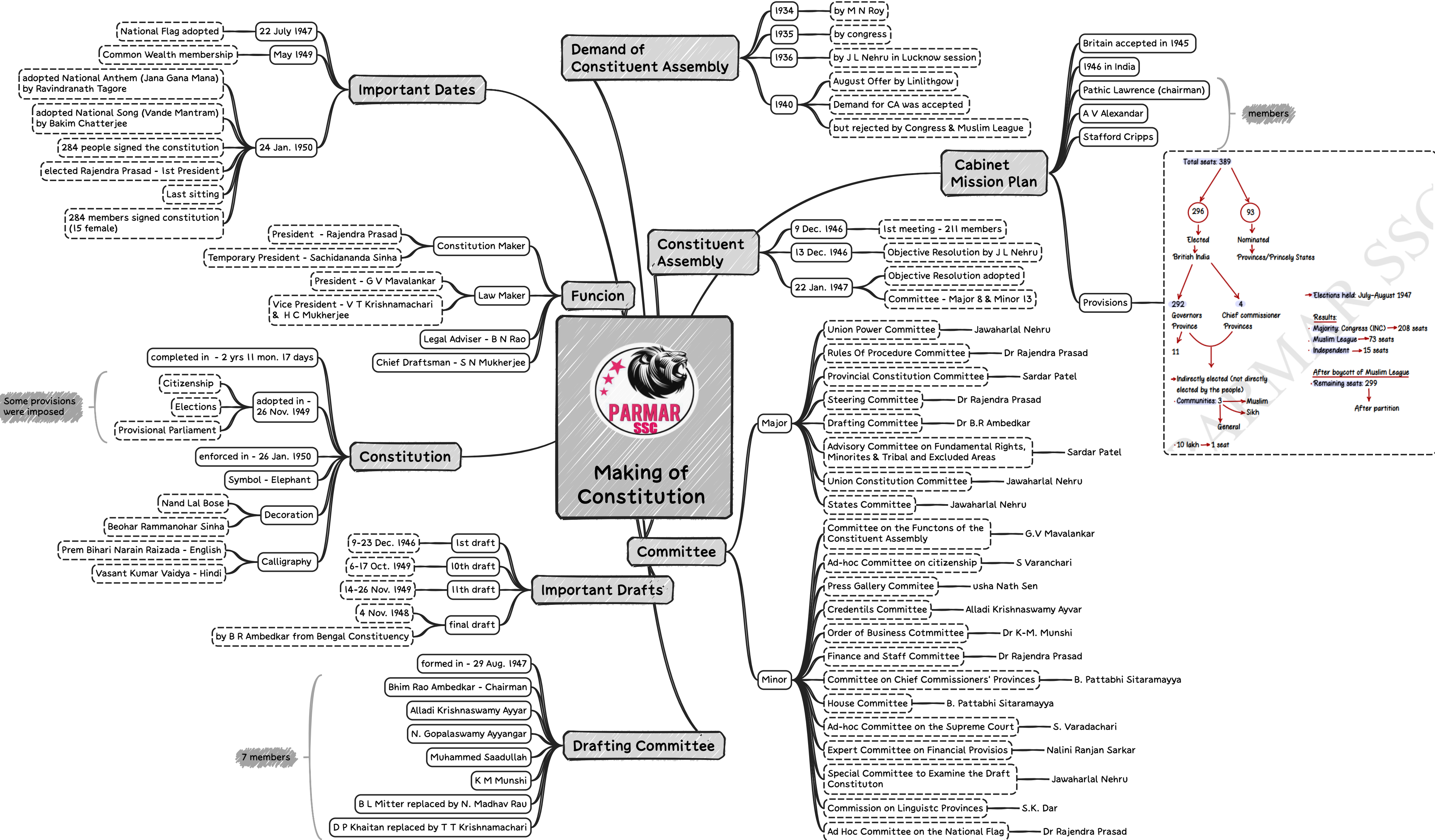




Making of Constitution





Preamble & Schedule

Preamble

- Borrowed from
 - Concept - USA
 - Language - Australia
- modified form of Objective resolution
- adopted on 22 January 1949
- enforced on 26 January 1950
- Statement Passed
 - ID Card of the Constitution — by N A Palkivala
 - Horoscope of the Constitution — by K M Munshi
 - Keynote of the Constitution — by Ernst Barker
- Ingredients
 - Source of authority of the constitution — People of India
 - Nature — Sovereign, Socialist, Secular, Democratic & Republic
 - Objective
 - Justice — Social, Economic & Political
 - Liberty — Thought, Expression, Worship, Belief & Faith
 - Equality — Status & Opportunity
 - Fraternity
- Amendment
 - only once in - 42th CA, 1976 (known as mini Constitution)
 - added - Integrity, Socialist & Secular

Case

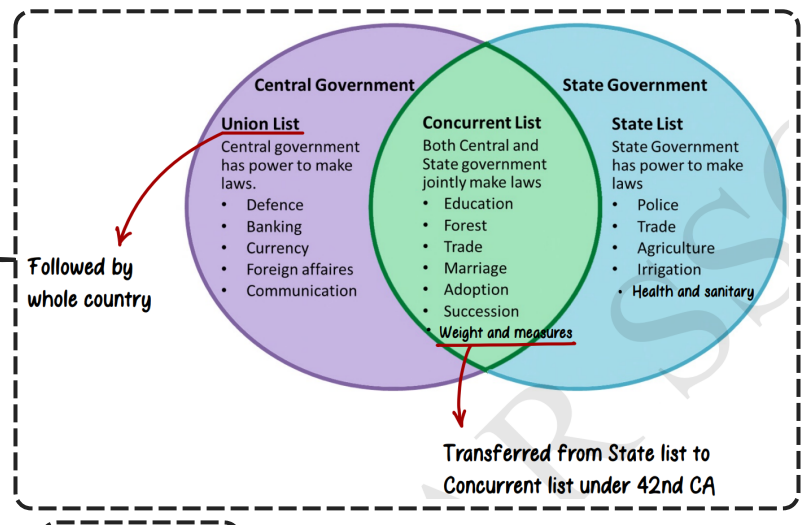
- Berubari Union Case (1960)
 - Preamble is not a part of Constitution & cannot be Amended
- Keshavnanda Bharti Case (1973)
 - Preamble is a part of Constitution & can be amended
 - Supreme Court / High Court can reverse the decision
 - Requires more bench of judges
 - 13 judges were present (highest till now)
- LIC Case
 - confirmed Keshavnanda Bharti Case

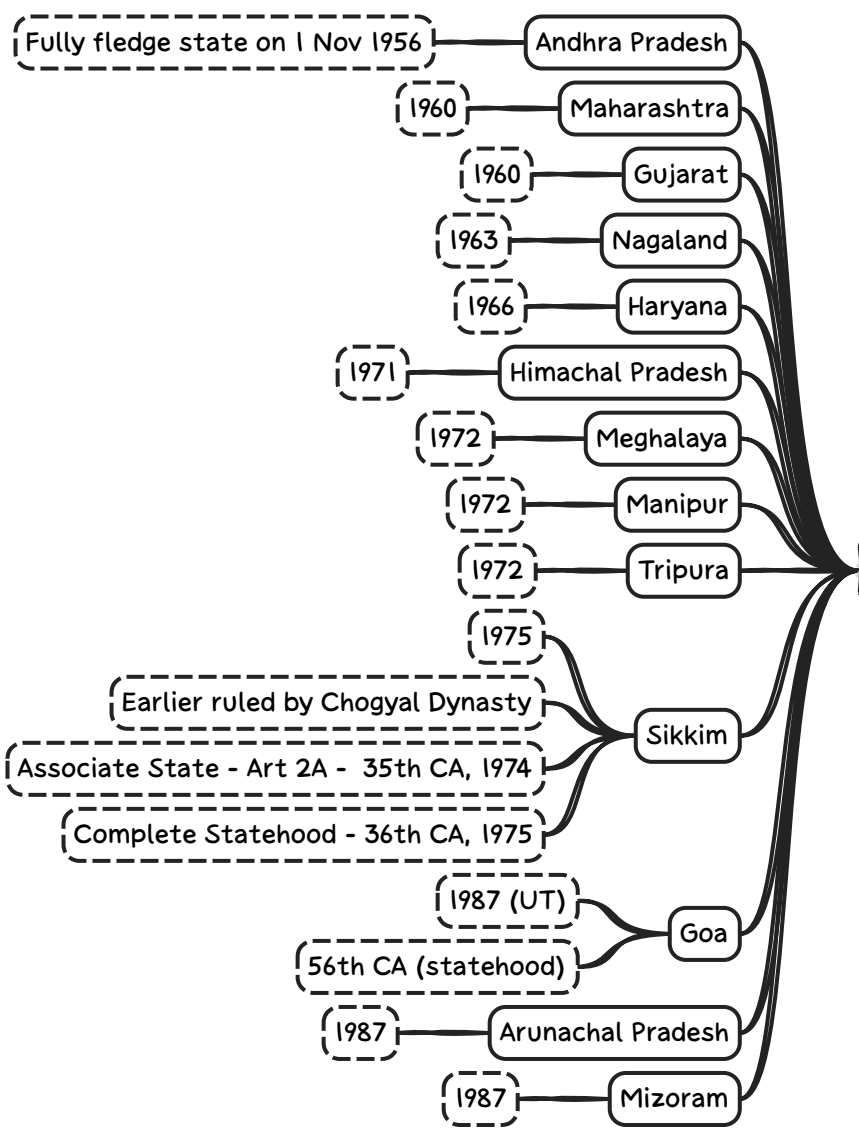
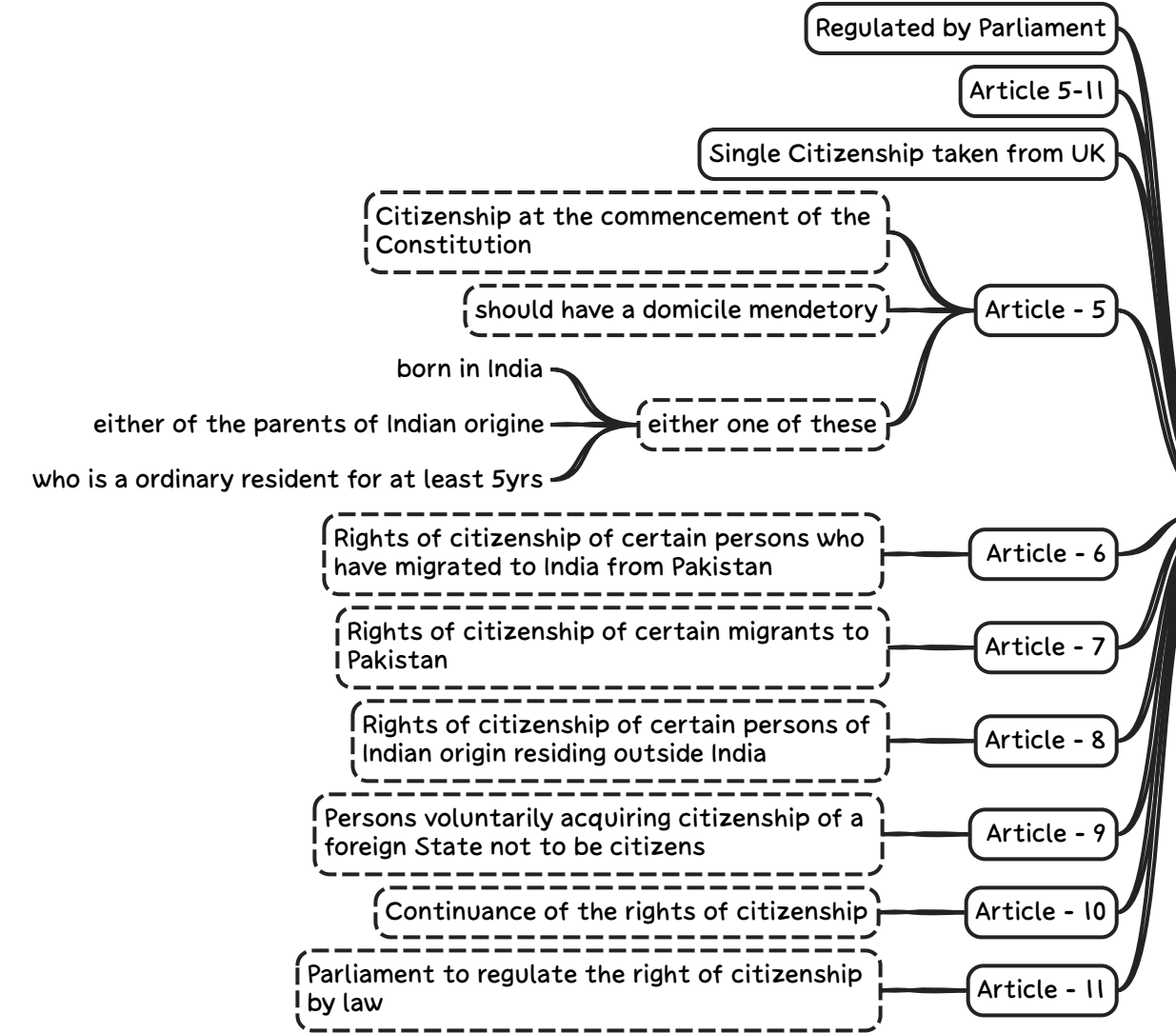
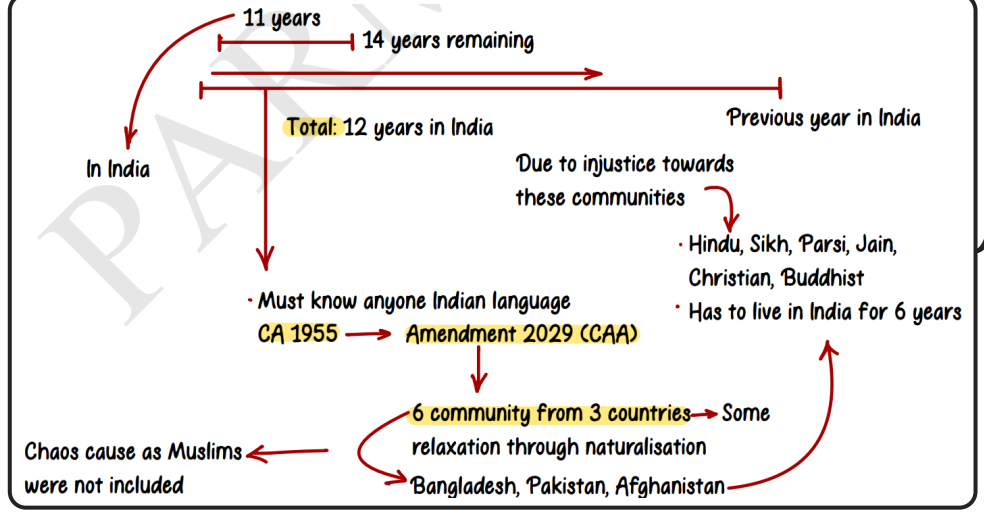
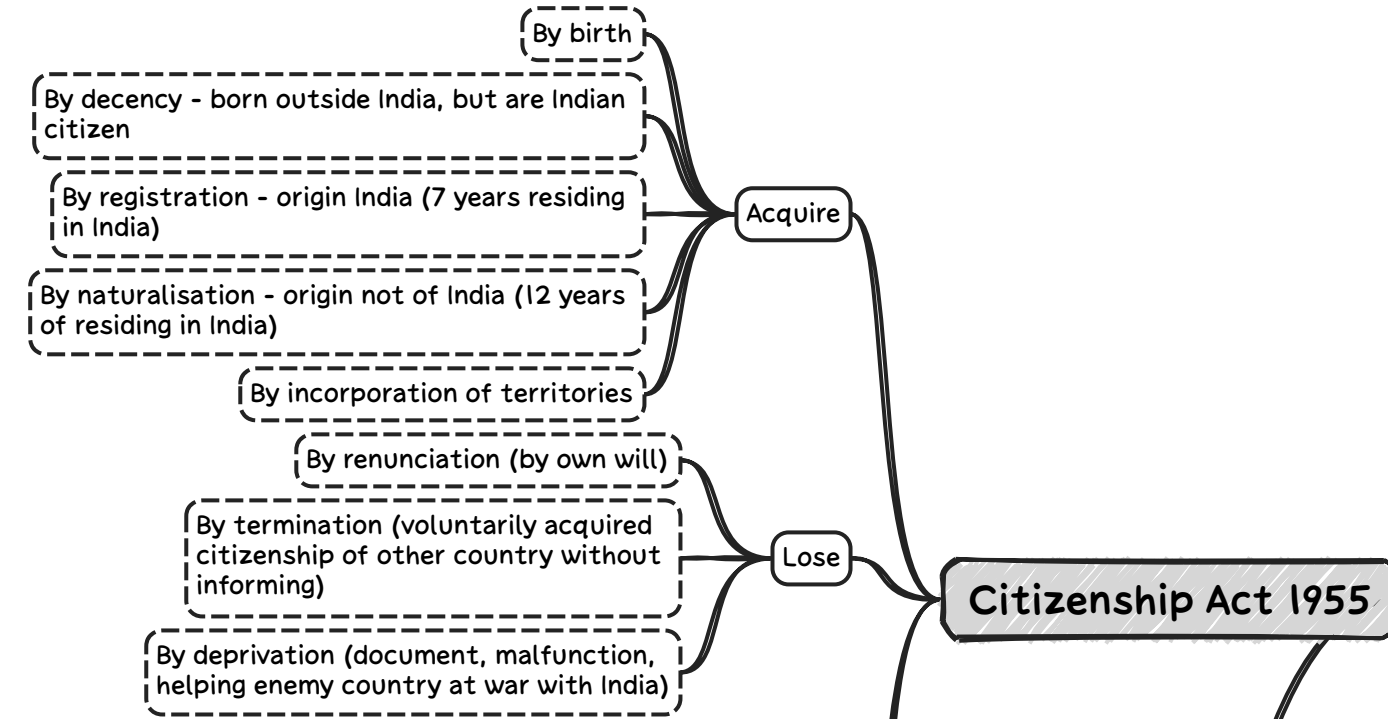
Source of the constitution

- GOI act 1935
 - Mostly influenced the Indian constitution
 - Emergency provision
 - Supreme Court establishment
 - PCS
 - Officer of Governor
 - Federal scheme
- UK
 - Parliamentary form of government
 - Parliamentary privileges
 - Single citizenship
 - Rule of law
 - Writs
 - Legislative procedure
 - Bicameral Parliament
 - Fundamental Rights
 - Preamble
 - Separation of Power
 - Supremacy of Constitution
 - Independence of judiciary (removal procedure of SC and HC)
 - Judicial review
 - Equal protection of law
 - Election of Head of the State (President)
 - Impeachment of President
 - Post of Vice President
 - Financial Emergency
- USA
 - Federation with a Strong Centre
 - Centre appoints Governor of State
 - Residuary power - only to Centre
 - Advisory jurisdiction of Supreme Court
 - Concurrent List
 - Freedom of trade and commerce
 - Joint sitting of two houses
 - Division of powers between Centre and State
- Canada
 - DPS
 - Nomination of members in Rajya Sabha
 - President's power - Emergency
 - Suspension of Fundament Rights during emergency
- Australia
 - Fundamental Duties
 - Ideals of Justice - Social Economical & Political
 - Five Year Plans
- Ireland
- Germany
- USSR (Russia)
- France
 - Liberty, equality, fraternity
 - Republic system
- Japan
 - Procedure established by law

Schedule

- Territories expansion & jurisdiction
- Emoluments
- Affirmation & Oaths
- Rajya Sabha Seats
- Scheduled Areas
- Other Schedule Areas — Assam, Tripura, Mizoram & Meghalay
- Federal Provision
 - Followed by whole country
- Official Languages
 - originally - 14
 - at present - 22
 - 21st CA — Sindhi added
 - 71st CA — Konkani, Manipuri, Nepali
 - 92nd CA — Bodo, Dongri, Maithili, Santhali
 - 96th CA — Odia
- Land Reforms — 1st CA - 1951
- Defection Law — 52nd CA - 1985
- Panchayats — 73rd CA - 1992
- Municipalities — 74th CA - 1993





Article No.	Subject-matter
371	Special provision with respect to the states of Maharashtra and Gujarat.
371 - A.	Special provision with respect to the state of Nagaland.
371 - B.	Special provision with respect to the state of Assam
371 - C.	Special provision with respect to the state of Manipur
371 - D.	Special provisions with respect to the state of Andhra Pradesh or the state of Telangana
371 - E.	Establishment of Central University in Andhra Pradesh
371 - F.	Special provisions with respect to the state of Sikkim
371 - G.	Special provision with respect to the state of Mizoram
371 - H.	Special provision with respect to the state of Arunachal Pradesh
371 - I.	Special provision with respect to the state of Goa
371 - J.	Special provisions with respect to the state of Karnataka

special powers



Part - I & II

Linguistic Provision commission

Formation of States

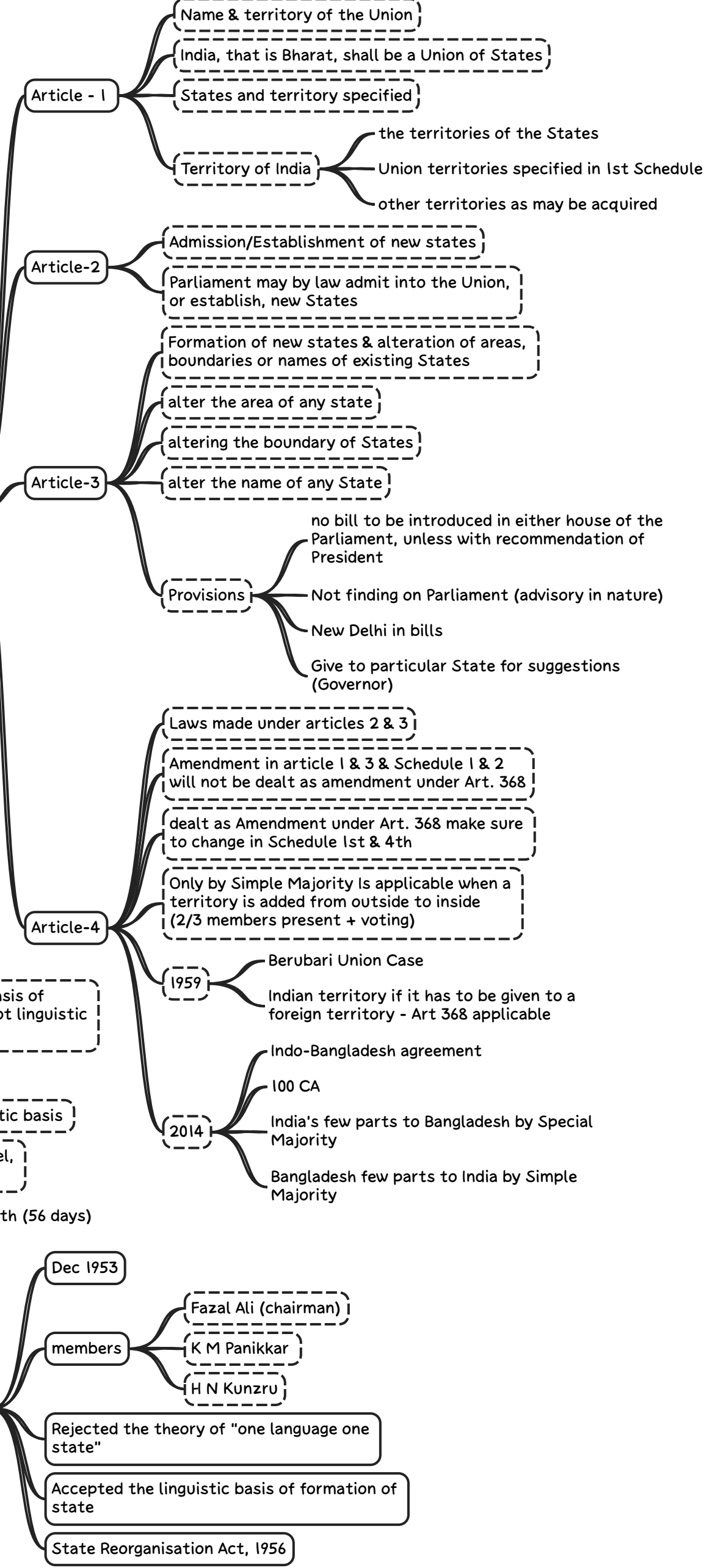
Part-I Union & Its territory

S K Dhar Commission

JVP Committee

1953

Fazal Ali Commission





Fundamental Rights

- Art. 15, Art. 16, Art. 19, Art. 29 & Art. 30 - **Rights available to citizens**
- Article 35** - power to make laws to give effect to fundamental rights (vested only on Parliament)
- Article 34** - restriction on fundamental rights while Martial Law is in force
- Article 33** - Parliament power to restrict fundamental rights of armed personals

- Art: 12-35
- Magna Carta
- FRs are not absolute but qualified (very limited)
- FRs are not sacrosact (are not permanent)
- FRs are justiciable in nature

- Right to Property has been removed**
 - Art 31 & Art 19(f)
 - PM - Morarji Desai
 - now legal right - 300 A

- Article 12** - Definition of term The State
 - State Govt.
 - Government
 - Parliament
 - Govt. body
 - Local/other authorities

Within the territory of India

- Article 13** - any laws which inconsistent/controversial with FR shall be declared null & void (by judiciary)

Right to Equality Art. 14-18

- All citizens shall have the right -
 - Art. 19(a) - to freedom of Speech & expression
 - Art. 19(b) - to assemble peaceably & without arms
 - Art. 19(c) - to from association or union
 - Art. 19(d) - to move freely throughout the territory of India
 - Art. 19(e) - to reside & settle in any part of the territory of India
 - Art. 19(g) - to practice any profession or to carry on any occupation, trade or budiness

- Article 14**
 - Equality before the law - from UK
 - Equal protection of the law - from USA
 - Exceptions - Presidents, MLAs/MPs cannot be arrested on civil matters

- Article 15**
 - Equality to status
 - Right against discrimination Gender, race, caste, sex, religion & place of birth

- Article 16**
 - Equality to public employment
 - Equality of opportunity in matters of public employment

- Art. 16(4)**
 - promotion & reservation in appointment (not a violation of Right to Equality)
 - Cases
 - Balaji v/s State of Mysore
 - Devdasan v/s Union of India Case
 - Indira Sawhney Case (1993)

- Article 17** - Abolition of untouchability

- Article 18** - Abolish of titles
 - State cannot provide title
 - Exception: in case of education, military, excellency

Part-III

Article 32

Writs (from UK)

Types of Writs In Indian Constitution

- Mandamus**
 - 1. It literally means 'we command.'
 - 2. A directive to a public official, requesting to perform official duties which failed to perform or refused to do so.
 - 3. It can used against any public figure, corporation, a lower court, a tribunal.
- Habeas Corpus**
 - 1. It literally means 'to have the body of.'
 - 2. A person who has detained another person to produce the latter's body before the court.
 - 3. Both public authorities and private individuals can be served.
- Quo-Warranto**
 - 1. It literally means 'by what authority or warrant.'
 - 2. It is issued by the court to investigate the legality of a person's claim to a public office.
 - 3. Only issued in the case of a substantive public office of permanent character.
- Prohibition**
 - 1. It literally means 'to forbid.'
 - 2. It is issued by a higher court to a lower court or tribunal to prevent the latter from exceeding its jurisdiction.
 - 3. Only judicial and quasi-judicial authorities can be served.
- Certiorari**
 - 1. It literally means 'to be certified' or 'to be informed.'
 - 2. It is issued due to an excess of jurisdiction, a lack of jurisdiction, or a legal error.
 - 3. Only issued against judicial and quasi-judicial authorities, not administrative ones.

Article 32 - Supreme court
Article 226 - High Court

- by B R Ambedkar - **Heart & Soul of Constitution**
- Supreme Court cannot refuse to issue writ but High Court can
- High Court writ jurisdiction is wider than Supreme Court rich jurisdiction

Right to Freedom Art. 19-22

- Article 19
 - protection in respect of conviction for offences
 - no ex post facto law - No person shall be convicted of any offence except for violation of a law in force at the time of the commission
 - no double jeopardy - No person shall be prosecuted & punished for the same offence more than once
 - no self incrimination - No person accused of any offence shall be compelled to be a witness against himself
- Article 20**
 - Protection of life & personal liberty
 - no person shall be deprived of his life & personal liberty except according to procedure established by law

- Article 21**
 - Right to education
 - provide free and compulsory education to all children of the age of 6 to 14 years
 - by 86th CA, 2002

- Article 21 A**
 - Protection against arrest and detention in certain cases
 - No person who is arrested shall be detained in custody without being informed
 - Every person who is arrested and detained in custody shall be produced before the nearest magistrate within twenty-four hours
 - Punitive - crime has done
 - Preventive - on suspect

Cultural & Educational right Art. 29-30

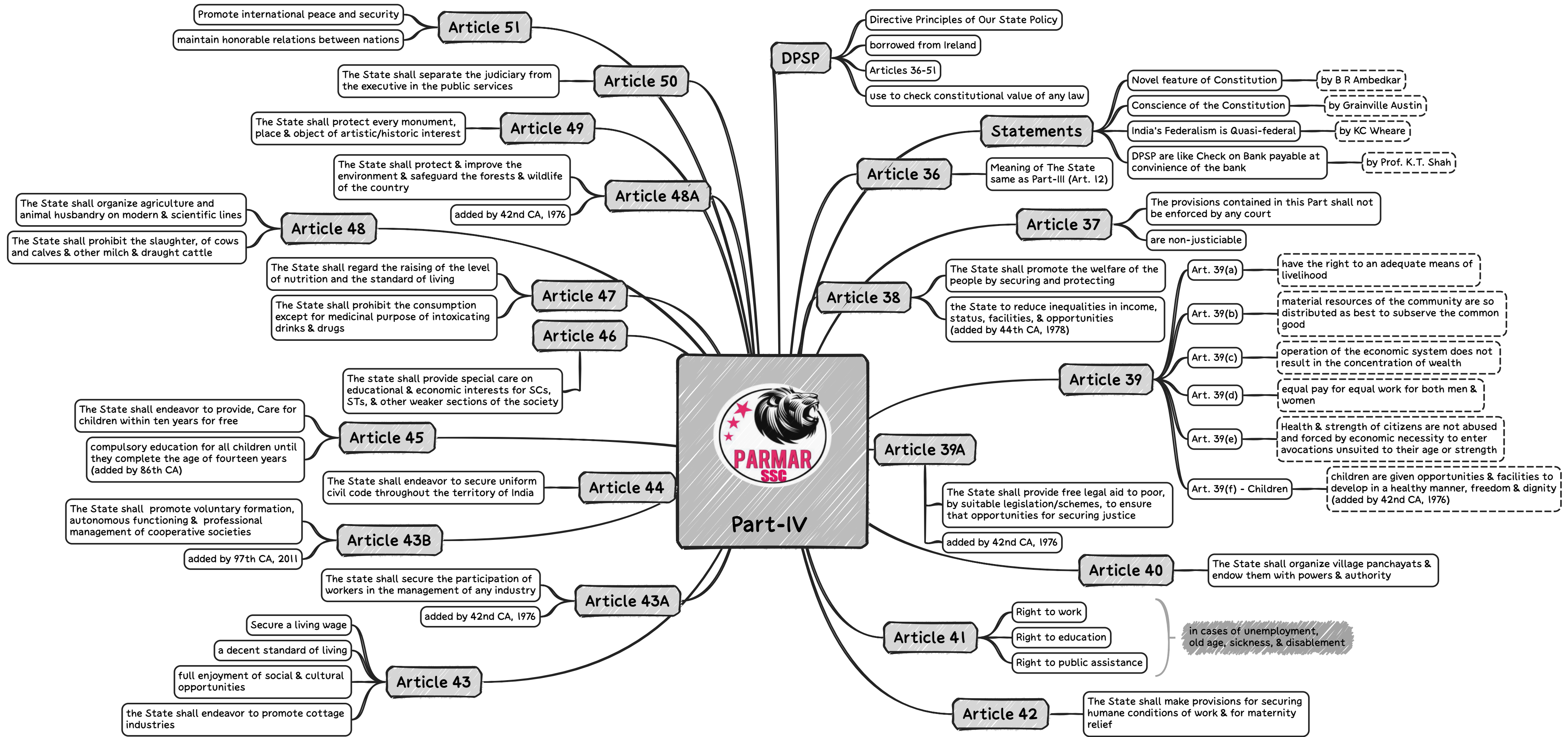
- Article 29**
 - Protection of interests of minorities
 - Right to protect language, script, culture of every citizen for any section of society
- Article 30**
 - Right of minorities to establish & administer educational institutions
 - Right to establish & administer educational institutions (Only for minorities)

Right of religion Art. 25-28

- Article 25** - Freedom of conscience and free profession, practice and propagation of religion
- Article 26** - freedom to manage religious affairs
- Article 27** - Freedom as to payment of taxes for promotion of any particular religion
- Article 28** - Freedom as to attendance at religious instruction or religious worship in certain educational institutions

Right against exploitation Art. 23-24

- Article 23**
 - Prohibition of Human trafficking & forced labor
 - Exception - under this article, state can force people to do compulsory services
- Article 24**
 - Prohibition of child labour
 - Below 14 yrs can't be employed in hazardous/dangerous place



DPSP

- Directive Principles of Our State Policy
- borrowed from Ireland
- Articles 36-51
- use to check constitutional value of any law

Statements

- Novel feature of Constitution — by B R Ambedkar
- Conscience of the Constitution — by Grainville Austin
- India's Federalism is Quasi-federal — by KC Wheare
- DPSP are like Check on Bank payable at convenience of the bank — by Prof. K.T. Shah

Article 36

Meaning of The State same as Part-III (Art. 12)

Article 37

The provisions contained in this Part shall not be enforced by any court
are non-justiciable

Article 38

The State shall promote the welfare of the people by securing and protecting
the State to reduce inequalities in income, status, facilities, & opportunities (added by 44th CA, 1978)

Article 39

- Art. 39(a) have the right to an adequate means of livelihood
- Art. 39(b) material resources of the community are so distributed as best to subserve the common good
- Art. 39(c) operation of the economic system does not result in the concentration of wealth
- Art. 39(d) equal pay for equal work for both men & women
- Art. 39(e) Health & strength of citizens are not abused and forced by economic necessity to enter avocations unsuited to their age or strength
- Art. 39(f) - Children children are given opportunities & facilities to develop in a healthy manner, freedom & dignity (added by 42nd CA, 1976)

Article 39A

The State shall provide free legal aid to poor, by suitable legislation/schemes, to ensure that opportunities for securing justice
added by 42nd CA, 1976

Article 40

The State shall organize village panchayats & endow them with powers & authority

Article 41

- Right to work
 - Right to education
 - Right to public assistance
- in cases of unemployment, old age, sickness, & disablement

Article 42

The State shall make provisions for securing humane conditions of work & for maternity relief

Part-IV

Article 50

The State shall separate the judiciary from the executive in the public services

Article 49

The State shall protect every monument, place & object of artistic/historic interest

Article 48A

The State shall protect & improve the environment & safeguard the forests & wildlife of the country
added by 42nd CA, 1976

Article 48

The State shall organize agriculture and animal husbandry on modern & scientific lines
The State shall prohibit the slaughter, of cows and calves & other milch & draught cattle

Article 47

The State shall regard the raising of the level of nutrition and the standard of living
The State shall prohibit the consumption except for medicinal purpose of intoxicating drinks & drugs

Article 46

The state shall provide special care on educational & economic interests for SCs, STs, & other weaker sections of the society

Article 45

The State shall endeavor to provide, Care for children within ten years for free
compulsory education for all children until they complete the age of fourteen years (added by 86th CA)

Article 44

The State shall endeavor to secure uniform civil code throughout the territory of India

Article 43B

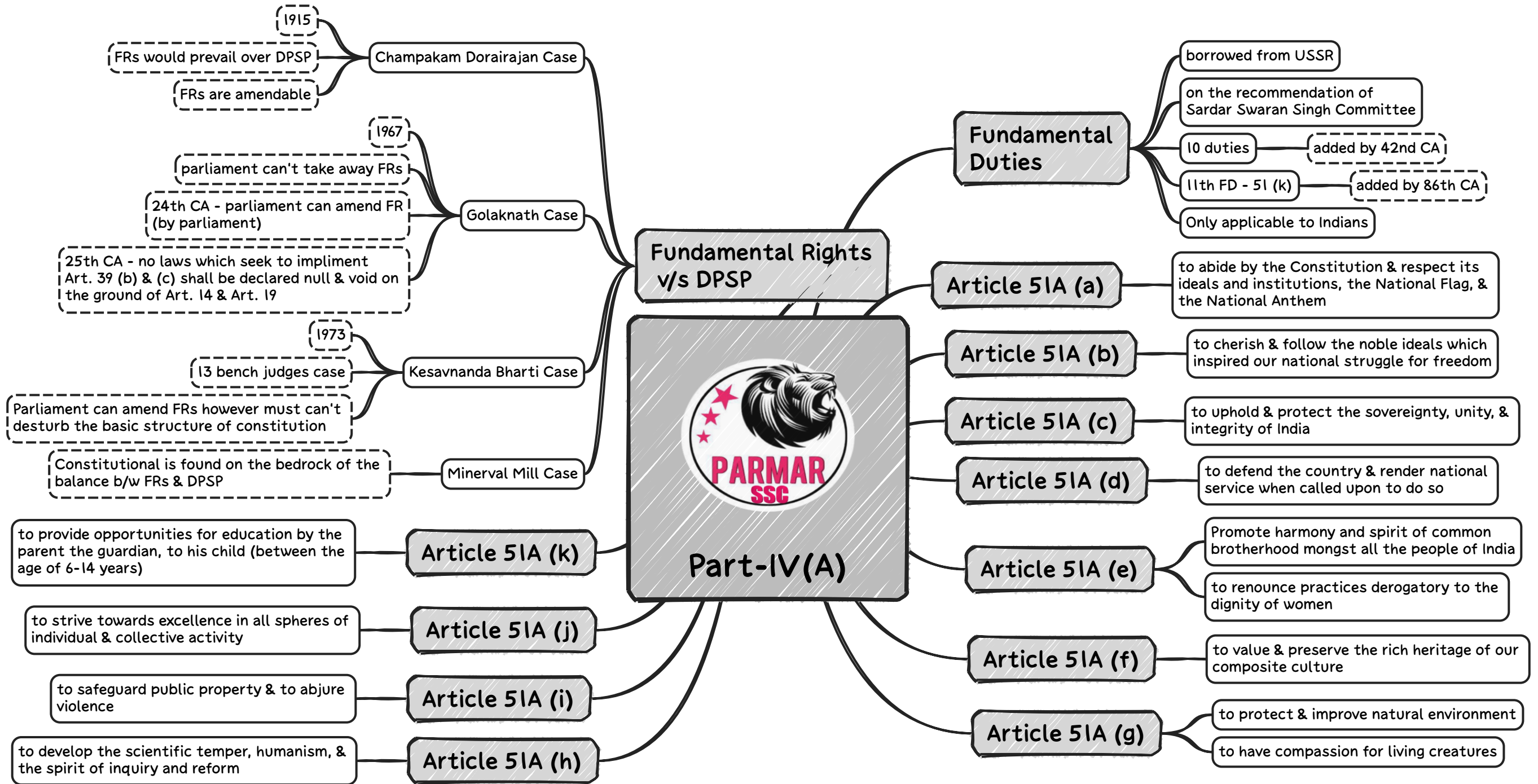
The State shall promote voluntary formation, autonomous functioning & professional management of cooperative societies
added by 97th CA, 2011

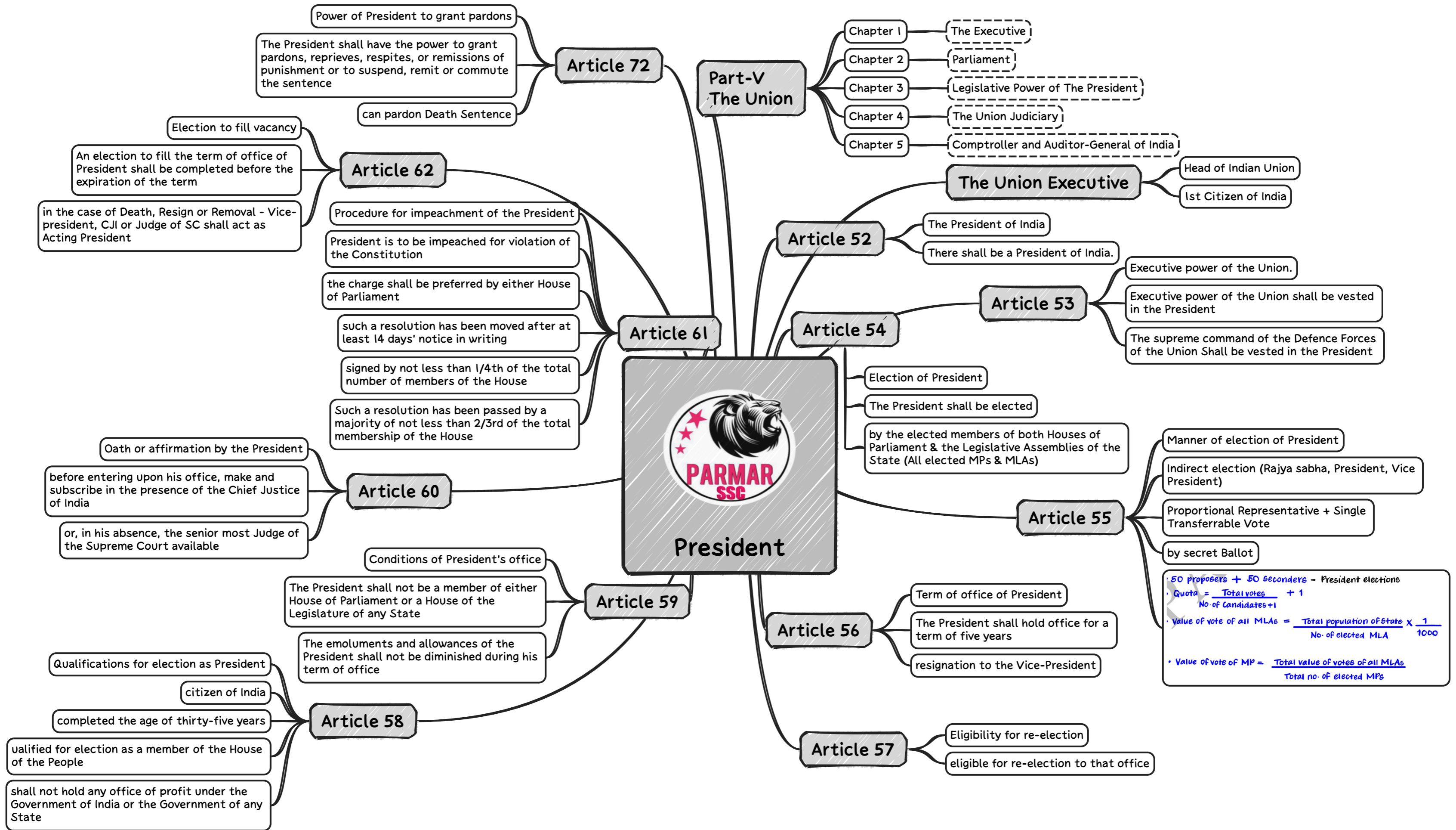
Article 43A

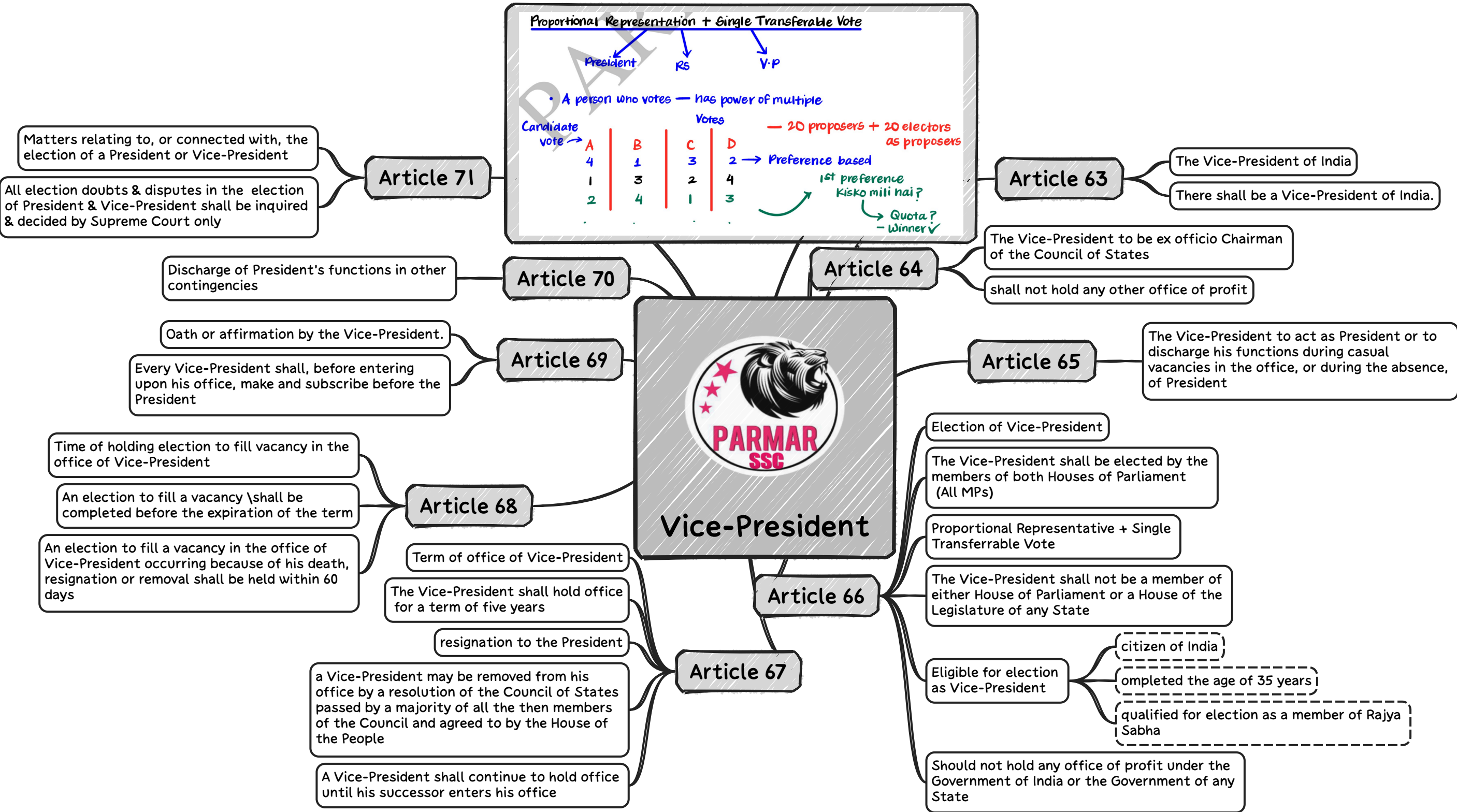
The state shall secure the participation of workers in the management of any industry
added by 42nd CA, 1976

Article 43

Secure a living wage
a decent standard of living
full enjoyment of social & cultural opportunities
the State shall endeavor to promote cottage industries









Article 74

Council of Ministers to aid and advise President.

There shall be a CoMs with the PM at the head to aid and advise the President

President may request CoMs to reconsider, and he shall act by the advice after reconsideration.

advice was tendered by Ministers to the President shall not be inquired into in any court.

Other provisions as to Ministers.

The Prime Minister shall be appointed by the President

the other Ministers shall be appointed by the President on the advice of the Prime Minister

total no. of Ministers, including PM, in CoMs shall not exceed 15% of total no. of members of LS

member of either House who is disqualified for defection also disqualified to be appointed as a Minister.

Article 75

The Ministers shall hold office at the pleasure of the President

The Council of Ministers shall be collectively responsible to the House of the People

Before a Minister enters his office, the President shall administer to him the oaths of office

who for period of 6 consecutive months is not a member of either House shall cease to be a Minister.

salaries and allowances determine by Parliament

Article 78

Duties of Prime Minister

President <-> PM <-> CoMs

Article 77

Conduct of business of the Government of India

All executive action of the Gol taken in the name of President.

Orders and other instruments made in the name of the President

President makes rules for the more convenient transaction of the business of the Gol and the allocation among Ministers of the said business.

Article 76

Attorney-General for India

