

**The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:**

1. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
3. Each House must pass the bill separately. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.

4. The bill must be passed in each House by a special majority, that is, a majority of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
5. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
6. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
7. The President must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament. (24<sup>TH</sup> Amendment 1974)
8. After the President's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

## TYPES OF AMENDMENTS

Article 368 provides for two types of amendments, that is, by a special majority of Parliament and also through the ratification of half of the states by a simple majority.

Some other articles provide for the amendment of certain provisions of the Constitution by a simple majority of Parliament, that is, a majority of the members of each House present and voting. Notably, these amendments are not deemed to be amendments of the Constitution for the purposes of Article 368.

Constitution can be amended in three ways:

- (1) Amendment by simple majority of the Parliament,
- (2) Amendment by special majority of the Parliament, and
- (3) Amendment by special majority of the Parliament and the ratification of half of the state legislatures.

### 1. By Simple Majority of Parliament

A number of provisions in the Constitution can be amended by a simple majority of the two Houses of Parliament outside the scope of Article 368.

These provisions include:

1. Admission or establishment of new states.
2. Formation of new states and alteration of areas, boundaries or names of existing states.
3. Abolition or creation of legislative councils in states.
4. Second Schedule—emoluments, allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
5. Quorum in Parliament.
6. Salaries and allowances of the members of Parliament.
7. Rules of procedure in Parliament.
8. Privileges of the Parliament, its members and its committees.
9. Use of English language in Parliament.
10. Number of puisne judges in the Supreme Court.
11. Conferment of more jurisdiction on the Supreme Court.
12. Use of official language.
13. Citizenship—acquisition and termination.

## **2. By Special Majority of Parliament**

The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority of the total membership of each House and a majority of two-thirds of the members of each House present and voting.

The expression 'total membership' means the total number of members comprising the House irrespective of fact whether there are vacancies or absentees.

The provisions which can be amended by this way includes:

- (i) Fundamental Rights;
- (ii) Directive Principles of State Policy; and
- (iii) All other provisions which are not covered by the first and third categories.

## **3. By Special Majority of Parliament and Consent of States**

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with

the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill.

1. Election of the President and its manner. (Articles 54, 55 and 73)
2. Extent of the executive power of the Union and the states. (Article 162)
3. Supreme Court and high courts. (Part V and VI)
4. Distribution of legislative powers between the Union and the states. (Schedule VII)
5. Goods and Services Tax Council.

### **SIGNIFICANCE OF THE AMENDMENT PROCEDURE**

1. It, as rightly said by K.C. Wheare, 'strikes a good balance between flexibility and rigidity'.
2. K.C. Wheare has admired the variety of amendment procedures contained in the Constitution of India. 'This variety in the amending process is wise but rarely found'.
3. According to Granville Austin, 'the amending process has proved itself one of the most ably conceived aspects of the Constitution. Although it appears complicated, it is merely diverse'.

### **Special Majority Under Article 61**

#### **Procedure for impeachment of the President**

1. When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.
2. No such charge shall be preferred unless,
  - (a) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and
  - (b) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.
3. When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be

investigated and the President shall have the right to appear and to be represented at such investigation.

4. If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

### **Special Majority Under Article 249**

#### **Power of Parliament to legislate with respect to a matter in the State List in the national interest**

(1) If the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

### **Important amendments**

#### **(i) State Reorganization**

<b>Amendment Number and Year</b>	<b>Amended Provisions of the Constitution</b>
7th Amendment Act,1956	<ol style="list-style-type: none"><li>1. Abolished the existing classification of states into four categories i.e., Part A, Part B, Part C and Part D states, and reorganized them into 14 states and 6 union territories</li><li>2. Extended the jurisdiction of high courts to union territories</li><li>3. Provided for the establishment of a common high court for two or more states.</li></ol>
10th Amendment Act,1961	Incorporated Dadra and Nagar Haveli in the Indian Union.
12th Amendment Act,1962	Incorporated Goa, Daman and Diu in the Indian Union.
13th Amendment Act,1962	status of a state to Nagaland and made special provisions
14th Amendment	Incorporated Puducherry in the Indian Union.

Act, 1962	Creation of legislatures and council of ministers for the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Puducherry.
22nd Amendment Act, 1969	The creation of a new autonomous State of Meghalaya within the State of Assam.
35th Amendment Act, 1974	Terminated the protectorate status of Sikkim and conferred on it the status of an associate state of the Indian Union. The Tenth Schedule was added laying down the terms and conditions of association of Sikkim with the Indian Union.
36th Amendment Act, 1975	Sikkim a full-fledged State of the Indian Union and omitted the Tenth Schedule.
69th Amendment Act, 1991	Accorded a special status to the Union Territory of Delhi by designing it as the National Capital Territory of Delhi.

## (ii) Official Languages

Amendment Number and Year	Amended Provisions of the Constitution
21 <sup>st</sup> Amendment Act, 1967	Sindhi added to schedule VIII
71st Amendment Act, 1992	Manipuri, Nepali, Konkani
92nd Amendment Act, 2003	Bodo, Dogri, Santhali, Maithili.

## (iii) Anti-defection

Amendment Number and Year	Amended Provisions of the Constitution
52nd Amendment Act, 1985 (popularly known as Anti-Defection Law)	Provided for disqualification of members of Parliament and state legislatures on the ground of defection and added a new Tenth Schedule containing the details in this regard.
91st Amendment Act, 2003	The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha (Article 75(1A)).

## (iv) Other major amendments:

### **1. First Amendment Act, 1951**

Empowered the state to make special provisions for the advancement of socially and economically backward classes and added Ninth Schedule.

### **2. Sixteenth amendment, 1963**

Prevents Secession of state from the Indian Union

### **3. Twenty-fourth Amendment (1971)**

Right of the Parliament to amend any part of the Constitution including Fundamental Rights.

### **4. Twenty-fifth Amendment (1971)**

- Curtailed the fundamental right to property
- Provided that any law made to give effect to the Directive Principle contained in Article 39 (b) or (c) cannot be challenged on the ground of violation of the rights guaranteed under Article 14, 19 and 31.

### **5. Twenty-sixth Amendment (1971)**

Abolished the titles and special privileges of former rulers of princely states.

### **6. Forty-second Amendment (1976) - "Mini Constitution"**

- It added the words 'Socialist' 'Secular' and 'Integrity' in the Preamble.
- It added a set of 10 Fundamental Duties to the Constitution. (Part IV A)
- It froze the seats in the Lok Sabha and State assemblies on the basis of the 1971 census till 2001 AD.
- Provided for administrative tribunals and other tribunals Shifted five subjects from the state list to the concurrent list

### **7. Forty-Fourth Amendment Act, 1978**

Enacted by the Janata Government mainly to nullify some of the other distortions introduced by the 42<sup>nd</sup> Amendment Act, 1976

### **8. Sixty-first Amendment (1989)**

Reduced the voting age from 21 years to 18 years for the Lok Sabha as well as assembly elections.

### **9. Seventy-Third and Seventy-Fourth Amendment Act, 1992**

It granted constitutional status to the panchayat raj institutions and the urban local bodies.

### **10. Seventy-sixth Amendment (1994)**

It seeks to bring the **Tamil Nadu Reservation Act** (which provides for 69 percent reservation in jobs and educational institutions in the state) under the Ninth Schedule of the Constitution.

### **11. Eighty Sixth constitutional amendment (2002)**

Free and compulsory education, a right of all children from 6 to 14 years of age, has given thrust to the goal of Universalization of Elementary Education.

### **12. Ninety - Third Amendment Act, 2005**

Empowered the state to make special provisions for the socially and educationally backward classes or the Scheduled Castes or the Scheduled Tribes in educational institutions including private educational institutions.

### **13. Ninety-Nineth Amendment act, 2014**

Formation of a NJAC-National Judicial Appointment Commission. It was nullified by the Supreme Court

### **(v) Recent Amendments**

Amen dment	Description	Bill for Amendment	Enforc ed on	
101 <sup>st</sup>	Introduced the Goods and Services Tax	122 <sup>nd</sup> Amendment Bill	1 July 2017	Addition of articles 246A, 269A, 279A. Deletion of Article 268A. Amendment of Articles 248, 249, 250, 268, 269, 270, 271, 286, 366, 368, Sixth Schedule, Seventh Schedule.
102 <sup>nd</sup>	Constitutional status	123 <sup>rd</sup>	11	Addition of articles



	to National Commission for Backward Classes	Amendment Bill	August 2018	338B, 342A and Added Clause 26C. Omitted Article 340. Modification of articles 338, 366
103 <sup>rd</sup>	A maximum of 10% Reservation for Economically Weaker Sections	124 <sup>th</sup> Amendment Bill, 2019	12 January 2019	Amendment to Article 15, added Clause [6], Amendment to Article 16, added Clause [6]
104 <sup>th</sup>	To extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty years.	126 <sup>th</sup> Amendment Bill	25 January 2020	Amended article 334
105 <sup>th</sup>	To restore the power of the state governments to identify Other Backward Classes (OBCs) that are socially and educationally backward.  This amendment annulled the Supreme Court judgement of 11 May 2021, which had empowered only the Central government for such identification	127 <sup>th</sup> Amendment Bill	10 August 2021	Amended Article 338B, 342A and 366
106 <sup>th</sup>	It reserves one-third of all seats for women in Lok Sabha, State Legislative Assemblies, and the Legislative Assembly of the National	128 <sup>th</sup> Amendment bill	2023	<b>Article 330A:</b> This article, inserted by the 106th amendment, mandates that one-third of the seats in the Lok Sabha, including those reserved for Scheduled

	Capital Territory of Delhi, including those reserved for SCs and STs.		<p>Castes (SCs) and Scheduled Tribes (STs), be reserved for women.</p> <p><b>Article 239AA:</b></p> <p>This article, also inserted by the 106th amendment, mandates that one-third of the seats in the Legislative Assembly of the National Capital Territory of Delhi be reserved for women.</p>
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## **EMPOWERMENT OF WOMEN**

Providing the women economic, social and educational rights, without any kind of discrimination based on gender class, religion and social status.

### **RIGHTS OF WOMEN**

The rights available to woman can be classified into two categories, namely, constitutional rights and legal rights.

The constitutional rights are those which are provided in the various provisions of the constitution. The legal rights, on the other hand, are those which are provided in the various laws (acts) of the Parliament and the State Legislatures.

#### **Constitutional Rights**

The rights and safeguards enshrined in the constitution for women are as follows:

1. The state shall not discriminate against any citizen on the ground of sex [Article 15(1)]
2. The state to secure for men and women equally the right to an adequate means of livelihood [Article 39(a)]
3. The state to secure equal pay for equal work for both men and women [Article 39(d)]
4. **73rd and 74th amendment, 1992**
  - One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [Article 243-D(3)].
  - One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women [Article 243-D(4)].

#### **Legal Rights**

The following various legislations contain several rights and safeguards for women:

1. Protection of Women from Domestic Violence Act (2005)

2. Immoral Traffic (Prevention) Act (1956)
3. Indecent Representation of Women (Prohibition) Act (1986)
4. Commission of Sati (Prevention) Act (1987)
5. Dowry Prohibition Act (1961)
6. Maternity Benefit Act (1961)
7. Medical Termination of Pregnancy Act (1971)
8. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994).
9. Equal Remuneration Act (1976)
10. Dissolution of Muslim Marriages Act (1939)
11. Muslim Women (Protection of Rights on Divorce) Act (1986)
12. Family Courts Act (1984)
13. Indian Penal Code (1860)
14. Code of Criminal Procedure (1973)
15. Indian Christian Marriage Act (1872)
16. Legal Services Authorities Act (1987)
17. Hindu Marriage Act (1955)
18. Hindu Succession Act (1956)
19. Minimum Wages Act (1948)
20. Mines Act (1952) and Factories Act (1948)
21. National Commission for Women Act (1990)
22. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013)
23. Muslim Women (Protection of Rights on Marriage) Act, 2019 in which practice of Triple Talaq is declared illegal.

The following other legislations also contain certain rights and safeguards for women:

- (i) Employees State Insurance Act (1948)
- (ii) Plantation Labour Act (1951)
- (iii) Legal Practitioners (Women) Act (1923)
- (iv) Parsi Marriage and Divorce Act (1936)
- (v) Indian Evidence Act (1872)

## **Feminism**

Feminism refers to the movements and ideologies that strive to promote empowerment of women so that they achieve equality with men.

It emerged from the last decades of 19th century propelled by scientific realisation about the innate capability and equality of women with men.

## **Woman's Education**

Savitribai Phule is the first female teacher at the first girls' school opened along with her husband Jyotirao Phule in 1848.

## **Political Participation**

The first Women's Reservation Bill to reserve 33% of seats in the Lok Sabha and State Legislative Assemblies for women was introduced as the 81st Amendment Bill in September 1996 by the Deve Gowda - led government.

## **Women Reservation Bill Granting 33% Seats to Women in Parliament**

- ❖ The Lok Sabha has passed the women's reservation Bill – the Constitution (One Hundred and Twenty-Eighth Amendment) Bill, 2023 – with near unanimity: 454 votes in favour and two against it.
- ❖ The Union Cabinet took a historic step by approving the Women Reservation Bill, The Bill mandates that one-third of the seats in the Lok Sabha and state assemblies will be reserved for women candidates.
- ❖ This provision aims to promote gender equality and increase women's representation in India's legislative bodies.
- ❖ To ensure fairness and equitable distribution, the reserved seats will be rotated after each general election. This mechanism prevents the monopolization of reserved seats by specific political parties or individuals.

- ❖ The Bill also proposes sub-reservation within the 33 percent quota for Scheduled Castes (SCs), Scheduled Tribes (STs), and Anglo-Indians.

### **National Commission for Women (NCW)**

The National Commission for women was set up in 1992 as a statutory body by National Commission for women Act, 1990. It comes under the aegis of Ministry of women and Child Development.

#### **Composition**

It is comprised of one chairperson and five members and a member secretary All the members of the commission will be nominated by the Central government for a term of three years.

Ms. Vijaya Kishore Rahatkar is the present chairman of the National Commission for Women assumed the charge of Chairperson.

Other members are, 1) Delina Khongdup, 2) Mamta Kumari and 3) Dr. Archana Majumdar

#### **Parivarik Mahila Lok Adalat**

The National Commission has evolved an innovative concept of Parivarik Mahila Lok Adalat (PMLA), which in turn supplements the efforts of the District Legal Service Authority (DLSA) for redressal and speedy disposal of the matters related to marriage and family affairs pending in various courts.

The Parivarik Mahila Lok Adalat functions on the model of the Lok Adalat. The Commission provides financial assistance to NGOs or State Women Commissions or State Legal Service Authority to organise the Parivarik Mahila Lok Adalat.

Tamil Nadu State New Policy for Women 2021 - This policy will be implemented for more than five years.

#### **Facts**

1. First country to grant “Right to vote” to women – New Zealand
2. Sexual harassment of women’s at workplace (Prevention, Prohibition and Redressal) act 2013.
3. Parliamentary Committee on Empowerment of Women

- It was constituted in 1997 and consists of 30 members (20 from Lok Sabha and 10 from Rajya Sabha). It considers the reports of the National Commission for Women and examines the measures taken by the Union government to secure status, dignity and equality for women in all fields.
- 4. UNO had declared 1975 March 8, as International year of women.
- 5. The United Nations Development Fund for women (UNIFEM) works since 1995 to implement Beijing Platform for Action.
- 6. The first chairperson of NCW was Ms. Jayanti Patnaik (1992)

### **First in the World – Woman**

Prime Minister	Srimavo Bandaranaike	Sri Lanka
In space	Valentina Tereshkova	USSR
To scale Mt Everest	Junko Tabei	Japan
To win the Olympic gold	Charlotte Cooper	England

### **First in India - Women**

- First Women's University - SNDT University by Maharshi Karve in Pune with five students in 1916.
- First Women to hold a Union Cabinet post - Vijaya Lakshmi Pandit
- First Women to hold a Union Foreign Minister's post - Sushma Swaraj (2014)
- First Women governor of Independent India - Sarojini Naidu, in charge of United Provinces
- First Women president of UN General Assembly - Vijaya Lakshmi Pandit (1953)
- First Woman Finance minister of India - Nirmala Sitharaman

# CONSUMER PROTECTION FORUMS

## Consumer

### 1. Definition

According to Indian Consumer Protection Act, (1986), a person who buys any goods or services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment is a consumer.

### Consumer Protection

Consumer protection is a group of laws enacted to protect the rights of consumers, fair trade, competition and accurate information in the market place.

The earlier approach of 'caveat emptor' which means "Let the buyer beware", has now been changed to 'caveat venditor' meaning "Let the seller beware".

### 2. Basic Consumer Rights

Consumer Right is interpreted as "the right to have information about the quality, purity, price and standard of goods or services".

### 3. United Nations Guidelines

UN General Assembly passed a resolution on April 9, 1985 adopting a set of guidelines for consumer protection to persuade the member countries to adopt laws and policies for better protection of the interests of the consumers.

### 4. Consumer Protection Council

It was established in 1972 with the main objective of protecting consumer rights. It has a total of 20 members and all are appointed by the President of India on the advice of the Prime Minister. The term of all members is 5 years. It should meet at least once a year.

### 5. The Consumer Protection Act 1986 (COPRA)

The COPRA 1986 seeks to protect and promote the interests of consumers. The act does not create rights or liabilities but it has emerged as new forum for settlement of disputes. The loss claimed by consumers must be a loss resulting from on some "deficiency of service" of "defect in the goods".



COPRA is regarded as the 'Magna Carta' in the field of consumer protection for checking unfair trade practices, defects in goods and 'deficiency in services' in India.

## **Grievance Redressal Mechanism**

Consumer Protection Councils are established by the act at the District, State and central levels to promote and protect the rights of the consumers through awareness.

## **6. Consumer Courts in India**

The act postulates establishment of a three tier, quasi-judicial consumer dispute redressal mechanism.

### **1. District Consumer Disputes Redressal Forum**

State government can establish more than one District Forum if it deems fit to do so.

**President** - Qualification of a district judge

**Jurisdiction** - Less than ₹20 lakhs (now ₹1 crore)

### **2. State consumer Disputes Redressal Commission**

The state commission is to be appointed by the State Government in consultation with the centre.

**President** - Present or retired judge of a High Court

**Jurisdiction** - Above Rs.20 lakh and below one crore (now between one crore and 10 crores)

**Appeal** - National Commission within 30 days of the order

### **3. National Consumer Disputes Redressal Commission**

It is a quasi-judicial commission set up in 1988 under COPRA 1986. Its head office is in New Delhi.

## **Composition**

It is headed by a sitting (or) retired judge of Supreme Court. It has five members with one must be from judiciary and one must be a woman.

<b>Jurisdiction</b>	- Above one crore (now 10 crores)
<b>Appeals</b>	- Made in Supreme Court within a period of 30 days.

At present, there are more than 678 District Forums and about 35 state commissions in India.

## **7. Consumer Protection Act of 2019**

Indian Parliament in August 2019 passed this act to replace the three decades old COPRA 1986. It came into effect from 20<sup>th</sup> July 2020. The act aims to provide timely and effective administration and settlement of consumer disputes in this Digital Age.

### **Highlights of the Act**

1. E-Commerce Transactions: Including any person who buys goods or services through online electronic means.
2. Enhancement of Pecuniary Jurisdiction: Revised pecuniary limits
3. E-Filing of complaints: Electronically and to file complaints video-conferencing
4. Central Consumer Protection Authority (CCPA): Headed by a Director General to inquire consumer law violations.
5. Unfair Trade Practices: Introduces a broad definition
6. Penalties for misleading advertisements: CCPA may impose penalty upto 10 lakh rupees (or) imprisonment for upto two years. In case of subsequent offence, penalty upto lakh rupees and imprisonment upto five years.

## **8. Other Consumer Protection Legislations**

1. The Essential commodities Act 1955
2. Prevention of Food Adulteration Act, 1954
3. Weights and Measures Act, 1958
4. Indian Standard Institution (Certification marks) Act, 1952
5. Bureau of Indian Standards Act, 1986 to replace ISI by BIS

6. Indian Contract Act, 1982
7. Sale of Goods Act, 1982
8. Prevention of Black Marketing and Maintenance of Supplied of Essential Commodities Act, 1980
9. The Legal Metrology Act, 2009

## **9. Voluntary Organisations for Consumer Awareness**

### **1. Consumer Welfare Fund (CWF)**

It is operated by the Department of Consumer Affairs to strengthen the consumer advocacy movement in India.

### **2. Voluntary Consumer Organisation (VCO)**

It is supported through CWF grants for comparative testing of products and services and dissemination of the findings.

### **3. International Organisation of Consumers Union (IOCU)**

It was first established in 1960 to create cross-border campaigns and share knowledge. It has over 250 member organisations in 120 countries. Its head office is based in London, England.

# HUMAN RIGHTS

Human Rights are those rights to which all humans are entitled merely by virtue of being humans. They are the inalienable and inviolable rights of all human beings. They derive from the inherent dignity of human beings. They are essential for human survival and human development.

## Written Precursors of Human Rights Documents

1. The Cyrus Cylinder (539 B.C.)
2. The Magna Carta of 1215 (England)
3. The English Bill of Rights of 1689
4. French declaration of Rights (Declaration of the Rights of Man and Citizen) in 1789
5. The US Constitution and Bill of Rights (1791)

## Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948 in Paris. This declaration represents the first international expression of human rights to which all human beings are entitled. It is described as the “International Magna Carta”.

It was achieved by the UN’s Commission on Human Rights guided by Eleanor Roosevelt. December 10 was celebrated as Human Rights Day or International Human Rights Day.

The declaration consists of 30 articles which can be divided into four parts. These are explained below.

The first two articles contain the basic principles underlying all human rights. Thus, they state as follows:

### Basic Principles

**Article 1 :** All human beings are born free and equal in dignity and rights.

**Article 2 :** Everyone is entitled to all the human rights and freedoms, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Articles 3 to 21 consist of civil and political rights. They are as under:

**Article 3 :** Right to life, liberty and security

**Article 4 :** Freedom from slavery and servitude

**Article 5 :** Freedom from torture and inhuman punishment

**Article 6 :** Right to recognition as a person before the law

**Article 7 :** Right to equality before the law

**Article 8 :** Right to judicial remedy

**Article 9 :** Freedom from arbitrary arrest or exile

**Article 10 :** Right to a fair trial and public hearing

**Article 11 :** Right to be presumed innocent until proved guilty

**Article 12 :** Right to privacy and reputation

**Article 13 :** Right to freedom of movement

**Article 14 :** Right to seek asylum

**Article 15 :** Right to a nationality

**Article 16 :** Right to marriage and family protection

**Article 17 :** Right to own property

**Article 18 :** Freedom of thought, conscience and religion

**Article 19 :** Freedom of opinion, expression and information

**Article 20 :** Freedom of peaceful assembly and association

**Article 21 :** Right to participate in government and equal access to public service

Articles 22 to 27 contain economic, social and cultural rights. They are mentioned below:

**Article 22 :** Right to social security

**Article 23 :** Right to work and equal pay for equal work

**Article 24 :** Right to rest and leisure

**Article 25 :** Right to adequate standard of living for health and well-being including food, clothing, housing, medical care, social services and security.

**Article 26 :** Right to education

### **Article 27 : Right to participate in cultural life of community**

The last three articles specify the context within which all the human rights are to be enjoyed. Thus, they state as under:

**Article 28 :** Everyone is entitled to a social and international order in which the above rights and freedoms can be fully realised.

**Article 29 :** The exercise of the above rights and freedoms shall be limited for the purpose of securing recognition and respect for the rights and freedoms of others and for meeting the requirements of morality, public order and general welfare.

**Article 30 :** No state, group or person has any right to engage in any activity aimed at the destruction of the above rights and freedoms.

### **Facts**

1. UDHR's principles are incorporated into the Constitutions of most (above 185) nations.
2. UDHR has been translated into more than 500 languages.

### **International Bill of Human Rights**

Later on, the Universal Declaration of Human Rights was bifurcated into two separate covenants, namely, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both the covenants were adopted by the UN General Assembly in 1966 and came into force in 1976.

In addition to the above two detailed covenants, two Optional Protocols to the International Covenant on Civil and Political Rights were also adopted by the UN General Assembly.

- a. The First Optional Protocol was adopted in 1966
- b. The Second Optional Protocol was adopted in 1989.

The First Optional Protocol provides for the submission of complaints by individuals whose human rights have been violated by a State party.

The Second Optional Protocol, on the other hand, advocates the abolition of the death penalty.

The Indian Government acceded to these two International Covenants on April 10, 1979.

### **Other International Conventions**

1. Convention on the Elimination of All Forms of Racial Discrimination (1966)
2. Convention on the Elimination of All Forms of Discrimination Against Women (1979)
3. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
4. Declaration on the Right to Development (1986)
5. Convention on the Rights of the Child (1989)
6. Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)
7. Convention on the Rights of Persons with Disabilities (2006)
8. UN Declaration on the Rights of Indigenous People (2007)

## Human Rights in India

According to Section 2 of the Protection of Human Rights Act (1993), “human rights” refer to the rights of the individual to life, liberty, equality, and dignity that are guaranteed by the Constitution or embodied in International Covenants and enforceable by Indian courts.

The Preamble, the Fundamental Rights and the Directive Principles of State Policy reflect the principles and provisions of the Universal Declaration of Human Rights (1948).

The Supreme Court has also expanded the scope of human rights contained in the Fundamental Rights. The examples of such un-enumerated fundamental rights are right to health, right to speedy trial, right against torture, right to privacy, right to travel abroad, right to free legal aid, and so on.

The Constitution of India and the laws of Parliament provide for the establishment of national and state commissions for the protection and promotion of those rights.

## National Commissions Related to Human Rights

S.No.	Name of the Commission	Established Under
1	National Commission for SCs	Constitution (Article 338)
2	National Commission for STs	Constitution (Article 338-A)
3	Special Officer for Linguistic Minorities	Constitution (Article 350-B)
4	National Human Rights Commission	The Protection of Human Rights Act, 1993

5	National Commission for Protection of Child Rights	The Commissions for Protection of Child Rights Act, 2005
6	National Commission for Women	The National Commission for Women Act, 1990
7	National Commission for Minorities	The National Commission for Minorities Act, 1992
8	National Commission for Backward Classes	The National Commission for Backward Classes Act, 1993
9	Central Commissioner for Disabled Persons	The Persons with Disabilities Act, 1995

### State Commissions Related to Human Rights

S.No.	Name of the Commission	Established Under
1	State Human Rights Commission	The Protection of Human Rights Act, 1993
2	State Commission for Protection of Child Rights	The Commissions for Protection of Child Rights Act, 2005
3	State Commissioner for Disabled Persons	The Persons with Disabilities Act, 1995
4	State Commission for SCs and STs	Act of the State Legislature or Executive Resolution of the State Government
5	State Commission for Women	Act of the State Legislature or Executive Resolution of the State Government
6	State Commission for Minorities	Act of the State Legislature or Executive Resolution of the State Government
7	State Commission for Backward Classes	Act of the State Legislature or Executive Resolution of the State Government

### NATIONAL HUMAN RIGHTS COMMISSION

The National Human Rights Commission is a statutory (and not a constitutional) body. It was established in 1993 under a legislation enacted by the Parliament, namely, the Protection of Human Rights Act, 1993. This Act was amended in 2006 and 2019.

The commission is the watchdog of human rights in the country, that is, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India.



## Composition of the Commission

- The commission is a multi-member body consisting of a chairman and five members.
- The chairman should be a retired judge of the Supreme Court
- The members should be serving or retired judges of the Supreme Court, a serving or retired chief justice of a high court and two persons having knowledge or practical experience with respect to human rights.
- In addition to these fulltime members, the commission also has seven ex-officio members—the chairpersons of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs the National Commission for Women, National Commission for BCs, the National Commission for Protection of Child Rights and Chief Commissioner for persons with disabilities.

## Current Chairman of the National Human Rights Commission (NHRC)

The current Chairman of the National Human Rights Commission (NHRC) is Justice V. Ramasubramanian. He is the Ninth chairman of the National Human Rights Commission of India.

Name	Chairman
1. Shri Justice V. Ramasubramanian	Chairperson
2. Dr. dnyaneshwar Manohar Mulay	Member
3. Shri Rajiv Jain	Member
4. Mr. Iqbal Singh Lalpura, Chairperson, National Commission for Minorities	Ex-Officio Member
5. Shri shri Vijay Sampla, National Commission for Schedule Castes	Ex-officio Member
6. Shri Harsh Chouhan, Chairperson, National Commission for Schedule Tribes	Ex-Officio Member
7. Ms. Rekha Sharma, Chairperson, National Commission for Women	Ex-Officio Member
8. Shri Priyank Kanoongo, Chairperson, National Commission for Protection of Child Rights	Special Invitee to Statutory Full Commission
9. Shri Hansraj Gangaram Ahir, Chairperson, National Commission for Backward Classes	Ex-Officio Member
10. Chief Commissioner for Persons with Disabilities	Ex-officio Member

The chairman and members are appointed by the president on the recommendations of a six-member committee consisting of the prime minister as its head, the Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha,

leaders of the Opposition in both the Houses of Parliament and the Central home minister.

The chairman and members hold office for a term of five years (now three years) or until they attain the age of 70 years, whichever is earlier.

### **Working of the Commission**

The commission's headquarters is at New Delhi and it can also establish offices at other places in India. It is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character.

The commission is not empowered to inquire into any matter after the expiry of **one year** from the date on which the act constituting violation of human rights is alleged to have been committed.

### **Role of the Commission**

- i. The functions of the commission are mainly recommendatory in nature.
- ii. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim.
- iii. Its recommendations are not binding on the concerned government or authority.

### **Human Rights (Amendment) Act, 2006**

1. Empowering the NHRC to undertake visits to jails even without intimation to the state Governments
2. Empowering the Commissions to recommend award of compensation, etc. even during the course of enquiry

**Note:** The first Chairman of National Human Rights Commission was Ranganath Misra.

### **STATE HUMAN RIGHTS COMMISSION**

- Twenty-five states have constituted the State Human Rights Commissions through Official Gazette Notifications.
- Tamil Nadu Human rights commission was established on 17th April 1997.

### **Composition of the commission**

- It consists of a chairperson and two members.
- The chairperson should be retired a judge of High Court.

- The members should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years of experience as District Judge and a person having knowledge or practical experience with respect to human rights.
- The chairperson and members are appointed by the Governor but can be removed only by the President

### **Tamil Nadu State Human Rights Commission**

<b>S. No.</b>	<b>Designation</b>	<b>Name</b>
1.	Chairperson	Justice S. Mani Kumar
2.	Member	Thiru Justice Raja Elango
3.	Member	Thiru V. Kannadasan
4.	Secretary	Dr. K. Vijaya Karthikeyan, IAS

### **Role of the commission**

State Human Rights Commission can inquire into violation of human rights only in respect of subjects mentioned in the State List (List-II) and the Concurrent List (List-III) of the Seventh Schedule of the Constitution.

### **HUMAN RIGHTS COURTS**

The Protection of Human Rights Act (1993) also provides for the establishment of Human Rights Court in every district for the speedy trial of violation of human rights. These courts can be set up by the state government only with the concurrence of the Chief Justice of the High Court of that state.

For every Human Rights Court, the state government specifies a public prosecutor or appoints an advocate (who has practiced for seven years) as a special public prosecutor.

### **Child Rights**

The Convention on the Rights of the Child was proclaimed by UN on 20th November 1989. UN has declared 1979 as the international year of Children.

### **Protecting rights of the Children**

- a. The Child Labour (Prohibition and Regulation) Act, 1986
- b. National Commission for Protection of Child Rights (2007)
- c. Tamil Nadu Commission for Protection of Child Rights (2007)

- d. Right to Education Act, (Article 21A) 2009
- e. The Protection of Children from Sexual Offences (POCSO) Act, 2012 - came into force from November 14, 2012 and was amended in 2019
- f. Juvenile Justice (Care and Protection of Children) Act, 2015 - came into force from January 15, 2016

