West Bengal Judicial Service (Mains) 2018: Constitution and Constitutional Law — Solution

THE INDIAN CONSTITUTION AND CONSTITUTIONAL LAW

GROUP - A

1. Explain the concept equal opportunity and elaborate the doctrine "protective discrimination" with special reference to Articles 15 and 16 of the Constitution of India.

The concept of equal opportunity and the doctrine of "protective discrimination," particularly in the context of Articles 15 and 16 of the Constitution of India, represent fundamental aspects of the Indian legal and constitutional framework. These concepts aim to address historical injustices and societal imbalances by ensuring equality for all citizens and providing measures for the upliftment of disadvantaged groups.

Equal Opportunity
Definition: Equal opportunity refers to the idea that all individuals should have a fair chance to compete for resources, positions, and rights without discrimination based on irrelevant characteristics like caste, religion, gender, or place of birth.

Constitutional Basis in India: The Constitution of India, through various provisions, enshrines the right to equality and equal opportunity for all its citizens. This includes the right to be treated equally before the law, prohibition of discrimination on various grounds, equality of opportunity in matters of public employment, and the protection of certain rights against exploitation.

Protective Discrimination
Doctrine of Protective Discrimination: This doctrine refers to the constitutional strategy of providing special measures or affirmative action for the advancement of historically disadvantaged groups. It recognizes that certain sections of society, due to historical and systemic discrimination, need special protections and advantages to compete on a level playing field.

Legal and Constitutional Framework: Articles 15 and 16 of the Constitution of India are crucial in this regard.

Article 15: Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. However, it also allows the state to make special provisions for women and children, and for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

Article 16: Article 16 guarantees equality of opportunity in matters of public employment. It prohibits discrimination on the grounds of religion, race, caste, sex, descent, place of residence, or any of them. However, it also permits the state to make provisions for the reservation of appointments or posts in favour of any backward class of citizens, which, in the opinion of the state, is not adequately represented in the services under the state.

Application and Interpretation
Balancing Act: The Indian judiciary has played a significant role in interpreting these provisions, often balancing the need for affirmative action with the principle of equality. The Supreme Court of India, through various judgments, has upheld the constitutionality of reservations and special provisions, while also ensuring that such measures do not undermine the essence of equality.

Evolution of Jurisprudence: Over the years, the interpretation of these articles has evolved. The judiciary has dealt with complex issues like the determination of backward classes, the extent of reservation, the concept of creamy layer, etc.

Case Law: Landmark cases like Indra Sawhney v. Union of India (1992) have been pivotal in shaping the jurisprudence around protective discrimination. The Supreme Court in this case laid down significant guidelines regarding reservations and the concept of the 'creamy layer' within backward classes.

The concepts of equal opportunity and protective discrimination in the Indian constitutional context represent a nuanced approach to achieving true equality. By acknowledging the historical and systemic disadvantages faced by certain sections of society, these provisions aim to provide them with a level playing field. Articles 15 and 16 of the Constitution of India exemplify this approach, balancing the ideals of equality with the realities of social inequality, and striving to create an inclusive society where every citizen has the opportunity to thrive.

2. "The Judicial review of a proclamation under Article 356 of the Constitution of India would lie on any of the grounds upon which any executive determination which is found on subjective satis-

faction can be questionable" - D.D. Basu.

In the light of the above statement discuss the scope and ambit of the power of judicial review under Article 356 of the Constitution.

The statement by D.D. Basu highlights the scope and complexities surrounding the judicial review of a proclamation issued under Article 356 of the Constitution of India. Article 356, often referred to as a tool for imposing President's Rule in a state, has been one of the most debated provisions in the Indian Constitution, especially regarding its susceptibility to misuse and the extent of judicial scrutiny over such proclamations.

Article 356: An Overview

- **Context:** Article 356 empowers the President of India to impose President's Rule in a state under certain circumstances. This typically happens if the President, upon receiving a report from the Governor of the state or otherwise, is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.
- **Use:** It enables the central government to take over the state administration, including the legislative powers, when there is a breakdown of constitutional machinery in that state.

Judicial Review of Article 356 Proclamations

The power of judicial review under Article 356 was established and expounded upon in several landmark judgments:

S.R. Bommai vs. Union of India (1994): This landmark judgement by the Supreme Court of India laid down explicit guidelines for the imposition of President's Rule in a state and its judicial review. The Court held that the proclamation under Article 356 is subject to judicial review and can be struck down if it is malafide or based on irrelevant or extraneous grounds.

Grounds for Review: The proclamation can be reviewed on grounds of malafide, mala fide exercise of power, based on irrelevant considerations, or if the situation does not meet the criteria of a breakdown of constitutional machinery.

Subjective Satisfaction and Objectivity: The statement by D.D. Basu points out that while the President's satisfaction is subjective, it should not be arbitrary or whimsical. The Supreme Court in the S.R. Bommai case affirmed that the satisfaction of the President must be based on relevant material and is amenable to judicial scrutiny.

Scope of Review: The scope of judicial review includes examining whether there was any material at all (factual or legal) to warrant the belief that the government of the state cannot be carried on in accordance with the Constitution. The review also encompasses checking whether the material was relevant and whether the proclamation was issued in bad faith.

Ambit of Power: The judicial review does not extend to questioning the sufficiency of the material or its adequacy but is confined to ascertaining whether the material was pertinent and the decision was not vitiated by malafides or irrelevant considerations.

Constitutional Safeguards

- **Parliamentary Approval:** A proclamation issued under Article 356 requires the approval of both Houses of Parliament within a stipulated timeframe. This acts as a constitutional check against arbitrary use of Article 356.
- **Federal Structure:** The judicial review of Article 356 proclamations is crucial in protecting the federal structure of India, ensuring that the central government does not misuse its powers to undermine state governments unreasonably.

The power of judicial review under Article 356 of the Indian Constitution is a testament to the system of checks and balances ingrained in the constitutional framework of India. It ensures that the drastic measure of imposing President's Rule in a state is not misused and is exercised only when there is a genuine breakdown of constitutional machinery in the state. This judicial oversight is pivotal in maintaining the sanctity of federalism and democratic governance in India. The rulings, particularly the S.R. Bommai judgement, have significantly curtailed arbitrary use of Article 356 and have upheld the principle of constitutionalism and the rule of law.

3. Write a critical note on the right to freedom of religion under Articles 25 to 28 of the Constitution of India.

The right to freedom of religion, as enshrined in Articles 25 to 28 of the Constitution of India, represents a fundamental aspect of the secular fabric of the Indian state. These provisions ensure the religious freedom of individuals and groups, safeguarding the diverse and pluralistic nature of Indian society. A critical examination of these articles reveals both their comprehensive scope and the challenges in their application.

Articles 25 to 28: An Overview
Article 25: Guarantees the freedom of conscience and the right to freely profess, practice, and propagate religion. This right is subject to public order, morality, health, and other provisions relating to fundamental rights.

Article 26: Provides religious denominations the right to establish and maintain institutions for religious and charitable purposes, manage their own affairs in matters of religion, own and acquire movable and immovable property, and administer such property in accordance with law.

Article 27: Prohibits the state from levying any tax for the promotion or maintenance of any particular religion or religious denomination.

Article 28: Regulates religious instruction in educational institutions wholly maintained, recognized, or aided by the state.

Critical Analysis
Balance of Rights and Restrictions: Article 25, while providing for the freedom of religion, allows for restrictions based on public order, morality, and health. This creates a delicate balance between individual rights and societal interests, often leading to complex legal and constitutional debates. The interpretation of what constitutes public order and morality can be subjective and has been a point of contention in various legal cases.

Secularism and Equality: These articles collectively uphold the secular ethos of the Constitution, affirming that the state shall not discriminate against any citizen on the basis of religion. However, the application of these principles in a deeply religious society poses challenges, especially when religious practices come into conflict with the law of the land or other fundamental rights.

Religious Denominations (Article 26): The right of religious denominations to manage their own affairs can sometimes clash with individual rights or broader legal principles. For instance, the entry of women into certain religious places has led to legal battles where the right to equality conflicts with the rights of religious denominations.

State and Religion (Article 27): This article's prohibition of state taxation for religious activities upholds the principle of secularism. However, the state's involvement in religious institutions, particularly in the administration of certain temples and religious trusts, raises questions about the state's role in religion.

Religious Education (Article 28): This article addresses the complex issue of religious instruction in educational institutions, balancing the rights of religious groups with the secular nature of state institutions.

Challenges and Interpretations
The interpretation and application of these articles have been subjects of various landmark judgments in India. Courts have often had to navigate complex socio-religious landscapes while upholding constitutional principles. The tension between individual freedoms and societal norms, the intersection of religion with other rights like equality and non-discrimination, and the role of the state in religious matters are recurrent themes in the judicial interpretation of these articles.

Articles 25 to 28 of the Constitution of India collectively provide a comprehensive legal framework for the right to freedom of religion. While they reflect the constitutional commitment to secularism and religious

freedom, their implementation in a diverse and pluralistic society like India presents ongoing challenges. Balancing individual religious rights with public order, morality, and health, and reconciling the rights of religious denominations with the principles of equality and non-discrimination are critical aspects of this legal framework. The evolving jurisprudence in this area continues to shape India's approach to religious freedom and secularism.

GROUP - B

4. (a) Discuss the concept "minorities" under the Constitution of India.

The concept of "minorities" in the context of the Constitution of India is a significant aspect of the nation's legal and societal framework, reflecting India's commitment to protecting the rights and interests of various religious and linguistic groups that are numerically smaller than the majority population.

Definition and Identification

- **No Explicit Definition:** The Constitution of India does not provide a precise definition of 'minorities'. However, the term is generally understood to refer to groups that are numerically smaller compared to the rest of the population, particularly in terms of religion and language.
- **Contextual Understanding:** In the Indian context, 'minorities' primarily refer to religious and linguistic groups. These include, but are not limited to, Muslims, Christians, Sikhs, Buddhists, Jains, and Parsis as religious minorities, and various linguistic groups in different states.

Constitutional Provisions

- **Article 29:** It guarantees the protection of the interests of minorities. It provides that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script, or culture has the right to conserve the same.
- **Article 30:** It grants religious and linguistic minorities the right to establish and administer educational institutions of their choice, ensuring the preservation of their language, script, or culture.

Significance and Interpretation

- **Protection of Diversity:** These provisions underscore India’s commitment to protect the diverse tapestry of its cultural, linguistic, and religious communities. They recognize the importance of preserving the unique identity and heritage of each group.
- **Equal Rights:** While providing special rights to minorities, the Constitution also ensures that these rights are not in contravention of the overall framework of equality and nondiscrimination enshrined in the Constitution.
- **Judicial Interpretation:** The Supreme Court of India has played a vital role in interpreting the scope and extent of these rights. The judiciary has balanced minority rights with the concept of national integration, ensuring that minority rights do not override the overarching values of unity and integrity of the nation.
- **National Commission for Minorities:** Established under the National Commission for Minorities Act, 1992, this body works towards evaluating the progress of the development of minorities, monitoring the working of safeguards provided in the Constitution and laws, and making recommendations for their effective implementation.

Challenges and Critiques

- **Determining Minority Status:** The lack of a clear-cut definition of 'minorities' in the Constitution has led to debates and legal challenges regarding the criteria for determining minority status.
- **Uniform Civil Code and Minority Rights:** The debate around the implementation of a Uniform Civil Code, as mentioned in Article 44 of the Constitution, often intersects with the discourse on minority rights, especially regarding personal laws.

The concept of minorities in the Indian Constitution reflects the country's pluralistic ethos and its commitment to safeguarding the rights and identities of various religious and linguistic groups. By providing specific protections and rights, the Constitution aims to ensure that minorities are able to preserve and promote their unique cultural and religious identities, contributing to India’s rich diversity. The interpretation and application of these rights remain a dynamic and evolving aspect of Indian jurisprudence, balancing minority protections with the broader goals of national unity and integrity.

4. (b) What are the rights of minorities have been recognised under Article 30 of the Constitution of India ? Citing judicial decision discuss the nature and ambit of minorities rights.

Article 30 of the Constitution of India provides special rights to minorities, both religious and linguistic, to establish and administer educational institutions of their choice. These rights are fundamental in ensuring the preservation of the distinct culture and language of minorities. The nature and ambit of these rights have been elaborated through various judicial decisions, which have played a crucial role in interpreting and defining the scope of these rights.

Rights Under Article 30
Right to Establish and Administer Educational Institutions: Article 30(1) grants minorities the right to establish and administer educational institutions of their choice. This includes the freedom to impart education in their own way, subject to general regulations regarding educational standards, health, sanitation, and public order.

Non-Discrimination in Grant of Aid: Article 30(2) ensures that the state shall not discriminate against any educational institution managed by a minority in granting aid. This provision ensures a level playing field for minority institutions in terms of state support.

Judicial Interpretations and Decisions
Several landmark judgments have interpreted the rights under Article 30, shaping their current understanding:

St. Xavier's College vs. State of Gujarat (1974): The Supreme Court held that the right of minorities to administer educational institutions involves the right to establish, organize, and maintain these institutions. The Court also emphasized that the administration must be free of control so that the founders or their nominees can effectively direct the teaching and education of the students.

T.M.A. Pai Foundation vs. State of Karnataka (2002): This judgement is a pivotal one, where the Court held that minority educational institutions have the right to choose their students. However, this right is not absolute and must yield to the national interest. The Court also clarified that regulatory measures to ensure educational standards and excellence are permissible but should not impinge on the minority's right to administer their institutions.

P.A. Inamdar vs. State of Maharashtra (2005): In this case, the Supreme Court held that minority educational institutions are not subject to reservation policy for backward classes as this would defeat the purpose of Article 30(1). The institutions, however, are free to admit students of their choice, including students of non-minority groups.

Nature and Ambit of Minority Rights
- **Protection of Identity:** Article 30 aims to protect the identity of minorities and preserve their culture and language through education.
- **Balance of Rights:** While these rights are protective in nature, they are not absolute and are subject to reasonable restrictions in the interest of public order, morality, and health.
- **Admissions and Administration:** Minority institutions can admit students and appoint staff as per their choice, within the framework of general laws relating to education.
- **State Regulation:** The state can impose regulations to ensure educational standards, but such regulations should not dilute the right of minorities to administer their institutions effectively.

The rights of minorities under Article 30 of the Indian Constitution represent a crucial aspect of India's commitment to pluralism and diversity. Judicial decisions have played a vital role in interpreting these rights, ensuring that they are protected while balancing them with the broader objectives of national interest and educational standards. These rulings have helped in delineating the scope of Article 30, ensuring that minority institutions enjoy autonomy in their administration while adhering to the national goals of equality, excellence, and inclusivity in education.

5. (a) Discuss the President's election procedure.

The election of the President of India is a process governed by the Constitution of India and the Presidential and Vice-Presidential Elections Act, 1952. The procedure is intricate and designed to reflect the federal structure of the nation, ensuring that the President is elected by representatives from across India, including both the Union and the states.

Constitutional Provisions:

- **Article 54:** The President is elected by an electoral college consisting of elected members of both Houses of Parliament (Lok Sabha and Rajya Sabha) and the elected members of the Legislative Assemblies of the States (including National Capital Territory of Delhi and the Union Territory of Puducherry).
- **Article 55:** Provides for the manner of election of the President. It mandates a proportional representation system using a single transferable vote and secret ballot.

Election Procedure

Electoral College Composition:

- Members of the Lok Sabha and Rajya Sabha (both elected and nominated members).
- Elected members of the Legislative Assemblies of States and Union territories with legislatures.

Value of Votes:

- The value of the vote of each Member of Parliament (MP) is uniform across the country.
- The value of the vote of each Member of the Legislative Assembly (MLA) is based on the population of the respective state as per the 1971 census.

Single Transferable Vote and Secret Ballot:

- The election uses a single transferable vote system, where electors rank candidates in order of preference.
- To be elected, a candidate must achieve a specific quota of votes, calculated based on the number of votes cast and the number of candidates.

Nomination:

- A candidate for the presidency must be nominated by at least fifty electors as proposers and fifty electors as seconders.
- The nomination papers are to be filed before the expiry of the nomination period.

Eligibility:

- The candidate must be a citizen of India, aged 35 or older.
- The candidate must qualify to be a member of the Lok Sabha and must not hold any office of profit under the Government of India or any state government.

Conduct of Election:

- The Election Commission of India conducts and oversees the entire process.
- The election is held as per the schedule decided by the Election Commission.

Counting of Votes:

- The votes are counted according to the system of proportional representation by means of a single transferable vote.
- If no candidate achieves the required quota after the first count, the candidate with the fewest first-preference votes is eliminated, and their votes are transferred to the remaining candidates based on the second preference.

Declaration of Result:

- The candidate who achieves the required quota is declared the President-elect.
- **Disputes:** Any disputes regarding the Presidential election are to be inquired into and decided by the Supreme Court of India, whose decision is final.

The election process of the President of India is a complex mechanism that integrates the principles of proportional representation and the federal structure of the country. It ensures a broad-based consensus in the selection of the head of state, reflecting the diversity and plurality of India. The process is meticulously governed by constitutional provisions and overseen by the Election Commission, maintaining the sanctity and fairness of the electoral process.

5. (b) Discuss the powers and functions of the President.

The President of India holds a primarily ceremonial position under the Constitution of India but also has significant responsibilities as the nominal head of the state, especially in matters related to the executive, legislative, and judicial functions of the government. Here is a summary of the key powers and functions of the President as outlined in various sections of the Indian Constitution:

Executive Powers

- **Article 53** vests the executive power of the Union in the President, to be exercised directly or through officers subordinate to him. This includes supreme command of the armed forces.

- **Article 77** states that all executive actions of the Government of India shall be expressed to be taken in the name of the President.

Legislative Powers

- **Article 79** establishes that the President is a part of the Parliament, which includes the House of the People (Lok Sabha) and the Council of States (Rajya Sabha).

- **Article 86** grants the President the right to address and send messages to Parliament.

- **Article 87** outlines the President's role in addressing the opening session of Parliament and the first session after each general election.

- **Article 123** empowers the President to promulgate ordinances during recess of Parliament, which have the same force and effect as laws passed by Parliament.

Judicial Powers

- **Article 72** allows the President to grant pardons, reprieves, respites, or remissions of punishment, or to suspend, remit or commute the sentence of any person convicted of any offence.

Diplomatic, Military, and Emergency Powers

- **Article 75** notes the President appoints the Prime Minister and, on the advice of the Prime Minister, appoints the other ministers.

- **Article 78** involves the President's right to require the Prime Minister to furnish information relating to the administration of the affairs of the Union.

- **Article 356** allows the President to proclaim a state of emergency in a state if there is failure of constitutional machinery, often referred to as President's Rule.

- **Article 360** empowers the President to declare a financial emergency if the financial stability or credit of India or any part thereof is threatened.

Miscellaneous Powers

- **Article 143** provides the President the power to seek advice from the Supreme Court on questions of law or fact which are of public importance.

The President's role is designed to ensure that the constitutional framework functions smoothly, acting as a guardian of the Constitution in various capacities. While most powers must be exercised based on the advice of the Council of Ministers headed by the Prime Minister, the President's role is pivotal in safeguarding the spirit of democracy and constitutionalism in India.

6. Discuss the circumstances under which various types of writs can be issued under Article 226 of the Constitution of India.

Article 226 of the Constitution of India empowers the High Courts to issue certain writs for the enforcement of any of the rights conferred by Part III of the Constitution (Fundamental Rights) and for any other purpose. The scope of Article 226 is broad, and the High Courts have the discretion to issue writs for a range of purposes, ensuring the protection of constitutional rights and the redressal of grievances against the actions or inactions of authorities and individuals. The various types of writs that can be issued under Article 226 are Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo-Warranto, each with specific circumstances under which they are issued.

Types of Writs and Their Circumstances
Habeas Corpus

- **Meaning:** "You may have the body."
- **Purpose:** To release a person who has been unlawfully detained or imprisoned.
- **Circumstances:** Issued when a person is detained without legal justification or when the conditions of detention are in violation of legal provisions.

Mandamus

- **Meaning:** "We command."
- **Purpose:** To command a public authority to perform a statutory duty that it has failed or refused to perform.
- **Circumstances:** Issued when a public officer or a government body fails to perform a mandatory duty. It cannot be issued against a private individual or body and is not granted where the petitioner has an alternative remedy.

Prohibition

- **Meaning:** "To forbid."
- **Purpose:** To prevent an inferior court, tribunal, or quasi-judicial body from exercising jurisdiction that it does not possess.
- **Circumstances:** Issued when a lower court or tribunal usurps jurisdiction beyond its scope or acts contrary to the rules of natural justice.

Certiorari

- **Meaning:** "To be certified" or "To be informed."
- **Purpose:** To quash the order already passed by an inferior court, tribunal, or quasi-judicial body.
- **Circumstances:** Issued when a lower court or tribunal has passed an order without jurisdiction, has failed to comply with the principles of natural justice, or has made an error of law apparent on the face of the record.

Quo-Warranto

- **Meaning:** "By what authority."
- **Purpose:** To challenge the legality of a person occupying a public office.
- **Circumstances:** Issued to prevent a person from holding an office to which he/she is not legally entitled. It inquires into the legality of the claim of the person to the public office.

Judicial Interpretation and Application

- The Supreme Court and various High Courts have set precedents on the application of these writs, ensuring a broad interpretation to encompass various situations where constitutional or legal rights are infringed.
- The remedy under Article 226 is discretionary, and the courts exercise this power judiciously, considering the facts and circumstances of each case.

Conclusion
Article 226 empowers the High Courts to issue writs as a means to ensure the enforcement of rights and the proper administration of justice. The types of writs cater to different scenarios, ranging from unlawful detention to the abuse of power by public officials. This provision underlines the role of the High Courts as protectors of constitutional rights and is instrumental in maintaining the rule of law and upholding the principles of natural justice. The flexibility and wide scope of Article 226 make it a potent tool for safeguarding rights and remedying grievances in a diverse range of legal and administrative matters.

7. Write notes on any three of the following :-

(a) Secularism

Secularism is a fundamental concept in modern political and social philosophy, and it holds significant importance in the context of the Indian Constitution. It's a principle that governs the relationship between the state and religion. In the Indian context, secularism is unique and distinct from the Western model of secularism.

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Conceptual Understanding of Secularism:
Western Model: In Western democracies, secularism often means the separation of religion and state. The state remains neutral in religious matters and does not endorse any religion. This model is sometimes referred to as the 'wall of separation'.

Indian Model of Secularism: Indian secularism, as embedded in the Constitution, does not strictly adhere to the doctrine of separation. Instead, it is based on the principle of 'Sarva Dharma Sambhava', which implies equal respect for all religions. The Indian state does not uphold any religion as the state religion and treats all religions with equal respect and honor.

Constitutional Basis of Secularism in India:
Preamble to the Constitution: The Preamble of the Indian Constitution declares India to be a "sovereign socialist secular democratic republic." The 42nd Amendment Act, 1976, explicitly inserted the word "secular" into the Preamble, reaffirming the commitment to secularism.

Fundamental Rights: Various provisions under the Fundamental Rights in the Constitution support secularism:

- Article 14 guarantees equality before the law and prohibits discrimination on grounds of religion.
- Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth.
- Articles 25 to 28 guarantee freedom of religion, including the freedom to profess, practice, and propagate any religion, and freedom from paying any tax for promotion of any particular religion.

Directive Principles of State Policy: Article 44 of the Directive Principles advocates for the Uniform Civil Code, aiming to unify personal laws, which currently vary based on religious beliefs.

Indian Secularism in Practice:
Equal Treatment of All Religions: Unlike the secular model of some Western countries where the state maintains a strict neutrality towards religion, the Indian state actively engages with religions. The state can intervene in religious matters for the purpose of social welfare and reform while maintaining impartiality.

Religious Personal Laws: India has different personal laws for different religions in matters like marriage, divorce, inheritance, etc. The existence of these laws is a manifestation of the Indian version of secularism, which accommodates religious diversity.

Religious Freedom and Communal Harmony: Secularism in India aims to maintain communal harmony and ensure that religious communities coexist peacefully. The state plays a role in regulating religious practices to prevent communal tensions and uphold public order.

Judicial Interpretations: The Indian judiciary has played a crucial role in interpreting and safeguarding secularism. Courts have often intervened to uphold secular values and ensure that religious practices do not violate fundamental rights.

Challenges to Secularism in India:
Communalism and Religious Riots: India has witnessed communal tensions and riots, challenging the secular fabric of the nation.

Political Exploitation of Religion: The use of religion for political gains is a challenge to secular principles.

Uniform Civil Code: The debate over the Uniform Civil Code, as mentioned in Article 44, remains a contentious issue, reflecting the complexities in balancing religious diversity with the goal of legal uniformity.

Secularism in India is a distinctive model that embodies the principles of religious neutrality, equal respect for all religions, and active state intervention for social reform and religious harmony. It is a cornerstone of the Indian democratic framework, ensuring that religious diversity is accommodated and respected within the legal and constitutional order. However, the practice of secularism faces challenges in balancing religious freedoms with the rights and liberties of all citizens, and in navigating the complexities of a multi-religious society.

7. (b) Utility of the preamble to the Constitution of India

The Preamble to the Constitution of India serves as an introduction to the Constitution and presents the guiding principles and values upon which the constitutional framework is built. Its utility is multifaceted, providing insight into the vision of the framers of the Constitution, the objectives of the Indian state, and the core principles that guide the interpretation and application of the Constitution.

Guiding Light and Interpretative Tool

- **Reflects the Objectives of the Constitution:** The Preamble articulates the fundamental objectives of the Constitution such as Justice, Liberty, Equality, and Fraternity. It sets forth the aims and aspirations that the Constitution seeks to realise.
- **Interpretative Aid:** The Preamble serves as a significant tool in the interpretation of statutes and provisions of the Constitution. It helps in understanding the intent and spirit of the Constitution, especially when the language of a specific article is ambiguous or open to interpretation.

Source of Fundamental Principles

- **Declaration of Sovereignty:** It declares India to be a Sovereign entity, which implies freedom from external control. This is pivotal in international relations and in the maintenance of territorial integrity.
- **Establishment of a Socialist, Secular, and Democratic Polity:** The Preamble specifies that India is a Socialist (added by the 42nd Amendment in 1976) and Secular state, emphasising social welfare and religious freedom. It also reinforces the democratic nature of the country, indicating that the government is of the people, by the people, and for the people.
- **Assurance of Justice, Liberty, Equality, and Fraternity:** It guarantees justice (social, economic, and political), liberty of thought, expression, belief, faith, and worship, equality of status and opportunity, and promotes fraternity to maintain the unity and integrity of the nation.

Constitutional Amendments and the Preamble

- **Amendability:** The Preamble has been subject to amendment, demonstrating its dynamic nature. The 42nd Amendment in 1976 added the words 'Socialist', 'Secular', and 'Integrity' to the Preamble, reflecting the evolving ethos of the Indian state.
- **Supreme Court's Interpretation:** In the landmark Kesavananda Bharati case (1973), the Supreme Court of India held that although the Preamble is a part of the Constitution, it is not enforceable in a court of law. However, it plays a crucial role in interpreting ambiguities in the law.

Role in Constitutional Litigations

- **Reference in Judicial Decisions:** The Preamble is often cited in judicial decisions as embodying the essence of the constitutional vision, and it aids the judiciary in deciding cases that require a balance of fundamental values enshrined in the Constitution.

The Preamble to the Constitution of India is not just an introductory statement, but a powerful tool that encapsulates the essence and philosophy of the Constitution. It acts as a guiding light for the interpretation of constitutional provisions, reflects the core values and principles of the Indian state, and serves as a beacon in the evolution of constitutional law and governance in India. The Preamble's significance lies in its role as a constant reminder of the foundational values upon which the nation is built and the aspirations it strives to achieve.

7. (c) Rights to property

The "right to property" has evolved significantly in the context of Indian constitutional law. Initially, the right to property was a fundamental right under the Constitution of India, but subsequent amendments have changed its status and scope.

Initial Status: Fundamental Right

- **Original Provision:** In the original Constitution of India (1950), the right to property was a fundamental right under Article 31.
- **Protection:** This provision protected property rights by stipulating that no person shall be deprived of his property save by the authority of law. It also mandated compensation for the compulsory acquisition of property by the state.

The 44th Amendment and Current Status

- **44th Amendment Act (1978):** This amendment significantly altered the right to property. It removed the right to property from the list of fundamental rights and introduced a new provision, Article 300A.
- **Article 300A:** Under this article, the right to property is now a constitutional right but not a fundamental right. It provides that no person shall be deprived of his or her property save by the authority of law.

Implications of the Change

- **No Fundamental Right:** The right to property is no longer enforceable as a fundamental right. This means that individuals cannot directly approach the Supreme Court under Article 32 for infringements of property rights.
- **Constitutional Right:** As a constitutional right under Article 300A, the right to property still provides protection, but any dispute regarding property rights must be pursued through High Courts or lower courts.
- **Compensation:** The requirement of compensation for the compulsory acquisition of property is no longer a fundamental right. However, various laws governing land acquisition and other forms of property acquisition by the state do provide for compensation, albeit not always at market value.
- **State's Power to Acquire Property:** The state's power to acquire private property for public purposes has been retained and is exercised under the framework of various laws, such as the Land Acquisition Act, though now the procedure and compensation are governed by these specific statutes rather than by the constitutional provision itself.
- **Eminent Domain:** The doctrine of eminent domain, under which the state can acquire private property for public use, subject to the payment of compensation, remains intact but is now governed by statute rather than constitutional provision.

The right to property in India has transitioned from being a fundamental right to a constitutional right. This shift reflects a balancing act between individual property rights and the state's need to utilise resources for the greater public good. While the right to property continues to be protected under the law, the manner of its enforcement and the nature of its protection have been significantly altered by the 44th Amendment to the Constitution. This change underscores the evolving nature of constitutional rights in response to changing socio-economic conditions and priorities.

7. (d) Government liability in Tort under Article 300 of the Constitution.

The liability of the Government in torts, as enshrined under Article 300 of the Indian Constitution, is a significant legal concept that delineates the extent to which the State can be held liable for the wrongful acts (torts) committed by its servants. This article is instrumental in understanding how the principles of sovereign immunity apply in the Indian context, particularly after transitioning from British rule.

Understanding Article 300:
Text of Article 300: Article 300 of the Constitution of India states that the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State. It also mentions that the Government of India or a State government can be sued for the acts of its servants if the tortious act would have made the servant liable.

Background: This article is based on the common law principle where "the King can do no wrong." Initially, it provided the State with absolute immunity against tortious liability. However, its interpretation has evolved over time.

Evolution of the Government's Liability in Tort:
Pre-Independence Era: During British rule, the Crown enjoyed sovereign immunity, and the East India Company, as an agent of the Crown, was not liable for the torts committed by its servants.

Post-Independence Adaptation: After independence, the Indian legal system began interpreting Article 300 in the context of a democratic republic, gradually moving away from the absolute immunity concept.

Case Law: Various landmark judgments have shaped the interpretation of Article 300.

- In the **State of Rajasthan v. Mst. Vidhyawati** case, the Supreme Court held that the government would be liable if a tortious act is committed by its employees during the course of employment.
- **The Kasturi Lal v. State of Uttar Pradesh** case was significant where the Supreme Court held that in sovereign functions (like administration of justice, defence of the country, maintaining law and order), the state enjoys immunity, but not in non-sovereign functions.

Current Position on Government Liability in Tort:
Sovereign vs. Non-Sovereign Functions: The key distinction lies between sovereign (functions that can only be performed by the State) and non-sovereign functions (commercial or private activities). The State is not liable for torts committed while performing sovereign functions but can be held liable for torts arising from non-sovereign functions.

Constructive Liability: The State is constructively liable for the acts of its servants if such acts are committed during the course of their employment, and the act is not related to a sovereign function.

Rights of Citizens: The evolution of this legal principle underscores the rights of citizens to seek remedy against the wrongful acts of the government, balancing the need for sovereign immunity with the principles of justice and fairness.

Judicial Scrutiny: Indian courts have actively scrutinised cases to determine the liability of the government, ensuring that the concept of sovereign immunity does not lead to injustice.

The liability of the Government in tort under Article 300 of the Constitution of India represents a balance between the traditional doctrine of sovereign immunity and the need to protect citizens' rights against wrongful acts of the State. The distinction between sovereign and non-sovereign functions is pivotal in determining the extent of the State's liability. Over the years, Indian courts have played a crucial role in defining and refining this balance, ensuring that the State's liability is in line with the principles of a democratic republic.