



MASTER OF ARTS IN POLITICAL SCIENCE

SEMESTER-II

**PSC-2.1: INDIAN GOVERNMENT AND
POLITICS: BASICS/ POLITICAL IDEOLOGIES/
NATION BUILDING**

CREDIT: 4

BLOCK: 1,2,3 & 4

AUTHORS

Dr. Jayanta Kumar Dash

Dr. Ratnaprava Barik



ଦୂର ଓ ଅନୁଲାଇନ ଶିକ୍ଷା କେନ୍ଦ୍ର, ଉତ୍କଳ ବିଶ୍ୱବିଦ୍ୟାଳୟ
CENTRE FOR DISTANCE AND ONLINE EDUCATION
UTKAL UNIVERSITY



C.D.O.E.

Education For All

ABOUT THE UNIVERSITY

Founded in 1943, Utkal University is the 17th University of the country and the first of Orissa. It is the result of the efforts of Pandit Nilakantha Dash, Maharaja Krushna Chandra Gajapati, Pandit Godavarish Mishra and many others who envisioned a progressive education system for modern Odisha.

The University started functioning on 27 November 1943, at Ravenshaw College, Cuttack. It originated as an affiliating and examining body but shifted to its present campus spread over 400 acres of land at Vanivihar in Bhubaneswar, in 1962.

A number of Postgraduate Departments and other centres were established in the University campus. There are presently more than two hundred general affiliated colleges under the University. It has eleven autonomous colleges under its jurisdiction, twenty-eight constituent postgraduate departments, 2 constituent law colleges and a Directorate of Distance & Continuing Education. It boasts of a centre for Population Studies, a School of Women's Studies, an Academic Staff College, a pre-school and a high school. The University also offers a number of self-financing courses.

NAAC accredited in its 3rd cycle with A+ status in 2023. It is a member of the Indian Association of Universities and the Commonwealth Association of Universities.



C.D.O.E.

Education For All

**CENTRE FOR DISTANCE & ONLINE EDUCATION
UTKAL UNIVERSITY: VANI VIHAR
BHUBANESWAR:-751007**

From the Director's Desk

The Centre for Distance and Online Education, originally established as the University Evening College way back in 1962 has travelled a long way in the last 52 years. **'EDUCATION FOR ALL'** is our motto. Increasingly the Open and Distance Learning institutions are aspiring to provide education for anyone, anytime and anywhere. CDOE, Utkal University has been constantly striving to rise up to the challenges of Open Distance Learning system. Nearly one lakh students have passed through the portals of this great temple of learning. We may not have numerous great tales of outstanding academic achievements but we have great tales of success in life, of recovering lost opportunities, tremendous satisfaction in life, turning points in career and those who feel that without us they would not be where they are today. There are also flashes when our students figure in best ten in their honours subjects. Our students must be free from despair and negative attitude. They must be enthusiastic, full of energy and confident of their future. To meet the needs of quality enhancement and to address the quality concerns of our stake holders over the years, we are switching over to self instructional material printed courseware. We are sure that students would go beyond the course ware provided by us. We are aware that most of you are working and have also family responsibility. Please remember that only a busy person has time for everything and a lazy person has none. We are sure, that you will be able to chalk out a well planned programme to study the courseware. By choosing to pursue a course in distance mode, you have made a commitment for self improvement and acquiring higher educational qualification. You should rise up to your commitment. Every student must go beyond the standard books and self instructional course material. You should read number of books and use ICT learning resources like the internet, television and radio programmes etc. As only limited number of classes will be held, a student should come to the personal contact programme well prepared. The PCP should be used for clarification of doubt and counseling. This can only happen if you read the course material before PCP. You can always mail your feedback on the course ware to us. It is very important that one should discuss the contents of the course materials with other fellow learners.

We wish you happy reading.

DIRECTOR

PSC-2.1
INDIAN GOVERNMENT AND POLITICS: BASICS/POLITICAL
IDEOLOGIES/ NATION BUILDING AND NATIONAL INTEGRATION IN
INDIA

Brief Contents

Block No.	Block	Unit No.	Unit
1	Indian Government and Politics: Basics	1	Nation Building: Meaning & Mechanisms
		2	Nation Building: As a Recent Phenomena
		3	The Process of Nation Building in India: An Overview
		4	Cultural Perspective of Nation Building in India

Block No.	Block	Unit No.	Unit
2	Making of the Indian Constitution	5	Historical Background of the Indian Constitution
		6	Introduction to the Constituent Assembly
		7	Ideological Sources of the Constitution
		8	Fundamental Rights & DPSP

Block No.	Block	Unit No.	Unit
3	Secularism, Federalism and its Working	9	Distinctiveness of Indian Secularism
		10	Constitution as an Instrument of Social Change
		11	Working of Federalism in India
		12	Major Tension Areas of Centre-State Relations in India

Block No.	Block	Unit No.	Unit
4	Executive and Central Administration	13	The President of India
		14	The Prime Minister of India
		15	The Council of Ministers
		16	The Union Territories

CENTRE FOR DISTANCE AND ONLINE EDUCATION, UTKAL UNIVERSITY,
BHUBANESWAR

Program Name: Master in Political Science Program Code: 010316
Course Name: Indian Govt. and Politics: Basics / Political Ideologies / Nation Building

Course Code: PSC-2.1 Semester: I Credit: 4 Block No. 1 to 4 Unit No. 1 to 16

EXPERT COMMITTEE:

Prof. Brahamananda Satapathy, (Chairman)

Former Head and Professor, Dept. of Political Science, Utkal University, Vani Vihar,
Bhubaneswar

Dr. Smita Nayak, (Member)

HOD, Dept. of Political Science, Utkal University, Vani Vihar, Bhubaneswar

Dr. Seema Mallick, (Member)

Asst. Professor, Dept. of Political Science, Utkal University, Vani Vihar, Bhubaneswar

Dr. Swapna S. Prabhu, (Member)

Asst. Professor, Dept. of Political Science, Utkal University, Vani Vihar, Bhubaneswar

COURSE WRITER:

Dr. Jayanta Kumar Dash, Asst. Professor in Political Science, Astaranga Degree College, Puri

Dr. Ratnaprava Barik, Asst. Professor in Political Science, Panchayat Degree College, Boudh

PRINTED AND PUBLISHED BY

UTKAL UNIVERSITY, VANI VIHAR, BHUBANESWAR

**PSC-2.1-INDIAN GOVERNMENT AND POLITICS: BASICS / POLITICAL
IDEOLOGIES / NATION BUILDING**

Content

Block/Unit	Page Nos.
<u>BLOCK-1: Indian Govt. and Politics: Basics</u>	1-42
Unit-1: Nation Building: Meaning & Mechanisms	
Unit-2: Nation Building: As a Recent Phenomena	
Unit-3: The Process of Nation Building in India: An Overview	
Unit-4: Cultural Perspective of Nation Building in India	
<u>BLOCK-2: Making of the Indian Constitution</u>	43-125
Unit-5: Historical Background of the Indian Constitution	
Unit-6: Introduction to the Constituent Assembly	
Unit-7: Ideological Sources of the Constitution	
Unit-8: Fundamental Rights & DPSP	
<u>BLOCK-3: Secularism, Federalism and its Working</u>	126-210
Unit-9: Distinctiveness of Indian Secularism	
Unit-10: Constitution as an Instrument of Social Change	
Unit-11: Working of Federalism in India	
Unit-12: Major Tension Areas of Centre-State Relations in India	
<u>BLOCK-4: Executive and Central Administration</u>	211-254
Unit-13: The President of India	
Unit-14: The Prime Minister of India	
Unit-15: The Council of Ministers	
Unit-16: The Union Territories	

BLOCK-1: INDIAN GOVERNMENT AND POLITICS: BASICS

Unit-1: Nation Building: Meaning & Mechanisms

Unit-2: Nation Building: As a Recent Phenomena

Unit-3: The Process of Nation Building in India: An Overview

Unit-4: Cultural Perspective of Nation Building in India

UNIT-1: NATION BUILDING: MEANING & MECHANISMS

Structure

- 1.1 Objectives
- 1.2 Introduction
- 1.3 Definition of Nation Building
- 1.4 Mechanisms of Nation Building
- 1.5 Nation Building: A Historical Overview
- 1.6 Nation Building: Traditional View
- 1.7 Nation Building: Modern View
 - 1.7.1 The Nationalist School of Thought
 - 1.7.2 The Modernist School of Thought
 - 1.7.3 The Imaginist School of Thought
- 1.8 Summary
- 1.9 Key Terms
- 1.10 Self Assessment Questions
- 1.11 References

1.1: OBJECTIVES

After going through this unit, you will be able to know:

- The meaning, definition and factors of Nation Building
- Historical, Pre-Modern view of Nation Building
- Modern, Nationalist & Imaginist view of Nation Building

1.2: INTRODUCTION

Nation-building is one of the important aspect of a Nation. It is a process of uniting the people of the state into a well-functioning, good governing, well-dignified and unified nation. It builds in the state through the state of power with the political, social, economic, and cultural institutions. It inculcates the emotional unity of the people. It creates an enthusiasm among the people to participate in the process of modernization, development and socio-economic reconstruction of a nation. It creates a spirit of nationalism among the people of a nation. It always tries to unite the free people to give their efforts to develop a new egalitarian society with

the high altitude of social, economic, political and emotional development in the era of Modernization, Liberalization, Privatization and Globalization. It is a great challenge before each Nation to build the nation on the basis of identity, formation, culture etc. Nation Building refers the phase that is 'How to construct and restructure the identity of a Nation by using the power of the state'. Nation the word binds all the people in the single thread not only to form a state but also to find the process by which the nation states came into existence. Nation builders are those members of a state who take the initiative to develop the national community through government programmes, including military conscription and national content mass schooling. Nation-building can involve the use of propaganda or major infrastructure development to foster social harmony and economic growth.

Nation Building is a process of building the following:

- a. State Building
- b. People Building
- c. Democracy Building
- d. Citizen Building
- e. Economy Building
- f. Social Building
- g. Government Building

It is a process which focusses on the Nation States as well as true Nation States; people as well as well- organized, well defined and well- focused people; society as well as democratic and developed society and so on. It not only tends the people of a nation but also emphasizes on the legitimate role of the political system in fulfilling the demands and need of the people. It also stretches the power of the political systems by making them autonomous bodies. It implies the arrangement of a large number of individuals from the middle and lower classes linked to regional centers and leading social groups, by channel of social communications and economic intercourse. It involves the blend of integration of masses and the elite class.

Nation Building refers to a process of exercising the people in to a nation committed to all old-fashioned, indigenous allegiances, arrangements and power systems to one overriding loyalty to the nation, the motherland and to the authority of the state. All want to see their

nation stand prosperous and proud. The question is 'how is it going to happen?' Building a nation may not mean to develop 'infrastructure and material' by the government for people in order to improve trade and technology or to encourage arts and culture to flourish using government funds etc. Nation Building is something humanistic development along with all these materialistic progress. Building a nation is certainly not by members of the ruling party in Government 'learning new technologies' by going on foreign trips. All these are products of the peculiar brand of socialism that we have followed in our country since Independence. From the individualistic ground of none is blamed or cursed for the development of a nation. Let's not blame Pandit Jawaharlal Nehru entirely for this state, a great wave of acceptance swept across the country when Nehru announced his 'Five Year Plans' and other incentives for industry, agriculture and trade. People were ready for progress, they didn't care in which form it came, they didn't care from whose pockets the money flowed. It is that altruist morality that has landed us here today. From the ground of a businessman, the Nation Building is something individualistic. The central question is 'What does a 'man of business' do in this country today?' By this, it broadly refers to anyone who has something creative to offer. Such men of business today are too busy to see all this, they are busy waiting to jump off their office balcony, twist their necks, crawl on their bellies and lick boots to get 'documents passed' or 'projects cleared'. They are willing to 'pay' bribes, run errands, wait years 'for the next government to come' to get things going. Our businessmen are willing to work under any system as long as they are free to make a little profit. They are willing to listen to environmentalists, charlatans, soothsayers, yoga therapists, hi-tech consultancy agencies about matters of business policy. They are ready to shake hands with the worst of their enemies to gain political pull. They are willing to sponsor civic amenities like road blocks, dividers, traffic signals, pavements and are willing to forego the costs, satisfied with their logo being brandished on these 'civic amenities'.

1.3: DEFINITION OF NATION BUILDING

Nation Building is process of developing a developed nation through collective, united and systematized efforts. Modern nation- building refers to the efforts taken by the newly independent nations, to redefine the populace of territories that had been carved out by colonial powers or empires without regard to ethnic, religious, or other boundaries. Nation-building includes the creation of national equipment such as flags, anthems, national

days, national stadiums, national airlines, national languages, and national myths. At a deeper level, national identity needed to be deliberately constructed by molding different ethnic groups into a nation, especially since in many newly established states colonial practices of divide and rule had resulted in ethnically heterogeneous populations.

“Nation Building and Nation formation is the broad process through which Nations come into being. Nation-building wishes at the association of the people within the state and tries to bring a politically stable and practicable state with a long existence”.

Paul James

“Nation Building and Legitimate authority in modern national states are connected to popular rule, to majorities. Nation-building is the process through which these majorities are constructed”.

Harris Mylonas

“Nation Building is broad spectrum and wide ranging process, which begins after the creation of a nation state so as to make it viable, cohesive, and well-organized, authomous and widely acceptable entity”.

Myron Weiner

“A nation is not defined by its borders or the boundaries of its land mass Rather, a nation is defined by adverse people who have been unified by a cause and a value system and who are committed to a vision for the type of society they wish to live in and give to the future generations to come.”

Fela Durotoye

“A nation that craves for development and a stronger union should carry everyone along irrespective of language, colour, race, creed, ethnic diversity, religion, cultural values or sexual orientation. In essence, the country in question should practice an equitable distribution of wealth, equal opportunities and procrustean development where every individual will see each other as equal more so where no ethnic, race or group of persons should see the country as patrimony or 'born to rule syndrome.”

Lucas Anuforo

“No nation can ever be worthy of its existence that cannot take its women along with the men. No struggle can ever succeed without women participating side by side with men. There are two

powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of the women.”

Muhammad Ali Jinnah

“And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever.”

Thomas Jefferson

1.4: MECHANISMS OF NATION BUILDING

The mechanisms of nation building are the indicators for judging the progress of the process of nation building in a state. The vital mechanisms of Nation Building are

- (a) **Support of the people-** Nation Building is made through the constant and enthusiastic provision of the people to the community, the administration and the power holders.
- (b) **Leader-** A Nation is built under the vigilant guidance of the leader. A committed, devoted and dedicated national leader is only able to build a vibrant nation.
- (b) **Goals and Co-operation of the people-** Nation building is meant for achieving the national's goals, objectives and cooperation and coordination among the peoples of the nation.
- (c) **Respect for national symbols-** Nation building teaches the peoples of the nation to respect for their national symbols like National Flag, National Anthem, etc.
- (d) **Territorial Integrity-** Nation building is based on the principle of territorial integration not only among the states but among the nation-states.
- (e) **National priority and National identity-** Identity is the national priority of a nation. A nation aims to preserve national identity, unity and integrity. So national identity is

a major component of a nation.

- (f) **Public literacy and freedom-** Nation Building aims to establish a high level of public literacy and freedom from orthodoxism, radicalism, parochialism and conventionalism etc.
- (g) **Instrument of Nation building** - The qualities and commitments of intellectual elite of the society towards the goals adopted by the nation, the existence of the class of academic elites free from cast, communal and religious barriers always acting as a big instrument of nation building.
- (h) **Role of the fourth pillar of Democracy-** Mass media is the fourth pillar of democracy which is very alert, active and an effective instrument of political socialization, modernization and development.
- (i) **Nation Building as discipline-** Nation Building is a process and consistent march towards economic growth, political development and social justice. It works as a discipline in the nation.
- (j) **Nation Building as a process of development-** Nation Building aims in bringing development of national participants, developed and civic political culture. Development consistently goes on like nation building.
- (k) **Effective state controlled mechanism** – A nation is built with the development of effective, efficient and systematic state control mechanisms. A nation can be better constructed with better constructive mechanisms.
- (l) **National integration-** The thing which binds the people of a nation in one thread, one nation is the national integration. It is an emotional and psychological feeling which binds the people of a nation in one bond and tends towards development of a nation. A high level national integration builds a strong and united Nation.

1.5: NATION BUILDING: A HISTORICAL OVERVIEW

The word ‘nation- building’ originated into craze among traditionally oriented political scientists in the 1950s and 1960s. Its main protagonists incorporates the leaders of the American academic community like Karl Deutsch, Charles Tilly, and Reinhard Bendix. Ernest Renan’s famous question ‘what is a nation?’ in his lecture at Sorbonne in 1887, marks the beginning of the academic debate on nations and nationalism, which continues to this day. Nation-building philosophy was predominantly used to describe the processes of national integration and consolidation that led up to the establishment of the modern nation state as distinct from various form of traditional states, such as feudal and dynastic states, church states, empires, etc. “Nation-building” is an architectural representation which, strictly speaking, implies the existence of consciously acting agents such as architects, engineers, carpenters, and the like. For the political scientists, the word covers not only conscious strategies initiated by state leaders but also unplanned societal change. The ‘nation-building’ is for political science what “industrialization” is to social economy, an indispensable tool for detecting, describing and analyzing the instruction of historical and sociological dynamics that have produced the modern state. The traditional, pre-modern state was made up of isolated communities with parochial cultures at the “bottom” of society and a distant, and aloof, state structure at “the top,” largely content with collecting taxes and keeping order. Through nation-building these two spheres were brought into more intimate contact with each other. Members of the local communities were drawn upwards into the larger society through education and political participation. The state authorities, in turn, expanded their demands and obligations towards the members of society by offering a wide array of services and in-tegrative social networks. The subjects of the monarch were gradually and imperceptibly turned into citizens of the nation-state. Substate cultures and loyalties either vanished or lost their political importance, superseded by loyalties toward the larger entity, the state. Oyvind Osterud, in the concept of ‘nation-building’, said political science is what ‘industrialization’ is to social economy: an indispensable tool for detecting, describing and analyzing the macro historical and sociological dynamics that have produced the modern state.

1.6: NATION BUILDING: TRADITIONAL VIEW

The traditional, pre-modern state was made up of isolated communities with parochial cultures at the 'bottom' of society and a distant, and aloof, state structure at 'the top, largely content with collecting taxes and keeping order. Through nation-building these two spheres were brought into more intimate contact with each other. Members of the local communities were drawn upwards into the larger society through education and political participation. The state authorities, in turn, expanded their demands and obligations towards the members of society by offering a wide array of services and integrative social networks. The subjects of the monarch were gradually and imperceptibly turned into citizens of the nation-state. Sub-state cultures and loyalties either vanished or lost their political importance, superseded by loyalties toward the larger entity, the state. Stein Rokkan's model saw nation-building as consisting of four analytically distinct aspects. In Western Europe these aspects had usually followed each other in more or less the same order. Subsequently, they could be regarded not only as aspects but also as phases of nation-building.

The first phase ensued in economic and cultural unification at the elitist level. The second phase brought ever larger sectors of the masses into the system through conscription into the army, enrollment in compulsory schools, etc. The burgeoning mass media created channels for direct contact between the central elites and periphery populations and generated widespread feelings of identity with the political system at large. In the third phase, the subject masses were brought into active participation in the workings of the territorial political system. Finally, in the last stage the administrative apparatus of the state expanded. Public welfare services were established and nation-wide policies for the equalization of economic conditions were designed. In the oldest nation-states of Europe, along the Atlantic rim, the earliest stage of these processes commenced in the Middle Ages and lasted until the French Revolution. While it is impossible to pin-point exactly when the entire nation-building process was completed, it certainly went on for several centuries. In the ideal variant, each consecutive phase set in only after the previous one had run its course. This ensured the lowest possible level of social upheavals and disruptions, Rokkan believed. In the mid-1970s, discussions on nation-building took a new turn. In a seminal article pointedly titled "Nation-building or Nation-destroying".

Walker Connor launched a blistering attack on the school of thought associated with Karl Deutsch and his students. Connor noted that the nation-building literature was preoccupied with social cleavages of various kinds between burghers and peasants, nobles and commoners, elites

and masses but virtually or totally ignored ethnic diversity. This Connor regarded as an inexcusable sin of omission, since, according to his computation, only 9 percent of the states of the world could be regarded as ethnically homogeneous. Since “nation-building” in the Deutschland tradition meant assimilation into the larger society and the eradication of ethnic peculiarities, Connor believed that in world history it had produced more nation-destroying than nation-building. However, the efficiency of active engineering in nation-building, he held, had generally been greatly exaggerated. Very often it was counter-productive, regularly producing a backlash of ethnic revivalism. Complete assimilation of ethnic minorities had largely failed all over the world, even in that alleged stronghold of consummate nation-building, Western Europe, Connor maintained.

‘The reason behind the fundamental flaws of nation-building theory Connor found in the terminological confusion caused by the diverse usages of the word ‘nation’. As he pointed out, this term sometimes is used with reference to cultural groups and peoples, while at other times it describes political entities I.e. states, cf. expressions such as “United Nations” and “International Politics.” Even more misleading, he felt, was the tendency to use the term ‘Nation’ to describe the total population of a particular state without regard for its ethnic composition’.

From the ethnic groups the term “nation” discards all objective cultural markers as valid identity demarcations for these units. Neither common language, common religion, nor any other, shared cultural reservoir within a group qualified as a genuine sign of nationhood. Any such attempt to objectivize the nation was to mistake the cultural manifestations of a nation for its essence. The true nature of the ethnos was in all and every case the sense of common ancestry shared by its members. The nation is the ultimate extended family. To be sure, hardly ever could a common origin of the members of the nation be proven. In fact, very often it can be established that a nation stems from diverse ethnic sources. The belief in a common genetic origin can therefore usually be shown to be pure myth. Nonetheless, adherence to this myth has remained a *sine qua non* for every nation.

Later theoreticians developed Connor’s understanding in two different directions. The “modernists” such as Benedict Anderson, Tom Nairn, Ernest Gellner and Eric Hobsbawm strongly underlined the myth aspect of the nation. In a celebrated book title, Benedict Anderson coined the expression “imagined communities” to describe modern nations. The nation is a

product of imagination in the sense that the members of the community do not know each other personally and can only imagine themselves to be in communion with each other. Subsequently, Anderson distanced himself from Gellner and Hobsbawm who took the “imagination” metaphor one step further, interpreting it in the direction of “invention” and “fabrication.” The nation should not be defined as “false consciousness” Anderson insisted. Definitions like that would imply that there are such things as “true communities” which can be juxtaposed to “artificial” nations. “In fact, all communities larger than primordial villages of face-to-face contact (and perhaps even these) are imagined”. At the same time, Anthony Smith, Rasma Karklins and others developed Connor’s themes further in another direction, strongly emphasizing the ethnic aspect of the nation. While agreeing with the modernists that “nations” as we know them are recent phenomena, Smith insisted that they have a long prehistory, evolving out of ethnic cores. Of the conglomerate of ethnic groups existing in earlier ages, some developed into would be nations aspiring for nationhood and a state of their own, with a few eventually acquiring it. Why do some groups succeed while others fail? Often this must be explained as a result of historical contingencies, a confluence of felicitous circumstances but it may also be due to the active efforts of determined nationalists, the Nation-builders.

Smith and his disciples retained but reemployed the term “nation-building” introduced by the earlier, modernist school of thought. In accordance with their “neo-primordialist” understanding of all modern nations as products of age-old ethnic building material they heavily underlined the cultural, symbolic, (ethnic) and myth-making aspects of nation- building”.

Even for the most recently created states, ethnic homogeneity and cultural unity are paramount considerations. Even where their societies are genuinely “plural” and there is an ideological commitment to pluralism and cultural toleration, the elites of the new states find themselves compelled, by their own ideals and the logic of the ethnic situation, to forge new myths and symbols of their emergent nations and a new “political culture” of anti- colonialism and the post-colonialism i.e. African or Asian state.

1.7: NATION BUILDING: MODERN VIEW

There are three main schools of thought regarding the Nation Building such as nationalist,

modernist and Imaginist.

(a) The Nationalist school of thought

Nation is the soul and the spiritual principle of the Nationalist school of thought. It is a moral consciousness. Nineteenth-century scholars like Renan who also believed in the ancient times of the nation and interpreted its rise merely as a collective process of becoming aware of one's nationality. This and similar views basically represent the nationalist school, that is, the history of nations written by nationalists. The method applied by the nationalist school essentially is to look at visible manifestations and characteristics of nations and to extrapolate some kind of general definition from them. To count and accumulate so called objective claiming popular identification with them would be the second. The long-winded argument between the proponents of the state's nation and the kulturenation with all its overtones of Franco-German antagonism shows the ultimate futility of such an approach because neither concept can be applied universally. Moreover, there will always be communities or political entities meeting all 'objective' criteria without being a nation and vice versa.

(b) The Modernist School of thought

The characters of the modernist school, in contrast, have enthusiastically disputed the nationalist assertion of the antiquity of the nation. Ernest Gellner's famous words of nationalism creating nations and not vice versa, is a direct response to the nationalist conception of nations as having always existed and only recently having occupied a more prominent place in the minds of the inhabitants of Europe. In fact, Gellner and others have claimed that the rise of nations and nationalism has been the 'logical' consequence of a transition from one social order to another—from agrarian to industrial society. The need of modern industrial societies for increasing cultural unity in order to reach a high level of workforce mobility is at the heart of the modernist perspective. This cultural unity was, according to the modernist school, provided by nationalism which, in turn, has been propagated by the economic elite in order to stabilize the new social order beneficial to their interests. All this has led Gellner to claim that nationalism is not awakening of nations to self-consciousness: it invents nations where they do not exist.' It is important to note that this view rests in large part on the assumption that nationalism was a response to modernity.

(c) The imaginist school of thought-

The imaginist school of thought is most prominently characterized by the very influential work of Benedict Anderson. The central argument here is that nations like any other large communities are imagined since ‘the members of even the smallest nation will never know most of their fellow members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.’ What has been called a ‘spiritual principle’ by the nationalist school and is represented by the modernists almost like a political plot of the economically dominant classes, is taken a step further here. Nations only exist through an act of the imagination. From there, Anderson goes on to say that, therefore, nations should be distinguished not by their supposed spuriousness or legitimacy ‘but by the style in which they are fictional.’

1.8: SUMMARY

Nation-building efforts is often multifaceted and contingent upon various factors such as historical context, socio-economic conditions, political stability, and cultural dynamics. However, some overarching principles and considerations can be drawn.

Firstly, sustainable nation-building requires a holistic approach that addresses not only the establishment of political institutions but also the promotion of social cohesion, economic development, and the rule of law. This entails fostering inclusive governance structures that accommodate diverse perspectives and ensure equal participation and representation for all segments of society.

Secondly, effective nation-building necessitates a long-term commitment from both domestic stakeholders and international partners. It involves investing in education, healthcare, infrastructure, and other essential services to uplift communities and enhance their quality of life. Additionally, building institutional capacity and promoting transparency and accountability are crucial for fostering trust in government institutions.

Furthermore, nation-building efforts must prioritize reconciliation and healing in post-conflict or divided societies. This often involves acknowledging past injustices, promoting dialogue and understanding among different ethnic or religious groups, and implementing measures to address grievances and promote social integration.

Moreover, successful nation-building requires a nuanced understanding of local contexts and cultures. It entails engaging with local communities, respecting indigenous knowledge and practices, and empowering grassroots initiatives that contribute to the overall development of the nation.

It can be said while nation-building is a complex and challenging process, it is essential for fostering stability, prosperity, and peace in diverse societies. By embracing inclusive governance, investing in social and economic development, promoting reconciliation, and respecting local cultures, nations can lay the foundation for a brighter and more sustainable future for all their citizens.

1.9: KEY TERMS

- **Governance:** The processes and structures through which authority is exercised and decisions are made within a society. Effective governance is crucial for nation-building as it ensures stability, legitimacy, and accountability.
- **Rule of Law:** The principle that all individuals and institutions are subject to and accountable to law. Establishing the rule of law is essential for promoting justice, protecting human rights, and fostering trust in government institutions.
- **Infrastructure Development:** Building or improving physical structures and facilities such as roads, bridges, schools, hospitals, and utilities. Infrastructure development is vital for economic growth, social development, and enhancing the quality of life for citizens.
- **Education and Literacy:** Investing in education systems to provide access to quality education and promote literacy among the population. Education plays a crucial role in empowering individuals, fostering critical thinking, and building human capital necessary for national development.

1.9: SELF ASSESSMENT QUESTIONS

- What is Nation Building? Discuss its features.
- Discuss various mechanisms of nation building?
- Discuss various views of nation building.

1.10: REFERENCES

Karl Wolfgang Deutsch, William J. Folt, eds, *Nation Building in Comparative Contexts*, New York, Atherton, 1966.

Mylonas, Harris (2017), "Nation-building", Oxford Bibliographies in International Relations. Ed. Patrick James. New York: Oxford University Press.

Mylonas, Harris (2012). *The Politics of Nation-Building: Making Co-Nationals, Refugees, and Minorities*. New York: Cambridge University Press. p. 17. ISBN 978-1107661998.

Mylonas, Harris (2012). *The Politics of Nation-Building: Making Co-Nationals, Refugees, and Minorities*. New York: Cambridge University Press. p. xx. ISBN 978-1107661998.

Darden, Keith; Mylonas, Harris (July 9, 2016). "Threats to Territorial Integrity, National Mass Schooling, and Linguistic Commonality". *Comparative Political Studies*.

Keith Darden and Anna Grzymala-Busse. 2006. "The Great Divide: Literacy, Nationalism, and the Communist Collapse". *World Politics*, Volume 59 (October): 83-115.

UNIT-2: NATION BUILDING: AS A RECENT PHENOMENA

Structure

- 2.1 Objectives
- 2.2 Introduction
- 2.3 War and Nation Building
- 2.4 Nation and State
- 2.5 Aspects of Effective Nation- Building
- 2.6 Summary
- 2.7 Key Terms
- 2.8 Self Assessment Questions
- 2.9 References

2.1: OBJECTIVES

After going through this unit, you will be able to know:

- Difference between nation and state
- War and nation building
- Various aspects of effective nation building

2.2: INTRODUCTION

The goal of nation building should not be to impose common identities on deeply divided peoples but to organize states that can administer their territories and allow people to live together despite differences. While organizing such a state within the old internationally recognized borders does not seem possible, the international community should admit that nation building may require the disintegration of old states and the formation of new nation states. Taking a look at how the political map of the world has changed in every century since the collapse of the Roman Empire—that should be proof enough that nation building has been around for quite a while. Molding a glance at the 19th and 20th centuries will reveal that the types of nation building with the most lasting impact on the modern world are nationalism, colonialism, and post-World War II reconstruction. Nationalism gave rise to most European countries that exist today. The theory was that each nation, embodying a shared community of culture and blood, was entitled to its own state. (In reality, though, few beyond the intellectual and political

elite shared a common identity.) This brand of nationalism led to the reunification of Italy in 1861 and Germany in 1871 and to the breakup of Austria-Hungary in 1918. This process of nation building was successful where governments were relatively capable, where powerful states decided to make room for new entrants, and where the population of new states was not deeply divided. Germany had a capable government and succeeded so well in forging a common identity that the entire world eventually paid for it. Yugoslavia, by contrast, failed in its efforts, and the international community is still sorting out the mess.

The Colonial powers formed dozens of new states as they conquered vast bandages of territory, interfered with old political and leadership structures, and eventually replaced them with new countries and governments. Most of today's collapsed states, such as Somalia or Afghanistan, are a product of colonial nation building. The greater the difference between the precolonial political entities, and what the colonial powers tried to impose, the higher the rate of failure. Many European countries, such as France and Spain, grudgingly have recognized the existence of regional cultures. In the United States, the notion of the melting pot has been debunked, particularly as a new wave of immigrants from the developing world has shunned outright assimilation by forming a mosaic of hyphenated Americans. And contrary to the mythology inherited from 19th-century Europe, historical evidence reveals that the common identity, or sense of nationhood, that exists in many countries did not precede the state but was forged by it through the imposition of a common language and culture in schools. The Gauls were not France's ancestors until history textbooks decided so. The transformation of West Germany and Japan into democratic states following World War II is the most successful nation-building exercise ever undertaken from the outside. Unfortunately, this process took place under circumstances unlikely to be repeated elsewhere. Although defeated and destroyed, these countries had strong state traditions and competent government personnel. West Germany and Japan were nation-states in the literal sense of the term—they were ethnic and cultural communities as well as political states, and they were occupied by the U.S. military, a situation that precluded choices other than the democratic state.

2.3: WAR AND NATION BUILDING

The most successful nations, including the United States and the countries of Europe, were built by struggle and war. These countries accomplished statehood because they developed the

administrative capacity to mobilize resources and to abstract the revenue they needed to fight wars. Some countries have been created not by their own efforts but by decisions made by the international community. The Balkans offer unfortunate examples of states cobbled together from pieces of defunct empires. Many African countries exist because colonial powers chose to grant them independence. The British Empire created most modern states in the Middle East by carving up the territory of the defeated Ottoman Empire. The Palestinian state, if it becomes a reality, will be another example of a state that owes its existence to an international decision. Such countries have been called quasi states-entities that exist legally because they are recognized internationally but that hardly function as states in practice because they do not have governments capable of controlling their territory. Some quasi states succeed in retrofitting a functioning country into the legalistic shell. The state of Israel, for example, was formed because of an international decision, and Israel immediately demonstrated its staying power by waging a successful war to defend its existence. But many quasi states fail and then become collapsed states.

However, today, war is not an acceptable means of state building. Instead, nation building must be a consensual, spiritual and democratic process. But such a process is not effective against adversaries who are not democratic, who have weapons, and who are determined to use them. The world should not be fooled into thinking that it is possible to build states without coercion. If the international community is unwilling to allow states to be rebuilt by wars, it must provide the military muscle in the form of a sufficiently strong peacekeeping force. In this case, military power is an essential constituent of state building.

2.4: NATION AND STATE

A Nation is an association of states with different entities, culture, religion, politics and economics. The major question is that 'How a nation comes to be associated with a certain territory', and how the corresponding states depends upon a complex of factors, often on accidents of history, including the accident of leadership. The process is well demonstrated in the case of our own nation, India. Parenthetically an examination of the process might help in overcoming the fixation from which many in this country suffer as a result of partition.

Reminding ourselves that until the experience of British rule we were never a nation, in the modern sense of the term. Unquestionably, there was an indescribable unity in which our

ancestors shared. There was even the territorial concept of the land of Bharat, Bharat -varsha, which was bounded in the north by the Himalayas and in the south by the seas. But that sense of unity so eloquently spoken by Rabindranath was not a nationalistic sentiment but a spiritual and cultural sentiment that was based upon a common outlook on life, 'unity of spirit' as Tagore called it, and a common pattern of social living. It was only when British rule was established over the entire length and breadth of the country that India was united politically under one government. That political unity was, however, imposed from above and did not in itself constitute nationhood. It was in the process of opposition to this imposed rule that Indian nationalism took its birth. The most interesting point that might be raised here is whether the reaction to British rule would have been the same, that is to say nationalistic in the modern sense, if Great Britain had not been transformed meanwhile into a nation. Is it not reasonable to suppose that if Elizabethan England, for instance, had conquered the whole of India, opposition to it-successful? Otherwise -would have followed the traditional dynastic pattern than the modern nationalistic one.

2.5: ASPECTS OF EFFECTIVE NATION BUILDING

A successful nation-building has the following aspects:

Nation, Nationalism and democracy: Democracy is the powerful force behind all successful nations. Successful nations are defined as democratically constituted nations. In terms of theory, nationalism does not require a particular form of government, although there is always a strong element of at least implicit popular sovereignty involved in any nation- building process. It could, therefore, be argued that democracy is the natural form of government for nations, and that, indeed, nationalism and democracy depend on each other.

Elite and Elite consent: The elite and their consent are the motivating force behind the nation building. Specified the fundamental role of the elite in any nation-building process, the question of consensus focuses on this particular group. Through it may appear to be easier to reach a sufficient degree of consensus among a relatively small and well educated number of individuals rather than across a population of millions, this does not have to be the case. Most members of any given elite represent vested interests, regions or professions and reaching an agreement is by no means a foregone conclusion.

The most important requirement for nationalism to spread to the wider elite and non-elite parts of the population is met by one of the central tenets of nationalism itself that is the nation of popular sovereignty and fundamental equality. Any elite adopting a national identity may have had their own interests in mind but it would have been impossible to advance those interests without referring to a larger collective body, the nation, at the same time. Nationalist elites entered into their conflictive with traditional divinely ordained monarchies in the name of the people. References to the nation served a double purpose: to legitimize their own involvement and their desire for political power vis-à-vis the ancient regime and the populace at the same time.

Incorporate the existing institution: The most crucial responsibilities of nation builders is to incorporate existing institutions and traditions in the institutional make-up of the nation according to what importance they might have in the new national narrative. This is an open-ended process since any institutional structure might reinforce or change the national identity in one or another direction and could well be reformed or abolished as a consequence of the process it has triggered in the first place. This, in turn, may not only lead to political instability but to a decrease in social coherence and even to fundamental conflicts about the content of the national narrative and questions of national identity. It is important to keep in mind that in a national context, all public institutions take on an additional, symbolic meaning: not only are they supposed to perform certain political, social or economic functions but they also form the visible surface of the nation. The historical record would suggest that it can be helpful to remove predominantly symbolic institutions from the political fray as much as possible in order to preserve their meaningfulness beyond political partisanship.

2.6: SUMMARY

Nation- building refers to the building or constituting a national identity of the state. Nation Power is main motivating force behind it. Nation building can incorporate the use of information or major infrastructure development to substitute social coordination, co-operation and financial growth. The academic debate on nations and nationalism continues to this date from Ernest Renan's famous question 'What is the nation?' in his lecture at Sorbonne in 1887. Nation building is an architectural metaphor. A nation is consisted of various attributes. The attributes are important for the construction of a good nation. Nationhood is very important for

the nation. It is the basic idea on which a nation persists Rajni Kothari describes a nature of nation building process in free India as “the center periphery model”. By this statement he tried to describe the socio, economic, political development and modernization process in India. Nation Building is one of highest aspirations, if not the highest of the Indian people to become an integrated and strong nation. The ingredients of Nation Building are Well defined and well-functioning constitution, Achievements of National goals and objectives, Capability to bring peaceful and constitutional means of political change, unity and diversity, Communication and Infrastructure, development of economy, Safeguards to the minorities and weaker sections of the society, settlement of crisis. A nation might have its state and well-defined territory and yet lack the substance of nationality. Successful nations are defined as democratically constitute nations. Indian nationalism grew up as reaction to aggressive British nationalism. Nation building is a process of constituting the unity and strength of a nation. Its starts after the nation have earned independence. Nation Building is a process of State Building, People Building, Democracy Building, Citizen Building, Economy Building, Social Building, and Government Building. Nation-building is one of the important aspect of a Nation. It is a process of uniting the people of the state into a well-functioning, good governing, well- dignified and unified nation. It builds in the state through the state of power with the political, social, economic, and cultural institutions. Nation Building inculcates the emotional unity of the people. It creates an enthusiasm among the people to participate in the process of modernization, development and socio-economic reconstruction of a nation. Nation Building creates a spirit of nationalism among the people of a nation.

2.7: KEY TERMS

- **Social Cohesion:** Fostering a sense of unity, inclusivity, and shared identity among diverse populations within a nation. Social cohesion initiatives aim to mitigate social divisions, promote tolerance, and build social capital necessary for nation-building.
- **Civic Engagement and Participation:** Encouraging active participation of citizens in decision-making processes, community development, and governance. Civic engagement initiatives seek to strengthen democratic institutions, promote civic responsibility, and enhance political legitimacy.
- **Security Sector Reform (SSR):** Restructuring and professionalizing security forces,

including the military, police, and judiciary, to ensure their effectiveness, accountability, and respect for human rights. SSR is essential for maintaining peace, stability, and the rule of law.

- **Transitional Justice:** Addressing past human rights abuses, injustices, and conflicts through mechanisms such as truth commissions, prosecutions, reparations, and institutional reforms. Transitional justice processes aim to promote reconciliation, accountability, and healing in post-conflict societies.
- **Cultural Heritage Preservation:** Safeguarding and promoting the cultural heritage, traditions, and identities of diverse communities within a nation. Cultural heritage preservation contributes to national identity, social cohesion, and sustainable development.

2.8: SELF ASSESSMENT QUESTIONS

- Write an essay on war and nation building.
- What are the similarities and differences between nation and state.
- Discuss various aspects of effective nation building.
- What is nation building? Discuss its causes of failure.

2.9: REFERENCES

Eric Martin, "Nation building in Bosnia and Herzegovina: Cooperation, coordination and collaboration." *South East European Journal of Economics and Business* 2.2 (2007): 7-22.

Ignatieff, Michael. *Empire lite: nation building in Bosnia, Kosovo, Afghanistan*. Random House, 2003.

Paul Dibb, "The Soviet experience in Afghanistan: lessons to be learned?" *Australian Journal of International Affairs* 64.5 (2010): 495-509.

Murray, Donette Murray, "The Love That Dare Not Speak its Name? George W. Bush: State and Nation Building in Afghanistan, 2001–2" *Journal of Intervention and Statebuilding* (2013) vol 7 DOI: 10.

"The U.S. lost track of why it was in Afghanistan, former commander says". NPR. August 10, 2022. Retrieved 28 August 2022.

UNIT-3: THE PROCESS OF NATION BUILDING IN INDIA: AN OVERVIEW

Structure

3.1 Objectives

3.2 Introduction

3.3 Ingredients of Nation Building

3.3.1 Well defined and well functioned constitution

3.3.2 Achievement of national goals and objectives

3.3.3 Capability to bring peaceful and constitutional means of political change

3.3.4 Unity in Diversity

3.3.5 Communication and Infrastructure

3.3.6 Development of Economy

3.3.7 Safeguards to the Minorities

3.3.8 Settlement of Crisis

3.4 India and its Nationhood

3.5 Three important attributes of Nationhood

3.6 Summary

3.7 Key Terms

3.8 Self Assessment Questions

3.9 References

3.1: OBJECTIVES

After going through this unit, you will be able to know:

- Various ingredients of Nation Building
- About India and its Nationhood
- Important attributes of Nationhood

3.2: INTRODUCTION

The process of nation building in India, can be traced from her time of independence. By 26th day of November 1949 the constituent assembly completed the drafting of constitution of free India. The main objective of the constituent assembly was to achieve the sovereign, democratic and republic of India. The constitution was formed to bring justice, liberty, equality,

fraternity, unity, integrity in India. The Constitution of India defined India as Bharat and a union of states, with single uniform citizenship, common unified electorate, duly and freely elected representative government, a federal polity with emphasis upon a strong center, a secular state providing to all its citizens without any discrimination of caste, colour, creed, religion, place of birth, sex, etc. The constitution of India in Part-III, Fundamental Rights, grants and guarantees to all the citizens equal justice, liberty, equality, etc. The main aim of the nation-building is the creation of a national history. A successful nationalization of the past would meet two key requirements of both nationalism and modernity. The national histories always attempt to prove the uniqueness of the nation. The great national histories of the 19th century present the political order of the day as the result of a great national struggle, thus strengthening the legitimacy of the regime in nationalist terms. It is no doubt that the Indian nationalism grew up as a reaction against the aggressive British nationalism. But unfortunately it was not strong enough to seam together psychologically all the people of India into one nationality. The result was that almost on the eve of independence there arose a new concept of nationality which challenges the older one. The two nation theory was undoubtedly doomed and ill-founded, because if the history on national's origin and growth proves anything it is that religion alone never determines nationality.

Rajni Kothari describes a nature of nation building process in free India as "the centerperiphery model". By this statement he tried to describe the socio, economic, political development and modernization process in India. He stated that "the whole process in India is supposed to have started with the establishment of a constitutional and political centre which, through its creative activity in the management of political institutions, has penetrated into society at various levels. Thus, instead of being determined by economic factors both the elite and political institutions are creative forces which bring about the integration of diversities and pluralities in national life in the spirit of tolerance."

Nation building is a process of constructing the unity of a nation. It starts after the nation has got independence. India became independent after a long struggle against British Empire in 1947. That struggle resulted in the rise of a batch of leaders committed to the freedom and welfare of the nation. This welfare rested in the economic, educational and cultural development and achievement of national harmony. Indian was the poor nation at the time of independence. It had gone through a series of communal riots during the British period that resulted in the partition of

India. There were other differences of language and caste. All these needed a concerted effort to solve. India started with making a constitution ensuring rule of law and democracy on the basis of universal adult franchise. Every person in India entered the domain of the government which had so far only ruled them. The difference between the state and citizen were eliminated. With the proclamation of the constitution of India, the Planning Commission was established to guide the developmental activities of the country. In the first five-year plans there was a great improvement of agriculture through irrigation and establishment of heavy industries in the country. There was also a great change in the transport and communication particularly in backward regions of the country. Strong efforts at spreading education from the primary to the post-graduate level were taken up after a number of commissions of enquiry made their recommendations. Especial efforts were taken for the development of scientific and technological knowledge. Indian Institute of Technology (IIT) were set up first at Kharagpur, then at Kanpur and then in other important centers. A University Grant Commission (UGC) was entrusted with the spread of higher education in the country.

There were different developmental measures taken during the period. The government tried to reduce poverty by adopting various measures especially among the Backward Class of People. The Scheduled Castes and the Scheduled Tribes got particular attention and commission was set up for the welfare of Scheduled castes and scheduled tribes. In 1955, a State Reorganization Commission was set up to rationalize the state territories with reference to economic and administrative convenience. Accordingly in 1956, the State Reorganizations Act was passed. But the process did not stop there. It is continuing till today. This reorganization has a bearing on the linguistic division in the country. The autonomy of provinces largely based on languages is meant for balance growth of the linguistic communities. In 1961, the National Integration Council was set up primarily to control communal flare ups. The Commission consisted of union ministers, state chief ministers and representatives of major political parties. It does not have any executive power in its own. Communal conflicts are treated as law and order problems. The recommendations of the council have bearing upon the maintenance of law and order. Once, nations were forged through "blood and iron." Today, the world seeks to build them through conflict resolution, multilateral aid, and free elections. But this more civilized approach has not yielded many successes. For nation building to work, some harsh compromises are

necessary-including military coercion and the recognition that democracy is not always a realistic goal.

An arrangement of aspects conspired and India was partitioned. But the two nation theory did not have an unqualified victory. It had proclaimed that the Hindus and Muslim were two distinct nations which must live separately in their own sovereign nations-states. But in the event of partitioned, vast number of people belonging to these so called nations were left behind on either side. In clearheaded completion the partition of India would appear to have been a clumsy device which settled nothing and satisfied none. If we add to that the holocaust, the misery and suffering, the moral degradation and debasement which followed it one cannot but be appalled at the historic folly. It demonstrates how a turn of history can be responsible for the delamination 'national' territory and how there is nothing immutable or sacrosanct about it. It is quite conceivable that partition could have been avoided even with the consent of all concerned, and where there are two nations today there might have been only one. The role of events of history in giving rise to nations might be appreciated even better if we consider what might have been the situation if Britain or any other foreign nations had never established its rule over India and forcibly unified the country. The Mughal Empire, which in case never extended to the whole of India, was breaking up.

Taking the above measures one may go through different question such as, can it be said with any assurance that there would have been toady a single national state in India, or at any rate not more than two? Those who talk sentimentally about undivided India might give India serious thought to this question and also not forget the fact that the political divisions and the struggle for power of those days rarely followed religious or communal lines. True, there did not exist a degree of cultural 'unity' in Hindu society at that time. There was also, it is true a discernable process a foot towards a cultural synthesis between the Hindu and the Muslim ways of life. But the history of Western Europe has shown that cultural unity does not necessarily lead, to a single national state. So, while it is difficult to say with any assurance what would have happened if then British had not brought the whole of India under one government? It is a sobering experience to realize that undivided India would have been perhaps one of the lesser possibilities. This thought should bring those who even eat our hearts over partition and consider it their patriotic duty to undo it.

3.3: INGREDIENTS OF NATION BUILDING IN INDIA

There are various ingredients of nation building in India. Among them some are discussed below.

3.3.1 Well defined and well-functioning constitution:

The constitution of India was successfully formulated, adopted and enacted on 26th day of November 1949. It was also the test of the time. Our constitutional makers made it so successfully, that taking different good provisions of the different constitutions of the world, it has successfully established with well-functioning structure. Structurally it has been well designed and functionally it was workable to control the then situation of the country.

3.3.2: Achievement of national goals and objectives:

Our constitutional makers try to make India a welfare state. In order to make it welfare they were agreed to accept the goals of democracy, secularism, socialism, socio-economic development of the society, equality, liberty, fraternity, cultural diversity, dignity of the country and unity and integrity of the nation. To make it successful the constitutional makers also adopts the mixed economy model of development in the country where both the private and public sector runs side by side. It is also described in the Part-IV of the constitution of India under the heading of Directive Principle of State Policy (DPSP). These goals are also discussed in the preamble of the constitution of India. As the development of a welfare state commits to secure for all its people social, economic and political justice, the preamble of the constitution of India directs towards the fulfillment of these commitments.

3.3.3: Capability to bring peaceful and constitutional means of political change:

The constitution of India has declared India as a sovereign, socialist, secular, democratic and a republic state. These principles are very necessary to bring about peaceful political changes in the country through constitutional means. From the time of independence a constitution of India has developed the ability to remain free from the rebellions and insurgencies. Over the years with all sorts of ups and downs the constitution of India has maintained a balance and established itself with a peaceful political life.

3.3.4: Unity in Diversity:

India is a land of immense diversities. It is multi-lingual, multi-religious, multi-cultural and multi-regional country. With all sorts of diversities, the country has maintained unity and integrity. There is unity amidst diversity. There is a slogan of one state, one nation and one country. With all the past aggressions like Chinese Aggression 1962, Indo-Pak war 1965 and

1971, Kargil war of 1999, Terrorist attack on India parliament 26/11, etc. the country has raised her head maintaining its unity and integrity from the great Himalayas to the Kanyakumari. Despite all the crisis, political decay, chaos, instability changes and challenges, the country has remained its unity, integrity and nation hood.

3.3.5: Communication and Infrastructure:

The development of a country reflects from her communication and infrastructure. These are the yardsticks of the process of development of a country. The more the communication development, the more the progress of the nation; the more the infrastructural facility, the more the economic growth. Subsequently, the country is developed with high level of communication and developed infrastructure facility. The basic infrastructures deals with roads, power generation, communication system of the country, satellites, aircrafts, ships, electronic gadgets, semiconductors, computers, automobiles, railway, airways, waterway, ports, textiles, steels, nuclear technology, etc. In India, the development of all these infrastructures has been successfully going on.

3.3.6: Development of Economy:

In India the economic development is going on through five years plans. From the very beginning it has focused on agriculture as 70% of the people in India were depending on it. Agriculture is regarded as the backbone of Indian Gross Domestic Product (GDP). Indian economy is guided by three sectors such as, Primary sector deals with agriculture and agro-based industries, Secondary sector deals with various types of industries and the Tertiary sector deals with the service sector of the country. The development of Indian economy depends upon four factors of production such as, Land, Labour, Capital and Organization. In the modern time the fifth and the most vital factor of production is the latest technology, which contributes more to the growth of GDP. Subsequently India has been accompanying the people towards the economic development with both public and private sector. There is a consistent growth of 5% in economic growth rate in India.

3.3.7: Safeguards to the minorities and weaker sections of the society:

The 5th Scheduled of the Constitution of India provides safeguards to the minorities and weaker sections of Indian society. It has implemented several privileges to the weaker and down trodden section of the society. Part-IV of the constitution of India i.e. DPSP also deals with the upliftment of the Scheduled caste, Scheduled tribe and other backward classes of tribal areas in the process of socio-economic reconstruction and development. The Mandal Commission has

also recommended for increased reservation for the backward classes under the chairmanship of B. P. Mandal. Socio- economic upliftment including women empowerment is an important factor in Indian democracy.

3.3.8: Settlement of crisis:

As India is multi-ferrous country, there arises various obstacles and negative forces in the path of nation building. The hindrances in the way of nation building in India are Regionalism, Communalism, Casteism, Politicization, Religious differences, Political defection, etc. Several cases in India are Ram Janmabhumi vs Babrimasjid issue, Gujrat roit, terrorism issues like 26/11, parliament attack etc. When we want to build a strong and vibrant nation, we have to overthrow all these hindrances from the mind of the people. In order to overthrow them there needs a strong mindset and political settlement.

3.4: INDIA AND ITS NATIONHOOD

India is land of immense diversities. It is a multi-lingual, multi-religious, multi-regional country. It is not the situation of today. It is there from the time of immemorial. One cannot say exactly at which point of view the nation is created and in which dimension it has been united. There are several questions may be asked regarding its nationhood and nation building. The question of nation-building has been much to the fore ever since India got Independence. It is one of highest aspirations, if not the highest of the Indian people to become an integrated and strong nation. There is a strong feeling in the country that our very future as a people would be brought into question if this task of nation-building was not appropriately and speedily contented.

Nationhood is very important for the nation. It is the basic idea on which a nation persists. Thus it is important to have a close look at the phenomenon of nationhood. It has been found to be extremely difficult to define precisely what a nation is, what is the behavior of a nation, what should be the importance of the nationhood, in which ground the nation can be better with the nationhood etc. The most important question is what the base of a nation is. Taking all this questions one may focus with the genesis and development of the word nation and nationhood. The word has a long history and its meaning has undergone a considerable process of evolution. Originally 'nation' meant a backward tribe, (civilized peoples, as of Greece and Rome, called

themselves gens or populous). At the beginning of the Middle Age, the word nation was used in Germany and France to designate the higher ruling class in opposition to the people. In former times the chieftain of an Irish clan was called captain of his nation. 'The meaning of the word gradually evolved in western usage and came generally to refer to a free, self-governing people or a people constituted as a state. In the long history of our country there is no word or concept found to correspond with the modern concept of nationality. The long history of the word the nation in its modern sense is comparatively of recent origin.

Subsequently, some of the elementary traits of nationality, writes Hertz, may be as old as humanity, but the 'more complicated phenomena have gradually arisen at different times. 'While it is not possible to state definitely when nationality as we know it today was born, it would not be wrong to say that the second half of the 18th century saw its first beginnings. The 19th was par excellence the century of nationalism. The scene of this new development in human history was Western Europe. Why should it has been so is not very clear? For the present let it suffice to point out that it was not as if human society had to reach a 'higher' stage of civilization to give birth to the modern nation. To quote Hertz again, India, China and the Islamic peoples brought forth great and comparatively homogenous civilizations, but the ideas, In Europe nationality was alien to them before they were permeated by Europe itself,' Hertz goes on to say, 'ancient Greece or medieval Italy and Germany possessed very high civilization while there was hardly any national solidarity between the different peoples into which each was divided. A high level of civilization was even adverse to national unity on a wide scale. Athens, Florence and Nuremberg were proud of the splendor of their own achievements and looked down upon their backward kinsmen in other cities. History shows that the progress of civilization was often accompanied by a dwindling of national thoughts.'

3.5: THREE IMPORTANT ATTRIBUTES OF NATIONHOOD

A nation is consisted of various attributes. The attributes are important for the construction of a good nation. It would be helpful to keep in mind that to be a nation does not necessarily mean to be terribly civilized. While civilization is an end desirable in itself, nationalism can only be a means to an end. Scholars have distinguished between legal and social or political nationhood or nationality. The first is the objective and the second the subjective aspect of

nationalism. Legally considered, a nation usually has the following three essential attributes:

- (a) Well-defined territory that it calls its own;
- (b) Political unity represented by a common state to which all citizens owe allegiance;
- (c) Recognition by other nations, and by international law, as a distinct, sovereign nation. A legally defined nation might well be composed of a number of nations which in some respects consider themselves distinct from one another but yet accept willingly a common state.

With the characteristics of nationhood, one may inspire with all the phenomena of the nation. Only legal nationality is not enough. A nation might have its state and well- defined territory and yet lack the substance of nationality. That substance is denned as national consciousness or national sentiment'. 'Without a sufficient measure of this consciousness,' says Hertz, 'there is no nation.' When we speak of national integration in our own country, we mean precisely the development of this very consciousness of nationality.

Subsequently, this consciousness or sentiment is an exceedingly elusive thing, and whether or not a specific people possess it in sufficient degree is very difficult to determine. It is a product of varied historical experience, which is seldom the same for every nation. It is therefore difficult to generalize and lay down prescriptions on how to develop national consciousness. It would be interesting to quote here from Hertz two views of two distinguished Europeans on the question. Jonh stuart mill, saw the essence of nationality in the mutual sympathy of its adherents and in their desire to be united, under a government of their own, produced through a community of history and politics and through feelings of pride and shame, joy and grief connected with experiences of the past.' According to Ernest Renan, the great French philosopher and author of the famous Life of Jesus, it is not race, religion, language, state, civilization or economic interests that make a nation. The national idea is founded on a heroic past, great men, and true glory. Common experience leads to the formation of a community of will. More than anything else it is common grief that binds a nation together, more than triumphs. It made in the past and on willingness to make further ones in the future. The existence of a nation resembles a plebiscite repeated every day.

3.6: SUMMARY

A nation is not defined by its borders or the boundaries of its land mass. Rather, a nation is defined by diverse people who have been unified by a cause and a value system and who are committed to a vision for the type of society they wish to live in and give to the future generations to come. A nation that craves for development and a stronger union should carry everyone along irrespective of language, colour, race, creed, ethnic diversity, religion, cultural values or sexual orientation. In essence, the country in question should practice an equitable distribution of wealth, equal opportunities and procrustean development where every individual will see each other as equal more so where no ethnic, race or group of persons should see the country as patrimony or 'born to rule syndrome. No nation can ever be worthy of its existence that cannot take its women along with the men. No struggle can ever succeed without women participating side by side with men. There are two powers in the world; one is the sword and the other is the pen. There is a great competition and rivalry between the two. There is a third power stronger than both, that of the women. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever. The motto behind the UNO is to prevent war and maintain peace and security all over the world. It is ultimately spreading the message of Nation Building, National integration, nationalism and nationality. American diplomacy has three great tasks. First, we will unite the community of democracies in building an international system that is based on our shared values and the rule of law. Second, we will strengthen the community of democracies to fight the threats to our common security and alleviate the hopelessness that feeds terror. And third, we will spread freedom and democracy throughout the globe.

3.7: KEY TERMS

- **Education and Literacy:** Investing in education systems to provide access to quality education and promote literacy among the population. Education plays a crucial role in empowering individuals, fostering critical thinking, and building human capital necessary for national development.
- **Economic Development:** Promoting sustainable economic growth, job creation, and

poverty reduction. Economic development initiatives focus on diversifying the economy, attracting investments, and improving productivity to enhance the standard of living for citizens.

- **Social Cohesion:** Fostering a sense of unity, inclusivity, and shared identity among diverse populations within a nation. Social cohesion initiatives aim to mitigate social divisions, promote tolerance, and build social capital necessary for nation-building.
- **Civic Engagement and Participation:** Encouraging active participation of citizens in decision-making processes, community development, and governance. Civic engagement initiatives seek to strengthen democratic institutions, promote civic responsibility, and enhance political legitimacy.

3.8: SELF ASSESSMENT QUESTIONS

- Discuss various ingredients of the nation building.
- What is unit in diversity? Discuss it in Indian context.
- Write an essay on India and its nationhood.
- Discuss various attributes of nationhood.

3.9: REFERENCES

Eric Martin, "Nation building in Bosnia and Herzegovina: Cooperation, coordination and collaboration." *South East European Journal of Economics and Business* 2.2 (2007): 7-22.

Ignatieff, Michael. *Empire lite: nation building in Bosnia, Kosovo, Afghanistan*. Random House, 2003.

Paul Dibb, "The Soviet experience in Afghanistan: lessons to be learned?" *Australian Journal of International Affairs* 64.5 (2010): 495-509.

Murray, Donette Murray, "The Love That Dare Not Speak its Name? George W. Bush: State and Nation Building in Afghanistan, 2001–2" *Journal of Intervention and Statebuilding* (2013) vol 7 DOI: 10.

"The U.S. lost track of why it was in Afghanistan, former commander says". NPR. August 10, 2022. Retrieved 28 August 2022

UNIT-4: CULTURAL PERSPECTIVE OF NATION BUILDING IN INDIA

Structure

- 4.1 Objectives
- 4.2 Introduction
- 4.3 Steps of failure of Nation- Building in India
- 4.4 Hindrances of Nation- Building in India
- 4.5 United Nations: The role of Nations Building
- 4.6 Summary
- 4.7 Key Terms
- 4.8 Self Assessment Questions
- 4.9 References

4.1: OBJECTIVES

After going through this unit, you will be able to know:

- Causes of the failure of the Nation Building in India
- Hindrances on the way of Nation Building in India
- Role of United Nations in the Nation Building

4.2: INTRODUCTION

The process of nation building has a long run history. It has shaped its formation from its long historical traditions. In principle, all nation building process are cultural interventions as the center established a particular identity on the periphery or in other words, the elites creates a national identity for the rest of the population. In addition, there has always been a certain measure of foreignness in nationalism. In Russia the contribution of enlightenment thought and later German idealism have been crucial. The same applies to Arab nationalism in which the German notion of the Kulturnation played a prominent part. Ever since the end of the Cold war, intervention have occurred in cases of humanitarian disasters, such as genocide or ‘ethnic cleansing’, famine, civil war, in response to a war of aggression on a third party or a perceived military threat to the international community. Politically, nations in the grip of civil war or expediting genocide may present good reasons for intervention. If such an intervention occurs, the intervening powers inherit the causes of crisis and will have to address them. There

is, of course a multitude of possible reasons for a process of national disintegration leading to unrest or even civil war. The underlying cause of such a development, however, can be a profound disagreement about national identity.

4.3: STEPS OF FAILURE OF NATION-BUILDING IN INDIA

The causes of the failure of Nation building in are as follows

- (1) Frequent amendments in the constitution made its operational failure.
- (2) Lack of political stability and development.
- (3) Increase in political violence, electoral violence, political corruption
- (4) Lack of conflict resolution measures
- (5) Problem in implementing all the good measures of democracy in India
- (6) Poverty, illiteracy, unemployment, ignorance, casteism, factionalism, regionalism, linguism etc.
- (7) Politics and personality cult
- (8) Groupism and political defection
- (9) Lack of mature unity
- (10) Aggression, war, and external interferences
- (11) Decreasing level of emotional integration
- (12) Weak infrastructure and large based infrastructure in the country due to its large size
- (13) Lack of development in industrial sector
- (14) National income remains low
- (15) Low GNP and GDP in India
- (16) Over-population, less-productivity, mass poverty and fall in industrial production
- (17) Frequent strikes and Labour problems
- (18) Socio-economic imbalance

- (19) The benefits have failed to reach at all the sections of the society
- (20) The reservation policies vs. anti-reservations leads communal riots
- (21) Vote bank politics and corruption in politics
- (22) Miss use of power in politics
- (23) Red tapism

However, all these failures reflect the weakness of the process of nation building in India. In spite of all these problems, India is yet to undertake the challenging task of connecting Indians into a fully united, resilient, vigorous, dynamic and established nation.

4.4: HINDRANCES OF NATION-BUILDING IN INDIA

There are various hindrances in the process of nation building in India. These are

1. Ever growing and rapidly expanding population in India
2. Large section of India's population continues to live below poverty line
3. There is vicious circle of poverty
4. Slow and inadequate economic growth
5. Regional imbalance
6. Uneven economic development
7. Huge gap between rich and poor
8. Unemployment and underemployment
9. Provincial inequalities
10. Inadequate technological development
11. Communalism, regionalism and secessionism
12. Centre-state conflict
13. Inter-state dispute

14. Lack of healthy work culture
15. Terrorism
16. Illiteracy, ignorance and poverty
17. The unhealthy and biotic role of political parties
18. The existence of factionalism and personality cult

All these are the major hindrances of the nation building. The need of the hour is to fight these pron and corns with all effort and challenge.

4.5: UNITED NATIONS: THE ROLE OF NATION BUILDING

The United Nations Organization (UNO) has created after the Second World War on 24th October, 1945. The motto behind the UNO is to prevent war and maintain peace and security all over the world. It is ultimately spreading the message of Nation Building, National integration, nationalism and nationality.

Taking an example of the United States of America, one may focus on the George Bush's, former American president, administration. The Policy of the United States , ever since September 11, 2001 and the subsequent war on terrorism which promoting democracy has reimbursed forcefully to the foreign policy agenda of the United States. Although bringing about democratic change has been a foreign policy goal ever since President Wilson, and has been employed during the Cold War by different presidents with different emphases, one official reason for its renewed rise to prominence is the belief that a lack of democracy is conducive to the growth of Islamic extremism and the rise of terrorist networks threatening the United States. Before taking office as Secretary of State, Condoleezza Rice set out the foreign policy program following from these convictions: "In these momentous times, American diplomacy has three great tasks. First, we will unite the community of democracies in building an international system that is based on our shared values and the rule of law. Second, we will strengthen the community of democracies to fight the threats to our common security and alleviate the hopelessness that feeds terror. And third, we will spread freedom and democracy throughout the globe. That is the mission that President Bush has set for America in the world – and the great mission of American diplomacy today.

This approach is imbued by a specific perspective on nation-building and state-building shared

by many US policy makers and analysts. In his influential work on state-building, for example, Francis Fukuyama points out that the process of nation-building in the American understanding reflects their own 'National Experience' in which the United States constitution is seen as the starting point and frame of reference of a national history and common identity. Accordingly, many Americans see their state and their nation as essentially coterminous and both originating from the Declaration of Independence and the 1787 constitution. Applying these findings to foreign policy, he continues: "for Americans, their Declaration of Independence and the Constitution are not just the basis of a legal-political order on the North American continent; they are the embodiment of universal values and have significance for humankind that goes well beyond the borders of the United States. It is a belief in democracy, liberty, dignity of every life and the rights of every individual uniting Americans of all backgrounds, all faiths, and all colors. They provide us a common cause in all times, a rallying point in difficult times, and a source of hope to men and women across the globe who cherish freedom and work to advance freedom cause. And in these extraordinary times, it is the duty of all of legislatures, diplomats, civil servants and citizens to uphold and advance the values that are the core of the American identity, and that have lifted the lives of millions around the world." What is remarkable here is the democracy as form of government, as a value-system and, therefore, as an identity. By promoting democracy in this fashion, the distinction between state-building and nation-building is largely ignored. It also becomes apparent that this approach rests on the assumption that erecting democratic institutions in the course of a state-building process leading to a democratic society united by a democratic collective identity.

Given the nature of the US involvement in establishing democratic institutions and Nation Building process in Iraq, however, the question arises whether and in which guise democracy can be a reasonable as a foreign policy goal. Especially, when a truly democratic process may produce results bottomless to the other foreign policy interests of the United States. There is the danger that trying to harmonize divergent policy aims might lead to 'Semantic Democracy', leading not only to renewed mid-term instability but damaging and delegitimizing the concept of modern democracy itself. Considering the current policy of the United States the shady sides of the "failed states"- doctrine become apparent. As already mentioned the doctrine is susceptible to an instrumentalization for hegemonic power politics, disguised as the propagation of democracy and liberal values and legitimated with reference to a sloppy rhetoric

of “failed states”. To assume such an instrumentalization is not only influenced by the vagueness of the criteria of the doctrine, but is also a result of the fact that, until now, there is little work on the genealogy of this oratory. Its origins as well as the underlying political and historical aspects are anything but clear. The questions how it is linked to the promotion of the last superpower’s interests and what are the reasons for the emergence of this doctrine in the political and legal discourse still remain largely unanswered when the question of Nation Building arises. The role of UNO still revolves around this question. An analysis of the question in which the doctrine is used can at least ascertain that there is a predominance of western authors in defining the content of the “failed states and Nation Building” doctrine. It is true that the term is used in non-western countries, too, but “the term, insofar as used in the Southern Tier, seems to imply a wider legal and von Bog dandy et al., State-Building, Nation-Building moral responsibility on the governing bodies of the Northern Tier for colonialism’s consequences: it is becoming a rallying call for African action. The Policy of the United Nations, a much more cautious approach is pursued by the United Nations with regard to the promotion of democracy and Nation Building. It still appears to be common sense that the specific role of the United Nations as a universal institution and as global institution prevents political or ideological partiality. Given that the United Nations are primarily meant to safeguard international peace and security, this approach was carefully adhered to until the end of the cold war. The United Nations were meant to stay impartial precisely to ensure the neutrality of a forum for the major challengers. Yet, with the end of the major east-west conflict, North- South dialogue and establishment of hegemonic power by the super powers, some tendencies seem to point at notwithstanding restrained adjustment of this policy towards the promotion of democracy, nationalism and nation Building. This does not mean that the United Nations policy has loosened to only the promotion of democracy and nation building as a new primary goal, the question rather seems to be, how this orientation towards nation building and democratization can be incorporated in the overall framework of United Nations policies.

4.6: SUMMARY

No nation can ever be worthy of its existence that cannot take its women along with the men. No struggle can ever succeed without women participating side by side with men. There are two powers in the world; one is the sword and the other is the pen. There is a great competition and

rivalry between the two. There is a third power stronger than both, that of the women. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with His wrath? Indeed, I tremble for my country when I reflect that God is just; that his justice cannot sleep forever. The motto behind the UNO is to prevent war and maintain peace and security all over the world. It is ultimately spreading the message of Nation Building, National integration, nationalism and nationality. American diplomacy has three great tasks. First, we will unite the community of democracies in building an international system that is based on our shared values and the rule of law. Second, we will strengthen the community of democracies to fight the threats to our common security and alleviate the hopelessness that feeds terror. And third, we will spread freedom and democracy throughout the globe.

4.7: KEY TERMS

- **Ethnic/Religious Conflict:** This refers to tensions and conflicts arising from differences in ethnicity, religion, or cultural identity within a nation. Examples include sectarian violence, ethnic cleansing, or discrimination based on religious or ethnic grounds.
- **Political Instability:** Political instability encompasses factors such as frequent changes in government, weak governance structures, corruption, or lack of political consensus. It can hinder nation-building by impeding the implementation of policies and reforms essential for development.
- **Economic Challenges:** Economic hindrances include poverty, unemployment, unequal distribution of wealth, and economic dependence on foreign aid or resources. Economic instability can lead to social unrest and undermine efforts towards nation-building.
- **Historical Grievances:** Historical grievances such as unresolved conflicts, injustices, or colonial legacies can fuel resentment among different groups within a nation, hindering efforts to foster national unity and reconciliation.
- **External Interference:** External interference refers to interventions by foreign powers or neighboring states that undermine a nation's sovereignty, stability, or developmental efforts. This interference can take the form of military interventions, economic coercion,

or support for separatist movements.

- **Weak Institutions:** Weak institutions, including ineffective judicial systems, inadequate law enforcement, and lack of administrative capacity, can hinder nation-building by impeding the delivery of essential services, enforcing the rule of law, and ensuring accountability.
- **Social Fragmentation:** Social fragmentation occurs when divisions based on factors such as class, ethnicity, religion, or ideology undermine social cohesion and trust. This can lead to polarization, marginalization of certain groups, and difficulties in building consensus around national goals.
- **Geographical Challenges:** Geographical challenges such as rugged terrain, lack of infrastructure, or vulnerability to natural disasters can impede nation-building efforts by hindering economic development, access to education and healthcare, and the delivery of public services.
- **Cultural Barriers:** Cultural barriers encompass differences in language, customs, traditions, and values that can hinder efforts to forge a common national identity and promote social cohesion. Cultural diversity can enrich a nation, but it can also pose challenges in fostering unity and inclusivity.

4.8: SELF ASSESSMENT QUESTIONS

- What is Nation Building, Nationalism, Nationhood and Nationality.
- Discuss the role of UNO in Nation Building.
- Define Nation Building? Discuss its hindrances.
- Critically examine the cultural perspective of Nation Building in India.

4.9: REFERENCES

Ghai. K.K. (2003) 'Indian Government and Politics', Kalyani Publisher, New Delhi.

Yogesh, Atal (1981) 'Building a Nation(essays on India)', Abhinav Publisher, New Delhi

Kumar Anand. (1999) 'Nation Building in India : Culture, Power and Society', Radiant

Publisher, Hyderabad

Narayan, Jayprakash (1975) 'Nation Building in India' , Navachetan Prakashan, Varanasi

Chandra Dutt Rabindra (1987) 'Nation Building in India: Socio Economic Factors', Lancer International in association with India international centre.

BLOCK-2: MAKING OF THE INDIAN CONSTITUTION

Unit-5: Historical Background of the Indian Constitution

Unit-6: Introduction to the Constituent Assembly

Unit-7: Ideological Sources of the Constitution

Unit-8: Fundamental Rights & DPSP

UNIT-5: HISTORICAL BACKGROUND OF THE INDIAN CONSTITUTION

Structure

5.1 Objectives

5.2 Introduction

5.3 Historical Background of the Indian Constitution

5.3.1 Regulating Act of 1773

5.3.2 Pitt's India Act of 1784

5.3.3 The Charter Act of 1833

5.3.4 Charter Act of 1853

5.3.5 Government of India Act 1858

5.3.6 Indian Council Act 1861

5.3.7 Indian Council Act, 1892

5.3.8 India Council Act, 1909 or Morley -Minto Reform 1909

5.3.9 August Declaration or Montague Declaration of 1917

5.3.10 Government of India Act, 1919

5.3.11 Government of India act 1935

5.3.12 Cripps Mission 1942

5.3.13 Cabinet Mission 1945

5.3.14 Mount Batten Plan

5.3.15 Indian Independence Act, 1947

5.4 Summary

5.5 Key Terms

5.6 Self Assessment Questions

5.7 References

5.1: OBJECTIVES

After going through this unit, you will be able to know:

- Historical Background of the making of the Indian Constitution
- Philosophical and ideological bases of the Indian Constitution
- Various Act passed by the British Parliament for India
- Various Commissions came to India

5.2: INTRODUCTION

In 1600 A.D. the British came to India to trade in the country. It was in the form of East India Company (EIC) under a charter granted by Queen Elizabeth-I. Consequently, the company started capturing the rights over revenue and civil justice i.e. Diwani of Bengal, Bihar and Odisha to the end of 1765. In 1858, the wake up Sepoy mutiny or the First war of Indian Independence transferred the direct responsibility of governance of India to the British crown. The British Crown govern directly from Britain. One can trace the history of constitutional development in India from 1773 which brought the Regulating Act passed by the British parliament to framework the rules of EIC in India. The British parliament passed several charter acts to amend the company's rule in India. These amendments provided a sort of historical growth of the constitution of India and also paved the way for the development of Constituent assembly in India. The creation of the constitution of India was in progress even before the time of Independence. These creations had brought the birth of nationalism in India towards the later part of 19th century. The Nationalist leaders of India demanded many reforms in constitutional arrangements during the colonial rule. For this purpose the British parliament passed the 'Act for the better government of India in 1858' and later on three more acts i.e., in 1861, 1892, 1909. These acts were enacted to amend and reform the constitutional system of India. The main objective behind these was to decentralize and streamline British administration India. By passing the act of 1909 (Morley Minto Reforms), it stated that there was no question of introducing a responsible government in India's. However, within these years, the British government, under the pressure of First World War and the condition generated by the Indian national movements had to declare that the final goal of British policy in India was the realization of the self-government. Drafting Committee played a very vital role for the making of the Constitution of India. The Committee was constituted on 29 August, 1947, with Dr. B. R. Ambedkar as its chairman. The Committee submitted its report to the Constituent Assembly on 21st February, 1948. On the basis of this report, a new draft was prepared by the Drafting Committee and submitted to the Assembly on 4th November, 1948. From 14th November, 1949 to 26 November, 1949, the final debate was held on the draft.

The Constitution is a legally sanctified document consisting of the basic governing principles of the states. It establishes the framework as well as the primary objectives for the various organs of the government. The Constitution of a country is the basic structure of the political system

that governs people. It establishes a governmental structure that exercises power, and at the same time ensures individual freedom and liberty. Further, it recommends a method for the settlement of the power of the state through the principles of state organization. Besides, the Constitution is also responsible for defining the powers of the main elements of the states, segregating their responsibilities as well as regulating their relationships amongst each other and with the people. In a nutshell, the constitution serves as the ‘fundamental law’ of a country. Any other laws made in the country must be in conformity with the constitution in order to be legal.

5.3: HISTORICAL BACKGROUND OF THE INDIAN CONSTITUTION

After that the British government passed two acts that is 1919 and 1935 to introduce some sort of democratic, limited and responsible government. Finally in August 15, 1947 the British parliament passed the Indian Independence Act which marked the end of British rule in India embarking upon a new era of hopes and aspirations, peace and prosperity, planning with plenty, unity in diversity etc. Let’s discuss these Acts briefly starting from the Regulating Act of 1773.

5.3.1: Regulating Act of 1773

The Regulating Act of 1773 was the first and notable attempt made by the parliament of Britain to regulate and control the affairs of the East India Company in India. This Act was an important landmark in the growth of the Indian administration under the British rule. There was no dominant authority before 1773 in India. The EIC was extensively ruling over Bombay, Bengal and Madras presidencies by the headship of Governor in Council responsible to the Court of Directors in England. This act recognized the political and administrative functions of the company for the first time. This act was also laid the foundation of central administration in India.

The features of this Act are as follows:

1. It appointed a governor general and four counselors for the presidency of Fort Williams in Bengal
2. It designated the governor of Bengal as the ‘Governor-General of Bengal’ and created an Executive Council of four members to assist him. The first such Governor General

was Lord Warren Hastings.

3. This act gave the right to vote to the shareholders of the EIC for the election of the Directors of the company holding stock worth 1000 for 12 months preceding the date of elections.
4. This act made the governors of Bombay and Madras presidencies subordinate to the governor-in general of Bengal, unlike earlier, when the three presidencies were independent of one another.
5. It provided for the establishment of a supreme Court at Calcutta in 1774 having one chief Justice and three other judges
6. This act prohibited the servants of the company from engaging in any private trade or accepting presents or bribes from the natives.
7. This act strengthened the control of the British Government over the company by requiring the court of Directors to report to the revenue, civil, and military affairs in India.
8. This act also made the Governor General in Council strong to make rules and regulations, for the good order and the civil government of the Company's territories in India.
9. No British Subject was to charge interest at rate higher than 12 percent.

5.3.2: Pitt's India Acts of 1784

In order to rectify the defects of the Regulating act of 1773 the British parliament passed the amending act 1781. It also known as Act of Settlement. This act further changed as the Pitt's India act in 1784. This act strengthened the position of the Governor General in Council Vis- Vis the Supreme Court. In company's administration was changed by this act. The features of this Act were as follows

- 1- It distinguishes between commercial and political functions of the company.
- 2- This act established a Board of six commissioners for the affairs of India known as Board of Control (BOC).
- 3- The BOC was vested the power of appointing any of the company's servants.

- 4- The Court of directors were to be bound by all orders of the Board touching the civil and military government and the revenues of India.
- 5- This act reduce the numbers of members from four to three in Governor generals executive council.
- 6- The Board of Control was empowered to send secret orders and directions regarding secret matters such as declaring of war, making of peace or negotiating with any of the native princess or states in India, to the secret committee of the court of directors.
- 7- The appointment of the governor general was made by the directors with the approval of the crown. Such approval was not needed whenever the governors and members of the executive council were appointed.
- 8- Governor General and the council were empowered to superintend, direct and control the several presidencies and governments in matters of war and peace.

However, this act was very significant as for the first time the company's territory in India was called British possession in India and the British government was given the supreme control over company's affairs and its administration in the country.

5.3.3: The Charter Act of 1833

This act was focused towards the legislative centralization in India. The features of this act were given below

- 1- The act abolished the company's trading monopoly completely.
- 2- This act introduced financial centralization.
- 3- This act was an attempt to introduce a system of open competition for selection of civil servants, and stated that the Indians should not be debarred from holding any place, office and employment under the company.
- 4- This act deprived the governor of Bombay and Madras of their legislative powers.
- 5- The laws made under the previous acts were known as regulations but by this laws it became act.

- 6- This act recommended the appointment of a law commission under the presidency of the law member.
- 7- For helping the executive council in the process of law making a law member was added.
- 8- This act extended the jurisdiction of the governor general in council.

5.3.4: Charter Act of 1853

Under the Charter act of 1853 the road to the final surrender of authority by the EIC was opened. This act allowed the company to govern only until parliament shall otherwise provide. This act was a significant constitutional land mark in India. The features of this act were given below.

- 1- This act for the first time separated the legislative and executive functions of the governor general and council.
- 2- This act provided for addition of six new members declared as Legislative councilors.
- 3- By this act the legislative wing of the council worked as a mini parliament.
- 4- This act introduces an open competition system of selection and recruitment of civil servants.
- 5- This act extended the company's role and allowed it to continue in India under the trust of the British Crown.
- 6- By this act local representatives in the India legislative council were introduced.

The Crown Rule 1858 to 1947

The historical development of the Constitution of India was divided into two parts.

- (1) From 1773 to 1858 (As discussed above)
- (2) From 1858 to 1947 (As discussed under)

5.3.5: Government of India Act 1858

The government of India Act, 1858, ended the company rule and transferred the government of

the country directly to the British crown. The company rule was, thus, ended and the administration was carried out in the name of the crown through the secretary of the state. The secretary assumed the powers of the company's Board of Directors (BOD) as well as the Board of Control (BOC). The Secretary of State, accountable to the British parliament, required to be supported by the Council of India comprising of fifteen members. The crown was required to appoint eight members for the Council, while the Board of Directors was to elect the remaining seven. The main features of this Act were as follows:

- 1- It made the administration of the country unitary as well as rigidly centralized. Though the territory was divided into provinces with a Governor or Lieutenant Governor headed by his executive council, yet the provincial governments were mere agents of the government. They had to function under the superintendence, direction and control of the governor general in all matters related to the governors of the province.
- 2- It made no provision for separation of function. The entire authority for the governance of India like civil, military, executive and legislative was handed over to the governor of the council, who was accountable to the secretary of the state.
- 3- The secretary of the state had complete control over the Indian administration.
- 4- The entire apparatus of administration was made bureaucratic.
- 5- The Board of Control and the Court of Directors were abolished and their powers were transferred to the secretary of the state of India and the Indian Council.
- 6- Secretary of state who sat in the British parliament was to be assisted by a parliamentary undersecretary. He was to be a cabinet minister of England but his salary and that of his establishment was to be paid out of the revenue of India.
- 7- The secretary of state for India was to be the president of India council. He was to give a vote and a casting vote in the case of tie.
- 8- The act created an India council of 15 members. Seven of them were to be elected by the court of directors and the remaining 8 were to be appointed by the crown.

- 9- The act of 1858 transferred the Government of India to the hands of British Parliament and the latter acquired full, formal and legal control over Indian affairs.
- 10-Every year, the secretary of state was to present to the Commons a report on the moral and material progress in India.
- 11-The secretary of State in council was to lay down certain directions for the guidance of the government of India in its dealings with England.
- 12-Control over the civil and military servants of the crown was given to the Indian council.

However, the Act of 1858 was introduced for 'the better Government of India'. Thus, it introduced many significant changes in the Home Government. However, these changes were not related to the administrative set-up of India. Foremost changes were made in the Constitution of India after the severe crisis of 1857-58 Sepoy mutiny (Sipahi Bidrohia). There were many reasons behind the introduction of these changes. All legislative procedures were centralized by the Charter Act of 1833. The sole authority for legislating and passing decrees, while implementing them for the economy, rested with the Legislative council i.e. centre. Though the functioning of the Legislative Council was set up by the Charter Acts of 1833, the Act was not followed appropriately. The council resulted into a debating society or a parliament on a smaller scale, claiming all privileges and functions of the representative body. While acting as an independent legislator, the council did not function well with the home government. As a result, the first council act was passed in 1861 after holding discussion between the home governments in India. This act became very significant but did not grant any political rights to the Indians, so it could not fulfill the aspirations of the Indians.

5.3.6: Indian Council Act 1861

The Indian council act 1861 made various contributions to the process of making of the constitution of India. It introduced a representative institution in India for the first time. As per this act, the executive council of the governor general was to comprise some Indians as non-official members for the connection of legislative business. It has initiated the process of decentralization by restoring the legislative powers to the Mumbai and Madras presidency.

Another feature of the act was its statutory recognition of the portfolio system. Looking to its depth, the Indian council act was a part of legislation that was passed by the parliament of Great Britain in 1861, which converted the executive council of the viceroy of the India into a Cabinet on the portfolio system. This cabinet has six ordinary members, each of whom was in charge of an independent department in the Calcutta government. Comprising, government, revenue, law and finance, and public works (post 1874). The military commander in chief worked with the council as a special member. Under the provision of the act, the viceroy was allowed to overrule to the council when he deemed it unnecessary.

The act offered many privileges to the members of the legislative council. They could discuss legislation and give their inputs or suggestions. This legislative power that was taken away by the Charter of 1833, was restored those Act. On the other hand, there were some drawbacks of the Act as well. The members of the council were not allowed to implement any legislation on their own. The features of the Act are as follows:

1. The Act added a fifth member to the executive council of the Viceroy. The member was assumed to be a gentleman of legal professional service and a jurist. The Act further gave powers to the Governor-General to enact rules for convenient business transactions in the Council. Lord Canning used the power to pioneer the portfolio system in the Government of India. Until then, the Government's rules administered the executive council as a whole due to which all official documents were brought under the notice of the council members.
2. Before the Act, Canning divided the government amongst the council members. With this, the foundation of the cabinet government was formed in India. The Act further declared that each administrative branch would have its own spokesman and Head in the Government, who would be responsible for the entire administration and defiance. The new system witnessed the daily administrative matters taken care by the member- in-charge. In important case, the concerned member used to present the matters before the Governor-General and consult him before taking any decision.

The decentralization of business brought in some efficiency in the system; however, it could not be accomplished thoroughly.

3. The Governor General was given the power to create new provinces for legislative purposes and to appoint Lt. Governors for these provinces.
4. This Act introduced a number of legislative reforms in the country. The number of members in the Viceroy's executive council was increased, wherein; it was declared that additional members should be six to the minimum and twelve to the maximum. These were directly nominated by the Governor-General for two years. Not less than 50 per cent of the members were non-official members. The Act did not make any statutory provisions for admitting Indians. However, a few non-official seats of high rank were offered to Indians. The Council's functions were strictly confined to the legislative affairs. It did not have any control over the administration, finance and the right of interpellation.
5. Every bill passed by the provincial council required not only the ascent of the governor but also the governor general.
6. The Act reestablished the legislative powers of implementing and amending laws to the provinces of Madras and Bombay. Nonetheless, the provincial councils could not pass any laws until they had the consent of the Governor-General. Besides, in few matters, the prior approval of the governor-General was made compulsory. After the Act, the legislative councils were formed in Bengal, Punjab and the north-western provinces during the period from 1862 to 1889.
7. This Act considerably positioned down the mechanical set-up of the government. There were three independent presidencies formed into a common system. The legislative and the administrative authority of the Governor-General-in Council was established over different provinces. Further, the Act also gave legislative

authority to the governments of Bombay and Madras. It laid many requirements for creating identical legislative councils in other provinces. This led to the decentralization of legislative powers which culminated in autonomy grants to the provinces under the Government of India Act, 1935.

8. The council was expanded by not less than four and not more than eight members, out of whom half were to be nonofficial and consistently Indians.

9. The governor General was empowered the right to create similar other bodies for north western provinces and Punjab.

However, in the act, there was no endeavor to make under the Council Act of 1861, to discriminate the jurisdiction of the Central Legislature from the Local Legislature in the federal constitution. The main functions of the Legislative Councils, as established under the Act, were not carried out properly. The Councils could not perform in conformity to the Act. The Act could not establish representative government in India on the basis of the England government. It declared that the colonial representative assemblies would largely discuss financial matters and taxation. This Act paved the path for extensive anxiety and public estrangement. This Act was the first milestone leading to the responsible government.

5.3.7: Indian Council Act, 1892

The Indian Council Act of 1892 was the first result of the India National Congress (INC) which came in 1885. It is important to understand the evolution of this Act. The legislative reforms introduced under the Acts of 1861 failed miserably in meeting the demands and aspirations of the people of India. The small elements of non-officials, which mainly comprised big zamindars, Indian princes or retired officials, were entirely unaware of the problems of the common man. Thus, the people of India were not happy. Notwithstanding with this, in 1892, the British parliament decided to enlarge the legislative councils working in India by increasing the number of additional members. The most important system, that is the electoral system, was introduced in India by this act 1892. The other features of this Act are given below:

This Act emerged the nationalist spirit among Indian in the late 19th century. The universities were established in the presidencies leading to educational developments in the country. The gulf between the British and the Indian in the field of Civil Services was not liked by the Indians. The Acts enacted by Lord Ripon, that is, the Vernacular press Act and the Indian Arms Act of 1878, infuriated Indian to a great extent.

1. This Act provided a controversy between the two governments over the expulsion of per cent cotton duties made Indians aware of the injustice of the British government. This gave rise to the formation of the Indian National Congress in 1885. The main aim of the Congress was to organize public opinions in India, the grievances public and demand reforms from the British government.

2. In the beginning, the approach of the British government towards the Indian National Congress was good but it transformed when Lord Dufferin criticized the Congress from the front. He tried to belittle the significance of the Congress leaders and ignored the importance of the movement launched by the Congress. He secretly sent proposals to England to liberalize the councils and appoint a committee which plan the enlargement of the provincial councils. As a result, a Committee report was sent to the Home authorities in England to make changes in the Councils' composition and functions. The report was aimed at giving Indians a wider share in the administration. In 1890, the Conservative Ministry introduced a bill in the House of Lords in England based on these proposals. The House of Lords took two years to adopt measures in the form of the Indian Council Act of 1892.

3. This Act was known to have allocated entirely with the powers, functions and composition of the legislative council in India. In respect of the central legislature, the act ensured that the number of additional members should only be between six and twelve. An increase in the members was regarded worthless. Lord Curzon supported it saying that the efficiency of the body had no relation with the numerical strength of its members.

4. This Act acknowledged that the two-fifth of the total members in the

council should be non-officials. Some of them were to be nominated and others are elected. The election principle was compromised to some extent. According to act the members of the legislature were given equal rights to express themselves in financial issues. It was decided that all financial affairs, statements would be prepared in the legislature. However, the members are not allowed to either move resolution or divide the houses as per financial concerns. The members could only put questions limited to the governmental matters of interests on 6 days' notice.

5. This Act had conveyed many rules and regulations. The significant feature of the act was the introduction of the election procedure as stated above. The term election was carefully used in the act. In addition to the elected official's members, the act pronounced that there should be five non-official members. It further said that these members should be elected by the official members of the provincial legislatures of Bombay, Madras, Calcutta, the north-western province and the Calcutta chamber of commerce. The Governor General had the authority to nominate the five non-official members. The bodies were allowed to elect the members of District Boards, Municipalities, universities and the Chambers of Commerce but the election methods were not clearly mentioned. The elected members were officially regarded as 'nominated' in spite of the fact that recommendations of each legislative body were taken into consideration for the selection of these members. According to this Act, the members were allowed to make observations on the budget and give their suggestions on how revenue can be increased and expenditure can be reduced. The principle of election, as introduced by the Acts of 1892, was used in the formation of the Constitution as well.

6. This Act gave more functions to the legislative body. The members of the legislative councils were given the right of putting questions to the executive councilors.

7. This act authorized the council to discuss the annual financial statement.

8. This act laid down the foundations of a representative government.

Valentine Chirol said “The Indian Council Act 1892 was the first approach to the admission of the elective principles in the representation of Indian unofficial opinion in the Viceroy's legislative council but on a minor scale and in a roundabout way”. However, there were numerous faults and drawbacks in the Acts of 1892 because of which the Act could not satisfy the needs of the Indian nationalist and more particularly the INC. It was criticized in various sessions of the Indian National Congress. The Critics did not like the election procedure mentioned in the Act. Finally, it can be said that this Act made a limited and indirect provision for the use of election in filling up some of the non-official seats both in the central and provincial legislative councils.

5.3.8: India Council Act, 1909 or Morley -Minto Reform 1909

Indian council Act was also known as or Morley -Minto Reform 1909. This act was passed after seventeen years after passing the Indian council Act of 1892. It was the next step of the constitutional reform in India by the British Government. In 1909 the Indian Council Act or the Morley- Minto Reform was passed. Lord Morley, the Secretary of state for India Affairs, announced that his government wished to create new reforms for Indian, wherein the locals would be granted more powers in legislative affairs. Both Lord Morley and Lord Minto believed that terrorism in Bengal needed to be countered. The committee submitted the report and the reforms mentioned in the report were agreed upon by Lord Minto and Lord Morley. Thus, the Act of 1909 was passed by the British Parliament, also referred as the Minto-Morley Reforms. This Act changed the name of the Central Legislative Council to the Imperial Legislative Council. The size of the Councils of provinces was enlarged by including non-officials members. The functions the legislative councils were increased by this Act. However, the real perseverance of the act was, to pursue the divide and rule in India and in the process to introduce some developmental charges with a view to placate the growing demands of the Indian moderates. The features of the Act are given below.

1. This Act simplified elections of India's in legislative councils. Prior to this, some Indians were appointed at legislative councils, majority of which remained under the appointments of the British governments of the

British government.

2. This Act introduced the electoral principle discussing the framework for a parliamentary system.
3. This Act increased number of members of the Legislative Council at the Centre from sixteen to sixty.
 1. This Act granted the Muslims and the right of a separate electorate.
 2. This Act made the Official members with a majority rule. However, in provinces, non-official members formed the majority.
 3. This Act introduced the two Indians were to be nominated in the Council of the Secretary of state for Indian Affairs.
 4. This Act initiated the power of nominating one Indian member to the executive council was with the Governor-General.
5. This Act made the provision for concessions under a constant source of strife among the Hindu and Muslim population from 1990 to 1947. British statement generally considered reserved seats as regrettable as it encouraged communal extremism. The Hindu politicians tried to eliminate reserved seats as they considered them to be autocratic. They also believed that the reserved seats would hinder the development of a shared Indian national feeling among Hindus and Muslims.
6. This Act provided for the association of Indians with the executive Councils of the Viceroy and governors. Satyendra Prasad Sinha became the first Indian to Join the Viceroys Executive Councils. He was appointed as the law member.
7. This Act expanded the central imperial legislative council. The strength of the additional member was raised from 16 to 60. There were 37 official and 32 non-officials. Out of the 37 officials 9 were ex-official Governor General executive councilors and 28 were nominated by the Governor General. Out of the 32 non-official, there are 5 nominated and 27 elected non-officials. Out of the 9 were ex-official Governor General executive councilors, there were

one Governor General, 6 ordinary members and 2 extra-ordinary members. Out of the 27 elected non-officials 13 are general electorates, 12 class electorates and special electorates. Out of the 12 class electorates there were 6 Muslims constituencies and 6 land lords' constitutions.

8. This Act provided provincial legislative council were also expanded and their strength were to be Bengal(52), 47 members from Madras, Bombay and United Provinces , 41 seats from east Bengal, 41 members from Assam, 25 members from Punjab and 16 from Burma.

9. This Act introduced Communal Electorates covering all the people, landlords, Muslims and covering special institutions like chambers of commerce.

10. This Act imposed disqualifications on the political offenders. The political offenders had no right to offer themselves for contesting in the elections.

11. This Act also embraced the rules for the general public interest by discussing these matters with the members of the legislative councilors.

However, by criticizing this act, **K.M. Munsif** said "The rising democracy having been stabbed, Minto promised separate electorates in to the Muslims, in the proposed Reforms. A religious minority, at the behest of the British authorities was accorded a political existence as a make weight against the growing nationalism in the country, while the councils established under the Minto-Morley Reforms of course remained 'guided shams' with magnified non-entities whose constituency was the Government House." **Coupland** also criticized these reforms by observing that "Non-official minorities were allowed in the provinces but there were serious limitations. Since the ultimate responsibility for the good government of India was still vested in the British parliament, which meant, the British India Government, the maintenance of the central Government with a wide measure of Control over provincial Governments, the Councils field of action, both in administrative and legislative matters.....their proceedings an air of unreality." Dr. Keith, also criticized the Act by saying that "The Reform of 1909 was failed because of the

propagation of self- Government,”

5.3.9: August Declaration or Montague Declaration of 1917

In 1917, Montagu Declaration came in order to realize the self-government in India. This Act was the announcement of the government of the British in order to gain support from the Indians. As, during that time there were the unity of the congress and Muslim league in Lucknow pact in 1916, the unity of the moderates and the extremists, beginning of the Home Rule movement of India, so the British government tried to take a chance of choice. Out of this chance and choice the August Declaration came into existence. To maintain a responsible government in India was the ultimate goal of the declaration. This declaration was announced on 20th August, 1917. Under this provision, lord Montague declared “The policy of His Majesty’s government with which the government of India are in full accord, is that of increasing association of the Indians in every branch of administration and the gradual development of self-government institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange. It is because of opinion between those in authority at home and in India. His Majesty” s Government have accordingly decided with His Majesty’s approval that I should accept the Viceroy’s invitation to proceed the Indian to discuss this matters with the viceroy and Government of India to consider with the viceroy the views of the local government and the receive with him suggestion of representative bodies and other.

5.3.10: Government of India Act, 1919

The British Government, on 20 August 1917, proclaimed various objectives in order to introduce the responsible government in India. For this the British parliament enacted the Government of India Act 1919 which came into force in 1921. This Act was an Act of the parliament passed by the United Kingdom. It was passed to expand participation of the natives in the government of India. The Act embodied the reforms recommended in the joint report Sir Edwin Montagu and Lord Chelmsford. The retraction of British imperialism was a result of India’s enthusiastic participation in World War I. The Act broadly emphasized on the dual form of government, called diarchy, for major provinces. It also affirmed that a High Commissioner residing in

London would represent India in Great Britain. The Government of India Act was enacted for ten long years, i.e. from 1919 to 1929. The measure features of this act were given below:

1. This Act gave emphasis on responsibility of the viceroys for controlling various areas such as defence, communications and foreign affairs etc. The Government was responsible to take care of the matters related to health and education. Moreover, there was a bicameral legislature sited at the Center, comprising legislative assembly with 144 members, out of which 41 were nominated.
2. This Act also emphasized on the membership of the Council of States in the structure of the council. There are 34 elected members and 26 nominated members in the council. The responsibility of keeping control over political parties was handed over by the princely States. The Indian National Congress was a special session held in Bombay, where reforms were disintegrated. However, these reforms were also appreciated by the leaders like Surendranath Banerjee.
3. This Act introduced important changes in the Home Government, at the Centre, as well as the Provinces. System of diarchy in the provinces: According to this system, the subjects of administration were to be divided into two categories: central and provincial, the central subjects were exclusively kept under the control of the central government. On the other hand, the provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.
4. This Act inducted the Central control over the provinces. Under this provision, subjects of all-India importance were brought under the category 'central', while matters primarily relating to the administration of the provinces were put under 'provincial' subjects. This meant a relaxation of the previous central control over the provinces not only in administrative but also in legislative and financial matters. The forgoing provincial budgets were removed by the government of India and the provincial legislatures were empowered to present their own budgets and levy taxes according to the provincial sources of revenue.
5. This Act made Indian legislature more representative. It made the Indian

legislature bi-cameral, consisting of the upper house named the Council of States and the lower house named the Legislative Assembly. The Council of states had 60 members of which 34 were elected. The Legislative Assembly had 144 members out of which 104 were elected. However, the Centre did not introduce any responsibility and the Governor-General in Council remained accountable to the British parliament. The governor generals overriding powers in respect of the central legislation were retained in many forms.

6. This Act created new office of the high commissioner for India in London and transferred to him some of the functions hitherto performed by the Secretary of state for India.

7. This Act emphasized on the establishment of a public service commission. Hence, a central public service commission was set up in 1926 for recruiting civil servants.

8. This Act separated provincial budgets from the central budget and authorized the provincial legislators to enact their budgets.

9. This Act made certain changes in the central government. The central Legislative Assembly was called “Federal Assembly” which was constituted on the basis of the representation of the provinces and other areas in British India, in proportion to their populations. The members who were representing Governor’s provinces should be elected by provincial councils by method of promotion proportionate representation so as to ensure adequate representation of minorities. The members from North West Frontier province and other areas outside the provinces, should be returned by methods appropriate to each other.

However, in 1927, the British Government appointed a statutory commission, known as Simon Commission, as envisaged by the Government of India Act 1919 to make an enquiry in the functioning of the act and to announce that the domination status was the goal of Indian political developments. Sir John Simon was the chairman of the commission. The committee landed on Bombay in 1927 which gave its final report in 1930. This report was given

consideration at a Round table conference that created a white paper. The white paper was examined by joint select committee of the British parliament. Lord Linlithgow was appointed the president of the joint Select Committee. The committee presented a draft bill on 5th February 1935. The bill was discussed for 43 days in the House of Commons and for 13th days in the House of Lords. After the signatures of the king the bill was enforced in July 1935 as the Government of India act 1935. In August 1932, Ramsay MacDonald, the British Prime-minister, announced a scheme of representation of the minorities, which came to be known as the communal Award. The award not only continued separate electorates for the Muslims, Sikhs, Indian Christians, Anglo Indians and Europeans but also extended it to the depressed classes. Gandhi was distressed over this extension of the principle of the communal representation to the depressed classes and undertook fast unto death in Yeravada jail at Poona to get the award modified. Lastly, there was an agreement between the leaders of the congress and the depressed classes. This agreement is known as Poona Pact. This agreement reserved the joint electorate and gave earmarked places to the depressed classes in India.

5.3.11: Government of India act 1935

The Government of India act 1935 noticeable another landmark to a completely responsible government in India. It was a lengthy and detailed document having 321 sections and 10 schedules. In 1930, discussions over the Simon commissions report in 1930, in the three Round Table Conferences in 1930, 1931 and 1932 respectively. In these conferences all the disputes regarding various matters were settled. Ramsay MacDonald's Communal Award amended by Gandhi-Irwin Pact. The British government issued a white paper on the proposals for constitutional reforms in India. The Government of India Act 1935 was passed on the basis of the recommendations. There were many changes in the Indian constitutional system. The features of the Act are as follows.

Establishment of Federal features with provincial autonomy: - This Act provided for the establishment of an all-India Federation comprising the provinces and princely states as units into three lists, i.e., the Federal List, the Provincial List and the Concurrent List. Though the Act advocated the use of the provinces and the Indian states as units in a federation, it was optional for the Indian state accepted this provision and hence the federation envisaged by the Act was

not operational.

Introduction of Dyarchy at the centre and provincial autonomy in provinces: - This act provided provincial autonomy which was introduced in April 1937. Within its well-defined sphere, the provinces were no longer delegates of the central government but were autonomous units of the administration. The executive authority of a province was to be exercised by a Governor on behalf of the Crown and not as a subordinate of the Governor-General. The Governor acted in consultation with the ministers who were liable to the legislature. However, the Governor was given some supplementary powers which could be exercised by him at his 'discretion' or in the exercise of his 'individual decision in certain matters without taking advice from the ministers. By this act the dyarchy was introduced at the centre, though dyarchy in the provinces was abolished and provincial autonomy was introduced. The governors were given special responsibilities to act in their individual judgement and assume all powers in the case of a breakdown of constitutional machinery.

Abolished dyarchy in the provinces: - The Act abolished dyarchy in the provinces and continued the system of dyarchy at the centre. According to this system, the administration of defence, external affairs, ecclesiastical affairs, and of tribal areas, was to be made by the Governor-General in his discretion with the help of 'counsellors' appointed by him. These counsellors were not responsible to the legislature. With regards to matters other than the above reserved subjects, the Governor General was to act on the advice of a council of minister who was responsible to the legislator. However, in regard to the governor generals 'special responsibility', he could act contrary to the advice given by the ministers.

Introduction of Bi-cameralism: - The central legislator was made bi-cameral which comprised of the federal assembly and council of state. It also introduced bicameralism in six out of eleven provinces, and these provinces were Assam, Bombay, Bengal, Madras and the United Province. The members of each legislature were increased. The Federal legislator comprises two houses i.e. the council of states and the Federal assembly. A council of state was required to have 260 members, out of which 156 needed to be elected from the British India and 104 to be nominated by the princely states. The federal was required to include 375 members, out of which 250 members were required to be elected by the legislative assembly of the British Indian

provinces and 125 to be nominated by the princely states. The membership of North West Frontier Province (NWFP) was to be the smallest that was only of 50. In this way the Government of India Act 1935 established a Bi-cameral and enlarged legislation.

Distribution of powers between Centre and Provinces: - The legislative powers were divided between the Provinces and the Centre into three lists. These are the Federal list, the Provincial list and the Concurrent List. There was a facility for Residuary Subjects also. The federal list for the centre consisted of fifty-nine items such as external affairs; currency and coinage; naval, military and air forces; and census, etc. The Provincial List consisted of fifty-four items which dealt with subjects such as police, Provincial public services and education, etc. The concurrent list comprised thirty-six items dealing with subjects like criminal law and procedure, civil procedure, marriage and divorces, and abortion, etc. The Residuary powers were given to the Governor-General. He was empowered to authorize the Federal or the Provincial Legislature to ratify a law for any matter if not listed in any of the Legislative Lists. The provinces were, however, given autonomy with respect to subjects delegated to them.

Replacement of Indian Council: - This act replaced the India council by advisers. The Home government was also changed and the Indian council was dissolved. Its place was taken by a group of advisers to the Secretary of State for India whose number was fixed between 3 to 6. The Secretary of State had the right to consult these advisers individually or collectively. Thus, the Indian Council was removed. In its place, few advisors were nominated to assist the Secretary of States of India.

The enlarged electorate: - This act lowered the franchise qualification by enlarging the electorate system. Around ten percent of the population got the right to vote for the provincial legislatures. The communal electorate was also extended according to population. In 1919 the electorates were broken into ten parts which was extended into seventeen unequal bits later.

Establishment of a Federal Court: - This act established a Federal court with both original and appellate jurisdiction. By this act the provinces got the power to decide disputes between the federating units.

Establishment of Reserve Bank: - This Act established a Reserve Bank of India (RBI) in

1935. There was a Governor and fifteen Directors to control the financial condition and stability of the country.

Provincial Autonomy: - The unique feature of this Act was the establishment of autonomy in the provinces. The long-standing system of Dyarchy in the provinces was abolished. It also eradicated the distinction between the transferred subjects and the reserved subjects. The whole administration of the provinces was under the charge of the ministers and they were appointed by the governor among the members of provincial legislator. They were collectively responsible to the legislator. The Central Legislature was empowered to pass any Bill though the Bill required the Governor-General's approval before it became Law. The Governor-General too had the power to pass ordinances. Thus, this Act abolished dyarchy in the provinces by establishing the provincial autonomy.

Changes in territorial administration: - This Act brought changes in the territorial administration of the provinces. By this Act, Burma was separated from India and got transferred under the control of colonial administration. This transfer was effected on 1st April, 1937. Aden was also taken away from India and instituted into a crown colony. Sind and Odisha were created as two new provinces.

The Provisions of Safeguards: - The safeguards were the very vital features of the Act. They are the bulwark against the undesirable tendencies which the constitutional pandits want to avoid. The safeguards were governed by the objectives through which they were given and taken away with the other. The Governor General and Governors were vested with special responsibilities such as prevention of grave threat to the peace and security of India or in a province; the protection of legitimate interest of the minorities; safeguarding of the rights of services; protecting the rights of Indian states and the dignity of the Indian rulers and the prevention of discrimination against the British goods. However, the most important safeguards are as follows

- a- Defence and external affairs were kept firmly in the British clutch.
- b- Special responsibilities in governor and governor general.
- c- The safeguard relating to finance was created to prevent transferring its control to the popular ministers.
- d- Governors power to declare the constitution of a province have been

- broken down was like a 'Damocles' showed hanging on the ministers head.
- e- He has also the capabilities to amend the constitution of India for the popular aspirations for independence.

The Indian National Congress as well as the Muslim League was strictly against the Act but they participated in the provincial elections of 1936-37, which were held under stipulations of the Act. At the time of independence, the two dominions of India and Pakistan accepted the Act of 1935, with few amendments, as their provisional constitution. By commenting the act Maulana Azad said "The Government of India Act 1935 provided for provincial autonomy but there was a fly in the ointment. Special powers were reserved to the governors to declare a state of emergency and once a governor did so he could suspend the constitution and assume all powers to himself. Democracy in the provinces, therefore function only so long as the governors permitted it. The position was even worse so far as a central government was concerned...."

5.312: Cripps Mission 1942

The Cripps mission was appointed by the British government under the chairmanship of Sir Stafford Cripps. This mission was landed in India on 22nd March, 1942. This mission aimed to control the political crisis in India during that period. This committee came to India to discuss with the Governor General, the Executive councilor and the Indian leaders belonging to all the political parties. The mission set different types of proposal to solve the political crisis. The mission's proposals were given below

- 1- The proposal for an elected body to charge with the task of framing a new constitution for India.
- 2- The proposal for the participation of India states in the constitution making body.
- 3- By this proposal, the government undertakes to accept and implement the following.
 - (a) The right to any province of British India that is not prepared to accept the new constitution to retain its present constitution positions; provision being made for its subsequent accession if it so decides.
 - (b) The signing of the treaty which shall be negotiated between His Majesty's Government and constitution making body. The treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian

handsCommon Wealth

- (c) “Whether or not an Indian State elects to adhere to the constitution, it will be necessary to negotiate a revision of its treaty arrangements so far as this may be required in a new situation”.

Indian states shall be invited to appoint representatives in the same portion to their total population as in the case of representatives in the same proportion to their total population as in the case of representatives of British India as a whole.

5.3.13: Cabinet Mission 1945

With the defeat of Germany the 2nd World war ended. The Conservative party was defeated in England and Labour party came to power. Clement Attlee became the Prime Minister of Britain. In a mission to view the sympathy for Indians he took the initiative in sending a high power Cabinet mission, constituted by Lord Pethic Lawrence, Sir Stafford Cripps and Mr. A.V. Alexander. The committee came to India and discussed with the Viceroy and the Indian leaders to formulate the principles for the new constitution of India. This mission reached Delhi on 24th March 1946. After that a new plan was set up. The objective of this cabinet mission plan is given below

- 1- This mission planned to have a Union of India with British India and the States, dealing with subjects like foreign affairs, defence, communication, etc.
- 2- This mission planned to have an Executive and Legislature from British India and state representatives.
- 3- This mission planned to have the vast province with union subjects and residuary powers.
- 4- This mission retained all subjects and powers other than those relinquished to the union of the states.
- 5- This mission planned to free all provinces to form groups with executives and legislatures giving each group a common determination.
- 6- This mission planned to setup the provincial constitution for the particular provinces.
- 7- This mission planned to have a constitution of a union and of the groups containing a provision that any province could by majority vote of its legislative assembly can call for a reconsideration of the constitution after an initial period of ten years.
- 8- This mission recommended the summoning of a constituent assembly to draft the

constitution.

- 9- This mission planned to have an interim government for India with several provisions such as scheme for making India a federation; proposal for the setting up a constituent assembly in India for making the constitution; ending the British supremacy over India states; rejection of demand for creation of Pakistan; setting up interim National government etc.
- 10- The interim government took over power in India in June 1946. The constituent assembly came into existence in December 1946.

5.3.14: Mount Batten Plan

On 24th March 1947 Lord Mount Batten assumed the office of the new Viceroy in India. He was appointed by the Prime Minister of Britain, Mr. Clement Attlee, in order to issue of transfer of power to the Indians. While transferring he faced a great problem by the Muslim League, who demanded a separate of Pakistan. After that he realized that the best alternative for the country was to follow the principle of “Divide and Rule”. On the basis of that policy and to maintain peace and security he formulated a plan by consultations with the British government. The major features of the plan were as follows

- 1- Immediate necessity was to divide India and to create a separate state of ‘Pakistan’.
- 2- The Muslim majority districts and the rest of the provinces would meet separately in the legislative assembly and decide by a simple majority votes for their respective provinces was to be divided or not.
- 3- After the division the provinces had an option to whether to join the existing constituent assembly in Delhi or to create a new constituent assembly.
- 4- A referendum was also held in ‘Sylhet’ a Muslim dominated district in Assam.
- 5- In the case of North-West Frontier Province (NWFP), a referendum was initiated whether to join Delhi or the New State.
- 6- The question of British Baluchistan was under processing.

However, both the Congress and the Muslim League accepted the proposal given by Mountbatten Plan. On the basis of the recommendation of the Mountbatten Plan, the British parliament passed the Indian Independence Act of 1947. This Act provided for the freedom of

India by dividing it into two parts, i.e., West Pakistan and East- Pakistan. In 1971, the East-Pakistan again liberated itself from Pakistan and became a separate country known as Bangladesh.

5.3.15: Indian Independence Act, 1947

The British Prime Minister Clement Attlee, on 20th February, 1947 officially declared that the British rule in India would end by June 30, 1948. The power of British Government would transfer from the British Government to the responsible Indian hands. The Indian Independence Act, 1947, was ratified and passed by the British Parliament that officially announced the Independence of India and the partition of India. An agreement was passed among the Indian Political Parties, the Indian National Congress (INC), the Muslim League and the Sikh community regarding the transfer of power from the British Government to the independent Indian Government, with the partition of India. The main provisions of the Indian Independent Act were given below.

- 1- On 20th February 1947, the prime Minister of UK, Clement Attlee announced that by June 1948, the British Government would endow absolute self-government to British India and after deciding the final transfer date, the future of princely states would be decided.
- 2- The Indian Independence Act 1947 came into commencement from the 3rd June plan. On 3rd June 1947, a plan was proposed by the British government that outlined the following principals; the principle of partition of India was agreed upon by the British Government and the successive governments were allotted dominion status.
- 3- Two separate dominions of India and Pakistan came into existence on 15th August 1947.
- 4- Territories for the two dominions were defined and they were vested to include and exclude their territory.
- 5- There was one Governor General for each domain.
- 6- The constituent assemblies of the two domains were to work both a constitution making body and legislative body.
- 7- On 15th August 1947 all laws came into force.
- 8- Members of service would enjoy their power, privileges and rights until they have

continuity in service.

9- Special powers for the Governor General were abolished.

10-The states were free to join either dominions or remain independent.

11- It dropped the title of Emperor of India from the royal titles of the King of England.

12-It discontinued the appointment of Civil Service and reservation of post by the Secretary of state for India.

13-The Office of Secretary of State was ended by the Secretary of Commonwealth Affairs.

With this the rule of British in India came to an end. The Indian Independence Act of 1947 ended the era of constitutional development under the British. Thereafter, an era of self-rule and the theme of self-effort of constitutional development began with a new light and new aspiration. Finally on 26th January 1950, India was declared as a Sovereign, Democratic, Republic with her Self-made constitution. Therefore, it is pertinent to discuss the composition, function and role of the 'Constituent Assembly' of India in making a Self-made constitution, which is discussed as under.

5.4: SUMMARY

The historical background of the Indian Constitution is complex and multifaceted, shaped by centuries of colonial rule, nationalist movements, and diverse cultural and political influences. India was under British colonial rule for nearly 200 years, from the mid-18th century until independence in 1947. During this period, the British government imposed various laws and administrative structures, which significantly influenced India's socio-political landscape. Throughout the 19th and early 20th centuries, Indian nationalism began to take shape in response to British colonialism. Leaders like Mahatma Gandhi, Jawaharlal Nehru, Subhas Chandra Bose, and others emerged as prominent figures advocating for India's independence through various means, including non-violent resistance and armed struggle. The Indian National Congress, founded in 1885, became a significant political platform for demanding self-government and greater representation for Indians in the colonial administration. Various movements and protests, such as the Non-Cooperation Movement and the Civil Disobedience Movement, contributed to the growing demand for independence. Framework for Independence: During World War II, the British government realized the need to address Indian aspirations for self-rule. In 1946, the

Cabinet Mission Plan proposed a framework for India's independence, including the establishment of a Constituent Assembly to draft a constitution for the country. The Constituent Assembly of India, comprised of elected representatives from various political parties and regions, was convened in December 1946 to draft the country's constitution. Dr. B.R. Ambedkar chaired the drafting committee, which worked extensively to create a document that reflected the values and aspirations of the newly independent nation. After nearly three years of deliberation, the Indian Constitution was adopted on January 26, 1950, marking the formal commencement of the Republic of India. The constitution provided a comprehensive framework for governance, enshrining principles of democracy, secularism, federalism, and social justice. Over the years, the Indian Constitution has been subject to numerous amendments to address changing socio-political realities and challenges. Amendments have been made to various provisions, including those related to fundamental rights, directive principles of state policy, and the structure of government. Overall, the historical background of the Indian Constitution reflects the struggle for independence, the aspirations of a diverse nation, and the commitment to democratic principles and social justice. It remains a living document that continues to shape India's governance and society.

5.5: KEY TERMS

- **British Colonial Rule:** India was under British colonial rule for nearly 200 years before gaining independence. The struggle against British imperialism provided the context for India's quest for self-governance.
- **Partition of India:** The partition in 1947 led to the creation of India and Pakistan as separate nations. This event had significant implications for the socio-political landscape and influenced the framing of the Indian Constitution.
- **Colonial Rule:** India was under British colonial rule for nearly 200 years, from the mid-18th century until independence in 1947. During this period, the British government imposed various laws and administrative structures, which significantly influenced India's socio-political landscape.
- **Demand for Self-Government:** The Indian National Congress, founded in 1885, became a significant political platform for demanding self-government and greater representation for Indians in the colonial administration. Various movements and protests, such as the Non-Cooperation Movement and the Civil Disobedience Movement, contributed to the growing

demand for independence.

- **Rise of Nationalism:** Throughout the 19th and early 20th centuries, Indian nationalism began to take shape in response to British colonialism. Leaders like Mahatma Gandhi, Jawaharlal Nehru, Subhas Chandra Bose, and others emerged as prominent figures advocating for India's independence through various means, including non-violent resistance and armed struggle.

5.6: SELF ASSESSMENT QUESTIONS

- Discuss the historical background of the making of the Indian Constitution.
- Discuss basic features of the govt. of India Act 1858.
- Discuss various provisions of the Crips Mission 1942 and Cabinet Mission 1945.
- Write an essay on Mount Batten Plan.
- Write the features and provisions of the Indian Independence Act, 1947.

5.7: REFERENCES

- Ghai, K.K. (2003) "Indian Government and Politics", Kalyani Publishers, New Delhi.
- Hidayatullah, M, "Democracy in India and Judicial Process", page-51,
- Laxmikanth, M, (2015) "Indian Polity", McGraw Hill Education (India) Pvt. Ltd.
- Khanna, H.R. (2008) "Making of India's Constitution", Eastern Book Company, NewDelhi.
- Austin, G. (1999) "Working a Democratic Constitution: The India Experience", Oxford University Press, New Delhi.
- Wheare, K.C. (1966) "Modern Constitutions", p- 43
- Kashyap, S.C. (1999) "Our Parliament", National Book trust

UNIT-6: INTRODUCTION TO THE CONSTITUTENT ASSEMBLY

Structure

- 6.1 Objectives
- 6.2 Introduction
- 6.3 Composition of the Constituent Assembly
- 6.4 Committees to Draft a Constitution
- 6.5 Functioning of the Constituent Assembly
- 6.6 The Objective Resolution
- 6.7 Summary
- 6.8 Key Terms
- 6.9 Self Assessment Questions
- 6.10 References

6.1: OBJECTIVES

After going through this unit, you will be able to know:

- The composition of the Constituent Assembly
- Various committees formed in the Constituent Assembly
- Functions of the Constituent Assembly
- The objective resolution of the Assembly

6.2: INTRODUCTION

The Constitution of India was outlined by the Constituent Assembly. The idea of making the Constitution cannot be attributed to the Constituent Assembly alone. In 1934, the idea of the Constituent Assembly for India was put forward for the first time by M.N.Roy. He was the pioneer of the communist movement in India. He was also an advocate of Radical Democratism. In 1935 the Indian National Congress (INC) officially demanded for setting of a constituent assembly to frame the constitution of India. Pandit Jawaharlal Nehru, in 1938, on behalf of INC demanded that the Constitution of free India must be a necessity, without any outside intervention; the Constituent Assembly must be elected on the basis of adult franchise. It was also wished to be seen in the evolutionary perspective. The adoption of the famous Motilal

Nehru Resolution in 1924 and 1925, on the national demand, was a historic event. It is because the Center Legislature had, for the first time, lent its support to the growing demand of the future constitution of India. It also agreed to the opinion that the Constitution of India should be framed by Indians themselves. In November 1927, the Simon Commission was appointed without any Indians represented in it. Therefore, all-party meetings, held at Allahabad, voiced the demand for the right to participate in the making of the Constitution of their country. The Assembly was constituted in 1946. The members of the Constituent Assembly were indirectly elected by the members of the existing Provincial Assemblies. In addition, there were members nominated by the rulers of the Princely States. With Independence of India, the Constituent Assembly became a fully sovereign body. The Constituent Assembly, following the partition of the country in 1947, comprised of 299 members as on 31st December 1947. Of these 229 members were elected by the provincial assemblies and the rest were nominated by the rulers of the princely states. Majority of the members in the Constituent Assembly belonged to the Congress party. All prominent leaders of the freedom movement were members of the Assembly.

At the Bombay session of the Congress earlier on 17 May 1927, a resolution was passed by Motilal Nehru. The resolution called upon the Congress, Working Committee to frame the Constitution for Indian in Consultation with the elected members of the central and provincial legislatures, and the leaders of political parties. Implemented by an overpowering majority with amendments, it was this resolution on the Swaraj Constitution which was later restated by Jawaharlal Nehru in a resolution passed by the Madras Session of the Congress on 28 December 1927.

A committee was appointed under the chairmanship of Motilal Nehru in the all party conference of Bombay on May 1929. The committee established the principle of the constitution of India. On 10th August 1928 the committee submitted its report which was later became famous as the Nehru Report. This was the beginning of the process of making of the Constituent Assembly in India to frame the constitution for their country.

There was the perception of the modern nationalists in the report. It also provided a framework of the constitution of India. The outline was based on the principle of dominion status and it suggested that the government should be made on the parliamentary pattern. The report proclaimed the principle that sovereignty belongs to Indians. It laid down a set of Fundamental Rights (FR), which was the basic necessity of the citizen of India, and provided for

a federal system with maximum autonomy granted to the units. The residuary powers were specified to the central government.

There was a chapter on justifiable fundamental rights and rights of minorities envisioned in the Nehru Report in 1928, which fundamentally personified the constitution of the Sovereign India.

In the Third Round Table Conference (TRTC) a white paper issued with an outline of reforming the constitution of India by the British. However, the joint Parliamentary committees which examines this proposal, observed that 'A specific grant of constituent power to authorities in India is not at the moment a practicable proposition,' in its regard, the congress working committee in June 1934 declared that the only adequate substitute to the white paper was that the constitution be drawn out by the constituent Assembly. They demanded that the members of the constituent assembly be elect on the basis of adult suffrage. Significantly, this was the first time that a definite demand for a constituent assembly was formally put progressed. The failure of the Simon Commission and the Round Table Conference gave rise to the rectification of the Government of India Act 1935. The congress in its Lucknow Session in April 1936 adopted a resolution in which it declared that no constitution imposed by outside authority shall be acceptable to India. The resolution asserted that it has to be framed by Indian constituent assembly elected by the people of India on the basis of Adult Franchise. On 18th March 1937, the congress adopted another resolution in Delhi which asserted these demands.

In 1939, after the outbreak of the Second World War, the demand of the constituent Assembly was reiterated in the long statement issued by the Congress Working Committee (CWC) on 14th September 1939. In this regard, Mahatma Gandhi wrote an article in the 'Harijan' 19th November 1939. There, he has expressed the view that the constituent assembly alone can produce a constitution for the country which truly and completely represents the will of Indians. It declared that the constituent assembly was the only way out arrive at the solution of communal and other problems of the country. The demand was partially considered by the British government in the, August offer of 1940. In March 1942, the British Government sent the Cripps Mission to India with a draft declaration which needed to be implemented at the end of the Second World War. The main proposals of the Mission were (i) the Constitution of India was to be framed by an elected Constituent Assembly of the Indian people; (ii) the Constitution should give dominion status to India, i.e., equal partnership of the British Commonwealth of Nations; (iii) there should be an Indian union, comprising all the province and India states;

and (iv) any province or Indian state, which was not prepared to accept the constitution would be free to retrain its constitutional position existing at that time with such province, the British government would enter into separate constitutional arrangement. However, the Cripps mission was a failure and no steps were taken for the formation of the constituent assembly, until the world war in Europe came to an end in May 1945, in July, when the new Labor government came to the power in England, Lord Wavell affirmed that his majesty's intention was to convene a constitutional making body as soon as possible. In 1946, the British cabinet sends three members, including Cripps to make another serious attempt to solve the problem. However, the cabinet delegation rejects the claim for a separate constituent assembly and a separate state for the Muslim's. It forwarded that there would be a union of India comprising both British India and states, and having jurisdiction over the subjects of foreign affairs, defence and communication. All residuary powers would belong to the provinces and the states and the union should comprise an executive and a legislature having representatives from the provinces and states. In order to explain the actual meaning of the clauses of the proposals of the Cabinet Mission, the British Government published the following statement; on 6th December 1946 'should a constitution come framed by the constituent assembly in which large section of the Indian population had not been represented? ' his Majesty government would not consider imposing such a constitution upon any restrictive part of the country.

However, the British government for the first time pondered over the likelihood forming two constituent assembly and two states. The cabinet mission recommended a basic framework for the constitution and laid down a detailed procedure to be followed by the constitution making body. The election for the 296 seats, the congress won 208 seats including all the general seats except 9. The Muslim League won 73 seats. With the partition and independence of the country on 14th and 15th August 1947, the constituent assembly of India was said to have become free from the fitters of the cabinet mission plan. Following the acceptance of the plan of 3rd June, the member of the Muslim League from the India dominion also took their seats in the assembly. The representatives of some of the Indians states had already entered the assembly on 28th April 1947. By 15th August 1947, most of the states were represented in the assembly and the remaining states also send their representatives in due course. The constituent assembly, thus, became a body fully representative of the states and provinces in India, free from external authority. It could change any law made by the British Parliament.

6.3: COMPOSITION OF THE CONSTITUENT ASSEMBLY

The Constitution Assembly was constituted in November 1946 under the Scheme formulated by the Cabinet Mission Plan. The first meeting of the Constituent Assembly was first held on 9th December, 1946. It included provinces comprising Pakistan and Bangladesh of today and represented the princely states of India as well. Further, the delegations from provinces of Sind, East Bengal, West Punjab, Baluchistan and the North-West Frontier provinces in June 1947 formed the Constituent Assembly of Pakistan in Karachi. Mr. B N Rao was the Constitutional Advisor of the Assembly. After India became independent, the Constituent Assembly became the parliament of India. The Constituent Assembly was indirectly elected by the Provincial Legislative Assembly members (Lower House only), as per the scheme of Cabinet delegations. The key features of the scheme are as under:

1. Each Indian state or group of states and the province were allotted a specific number of seats relative to their populations respectively. Due to this, the provinces were needed to elect 292 members and the Indian states were assigned a minimum number of 93 seats. To these were to be added a representative each from the four chief Commissioners provinces of Delhi, Ajmer-Marwar, Coorg and British Baluchistan.
2. All provincial seats were disseminated amongst three major communities like, Muslims, Sikh and General, which was proportionate to their respective provinces populations.
3. Each community member, within the provincial Legislative Assembly, elected his own representatives through proportional representation with single transferable vote system.
4. Indian state representatives were selected by the method of consultation.
5. The representatives of princely states were to be nominated by the heads of the princely states.
6. The Elections to the Constituent Assembly for 296 seats allocated to the British Indian Provinces were held in July-August 1946. The results were as Indian National Congress - 208 Seats; Muslim League - 73 Seats; Small Group and Independents - 15 Seats; Princely States - Election for 93 Seats was to be done but the seats were not filled as they decided to stay away from the Constituent Assembly.
7. Each Province and each Indian state or Group of States were allotted the total

number of seats proportional to their respective population roughly in the ratio of one to a million. Seats allocated to each British Province were to be decided among the three principal communities - Muslims, Sikhs and General in proportion to their population.

8. The Assembly included all the important personalities of India at that time, with the exception of Mahatma Gandhi and M.A. Jinnah.
9. The Constituent Assembly elected for undivided India which had met for the first time on 9th December 1946 was convened to meet on 14th August 1947 and the became the Sovereign Constituent Assembly for the Dominion of India. The Muslim League had joined the Interim Government but abstained from sending its representatives to the Constituent Assembly which was an integral part of the Cabinet Plan.

However, the Constituent Assembly was a partially elected and partially nominated body. Moreover, the Constituent Assembly was to have 389 members but Muslim League boycotted the Assembly. Only 211 members attended its first meeting on 9 December 1946. Apart from that, the partition plan of 3 June 1947 gave rise to the setting up a separate Constituent Assembly for Pakistan. The representatives of Bengal, Punjab, Sind, North-western Frontier Province, Baluchistan, and the Sylhet district of Assam had to join Pakistan. Due to this, on 31 October 1947, when the Constituent Assembly reassembled, the House membership was lessened to 299. of these, 284 members were actually present on 26 November 1949 and signed the Constitution to regard it as finally passed.

6.4: COMMITTEES TO DRAFT A CONSTITUTION

There are various committees of the Assembly. These committees are discussed under the two heads.

(A) Committees on technical affairs.

- (1) The Steering Committee (Headed by : K.M Munsii)
- (2) The rules of procedure committee (Headed by : Rajendra Prasad)
- (3) The House committee

- (4) The Hindi translation Committee
- (5) The Urdu translation Committee
- (6) The finance and staff committee
- (7) The press gallery committee
- (8) The committee based on the Indian independence Act of 1947
- (9) The order of business committee
- (10) The credential committee

(B) Committees on Significant affairs

- 1. The drafting committee (Headed by :B.R. Ambedkar)
- 2. The committee of negotiating with state (Headed by :Rajendra Prasad)
- 3. The union constituent committee (Headed by :Jawaharlal Nehru)
- 4. The provincial constitution committee (Headed by :Sardar Patel)
- 5. A special Committee to examine the draft constitution (Headed by :A.K.Iyer)
- 6. The union powers Committee (Headed by : Pandit Jawaharlal Nehru)
- 7. The Committee on Fundamental Rights and Minorities (Headed by : Sardar Vallabhav Bhai Patel)
- 8. The Committee on Chief Commissioners Provinces
- 9. The Commission of Linguistic Provinces
- 10. An Expert Committee on Financial Provisions
- 11. Ad-hoc Committee on National Flag
- 12. Ad-hoc Committee on the Supreme Court

There were 11 sessions during its entire sitting of the Constituent Assembly. The Assembly was actually working for 165 days. Finally, after three years of great efforts, the historical manuscript, i.e., the Constitution of the free India was enacted and adopted by the Assembly on 26 November 1949. The constitution of India Came into force from 26 January 1950. There were 315 Articles and twelve Schedules of the draft Constitution. This shows that the original draft had undergone considerable changes. Subsequently, there were over 7000 amendments, which were proposed to be made in the Draft Constitution. Out of these amendments, 2473 were actually moved, debated and predisposed of. It was indeed a great democratic exercise as discussion, debates and deliberation were encouraged. There was also a great tolerance of criticism. It was truly a full-fledged democratic procedure which helped in the making of the Constitution.

6.5: FUNCTIONING OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly has a long tradition. The British legal system does no mention anywhere the concept of a constituent Assembly. Towards the last decade of the 18th century, the idea of Constituent Assembly emerged in America and France after the democratic revolutions. In India, a Constituent Assembly was demanded by Indian nationalists. The British set it up according to the Cabinet Mission plan under the Governor General of India, Lord Mountbatten. Mountbatten was replaced by an Indian Governor General, C. Rajagopalachari, in March 1948. After that the Constituent Assembly of India worked practically as a sovereign body. The Constituent Assembly had been elected by the provincial legislative assemblies, which had been elected by a restricted electorate in January 1946. It was dominated by the Congress party. The second biggest party was the Muslim League. Most of these League members left India and joined the Pakistan Constituent Assembly. That strengthened the Congress further in the Constituent Assembly in India. But there remained in the Assembly independent representatives of the princely states. Even the Congress party had nominated members of other political parties of India except the Communist party. Thus, the Constituent Assembly represented a broad consensus of Indian opinion.

In this regard, the Constituent Assembly appointed several Committees for effectively organizing the opinions on different aspects of the Constitution. Finally, drafting committee was

set up under the chairmanship of B.R Ambedkar. A number of officials of highest rank worked for the Constituent Assembly. Advices were received from non-member Indian leaders like Sir Tej Bahadur Sapru and Shri Jia Prakash Narayan. Sri B. N. Rau, constitutional advisor to the Constituent Assembly, collected data on the working of constitutional systems of major democracies. He visited a number of countries including the USA and Ireland. Inputs from such countries were also made use of. As a result India produced the world's lengthiest Constitution but detailing legislative measures to address several problems of India.

6.6: THE OBJECTIVE RESOLUTION (THE IDEOLOGICAL CONTENT)

On December 13, 1946, Pt. Jawaharlal Nehru moved the objective resolution of the India constitution which depicted its ideology. With full discussion and debate the Constituent Assembly passed the objectives Resolution on 22nd January, 1947. The Objective Resolution has laid down the ideological foundations and values of the constitution of India and guided the work of the Assembly. Let us discuss this resolution:

1. This constituent assembly declares its firm and solemn resolved to proclaim India as an independent, sovereign, republic and to draw up a constitution for her future governance;
2. Where in the territories that now comprise British India the territories that now formed the Indian states and such others parts of India as are outside British India and the state as well as such other territories as are willing to be constituted into the independent sovereign India, shall be a union of them all; and
3. Where in the said territories, whether with their present boundaries or with such other as may be determined by the constituent assembly and there after according to the law of the constitution, shall possess and retain the status of autonomous unit, together with residuary powers and exercise all powers and function of government and administration, save and except such powers and functions as are vested in all assigned to the union, or as are inherent or implied into the union or resulting therefrom; and
4. Where in all power and authority of the sovereign independent India its constituent parts and organs of government, are derived from the people; and
5. Where in shall be guarantee and secured to all the people of Indian justice, social,

economic and political; equality of status , of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

6. Where in adequate safeguard shall be provided for minorities, background and tribal areas, and depressed and other backward classes; and
7. Where by shall be main tenanted the integrity of the territory of the republic and its sovereign rights on land, sea and air according to justice and the of civilized nation; and
8. The ancient attains its rightful and honored placed in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

However, the Objective Resolution was designed to declare the resolve to make India a sovereign, independent, Republic to secure to all its citizens, fundamental rights justice, secularism, and welfare state as well as to preserve the unity and integrity of India. This resolution was consistently adopted by the constituent assembly on 22nd January 1947. On 29th August 1947, the constituent assembly set up a Drafting committee under the chairmanship of B R Ambedkar to prepare a draft constitution of India. While deliberating upon the draft constitution, the assembly moved, discussed and disposed of as many as 2473 amendments out of a total 7635 tabled. Subsequently, the constitution of India was adopted on 26th November 1949 and the members appended there signature to it on 24th January 1950. In all, 284 members actually signed the constitution. The constitution of India came into force on 26th January 1950. On that day, the assembly ceased to exist transforming itself into the provisional parliament of India until a new parliament was constituted in 1952.

6.7: SUMMARY

On 24 January 1950, the Constituent Assembly held its final session. It, however, did not end and continued as the provisional Parliament of India with the effect from 26 January 1950 till the formation of the new Parliament after the general election held in 1951-52. The Constitution Assembly had been playing an important role to frame the constitution of sovereign India. The different significant committees helped the Constituent Assembly to articulate the idea of various constitutions of the world and develop or frame the Constitution of India. The Drafting Committee of the Assembly had a significant role under the Chairmanship of Dr. B.R. Ambedkar

who provided the final shape of the Constitution. The other committees also performed their role very seriously to frame the Constitution of India.

6.8: KEY TERMS

- **Constitution:** The fundamental law or set of laws that govern a nation, outlining the structure of government, the allocation of powers, and the rights of citizens.
- **Constituent Assembly:** A body elected or appointed for the purpose of drafting or revising a constitution.
- **Constitutional Convention:** Another term for a constituent assembly, often used interchangeably.
- **Delegates/Representatives:** Individuals chosen to participate in the constituent assembly, representing various interests, regions, or groups within the society.
- **Constitutional Drafting:** The process of writing or revising a constitution, which involves discussions, debates, and the formulation of constitutional provisions.
- **Constitutional Principles:** Fundamental ideas and values upon which the constitution is based, such as democracy, rule of law, human rights, and separation of powers.
- **Constitutional Amendments:** Changes or additions made to the constitution after its initial adoption, often requiring specific procedures outlined within the document.
- **Popular Sovereignty:** The principle that the authority of the government is derived from the consent of the people, typically a foundational concept guiding the work of a constituent assembly.

6.9: SELF ASSESSMENT QUESTIONS

- Discuss the composition and functions of the Constituent Assembly.
- Discuss various committees composed in constituent assembly.
- Discuss the composition and functions of the Drafting Committee.
- Discuss the functions of the Constituent Assembly.
- Write an essay on the Objective Resolution of the Constituent Assembly.

6.10: REFERENCES

Austin, Granville. *The Indian Constitution, Cornerstone of a Nation*. New Delhi: OUP India, 1999. ISBN 0-19-564959-1.

Bipan Chandra, Mridula Mukherjee and Aditya Mukherjee. *India Since Independence: Revised Edition*. New Delhi: Penguin Books India, 2008.

M. Lakshmikanth, *Indian Polity for Civil Services Examinations*, 3rd ed., (New Delhi: Tata McGraw Hill Education Private Limited, 2011), p. 2.3

Ravichandran, Priyadarshini (11 March 2016). "The women who helped draft our constitution". *Mint*. Archived from the original on 5 July 2019. Retrieved 2 December 2018.

UNIT-7: IDEOLOGICAL SOURCES OF THE CONSTITUTION

Structure

- 7.1 Objectives
- 7.2 Introduction
- 7.3 Preamble of the Constitution of India
- 7.4 The Salient features of the Preamble
- 7.5 Features of the Constitution of India
- 7.6 Summary
- 7.7 Key Terms
- 7.8 Self Assessment Questions
- 7.9 References

7.1: OBJECTIVES

After going through this unit, you will be able know:

- The preamble of the Constitution of India
- Features of the Preamble of India
- Features of the Constitution of India

7.2: INTRODUCTION

The ideological, philosophical and socio-economic dimension of the governance of India is embodied with the preamble of the constitution of India, Fundamental Rights (FR) and the Directive Principle of State Policy (DPSP) protected in it. The preamble articulates the great objectives, such as making India a socialist, secular, democratic and republic. The ideological goals such as providing social, economic and political justice to the citizens of India, equality in the society, equal pay for equal work etc. The preamble is the key features of the constitution. The objectives can be explained in ways such as In the way of the structure of the governance and the other is about the ideas to be achieved in independence India. The preamble embodies a distinct philosophy which regards the state as an organ to secure good and welfare of the people. This concept of state is further strengthened by the Directive Principle of State policy which set put the economy, social and political goals of Indian constitutional system. The DPSP imitates certain non-justiciable rights on the people, and placed the government under an obligation to

achieved and maximize social welfare and basic social values of life education, employment, health, etc. In concerns with the modern beliefs of men, the India constitution sets up machinery to achieve the goal of economic, democracy along with political democracy. There are different ideological sources of the constitution of India such as Values of National Liberation Movement, Foreign Constitutions, the Government of India Act 1935, the Constituent Assembly, objective resolutions, reports of the constitutional Committee, debate of the constituent Assembly, the draft constitution, constitutional amendments, parliamentary status, judicial decisions, conventions, constitutional jurists and experts, fundamental rights, DPSP etc. Let us discuss the preamble, Fundamental rights and Directive Principles of State Policy.

7.3: PREAMBLE OF THE CONSTITUTION OF INDIA

The preamble to the constitution of India was formulated in the nimble of the theme of the phase “Objective Resolution”. It was moved by pt. Jawaharlal Nehru on 13th December 1946 and almost universally enacted and adopted on 22nd January, 1947. It was specified and committed towards its objectives. It is described in various ways. K.M. Munsi describes the preamble as the political horoscope of the constitution which lists the basic features of the constitution, its basic philosophy and the nature of Indian state. Pt. Thakur dash Bhargawa said “The preamble is the most precious part of the constitution. It is the soul of the constitution, it is the key to the constitution. It is the key to open the mind of the makers of the constitution, it is the jewel set in the constitution, it is a superb prose poem, nay, and it is perfection in itself. It is a proper yardstick with which one can measure the worth of the constitution.” Thus, the Preamble stands as the important part of the constitution’. The preamble to the constitution of India reads:

We, **the people of India** having solemnly resolved to constitute **India** into a **Sovereign, Socialist, Secular, Democratic, Republic** and to secure to all its citizens;

Justice, social, economic and political

Liberty of thought, expression, belief, faith and worship;

Equality of status, and of opportunity and to promote among them all;

Fraternity assuring the **dignity of the individual** and the **unity and integrity** of the nation

In our **Constituent Assembly**, this **twenty-sixth day of November 1949** do here by **Adopt, Enact and Give to ourselves this constitution.**

The word 'Socialist', 'Secular', and 'integrity' were initially not there in the preamble and were added to, it by the 42nd Amendment 1976 to the constitution of India. In the Section 2 of the Constitution (forty-second Amendment Act, 1976), two amendments were made in the Preamble. They are instead of 'Sovereign Democratic Republic', India was declared 'Sovereign Socialist Secular Democratic Republic' and for the words 'Unity of Nation', the words 'Unity and Integrity of the Nation' were introduced.

The aims of the Indian state were to achieve the basic proceeds which the Constitution makers envisaged for the Indian state were to achieve the goals of justice, liberty, equality and fraternity. These objectives help us interpret the messages and mandates of our Constitution in terms of our contemporary needs and futuristic perspectives.

7.4: THE SALIENT FEATURES OF THE PREAMBLE

The salient features of the preamble have been described under the following heads.

1. **Source of Authority:** - The preamble is the source of Authority. It is accepted the principle of popular sovereignty. The first and the words of the preamble, i.e., 'we, the people of India.....adopt, enact and give to ourselves this constitution 'convey that the source of the Constitution is the people of India. This represents that the people are the ultimate source of authority in India. There is a similarity in the preamble of the USA constitution and the charter of the United Nations. However, the two persons, like H.V.Kamath and Mollana Hazrat Mohani, were objected over the issue of 'we the people of India'. They were saying that it should begin with the phrase 'in the Name of God'.
2. **Five Cardinal principles of the nature of the state:** - The preamble of the constitution of India declares India as Sovereign, Socialist, Secular, Democratic, Republic.
 - (I) India is a sovereign state. Sovereignty is one of the foremost elements of any independent State. It means absolute independence, i.e., a government which is not controlled by any other power: internal or external. A country cannot have its own constitution without being sovereign. India is free from external control. It can frame its policies. India is free to formulate its own foreign policy.

- (II) India is a socialist state. The word ‘socialist’ was added to the constitution of India by forty-second amendment Act in 1976. This principle in India provides commitment to the Indian citizens to secure justice – social, economic and political to all. It is also trying to equitable distribution of income, resource and wealth.
- (III) The word socialist was not there in the Preamble of the Constitution in its original form. In the 42nd Amendment of 1976, the Constitution of India introduced ‘Socialist’ and ‘Secular’ in the Preamble. The word ‘Socialism’ had been used in the perspective of economic planning. It signifies major role in the economy. It also means commitment to attain ideals like removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work, equal pay for both men and women, equality of opportunity in matters of public employment etc. The Directive Principles of the State Policy explains the ideals in the Constitution.
- (IV) India is secular state. India is said that ‘India is neither religious, nor irreligious nor anti-religious. This implies that in India there will be no ‘State’ religion. The ‘State’ will not support any particular religion out of public fund. In this regard, there are two consequences such as a) every individual is free to believe in, and practice, any religion he or she belongs to, and, b) State will not discriminate against any individual or group on the basis of religion. There will be equal treatment of all religions and will get equal justice.
- (V) India is Democratic State. The phrase “we the people of India” denotes that the people are the real source of authority in the country and the Constitution belongs to the people of India. The last line of the Preamble says ‘.... Hereby Adopt, Enact and Give To Ourselves This Constitution’. In fact the Democratic principles of the country flow from this memorable last line of the Preamble. Democracy is generally known as government of the people, by the people and for the people. Democracy means a successful Government that is elected by the people. The government is responsible and accountable to the people. The democratic principles are highlighted with the provisions of universal adult franchise, elections, fundamental rights, and responsible government. The Preamble also declares India as a Republic. It means that the head of the State is elected either directly or indirectly. The President of India is indirectly elected and he is not a

hereditary ruler as in case of the British Monarch. Madison observed 'Republic is a government which derives its power directly or indirectly from the great body of people, and is administered by persons holding their office during the pleasure of the people, for limited period or during good behaviour '. However, India is a sovereign republic.

3. Four Cardinal Principles the objectives of the state

In order to secure all its citizens of India, the preambles of the constitution of India declares four cardinal principles. They are (a) Justice; (b) Liberty; (c) Equality; (d) Fraternity

- (a) **Justice:-**The constitution of India tries to secure justice-social, economic, and political, for all the citizens of India. End of foreign dominance and to secure a new social order based on social, economic and political justice. The term 'justice' implies a harmonious reconciliation of individual conduct with the general welfare of the society. In the light of 'Objectives Resolution' and the Preamble, the idea of socio-economic justice signifies three things such as social, economic and political. Social justice means the absence of socially privileged classes in the society without any discrimination against any citizen on grounds of caste, creed, color, religion sex or place of birth. The constitution of India stands for eliminating social exploitation in the name of caste or creed. Economic justice means on the basis of income, wealth and economic values, all are equal irrespective of men and women. Economic justice involves with the concepts like economic equality, end of monopolistic control over means of production and distribution, decentralization of economic resources, adequate opportunity to all the citizen to earn their live and livelihood, etc. Political justice means equality, freedom and fair opportunities to the people for participation in the political process. Political justice grants each and every man his due in political field such as equal political right to all the people without any discrimination on the basis of caste, colour, creed, religion, sex or place of birth. In this way, the major objectives of justice in the constitution of India describe socio-economic and political status of the citizen of India.

- (b) **Liberty:** The preamble of the India constitution declares that liberty of thought, expression, belief, faith and worship. In this regard the constitution of India has designed the grant of fundamental rights i.e. right to freedom to secure the objectives of liberty in India. The term 'liberty' is used in the Preamble both in the positive and negative sense. In the positive sense, it means the formation of conditions that provide the essential constituents necessary for the complete development of the personality of the individual in the society by providing liberty of thought, expression, belief, faith and worship. In the negative sense, it refers to the absence of any arbitrary restraint on the freedom of the individual action. There is no state intervention in the action of individual liberty. Right to religious freedom is also a fundamental right in India.
- (c) **Equality:** Liberty and equality are interrelated. Equality is the third major objective of the constitution of India. Liberty cannot exist without equality. Both liberty and equality are complementary to each other. Here, the concept of equality means that all human beings are equal in the eyes of the Law irrespective of their cast, creed, religion and language. Equality of status and equality of opportunity were the major objectives of the principle of equality in the preamble of constitution of India. However, the constitution of India grants and guarantees the Fundamental Right of equality to all the citizen of India.
- (d) **Fraternity:** Finally, the Preamble underlines the objective of fraternity in order to ensure both the dignity of the individual and the unity and integrity of the nation. 'Fraternity' refers to establishment of the spirit of brotherhood, the promotion of love and peace, propagating the message of universal truth and oneness of which is poised of people of many races and religion. It is a word of moral and spiritual importance and imposes a moral obligation on the part of the Union to respect the personality of the citizen and to create conditions of work which will ensure self-respect, brotherhood and unity and diversity among the people of the nation. The words 'unity and integrity' have been made to prevent tendencies of regionalism, provincialism, linguism, communalism and any of the enlightened secularism is achieved.

4. **Adoption and Enactment of the Constitution of India:** The Preamble of the constitution of India was adopted on 26th November 1949. It was adopted and enacted

with the signature of the then president of India.

- 5. The constitution of India is enacted, adopted and self-made one. It was adopted and enacted by the constituent Assembly.**

7.5: FEATURES OF THE CONSTITUTION OF INDIA

After discussing the historical development of the constitution of India, in this paragraph we have discussed its salient features in a vivid manner. The salient features of the Indian Constitution directly and indirectly flows from the Preamble, representing the faith of framers or the constitutional makers in the ideals, objectives and goals as mentioned in the Constitution of India. The features of the constitution are:

- 1. A Written and a Detailed Constitution** - The Constitution of India is a written one. It is framed at a given time and came into force or is adopted on a fixed date as a document. It was framed over a period of 2 years, 11 months and 18 days; it was adopted on 26th November, 1949 and prescribed on January 26, 1950. There were various resolutions and conventions, slowly evolved over a period of time which has demonstrated useful in the working of the constitution. The British Constitution is an example of an unwritten constitution. It is to be noted though, that a written constitution is ‘mainly’ an enacted document, there could be bodies or institutions which may not be included in the constitution but form an important part of governance. In Indian context one can mention the Planning Commission. It is very important body for country’s planning and development. The planning commission was set up in March 1950, not by an Act of Parliament, nor as a Part of the Constitution of India. It was set up by a cabinet resolution. The Indian constitution is the lengthiest in the world. The original constitution had 395 Articles and 8 Schedules, while, the constitution of USA has only 7 Articles.

The constitutional makers did not want to leave anything to chance because they were conscious of the socio-economic-political problems faced by the country. The integration of several important features like the Directive Principle of State Policy (DPSP), emergency provision, language provision, protection of the interest of Schedule caste and Schedule Tribe, Other

Backward Classes (OBC), the Election Commission, The UPSC and the State Public Service Commission, etc. are made the constitution very lengthy and a bulky one. More important thing is that the common constitution for both at the Centre and the State make it more large and vast. Apart from these, the constitutional makers also made decision to include other provisions like the Fundamental Rights (FR), The Centre State relation, Schedule of the constitution, and some other provisions which further enlarged the constitution of India.

2. Partly Rigidity and partly Flexibility

The Indian Constitution is a unique example of rigidity with flexibility. The amendment procedure of a constitution makes it rigid or flexible. In a rigid constitution, amending the constitution is not so easy. For example, the Constitutions of USA, Switzerland and Australia are considered as rigid constitutions. Against this background, the amendment procedure is very easy in a flexible constitution. For example, the British Constitution is reflected as flexible. However, the Constitution of India provides for three types of amendments, such as, amendment done by the two houses of Parliament with simple majority of the members present and voting before sending it for the Presidential approval; amendments with a special majority, such an amendment is passed by each House of Parliament by a majority of the total members of that House as well as by the 2/3rd majority of the members present and voting in each house of Parliament and send to the President for his assent which cannot be denied; and besides the special majority mentioned in the above type, the same has to be approved also by at least 50% of the State legislatures. Therefore, it is found that the Indian constitution provides for the type of amendments extending from simple to most difficult procedure depending on the nature of the amendment. The flexibility features of the constitution of India is found, in the Article 249 and Article 312, which declares and places the state subjects as the process of national importance and makes laws by the union parliament; establish and abolition of All India Service (AIS) respectively.

3. **A Sovereign, Socialistic, Secular, Democratic, Republic Constitution-** The preamble of the constitution of India reads India as a Sovereign, Socialistic, Secular, Democratic, Republic Constitution. The constitution of India declares that, India is a sovereign state. It means India is no longer under any foreign rule. It is both internally and externally free to conduct its own internal and external affairs. As a socialistic state, the constitution of India promotes the social, economic and political justice for all its citizens. As a secular state, India gives special status to no state religion. There is religious toleration within

the territory of India. This refers that, nobody can find, there is a state religion in India. Within the territory of India, each and every people can profess, propagate and practice any religion without any state hindrances. As a democratic state, India gives much importance to the 'Voice of the People'. It is based on the famous quote 'Vox Populi Vox Dei'. It is also based on the views of Abraham Lincoln's view on democracy i.e. 'The Government is, of the people, by the people and for the people. The citizens are enjoying equal political rights, universal adult franchise, right to contest elections, right to hold public office, right to form associations, and right to oppose the policies of the government. As a republic state, the head of the state is elected by the people. The nominal head is the president of India and the real head is the prime minister of India. India is not ruled by the monarch or nominated Head. Thus, India is a republic state.

4. Federal in form and unitary in spirit

India has implemented a federal structure. In a federation there are two distinct levels of governments. There is one government for the whole country which is called the Union or Central Government. There is government for each Unit or State. The United States of America is a federation whereas the United Kingdom or Great Britain has a unitary form of government. In a unitary structure there is only one government for the whole country and the power is centralized. However, the Constitution of India does not use the term 'federal state'. It says that India is a 'Union of States'. Article 1 of the constitution of India defines that 'India that is Bharat, shall be a union of states'. There is a distribution of powers between the Union or Central Government and the State Governments. Since India is a federation, such distribution of functions becomes necessary. There are three lists of powers such as Union List, State List and the Concurrent List. On the basis of this distribution, India may be called a federal system.

The supremacy of the judiciary is an essential feature of a federation so that the constitution could be interpreted impartially. In India, the Supreme Court has been established to guard the constitution. However, in case of Indian federalism, more powers have been given to the Union Government in administrative, legislative, financial and judicial matters. In fact, The Indian federal set up stands out with certain distinctive unitary features. The makers of our constitution while providing for two sets of government at the centre and in the states provided

for division of powers favoring the Central Government, appointment of the Head of the State government by the Central Government, single unified judiciary , single citizenship indicate the unitary nature of our federalism. Professor K.C. Wheare said ‘India is a quasi-federal state’ or a federation with a unitary bias or even as a Unitarian federation.

5. Self-made and Enacted Constitution

The constitution of India is regarded as a self-made constitution, because the people of the country are directly or indirectly responsible for its creation, organization and function. It is also a constitution made by the people of India acting through their duly elected and representative body I.e. the Constituent Assembly that came into existence in December 1946. Accordingly, its first session was held on 9th December, 1946, where the Objectives Resolution was passed on 22 January, 1947.

Afterwards, it commenced the process of constitution-making. This was finally passed, adopted and enacted to the constitution of India, on 26th November, 1949. The constitution became fully operational with effect from 26th January 1950. As a result of which, Indians celebrate this day as Republic Day. Therefore, the Constitution of India is declared as a self-made and duly enacted one.

6. Fundamental Rights and Fundamental Duties

Rights are those privileges by which an individual will be the best self. It helps an individual to develop his personality. Every human being is entitled to enjoy certain rights which ensure good living. In a democracy all citizens enjoy equal rights. The Constitution of India guarantees those rights in the form of Fundamental Rights. Fundamental Rights are one of the important features of the Indian Constitution. The Constitution provides for six Fundamental Rights. Fundamental Rights are justiciable and are protected by the court of law. In case of violation of any of these rights one can move to the court of law for their protection. The constitution of India, under part-III, from Article 12-35, grants and guarantees six fundamental Rights such as Right to equality (Article 14-18); Right to Freedom (Article 19-22); Right against exploitation (Article 23-24), Right to Freedom of Religion (Article 25-28); Cultural and educational Rights (Article 29-30); Right to Constitutional Remedies (Article 32), which will be discussed in the subsequent points.

The constitution of India also has incorporated 10 Fundamental Duties. However, the Fundamental Duties were added to our Constitution by the 42nd Amendment act 1976. While

the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform. The Fundamental Duties are as follows.

- (1) To abide by the constitution, respect the constitution, the National flag, and the National Anthem.
- (2) To Cherish and follow the noble ideals of the freedom struggle.
- (3) To Uphold and protect the sovereignty, unity, and integrity of India.
- (4) To defend the country and render national service.
- (5) To promote the common brotherhood of all the people of India and renounce any practice derogatory to the dignity of women.
- (6) To preserve the rich heritage of the Nation's composite culture.
- (7) To protect the natural environment and have compassion for living creatures.
- (8) To develop scientific temper, humanism and spirit of inquiry and reform.
- (9) To safeguard the public property and abjure violence.
- (10) To strive for excellence in all individual and collective activity.

However, after the 86th constitutional amendment 2002, it has become a fundamental duty of the parents to provide education to their children.

7. Bi-Cameral Union Parliament

The Constitution provides for a Bicameral Legislature at the Union level. It is named as the Union Parliament of India. It has two Houses. They are the Lok Sabha (The Lower House) and the Rajya Sabha (The Upper House). The Lok Sabha is the popular house where the members are directly elected by the people. The Lok Sabha consists of 550 members. At present, Lok Sabha has 545 members. The people of each state elect representatives in proportion to their population. Orissa has 21 seats out of which some seats are reserved for the people belonging to SCs and STs. The members of the Lok Sabha are directly elected by the people of India. The tenure of the Lok Sabha is 5 years. But the President acting under the advice of Prime Minister can dissolve it earlier.

The members of Rajya Sabha are indirectly elected. It is the second chamber of Parliament. It

represents the states of the Indian union. Its maximum strength is 250. Presently, the Rajya Sabha has 245 members. Out of these 233 members are elected by all the State Legislative Assemblies and 12 are nominated by the President from amongst eminent persons from the fields of Art, Science and Literature. Rajya Sabha is a quasi-permanent house. Its one-third members retire after every two years. Each member has tenure of six years. Orissa has 10 seats in the Rajya Sabha. However, the Lok Sabha is a more powerful than Rajya Sabha. It is because the money bill can only be introduced in the Lok Sabha. The Union Council of Ministers is collectively responsible before the Lok Sabha.

8. Parliamentary Democracy

India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the parliament. The Cabinet holds office so long as it enjoys the confidence of the legislature. In this form of democracy, the Head of the state is nominal. In India, the President is the Head of the State. Constitutionally the President enjoys numerous powers but in practice the Council of Ministers headed by the Prime Minister, which really exercises these powers. The President acts on the advice of the Prime Minister and the Council of Ministers. The prime minister is the real head of the Indian legislature and the president is the titular executive.

9. Directive Principles of State Policy

The Directive Principles of State Policy (DPSP) of the constitution of India have been adopted from the Irish and Spanish Constitution. It is another unique feature of the Constitution of India. The Directive Principles were included in our Constitution in order to provide social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few. Part-IV of the constitution of India deals with the principles of DPSP. In this regard, J.N.Joshi said that these principles are very comprehensive political, social, and economic programmes for the modern democratic state. The DPSP aims to direct the Indian states to ensure for the people adequate means of livelihood, equal distribution of wealth, equal pay for equal work, protection of children, women, Labour and youth, old age pension etc.

10. Single and Integrated Judicial System

India has a single integrated judicial system. The Supreme Court stands as the highest court of Justice in the judicial system of India. The High Court comes under the Supreme Court. The High Court controls and supervises the lower courts. The Indian judiciary, thus, stands like a pyramid with the lower courts as the base, High Courts in the middle and the Supreme Court at the apex. Independence of Judiciary Indian judiciary is independent and impartial. The Indian judiciary is free from the influence of the executive and the legislature. The judges are appointed on the basis of their qualifications and cannot be removed easily. In a federal state usually the citizens enjoy double citizenship as is the case in the USA. In India there is only single citizenship. It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chhattisgarh to which he/she may belong to but remains a citizen of India. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of India.

11. Independence of the judiciary System

The constitution of India provides an independent and impartial judiciary. It is because the judges of the court are appointed by the president; highly legal qualified and experienced persons are appointed as judges; they are getting the salary from the consolidated fund of India so on and so forth, the constitution of India is an independent and impartial one.

12. Judicial Review and judicial Activism

The constitution of India is the supreme law of the land. The supreme courts act as the guardian protector and interpreter of the constitution. It is also the guardian of the fundamental rights of the people. For this purpose it exercises the power of judicial review. By the process of judicial review, the Supreme Court determines the constitutional validity of all acts of the legislatures and the executive. Taking an example of this process, since last decades, the cases like Golak Nath Case, Kesavananda Bharati Case, Minerva Mills Case, Gopalan Case etc. have become the example of the judicial review process in India.

13. Universal Adult Franchise

Universal means applicable for all, Adult means those who have completed the age of 18 and

the Franchise means the voting system. Thus, the Universal Adult Franchise means each person after or on the age of 18 has the right to cast his or her vote. Indian democracy functions on the basis of 'one person one vote'. Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status. The Indian Constitution establishes political equality in India through the method of universal adult franchise.

14. Emergency Provisions

Following the provisions of the Weimer Constitution of Germany, the constitutional maker of India adopted the emergency provisions of the constitution of India. The Constitution makers also foresaw that there could be situations when the government could not be run as in ordinary times. To cope with such situations, the Constitution elaborates on emergency provisions. There are three types of emergency; a) National Emergency (Article- 352) which is caused by war, external aggression or armed rebellion; b) The state emergency (Article- 356), arising out of the failure of constitutional machinery in states; and c) Financial emergency (Article- 360), which is declared at the time of threat of financial stability and crisis.

15. Special Provisions for the scheduled castes and schedule Tribes of India

The Fifth and Sixth Schedule, of the constitution of India, deals with the Special Provisions for the scheduled castes and schedule Tribes. The part XVI of the constitution of India specifies certain special provisions for the scheduled castes and schedule Tribes. Article 30 of the constitution of India also provides for reservation of seats for scheduled castes and scheduled Tribes. Articles 331, 332 of the Constitution of India also have provisions for the reservations of the seats for Scheduled Castes (SC) and Scheduled Tribes (ST) and Anglo-Indian Community in the state legislatures respectively.

16. Provisions regarding Language

Language plays very vital role in the constitution of India. The Constitution provides some special provisions and amendments and also establishes various committees for signifying the Language of the Union, states and Region. It states that the official language of the

Union shall be Hindi and be in Devnagri script. It also affords for the perpetuation of English language for smooth running of the administration in the country. A state legislature can adopt the language of the province as its official language. English continues to be the language of the Supreme Court and the High Courts. The Constitution gives a directive to the Union to develop Hindi and popularize its use. In its Eighth Schedule of the constitution of India, it distinguishes 22 modern Indian Languages. They are Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Nepali, Manipuri, Konkani, Sanskrit, Sindhi, Tamil, Telgu, Urdu, Bodo, Dogri, Maithli and Santhali.

17. Three tier Government

In the beginning, the Indian Constitution provided for a dual polity and contained provisions with regard to the organization and power of the centre and the states. Later, in the 73rd and 74th amendment Act 1992 have added a three tier of government. The 73rd Amendment Act of 1992 gave constitutional recognition to the Panchayat that is the rural local governments. This also added a new part that is part IX and a new schedule 11 to the constitution of India. The 74th constitutional amendment Act 1992 of the constitution of India also added, a new part IX-A, a new Schedule 12 I.e. Panchayat raj in the urban local areas to the constitution of India.

18. A Constitution of many sources

Indian constitution is regarded as a borrowed constitution. In articulating the Constitution of India, the founding fathers of the constitution have made it more attractive and workable, drawn several elements from various sources of different constitution of the world. The ethics, values, principles, tenants and ideals of the numerous national movements channeled their path towards making the constitution. Certain provisions of Government of India Act 1935 were used by them and several features of foreign constitutions influenced them, and were adopted by them. The adoption of parliamentary system of government and bicameralism was borrowed from the constitution of Britain. The system of republicanism, independence of judiciary, judicial review and bill of rights was influenced by the constitution of America. The development of the former USSR after the 1917 Socialist Revolution influenced them to adopt socialism as a goal. Subsequently, the constitution also influenced by the constitutions of Canada, Australia, Weimar

Republic (Germany) and Ireland. The rudimentary and elementary edifice of the Constitution i.e. its most essential features can be described as: Preamble, Fundamental Rights, Directive Principles, Secularism, Federalism, Republicanism, Independence of Judiciary, Rule of Law, and Liberal Democracy which makes it more vibrant and active. The Indian Constitution is a constitution, best suited to the Indian environment and administration, with all these features. However, the following table gives the details of the borrowed features of the Constitution of India.

Sl.No	Borrowed features	Sources
1	Federal features, office of the Governor, judiciary, Public Service Commission, Emergency provision and administrative details.	Government of India Act-1935
2	Parliamentary government, rule of law, legislative procedure, single citizenship, cabinet system, writs of the constitution, bi-cameralism,	British constitution
3	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of the judges of the High court and supreme court, post of vice-president.	U.S.A. constitution
4	Directive Principle of State Policy, nomination of members to Rajya Sabha and method of election of president.	Irish constitution
5	Federation with strong centre, residuary power at the centre, the advisory jurisdiction of the supreme court, appointment of state governors by the centre.	Canadian constitution
6	Concurrent list, freedom of trade, commerce and intercourse and joint sitting of the two houses of the parliament.	Australian constitution
7	Suspension of Fundamental rights during emergency.	Weimar constitution of Germany
8	Fundamental duties, the Idea of justice in the	Soviet constitution

	preamble.	
9	Republic and ideals of liberty, equality and fraternity in the preamble.	French constitution
10	Procedure for amendment of the constitution and election of members of Rajya Sabha.	South African constitution
11	Procedure established by law	Japanese constitution

Constitution of India is unique in itself. Many features of our constitution are borrowed from various sources around the world. For this, it is criticized as a “*borrowed constitution*”. Moreover, it is not true. Though our constitutional makers have borrowed many features, but they have used it after necessary change and modification.

7.6: SUMMARY

The ideals enshrined in the Preamble of the Indian Constitution give a brief analysis of the philosophy of the Indian Constitution. However, time and again most of these ideals and objectives incorporated in the constitution are flouted. After the initiation of globalization and privatization in India, the very notion of sovereignty in not only India but in most countries comes under the scanner. Countries can't be fully independent and largely dependent on one another. If colonialism has declined, the concept of neo-colonialism is on the rise in the present period. This is done by international economic organizations like the IMF and World Bank as they try to control the economies of developing and under-developed countries. The ideas of socialism and secularism have also come under threat in India. Many thinkers that it is because the words 'socialism' and 'secularism' have not been properly defined by the Constitution of India. The idea of socialism came into criticism as the New Economic Policy of 1991 came into the picture with the control of the state declining with the rise of the market in the economy. This would widen the gap between the rich and the poor which goes against the very idea of socialism. Again, the concept of secularism and the intercourse of religion into politics has often resulted in communal strife amongst people which was far from the imagination of the policymakers. The democratic credentials of the country also get questioned from time to time

with anti-people policies of the government. The practices of communal riots, new forms of casteism, and gender discrimination have also infringed upon the objectives of Justice, liberty, equality, fraternity, and eventually unity and integrity of the nation.

7.7: KEY TERMS

- **Sovereign:** Asserts the independence of India from any external authority or control.
- **Socialist:** Reflects the commitment to achieving social and economic equality through the promotion of socialism as a guiding principle.
- **Secular:** Emphasizes the principle of secularism, ensuring equal treatment of all religions by the state and the independence of religion from governmental interference.
- **Democratic:** Affirms the democratic system of governance, where power is vested in the people and exercised through elected representatives.
- **Republic:** Denotes the form of government where the head of state is elected, rather than being a hereditary monarch.
- **Justice:** Stresses the pursuit of social, economic, and political justice to ensure equality and fairness for all citizens.
- **Liberty:** Guarantees individual freedoms such as freedom of speech, expression, belief, faith, and worship.
- **Equality:** Promotes equality of status and opportunity among all citizens without discrimination based on caste, religion, gender, or creed.
- **Fraternity:** Encourages a sense of brotherhood and unity among all citizens to promote national integration and harmony.

7.8: SELF ASSESSMENT QUESTIONS

- Analyses the important features of the Preamble of the India.
- Discuss the basic features of the Indian Constitution.
- Indian Constitution is a copied Constitution, comment.

- Discuss the basic sources of the Indian constitution.

7.9: REFERENCES

Austin, Granville. Indian Constitution –The Cornerstone of a Nation. Clarendon Press, 1966.

D Nagarathinam Duraipandian & N.Karpaha Nagarathinam. “A Deep Analysis on the Controversial Preamble of the Constitution of India.” Asia Pacific Law & Policy Review, Volume 5 (Annual) – 2019.

Deshpande, V.S. “People, and the Constitution.” Journal of the Indian Law Institute 16, no. 1 (1974): 1–10. (<http://www.jstor.org/stable/43950310>)

Kashyap, Subhash C. Our Constitution. New Delhi: National Book Trust, 2014.

More, Hemant (March 15, 2019). “The Preamble” Constitutional Law (https://thefactfactor.com/facts/law/constitutional_law/preamble/656/)

Pillai, K. N. Chandrasekharan. Reviewed work “Preamble: The Spirit and Backbone of the Constitution of India”, Journal of the Indian Law Institute 47, no. 1 (2005): 115–17. (<http://www.jstor.org/stable/43951955>)

UNIT-8: FUNDAMENTAL RIGHTS AND DPSP

Structure

- 8.1 Objectives
- 8.2 Introduction
- 8.3 Fundamental Rights of the Indian Constitution
- 8.4 Directive Principles of the State Policy
- 8.5 Difference between Fundamental Rights and DPSP
- 8.6 Summary
- 8.7 Key Terms
- 8.8 Self Assessment Questions
- 8.9 References

8.1: OBJECTIVES

After going through this unit, you will be able to know:

- Fundamental Rights of the Indian Citizen enumerated in constitution
- Directive Principle's of the State Policy in the Indian Constitution
- Difference between Fundamental Rights and DPSP

8.2: INTRODUCTION

Fundamental rights can be effective and assertive tools for the human that can be embedded by the legal authority such as courts while directive principles are not justified by the courts if any violations are created with these concerns. Fundamental rights demonstrated the basic conceptions of human rights enriched by the constitutions under Part III and articles (12- 35) for making them full of enthusiasts by full capabilities. The concept of a fundamental right is taken from the USA that illustrated the constitution as guardian of this right to promote the significance of these specific considerations. On the contrary, it was 7th in number but later on by the implementation of the 44th amendment bill 1978 articles 31(Right to property) have been removed from the list and become the Legal right under section 300. Along with this, the present time it is 6 and that highlights the strength and facilitates the opportunity to grab the humanitarian consideration within the society.

The concept of the directive principles is considered as ideological directions provided by the constitution to the government for effective implication while accessing the assertive principles. On

the contrary, it can be evaluated as a framework of duty applied by the states to their citizens from the perspective of administrative laws and regulations. The concept of these principles has been described by Dr. Bhim Rao Ambedkar for assisting the specific features that forecasted the overall idea under the Part IV articles (36-51). Apart from this, the basic phenomena of the directive principles are to make the welfare state and enable social and economical democracy. Apart from this, the basic phenomena of DPSP are to focus on some effective consideration of existing social and welfare improvement within the society.

8.3: FUNDAMENTAL RIGHTS OF THE INDIAN CONSTITUTION

Part-III of the constitution of India, from Article 12 to 35, deals with the Fundamental Rights (FR) of the constitution of India. The FR in the constitution of India is derived from the constitution of USA. The part-III is known as the 'Magna Carta' of India. In England Magna Carta was passed in the English parliament in 1215 as a set of laws, regulations, bills, conventions etc. The constitution of India contains a very long and comprehensive list of justiciable fundamental of rights. Before going to understand Fundamental Rights, we must understand rights. Rights are those privileges, essential for the existence and development of individuals. In that sense there will a long list of rights. Whereas all these are recognized by the society, some of the most important rights are recognized by the State and enshrined in the Constitution. Such rights are called fundamental rights. These rights are fundamental because of two reasons. First, these are mentioned in the Constitution which guarantees them and the second, these are justiciable, i.e. enforceable through courts. Being justiciable means; that in case of their violation, the individual can approach courts for their protection. If a government enacts a law that restricts any of these rights, it will be declared invalid by courts. Such rights are provided in Part III of the Indian Constitution. The fundamental Rights are meant for promoting the ideals of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country. They also protect the liberties and freedoms of the people against the invasion by the state. They aim at establishing a government of laws and not of men. The Fundamental Rights are named so because they are guaranteed and protected by the constitution of India. They are fundamental law of the land.

There were seven Fundamental Rights in the beginning of the constitution. Presently, the Constitution guarantees six fundamental rights to Indian citizens which are discussed asunder:

- I. Right to equality (Article 14-18)
- II. Right to freedom (Article 19-22)
- III. Right against exploitation (Article 23-24)
- IV. Right to freedom of religion (Articles 25-28)
- V. Cultural & educational rights (Articles 29-30)
- VI. Right to constitutional remedies (Article 32).

The Right to property (Art-31) was removed from the list of the Fundamental Rights by the 44th Constitution amendment Act, 1978 and after amendment; it was made legal right under article 300-A in part-12 of the constitution of India. Let us discuss the rights one by one.

(i) Right to Equality (Article 14 - 18)

A- Article 14 (Equality before law):

Article 14 says that state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It is available to any person including legal person's viz. statutory corporation, companies, etc. It is also taken from the concept of equal protection of laws has been taken from the constitution of USA. The concept of rule of law is a negative concept while the concept of equal protection of laws is a positive concept. The concept of equality before law is equivalent to the second element of the concept of the 'rule of law' propounded by A.V. Dicey, the British jurist. But certain exceptions to it are, the president of India, state governors, Public servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections and special privileges.

B- Article 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth):

Article 15 says that the state shall not discriminate against any religion, race, sex, and place of birth or any of them. Under article 15 (3) and (4), government can make special provisions for women and children and for group of citizens who are economically and socially backward section of the society.

C- Article 16 (Equality of opportunities in matters of public employment):

Article 16 says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. The State cannot discriminate against anyone in the matter of public employment. All citizens can apply and become employees of the State. Merits and qualifications will be the basis of employment. However, there are some exceptions to this right. There is a special provision for the reservation of posts for citizens belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes (OBCs).

D- Article 17 (Abolition of Untouchability)

Article 17 says that Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. Practicing untouchability in any form has been made a punishable offence under the law. This provision is an effort to uplift the social status of millions of Indians who had been looked down upon and kept at a distance because of either their caste or the nature of their profession. It is really very unfortunate that despite constitutional provisions, this social evil continues even today.

E- Article 18 (Abolition of Untouchability)

Article 18 says that no title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign state. All the British titles like Sir (Knighthood) or Rai Bahadur which were given to the British loyalists during the British rule, have been abolished because they created distinctions of artificial nature. However, the President of India can confer civil and military awards to those who have rendered meritorious service to the nation in different fields. The awards, Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri called as the national Awards would not amount to title within the meaning of Article 18(i).

(ii) Right to Freedom (Article 19-22)

Freedom is the most cherished desire of every living being. Human beings definitely want and need freedom. The Constitution of India provides Right to Freedom to all its citizens. This Right is stipulated under Articles 19-22.

A- Article 19 (Protection of certain rights regarding freedom of speech, etc.) Article 19 says that all citizens shall have the right

- I. To freedom of speech and expression.
- II. To assemble peacefully and without arms.
- III. To form associations or unions.
- IV. To move freely throughout the territory of India.
- V. To practice any profession or to carry on any occupation, trade or business.

There is certain purpose to provide freedoms and to build and maintain an environment for proper functioning of democracy. However, the Constitution has authorized the State to impose certain reasonable restrictions on each of them:

1. Restrictions may be put on the Right to Freedom of speech and expression in the interests of the sovereignty, integrity and security of India, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
2. Right to assemble peacefully and without arms may be restricted in the interests of the sovereignty and integrity of India or public order.
3. Right to form associations or unions may have restrictions in the interests of the sovereignty and integrity of India, public order or morality.
4. Right to move freely throughout the territory of India and to reside and settle in any part of India may also be restricted in the interest of the general public or for the protection of the interests of any Scheduled Tribe.
5. Right to practice any profession or to carry on any occupation, trade or business may have restrictions in the interests of the general public. The State is also permitted to lay down the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business. However, the following table finds the reasonable restrictions as under. The reasonable restrictions are given in the following Table:

Freedom	Reasonable Restrictions
Freedom of speech and expression	Restriction on the movement of a Person or group of to prevent spread of Violence.
Freedom to form Associations and Unions	Not allowed to run trades like gambling, prostitution, selling of Narcotic drugs.
Freedom to assemble peacefully and without arms,	Not allowed to reside too close to aerodrome.
Freedom to move freely throughout the territory of India	Restriction on the use of that may instigate people for communal violence
Free to reside and settle in any part of India	Not allowed to form an association to help terrorist activities
Freedom to practice or to carry on any occupation, trade or business	Should be peaceful and participants should not carry any weapon.

B- Article 20 (Protection in respect of conviction for offences)

Article 20 says that state can impose reasonable restrictions on the groups of security of the state, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation etc.

C. Article 21 deals with Protection of life and personal liberty.

Article 21A states that that state shall provide free and compulsory education to all children of the age of 6-14 years. This article was added to the constitution on 2 April 2010, India joined a

group of few countries in the world, with a historic law making education a fundamental right of every child coming into force by making elementary education an entitlement for children in the 6–14 age groups. The then Prime Minister India, Dr. Manmohan Singh announced the operationalization of the Act. Children, who had either dropped out of schools or never been to any educational institution, will get elementary education as it will be binding on the part of the local and State governments to ensure that all children in the 6–14 age group get schooling. As per the Act, private educational institutions should reserve 25 per cent seats for children from the weaker sections of society. The Centre and the States have agreed to share the financial burden in the ratio of 55:45, while the Finance Commission has given Rs.250 billion to the States for implementing the Act. The Centre has approved an outlay of Rs.150 billion for 2010–2011. The school management committee or the local authority will identify the drop-outs or out-of-school children aged above six and admit them in classes appropriate to their age after giving special training. The Constitution of India is a unique constitution. It is the largest written liberal democratic constitution of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity. Since its inauguration on 26th January 1950, the Constitution India has been successfully guiding the path and progress of India. This is also called Right to Education (RTE) Act.

D. Article 22 deals with protection against arrest and detention in certain cases.

Article 22 provides that whenever a person is arrested, he or she should be informed, as soon as it is possible, of the grounds for arrest and should be allowed to consult and to be defended by a legal practitioner of his or her choice. Moreover, the arrested person must be produced before the nearest magistrate within 24 hours of such an arrest excepting a person who has been arrested under preventive detention law. The case of the person arrested under preventive detention law has also to be referred to an Advisory Board within a period of three months of his or her arrest.

(iii) Right against Exploitation (Article 23 and 24)

Conventionally, Indian society has been marked by exploitation in many ways. This has also influenced the Constitutional makers to make provisions against exploitation. The citizens

have been guaranteed the right against exploitation through Articles 23 and 24 of the Constitution. These two provisions are:

A- Article-23 (Prohibition of traffic in human beings and forced labour)

Article-23 refers to the Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any breach of this provision shall be an offence punishable in accordance with law.

B. Article-24 (Prohibition of employment of children in factories, etc.)

Article-24 prohibits the child below the age of fourteen years to be employed to work in any factory or mine or engaged in any other hazardous employment. This right aims at eliminating one of the most serious problems, child labour, that India has been facing since ages. Children are assets of the society. It is their basic right to enjoy a happy childhood and get education. But as shown in the illustration and as you also may have observed, in spite of this constitutional provision, the problem of child labour is still continuing at many places. This malice can be eliminated by creating public opinion against it.

(iv) Right to Freedom of Religion (Article 25 to 28)

The Preamble declares the constitution of India “to secure to all its citizens liberty of belief, faith and worship”. Since India is a multi-religion country, where Hindus, Muslims, Sikhs, Christians and many other communities live together, the Constitution declares India as a ‘secular state’. It means that Indian State has no religion of its own. But it allows full freedom to all the citizens to have faith in any religion and to worship, the way they like. But this should not interfere with the religious beliefs and ways of worship of other fellow beings. This freedom is available to the foreigners as well.

A- Article 25 (Freedom of conscience and free profession, practice and propagation of religion)

Article 25 deals with freedom of conscience and free profession, practice and propagation of religion. All persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion freely. However, it does not mean that one can force another person to convert his/her religion by force or allurement. Also, certain inhuman, illegal and superstitious practices have been banned. Religious practices like sacrificing animals or human

beings, for offering to gods and goddesses or to some supernatural forces are not-permissible. Similarly, the law does not permit a widow to get cremated live with her dead Husband (voluntarily or forcibly) in the name of Sati Pratha. Forcing the widowed woman not to marry for a second time or to shave her head or to make her wear white clothes are some other social evils being practiced in the name of religion. Besides the above stated restrictions, the State also has the power to regulate any economic, financial, political or other secular activities related to religion. The State can also impose restrictions on this right on the grounds of public order, morality and health.

B. Article 26 (Freedom to manage religious affairs)

Article 26 deals with freedom to manage religious affairs, subject to public order, morality and health, every religious group or any section thereof shall have the right

- (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law.

C. Article 27 (Freedom as to the payment of taxes for promotion of any particular religion)

Article 27 deals with freedom as to payment to taxes for promotion of any particular religion. No person shall be compelled to pay any tax, the proceeds of which are specifically used in payment of expenses the incurred on the promotion or maintenance of any particular religion or religious sects etc.

D. Article 28 (Freedom as to attendance in religious function)

Article 28 deals with freedom as to attendance at religious instructions or religious worship in certain educational institutions. It prohibits the imparting of religious instruction in any educational institution, which are entirely maintained and upheld out of the state funds or aid getting from the state. However, this provision does not apply to an educational institution. No religious instruction shall be provided in any educational institution wholly maintained out of State funds. However, it will not apply to an educational institution which is administered by the State but has been established under any trust which requires that religious instruction shall be

imparted in such an institution. But no person attending such an institution shall be compelled to take part in any religious instruction that may be imparted there or attend any religious worship that may be conducted there. In case of a minor, the consent of his/her guardian is essential for attending such activities.

(v) Cultural and Educational Rights (Article- 29 and 30)

India is the largest democracy in the world. It is having a diversity of culture, scripts, languages and religions. In a democracy, the minorities are also equally important for its successful and effective working. Consequently, protection of language, culture and religion of the minorities becomes essential. Simultaneously, the minorities may not feel neglected or undermined under the influence of the majority rule. In Articles 29-30 two major provisions have been made.

A. Article-29 (Protection of interests of minorities)

Article-29 refers that any minority group having a distinct language, script or culture of its own shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

B. Article-29 (Right of minorities to establish and administer educational institutions)

Article-29 refers that all Minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, the State shall ensure that the amount Cultural and Educational Rights fixed by or determined under such law for the acquisition of such property would not restrict or abrogate the right guaranteed under that clause. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

(vi) Right to Constitutional Remedies (Article-32)

Article-32 refers to the Right to constitutional remedies. Since Fundamental Rights are justiciable, they are just like guarantees. They are enforceable, as every individual has the right to seek the help from courts, if they are violated. In reality it is not like that. Encroachment or

violation of Fundamental Right in the day to day life is a matter of great concern. Our Constitution does not permit the legislature and the executive to curb these rights. It provides legal remedies for the protection of our Fundamental Rights. This is called the Right to Constitutional Remedies. When any of the fundamental right is violated, one can seek justice through courts. This article deals with the right to move to the Supreme Court for the enforcement of Fundamental Rights including the Writs of (i) Habeas corpus, (ii) Mandamus, (iii) Prohibition, (iv) Certiorari and (iv) Quo warranto. Let us discuss these writs one by one.

I- Habeas Corpus

Habeas Corpus literally means ‘to have the body of’. Through this writ, the court can cause any person who has been detained or imprisoned to be physically brought before the court. The court then examines the reason of his detention and if there is no legal justification of his detention, he can be set free. Such a writ can be issued in following example cases: When the person is detained and not produced before the magistrate within 24 hours, when the person is arrested without any violation of a law, when a person is arrested under a law which is unconstitutional, when detention is done to harm the person or is malafide. Thus, Habeas corpus writ is called bulwark of individual liberty against arbitrary detention. A general rule of filing the petition is that a person whose right has been trespassed must file a petition. Nevertheless, Habeas corpus is an exception and anybody on behalf of the detainee can file a petition. This writ is applicable to preventive detention also. This writ can be issued against both public authorities as well as individuals.

II- Mandamus

Mandamus means “we command or we order”. This writ is a command issued by court to a public official, public body, corporation, inferior court, tribunal or government asking them to perform their duties which they have refused to perform. Due to this, Mandamus is called a “wakening call” and it awakes the sleeping or snoozing authorities to perform their duty. Mandamus thus demands an activity and sets the authority in action. Mandamus cannot be issued against the following circumstances: a private individual or private body, if the duty in question is discretionary and not mandatory, against president or governors of state, against a working chief justice to enforce some kind of private contract. A petition for writ of mandamus can be filed by any person who seeks a legal duty to be performed by a person or a body. Such a filing person must have real or special interest in the subject matter and must have legal or lawful right to do so.

III- Prohibition

The writ of prohibition means that the Supreme Court and High Courts may prohibit the lower courts such as special tribunals, magistrates, commissions, and other judiciary officers who are doing something which exceeds to their jurisdiction or acting contrary to the rule of natural justice. For example if a judicial officer has personal interest in a case, it may hamper the decision and the course of natural justice. Difference between Mandamus and Prohibition is while Mandamus directs activity, Prohibition directs inactivity. While Mandamus can be issued against any public official, public body, corporation, inferior court, tribunal or government; prohibition can be issued only against judicial and quasi-judicial authorities and not against administrative authorities, legislative bodies.

IV- Certiorari

Certiorari means “to certify”. It is a writ that orders to move a suit from an inferior court to superior court. It is issued by a higher court to a lower court or tribunal either to transfer a case pending with that to itself or squash its order. This is generally done because superior court believes that either the inferior court had no jurisdiction or committed an error of law. Thus, certiorari is a kind of curative writ.

V- Quo warranto

Quo warranto means “by what warrant?”. This writ is issued to enquire into legality of the claim of a person or public office. It restrains the person or authority to act in an office which he or she is not entitled to; and thus stops usurpation of public office by anyone. This writ is applicable to the public offices only and not to private offices.

8.4: DIRECTIVE PRINCIPLES OF STATE POLICY

Directive Principles of State Policy (DPSP) are in the form of instructions or guidelines to the governments at the center as well as states. These principles are non-justiciable by nature. They are fundamental in the governance of the country. These principles are included in part IV of Constitution in order to understand the high ideals of justice, liberty, equality and fraternity, cherished the preamble to the Constitution. These principles reflect Gandhi’s constructive programme for socio-economic welfare of the people of India. These constitute an instrument of instructions to the legislatures and the executives at all levels as to how they

should exercise their respective powers, and aims at attaining the economic, educational and social welfare of the people.

The idea of Directive Principles of State Policy has been taken from the Irish Republic. They were incorporated in our Constitution in order to provide economic justice and to avoid concentration of wealth in the hands of a few people. Hence, no government can afford to ignore them. They are in fact, the directives to the future governments to incorporate them in the decisions and policies to be formulated by them Directive Principles of State Policy have been grouped into four categories. These are: (1) the economic and social principles, (2) the Gandhian principles, (3) Principles and Policies relating to international peace and security and (4) miscellaneous

1-The economic and social Principles

- The state shall endeavour to achieve Social and Economic welfare of the people by:
- Providing adequate means of livelihood for both men and women.
- Reorganizing the economic system in a way to avoid concentration of wealth in few hands.
- Securing equal pay for equal work for both men and women.
- securing suitable employment and healthy working conditions for men, women and Children.
- Guarding the children against exploitation and moral degradation.
- Making effective provisions for securing the right to work, education and public assistance in case of unemployment, old age, sickness and disablement.
- Making provisions for securing just and humane conditions of work and for maternity relief.
- Taking steps to secure the participation of workers in the management of undertakings etc.
- promoting education and economic interests of working sections of the people especially the SCs and STs

- Securing for all the workers reasonable leisure and cultural opportunities.
- Making efforts to raise the standard of living and public health.
- providing early childhood care and education to all children until they complete the age of 6 years

2-The Gandhian Principles

There are certain principles, based on the ideals advocated by Mahatma Gandhi. These Principles are as follows: -

- To organize village Panchayat.
 - To promote cottage industries in rural areas.
 - To promote educational and economic interests of the weaker sections of the society.
 - To prohibit intoxicating drinks and drugs that is injurious to health.
 - To preserve and improve the breeds of the cattle and prohibit slaughter of cows, calves and other milch and draught animals
- Directive Principles of State Policy
Relating
- To organize agriculture and animal husbandry.

3-Principle of International Peace and Security (Liberal principles)

India should render active cooperation for world peace and security and for that the state shall endeavour to: -

- promote international peace and security
- Maintain just and honorable relations between nations.
- Foster respect for international laws and treaty obligations.
- Encourage settlements of international disputes by mutual agreement.
- To secure for all Indians a uniform civil code.

- To provide free legal aid to the poor, so that justice is not denied.
- Separation of judiciary from executive (Art-50)
- To provide free and compulsory education to all children up to the age of 14 years.

4-Miscellaneous

The Directive Principles in this category call upon the state: -

- To protect historical monuments.
- To save environment from pollution and protect wild life.
- To make arrangements for disbursement of free legal justice through suitable legislation
- To maintain just and honourable relations between nations
- To foster international law and treaty obligation.
- To encourage a settlement of international disputes through arbitration.

While incorporating most of these principles, the framers of the Constitution were primarily influenced by the identical provisions in the Irish and Spanish Constitution. They were also influenced by the Character of the United Nations and the Charter of Human Rights. They are also being the constitutions of socialist democracies of USSR.

The Directive Principles of state policy, as included in part IV of the Constitution, have been enumerated under Articles 36 to 51. They are discussed as under:

- Article 36 defines the term state and declares that it has the same meaning in part IV as it has in part III. This means that the Constitution directs not only the legislatures and executives of the Union and the states but also the local authorities, like district boards and village Panchayat, to implement these principles through their laws, policies and programmes.
- Article 37 describes the nature of these principles as follows:
- That these principles shall not be enforceable by any laws
- That these principles shall be fundamental in the governance of the country

- That it shall be duty of the state to apply these principles in making laws
- Article 38 declares ‘The state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life’.
- Article 39 describes that the state is directed to ensure various economic rights to the citizens. In the first place, it is to ensure that the citizens, both men and women, should have the right to an adequate of livelihood.
- Article 39(A) has been inserted to enjoin the state to provide ‘free’ aid to the poor and to take other steps to ensure equal justice to all, which is offered by the preamble.
- Article 40 directs the state to organize village Panchayats and to vest them with such powers and authority as may be necessary to enable them to function as units of self-Government. For the implementation of the provisions of this Article, Seventy-Third Amendment Act was passed vesting various degrees of power of self-Government and civil and criminal justice in the hands of the panchayats. Owing to the lack of proper education, narrow-mindedness and local politics, the system of Panchayat administration has not been a big success.
- Article 41 deals with the economic and educational rights of the citizens. It directs the state to ensure them the right to work, the right to education and the right to public assistance in case of unemployment, old-age, sickness or disablement.
- Article 42 directs the state to make provisions for securing just and human conditions of work, and for maternity relief. Adequate provision has been made by the state through Labour Laws and Factions Acts and the rules of service for the employees of the Unoin and the states.
- Article 43 also deals with the rights of the citizens. It directs the state to ensure all workers, agricultural, industrial or otherwise the following rights: Right to work ,Right to a living wage, Right to such conditions of work ensures a decent standard of life and full enjoyment of leisure, and social and cultural opportunities
- Article 44 directs the state to endeavour to secure for the citizens a uniform code throughout the territory of India. The purpose of this Article is to enable the legislature to make an attempt to unity the ‘personal law’ of the country.

Under Eighty-Sixth Amendment Act 2002, Article 45 was amended to provide early childhood care education to children below the age of 6 years

- Article 46 directs the state to promote the educational and economic interests of the scheduled Castes, scheduled Tribes and other weaker section. It also directs the state to protect these people from social injustice and from all forms of exploitation. For this purpose, seats have been reserved for them in all educational institutions, and fairly wide range of scholarships has also been provided for them.
- Article 47 can be split into two parts: Direction to the state to raise to the level of nutrition and the standard of living of its people and the improvement of their health; Direction to the state to bring about prohibition of intoxicating drinks and drugs, which are injurious to health, except for medical purposes;
- The subject matter of Article 48 centers round the preservation and improvement of cattle and the prohibition of cow slaughter. The protection conferred by this Article extends only to cows, calves and the other animals which are capable of yielding milk or being used for some work.
- Article 48(a) has been inserted, through Forty-second Amendment, in order to direct the state to protect and improve the environment and to safeguard the forests and wildlife of the country.
- Article 49 directs the state to protect, preserve and maintain monuments, places or objects of artistic or historic interest or of national importance. The state is to ensure that these monuments and objects are not spoiled, disfigured, destroyed, removed or exported. The aim of this Article is to preserve the nation's cultural heritage.
- Article 50 directs the state to take steps to separate the judiciary from the executive in public services of the state. The separation of judiciary from the executive would eliminate many evils, which follow from the combination of two positions in the same person.
- Article 51 directs the state to shape its foreign policy in such a manner that attains the following objectives: Promotions of international peace and security; Maintenance of just and honorable relations between nations; Settlement of international disputes by arbitration.

8.5: DIFFERENCE BETWEEN THE FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

Parts III and IV of the constitution of India deal with the Fundamental Rights and Directive Principles of State Policy respectively. They together constitute the “conscience” of the Indian constitution. There exist differences. The differences between them are discussed below

1. Firstly, the fundamental rights constitute a set of negative injunctions. The state is restrained from doing something. The directives on the other hand are a set of positive directions. The state is urged to do something to transform India into a social and economic democracy. As Gladhill observes, Fundamental Rights are injunctions to prohibit the government from doing certain things, the Directive principles are affirmative instructions to the government to do certain things.
2. Secondly, the Directives are non-justiciable. Courts do not enforce them. A directive may be made enforceable by the courts only when there is a law on it. Fundamental rights, on the other hand are justiciable. They impose legal obligations on the state as well as on individuals. Courts enforce them. If a law violates a fundamental right, the law in question will be declared void. But no law will be declared unconstitutional on the ground that it violates a directive principle against violation of a fundamental right, constitutional remedy under Art. 32 are available which not the case is when a directive is violated either by the state or, by individual. For this reason Prof K. T. Shah deprecates the Directive Principles as “Pious wishes” or a mere window dressing for the social revolution of the country.

Whenever conflicts arise between fundamental rights and directive principles, fundamental rights prevail over the directive principles because, in terms of Arts. 32 and 226, fundamental rights are enforceable by the courts. If a law is in conflict with a fundamental right, it is declared void by the Supreme Court. But no law can be declared void on the ground that it is violated the directive principle. In 1951, in *Champakam Dorairajan vs. the state of Madras*, the Supreme Court held “The chapter on Fundamental Rights is sacrosanct and not liable to

be abridged by any legislative or executive act. The Directive Principles of State Policy have to conform and are subsidiary to the chapter on Fundamental Rights.”

8.6: SUMMARY

The Constitution is a legally sanctified document consisting of the basic governing principles of the states. It establishes the framework as well as the primary objectives for the various organs of the government. The fundamental rights form the cornerstone of any democratic society, serving as a safeguard for the inherent dignity, freedom, and equality of every individual. These rights are not mere privileges granted by the state but are intrinsic to the essence of being human. As such, they must be upheld, protected, and respected by all levels of governance and society. Fundamental rights provide a framework for the protection of human dignity, liberty, equality, and justice. They empower individuals to live their lives with autonomy and integrity, ensuring that no one is subjected to arbitrary treatment or discrimination. It is imperative for governments, institutions, and individuals to recognize, uphold, and defend these rights as they are essential for the flourishing of democratic societies and the advancement of human civilization.

The Directive Principles of State Policy (DPSP) serve as a guiding light for governments in crafting policies and laws that aim to achieve a just and equitable society. While not enforceable by courts, they represent the moral and ethical commitments of the state towards its citizens. The DPSP underscore the state's responsibility to promote the welfare of its people by ensuring social, economic, and political justice. They provide a roadmap for governance that prioritizes the needs of the marginalized, protects the environment, and fosters inclusive development. Though not legally binding, their fulfillment is crucial for the realization of a truly democratic and egalitarian society. Therefore, it is incumbent upon governments to earnestly strive towards their implementation, thereby fulfilling the aspirations enshrined in the Constitution and fostering the well-being of all citizens.

8.7: KEY TERMS

- **Constitution:** The supreme law of a country that outlines fundamental rights and freedoms.

- **Fundamental Rights:** Basic rights inherent to all human beings, typically protected by law, often enshrined in a country's constitution.
- **Human Rights:** Rights inherent to all human beings, regardless of nationality, ethnicity, religion, or any other status.
- **Civil Liberties:** Individual freedoms and rights, such as freedom of speech, religion, and assembly, protected by law from infringement by the government.
- **Constitutional Rights:** Rights guaranteed by a country's constitution, often including freedom of expression, equality before the law, and the right to due process.
- **Legal Rights:** Rights recognized and enforced by the legal system, often overlapping with constitutional and fundamental rights.
- **Social Justice:** DPSP emphasizes the state's responsibility to secure social, economic, and political justice for all citizens.
- **Economic Justice:** Ensuring an equitable distribution of wealth and resources, preventing concentration of wealth, and controlling the means of production to ensure justice in economic matters.
- **Equal Pay for Equal Work:** A principle aimed at ensuring that men and women receive equal pay for performing the same work.

8.8: SELF ASSESSMENT QUESTIONS

- What is Rights. Discuss the fundamental rights given of the Indian Constitution.
- Article-32 of the Indian Constitution is the protector of the Fundamental Rights. Comment.
- Discuss the Liberal Principle's of the DPSP.
- DPSP is the guiding principles of the Indian Constitution, discuss.
- Find out the basic differences between Fundamental Rights and DPSP.

8.9: REFERENCES

Ghai, K.K. (2003) "Indian Government and Politics", Kalyani Publishers, New Delhi.

Hidayatullah, M, “Democracy in India and Judicial Process”, page-51,

Laxmikanth, M, (2015) “Indian Polity”, McGraw Hill Education (India) Pvt. Ltd.

Khanna, H.R. (2008) “Making of India’s Constitution”, Eastern Book Company, NewDelhi.

Austin, G. (1999) “Working a Democratic Constitution: The India Experience”, Oxford University Press, New Delhi.

Wheare, K.C. (1966) “Modern Constitutions”, p- 43

Kashyap, S.C. (1999) “Our Parliament”, National Book trust.

BLOCK-3: SECULARISM, FEDERALISM AND ITS WORKING

Unit-9: Distinctiveness of Indian Secularism

Unit-10: Constitution as an Instrument of Social Change

Unit-11: Working of Federalism in India

Unit-12: Major Tension Areas of Centre-State Relations in
India

UNIT-9: DISTINCTIVENESS OF INDIAN SECULARISM

Structure

- 9.1 Objectives
- 9.2 Introduction
- 9.3 Meaning of Secularism
- 9.4 Origin of Secularism
 - 9.4.1 Secularism in India: Historical Overview
 - 9.4.2 Constitution of India and Secularism
 - 9.4.3 Distinctiveness of Indian Secularism
 - 9.4.4 Features of Indian Secularism
 - 9.4.5 Significance of Indian Secularism
 - 9.4.6 Secularism and its Practice in India
 - 9.4.7 Challenges of Secularism in India
 - 9.4.8 Gandhi and Secularism in India
- 9.5 Summary
- 9.6 Key Terms
- 9.7 Self Assessment Questions
- 9.8 References

9.1: OBJECTIVES

After going through this unit, you will be able to know:

- Meaning of Secularism
- Origin of the Secularism in India
- Distinctiveness of Indian Secularism
- Gandhi and Indian Secularism

9.2: INTRODUCTION

Man is a social animal. He always try to live with peace and harmony with his fellow human beings in the society. For this the human society has created the state in order to maintain public order, defend boundaries, and ensure good will, harmony and cooperation among individuals and groups. After centuries of struggle, only in the modern era has it generally come to be

accepted that the state cannot be controlled by divine right or brute power. Neither hereditary succession nor authoritarianism are acceptable as arbiters of political power in a civilized society. Throughout most of our ancient and medieval history, there is no clear evidence of a theory of state at work. As several scholars have pointed out, personalized despotism was the norm of governance in our society. However, there was a saving grace. While the absolute power of the despotic monarchy was accepted, the relative autonomy of individuals and groups from state power was recognized and respected in large spheres of human endeavour. It is this strength and vitality of institutions other than state that helped to nurture and sustain Indian society over the centuries of turbulence and seeming anarchy. Matters relating to religion and Dharma have always been beyond the aim of the state. Even justice as understood in ancient and medieval times was to a large extent left to various social groups beyond the light of the state.

India is a secular State. The preamble of the constitution of India declares that India is a Sovereign, Socialist, Secular, Democratic and Republic state. India is a land of religions, languages and customs. Many religions are flourishing here since long back, which have their own traditions and beliefs. Therefore India is a multi-religious and multi-cultural country from its known history. It was never mono-religious or mono-cultural. The number of invasions and incursions from Aryans to Mughals added to religious, cultural and linguistic pluralism. British colonialism also contributed to its cultural and religious multiplicity. Thus with every invasion and incursion Indian society became more and more complex and rich. Perhaps no other society of the world is as multi-cultural and multi-religious as Indian society. It is rightly said that the Aryans, the non-Aryans, the Dravidians and the Chinese, the tribes of Scythians and Huns, the Afghans and the Mughuls have all agreed into one body'. Indian society is like a mighty river fed with many tributaries and the main stream flows on and on. Hence, Indian society is very rich, and well known for wisdom and great thoughts. Secularism is an important aspect of Indian society, for which it is also well-known in the world.

9.3: MEANING OF SECULARISM

In a scientific outlook, a secular state is defined as a state which recognizes every citizen as equal and does not recognize any social or religious stratification for any political benefit. The secular principle, in the Constitution of India, is the significant features of liberal and non-religious outlook towards governance. It is one of the most important tools to achieve

national integration. Despite a few points of crises in the post-Independence period years, the people of this country have demonstrated a great sense of unity and togetherness. Religious tolerance and absence of a state religion have contributed greatly towards this unity. It is generally projected as secularism is tolerance of all religions with special emphasis on the protection of minorities and preservation of communal harmony. In the words of Rizvi the essence of secularism rests on two basic principles. They are (i) Separation of religion from politics, (ii) Acceptance of religion as purely and strictly private affairs of individuals having nothing to do with the state.

Sometimes, the word secular is used as contrast with the word religious, which lead people to believe that secularism is opposed to religion. In reality rather than remaining opposed to religion, secularism takes it as a passionate view in running the affairs of the state. In the context of India, it basically connotes treatment of all religions on a footing of equality and ruling out any discrimination. Hence, secularism means separation of the state, politics and non-religious areas of life from religions and religions being treated as a purely personal matter. So, when India is said to be a secular state, it only means that the state will not identify itself with any particular religious faith and that no person shall suffer any disability or discrimination on the basis of religion.

9.4: ORIGIN OF SECULARISM

The origin of the idea of secularism has a long process of which can be outlined to the Western part of the world. The word 'secular' is derived from the Latin word 'sacularis' which meant, among other things, 'that which belongs to this world, non-spiritual, temporal as opposed to spiritual or ecclesiastical thing'. It is a form applied in general to the separation of state politics or administration from religious matters, and 'secular education' is a system of training from which religious teaching is definitely excluded. Philosophically, the term reveals the influence of positivism and utilitarianism. The principle of secularism was to pursue all the developmental measurements of human improvement by material means alone, these being considered as adequate to secure the desired end. Its principles could be sustained by intellect and were equally applicable to all humanity. Morality was seen as being based on reason and as seeking to establish the common welfare. Reason had to be freed from religious considerations.

9.4.1: Secularism in India- A Historical overview

Secular traditions are very deep rooted in the history of India. Indian culture is a composite one. It is based on the blending of various spiritual traditions and social movements. In ancient India, the Santam Dharma (Hinduism) was basically allowed to develop as a holistic religion by welcoming different spiritual traditions and trying to integrate them into a common main stream. The development of four Vedas and the various interpretations of the Upanishads and the Puranas clearly highlights the religious plurality of Hinduism. Emperor Ashoka was the first great emperor to announce, as early as third century B.C. that, the state would not prosecute any religious sect. In his 12th Rock Edit, Ashoka made an appeal not only for the toleration of all religion sects but also to develop a spirit of great respect toward hem. He pleaded for restrain of criticism of other religious sects. He asked people to become perfect in the scriptures of other religions. Their religious tolerance expressed by Ashoka more than 2,300 years ago has been one of the cherished Indian Social Value. Ashoka's secular outlook is one of the landmarks not only of Indian civilisation but also of the human civilization itself. Even after the advent of Jainism, Buddhism and later Islam and Christianity into the Indian soil, the quest for religious toleration and co-existence of different faiths continued.

During the period of medieval India, the Sufi and Bhakti movements united the people of various communities together with love, peace, sympathy and tranquility. The pioneers of these movements were Khwaja Moinuddin Chisti, Baba Farid, Sant Kabir Das, Guru Nanak Dev, saint Tukaram and Mira Bai. They contributed to the development of a composite culture in such a manner that nobody dares to challenge them. Guru Nanak, preached that 'There is no Hindu and no Musalman, as there is no distinction between man and man'. This thought gave support to the roots of Secularism in India.

The Mughal emperor, the great Akbar promoted the policy of toleration of different religions. His propagation of Din-e-Illahi (Divine faith) and Sulh-e-kul (Peace with all) were highly inspired by the spirit of secularism. Most of the Mughal kings were tolerant and liberal in their approach. Man Singh a Hindu was the commander of Akbar's Army. There were forty thousand soldiers and more than five hundred were Hindu Sardar. During the period of Shahjahan 24 percent were Hindu Sardar. In Aurangzeb's regime, 31.6 percent were Hindu Sardar. He appointed Raja Jaswant Singh (Rajput) as a head of Afghanistan. The spirit of secularism was strengthened and enriched through the Indian freedom movement too. In

the initial part of the Indian freedom movement, the liberals like Feroz Shah Mehta, Mahadev Govind Ranade, Gopal Krishna Gokhale and large pursued a secular approach to politics. The Brahma Samaj started by, Sri Raja Ram Mohan Roy and the Arya Samaj led by Swami Dayanand Saraswati, never treated other religious faiths with any antipathy.

At the same time, they also tried to purify the wrong traditions which had gradually appeared in the vitality of Hindu religion. The constitution drafted by Pandit Motilal Nehru, as the chairman of the historic Nehru Committee, in 1928, had the following provision on secularism.

- There shall be no state religion for the commonwealth of India or for any province in the commonwealth, nor shall the state, either directly or indirectly, endow any religion any preference or impose any disability on account of religious beliefs or religious status.
- The principal advocates of secular ideology in modern India were Mahatma Gandhi, Pandit Jawahar Lal Nehru.
- Gandhiji's secularism was based on a commitment to the brotherhood of religious communities based on the principle of nonviolence and truth.
- Pandit J. L. Nehru's secularism was based on a commitment to scientific humanism, rationality with a progressive view of historical development and change. Pandit Jawaharlal Nehru has been a leading supporter of the concept of the secular state. The creation of India as a secular state has been accepted as one of his greatest achievements. Moreover he was especially concerned with transforming India from a 'caste ridden society' in which communalism constitutes a major menace to all the values that he cherished to a 'national state' which includes people of all religions and shades of opinion and is essentially secular as a state.
- presently, in the context of Indians, the separation of religion from the state constitutes the core of the philosophy of secularism. The expression 'secular' has also a special significance in the context of the historical development of Indian polity.
- It is of pivotal importance in the context of political realities on the ground as they exist now.
- In India, the word secular is identified with tolerance among the different religions. In a secular state, no one enjoys any special privilege in national life or in any type of

conduct for international relations. No group of citizens arrogates to itself the rights and privileges which it denies to others. No person suffers from any form of disability and discrimination because of his religion but all alike to be free to share the fullest degree of freedom in his common life.

- Explaining the notion of secularism in India, Das and E. Smith, write that, ‘The secular state guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion. It is not constitutionally connected to a particular religion nor does it seek to either promote or interfere with any religion’.
- A close analysis of the secular state in India, involves three distinct but inter-related sets of relationships concerning the state, religion and individual. These are (i) Religion and the individual, (ii) The state and the individual, and (iii) The state and religion.
- In a secular state, the relationship between religion and individual is an independent variable in the sense that each and every citizen is free to choose his or her own religion or even refuse to adhere any one of them.
- The state has no business to disturb in the right to conscience of the citizens. The relationship between the state and the individual is also another independent variable in the sense that it is dispassionately decided under some constitutional guidelines.
- Thus religion has practically no role to intervene in such a social relationship. The state and religion both are independent to decide their course of action about their own norms, traditions and customs.
- Indian constitution arranges that both keep a respectable distance between each other. In case of any clash of interests among different religions, the state has every right to arbitrate and even regulate their activities.

9.4.2: Constitution of India and Secularism

Guided by the fact of pluralist character of Indian society, and disturbed by the alarming and dangerous forces of communalism, the constituent assembly of India adopted the principle of secularism as a key objective of the Indian polity. The constitution of India adopted the principle of 'socialist, secular and integrity' by the 42nd amendment Act of 1976. The constitution of India has adopted a system of political philosophy that all forms of religious faith and worship are of equal status and has accepted the view that public education and other matters of public policy should be conducted without the introduction of religious sentiments. Indian constitution has elaborated the principle of secularism in great detail. It specifies that the state should abstain from either penalizing or favouring any of its people on religious considerations.

In fact, India adopted secularism to facilitate the promotion of religious tolerance and cultural co-existence. It is true that the word 'secular' did not first occurs either in Article 25 or 26 or in any other article of Preamble of the constitution. The constitution says that, there shall be no 'state religion' in India. The State will neither establish a religion of its own nor confer any special patronage upon any particular religion. It follows from this that; The state will not compel any citizen to pay any taxes for the promotion or maintenance of any particular religion or religious institution (Article 27). No religious instruction shall be provided in any educational institution wholly provided by state funds Article 28(1).

Article 28 provides that every person is guaranteed the freedom of conscience and the freedom to profess, practice and propagate his own religion, subject only (a) to restrictions imposed by the state in the interests of public order, morality and health, (b) to regulations or restrictions made by state relating to any economic, financial, political or other secular activity which may be associated with religious practice, but do not really belong to the freedom of conscience, (c) to measure the social reform and for throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Subject to above limitations, a person in India shall have the right not only to entertain any religious belief but also to practice the observances dictated by such belief. (Article 25)

9.4.3: Distinctiveness of Indian Secularism

There is a crucial relationship exists among man, state and religion. This constitute a vital factor

in the distinctiveness of India's secularist character. Thus, secularism is not just a word or concept but it is an ideology itself. It was advocated by the founding fathers of independent India and the architects of India's Constitution. It refers to a number of norms and values regarding the way a plural society and its state should be organized. The basic idea is that the state and its laws should not associate with the realm of religion. Instead, each religion should offer useful anchorage to the government's secular attempts to turn out Indians into decent and truthful inhabitants. For India, secularism is not a simple point of view; it is a question of survival and existence; a safeguard of peace, order and rationality in the society. Hindus, Muslims, Christians and several other groups were quite successful in living together in relative peace for a long period of time in India and nobody had heard of the word "Secularism". Therefore, the task ahead is to examine the ways of living together by making adjustments, within the bounds of their religious beliefs. Internal pluralism exists within every religion and their traditions. Thus, the distinctiveness of Indian secularism denotes under the following heads.

9.4.4: Features of Indian Secularism

The Features of Indian Secularism are as follows

- A- The Preamble of the constitution of India-** The preamble is the source of Authority. It is accepted the principle of popular sovereignty. The first and the words of the preamble, i.e., 'we, the people of India.....adopt, enact and give to ourselves this constitution 'convey that the source of the Constitution is the people of India. This represents that the people are the ultimate source of authority in India. Its objective is to secure the justice, liberty, equality and fraternity for the people of India.
- B- Equal citizenship and equal fundamental rights-** Without any discrimination on the grounds of religion, caste, colour, creed, sex, place of birth, equal citizenship has been conferred upon all the citizen of the country. All are legally and politically equal in the eyes of the constitution. The citizen also enjoys the fundamental rights protected by the supreme court of India.
- C- Right to equality-** Article 14 of the constitution of India provides equality to all citizens before law. Art-15 states that the state shall not discriminate against any citizen on grounds of religion, caste, sex, place of birth or any of them. These

provides a unique feature of secularism in India.

D- Right to freedom of Religion- The constitution of India under Art-25 to 28 provides the Right to Freedom of Religion. It guarantees freedom of conscience and free profession, practice and propagation of religion.

E- Cultural and educational rights of minorities- The constitution seeks to protect the interests of all sections of society. Art- 29 holds “Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script, or culture of its own shall have the right to conserve the same. Further, no citizen can be denied admission into any educational institution on grounds only of religion, race, caste, language or any of them. ” Art-30 grants to the minorities the right to establish and administer their educational institution. The state cannot discriminate against any of these institution in granting aid to the educational institution.

F- Joint Electorate- The constitution has abolished communal electorate and in its place Joint electorate has been created. However, for protecting the interest of people belonging to Scheduled caste and Scheduled tribe, provision for the reservation of seats has been incorporated within the system of joint electorate.

G- Universal Adult Franchise- Further, the constitution confers Universal Adult Franchise under which all citizens of 18 years or above the right to vote in election. Anyone can hold any public office under these conditions.

H- Merit system of Recruitment- all recruitments to Civil service which includes All India, Central and State are made on the basis of merit, which judge through the holding of Comparative examination and interview.

I- Protective Discrimination- the state gives special protection to the people belonging to Schedule caste and Schedule tribes, tribals, women, children and Other Backward Classes. It is provides for reservation in job people belonging to SC, ST and OBC.

With these major secular features along with the absence of a state and official religion, India qualifies to be a secular state. In this regard, D.D. Basu writes ‘The Sum total of the above provisions makes our state more secular than even the United States of America’

9.4.5: Significance of Indian Secularism

In India, the importance of secularism emerges as an overemphasis phenomena. The people of India are very personal and emotional in relation to religion. It is a danger to the society, if the religion has been politicized. Thus in India the politics should be free from religion. Otherwise there will be a revolution in the country. India is a country of multi-lingual, multi-religious and multi region. Such a country is very difficult to maintain peace and order in the country. In order to avoid such circumstances, the constitutional makers of the constitution of India have advocated the secularist principles in India. The preamble of the constitution declares it as a secular state. India as a secular state neither compels the citizen of India to accept, profess, propagate and practice any religion nor support to any specific religious procedures. In India the citizen are free to declare himself as a Hindu or Muslim or Christian etc. for this reason India is known as a unique type of secularism.

However, In 1976 the 42nd Amendment added the 'secular' to the goals of the Constitution of India. In fact, secularism was enshrined in the Constitution right at its beginning. The Constitution of India, in Article 25, grants freedom of religion to all persons. By Article 26 the Constitution allows different religious denominations or sections thereof the right to establish their own religious institutions and manage their affairs. Article 27 grants every person the freedom as to the payment of taxes for promotion of any particular religion. Article 25 also provides that the state can control the secular affairs of religious institutions like their finance. Here is a clear distinction between the secular and the sacred domain.

9.4.6: Secularism and its Practice in India

India got independent status after a long struggle against British colonial rule. Then it became a pluralistic nation and welcomed religious and cultural diversity. According to Ram babu, (2006) at the time of the partition it was estimated that there were 361 million people living within India's borders; of these people 315 million were Hindus, 32 million Muslims, 7 million Christians, 6 million Sikhs, one million Buddhists, 100,000 Persians and a small minority of Jews. Therefore it was the need of the hour to save this multi-ethnicity of India, for which later on our constitution have opted the way of secularism. In real practice too, the governments in India always tried to follow a secular path, although it had some setbacks from time to time.

In our country, we had as many as four non Hindu Presidents, three Muslims namely, Dr.

Zakir Husain, Fakhruddin Ali Ahmed, Dr. A. P. J. Kalam and a Sikh, Giani Zail Singh.

Supreme Court of India has had Muslims as Chief Justices, one of them M. Hidayatullah, was also Vice-President for a term. Presently Dr. Hamid Ansari, a Muslim is at the position of Vice-President of India. Several others have reached very high positions. There have been invariably more than one Muslim minister at the centre and in most of the states. Similarly governors, vice-chancellors, leaders in the field of science and technology, and a number of ambassadors are from different religious communities. Therefore, in general the Indian government has not been indifferent to religion but has attempted to treat and foster each religion in the country equally. The minority communities in India are well represented in the top cadres of the armed forces. Muslims, Christians, Sikhs and the other minorities have given the country some outstanding civil servants, artists and sports persons in sixty seven years since independence. The general non-discriminatory climate in the country ensures that ability and performance should be given due weightage and nobody should be held back because of his or her religion.

9.4.7: Challenges of Secularism in India

India is a country of varieties of religion and languages. These are the measure sources of cultural heterogeneity in India. Hindus constitute the majority, while the Muslims constitute the largest minority. India is a secular state, but the Indian society is hardly secularized. The Indian Constitution makes the State to observe Dharma - Nirapekshata. But, our society is steeped in religion. Religious feelings govern our mode of thinking and observance of religious festivals and rituals is part of our day to day life. Thus there is a clear contradiction between the basic tenets of the Constitution and the character of our society. For secularism to survive, it is not enough if the State declares itself to be secular, but the society should also be secular. If not, the society's religiousness gets reflected in politics and public administration, which often work in a manner contrary to what is envisaged in the Constitution. "Secularists" contend that Indian secularism has suffered damage following the rise of Hindu Nationalism in the form of the Sangh Parivar. Stating that the BJP's ideology was based on Gandhian Socialism, Vajpayee presented the Bharatiya Janata Party (BJP) as a modernizing and scientifically oriented political party. The BJP adopted what it called positive secularism, an ambiguous concept ultimately based on the Hindutva (Hinduism) view that Hinduism was not a religion and could not be

other than secular. Vajpayee said that Dharma nirapekshata (Secular), the indifference of state to religion, was neither secularism nor a reflection of the dominant (Hindutva) ethos of India. Hence, positive secularism could seemingly incorporate both the existing conception of sarva dharma samabhava (the view that the orientation of the state should conceive of all India's religions differently though 'special privileges' or 'concessions' would advantage them in comparison with Hindus". The BJP and the Sangh Parivar could mobilize support for its activities by presenting itself as a disciplined party, with its members subject to the aims and values of Hindutva. This position became increasingly stronger, as Congress continued to languish because of its inability to define what it stood for. One of the arguments in the political discourse in India is that India is secular because Hinduism is tolerant and non-violent; that such tolerance nurtured a diversity of faiths, religion, and cultures in India. In plain terms, the message that is sought to be concretized is that India can afford to be secular only because of Hinduism. From the above it can be said that the followings are the problems of the secularism in India.

- A. Communalism
- B. Casteism.
- C. Regionalism
- D. Religion.
- E. Racialism
- F. Ideological difference
- G. Collectivism
- H. Conservatism
- I. Ethnicity

9.4.8: Gandhi and Secularism in India

Mahatma Gandhi was a profound scholar of all religions. Apart from his study of Hinduism, Buddhism and Jainism, he was a passionate reader of Christian and Islamic scriptures as well. All forms of religion attracted Gandhi enormously, and through his thorough

understanding of all, he successfully arrived at a complex understanding of religion and God as a whole. In his secular theories, he took a special significance in the particular context of the Indian national movement. Indian society has been traditionally plagued by the evils of caste and creed based discrimination. The caste oriented stratification of the Indian society has hindered all chances of national unification from the early days of Indian society. The situation was complicated by the presence of various religious groups within the country, who were not ready to compromise any ground to reach a platform of commonality. The traditional rhetoric of the religious and the self-styled spiritual preachers fuelled these divisions more often than not. It was a great pain for Gandhi that India's age old tradition of religious tolerance was not being maintained when it was more needed. What particularly disturbed him was the realization that it would be impossible to organize any countrywide movement against the common opposition of the British oppressors, if society continues to remain divided on religious grounds. Secularism for Gandhi was an absolute necessity to bring about any form of constructive and all-encompassing political movement.

Mahatma Gandhi preached his ideals of secularism and religious tolerance across the country. He showed his consolidation to the Muslim leaders through the support that Congress extended to the Khilafat movement. Thus he wrote extensively on the need of secularism in India, and made speeches to the same effect all over the country. It was not the easiest of tasks for Gandhi. The British were bent upon implementing the policy of divide and rule, and it took its worst form after the declaration of separate elections for the different communities in the declaration of the Government of India Act in 1935. Indian National movement has always been plagued by communal tensions, and haunted it till the very end. Gandhi's monumental efforts at bringing together the various communities in India were not fully realized. The British policy of 'divide and rule' had its effects, and the demand for a separate Muslim nation was fast gaining currency. Gandhi was hurt, but he realized his helplessness. Even at the intense riots on the eve of Indian independence, Gandhi was on the roads trying to unite the warring communal factions. Even his death can in many ways be related to his life-long commitment to secular principles.

9.5: SUMMARY

The conclusion to the discussion on Indian secularism is multifaceted and nuanced. Indian secularism, as enshrined in its Constitution, embodies principles of religious tolerance, equality,

and the separation of religion and state. However, the application of secularism in India has faced numerous challenges and criticisms over the years. One key aspect of Indian secularism is its commitment to respecting all religions equally, which has been a fundamental aspect of the nation's identity since its independence. This commitment is reflected in the protection of minority rights and the freedom of religion guaranteed by the Constitution. Despite these constitutional safeguards, the practice of secularism in India has often been questioned. Critics argue that sectarian tensions, religious discrimination, and communal violence continue to pose significant challenges to India's secular fabric. The rise of religious nationalism and identity politics has further complicated the secular discourse, leading to polarization and social unrest in some instances. Moreover, the concept of secularism itself is subject to interpretation and debate. While some advocate for a strict separation of religion and state, others argue for a more inclusive approach that acknowledges the role of religion in public life while ensuring equal treatment for all faiths. Indian secularism is a complex and evolving concept that requires constant vigilance and adaptation to the changing socio-political landscape. While the ideals of secularism remain central to India's democratic ethos, addressing the challenges and contradictions inherent in its implementation is essential for the country to realize its full potential as a pluralistic and inclusive society.

9.6: KEY TERMS

- **Secularism:** The principle of separating government institutions and religious institutions, aiming for a neutral stance toward all religions.
- **State Secularism:** This refers to the official policy or stance of a government or state that does not favor any particular religion. It implies equal treatment and protection of all religions by the state.
- **Religious Pluralism:** The presence of multiple religious beliefs and practices within a society. Secularism often promotes religious pluralism by ensuring the coexistence of diverse religious groups without privileging any.
- **Freedom of Religion:** A fundamental human right that allows individuals to practice, observe, or change their religion without interference from the state or other religious groups.

- **Freedom from Religion:** The right to be free from coercion, pressure, or imposition of religious beliefs or practices by the state or other individuals or groups.
- **Secular State:** A state that operates without official religious affiliation and does not endorse any particular religion as the state religion.
- **Secular Ethics:** Moral principles and values that are derived from secular, non-religious sources, such as reason, empathy, and human experience, rather than from religious doctrines or scriptures.
- **Civic Religion:** A set of beliefs, rituals, and symbols that serve to unify a society around common values and ideals without being tied to any specific religious tradition.

9.7: SELF ASSESSMENT QUESTIONS

- What is Secularism? Discuss the meaning and origin of Secularism in India.
- Discuss distinctiveness of Indian secularism.
- Discuss features of Indian Secularism.
- Discuss secularism and its practices in India.
- What are the major challenges to the Indian secularism?
- Discuss about Gandhi and Secularism.

9.8: REFERENCES

Haynes, Jeffrey (2021). Handbook on Religion and International Relations. Elgar Handbooks in Political Science. Edward Elgar Publishing Limited. p. 348. ISBN 978-1-83910-024-6.

Kohli, Atul (2014). India's Democracy: An Analysis of Changing State-Society Relations. Princeton Legacy Library. Princeton University Press. p. 148. ISBN 978-1-4008-5951-1. Indian secularism after independence was mostly articulated by leaders like Nehru, who used the formal instruments of the central government to impress an ideology of secular rationalization.

Ashis Nandy (2007). AD Needham and RS Rajan (ed.). The Crisis of Secularism in India. Duke University Press. pp. 109–112. ISBN 978-0-8223-3846-8.

Ganguly, Sumit (2002). "India's Multiple Revolutions". *Journal of Democracy*. Johns Hopkins University Press. 13 (1): 38–51. doi:10.1353/jod.2002.0007. S2CID 145715953., Quote: "they contend that secularism, as practiced in India, has amounted to little more than the pampering of minorities and is therefore pseudo-secularism."

UNIT-10: CONSTITUTION AS AN INSTRUMENT OF SOCIAL CHANGE

Structure

- 10.1 Objectives
- 10.2 Introduction
- 10.3 The Provision of Popular Sovereignty
- 10.4 The Provision of Parliamentary Democracy
- 10.5 The Principles of Representative Democracy
- 10.6 Democratic Decentralization
- 10.7 Freedom of Individuals
- 10.8 Freedom of the Press
- 10.9 The Concept of Social Justice
- 10.10 The Concept of Equality
- 10.11 The Concept of Universal Suffrage
- 10.12 The Concept of Fraternity and National Identity
- 10.13 The Concept of DPSP
- 10.14 The Provisions of Constitutional Amendments
- 10.15 Criticisms
- 10.16 Summary
- 10.17 Key Terms
- 10.18 Self Assessment Questions
- 10.19 References

10.1: OBJECTIVES

After going through this unit, you will be able to know:

- Constitution as an instrument of social change
- The provision of the Parliamentary Democracy
- The concept of Social Justice and Equality
- Democratic decentralization and individual freedom

10.2: INTRODUCTION

Constitution is a set of rules and regulations. These set of the rules are provided under a

country's legal system. The constitution governs as the framework for the government of the country. The aim of the constitution should be to endure a comprehensive and peaceable social system. Constitution of India has served as an instrument of social change under different circumstances. Constitution of India tries to emphasize the original Constitution adopted on 26 November 1949 along with successive amendments of the constitutional provisions. Article 368(1) says, "Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article." All the constitutional amendments in India are trying to meet the demands of the situations and conditions of the country. The parliament of India supplements and complements the acts for the proper grasping of the constitutions of India. In this regard Heywood has put it, one of the functions or purposes of the Constitution is that, "in addition to laying down a framework for government, constitutions invariably embody a broader set of political values, ideals and goals. This is why constitutions cannot be neutral; they are always entangled, more or less explicitly, with ideological priorities. The creators of constitutions therefore seek to invest their regime with a set of unifying values, a sense of ideological purpose, and a vocabulary that can be used in the conduct of politics. In many cases, these aims are accomplished explicitly in preambles to constitutional documents which often function as statements of national ideals." In that sense the preamble of Indian Constitution represents the nature of the state and the objectives or values before its future governments to be achieved.

However, at the time of crisis, the constitution should be able to peacefully transform its economic and social order. Basically, it is aimed at establishing a sovereign, socialist, secular, democratic, republic and at the same time it promises to provide justice, liberty, equality and fraternity to all its citizens. The most important thing is that it is based on the principle of 'Unity of Diversity'.

10.3: THE PROVISION OF POPULAR SOVEREIGNTY

Before going to explain the popular Sovereignty, let us try to understand the concept of Sovereign. Sovereign means free from the control of any foreign power and internally have a free government which is directly elected by the people and makes laws that govern the people. Popular sovereignty or the sovereignty of the people is the belief that the legitimacy of the state

is created by the will or consent of its people. The people are the source of all political power. It is closely associated to the social contractualists like Thomas Hobbes, John Locke and Jean-Jacques Rousseau. This sovereignty expresses a concept and does not necessarily reflect or describe a political reality. It is often contrasted with the concept of parliamentary sovereignty, and with individual sovereignty. The Popular sovereignty is also one of the basic structures of constitution of India.

The preamble of India starts from 'We the people of India'. This states that the people of India are the real source of authority. The real power lies with the hands of the people. Moreover, it is stated that India is a Sovereign Socialist, secular, Democratic and Republic state. The beginning words of the preamble of the Constitution emphasize the ultimate authority of the people of India from whose determination the Constitution developed. The preamble proclaims the intense perseverance of the people to constitute India into a sovereign, democratic republic. The principle of popular sovereignty implies firstly, that the ultimate authority of all governmental agencies springs from the will of the people as expressed in the Constitution and secondly, that the authority is renewed from time to time through popular elections at regular intervals. Further, under our Constitution those who wield the executive power of the government are responsible to the legislatures and through them to the people. Thus, in the affairs of the state, it is the will of the people that prevails ultimately, and not the will of a few individuals, however, important or powerful.

The principle of popular sovereignty is endorsed in several places of the Constitution of India. It is more found particularly in the chapter links with election procedure and sovereign votes. The election to the House of Representative (Lok Sabha) and the Legislative Assembly of every state have to be held on the basis of adult suffrage. Further, such elections should take place at least once every five years. The Constitution also ensures the democratic ideal of 'one man, one vote, one value,' irrespective of his wealth, education, social status or importance otherwise. The concept of sovereign votes gains a very important aspect. This is the power of the citizen of India. Citizens of India enjoy sovereign power to elect their representatives in elections held for parliament, state legislature and local bodies as well. People have supreme right to make decisions on internal as well as external matters. No external power can dictate the government of India. India's membership of the commonwealth or of the United Nations does not impose any external limit on her sovereignty. Thus, the sovereignty empowers India to either acquire a foreign territory or relinquish a part of its territory in favour of a foreign state.

The founding fathers of our Constitution had taken most fundamental and far-reaching decision. It was indeed an act of faith, a homage to the people of India and implicit in the liberal outlook of India's freedom struggle. They have made India as the largest parliamentary democracy in the world. In 1951, in the first poll of the number of eligible voters was around 160 million. In 1999, for the thirteenth general elections, the number was as large as about 650 million. The framers of the Constitution were not satisfied by merely providing for universal adult suffrage. They wanted also to ensure free elections by creating an independent constitutional authority-the Election Commission of India-to be in-charge of everything connected with the elections. Thus, the systems like Universal Adult suffrage, one man one vote, political participation, election procedure etc. makes the constitution of India as a sovereign state. The sovereignty lies in the hands of the people.

10.4: THE PROVISION OF PARLIAMENTARY DEMOCRACY

Before going to understand parliamentary democracy in India one must understand the concept of Parliamentary system. A parliamentary system is a system of democratic governance of a state where the executive branch derives its democratic legitimacy from legislature (parliament) and is also held accountable to that legislature. In a parliamentary system, the head of state is normally a different person from the head of government. This is in contrast to a presidential system in a democracy, where the head of state often is also the head of government, and most important thing is that the executive branch does not derive its democratic legitimacy from the legislature. The countries with parliamentary systems may be constitutional monarchies, where a monarch is the head of state while the head of government is almost always a member of the legislature such as the United Kingdom, Sweden and Japan. In parliamentary republics, the ceremonial president is the head of state while the head of government is regularly from the legislature such as Ireland, Germany, India and Italy. In a few parliamentary republics, such as Botswana, South Africa and Suriname, as well as German states, the head of government is also head of state, but is elected by and is answerable to the legislature.

For example, the British government introduced the parliamentary system in India. Whether it was a conscious decision on their part is contentious, as some feel that were not completely familiar with the system themselves. Many of the modern thinkers have even gone to the extent of saying that the system was introduced by the British government in a state of 'absent-mindedness'. The real intentions behind the mindset of the British rulers cannot be traced down completely.

However, there are certain basic values of democracy which are applicable to all democratic nations around the world and also to India. They are;

- Freedom of the people
- Equality for the people
- Political participation and political culture
- Fraternity assuring the dignity of the Individual
- Fundamental rights and Fundamental Duties
- Social equality and social justice
- Independent and integrated of judiciary
- Unity and integrity of the nation
- Popular sovereignty
- Public opinion
- Political parties

However, Parliamentary democracy in India refers to the following points.

- Equal opportunity for all
- distributed and shared Responsibilities
- Respect for the opinion of the others
- Resolution of the majority and opinion of majority
- Popular participation should be guaranteed and safeguarded
- The citizen should wait for their opportunity

However, Parliamentary Democracy in India has become an embarrassment. It needs a strong policies for the smooth and proper working. It is not only the duty of the leaders but also the responsibility of the citizens to make conscious about their rights and their duties to make the parliamentary democracy a successful one. Democracy itself will not be stable. It is the public opinion that makes it stable. In a parliamentary democracy, the Council of Ministers are

responsible to the Parliament and take into consideration the voice of the people. However, the government will be dictatorial, if it ignores the need of people. In a Parliamentary democracy, somewhat uncorrupted is that, the ruling party is not prepared to dictate its terms to the opposition and other sections of the people. The spirit of democracy demands that there should be 'give and take'.

In fact the political consciousness among the people has not gone deep and so opposition party has not been able to become strong in the Parliament. We are hero worshippers by nature and so they respect the time-honored walls. This conservative nature has made them to elect the same political party to power. When the people become politically awake and organize themselves this will not happen. So we can say that at present parliamentary democracy has not acquired its true character. It needs some more measures to become proper type of parliamentary democracy.

10.5: THE PRINCIPLE OF REPRESENTATIVE DEMOCRACY

India has been following the system of representative democracy since Independence. Representative democracy is also known as indirect democracy or representative republic is a variety of democracy founded on the principle of elected officials representing a group of people, as opposed to direct democracy. For example, the United Kingdom is a crowned republic and Ireland is a parliamentary republic. There are various types of principles of Representative Democracy. They are

1. It is the rule by the representative of the people
2. It needs the definite representative mechanism
3. It is based on the period of elections
4. It is process through which political parties compete for political authority
5. It is based on the principle of existence of interest and pressure groups
6. It is system of election through the process of Universal Adult Franchise
7. It is based on public opinion and political majority
8. It is often presented as the only form of democracy possible in mass societies.
9. It arguably allows for efficient ruling by a sufficiently small number of people

on behalf of the larger number.

10. It has been conceptually associated with and historically instantiated by the political system known as representative government.
11. It is a system in which people elect their lawmakers, who are then held accountable to them for their activity within government.
12. It is an element of both the parliamentary system and presidential system of government and is typically used in a lower chamber such as the House of Commons in UK or Dáil Éireann in Ireland, and may be curtailed by constitutional constraints such as an upper chamber.
13. It has been described by some political theorists including Robert A Dahl, Gregory Houston and Ian Liebenberg as oligarchy. In it the power is in the hands of the elected representatives who are elected by the people in elections
14. Representatives are elected by the public, as in national elections for the national legislature. Elected representatives may hold the power to select other representatives, presidents, or other officers of the government or of the legislature, as the Prime Minister in the latter case.
15. The power of representatives is usually curtailed by a constitution as in a constitutional democracy or a constitutional monarchy or other measures to balance representative power.
16. It possess an independent judiciary, which may have the power to declare legislative acts unconstitutional. For example constitutional court, Supreme Court.
17. In this type of government, the constitution may also provide for some deliberative democracy, I.e. Royal Commissions or direct popular measures e.g., initiative, referendum, recall elections. However, these are not always binding and usually require some legislative action legal power usually remains firmly with representatives.
18. In some cases, a bicameral legislature may have an upper house that is not directly elected, such as the Canadian Senate, which was in turn modeled on the British House of Lords. Theorists such as Edmund Burke believe that part of the duty of a representative was not simply to communicate the

wishes of the electorate but also to use their own judgement in the exercise of their powers, even if their views are not reflective of those of a majority of voters.

19. It is based on the voting behaviour of the people. Voting rights and the manner in which the whole system of voting works is different in all countries. For example, in British women were not allowed to vote but got the right to franchise in 1918. In our system today we follow 'Universal Adult Franchise' and our elections for Lok Sabha, State Legislature and the Three-tier gram Panchayat, are held through this 'universal adult franchisee' only. Although every adult citizen in the country is bestowed with voting rights, there are a few exceptions. Someone who is found culpable of election offence, someone who is punished and people who are not mentally sound are not allowed to vote.
20. It is based on the rule of Political parties A democratic system of any form, especially parliamentary democracy, cannot be through off without the presence of the party system. Political parties are essential for the representation and protection of the masses, and are the backbone of representative democracy. The common particulars of the are: they have common objectives; based on the activity of the fundamentals of ideas and principles; based on the organizational structure; based on stability; it acts as the general objective of attaining the governmental power etc.
21. There are different political parties in the country. They are single-party system; bi-party system and multi-party system. However, in India we have a multi-party system. The major of the political parties are the National Party; State Party and Local Party.
22. The bases of Democracy are Equality in voting, Effective participation, Enlightened understanding and Citizen control of the agenda
23. The Election Commission:- the election commission was set up in order to conduct the elections in free and fair means. In a representative democracy, the role of the election commission is very vital. It takes all the responsibility to build the nation and have a strong public opinion. The commission is composed of the chief election commissioner, and other

commissioners decided by the president of India. The responsibilities of the commission is given as under.

- A. The commission prepares the list of the voters for the election
- B. The commission renews the list before each election
- C. The commission declares the time of the elections
- D. The commission fixes the date for the scrutiny and the dates for the nomination of the election
- E. The commission fixes the dates of the counting of the votes
- F. The commission prepares and implements the code of conduct which is compulsory for all the political parties
- G. The commission settles all the dispute regarding the elections
- H. The commission declares the result of the election
- I. The commission scrutinizes the expenses the election of the candidates

However, there are basic features which influences the party system such as;

- A. Co-existence of the political parties
- B. Principle and ideological political parties;
- C. Elements of caste, colour, creed and race;
- D. Party coalition and party defection etc.
- E. In order to be a national party, one party has to complete at least five years in service to political activities along with securing a minimum of four percent of the total number of votes in previous elements to state legislature.

10.6: DEMOCRATIC DECENTRALIZATION

Democratic Decentralization in India emphasizes on the decentralization of power. For example in India, the Panchayat Raj system acts as the greatest idea of democratic decentralization. The concept of Panchayat Raj is also known as the 'Grass Root' level of democracy, which was envisaged by the Father of the Nation, Mahatma Gandhi. According to him it brings transparency and accountability in the governance of the country. The 73rd and 74th

constitutional amendment of India added the Panchayat raj system in rural areas of the country and urban areas respectively. The features of these amendments are given below

- Elections are compulsory at local administrative level.
- A structural consistency of local self-government throughout the country.
- State election commission got responsibility of conducting elections for panchayats.
- The people's participation becomes more in this process of development.
- Greater powers are restored on the local bodies.
- Greater development at the grass root level i.e. the village level.
- Larger participation because of greater political consciousness among the people.

However, there are many challenges in the path of Democratic decentralization. The challenges are

- Poverty
- Illiteracy
- Unemployment
- Underemployment
- Unsettling propensities
- Favoritism and Nepotism
- Parochialism and Narrow-mindedness
- Corruption
- Terrorism
- Political defection
- Political instability
- Political apathy and indulgence
- Lack of developmental mechanisms

- Lack of infrastructure
- Lack of interest of the Individuals towards the political system

10.7: FREEDOM OF THE INDIVIDUALS

Freedom is the most important strength behind all individuals' development and progress. Individual can be the best self through the rights provided by the constitution of India. In India, part-III of the constitution deals with the Fundamental Rights of the constitution. Article 19 to 22 of the constitution of India deals with the right to Freedom. Art-19 is regarded as the most significant and essential article, which provides 'Six fundamental Freedoms' to the citizen of the country. This article is also viewed as the 'Key' to the constitution of India. The six Fundamental Rights constitutes the

- 1- Right to Freedom of Speech and Expression;
- 2- Right to Freedom to assemble peacefully without arms;
- 3- Right to Freedom of Association;
- 4- Right to move freely throughout the territory of India;
- 5- Right to reside and resettle in any part of the territory of India;
- 6- Right to practice and profession, or to carry out any occupation, trade or business;

Therefore, the Right to Freedom is considered to be the most vital factor of development of democracy and progress of the individual of the country. Individual and freedom are two important element of a particular government; it is also a yardstick for measurement of democracy. These freedoms, as a whole, constitute the liberty of the individual. So the preamble of the Indian Constitution proclaims that one of its objective is to secure Liberty i.e. Liberty of thought, expression, belief, faith and worship.

10.8: FREEDOM OF THE PRESS

The Constitution of India constitutes four important pillars and they are: The Executive, The Legislature, The Judiciary and the fourth and central pillar is the Press or Mass Media. The Constituent Assembly of India faced much criticism, of the omission of a specific reference to Freedom of the Press and the failure to guarantee it along with the freedom of speech. However, the Drafting Committee of the constitution of India, did not think it essential to include a separate right in the chapter of Fundamental Rights. Freedom of the press is also known as the freedom of the media. It is the freedom of communication and expression which includes various electronic media and published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections.

Regarding this, the Father of the Drafting Committee, Dr. B.R. Ambedkar viewed that 'The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the Manager of a press are all citizens and, therefore, when they choose to write in newspapers, they are merely exercising their right of expression and in my judgement, therefore, no special mention is necessary of the freedom of the press at all.' With respect to governmental information, it is the government who decides which matter will be publicized and which will be protected from disclosure to the public based on classification of information as sensitive, classified or secret. This information will be secured from disclosure due to relevance of the information to protecting the national interest. Many governments are also subject to sunshine laws or freedom of information legislation that are used to define the ambit of national interest. For example, the United Nations' in 1948 Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and impart information and ideas through any media regardless of frontiers"

This philosophy is usually accompanied by legislation ensuring various degrees of freedom of scientific research (known as scientific freedom), publishing, press and printing the depth to which these laws are entrenched in a country's legal system can go as far down as its constitution. The concept of freedom of speech is often covered by the same laws as freedom of the press, thereby giving equal treatment to spoken and published expression. The Committee to Protect Journalists (CPJ) uses the tools of journalism to help journalists by tracking press freedom issues through independent research, fact-finding missions, and first hand contacts in

the field, including local working journalists in countries around the world. CPJ shares information on breaking cases with other press freedom organizations worldwide through the International Freedom of Expression Exchange, a global e-mail network. CPJ also tracks journalist deaths and detentions. CPJ staff applies strict criteria for each case; researchers independently investigate and verify the circumstances behind each death or imprisonment. Freedom of expression enables one to express one's own voices as well as those of others. But freedom of the press must be subject to those restrictions which apply to the freedom of speech and expression. The restrictions mentioned in Article 19 are defamation, contempt of court, decency or morality, security of the state, friendly relations with other states, incitement to an offence, public order and maintenance of the sovereignty and integrity of India. In this way, freedom of press constitutes the instrument of social change.

10.9: THE CONCEPT OF SOCIAL JUSTICE

The term Social justice refers to the rational and fair relation between the individual and society. This is dignified by the unambiguous and implicit terms for the distribution of wealth, opportunities for personal activity and social privileges. In Western as well as in older Asian cultures, the concept of social justice has often denoted to the development of certifying that individuals fulfill their societal relations and obtain their due from society. Presently, in the era of globalization, the concept of social justice receives more importance for providing safety nets, social security and economic justice to the individuals of the country. In the current global grassroots movements for social justice, the emphasis has been on the infringement of blockades for social flexibility and social elasticity. It empowers people to receive the basic benefits and burdens of cooperation from the society. These includes taxation, social insurance, public health, public school, public services, labour law, regulation of markets, to ensure fair distribution of wealth, equal opportunity, equality of outcome, etc.

The concept of "Social justice" traced back its origin in 1840, from the theology of Augustine of Hippo and the philosophy of Thomas Paine. However, the term was developed in a more towards the late of industrial revolution, progressive American legal scholars began to use the term more, particularly Louis Brandeis and Roscoe Pound. From the early 20th century it was also surrounded in international law and international institutions. The preamble to inaugurate the International Labour Organization (ILO) elicited that "universal and lasting peace can be

established only if it is based upon social justice." During the latter part of 20th century, social justice was made dominant feature in the philosophy of the social contract, and predominantly by John Rawls in his book 'A Theory of Justice' (1971). During the Vienna Declaration and Program of Action indulgences social justice is pillar of human rights education and development. The Ministry of Social Justice and Empowerment in India is responsible for welfare, social justice, and empowerment of disadvantaged and marginalized sections of society, including scheduled castes (SC), Other Backward Classes (OBC), the disabled, the elderly, and the victims of drug abuse. The Ministry of Tribal Affairs is also responsible for the welfare of scheduled tribes (ST).

The preamble of the Constitution of India, in its 'Objective Resolution', said that there are three principles for the establishment of socio-economic justice in our country. These are

1. socio- economic justice in a country like India can be treated as valid, only it provides the positive aids such as material and substantive aids to the working section. Socio - economic justice in the negative sense implies that individual functions with restriction.
2. Political justice is less important than socio – economic justice. Socio-economic justice is qualitatively more important.
3. The stability of the ruling authority is relative to its ability to promote the cause of socio-economic justice for the general public. Simultaneously, universal adult franchise must be the cardinal principle of political election. Political justice would lose its consequence if socio-economic justice is not impending.

The purposes to secure justice, liberty, equality and fraternity to the individuals of the country, which is reflecting in the Part-III and Part-IV of the Indian constitution, namely Fundamental Rights (FR) and Directive Principle of State Policy (DPSP) respectively.

- **Liberty:** The preamble of the India constitution declares that liberty of thought, expression, belief, faith and worship. In this regard the constitution of India has designed the grant of fundamental rights i.e. right to freedom to secure the objectives of liberty in India. The term 'liberty' is used in the Preamble both in the positive and negative sense. In the positive sense, it means the formation of conditions that provide the essential constituents necessary for the complete development of the personality of the individual in the society by providing liberty of through, expression, belief,

faith and worship. In the negative sense, it refers to the absence of any arbitrary restraint on the freedom of the individual action. There is no state intervention in the action of individual liberty. Right to religious freedom is also a fundamental right in India.

- **Equality:** liberty cannot exist without equality; both are complementary and supplementary to each other. Liberty and equality are interrelated. Equality is the third major objective of the constitution of India. Liberty cannot exist without equality. Both liberty and equality are complementary to each other. Here, the concept of equality means that all human beings are equal in the eyes of the Law irrespective of their cast, creed, religion and language. Equality of status and equality of opportunity were the major objectives of the principle of equality in the preamble of constitution of India. However, the constitution of India grants and guarantees the Fundamental Right of equality to all the citizen of India.
- **Fraternity:** The Preamble underlines the objective of fraternity in order to ensure both the dignity of the individual and the unity and integrity of the nation. 'Fraternity' refers to establishment of the spirit of brotherhood, the promotion of love and peace, propagating the message of universal truth and oneness of which is poised of people of many races and religion. It is a word of moral and spiritual importance and imposes a moral obligation on the part of the Union to respect the personality of the citizen and to create conditions of work which will ensure self-respect, brotherhood and unity and diversity among the people of the nation. The words 'unity and integrity' have been made to prevent tendencies of regionalism, provincialism, linguism, communalism and any of the enlightened secularism is achieved.
- **Dignity and Self Respect:** Dignity and self-respect is a moral obligation and compulsion, which imposes spiritual, moral, ethical and honourable to the Union and state government to respect the personality of the citizens of the country. It is also the responsibility of the government to generate conditions and circumstances of work which will ensure self-respect.

10.10: THE CONCEPT OF EQUALITY

Article 14 of the constitution of India , states that state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It is available to

any person including legal person's viz. statutory corporation, companies, etc. It is also taken from the concept of equal protection of laws has been taken from the constitution of USA. The concept of rule of law is a negative concept while the concept of equal protection of laws is a positive concept. The concept of equality before law is equivalent to the second element of the concept of the 'rule of law' propounded by A.V. Dicey, the British jurist. But certain exceptions to it are, the president of India, state governors, Public servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections and special privileges. Thus Article-14 stands for the establishment of a circumstance under which there is fully absence of arbitrary discrimination by the laws themselves or in their administration.

Article 15 of the constitution of India, states that the state shall not discriminate against any religion, race, sex, and place of birth or any of them. Under article 15 (3) and (4), government can make special provisions for women and children and for group of citizens who are economically and socially backward section of the society.

National Campaign on Dalit Human Rights (NCDHR) highlighted the following discriminations being practiced against Dalits in India.

- Prohibited from eating with other caste members
- Prohibited from marrying with other caste members
- Separate glasses for Dalit's in village tea stalls
- Discriminatory seating arrangements and separate utensils in restaurants
- Segregation in seating and food arrangements in village functions and festivals
- Prohibited from entering into village temples
- Prohibited from wearing sandals or holding umbrellas in front of dominant caste members
- Prohibited from using common village pat
- Separate burial grounds
- No access to village's common or public properties and resources wells, ponds, temples, etc.
- Segregation of Dalit children in schools

- Bonded Labor
- Face social boycotts by dominant castes for refusing to perform their “duties”

Article 16 of the constitution of India, states that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. The State cannot discriminate against anyone in the matter of public employment. All citizens can apply and become employees of the State. Merits and qualifications will be the basis of employment. However, there are some exceptions to this right. There is a special provision for the reservation of posts for citizens belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes (OBCs).

Article 16(1) and 16(2) emphasizes on some general about equality of opportunity. It states that there shall be equal opportunity for all citizens and thus emphasizes on universality of Indian Citizenship.

Article 16(3) states that ‘Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office, I.e. under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory, prior to such employment or appointment. As per this article residence qualifications may be made necessary in the case of appointments under the state for particular positions, thus making the domicile provisions stronger, however, the power is not vested in the states but in Parliament to prescribe the requirement as to residence in the state. This emphasizes on making the qualifying test uniform throughout the country.

Equality of opportunity states the idea that everyone has an equal chance to achieve wealth, social prestige, and power because the rules of the game, so to speak, are the same for everyone. It signifies that, for any social equality and stability dealing with wealth, social prestige, power, influence, authority or any of that sorts, the equality of opportunity standard can preserve the idea that everyone in the society had occupied the same and equal position in the societal hierarchy. The standard of equality of opportunity eliminates inequality and disparity, because the rules of the competitions in society are still fair and just and it is same for all in the society. Lesley A. Jacobs, the author of Pursuing Equal Opportunities said that

‘The Theory and Practice of Egalitarian Justice, talks about equality of opportunity and its importance relating to egalitarian justice.’ This concept of equality, deals with the factors like race, gender, class, colour, creed, etc. that should not be considered while speaking about equality through this conception. In the words of Conley, this standard of equality is at the heart of a bourgeois society, such as a modern capitalist society, or “a society of commerce in which the maximization of profit is the primary business incentive.”

Thus, the equality conceptualize different type as under

- Economic equality, a form of social justice
- Egalitarianism, a trend of thought that favors equality for all people, also known as Equality
- Equal opportunity, a stipulation that all people should be treated similarly
- Equality before the law, the principle under which all people are subject to the same laws
- Equality of outcome, in which the general economic conditions of people's lives are similar
- Gender equality
- Racial equality

Article 17 of the constitution of India states that Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. Practicing untouchability in any form has been made a punishable offence under the law. This provision is an effort to uplift the social status of millions of Indians who had been looked down upon and kept at a distance because of either their caste or the nature of their profession. It is really very unfortunate that despite constitutional provisions, this social evil continues even today.

To make untouchability law further strong, parliament of India passed Untouchability Act in 1955 which came into force 1st June, 1955. This act was further amended and renamed in 1976 as Protection of Civil Rights Act, 1955. This act lays down that whatever is open to general public should be open to the members of the scheduled castes.

Article 18 of the constitution of India, states that no title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign state. All the British titles like Sir (Knighthood) or Rai Bahadur which were given to the British loyalists during the British rule, have been abolished because they created distinctions of artificial nature. However, the President of India can confer civil and military awards to those who have rendered meritorious service to the nation in different fields. The awards, Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri called as the national Awards would not amount to title within the meaning of Article 18(i). Article 18(1) states that 'No title, not being a military or academic distinction, shall be conferred by the State'. Article 18 (2) states that 'No citizen of India shall accept any title from any foreign State'. Article 18(3) states that 'No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State'. Article 18(4) states that 'No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State'. Article 18 also precludes the state from confirming any title except military and academic distinction. It also prohibits the Indian citizens from receiving titles from any foreign state. The foreign nationals holding the office of profit under the state may accept titles from the foreign government with the consent of President. In a true democracy, there is no space for artificial distinctions among the same society. Titles such as Rai Bahadur, Sawai, Rai Sahab, Zamindar, taluqdar etc were prevalent in medieval and British India.

However, the following titles are abolished by article 18 of the constitution of India.

- No title, not being a military or academic distinction, shall be conferred by the State.
- No citizen of India shall accept any title from any foreign State.
- No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.
- No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

10.11: THE CONCEPT OF UNIVERSAL SUFFRAGE

The concept of universal adult suffrage along with free and fair voting are looked upon as the “guarantors of minority rights.” It also had a trickle down impact on poverty alleviation. By allowing voting rights to all citizens, the poor found an opportunity to choose the political administrators and increase the scope of governance at a local level. The direct outcome is prosperity at grassroots level and development of infrastructure.

Universal suffrage is known as the general suffrage or common suffrage. It consists of the extension of the right to vote to all citizens. It excludes the grant of the right to minors or non-citizens. However, suffrage has two necessary components, the right to vote and opportunities to vote, the term universal suffrage is associated only with the right to vote and ignores the frequency that an incumbent government consults the electorate. Where universal suffrage exists, the right to vote is not restricted by race, sex, belief, wealth, or social status. Historically, the First French Republic was the second nation that adopted universal male suffrage, doing so in 1792. It was one of the first national system that abolished all property requirements as a prerequisite for allowing men to register and vote. Greece recognized full male suffrage in 1830 and France and Switzerland have continuously done so since the 1848. Upon independence in the 19th century, several Latin American countries and Liberia in Africa initially extended suffrage to all adult males, but subsequently restricted it based on property requirements. The German Empire implemented full male suffrage in 1871. The United States hypothetically adopted full male suffrage with the Fifteenth Amendment to the United States Constitution in 1870, but this was not practically implemented in the South until the Voting Rights Act of 1965 came into existence.

In 1893 New Zealand became the first nation in the world to grant universal, male and female adult suffrage. In most countries, full universal suffrage followed about a generation after full male suffrage. Notable exceptions in Europe were France, where women could not vote until 1944, that is in Greece (1952) and Switzerland (1971), in federal elections and 1990 in all cantonal elections. It is worth noting that countries that took a long time to adopt women's suffrage were often actually pioneers in granting universal male suffrage. However, in the first modern democracies, governments restricted the vote to those with property and wealth, which almost always meant a minority of the male population. In some

jurisdictions, other restrictions existed, such as requiring voters to practice a given religion. In all modern democracies, the number of people who could vote has increased progressively with time. In the 19th century in Europe, Great Britain and North America, there were movements advocating "universal male suffrage". The democratic movement of the late 19th century, unifying liberals and social democrats, particularly in northern Europe, used the slogan Equal and Common Suffrage. The first movements in the Western world toward universal suffrage occurred in the early 19th century, and focused on removing property requirements for voting. In the United States following the American Civil War, slaves were freed and granted rights of citizens, including suffrage for adult males although states established restrictions later in the century. In the late 19th and early 20th centuries, the focus of the universal suffrage movement was the extension of the right to vote to women.

However, in India, Article 326 of the Constitution grants universal adult suffrage to every citizen of India. As a result of which, every adult citizen is entitled to cast his or her vote in all state elections unless that citizen is "convicted of certain criminal offences" or "deemed unsound of mind." As per this concept, the right to vote is not restricted by caste, race, sex, religion or financial status. During the pre-independence era, only 13 per cent of Indian citizens used to enjoy the right to vote. The demand for universal adult suffrage had been gaining momentum few decades prior to the independence. The Motilal Nehru report was among the first proponent of "unlimited adult franchise and equal rights for women."

In 1928, Dr. B.R. Ambedkar appeared before the Simon Commission and insisted on incorporating universal adult franchise in the Constitution of India. According to him, elections were "a weapon in the hands of the most oppressed sections of society" and voting rights will give them the politico legal equality. In 1931, the Indian National Congress called for political equality at the Karachi session. The party argued that it would be one of the crucial strides towards making the electoral process more participatory and inclusive. There were doubts in the minds of our constitution makers and the issue of adult franchise was debated in the Constituent Assembly by many senior leaders before it abolished all the previous restrictions and provided for universal adult suffrage.

10.12: THE CONCEPT OF FRATERNITY AND NATIONAL IDENTITY

National identity denotes to the sense of belongingness to a state or a nation. It is a sense of solidarity feeling with a particular group without regard to one's actual citizenship status. This

is not a trait with which people are born, rather, experiences from the common way stations of people's lives build their sense of national identity. Different factors like language, national colors, national symbols, and the history of the nation, blood connections, culture, cuisine, music and others play a part of it. Positively, national identity refers to 'patriotism' but if one views this negatively, it is also known as chauvinism. It also requires the process of self-categorization and it involves both the identification of in-group i.e. identifying with one's nation, and differentiation of out-groups other nations. By recognizing commonalities such as having common descent and common destiny, people identify with a nation and form an in-group, and at the same time they view people that identify with a different nation as out-groups. National identity is a collective product. It is a process of socialization, a system of beliefs, values, assumptions and expectations is transmitted to group members. The collective elements of national identity may include national symbols, traditions, and memories of national experiences and achievements. These collective elements are rooted in the nation's history. Depending on how much the individual is exposed to the socialization of this system, people incorporate national identity to their personal identity to different degrees and in different ways, and the collective elements of national identity may become important parts of individual's definition of the self and how they view the world and their own place in it.

However, in India there is a strong faith of national Identity. It is because India is a land of immense diversities. It believes on the principles of unity and diversity. The preamble of the constitution of India enumerates '....unity and integrity of the nation'. This shows that there is a strong national identity in India.

10.13: THE CONCEPT OF DIRECTIVE PRINCIPLES OF STATE POLICY

Directive Principles of State Policy (DPSP) is described in the Part IV of the constitution of India under Article 51 (A). The Directive Principles of State Policy are the guidelines or principles given to the central and state governments of India. The states have to keep these directives in mind while framing laws and policies. These principles are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country. Thus, it is the duty of the State to apply these principles in making laws to establish a just and fair society in the country. The principles have been inspired by the Directive Principles, given in the Constitution of Ireland and Spain, relate to social justice, economic

welfare, foreign policy, and legal and administrative matters. Under the constitution of India, Directive Principles are based on the following features

- Economic and socialistic, political and administrative, justice and legal, environmental, protection of monuments and peace and security.
- The concept of Directive Principles of State Policy was borrowed from the Irish Constitution.
- It represents the features of Irish nationalist movement.
- The idea of such policies is based on “can be traced to the Declaration of the Rights of Man proclaimed by Revolutionary France and the Declaration of Independence by the American Colonies.
- The Indian constitution was also influenced by the United Nations Universal Declaration of Human Rights.

Article-39 of the constitution of India laid down the following principles to make the Constitution of India as an instrument of social change. They are

- The citizens both men and women have equal right to life and livelihood.
- The ownership and control of the material resources are distributed as based to perceive the common good.
- The operation of the economic and financial system does not result in concentration of wealth and means of production and distribution to the common impairment.
- There is existence of equal pay for equal work for both men and women.
- The health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- Childhood and youth are protected against exploitation and against moral and material abandonment.

Art-40 of the Constitution of India emphasizes that the state shall take step to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as unit of self-government.

Article-41 of the Constitution laid down that the state was directed, within the limits

of its economic capacity and development, to make effective provision for securing the Right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other causes of undeserved want.

Article-42 of the Indian constitution laid down that the state shall make provisions for securing just and human conditions of work and for maternity relief.

Article-43 of the Constitution of India explains that the state shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers such as agricultural, industrial or otherwise work, a living wage, conditions of work, ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Article-44 of the Indian constitution laid down the state endeavour to secure for the citizens a uniform civil code through the territory of India.

Article-45 of the Indian constitution laid down the state shall endeavour to provide within a period, often years, from the commencement of the constitution, for free and compulsory education for all citizen until they complete the age 14 years.

Article-47 of the Indian constitution highlights that the state was entrusted the responsibility of raising the level of nutrition of the people and the improvement of their health, and to this end, it was to bring about prohibition of the consumption of intoxicating drinks and drugs.

Article-48 of the Indian constitution laid down the states to organize agriculture and animal husbandry on modern and scientific lines.

Article-51 of the Indian constitution states that the states are directed to promote international peace and security, to maintain just and honourable relations between nations, to foster respect for international law and treaty obligations in the dealing of organized people with one another and to encourage settlement of international disputes by arbitration.

From the above, the founding fathers of the India Republic directed the state to preserve, protect each and every monument or place or object of artistic, etc., in order to protect the cultural heritage of India. In the process of Nation building and Nation

making, these provisions of the constitution of India (As stated above) are mainly responsible to make the constitution as an instrument of Social change in India.

10.14: THE PROVISION OF CONSTITUTIONAL AMENDMENTS

Amendment means change or alteration. In order to meet the changing situations, the constituent makers have adopted the amendment process in the country. The Constitution of India provides for a distinctive amending process when compared to the Constitutions of other nations. It can be described as partly flexible and partly rigid. In the constituent assembly Pt. Jawaharlal Nehru stated that ‘While we want this constitution to be solid and permanent as we can make it, there is no permanence in a constitution. There should be certain flexibility. If you make everything rigid and permanent you stop a nation’s growth, the growth of a living, vital and organic people.’

The Constitution provides for a variety in the amending process. This feature of the constitution of India has been borrowed from the Australian constitution. An amendment of the Constitution can be initiated only by the introduction of a Bill in either House of Parliament. The Bill must then be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. There is no provision for a joint sitting in case of disagreement between the two Houses. The Bill, passed by the required majority, is then presented to the President who shall give his assent to the Bill. If the amendment seeks to make any change in any of the provisions mentioned in the provision to article 368, it must be ratified by the Legislatures of not less than one-half of the States. Finally, the bill gets president’s approval for its recognition.

Types of Amendment in India

The original constitution provided for three categories of amendments. They are

- A. Amendment by simple Majority of Votes in both the house of the parliament.
 - B. Amendment by 2/3rd majority of the parliament
 - C. Amendment by 2/3rd majority of the parliament cum ratification by at least half of the state legislatures.
- A. Amendment by simple Majority of Votes in both the house of the parliament-**

The constitution of India empowers the parliaments to amend some specific constitutional provisions. The parliament can change these provisions by ordinary law making and can be effected by a simple majority such as that required for the passing of any ordinary law. The amendments under this category are specifically excluded from the purview of article 368 which is the specific provision in the Constitution dealing with the power and the procedure for the amendment of the Constitution. For amending the provision under this category, first the bill will be introduced in the legislature in either house. Then the bill asks for the majority in the houses. It becomes a law when passed by both the houses individually by simple majority of their members present and voting. Finally, the bill gets president's approval for its recognition. The provisions which can be amended by the simple majority are given as under

- Article 2, 3 and 4 provides for the admission or establishment of new states, formation of new States and alteration of areas, boundaries or names of existing States) effecting amendments in the First Schedule or the Fourth Schedule and supplemental, incidental and consequential matters, shall not be deemed to be amendments of the Constitution for the purposes of article 368, by formulating and altering the boundaries.
- Article 5,6,7,8,9,10 and 11 dealing with the citizen of India
- Article 81 dealing with the delimitations of the constituencies
- Article 100 relating to quorum of the parliament etc.

B. Amendment by 2/3rd majority of the parliament

This category of amendment includes amendments that can be effected by the 2/3rd majority of the parliament. Article 368 of the constitution of India stated that 'An amendment to the constitution of India may be initiated only by the introduction of a bill for the purpose in either house of the parliament or when the bill is passed in each house by a majority of total membership of that house and by a majority of not less than two- third of the members of the house present and voting, it shall be presented before the president who shall give his ascent to the bill and thereupon the constitution shall stand amended in accordance with terms of the bill'.

C. Amendment by 2/3rd majority of the parliament cum ratification by at least half of the state legislatures

In some of the key features of the constitution, a rigid method of amendment has been prescribed. By this amendment there are two steps. Firstly, the passing of the amendment bill by both the house of parliament by a majority of total membership present and voting in each house. Secondly, the amendment bill as passed by the parliament becomes an Act only after it secures ratification at least half of the several states Legislatures and the ascent of the president. The provisions relating to Article 54 and 55, i.e. the election of the president of India; Article-73 i.e. executive power of the union; Article 162 i.e. the provision regarding the high court in Union Territories etc., are coming under this category of Amendment of the constitution of India.

: Important Amendments

The important amendment of the constitution is as follows.

- 24th Amendment Act, 1971- Under this Amendment the Constitution It affirmed the power of the Parliament to amend any part of the Constitution. After this amendment, the President is bound to assent to Constitution Amendment Bill. Education was transferred to the Concurrent List by this amendment.
- 31st Amendment Act, 1973 - This amendment increased the elective strength of the Lok Sabha from 525 to 545. Under the Act, the upper limit of representatives of the States goes up from 500 to 525 and that of the Union Territories decreases from 25 to 20.
- 36th Amendment Act, 1975- This amendment made Sikkim as the 22nd State of the Indian Union.
- 37th Amendment Act, 1975 - This amendment was passed by Parliament on April 26, 1975, to provide for a Legislative Assembly and a Council of Ministers to Arunachal Pradesh, the country's north-easternmost Union Territory.
- 39th Amendment Act, 1975- This amendment was passed by the Lok Sabha on August 7 and received Presidential assent on August 9, 1975. The Act places beyond challenge in courts the election to Parliament of a person holding the office of Prime

Minister or Speaker and the election of President and Vice-President.

- 40th Amendment Act, 1976- This Amendment had a three-fold objective: (1) It places beyond challenge in courts some major Central laws; (2) It gives similar protection to several State enactments, mostly relating to land legislation, by including them in the Ninth Schedule of the Constitution; and (3) It provides that the limits of the territorial waters, the Continental Shelf, the Exclusive Economic Zone and the maritime zones of India shall be specified from time to time by law made by Parliament.
- 42nd Amendment Act, 1976- This Amendment was enacted during the period of internal emergency. It was passed by Parliament on November 11, 1976 and received Presidential assent on December 18, 1976. The Amendment was established beyond doubt the supremacy of Parliament over the other wings of Government; gave the Directive Principles precedence over the Fundamental Rights; enumerated for the first time a set of ten Fundamental Duties. It further imposed limits on the power and jurisdiction of the judiciary; raised the term of the Lok Sabha and the Vidhan Sabha from five to six years; authorized the use of Central armed forces in any State to deal with law and order problems, made the President bound by the advice of the Council of Ministers and envisaged the establishment of administrative tribunals for service matters of Government employees and also other tribunals for economic offences. The Act also clearly laid down that no Constitutional Amendment could be questioned in any court of law.
- 43rd Amendment Act, 1978- This Amendment received the Presidential assent on April 13, 1978. This Act repeals the obnoxious provisions of the Constitution (42nd Amendment) Act passed during the Emergency. It restores civil liberties by deleting Article 31 D which gave powers to Parliament to curtail even legitimate trade union activity under the guise of legislation for the prevention of anti-national activities. The new law, which was ratified by more than half of the States in accordance with the Constitution, also restores legislative powers to the States to make appropriate provision for anti-national activities consistent with the Fundamental Rights. Under the Act, the judiciary has also been restored to its rightful place. The Supreme Court will now have power to invalidate State laws, a power taken away by the 42nd

Amendment Act. The High Courts will also be able to go into the question of constitutional validity of Central laws thereby enabling persons living in distant places to obtain speedy justice without having to come to the Supreme Court.

- 44th Amendment Act, 1978- This Amendment came into force on April 30, 1979, after the President's assent. The Act removes major distortions in the Constitution introduced during the Emergency. The duration of the Lok Sabha and State Legislative Assemblies has been reduced from six to five years—the normal term which was extended during the Emergency under the 42nd Amendment to achieve some political purposes. The Right to Property ceases to be a Fundamental Right and becomes only a legal right according to the Constitution 44th Amendment. The Act also extends, for the first time since independence, constitutional protection for publication of the proceedings of Parliament and State Legislatures, except in cases where it is proved to be “malicious”. Another important feature of the Act is that any proclamation of Emergency need henceforward, be issued by the President only after receiving the advice of the Cabinet as a whole in writing. The President will not be called upon to act on the basis of advice by the Prime Minister on his own without consulting his Cabinet. Other safeguards provide that the proclamation will have to be adopted by a two-thirds majority of the members of both Houses of Parliament within a month. The 44th Amendment provides safeguards against future subversion of the Constitution for establishing an authoritarian regime. It contains provisions which are designed to make it impossible to impose the kind of emergency the country had experienced for 19 months.
- 45th Amendment Act, 1980- This Act extended reservation of seats for the Scheduled Castes and the Scheduled Tribes in Parliament and the State Assemblies and the representation of Anglo-Indians by nomination for a further period of 10 years.
- 46th Amendment Bill, 1982- This Amendment seeks to authorize the government to prepare an authoritative text of the Constitution, in Hindi.
- 52nd Amendment Act, 1985- This Act has made defection to another party, after elections illegal. Any member defecting to another party after elections will be disqualified from being Member of Parliament or State Legislature.

- 53rd Amendment Act, 1986- This Act confers Statehood on Mizoram and ensures against unnecessary interference by the Central Government with the laws relating to spheres of social relationship and community conduct applicable to Mizoram.
- 54th Amendment Act, 1986- This amendment enhances the salaries of Judges of High Courts and Supreme Court of India. The salary of Chief Justice of India will be Rs 10,000; Chief Justice of High Courts Rs 9000; Judges of Supreme Court Rs 9000; and Judges of High Courts Rs 8000.
- 55th Amendment Act, 1987- This amendment grants Statehood to Arunachal Pradesh which consequently became the 24th State of the Indian Union.
- 56th Amendment Act, 1987- This Act confers Statehood on Goa and forms a new Union Territory of Daman and Diu. Goa thus became the 25th State of the Indian Republic.
- 57th Amendment Act, 1987- This Act made a special provision for the setting up of the new State of Goa. Consequently Daman and Diu were separated from the former to form a Union Territory.
- 58th Amendment Act, 1988- This Act provides for special arrangements with regard to reservation of seats for Scheduled Tribes in the States of Arunachal Pradesh, Nagaland, Mizoram and Meghalaya. By amending Article 322 the adjustment of seats has been frozen until 2000 A.D.
- 59th Amendment Act, 1988 - This Act empowered the Central Government to impose Emergency in Punjab when deemed necessary. Under the amendment, President's rule can be extended up to three years. Earlier maximum period was two years.
- 61st Amendment Act, 1989- This Act lowered the voting age from 21 to 18.
- 62nd Amendment Act, 1989- This Act provided for the extension by another 10 years of reservation of seats in the Parliament and State Assemblies for the Scheduled Castes and Tribes and reservation for Anglo Indian community by nomination.
- 63rd Amendment Act, 1989 - This Act repealed Amendment 59 which empowered the government to impose emergency in Punjab.
- 64th Amendment Act, 1990- This Act extended the President's rule in Punjab by six months.
- 66th Amendment Act, 1990- This Act brings land reforms within the purview of 9th

Schedule of the Constitution.

- 69th Amendment Act, 1991- This Act Delhi made National Capital Region. The Act also made provision for Legislative assembly and a council of ministers for Delhi.
- 70th Amendment Act, 1992- This Act made article 54 relating to the election of the President provided for an electoral college consisting only of the elected members of Parliament as well as the legislative assemblies of the States. The amendment provide for inclusion of members of legislature of Pondicherry and Delhi.
- 71st Amendment Act, 1992- This Act amends the 8th Schedule to the Constitution to include Konkani, Manipuri and Nepali Languages in the 8th Schedule of the Constitution.
- 72nd Amendment Act, 1992- This Act made temporary provision for the determination of the number of seats reserved for the Scheduled Tribes in the State assembly of Tripura, until the re-adjustment of seats is made on the basis of the first census after the year 2000 under article 170 of the Constitution.
- 73rd Amendment Act, 1992- This Act ensures direct election to all seats in Panchayats; to reserve seats for SCs and STs in proportion to their population; and for reservation of not less than one third of the seats in Panchayats for women.
- 74th Amendment Act, 1992- This Act was made to ensure direct election to all seats in Nagarpalikas and Municipalities.
- 75th Amendment Act 1994- This Act provided for setting up of State-level Rent Tribunals to exclude the jurisdiction of all courts, except that of the Supreme Court, under Article 136 of the Constitution.
- 76th Amendment Act, 1994- This Act relates to the Reservation of Seats in Educational Institutes and of appointments or posts in the Services under a State, for Backward Classes, Scheduled Castes and Scheduled Tribes. The Supreme Court had ruled on November 16, 1992, that the total reservations under Article 16(4) of the Constitution should not exceed 50 per cent.
- 81st Amendment Act, 2000- This Act provides that the unfilled vacancies of a year reserved for SC/ST kept for being filled up in a year as per Article 16, shall be considered separately for filling vacancies in the succeeding year and the previous list will not be considered for filling the 50% quota of the respective year.

- 82nd Amendment Act, 2000- This Act provides that nothing in the Article 355 shall prevent the State from making any provisions in favour of the members of SC/ST for relaxation in qualifying marks with respect to examination/job/promotion.
- 83rd Amendment Act, 2000- This Act amended Article 243 M to provide that no reservation in Panchayats be made in favour of SC/ST in Arunachal Pradesh where the whole population is tribal.
- 83rd Amendment Act 2002 - This Act extended the usage of 1971 national census population figures for statewide distribution of parliamentary seats
- 92nd Amendment 2004 - This Act Included Bodo, Dogri, Santali and Maithali as official languages in the eight schedule of the constitution
- 99th Amendment 2015- The amendment provided for the formation of a National Judicial Appointments Commission. 16 State assemblies out of 29 States including Goa, Rajasthan, Tripura, Gujarat and Telangana ratified the Central Legislation, enabling the President of India to give assent to the bill. The amendment is in to quash by Supreme Court on 16 October 2015.
- 100th Amendment 2015 – This Act exchanged certain enclave territories with Bangladesh and conferment of citizenship rights to residents of enclave's consequent to signing of Land Boundary Agreement (LBA) Treaty between India and Bangladesh.

10.15: CRITICISMS

The method of the amendment of the constitution of India has been criticized as under

- Undemocratic in its Nature
- Very Rigid and Very Flexible
- Lack of procedure for resolving deadlocks over amendment bill
- Less importance to the states
- No time limit for ratifications by the states
- Consent of the president is an unnecessary process
- The provision of judicial review over amendment

- Too many amendments.

10.16: SUMMARY

Political parties are essential for the representation and for the protection of the masses and are the backbone of the representative democracy. The party system of any country is decided upon by the existing political culture of that country like India. The election commission was established to conduct elections smoothly. It is headed by a chief election commissioner and other commissioners appointed by the president. The term liberty positively means creation of conditions that provides the essential ingredients necessary for the fullest development of the personality of the individual by providing liberty of thought, expression, belief, faith and worship. The term liberty negatively means absence of any arbitrary restraint on the freedom of individual action. Right to Equality refers protection not only against discriminatory laws passed by the legislature but also presents arbitrary discretion of being vested in the executive. An amendment in the India constitution may be initiated by the introduction of a bill for the purpose in either house of parliament.

10.17: KEY TERMS

- **Amendment:** The process by which the Constitution can be altered or amended, allowing for updates to reflect changing social attitudes and values. Notable amendments such as the abolition of slavery (13th Amendment) and granting women the right to vote (19th Amendment) illustrate the Constitution's capacity for social progress.
- **Bill of Rights:** The first ten amendments to the Constitution, which outline fundamental rights and liberties of individuals, including freedom of speech, religion, and assembly. Interpretations and applications of these rights have evolved over time, influencing societal norms and fostering social change.
- **Equal Protection Clause:** Found in the 14th Amendment, this clause mandates that no state shall deny any person within its jurisdiction the equal protection of the laws. It has been invoked in landmark cases addressing racial segregation, gender discrimination, and LGBTQ+ rights, among others, contributing to social equality and justice.
- **Due Process Clause:** Also within the 14th Amendment, this clause ensures that

individuals are afforded fair treatment and procedural safeguards by the government. Its interpretation has expanded to encompass various aspects of civil liberties and human rights, shaping legal precedent and social reform efforts.

- **Judicial Review:** The power of the courts, particularly the Supreme Court, to review the constitutionality of laws and government actions. Landmark cases such as *Brown v. Board of Education* (1954) and *Obergefell v. Hodges* (2015) have utilized judicial review to advance social justice and equality.
- **Federalism:** The division of powers between federal and state governments, providing avenues for experimentation and innovation in policymaking. States often serve as laboratories for social change, enacting progressive legislation that can influence national discourse and policy direction.
- **Civil Rights Movement:** A pivotal period in American history characterized by grassroots activism and legal challenges aimed at dismantling racial segregation and discrimination. Key legislative achievements such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965 reflect the Constitution's role as a catalyst for social transformation.
- **Incorporation Doctrine:** The principle by which certain provisions of the Bill of Rights are applied to the states through the 14th Amendment's due process clause. This doctrine has expanded the protection of individual rights against state infringement, contributing to broader social change and legal precedent.
- **Living Constitution:** The concept that the Constitution is a dynamic document capable of evolving interpretations that reflect contemporary values and societal progress. Through flexible interpretation and adaptation, the Constitution remains relevant in addressing emerging social issues and promoting positive change.

10.18: SELF ASSESSMENT QUESTIONS

- State the relationship between Parliamentary democracy and Representative democracy.
- Discuss the amendamental procedure to the constitution of India.
- What are the functions and responsibilities of the Election Commission of India?

- What do you understand by Equality before law?
- Discuss Directive Principle of State Policy in the constitution of India.
- Write-down the limitations imposed on the amending power of the constitution of India.
- Describe the significance of social justice in India.
- What are the important amendments in the constitution of India?
- What is Decentralization? Discuss its challenges in India.
- Write a note on Popular Sovereignty in India.
- State the Distinctiveness of Indian Secularism.

10.19: REFERENCES

Austin, Granville (1999) Working a Democratic constitution: The Indian Experience, New Delhi, Oxford University Press.

Narayan Jayprakash (1975) Nation Building in India, Varanasi, NavachetanPrakashan

Chandra, B. (2008). Communalism: A primer. New Delhi: National Book Trust.

Das, H. H. (1991). India: Democratic government and politics. Delhi: Himalaya Publishing House.

Gahrana, G. K. (1998). Secularism and the Indian Society. In Pachauri. V. K (Ed). Social

Juergensmeyer, M.(1994). Religious Nationalism: Confronts the Secular State.Delhi: Oxford University Press

Kar, P. K. (1998). Indian Society. New Delhi: Kalyan Publication.

Sharma, R. N. (2000). Textbook of Educational Philosophy. New Delhi: Kanishka Publishers and Distributors.

Talesra, H. (2002). Sociological Foundation of Education. New Delhi: Kenosha Publishers Distributors

Tara, S. (1991). Secular India. New Delhi: Anmol Publication.

UNIT-11: WORKING OF FEDERALISM IN INDIA

Structure

- 11.1 Objectives
- 11.2 Introduction
- 11.3 Federalism in India
- 11.4 Phases of Development
- 11.5 Working of Federalism in India
- 11.6 Features of Indian Federalism
- 11.7 Summary
- 11.8 Key Terms
- 11.9 Self Assessment Questions
- 11.10 References

11.1: OBJECTIVES

After going through this unit, you will be able to know:

- Federalism in India and its development
- Working of Federalism in India
- Recognize the Federal features of Indian Federalism

11.2: INTRODUCTION

Federalism is a form of government in which the sovereign authority of political power is divided between the various units. This form of government is also called a 'federation' or a 'federal state' in the common parlance. These units are Centre, state and Panchayat or the municipalities. The centre also is called union. Framed by the constitution of 1950, Indian federalism serves the second largest population in the world, comprising an unparalleled multiplicity of cultures, religions, languages, and ethnicities. The original federal design of 1950 drew its structure from the British Government of India Act, 1935, and its inspiration from the idea of centralized planned development. Federalism is a basic feature of the Constitution of India in which the Union of India is permanent and indestructible. Both the Centre and the States are co-operating and coordinating institutions having independence and ought to exercise their respective powers with mutual adjustment, respect, understanding and accommodation.

Tension and conflict of the interests of the Centre and the respective units is an integral part of federalism. Prevention as well as amelioration of conflicts is necessary. Thus, the Indian federalism was devised with a strong Centre. Federalism with strong Centre was inevitable as the framers of the Indian Constitution were aware that there were economic disparities as several areas of India were economically as well as industrially far behind in comparison to others. The nation was committed to a socio economic revolution not only to secure the basic needs of the common man and economic unity of the country but also to bring about a fundamental change in the structure of Indian society in accordance with the egalitarian principles. With these considerations in mind the Constitutional makers devised the Indian federation with a strong Union.

Article 1 of the constitution declares that 'India, that is Bharat, shall be a Union of States'. Part XI of the Indian constitution defines the power distribution between the federal governments i.e. the Centre or union and the States in India. This part is divided between legislative, administrative and executive powers. The legislative section is divided into three lists: Union list, States list and Concurrent list. Unlike the federal governments of the United States, Switzerland or Australia, residual powers remain with the Centre, as with the Canadian federal government. Thus, the very first article describes India as a Union of States. It provides for distribution of powers between the Union and the states. It enumerates the powers of the Parliament and state legislatures in different subjects like national defence, foreign policy, and issuance of currency are reserved to the Union list. Public order, local governments, and certain taxes are the examples of subjects of the State list. Education, transportation, criminal law is a few subjects of the Concurrent list, where both the state legislature and the Parliament have powers to enact laws. The residuary powers are vested with the Union. Thus, our Constitution, based on the principle of federalism with a strong and indestructible Union, has a scheme of distribution of legislative, executive and financial powers. A distinguishing aspect of Indian federalism is that unlike many other forms of federalism, it is asymmetric. Article 370 makes special provisions for the state of jammu and Kashmir as per its instrument of accession. Article 371 makes special provisions for the states of Andhra Pradesh, Arunachal Pradesh, Assam, Goa, Mizoram, Manipur, Nagaland and Sikkim as per their accession or state-hood deals. Also one more aspect of India federalism is system of president's rule in which the central government (through its appointed governor) takes control of state's administration for certain months

when no party can form a government in the state or there is violent disturbance in the state.

11.3: FEDERALISM IN INDIA

Federalism in India refers to the constitutional structure and distribution of powers between the central government and the states. India is a federal country with a dual polity, consisting of the central authority at the national level and individual state governments at the regional level. The federal system in India is enshrined in the Constitution, which divides powers and responsibilities between the central government and the states, as well as defines the relationship between them. Despite being a federal system, India also exhibits certain unitary features such as a strong central authority, single citizenship, and the ability of the central government to intervene in the affairs of states under specific circumstances. This balance between federalism and centralism is a unique characteristic of the Indian political system.

The Constitution of India establishes the structure of the Indian government, including the relationship between the federal government and state governments. Part XI of the Indian constitution specifies the distribution of legislative, administrative and executive powers between the union government and the States of India.^[1] The legislative powers are categorised under a Union List, a State List and a Concurrent List, representing, respectively, the powers conferred upon the Union government, those conferred upon the State governments and powers shared among them.

This federalism is symmetrical in that the devolved powers of the constituent units are envisioned to be the same. Historically, the state of Jammu and Kashmir was accorded a status different from other States owing to an explicitly temporary provision of the Indian Constitution namely Article 370 (which was revoked by the Parliament in 2019). Union territories are unitary type, directly governed by the Union government. Article 1 (1) of the constitution stipulates two tier-governance with an additional local elected government. Delhi and Puducherry were accorded legislatures under Article 239AA and 239A, respectively.

11.4: PHASE OF DEVELOPMENT

The framers of the Indian Constitution were keen in federalism as a functional instrument for the creation of an Indian nation and a strong, cohesive state. The leading politicians of the immediate post-Independence state were overwhelmed by threats to India's security both from

outside and inside, and faced the challenge of development through having perceived and chosen centralized economic planning as an optimal method by which to reach that objective. Thus, both for constitutional and political reasons, the institutionalization of a strong federalism in the Indian system appear to have been seriously compromised from the outset. Nonetheless, the political process has been able to adapt to this design and in many, though not all, cases mollify it then necessary to safeguard regional interests.

I. The First phase of federalization - The first phase of federalization of the political process in India extended from the time of Independence to the mid-1960s. At that time Prime Minister Jawaharlal Nehru took democracy seriously enough to face the enormously expanded electorate. In 1951, the first general election held both to the national parliament and the provincial assemblies, providing for full and free participation of all in the election. The Indian National Congress (INC), had already embraced the federal principle back in the 1920s by organizing itself on the basis of Provincial congress committees based on linguistic regions, institutionalized the principle of consultation, accommodation and consensus through a delicate balancing of the factions with the 'Congress System'. It also practiced the cooptation of local and regional leaders in the national power structure, and the system of sending out Congress observers from the Centre to mediate between warring factions in the provinces, thus simultaneously ensuring the legitimacy of the provincial power structure in running its own affairs as well as the role of Central mediation.

II. The Second phase - The second phase of the development of Indian federalism began with the fourth general elections in 1967. This phase drastically reduced the overwhelming strength of the congress party in the national Parliament to a simple majority and saw nearly half the states moving out of Congress control and into the hands of opposition parties or coalition. This had led to a radical change in the nature of centre-state relations in India. No longer could an imperious Congress Prime Minister afford to dictate benevolently to a loyal Congress Chief Minister. However, even as the tone became more contentious, the essential principles of accommodation and consultation held between the crucial 1967-69 periods of transition. The congress dominated Centre began cohabiting with opposition parties at the regional level. The balance was lost once the Congress party split in 1969, and Prime Minister Indira

Gandhi took to the strategy of radical grandiloquence and strong centralized personal leadership. In consequence, the regional accommodation, which had been possible by way of the internal federalization of the Congress Party, was subsequently eroded. However, after the authoritarian interlude of 1975-77, which, in both law and fact, reduced India's federal system to pretty much a unitary state, the system reverted to the earlier stage of tenuous cooperation between the Centre and the state.

III. The Third phase - The third phase in the federalization of India politics began at the end of the 1980s with the prolonged period of coalition governments at the Centre, and Regional parties, such as the Dravida Munnetra Kazhagam (DMK) of Tamil Nadu or the Rashtriya Janata Dal (RJD) of Bihar. These parties have asserted their interests more openly over the past one and a half decades of coalition and minority governments. This increased assertion on the part of regional parties at the Central level had forced even the Hindu nationalist Bharatiya Janata party. This led the ruling coalition in the thirteenth Lok Sabha until 2004. This phase was a symbolic adherence to the norms of centre-state relations established by its predecessors, including such hallowed principles of the Indian Union as the three language formula, in spite of its advocacy of Hindi as India's national language during its long years in the opposition.

11.5: WORKING OF FEDERALISM IN INDIA

The constitution of India has a federal set up. There is a two tier of Government with well assigned powers and functions in India. In India, there is a system the central government and the governments of the units act within a well-defined sphere, co- ordinate and at the same time act independently. The federal polity, in other words, provides a constitutional device for bringing unity in diversity and for the achievement of common national goals. In its federal polity, India has the Union at the centre and the states at the periphery. The Union and the states have powers, as mentioned in the Constitution, which they can exercise in the area assigned to them. The clear cut division of powers between the Union and the states is one of the salient features of our Constitution. The basic principle of the federation is that the legislative executive and financial authority is divided between the Centre and the states not by any law passed by the Centre, but by the Constitution itself. Part XI and part XII of the Constitution (Article 245 to 263) explain the relation between the Union and the states. Part XI discusses the legislative

and administrative relations between the Union and the states, while part XII explains the financial relations between them.

11.6: FEATURES OF INDIAN FEDERALISM

The Constitution of India has adopted federal features. It has not claimed that it establishes a federation. The Federalism in India is dynamic theory of the nation and state building. It is primarily a theory about institutionalized political cooperation and collective co-existence in India. In other words, India has a federalism in a grand design of living together and unity of polity and plurality of society in India. As a theory of nation-building, federalism in India always try to seek the state-society relationships and the autonomy of identity of social groups to flourish in the constitutionally secured and mandated institutional and political space in India. The constitution India recognizes the special cultural rights of the people, especially the minorities. In this sense, it is very close to the theory of multiculturalism. As a state-building theory, federalism in India has the following essential components: (i) formation of states and territorialisation of federal-local administration in such a manner as to promote closer contact between people and government i.e, the creation of the institutions of 'self-rule' in the Country at the macro and macro level (ii) distribution of federal powers on a non-centralized basis i.e, the division of federal powers and functions on a relatively autonomous basis, where each unit has sufficient legislative competence, executive; and (iii) creation of the institutions of shared rule. However, India is a huge country. It is considered as a multi-cultural, multi-regional, and multi-linguistic and ruled from a single centre. From the very beginning, through India was not a federal state, its various regions enjoyed adequate autonomy from central rule. These are the vital factors which our constitutional makers have kept in their mind and chosen for the federal form of government. There are various features of the federation of India. They are given as under:

A. A Written Constitution - India has a written Constitution. It is one of the important features of Indian federation. It is a written document and is the most elaborate Constitution of the world. It establishes supremacy of the Constitution because both the union and the states are given powers by the Constitution as to be independent in their spheres of governance.

B. A Rigid Constitution

Rigidity and flexibility of a constitution depends on the amendment procedure of the

constitution. In India it is having a rigid amendment procedure. Indian Constitution provides that some amendments require a special majority. Such an amendment has to be passed by majority of total members of each house of the Parliament as well as by two-thirds majority of the members present and voting there in. However, in addition to this process, some amendments must be approved by at least 50% of the states. After this procedure the amendment is signed by the head of the state i.e.; the President. Since then in India important amendments can be amended through this procedure. Therefore, Indian Constitution is a rigid one.

C. Division of Powers

In the Constitution of India, there is a clear division of powers, so that the States and the Centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of the other. For this, the constitution of India enumerates three lists, viz. the Union, the State and the Concurrent List. The Union List consists of 97 subjects of national importance such as Defence, Railways, Post and Telegraph, etc., the State List consists of 66 subjects of local interest such as Public Health, Police etc., the Concurrent List has 47 subjects important to both the Union and the State. Such as Electricity, Trade Union, Economic and Social Planning, etc.

D. Supremacy of the Judiciary

The constitution of India enumerates an integrated and independent Judiciary. The judiciary is there to interpret the Constitution and to maintain its sanctity. The Supreme Court of India is the highest court of justice. It has the original jurisdiction to settle disputes between the Union and the States. It can declare a law as null or void or unconstitutional, if it violates any provision of the Constitution of India.

: Centre- States Relations in India

The Constitution of India provides for a federal system, both the Union and the State, are created by the Constitution and derive their respective authority from it. Yet there is a criticism that India is a federal State but with unitary features. In order to understand this, it is desirable to study the relationship between the Union and the States. The relations between the Centre and the states which constitute the core of

federalism have been enumerated in Parts XI and XII of the Constitution of India. These are headed under the three points, Such as legislative, administrative and financial relations.

A. Legislative Relations

Following the Canadian model of Federation, the legislative relations in the constitution of India enumerates threefold division of powers in the chapter I of part XI of it. This deals with legislative relations I.e. distribution of legislative powers between the Union and the states. There are two lists of legislative powers, one for the Centre and the other for the State, known as the Union List and the State List, respectively. The third list is called the Concurrent List. The Union List which consists of 97 subjects of national interest. It is the largest of the three lists. Defence, Railways, Post and Telegraph, Income Tax, Custom Duties, etc. are some of the important subjects included in this list. Under this list the Parliament has the exclusive power to enact laws on the subjects included in the Union List for the whole country. The State List consists of 66 items of local interest. Trade and Commerce within the State, Police, Fisheries, Forests, Industries, etc., are some of the important subjects Included in this List. The State Legislatures have been empowered to make laws on the subjects included in the State List. The Concurrent List consists of 47 subjects of common interest to both the Union and the States. Stamp Duties, Drugs and Poison, Electricity, Newspapers etc., are some of the subjects included in this list. Under this list, both the Parliament and the State Legislatures can make laws on the subjects. Subsequently, in case of a conflict between the Union and the State law relating to the same subject, the Union law prevails over the State law. However, the parliament of India has the power to legislate on all subjects which are not included in any of the three lists. Under certain circumstances, the Parliament can legislate on the subjects mentioned in the State List.

Further, the constitution of India also vests the residuary powers with the Centre. The residuary power is mentioned in Article 248 of the Constitution, which is given to the Union

Legislature. The Parliament has the power to make laws with respect to matters which are enumerated in the Concurrent List or the State List. The Constitution seems to favour the Union in many ways. It is evident from some provisions, such as:

- The Union List consists of subjects which are of national and paramount importance.
- The Union Laws have primacy over the State Laws with respect to the concurrent subjects.
- The residuary powers are with the Union Parliament.
- In certain circumstances, the Union Parliament has the rights to make laws related to the subjects which are given in the State List list:
- Superior status is given to the Union Laws in case of conflict between the Union Law and the State Law.
- The Parliament has the power to establish or abolish the State Legislative Councils.
- The Parliament has the power to determine or change the boundaries of the state.
- The Parliament has the power to legislate for the Union Territories.

B. Executive or Administrative Relations

The Constitution of India in Chapter II of part XI from article 256 to 263 deals with the administrative relations between the Union and the states. In the sphere of administrative relations as well, the Constitution shows a distinct leaning in favour of the Union. The framers of the Indian Constitution never intended to create administrative co-operation and co-ordination between the centre and states. The executive power of the State is to be exercised in such a way as to ensure compliance with the laws made by the Parliament. Further, the Union Executive is empowered to give directions to a State, if necessary, for the requisite purpose. The Union Government can issue directions to the States to ensure compliance with the laws of the Parliament for construction and maintenance of means of communications, declared to be of national and military importance, and also on the

measures for the protection of Railways. In addition to all this, the Parliament can alone adjudicate on inter-state river disputes. Also, a provision has been made for constituting an Inter- State Council to advise the president on inter-state disputes. Even the State governments may delegate some of its administrative functions relating to the State subjects, to Union Government for a specified period. The Constitution of India has certain special provisions to ensure uniformity of the administrative system. These include the creation of All India Services such as IAS and IPS and placing members of these services in key administrative positions in the states. The presence of All India Service Officers further paves way for the Central Government to exercise its authority and control over the states. The members of these services are recruited by the Centre but are appointed in the States. No disciplinary action can be taken against them by the State Governments without the permission of the Centre. The Constitution also makes provision for the creation of new All India Service by the Parliament on the recommendation of the Rajya Sabha. The President also puts the entire control of the state administrative machinery under the control of the Union which you will study in details while going through the lesson on emergency provisions.

Moreover, the Indian Constitution is based on the principle that the executive power is co-extensive with legislative power, which means that the Union executive/the state executive can deal with all matters on which Parliament or state legislature can legislate. The executive power over subjects in the Concurrent list is also exercised by the states unless the Union government decides to do so. The Centre can issue directives to the state to ensure compliance with the laws made by Parliament for construction and maintenance of the means of communications declared to be of national or military importance, on the measures to be adopted for protection of the railways, for the welfare of the scheduled tribes and for providing facilities for instruction in mother tongue at primary stage to linguistic minorities. The Centre acquires control over states through All India Services, grants- in- aid and the fact that the Parliament can alone adjudicate in inter- state river disputes. During a proclamation of national emergency as well as emergency due to the failure of constitutional machinery in a state the Union government assumes all the executive powers of the state. Thus the principal features of administrative relations between the Center and the states in India are as under:

- Distribution of Executive Powers
- Obligation of the states and the centre
- Mutual Delegation in functions in regards to centers direction to the states
- Cooperation between the centre and the states
- Article 256 of the Constitution states that the executive powers of the state should be exercised in such a manner that it does not impede the executive power of the Union.
- If the state does not comply with the directives of the Centre, the latter may, under Article 356, take over the administration of the state I.e. President Rule.
- Under Article 258(2), the Parliament is given the power to use the state machinery to enforce the Union laws.
- The centre can deploy military and paramilitary forces in a state even against the wishes of the government of that state.

C. Financial Relations

The Constitution of India in its part XII, Chapter I, from article 268 to 293, explains the financial relations between the Union and the states. The constitution India provides the taxing power between the centre and the state. The Parliament can levy taxes on the subjects included in the Union List. The States can levy taxes on the subjects in the State List. The state legislatures have exclusive powers to levy taxes on subjects enumerated in the state list. Both the parliament and the state legislature can levy taxes on subjects enumerated in the concurrent list. The residuary powers of taxation are vested in the parliament. In India, the distribution of financial resources is especially critical in determining the nature of the State's relationship with the Centre. Both the Union and the State have been provided with independent sources of revenue by the Constitution.

The Union List consists of items of taxation which are (i) Taxes levied by the Union but collected and appropriated by the State such as stamp duties and duties of excise on medicinal and toilet preparations etc.; (ii) Taxes levied and collected by the Union but assigned to the States viz. railways, sea or air etc.; (iii) Taxes levied and collected by the Central and may be distributed between the Central and the states if the Parliament by law so

provides, such as union excise duties, excise on toilet preparations etc., (iv) Taxes levied and collected and retained by the Centre such as customs, surcharge on income tax etc., (v) Taxes levied and collected by the Centre and distributed between the union and the states such as taxes other than agriculture etc.

In the financial sphere, the Centre is better furnished in India. The Centre exercises control over the state finances and grants-in-aid both general and special to meet the expenditure on developmental schemes. During financial emergency, the President has the power to suspend the provisions regarding division of taxes between the Centre and the State. He can also impose other restrictions on the expenses of the State. State plans are framed within the priorities of the central plan and they are executed with the approval of the Planning Commission. Further, the States have to carry out the centre subsidized schemes for which the Centre gives grants and the conditions under which these are to be made. The Planning Commission has created an over consolidated planning system. No initiative is left to the states and the centrally formulated schemes have been inappropriately and unimaginatively imposed upon them. However, some of financial relations are as given under:

- Article 268 of the constitution of India states that the taxes levied by the centre but collected and appropriated by the states
- Article 268 A of the constitution of India states that service tax levied by the centre but collected and appropriated by the centre and the states
- Article 269 of the constitution of India states taxes levied and collected by the centre but assigned to the states
- Article 270 of the constitution of India states that taxes levied and collected by the centre but distribution between the centre and the states
- Article 271 of the constitution of India states that surcharge on certain taxes and duties for the purpose of the centre
- The Constitution of India exclusively assigns certain items of revenues to the Union. Taxes on any item covered in the Union List such as customs and export duties, income tax, excise duties on tobacco and jute are assigned to the Union.
- There are certain items of revenue which fall under the exclusive jurisdiction of the state. These are land revenue, stamp duty except on documents included in the Union

List, succession duty, and estate duty in respect of agricultural land and others.

- Taxes on railway freights and fares, terminal taxes, and estate duty in respect of property other than agricultural land are collected by the Union but are given to the states.
- Under Article 275, the Centre needs to provide grants-in-aid to the states.
- The states of the Union cannot raise foreign loan without the consent of the Union
- Under Article 370, the Centre can declare financial emergency. After this, the President can suspend the provisions which are related to the division of revenue between the Union and the states. He/ She can also suspend grant-in-aid to the states.
- Under Article 280, the President can appoint a Finance Commission which makes recommendations for the distribution of income (from taxes) between the Union and the states. The finance commission is a quasi-judicial body. It is constituted by the president every five year or even earlier.
- The Centre has control over the states due to the system of centralized planning mentioned in the Constitution.

D. Political Relations

Political Relation deals with the balance of power between the centre and the states. Notwithstanding with the division of powers between the Centre and the states, the states are dissatisfied because they feel that the balance of powers is heavily in favour of the Centre. They also feel that Centre uses its powers in such a way that there is no autonomy left to them even in matters mentioned in the State List. There is a tendency in our country to view political thought the legal mechanism of the constitution. Thus, political parties are to suggested amendments to resolve political problems. The constitutional framework is stable while the political contest keeps changing. The four aspects of political dimensions of the Centre-State relations are follows:

1- **Dynamics of political parties:** As long as the same political party was ruling over the centre and the states, only intra party factors were important, in determining the centre-state relations. However, in a emerging malty party system at least a few of the state government are under parties which are different from the party ruling at the catered. Thus, inter party factors determine the centre state relation. In such a case the state governments can be

diverted into 3 types, from the view point of the central government:

- Identical i.e. of the same party
- Congenial i.e. Where ideological and interest gap is low.
- Hostile i.e. for the party in power at the state level is radically different in its ideological orientation, e.g. Congress and BJP in case when the state government is identical or congenial, the conflicts can be resolved with the help of some discussion.

2- Politics of coalition: The India part system has had a considerable experience of the coalition government. If the ruling party of the state level and central level is same, the relation between state and central governments are friendly. The central government may even tolerate the decision taken by the state government. For instant, the NDA (National Democratic Alliance) government did not make any move to impose president's rule in Gujarat. at the time of Godhar (Gujarat) riots, when the Modi government showed toll tax of interest in curbing the riots. On the other hand, if the ruling party at the state is different from the party ruling at the cenere the state government may be consider hostile. In this situation, the ceneral government would like to use its power to undermine the state government. For finance, the BJP led coalition NDA government dismisses Rashtriya Janata Dal (RJD). Government in Bihar led by Rabridevi in 1999 in the wake of the caste class violence but did not take any strong action during the Godhra riots etc.

3. President's rule article-356: one of the widely used instruments used by the centre over the state is the provision for President's rule article-356. This was meant as a 'Safety valve' in the [political system to prevent and authority vacuum in case of breakdown of the constitutional machinery in a particular state. However, in practice, this article has been use so frequently that it has become a poison for our political system. President's rule can be imposed either on the recommendation of the Governor or if the President deems it necessary. From 1952 to 1989, there were 79 presidential central interventions in the state. Most of these emergencies were declared during the Congress rules under Indira Gandhi and during the reign of the Janata party. The dissolution of nine state assemblies and proclamation of President's rule in 1977 and 1980 was a blow to the federal democratic structure of the country.

The use of the Article 356 declined in the 1990s. It was in 1997 that for the first time, the president openly asked the Prime Minister and Cabinet to reconsider the proposal for the dismissal of U.P. state government before signing the proclamation.

4. **Integrity of the States** - one of the states of a federal system is that the federating units have distinct territorial identity and their integrity is maintained. In this respect, the states in the Indian political system are severely handicapped.

11.7: SUMMARY

In conclusion, federalism in India has been a cornerstone of its democratic governance, fostering unity amidst diversity and facilitating development across regions. While it has shown remarkable resilience and adaptability, there is always room for improvement to ensure a more effective and equitable distribution of power and resources among the center and states. India is a federal state. As a federation it has distribution of powers, written constitution, independent and integrated judiciary, etc. The Constitution of India has divided the legislative, administrative, political and financial powers between the centre and the states. The Constitution of India has consisted three lists. They are the Union list (100 items), State list (66 items) and Concurrent list (47 items). There is strong centre in India. In case of any conflict between the centre and state, the central laws remain final. The centre also declares president's rule in case of any constitutional breakdown in the states. The working of the Indian Federation shows that the central government has at times, misused its strong position for bringing some states under its influence. India has had coalition governments in the past and is expected to have such government even in the future, therefore it is in the best interest for all the parties to develop a sense of understanding and not play power games. Existence of 'Plural' society and diversity of India are the factors that have the task of national integration. Communalism, Regionalism, and Linguism are the hindrances in the way of national integration of the country.

11.8: KEY TERMS

- **Union List:** This is a list of subjects under the Seventh Schedule of the Indian Constitution that exclusively fall under the jurisdiction of the central government.
- **State List:** Another list under the Seventh Schedule, comprising subjects that are the exclusive domain of the state governments.

- **Concurrent List:** This list contains subjects on which both the central and state governments can legislate. In case of a conflict, the central law prevails.
- **Residuary Powers:** Matters not explicitly mentioned in any of the lists are within the jurisdiction of the central government, giving it residual powers.
- **Federal Structure:** The overarching framework of governance in India, characterized by the distribution of powers and responsibilities between the central and state governments.
- **President's Rule:** Provision under Article 356 of the Constitution, allowing the central government to assume direct control over a state's administration in case of breakdown of constitutional machinery.
- **Sarkaria Commission:** A commission formed to examine the relationship between the central and state governments and provide recommendations for improving federal relations.

11.9: SELF ASSESSMENT QUESTIONS

- What do you mean by federalism? Discuss its features.
- Discuss various phases of development of Indian federalism.
- Discuss basic features of Indian federalism.
- Discuss centre-state relations in India.

11.10: REFERENCES

Austin, Granville. (1999). 'Working a Democratic Constitution: The Indian Experience', New Delhi: Oxford university Press.

Chandra, B. (2008). 'Communalism: A primer', New Delhi: National Book Trust.

.Das, H. H. (1991). 'India: Democratic government and politics', Delhi: Himalaya Publishing House

Fadia, Babulal (1984). State politics in India Volume I. Radiant publishers, New Delhi. pp. 92–122.

Robert L. Hardgrave and Stanley A. Koachanek (2008). India: Government and politics in a developing nation (Seventh ed.). Thomson Wadsworth. p. 146. ISBN 978-0-495-00749-4.

UNIT-12: MAJOR TENSIONS AREAS OF CENTRE-STATE RELATIONS IN INDIA

Structure

- 12.1 Objectives
- 12.2 Introduction
- 12.3 Major Tension Areas of Centre-State Relations in India
- 12.4 Recommendations of the ARC
 - 12.4.1 Rajmannar Committee
 - 12.4.2 Sarkaria Commission
 - 12.4.3 Punchi Commission
- 12.5 Separatist Movement in India
 - 12.5.1 Assam
 - 12.5.2 Nagaland
 - 12.5.3 Tripura
 - 12.5.4 Manipur
 - 12.5.5 Mizoram
 - 12.5.6 Tamil Nadu
 - 12.5.7 Jammu and Kashmir
- 12.6 Summary
- 12.7 Key Terms
- 12.8 Self Assessment Questions
- 12.9 References

12.1: OBJECTIVES

After going through this unit, you will be able to know:

- Various major tension areas of Centre state relations in India
- Recommendations of the Administrative Reforms Committee
- Various commissions to study Centre State relations in India
- Separatist Movement in India

12.2: INTRODUCTION

The tension areas of center-state relations refer to the various points of friction or conflict that arise between the central government and the state governments in a federal system. In countries like

India, the United States, Australia, and others with a federal structure, the division of powers between the central government and the state governments can lead to disagreements and disputes. These tensions often arise due to differing interests, priorities, and interpretations of constitutional powers. One of the fundamental sources of tension is the distribution of legislative, executive, and financial powers between the center and the states. The Constitution delineates these powers, but there can be disputes over interpretation or encroachment on each other's jurisdictions. Fiscal matters often become contentious between the center and the states. Disagreements may arise over tax-sharing arrangements, grants-in-aid, borrowing limits, and fiscal autonomy. States may feel that the center is unfairly withholding funds or imposing conditions on financial assistance. Issues related to administrative control, including the appointment of governors, the deployment of central forces in states, and the control over civil services, can lead to conflicts. States often seek more autonomy in administrative matters, while the center may assert its authority to maintain unity and integrity. Water is a critical resource, and disputes over river water sharing among states can escalate into major conflicts. The center often plays a role in mediating these disputes, but disagreements can arise over the implementation of agreements and the allocation of water resources. During emergencies such as national security threats or natural disasters, the center may invoke emergency provisions, potentially infringing upon the powers of the states. States may perceive such actions as centralization of power and encroachment on their autonomy. Differences in political ideologies and priorities between the central government and state governments can lead to tensions in policy formulation and implementation. States may resist centrally-imposed policies that they perceive as against their interests or those of their constituents. States often accuse the central government of interfering in their affairs, particularly in matters related to law and order, education, health, and cultural policies. States assert their right to make decisions independently within their domains. Proposals for constitutional amendments can lead to disagreements between the center and the states, especially if they alter the federal structure or the distribution of powers in a way perceived unfavorable by states. These tension areas underscore the complex dynamics inherent in federal systems, where the balance of power between the central government and the states is continually negotiated and contested. Effective management of these tensions is crucial for maintaining the stability and functioning of the federal system.

12.3: MAJOR TENSION AREAS OF CENTRE- STATES RELATIONS IN INDIA

The major areas of tension of Centre- State relation in India are as follows:

- **Demand for state autonomy-** The states demand more autonomy. Some of the regional political parties like Siromani Akali Dal in Punjab, DMK (Dravuida Munidra Kazhagam), in Tamil Nadu, National Conference in Jammu and Kashmir (J and K), Assam Gana Parishad (AGP), in Assam and the Left parties have gone to the extent of demanding the limiting of the powers of the union to four key subjects including defence, foreign affairs, currency and coinage. They want that all the powers should be transfer to the state. In July 2000, J& K Assembly passed the autonomy resolution. Some other states demanded additional financial resources and powers for formulating and implementing developmental plans. The need to have strong states as part of the Indian Union is advocated as the necessary vision of the contemporary times. In 1947, the partition of the country compelled the adoption of strong centre in a Federal structure. Now, when the time has changed, there is a need to revise the model. The Rajamannar Report 1972; the Annand Saheeb Resolution of the Akali dal; the West Bengal Government Memoranda of 1980;, 1981,1983 1nd 1988; and the leaders of regional political parties and several state chief ministers have advocated a case for more autonomy to the states. The Sarkaria Commission favours the strong centre, which also demanded the State autonomy.
- Land Revenue resources of the state and financial relation between the Union and the states in India.
- Mode of appointment and dismissal of Governor in different states of India.
- Discriminatory and partisan role of Governors.
- Imposition of President's rule for partisan interests under Art-356 of the constitution of India.
- Concentration of amending powers in the hands of the Union.
- Disposition of central forces in the states in order to sustain law and order situation in the areas.

- Reservation of state bills for the approval of the President.
- Operation of Union laws by the states.
- Discrimination against the states.
- Issue related to mass-media.
- Role of planning Commission in approving state projects.
- Matters related to All India Services.
- Dissolution of state assemblies.

However, the above issues have been continuing since the 1960s. As a Federal state, India tries to maintain cooperative relationship in the country through various developmental Committees and Commissions. Some of them are discussed below.

12.4: THE RECOMMENDATION OF ADMINISTRATIVE REFORM COMMISSION

A six member committee was appointed by the Central Government in 1966 under the Chairmanship of Morarji Desai to review the Centre state relationship in India. Morarji Desai was followed by K. Hanumanthayya. This committee was popularly known as Administrative Reform Commission (ARC). The ARC constituted a study team under M.C. Setalvad. The Commission submitted its reports in 20 parts containing 537 major recommendations. The 13th report of the Commission covered the issues of Centre-State relations. With regard to Inter-State Council the Commission made the following recommendations. The important recommendations are

- Establishment of an Inter-State Council under Article 263 (b) and (c) of the Constitution which would discuss all issues of national importance in which the States are interested.
- Saddling the Council with functions under article 263 (a) to inquire into and advise upon disputes between the States would prevent it from giving full attention to the various problems of national concern which it ought to consider.

- This committee should replace the National Development Council (NDC), the Chief Minister's Conference, the Finance Minister's Conference, the Food Minister's Conference and the National Integration Council (INC).
- The Council will be wide-embracing and will provide standing machinery for effecting consultations between the centre and the states. Only issues of real and national importance need be taken up there. Others should be settled by conferences convened by the ministries concerned, at a lower, preferably official level.
- The Council should have an appropriate secretariat. The Secretary of the Council should be an officer having the knowledge, experience and status that will enable him to work effectively.

Mandate of ARC

The ARC was instructed to give consideration to the need for ensuring the highest standards of efficiency and integrity in the public services, and for making public administration a fit instrument for carrying out the social and economic policies of the Government and achieving social and economic goals of development, as also one which is responsive to the people. Predominantly, the Commission is to consider the following.

- The machinery of the Government of India and its procedures of work
- The machinery for planning at all levels
- Center-State relationships
- Financial administration
- Personnel administration
- Economic administration
- Administration at the State level
- District administration
- Agricultural administration
- Problems of redress of citizens grievances

12.4.1: Rajmannar Committee- The Government of Tamil Nadu on 2 September, 1969 under the Chairmanship of Dr. P.V. Rajamanar set up an Inquiry Committee on the centre- state relations in India. The other two members of the Committee were Dr. A. Lakshmanaswami Mudaliar and Mr. P. Chandra Reddy. The Committee submitted its report in 1971 and made the following recommendations:

- a) The Inter-State Council should be constituted immediately. The proposed Council may consist of the Chief Ministers or their nominees, all the States having equal representation, with the Prime Minister as the Chairman. No other Minister of the Union Cabinet should be a member of the Council.
- b) Every Bill of national importance or which is likely to affect the interests of one or more States should, before its introduction in Parliament, be referred to the Inter-State Council and its views thereon should be submitted to Parliament at the time of introduction of the Bill.
- c) No decision of national importance or which may affect one or more States should be taken by the Union Government except after consultation with the Inter-State Council. Exception may be made to subjects like defence and foreign relations. But even on such matters the decision of the Central Government should be placed before the Inter-State Council subsequently without any avoidable delay.
- d) If the Inter-State Council is to be really effective, its recommendations should be made ordinarily binding on both the Centre and the States. If for any reason, any recommendation of the Inter-State Council is rejected by the Central Government; such recommendation together with reasons for its rejection should be laid before Parliament and State Legislature

12.4.2: Sarkaria Commission- Sarkaria Commission was set up in June 1983 by the central government of India. The Commission's charter was to examine the relationship and balance of power between state and central governments in the country and suggest changes within the framework of Constitution of India. The Commission was so named as it was headed by Justice Ranjit Singh Sarkaria, a retired judge of the Supreme Court of India. The other two members of the committee were Shri B. Sivaraman and Dr S.R. Sen. The commission made 247 recommendations, in the year 1988, to improve centre-state relations in India. The recommendations of the committee are given as under Under article 263 a permanent Inter-State Council known as Inter Governmental Council was established.

- Article 356 i.e. the president's rule should be used when there is the failure of all the measures.
- The institution of All India Services should be further strengthened and some more such services should be created.
- The residuary powers of taxation should be kept under the parliament of India. other powers shall be vested in the concurrent list
- If the president withholds the bill then the message should be reported to the states with the reasons.
- The National Development Council (NDC) should be renamed reconstituted as the national Economic and development Council (NEDC).
- The Zonal Council should be constituted anew and reenergized to endorse the spirit of Federalism.
- The centre should have powers to deploy its armed forces, even without the consent of the states.
- The centre should consult the states before making a law on the subject of the concurrent list.
- The procedure of consulting the chief minister in the appointment of the state governor should be prescribed in the constitution itself.
- The net proceeds of the corporation tax may be made permissibly by sharable with the states.
- The governor cannot dismiss the council of ministers so long as it commands a majority in the assembly.
- The Governors term of five years in a state should not be disturbed except person extremely compelling reasons.
- No commission of enquiry should be set up against the state minister unless a demand is made by the parliament.
- The surcharge on income tax should not be levied by the Centre except for a specific purpose and for a strictly limited period.
- The present division of function between the finance commission and the planning commission.
- Each reasonable and should continue.

- Steps would be taken to unfirmly implement the three language formula in its true spirit.
- No autonomy for radio and television but decentralization in their operation.
- No change in the role of Rajya Sabha and centre power to recognize the states.
- The commissioner for linguistic minority should be activated.

12.4.3: Punchhi Commission- Government of India set up the second commission on centre-state relations in India, under the chairmanship of Justice Madan Mohan Punchhi, former Chief Justice of India, on 27th April 2007. The committee looked into the new issues of Centre-State relations keeping in view the changes that have been taken place in the polity and economy of India since the time of Sarkaria Commission. The commission submitted its report to the government of India in April 2010 finalizing the 1456 page report. In this report over 310 recommendations are covering several important areas of the centre state relations in India. Some of them are given as under

- On Appointment and Removal of Governors the committee recommended the guidelines of the Sarkaria Commission. They are (1) He should be eminent in some walk of life (2) He should be a person from outside the State (3) He should be a detached figure and not too intimately connected with the local politics of the States and (4) He should be a person who has not taken too great a part in politics generally and particularly in the recent past.
- Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area; his choice of action should not be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.
- In respect of Bills passed by the Legislative Assembly of a State, the Governor is expected to declare that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President.
- On the question of Governor's role in appointment of Chief Minister in the case of a hung assembly there have been judicial opinions and recommendations of expert commissions in the past. Having examined those materials and having taken

cognizance of the changing political scenario in the country, the Commission is of the view that it is necessary to lay down certain clear guidelines to be followed as Constitutional conventions in this regard. These guidelines may be as follows: (I) the party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government. (II) If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government. (III) In case no party or pre-poll coalition has a clear majority, the Governor should select the Chief Minister in the order of preference indicated below: (a) the group of parties which had pre-poll alliance commanding the largest number.

(b) The largest single party staking a claim to form the government with the support of others. (c) A post-electoral coalition with all partners joining the government (d) A post-electoral alliance with some parties joining the government and the remaining including independents supporting the government from outside.

- On the question of dismissal of a Chief Minister, the Governor should invariably insist on the Chief Minister proving his majority on the floor of the House for which he should prescribe a time limit.
- On the question of granting sanction for prosecution of a State Minister in situations where the Council of Ministers advised to the contrary, the Commission would endorse the interpretation given by the Supreme Court to the effect that "if the Cabinet decision appears to the Governor to be motivated by bias in the face of overwhelming material, the Governor would be within his rights to disregard the advice and grant sanction for prosecution". The Commission recommends that Section 197 Criminal Procedure Code may be suitably amended to reflect the position of law in this regard.
- Given the strict parameters now set for invoking the emergency provisions under Articles 352 and 356 to be used only as a measure of "last resort", and the duty of the Union to protect States under Article 355, it is necessary to provide a Constitutional or legal framework to deal with situations which require Central intervention but do not warrant invoking the extreme steps under Articles 352 and 356. Providing the framework for "localized emergency" would ensure that the State Government can continue to function and the Assembly would not have to be dissolved while

providing a mechanism to let the Central Government respond to the issue specifically and locally. The imposition of local emergency, it is submitted, is fully justified under the mandate of Article 355 read with Entry 2A of List I and Entry 1 of List II of the Seventh Schedule.

- Under the States Re-organization Act, 1956 five Zonal Councils were created ostensibly for curbing the rising regional and sectarian feelings and to promote co-operation in resolving regional disputes. Later the North Eastern Council was created under the North Eastern Council Act, 1971. In each of these Zonal Councils, Union Home Minister is the Chairman and the Chief Ministers of the States in the Zones concerned are members. The Commission is of the view that the Zonal Councils should meet at least twice a year with an agenda proposed by States concerned to maximize coordination and promote harmonization of policies and action having inter-state ramification. The Secretariat of a strengthened Inter-State Council can function as the Secretariat of the Zonal Councils as well.
- The Constitution of All India Services is a unique feature of the Indian Constitution. The broad objectives in setting up All India Services relate to facilitating liaison between the Union and States, promote uniform standards of administration, enabling the administrative officers of the Union to be in touch with field realities, helping the State administrative machinery to obtain the best available talent with wider outlook and broader perspectives and reduce political influence in recruitment, discipline and control in administration. Considering the importance of these objectives, the Commission strongly recommends the constitution of few other All India Services in sectors like Health, Education, Engineering and Judiciary. They existed prior to Independence which contributed significantly to the quality of administration.
- The Commission is of the view that the scope of devolution of powers to local bodies to act as institutions of self-government should be constitutionally defined through appropriate amendments, lest decentralized governance should elude realization indefinitely. The approach should be on the principle of "subsidiarity" which is implicit in the scheme of Constitutional Amendment and letting the State Government confine itself only to matters of policy that cut across the entire domain of local governments. Articles 246(3) and 162 have to be read down in the light of the Amendment giving meaning and content to the expression "as may be necessary to

enable them (Panchayats and Municipalities) to function as institutions of self-government.

12.5: SEPARATIST MOVEMENT IN INDIA

Separation movement in India characteristically refers to the separation of states in India. Literally it refers to the secession or withdrawal of one or more states from the undivided Union of India. Some of the states claimed for their secession as a natural right of revolution. Some state movements seek secession from India itself and the establishment of a new nation from one or more states. Their fundamental sources are consistently found in political, social, economic, religious spheres and their nature, environment and opportunity depending upon the nature of the grievances, motivations and demands of the people in general.

However, since 1947, an estimated 30 armed rebellion are all-encompassing across India. These rebellions reflect an acute sense of unfriendliness on the part of the people involved in India. These can be divided as:

- Movements for political rights which includes Assam, Kashmir and Khalistan.
- Movements for social and economic justice which includes Maoist, Naxalite and north-eastern states
- Movements on Religious grounds which includes Laddakh.

Firstly, The Khalistan movement in Punjab was active in the 1980s and the 1990s is now considered dead within India. Smaller-scale insurgency has occurred in North- East India, in the states of Tripura, Meghalaya, Mizoram, Manipur, Assam and Nagaland. This movement aimed to create a separate Sikh country. The territorial definition of the proposed country ranges from the Punjab state of India to the greater Punjab region, including the Indian Punjab, Haryana, Himachal Pradesh and Northern Districts of Rajasthan such as Sri Ganganagar and Hanumangarh. After the partition of India, the majority of the Sikhs migrated from the Pakistani part to the Indian province of Punjab, which then included the parts of the present-day Haryana and Himachal Pradesh. Following India's independence in 1947, The Punjabi Suba Movement led by the Sikh political party Akali Dal led to the trifurcation of the Punjab state. The remnant Punjab state became Sikh-majority and Punjabi-majority. Subsequently, a section of the Sikh

leaders started demanding more autonomy for the states, alleging that the Central government was discriminating against Punjab. The Akali Dal explicitly opposed the demand for an independent Sikh country. The issues raised by it were used as a premise for the creation of a separate country by the proponents of Khalistan. The Indian government of Indira Gandhi was instructed by the Soviets to attack the Golden Temple as the communists thought they could get a stranglehold on India. The Soviets were in Afghanistan and thought to win over India, Bengal and Punjab needed to be targeted.

North East Regions of India (Secondly)

12.5.1: Assam

The militant organization i.e. United Liberation Front of Asom (ULFA) demands a separate country for the people of Assam. The Government of India had banned the ULFA in 1990 and has officially labelled it as a terrorist group, whereas the US State Department lists it under "Other groups of concern". Military operations against it by the Indian Army that began in 1990 continue until present. In the past two decades some 10,000 people have died in the clash between the rebels and the government of Assam. The Assamese secessionists have protested against the illegal migration from the neighboring regions. Since the mid-20th century, people from present-day Bangladesh previously known as East Pakistan have been migrating to Assam. In 1996, the Muslim United Liberation Tigers of Assam (MULTA) was established. The MULTA encouraged a separate country for the Muslims of the region. The United People's Democratic Solidarity (UPDS) demands a sovereign nation for the Karbi people. It was formed in March 1999 with the merger of two militant outfits in Assam's Karbi Anglong district, the Karbi National Volunteers (KNV) and Karbi People's Front (KPF). The United People's Democratic Solidarity signed a cease-fire agreement for one year with the Union Government on 23 May 2002. However, this led to a split in the UPDS with one faction deciding to continue with its subversive activities while the other commenced negotiations with the Government.

12.5.2: Nagaland

The Nagalim is a proposed independent country for the Naga people. In the 1950s, the Naga National Council led a violent unsuccessful insurgency against the Government of India. They demanded a separate country for the Nagas. The secessionist violence decreased considerably after the formation of the Naga-majority, Nagaland state, and more militants surrendered after

the Shillong Accord of 1975. However, the majority of Nagas, operating under the various factions of National Socialist Council of Nagaland, continue to demand a separate country.

12.5.3: Tripura

The National Liberation Front of Tripura (NLFT) is a Tripuri nationalist organization. It seeks for Tripura to separate from India and establish an independent Tripuri state. It has actively participated in the Tripura Rebellion (TR). The NLFT manifesto says that they want to expand what they describe as the Kingdom of God and Christ in Tripura. The Tripura National Volunteers was founded in 1978 with assistance from the Mizo National Front. However, it is perceived by Indian Government that separatist movement lacked people's support as 2014 General elections in India recorded more than 84% voters turnout in Tripura which was one of highest in India.

12.5.4: Manipur

Militant organizations: Hmar People's Convention–Democrat, Manipur People's Liberation Front, People's Liberation Army of Manipur, United National Liberation Front, Revolutionary People's Front of Manipur, People's People's Revolutionary Party of Kangleipak are the different insurgent groups in Manipur. These Insurgent groups in Manipur may be broadly classified into hill-based and valley based. While the hill-based demanded for tribal state to preserve their tribal cultures from outside influence, the valley based their demands for independence from historical perspective. It claimed that Manipur a Princely state with its geographical area extending to as far as the disputed Kabaw Valley of modern Myanmar during the British colonialism, was never a part of India. They say that Manipur should not be a part of the modern nation of India as well. About 90% of the hill-based insurgents and a few of the valley-based insurgents have now entered what is called Suspension of Operation. The People's Liberation Army is a leftist organization formed in 1978 with the aim of liberating Manipur from India.

12.5.5: Mizoram

The Militant organizations like Zomi Revolutionary Organization, Mizoram Farmers Liberation Force are the different tension giving organizations in Mizoram. Mizoram's tensions are largely due to the simmering Assamese domination and the neglect of the Mizo people. In 1986, the Mizo accord ended the main secessionist movement led by the Mizo National Front, bringing

peace to the region. Insurgency status is classified as partially active, due to secessionist/autonomy demands by the Hmars, chakmas, Brus, Pawis, Lais and the Reangs.

12.5.6: Tamil Nadu

The Dravistian Movement was started for creating a sovereign country for Dravidian speaking people in South India. This movement failed to find support from outside because it was guided by the Tamil hegemony. The state reorganization Act, 1956 created linguistic States.

12.5.7: Jammu and Kashmir

Jammu and Kashmir has following regions

- The Kashmir Valley inhabited with Muslim Population
- Jammu region with majority Hindu regions.
- Ladakh with a majority of Buddhist population

The overall majority of population is the Muslims in the state. In 1947 they wanted to live with India. Pakistan refused to acknowledge it and attacked from the north. As a result of which till date Jammu and Kashmir has become a controversial issue.

Finally, India has introduced several Armed Forces Special Powers Acts (AFSPA) to put down separatist movements in certain parts of the country. The law was first enforced in Manipur and later enforced in other insurgency-ridden north-eastern states. It was extended to most parts of Indian-occupied Kashmir (IOK) in 1990 after the outbreak of armed insurgency in 1989. Each Act gives soldiers immunity in specified regions against prosecution unless the Indian government gives prior sanction for such prosecution. The government maintains that the AFSPA is necessary to restore normalcy in regions like Kashmir and Manipur. Before the Partition of British India, Jammu and Kashmir was an independent Princely state ruled by Sikh Doghra rulers. According to the 2011 census, Islam is practiced by about 68.3% of the state population; while 28.4% follow Hinduism and small minorities follow Sikhism (1.9%), Buddhism (0.9%) and Christianity (0.3%). During the process of Indian independence (and the Partition), regions of British India with Muslim majority populations become part of the Muslim majority state of Pakistan. Hari Singh, the Ruler of Kashmir at that time, chose to retain Kashmir's Independent status - a sentiment apparently shared by the general populace. However,

immediately after the Partition of British India the tribesmen from Gilgit revolted against the Hindu Maharaja, allegedly backed and later joined by Pakistan in an attempt to assimilate Kashmir as part of the Pakistani state, looting rich markets, raping women and killing civilians in Baramulla and many other places. The Maharaja of Kashmir asked India for military help for which Nehru, the Prime Minister of India then, laid down a condition that Kashmir has to become part Indian state. When Pakistan's army came deep into Kashmir, the Maharaja agreed to Nehru's condition. Over the course of the conflict, Pakistan gained control over Gilgit and some parts of Kashmir and eventually created a state called Azad Kashmir; India gained control of the rest of Kashmir, creating the state of Jammu and Kashmir. This would eventually result in the ongoing conflict between Pakistan and India over the Kashmir Valley.

12.6: SUMMARY

India is a federal state. As a federation it has distribution of powers, written constitution, independent and integrated judiciary, etc. The Constitution of India has divided the legislative, administrative, political and financial powers between the centre and the states. The Constitution of India has consisted three lists. They are the Union list (100 items), State list (66 items) and Concurrent list (47 items). There is strong centre in India. In case of any conflict between the centre and state, the central laws remain final. The centre also declares president's rule in case of any constitutional breakdown in the states. The working of the Indian Federation shows that the central government has at times, misused its strong position for bringing some states under its influence. India has had coalition governments in the past and is expected to have such government even in the future, therefore it is in the best interest for all the parties to develop a sense of understanding and not play power games. Existence of 'Plural' society and diversity of India are the factors that have the task of national integration. Communalism, Regionalism, and Linguism are the hindrances in the way of national integration of the country.

12.7: KEY TERMS

- **Federalism:** The division of powers between the central government and regional/state governments. Tensions arise when there are disputes over the extent of powers allocated to each level of government.

- **Unitarism:** The concentration of power in the central government with little or no autonomy for regional/state governments. This can lead to tensions as states seek more autonomy and power.
- **Devolution:** The transfer of power from the central government to regional/state governments. Tensions may arise over the pace and extent of devolution, as well as the conditions attached to it.
- **Autonomy:** The degree of self-governance or independence enjoyed by regional/state governments. Tensions emerge when there are disagreements over the extent to which states should be allowed to make decisions independently of the central government.
- **Revenue Sharing:** The distribution of financial resources between the central government and regional/state governments. Tensions often arise over the formula used for revenue sharing and the allocation of funds for various programs and projects.
- **Interstate Water Disputes:** Disputes between states over the sharing of water resources from rivers and other sources. Tensions can escalate when there are disagreements over water usage, allocation, and control.
- **Political Representation:** The representation of states' interests in the central government. Tensions may arise when states feel that their interests are not adequately represented or when there is a perception of bias in decision-making at the central level.
- **Administrative Control:** The control exerted by the central government over administrative matters in the states. Tensions can arise when there are conflicts over the extent of central intervention in state affairs, particularly regarding law enforcement and governance.
- **Emergency Powers:** The authority of the central government to intervene in state matters during times of emergency or crisis. Tensions may arise when states perceive central intervention as infringing upon their autonomy or when there are disagreements over the declaration and lifting of emergencies.

12.8: SELF ASSESSMENT QUESTIONS

- Discuss the sources of conflict between centre state in India.
- Discuss various separatist movement in India.
- Discuss the recommendations of Sarkaria Commission regarding Centre – State relation in India.
- Discuss the recommendations of Punchhi Commission regarding Centre – State relation in India.
- Discuss the recommendations of Rajamannar Committee report on Centre – State relation in India.

12.9: REFERENCES

Austin, Granville. (1999). 'Working a Democratic Constitution: The Indian Experience', New Delhi: Oxford university Press.

Chandra, B. (2008). 'Communalism: A primer', New Delhi: National Book Trust.

Das, H. H. (1991). 'India: Democratic government and politics', Delhi: Himalaya Publishing House.

Juergensmeyer, M. (1994). 'Religious Nationalism: Confronts the Secular State'. Delhi: Oxford University Press.

Kar, P. K. (1998). 'Indian Society', New Delhi: Kalyan Publication.

Pant, A. D. And Gupta, S. K. (Ed.). 'Multy Ethnicity and National Integration: A Political Anthropological View'. Allahabad: Vohra Publication and Distributors.

Sharma, R. N. (2000). 'Textbook of Educational Philosophy'. New Delhi: Kanishka Publishers and Distributers.

Tara, S. (1991). 'Secular India'. New Delhi: Anmol Publication.

Yerankar, S. (2006). 'Secularism in India: Theory and Practice'. Delhi: Dhyayan Publisher & Distributors.

BLOCK-4: EXECUTIVE AND CENTRAL ADMINISTRATION

Unit-13: The President of India

Unit-14: The Prime Minister of India

Unit-15: The Council of Ministers

Unit-16: The Union Territories

UNIT-13: THE PRESIDENT OF INDIA

Structure

- 13.1 Objectives
- 13.2 Introduction
- 13.3 The President of India
 - 13.3.1 Qualification
 - 13.3.2 Election
 - 13.3.3 Oath and Affirmation
- 13.4 Power and Functions
 - 13.4.1 Executive Powers
 - 13.4.2 Legislative Powers
 - 13.4.3 Financial Powers
 - 13.4.4 Judicial Powers
 - 13.4.5 Diplomatic Powers
 - 13.4.6 Military Powers
 - 13.4.7 Emergency Powers
 - 13.4.8 Pardoning Powers
- 13.5 Position of the President of India
- 13.6 Summary
- 13.7 Key Terms
- 13.8 Self Assessment Questions
- 13.9 References

13.1: OBJECTIVES

After going through this unit, you will be able to know:

- Central executive
- The powers and functions of the President of India
- Role and Position of the President of India

13.2: INTRODUCTION

The preamble of the constitution of India states that ‘India is a sovereign, socialist, secular,

democratic and republic. These are the basic objectives of the constitution of India. In order to fulfill these objectives, it provides an indirect elected head of the state, i.e., the President of India and the direct elected head of the government, i.e., the Prime-Minister of India. From the above, the constitution of India has made the President as the nominal head of the state, and the Prime Minister as the real head of the government. The Prime Minister is the de facto authority holder and the President is the de jure authority. The constitution of India provides a parliamentary form of government with the prime minister, headed by the council of ministers, as its head to aid and advise the president. Article 52 of the constitution of India reads 'There shall be a president of India as the head of the state executive'. The president of India is the constitutional head of the state as well as the head of the country. Article 74, of the constitution of India states that 'there is a council of ministers headed by the Prime Minister in order to act and advise the Prime Minister. Article 74 and 75, of the constitution deals with the parliamentary system at the centre and article 163 and 164 in the states. Let us discuss the role of the executive and administrative systems of the central administration.

Executive and Central Administration in India

In this context we will briefly discuss the executive head of the state and the executive head of the government. The executive head in the constitution of India includes the President, Vice President and the executive head of the government includes the Council of Ministers headed by the Prime Minister of India. Let us discuss then one by one.

13.3: THE PRESIDENT OF INDIA

Article 52 to 78, of the constitution of India under Part- V deals with the Union executive. The Union executive consists of the President, the Vice- President, the Council of Minister headed by the Prime Minister and the Attorney General of India. The President is the head of the Indian states. He is the symbol of unity, integrity and solidarity of the nation. He is the first citizen of India. The President of India is the Head of state of the Indian Republic. He exercises his power directly or through his subordinates. He is the formal head of the legislature, executive and judiciary branches of Indian democracy. He is the commander-in- chief of the Indian Armed Forces.

13.3.1: Qualification

The constitution of India lays down the following qualification for a candidate seeking election

to the office of the President.

- He should be a citizen of India
- He should have completed the age of 35 years.
- He should be qualified for election as a member of the House of the People.
- He should hold any Office of Profit.
- He should not be a member of either house of the parliament or of a house of a state legislature. If a member of either house of parliament or state legislature gets elected as president, he shall be deemed to have vacated his sit in that house on the date on which he enters upon the office as President.

13.3.2: Election

The president of India is elected not directly by the people but by the members of an electoral college consisting of the following;

A- The elected members of both houses of Parliament (M.P.s),

B- The elected members of the State Legislative Assemblies (Vidhan Sabha) of all States.

C- The elected members of the legislative assemblies (M.L.A.s) of two Union Territories (i.e., National Capital Territory (NCT) of Delhi and Union Territory of Puduchery).

From the above it is clear that, the nominated members of the both the houses of the Parliament, the nominated members of the state legislative assemblies, the members of the state legislative councils, and the nominated members of the legislative assemblies of Delhi and Puduchery are not coming within the electoral college of the president of India. The nomination of a candidate for election to the office of the President must be subscribed by at least 50 electors as proposers and 50 electors as seconders. Each candidate has to make a security deposit of ₹15,000 in the Reserve Bank of India. The security deposit is liable to be surrendered in case the candidate fails to secure one-sixth of the votes polled. The election is held in accordance to the system of Proportional representation by means of the Single transferable vote method. The voting takes place by secret ballot system. Article 55 of the Constitution deals with the manner of election

of President of India. Each elector casts a different number of votes. The general principle is that the total number of votes cast by Members of Parliament equals the total number of votes cast by State Legislators. Also, legislators from larger states cast more votes than those from smaller states. Finally, the number of legislators in a state matters; if a state has few legislators, then each legislator has more votes; if a state has many legislators, then each legislator has fewer votes. The actual calculation for votes cast by a particular state is calculated by dividing the state's population by 1000, which is divided again by the number of legislators from the State voting in the Electoral College. This number is the number of votes per legislator in a given state. Every elected member of the parliament enjoys the same number of votes, which may be obtained by dividing the total number of votes assigned to the members of legislative assemblies by the total number of elected representatives of the parliament. The Basic Formula behind the value of the votes is given as under;

- A- Value of the vote of an M.L.A= Total Population of the state / Total No. of Elected members in the state x 1/1000
- B- Value of the vote of an M.P= Total Value of the Votes of all M.L. As of All states/ Total Number of elected members of the parliament
- C- Electoral Quota = Total Number of Valid Votes Polled / 1+1=(2) + 1

13.3.3: Oath and Affirmations

The President of India takes the oath of office in the presence of the Chief Justice of India. The day the term of the previous president expires, the oath taking of the new president takes place. In the absence of the chief justice, he / she have to take his oath at the senior-most Judge of the Supreme Court, before entering into his office. The oath of the president of India has been given in the Article 60 of the constitution of India. In his / her oath he reads...

‘I, ----- (Name), do swear in the name of God or solemnly affirm that I will faithfully execute the office of President or discharge the functions of the President of the Republic of India, and will to the best of my ability to preserve, protect and defend the Constitution and the law, and that I will devote myself to the service and well-being of the people of the

Republic of India’.

Conditions of the office of the president of India

The office of the President of India is virtually corresponding to that of the British monarchy. Constitution of India has established it in keeping the spirit of the parliamentary executive in the country. As the formal head of state, the office of the President is a dignified one, with enormous prestige, authority, grace, dignity, respect and adoration, but it acts with slow and less function. The executive power of the Union is based on the assumption of the President being a rubber stamp of the government in order to authenticate the decisions made by the council of ministers, barring a few cases ordained by circumstances. The President and the Vice-President are the formal executive heads of the Union, while the actual executive is the Union Council of Ministers, with Prime Minister as its Chairman.

- The Constitution of India provides conditions of his office. These conditions are The President should not be a member of either House of the Parliament or a House of the State legislature.
- The President should not hold any other office of profit.
- The President is entitled, without payment of rent, to the use of his official residence i.e. the Rastrapathi Bhavan.
- The President is entitled to such emoluments, allowances and privileges as may be determined by parliament.
- The president’s emoluments and allowances cannot be dismissed during his term of office.

The President of India is indirectly elected through an electoral college. The Electoral College comprises the elected members of both the houses of Parliament and the elected members of the state legislative assemblies, but the nominated members are not participated in this process. The term of the President is for five years from the date on which he enters upon his office. He also resigns from his office at any time by addressing his resignation letter to the Vice-President of India. However, he is also eligible for re-election (Art-57). He may be elected for any numbers of terms. Rajendra Prasad was the only President who was re-elected for the second time. Dr. Zakir Hussain and Sh. F.A. Ahmed died in office and

could not complete even one term. The President may be removed from the office by the process of impeachment, which is a cumbersome one, on the grounds of violation of the Constitution of India. The salary and allowances of the President of India are charged under the Consolidated Fund of India and these cannot be reduced during his tenure.

Vacancy in the office of President

- The vacancy in the office of President happens due to the following reasons.
- On the expiry of his tenure
- By his resignation
- Due to his removal
- Due to his sudden death in the office
- When he becomes disqualified to hold his office or his election is declared void

13.4: POWERS AND FUNCTIONS

The powers enjoyed and the functions performed by the president can be studied as under the following points

- A- Executive Powers
- B- Legislative Powers
- C- Financial powers
- D- Judicial Powers
- E- Diplomatic Powers
- F- Military Powers
- G- Emergency Powers
- H- Pardoning Powers

13.4.1: Executive powers

The president of India is the executive head of the Indian Union. Thus, the executive powers of the central government have been vested in the President. The powers are to be exercised by him either directly or through officers subordinates to him, in accordance with the Article

53 of the Constitution. The president of India enjoys a position of a very significant institution which functions either directly or indirectly connected to him. He is the head of the country. Article 74 (2), the council of ministers or Prime Minister are not accountable legally to the advice tendered to the President but it is the sole responsibility of the President to ensure compliance with the constitution in performing his duties. Let us discuss the executive powers of the President

- The President is invested with powers of making and unmaking executive appointments. In the first place, he appoints the Prime Minister and on the latter's advice, the other members of the Union Council of Ministers, to aid and advise him in the exercise of his functions. The President is also authorized to receive and accept their resignations and also to dismiss them individually or collectively as they all hold office during his pleasure.
- He/she further appoints the Attorney-General of India. He can appoint any person as the Attorney-General who is qualified to be appointed as a judge of the Supreme Court.
- He/she has the authority to appoint the Comptroller and Auditor-General of India, provided the candidate to be appointed is qualified to be a judge of the Supreme Court.
- She/ He appoints the Governors of states. These appointments are done in consultation with the Prime Minister.
- She/he alone can receive the Governor's resignation or dismiss him, as the latter holds his office during the pleasure of the President.
- The President also appoints the administrations of Union-Territories and determines the designations to be held by them. They are variously known as Lt. Governors, chief-commissioners or administrators.
- She/He is competent to appoint an inter-state council to exercise the following functions: (a) advising upon the disputes between the states; (b) investigate and discuss matters of common interest between the Union and the state or amongst the states themselves.
- The President appoints chairmen and members of the Union public service Commission and the Joint Public Service Commissions.

- He nominates the Chief Election Commissioner and the Deputy Chief Election Commissioner.
- He chooses commissioner to report to him on the administration of the 'scheduled areas' and the welfare of scheduled tribes. He also appoints another commissioner to investigate the conditions of the backward classes in the states.
- He decides on an Official Language Commission to recommend to him the ways through which Hindi can be progressively used in place of English for the official purpose of the Union. He also appoints a special officer for all matters relating to the safeguards provided for linguistic minorities under the Constitution.
- The President has also been empowered to entrust to the states, or to its officer with the exercise of executive power of the Union, provided that the state or the officers concerned, consent to do so.
- He/she has the power to administer Union Territories either directly or through officers or administrators of his choice. The executive power of the Union with respect to the Union Territories extends to all subjects.
- The President has the power to receive reports of the Comptroller and Auditor-General of India, Union Public Service Commissioners for scheduled areas and backward classes, and the special officers for scheduled castes and tribes, and for the linguistic minorities.
- He can appoint a commission to investigate into the conditions of SCs, STs and other backward classes.

13.4.2: Legislative powers

The president of India is an integral part of the constitution. The legislative powers of the President are given as under:

- Article 78, Article 86 of the constitution of India states that Legislative power is constitutionally vested by the Parliament of India of which the president is the head, to facilitate the law making process per the constitution. The President summons both the Houses of the Parliament and prorogues them. He can dissolve the Lok Sabha. Article 74, the President shall abide by the aid and advice of the Council of Ministers headed by the Prime Minister, provided the given advice is in accordance with the

constitution. Article 143 gave power to the president to consult the Supreme Court about the constitutional validity of any issue.

- The President inaugurates Parliament by addressing it after the general elections and also at the beginning of the first session each year; this is mentioned in Article 87.

The Presidential address on these occasions is generally meant to outline the new policies of the government.

- All bills passed by the Parliament can become laws only after receiving the assent of the President. After a bill is presented to him, the President shall declare either that he assents to the Bill, or that he withholds his assent from it. As a third option, he can return a bill to Parliament, if it is not a money bill or a constitutional amendment bill, for reconsideration. When, after reconsideration, the bill is passed and presented to the President, with or without amendments, the President cannot withhold his assent from it. The President can also withhold his assent to a bill when it is initially presented to him thereby exercising a pocket veto.
- The President is an integral part of the Parliament in as much as the Union Parliament, which consists of the President and two Houses known respectively as only be approved by the two houses of Parliament but must also be assented to the President.
- The President has the power to nominate a maximum of twelve members to the Rajya Sabha on the ground that they possess special knowledge or practical experience in the fields of art, science, literature and social service. Article 331 empowers him to nominate not more than two members belonging to the Anglo-Indian community to Lok Sabha. The President appoints acting Speaker or the Lok Sabha in case both, the Speaker and Deputy Speaker are not available. Similarly, he appoints the acting-Chairman of the Rajya Sabha in case both the Chairman and Deputy Chairman are not available.
- The President administers the oath of office to the members of both houses of Parliament.
- He/she decides the final authority, after consultations with the Election Commission, as to whether any Member of Parliament (MP) has become ineligible to hold his

office as an MP.

- The President has the power to specify the period within which a person who has been elected a member both to Parliament and to a state legislature must resign from either of his seats.
- He or she has the power to summon, from time to time, each house of the Parliament in such a manner that six months do not intervene in between the session. He or she has the power to prorogue either or both the houses. He is also empowered to summon the joint sitting of the two houses of Parliament in case of deadlocks over non-money bills passed by one houses and either rejected or delayed for more than 6 months by the other house.
- The President inaugurates the first session of parliament after each general election to the Lok Sabha, and delivers his inaugural address to the two houses sitting together in a joint session.
- Article 123 authorizes the President to promulgate ordinances duering the recess of parliament.
- All bills passed by the Parliament are sent to him for his consideration. He may assent to the bill. And only upon his assent, the bill becomes a LAW. If, however, he wants the Parliament to modify or amend the bill, he is free to return it for their reconsideration, with or without his recommendations.
- He also has the power to recommend to the parliament to formulate laws to form new states or to alter areas, boundaries, or names of the existing states.
- The President has been authorized by Article 370 extend the various provisions of the Constitution to the states of Jammu and Kashmir, with the concurrence of its government.
- He/she has also been authorized to consider and approve state laws and ordinances which under various provisions of this Constitution are reserved by state Governors for his assent. Finally, he has the power to make regulations for the peace, progress, and good government of the Union Territories, excepting Chandigarh and Delhi.
- When either of the two Houses of the Parliament of India is not in session, and if the government feels the need for an immediate procedure, the President can promulgate ordinances which have the same force and effect as laws passed by Parliament. These

are in the nature of interim or temporary legislation and their continuance is subject to parliamentary approval. Ordinances remain valid for no more than six weeks from the date the Parliament is convened unless approved by it earlier.

13.4.3: Financial powers

The President of India enjoys the following financial powers:

- A money bill can be introduced in the Parliament only with the President's recommendation.
- The President lays the Annual Financial Statement, i.e. the Union budget, before the Parliament.
- The President can take advances out of the Contingency Fund of India to meet unforeseen expenses.
- The President constitutes a Finance commission after every five years to recommend the distribution of the taxes between the centre and the States.
- The President has control over the finance of the nation. It is President who causes the national budget to be laid before each House of Parliament.
- He or she has been authorized by Article 280 to appoint a Finance Commission consisting of a chairman and other members every fifth year, or earlier if necessary.
- The President has also been given control over the Contingency Fund of India. He can advance money from this fund to the Government of India for meeting unexpected expenditures.
- Certain money bills (Article 110) and bills affecting the taxation in which states are interested (Article 274) are to be reserved by the state Governors for the approval by the President.

13.4.4: Judicial powers

The President of India enjoys the following judicial powers

- The President appoints the Chief Justice and other judges of the Supreme Court of India in consultation with the former. He or she may dismiss the judges if and only if the Houses of Parliament pass resolutions to that

effect by two-third majority of the members present.

- He appoints the judges of the state high courts, in consultation with the Chief Justice of India and the Governor of the concerned state.
- The President can transfer judges from one high court to another in consultation with the Chief Justice of India.
- Article 143 empowers the President to consult the Supreme Court. If the President considers a question of law or a matter of National importance has arisen, he can ask for the advisory opinion of the Supreme Court.
- The President also exercises the power of pardon. He may grant pardon, suspend or commute the sentence of any person.
- The President has the right to be represented and appear at the investigation of charges against him by either house of Parliament on a resolution of impeachment.

13.4.5: Diplomatic Powers

The President of India enjoys the following diplomatic powers

- All international treaties and agreements are negotiated and concluded on behalf of the President. However, in practice, such negotiations are usually carried out by the Prime Minister along with his Cabinet. Also, such treaties are subject to the approval of the Parliament. The President represents India in international forums and affairs where such a function is chiefly ceremonial. The President may also send and receive diplomats, i.e. the officers from the Indian Foreign Service. The President is the first citizen of the country.
- The President represents India in international affairs. He appoints and recalls India's Ambassadors, High Commissioners and other diplomatic envoys to the foreign states, the United Nations and its specialist agencies. He receives the credentials of the Ambassadors, High Commissioners, and other diplomatic envoys accredited to India by the United Nations and the foreign States.
- All international treaties and agreements to which India is a party are concluded on his behalf and are finally signed by him.

13.4.6: Military powers

The President of India enjoys the following Military powers

- Article 53 makes the President the Supreme Commander of the defence forces of the Union. The exercise of the military power by him is not discretionary. It is regulated according to the law passed by Parliament. In the exercise of his military powers, the President nominates and appoints the Chiefs of the Staff of Army, Navy and Air Force.
- He is the Chairman of the Defence Council which consists, besides him, the Prime Minister, the Defence Minister, and the three Chiefs of Staff.
- With the concurrence of the Parliament, the President can declare war and conclude treaties of peace with foreign states.

13.4.7: Pardoning Powers

Article 72 of the Constitution of India states that the President is empowered with the powers to grant Pardons, Commutation, Remission, Respite and Reprieve, in the following situations

- Punishment is for an offence against Union Law
- Punishment is by a Military Court
- Sentence is that of death
- The decisions involving pardoning and other rights by the President are independent of the opinion of the Prime Minister or the Lok Sabha majority. In most cases, however, the President exercises his executive powers on the advice of the Prime Minister and the cabinet.

13.4.8: Emergency powers

The constitution of India under the Part XVIII is authorized the Emergency Provisions. It deals with the circumstances in which a state of emergency can be proclaimed by the President and the steps he may take to cope with it. The purpose is to restore the normal

functions of the government at the earliest opportunity. The framers of the Constitution have provided for three types of emergencies, namely; Emergency caused by war, external aggression or internal revolt; Emergency caused by the breakdown of the Constitutional machinery in the states; and Emergency caused by the threat to financial stability or credit of India, or of any part of the territory thereof. The President can declare three types of emergencies: national, state and financial, under articles 352, 356 and 360 respectively in addition to promulgating ordinances under article 123. Let us discuss the emergency powers of the President of India.

- **National emergency (Article 352)** – National emergency is caused by war, external aggression or internal revolt. It can be declared in the whole of India or a part of its territory for causes of war or armed rebellion or an external aggression. Such an emergency was declared in India in 1962, 1971 and 1975 to 1977. Under Article 352 of the India Constitution, the President can declare National Emergency only on the basis of a written request by the Cabinet Ministers headed by the Prime Minister. Such a proclamation must be approved by the Parliament within one month. Such an emergency can be imposed for six months. It can be extended by six months by repeated parliamentary approval. However, there is no maximum duration of it. In such an emergency, Fundamental Rights of Indian citizens can be suspended. The six freedoms under Right to Freedom are automatically suspended. However, the Right to Life and Personal Liberty cannot be suspended (Article 21). The President can make laws on the 66 subjects of the State List. Also, all money bills are referred to the President for approval. The term of the Lok Sabha can be extended by a period of up to one year, but not so as to extend the term of Parliament beyond six months after the end of the declared emergency. National Emergency has only been proclaimed in India twice till date. It was declared first in 1962 by President Sarvepalli Radhakrishnan, during the Sino-Indian War. The second emergency in India was from 1975-77 proclaimed by President Fakhruddin Ali Ahmed, with Indira Gandhi as Prime Minister.
- **State emergency (Article -356)-** Article 356 of the constitution of India gives to the

president the power to declare an emergency in a state or states in order to meet the failure of the constitutional machinery in the state or states. In this case if the President is fully satisfied, on the basis of the report of the Governor of the concerned state or from other sources that the governance in a state cannot be carried out according to the provisions in the Constitution, he can proclaim a state of emergency in the state. Such an emergency must be approved by the Parliament within a period of 2 months. Under Article 356 of the Indian Constitution, it can be imposed from six months to a maximum period of three years with repeated parliamentary approval every six months. If the emergency needs to be extended for more than three years, this can be achieved by a constitutional amendment, as has happened in Punjab and Jammu and Kashmir. During such an emergency, the President can take over the entire work of the executive, and the Governor administers the state in the name of the President. The Legislative Assembly can be dissolved or may remain in suspended animation. The Parliament makes laws on the 66 subjects of the state list. This type of emergency needs the approval of the parliament within 2 months. It can last up to a maximum of three years via extensions after each 6-month period. However, after one year it can be extended only if a state of National Emergency has been declared in the country or in the particular state. The Election Commission finds it difficult to organize an election in that state. The Sarkaria Commission held that presidents have unconstitutionally misused the provision of Article 356 many times for achieving political motives, by dismissing the state governments although there was no constitutional break down in the states. During 2005, President's rule was imposed in Bihar state, misusing Article 356 unconstitutionally to prevent the democratically elected state legislators to form a government after the state elections. In this provision, there is no provision in the constitution to re-promulgate president's rule in a state when the earlier promulgation ceased to operate for want of parliament's approval within two months duration. During 2014 in Andhra Pradesh, president's rule was first imposed on March 1, 2014 and it ceased to operate on April 30, 2014. President's rule was promulgated after being fully aware that the earliest

parliament session is feasible in the end of May, 2014 after the general elections. It was imposed again unconstitutionally on April 28, 2014 by the president.

- **Financial emergency (Article-360)** - Article 282 of the constitution of India accords financial autonomy in spending the financial resources available with the states for public purpose. Article 293 gives liberty to states to borrow without any limit to its ability for its requirements within the territory of India without any consent from the union government. However union government can insist for compliance of its loan terms when a state has outstanding loan charged to the consolidated fund of India or an outstanding loan in respect of which a guarantee has been given by the Government of India under the liability of consolidated fund of India. Under article 360 of the constitution, President can proclaim a financial emergency when the financial stability or credit of the nation or of any part of its territory is threatened. However, until now no guidelines defining the situation of financial emergency in the entire country or a state or a union territory or a Panchayat or a municipality or a corporation have been framed either by the finance commission or by the central government. A state of financial emergency remains in force indefinitely until revoked by the President. With this emergency, the President can reduce the salaries of all government officials, including judges of the Supreme Court and High Courts, in cases of a financial emergency. All money bills passed by the State legislatures are submitted to the President for approval. He can direct the state to observe certain principles (economy measures) relating to financial matters. However, 38th Amendment Act of 1975 made the satisfaction of the President in declaring a Financial emergency final and conclusive and not questionable in any court on any ground. Subsequently this provision was deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

13.5: POSITION OF THE PRESIDENT OF INDIA.

A- Constitutional position

There are two opinions regarding the actual or real position of the President of India, which is discussed below: Firstly, President is a nominal head of the state; Secondly, President is not a nominal head of the state.

1. President is a nominal head

India have adopted a parliamentary system of government in which the President can only be a nominal head. The actual powers lie with the Prime Minister and his council of Ministers. Article 74 of the constitution of India states that there shall be a Council of Minister headed Prime Ministers. As the head of the Government, the Prime Minister has to aid and advice the President. Article 78, which enumerates the duties and responsibilities of the Prime Minister in relation to President of India. The 42nd amendment act of the constitution of India has clearly laid down that the President is bound to accept the advice of the Prime Minister and the Council of Ministers. Even in the exercise of his emergency powers, the president depends upon the advice of the Prime Minister and the Council of Ministers. The position of the President of India, like the position of the British Queen, is one of the office of highest honour, respect and prestige but lacking of real executive authority.

2. President is not a nominal head

Despite the factors described above, the president of India is not a figure head or rubberstamp in the hands of the ministry. This has been more or less a legalist view, which was more relevant before the 42nd Constitutional Amendment Act. The Amendment Act provided that the President would act according to the advice tendered by the Council of Ministers. But still there are certain arguments which believe that at least the Constitution did not provide for Nominal Head. After the 44th Amendment Act, 1978 the president can require the council of ministers to reconsider any advice given to him either general or otherwise. This act on the part of the president has a great significance. Under this the president can act of reconsideration for both a means of polite advice and or a warning. The president enjoys sovereign status as the head of the state. As a base of this he can assume and play a meaningful role in the working of the Indian Political system. Moreover, before assuming his office, the President takes an oath to faithfully execute the office of the

President of India and to preserve, protect and defined the Constitution and the Law and that he will devote himself to the service and well-being to the people of India. For the purpose of following his oath, he acts independently if he feels that the Cabinet advice is contrary to the oath he has undertaken. Further as per the Article 53, he has to exercise the executive powers of the Union, either directly or through officers subordinate to him in accordance with the Constitution. This also leaves certain undefined powers with the President.

3. Role of the President in India

The President of India is vested with the role ‘to advise, to encourage and to warn’, which lends the office of the President much authority and influence. In spite of the finality of the issue that he or she is merely a figurehead without any real powers, circumstantial dynamics may probably afford him few, if not many occasions to use his discretion in making decisions. There are three important circumstances, which can be discussed as under:

- Firstly, when after a fresh general elections, no party is able to command a majority in the Lok Sabha; the President is unintentionally put in a situation to apply his wisdom, without any aid and advice from a Council of Ministers.
- Secondly, if an obligatory government loses its majority in the Lok Sabha and the Council of Ministers recommends the dissolution of the House, the President might be in a position to use his mind to find out whether a reasonably stable government can be formed and the country saved from another general election, thereby acquiring a discretionary power to accept or the recommendation of the Council of Ministers.
- Lastly, due to the lack of time-frame, the President must assent to a bill, he may, in his discretion, use the pocket veto to kill a bill.

13.6: SUMMARY

However, the Constitution of India under Article 53 (1) confers that in the President ‘the executive power of the Union’ that is to be ‘exercised by him either directly or through officers subordinate to him’ in accordance with the provisions of the Constitution. However, the Constitution also states that the Council of Ministers, headed by the prime minister, is to ‘aid

and advice the President, who shall, in the exercise of his functions, act in accordance with such advice'. However, the Article 74(2) bars all courts completely from assuming even an existence of such an advice. Therefore from the courts' point of view, the real executive power lives with the President. As far as president's decision and action are concerned no with the advice tendered by the ministers or that it is based on no advice. Let us now study in details, the various powers of the President.

13.7: KEY TERMS

- **Head of State:** The President serves as the ceremonial head of the Indian state, representing the unity and integrity of the nation.
- **Constitutional Powers:** The President possesses various powers as outlined in the Indian Constitution, including the power to appoint the Prime Minister, dissolve the Lok Sabha (Lower House of Parliament), give assent to bills passed by Parliament, and promulgate ordinances.
- **Executive Authority:** While the real executive authority lies with the Council of Ministers headed by the Prime Minister, the President is the nominal head of the executive branch of government.
- **Commander-in-Chief:** The President is the supreme commander of the Indian Armed Forces.
- **Appointment Powers:** The President appoints various high-ranking officials, including governors of states, judges of the Supreme Court and High Courts, the Attorney General, and the Comptroller and Auditor General.
- **Diplomatic Functions:** The President represents India in international affairs, receives foreign diplomats, and undertakes state visits abroad.
- **Emergency Powers:** The President can declare three types of emergencies—national emergency, state emergency (President's Rule), and financial emergency—under certain circumstances.
- **Oath of Office:** The President takes an oath of office before assuming duties, pledging to

preserve, protect, and defend the Constitution and law.

- **Impeachment:** The President can be impeached by Parliament for violation of the Constitution, although it's a rare and highly serious process.
- **Term Length and Eligibility:** The President serves a five-year term and can be re-elected for a maximum of two terms. To be eligible for the presidency, a candidate must be a citizen of India, at least 35 years old, and qualified to be a member of the Lok Sabha.
- **Election Process:** The President is elected indirectly by an electoral college consisting of elected members of both Houses of Parliament and the Legislative Assemblies of the States and Union territories.

13.8: SELF ASSESSMENT QUESTIONS

- The president of India is the nominal head of the State, Comment.
- Discuss the process of appointment of the President of India.
- Discuss the powers and functions of the President of India.
- Discuss the role and position of the President of India.

13.9: REFERENCES

Bakshi, P.M. (June 1956). "Comparative Law: Separation of Powers in India". ABA Journal. American Bar Association. 42: 554. ISSN 0747-0088. Archived from the original on 17 May 2016.

Laxmikanth, M (2010). Indian Polity for Civil Services Examinations. Tata McGraw-Hill Education. ISBN 978-0-07-015316-5. Archived from the original on 24 April 2016.

Singh, Mahendra Prasad (2019). "Ambedkar: Constitutionalism and State Structure". In Roy, Himanshu; Singh, Mahendra Prasad (eds.). Indian Political Thought: Themes and Thinkers. Noida: Pearson India Education Services. p. 354. ISBN 978-93-325-8733-5.

UNIT-14: THE PRIME MINISTER OF INDIA

Structure

- 14.1 Objectives
- 14.2 Introduction
- 14.3 The Prime Minister of India
- 14.4 Power and Functions
 - 14.4.1 Formation of the Council of Ministers
 - 14.4.2 Allocation of Portfolios
 - 14.4.3 Chairman of the Cabinet
 - 14.4.4 Removal of Ministers
 - 14.4.5 Link Between Cabinet and President
 - 14.4.6 Chief Coordinator
 - 14.4.7 Leader of the Parliament
 - 14.4.8 Power to Dissolved the Parliament
 - 14.4.9 Director of Foreign Affairs
 - 14.4.10 Leader of the Nation
 - 14.4.11 Power of Patronage
 - 14.4.12 Role of P.M during emergency
- 14.5 Role and Position of the Prime Minister of India
- 14.6 Summary
- 14.7 Key Terms
- 14.8 Self Assessment Questions
- 14.9 References

14.1: OBJECTIVES

After going through this unit, you will be able to know:

- The changing role and position of the Prime Minister of India
- Power and functions of the Prime Minister of India

14.2: INTRODUCTION

The prime minister of India is the chief executive of the Government of India. Although the president of India is the constitutional, nominal, and ceremonial head of state, in practice and

ordinarily, the executive authority is vested in the prime minister and their chosen Council of Ministers. The prime minister is the leader elected by the party with a majority in the lower house of the Indian parliament, the Lok Sabha, which is the main legislative body in the Republic of India. The prime minister and their cabinet are at all times responsible to the Lok Sabha. The prime minister can be a member of the Lok Sabha or of the Rajya Sabha, the upper house of the parliament. The prime minister ranks third in the order of precedence.

The prime minister is appointed by the president of India; however, the prime minister has to enjoy the confidence of the majority of Lok Sabha members, who are directly elected every five years, unless a prime minister resigns. The prime minister is the presiding member of the Council of Ministers of the Union government. The prime minister unilaterally controls the selection and dismissal of members of the council; and allocation of posts to members within the government. This council, which is collectively responsible to the Lok Sabha as per Article 75(3), assists the president regarding the operations under the latter's powers; however, by the virtue of Article 74 of the Constitution, such 'aid and advice' tendered by the council is binding.

14.3: THE PRIME MINISTER OF INDIA

The Prime Minister of India holds the pivotal position in the cabinet of India. He is more powerful than the President. The office of the Prime Minister first originated in England and was borrowed by the framers of the constitution. India has a parliamentary Democracy, where the Prime Minister of India is the head of government and has the responsibility for executive power. The constitution of India expressly states that the Prime Minister shall be the head of the council of ministers. Hence, the other ministers cannot function without the Prime Minister. The Prime Minister of India is described variously by the under concerns.

Lord Morley described the Prime Minister of India as *primus inter pares* (first among equals).

Sir William Vernon called the Prime Minister of India as '*inter stellas luna minores* (moon among the stars).

Harold Laski called the Prime Minister of India as "The pivot of the whole system of Government".

Ivor Jennings called the Prime Minister of India as "The sun round which the planets

revolve".

Nehru said "The Prime Minister is the Linch-Pin of the Government"

Ramsay Muir said 'The Prime-Minister of India is the steering wheel of the ship of the state'.

The Prime Minister of India is the heart of the Cabinet. He is the focal point of the political system. He is the real executive of the country. Despite the constitutional provisions of the west minister model of cabinet Government in India, the Prime Minister has emerged as the undisputed chief of the executive. The personality of the Prime Minister determines the nature of the authority that he or she is likely to exercise. Hypothetically, the Prime Minister is selected by the President of India. In reality, the President invites the leader of the majority party in Parliament to form the council of ministers. It is the political parties go to the parliamentary polls with a clear choice of their leaders. Generally the leader of the majority party becomes the Prime Minister. However, the President can exercise some discretion in the selection of the Prime Minister when no party commands a clear majority in the lower house of parliament. In such circumstances, the President may request the single largest party to form Government or alternatively, he may allow a coalition Government to be formed. When a party leader has a clear majority support in the lower house of parliament, the President has no choice but to call upon him to form the council of ministers.

The Constitution of India envisions a scheme of affairs in which the President of India is the head of the executive. The following articles of the constitution of India are given as under.

Article 53 reads that the office of the prime minister headed by the Council of Ministers to assist and advise the president in the discharge of the executive power.

Article 53(i) states that the executive powers of the Union shall be vested in the president and shall be exercised either directly or through subordinate officers, in accordance with the Constitution.

Article 74(1) of the Constitution of India states that there shall be a Council of Ministers with the prime minister at the head to aid and advise the president who shall, in the exercise of his functions, act in accordance with such advice.

Article 75(1) of the Constitution of India states that the Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

14.4: POWER AND FUNCTIONS

The Constitution of India vests executive powers of the Union in the hands of the Prime Minister headed by the council of ministers. As the head of the state and government, the Prime Minister enjoys the following powers.

14.4.1: Formation of the Council-of Ministers- The Prime Minister of India holds the task of formation of the ministry. It begins with the appointment of the Prime Minister by the President. After the appointment of Prime Minister, the President appoints all other ministers on the advice of the Prime Minister. The PM determines the strength of his ministry and selects his team of ministers. However, this number cannot be more than 15% of the total membership of the Lok Sabha. Generally, most of the ministers are drawn from Lok Sabha. The Prime Minister decides who amongst them shall be the Cabinet Minister and who will be Minister of State or a Deputy Minister.

14.4.2: Allocation of Portfolios- The Prime Minister of India allocates portfolios to his ministers under an undisputed privilege. It is the Prime Minister who decides the particular department is to be given to which minister. Any minister objecting to such an allotment invites the wrath of the Prime Minister and can get completely ignored from the ministry.

Change of Portfolios- The Prime Minister of India has the power to change the departments or portfolios of the ministers at any time. It is his privilege to shuffle and reshuffle his ministry any time and as many times as he may like.

14.4.3: Chairman of the Cabinet- The Prime Minister of India is the leader of the Cabinet. He presides over its meetings. He decides the agenda of its meetings. All the matters in the Cabinet are decided with the approval and consent of the Prime Minister. It is up to him to accept or reject proposals for discussions in the Cabinet. All ministers conform to his views and policies. There is scope for deliberations and discussions but not for opposition. Thus, the Prime Minister is the chairman of the cabinet.

4.4.4: Removal of Ministers- The Prime Minister of India can demand resignation from any minister at any time, and the latter has to accept the wishes of the former. However, if any

minister may fail to resign, the Prime Minister can get him dismissed from the President. In April 2010 Mr. Shashi Throor had to submit his resignation because Prime Minister Dr. Manmohan Singh had asked him to do so. Thus, the council of Ministers is appointed by the president and can also be removed by the Prime Ministers of India.

14.4.5: Link between the President and the Cabinet- The Prime Minister of India works as the main channel of communication between the President and the Cabinet. He communicates to the President all decisions of the Cabinet, and puts before the Cabinet the views of the President. This is the sole privilege of the Prime Minister and no other minister can, of his own convey the decisions or reveal to the President the nature or summary of the issues discussed in the Cabinet. Thus, the Prime Minister of India is the chief Link between the President and the Cabinet.

14.4.6: Chief Coordinator- The Prime Minister of acts as the general manager of the state. He is the chief coordinator between the council of Ministers and the president. It is the responsibility of the Prime Minister of India to co-ordinate the activities of all the departments and to secure co-operation amongst all government departments. He resolves all differences, among the ministers. As a chief coordinator he does all sorts of acts of omission and commission of the cabinet.

14.4.7: Leader of the Parliament- The Prime Minister is the leader of the majority party in the Lok Sabha. He is also the leader of the Parliament. The Prime Minister, in this capacity, consultation with the Speaker of this Lok Sabha, decides the complete agenda of the House. The summoning and the proroguing of Parliament is in fact decided by him and the President only acts upon his advice. Besides this the major policies of the nations are announced by him on the floor of the parliament. He can address each house of the parliament but can vote only in the house to which he belongs.

14.4.8: Power to get the Parliament dissolved- The Prime Minister of India has the power to advise the President in favour of dissolution of the Lok Sabha. This power of dissolution really means that the members hold their seats in the House at the mercy of the Prime Minister. No member likes to contest frequent elections as these involve huge expenditures and uncertainties. It has been rightly remarked that this is such an important weapon in the hands of the Prime

Minister that it binds his party men, and even the members of opposition.

14.4.9: Director of Foreign Affairs- The Prime Minister always plays an important role in determining Indian foreign policy and relations with other countries of the world. He may or may not hold the portfolio of foreign affairs but he always influences all foreign policy decisions.

14.4.10: Role as the Leader of the Nation

Prime Minister is also the leader of the nation. General elections in India are fought in his name. We know that it was the charismatic and charming personality of Pt. Nehru that used to sweep popular votes in favour of the Congress party. The personality of the Prime Minister and the respect and love, that he commands act as a source of strength for his party as well as the nation. He leads the nation both in times of peace and war.

14.4.11: Power of Patronage

All important appointments are really made by the Prime Minister of India. These appointments include Governors, Attorney-General, Auditor General, Members and Chairman of Public Service Commission, Ambassadors, Consular etc. All high ranking appointments and promotions are made by the President with the advice of the Prime Minister.

14.4.12: Role of Prime Minister during an Emergency

The emergency powers of the President are in reality the powers of the Prime Minister. The President declares an emergency only under the advice of the Cabinet, which in reality means the advice of the Prime Minister. All decisions taken to meet an emergency are really the decisions of the Prime Minister. The Prime Minister can get the imposition of President's rule in a State. The Presidential decision in favour of imposing an emergency in a state is always governed by the decision of the Prime Minister and his Cabinet.

14.5: ROLE AND POSITION OF THE PRIME MINISTER OF INDIA

The Constitution of India vests executive powers of the Union in the hands of the Prime Minister and his team. The prime minister's role include the followings

- The power to advise the President about the appointment of other ministers to constitute the Union Council of Ministers. He has a free choice in selecting his colleagues.

The only thing which he has to keep in mind, while preparing the list of ministers, is that he has given representation to various groups in his party and that ministers are drawn from different states.

- The political life and death of ministers also depends upon the prime minister. He assigns to them various ministers and departments. He may change their portfolios or may even advise the President to dismiss them.
- The prime minister influences to a great extent every other appointment made by the President. The President appoints Chief Justices and Judges of the Supreme Court and the High Courts, Comptroller and Auditor-General, Attorney General, Election Commissioners, Chiefs of Staff of Army, Navy and Air Force, State Governors, Ambassadors and High Commissioners and many other State officers. All these appointments are essentially the choice of the prime minister.
- The Parliament is summoned and prorogued by the President on the advice of the prime minister. The prime minister also advises the President about the dissolution of the Lok Sabha.
- The Prime Minister is the channel of communication between the President and the Council of Ministers.
- As Chairman of the Union Council of Ministers, the Prime Minister summons meetings of the Council of Ministers and presides over them.
- The Prime Minister, being the Chairman of the Council of Ministers, not only supervises the departments under his personal charge but also co-ordinates and supervises the work of all other departments and ministers.
- The Council of Ministers is collectively responsible to the Lok Sabha. This they can do only if their leader shields and defends them and their actions both in and out of the Parliament. They must speak with one voice.
- Important Policy matters are initiated by the prime minister in both the Houses of Parliament. It is he who gives his opening speech on important policy matters and informs the Houses of the purpose the government wants to achieve.
- It has been prerogative of the prime minister to take a direct and keen interest in

India's international relations.

- The prime minister, being the leader of the majority party, has to take the whole party into confidence, so that he continues to command the confidence and support of his party.

14.6: SUMMARY

The prime minister controls the cabinet ministers. In this way, the Prime Minister can control the whole country. Article 74(1) of our Constitution expressly states that the Prime Minister shall be “at the head” of the Council of Ministers and should aid and advise the President in the exercise of his functions. The Prime Minister is at the heart of the Cabinet. Under the Westminster model of government, policy formulation and decisions on important matters are the responsibilities of the ministers. Despite the constitutional provisions of the Westminster model of cabinet government in India, the Prime Minister is the undisputed chief of the executive. The office of the Prime Minister first originated in England. William Harcourt calls him “luna inter stellas minores” or “A moon among lesser stars.” Dr. Ambedkar had once said that if any functionary under the Indian Constitution was to be compared with the U.S. President, he is the Prime Minister and not the President. The twin objectives of the Prime Minister appears to be to grant greater autonomy to the States and have a centralised structure for governing the Union. The Prime Minister's cabinet consists of all the ministers under whom the various ministries of the country come and some heads of these ministries. In case of a difference of opinion, the Prime Minister can demand the resignation of a minister or advise the President to remove him. The Prime Minister can dissolve the Council of Ministers by resigning. The Prime Minister of India advises the President in the matter of appointment to important posts like the Attorney General of India, the Comptroller and Auditor General of India, the Chairman and members of the Union Public Service Commission, the Election Commissioners, the Chairman and members of the Finance Commission, etc.

14.7: KEY TERMS

- **Constitution:** The supreme law of India which governs the country's political framework, rights, and duties of citizens, and the powers of the government.
- **Parliament:** The supreme legislative body of India consisting of two houses: the Rajya

Sabha (Council of States) and the Lok Sabha (House of the People).

- **Cabinet:** A body of senior government ministers chosen by the Prime Minister to lead various ministries and formulate policies.
- **Elections:** The process by which representatives are chosen to govern the country, including general elections for the Lok Sabha and state legislative assemblies.
- **Foreign Policy:** Strategies and principles adopted by the government in dealing with other nations and international organizations.
- **National Security:** Measures taken by the government to protect the country against internal and external threats, including defense forces, intelligence agencies, and border security.
- **Federalism:** The system of government in which power is divided between a central authority (the Union government) and various regional authorities (state governments).

14.8: SELF ASSESSMENT QUESTIONS

- Discuss the changing role of the Prime Minister of India.
- Discuss the Power and Functions of the Prime Minister of India.
- Prime Minister is the real hero of India, Comment.
- Discuss the role of Prime Minister in foreign affairs.

14.9: REFERENCES

Dam, Shubhankar (2016), "Executive", in Choudhry, Sujit; Khosla, Madhav; Mehta, Pratap Bhanu (eds.), The Oxford Handbook of the Indian Constitution, Oxford and New York: Oxford University Press, p. 307, ISBN 978-0-19-870489-8, The Prime Minister is the head of government.

Dam, Shubhankar (2016), "Executive", in Choudhry, Sujit; Khosla, Madhav; Mehta, Pratap Bhanu (eds.), The Oxford Handbook of the Indian Constitution, Oxford and New York: Oxford University Press, p. 307, ISBN 978-0-19-870489-8, Executive power, ordinarily, is exercised by Prime Minister.

Granville, Austin (2003). *Working a democratic constitution: A history of the Indian experience*. Delhi: Oxford University Press. p. 215. ISBN 978-0195656107

Pillay, Anashri (2019), "The Constitution of the Republic of India", in Masterman, Roger; Schütze, Robert (eds.), *Cambridge Companion to Comparative Constitutional Law*, Cambridge University Press, pp. 146–147,

Majeed, Akhtar (2005), "Republic of India", in Kincaid, John; Tarr, G. Alan (eds.), *Constitutional Origins, Structure, and Change in Federal Countries, A Global Dialogue on Federalism, Volume I*, Montreal & Kingston: McGill-Queen's University Press for Forum of Federation and International Association of Centers for Federal Studies, pp. 180–207, 185, ISBN 0-7735-2849-0, ...the executive authority is vested in the prime minister and in his Council of Ministers. (p. 185)

UNIT-15: THE COUNCIL OF MINISTERS

Structure

- 15.1 Objectives
- 15.2 Introduction
- 15.3 The Council of Ministers
- 15.4 Power and Functions of the Council Ministers
 - 15.4.1 Legislative Power
 - 15.4.2 Executive Power
 - 15.4.3 Financial Power
 - 15.4.4 Judicial Power
 - 15.4.5 Emergency Power
- 15.5 Role and Position of the Council of Ministers
- 15.6 Summary
- 15.7 Key Terms
- 15.8 Self Assessment Questions
- 15.9 References

15.1: OBJECTIVES

After going through this unit, you will be able to know:

- The power and functions of the Council of Ministers
- The role and Position of the Council of Ministers

15.2: INTRODUCTION

As the constitution of India provides for a Parliamentary system of government, modeled on the British system and the council of ministers headed by the prime minister is the real executive authority. These principles of parliamentary system are not detailed in the Indian constitution. However, the two Articles i.e. 74 and 75 deals with them in a broad manner.

Article 74(1) entails the President to have a Council of Ministers with the Prime Minister at the head to “aid and advice” him in the exercise of his power. The Prime Minister is appointed by the President and all other ministers are appointed by the President on the advice of the Prime Minister. India has a three-tier ministry consisting of cabinet ministers, ministers of state and

the deputy ministers. The term cabinet is absent in the constitution. Usually senior ministers with independent charge of ministries constitute a body that the Prime Minister consults in arriving at policy decisions, constitute the cabinet. The cabinet thus is the policy making part of the ministry. It is an informal body and its members are chosen by the Prime Minister himself.

15.3: THE COUNCIL OF MINISTERS

Article 75 makes the Council of Minister responsible to the House of People. This obliges the President to appoint the leader of the majority party as the Prime Minister and to appoint other ministers on his advice. Thus the Prime Minister is not the President's nominee but the nation's choice. The Prime Minister and the members of the council of ministers serve legally "during the pleasure of the President." But the President's pleasure is not personal but political. So long the Prime Minister retains his support in the House of People; the President cannot withdraw pleasure from the Prime Minister and the Council of Ministers. However, all the Council of Ministers do not belong to the same rank. They are classified under three ranks: (a) Cabinet Minister or 'Members of the Cabinet'; (b) Minister of State; and (c) Deputy Ministers. The Cabinet rank ministers are the heads of their departments. The Ministers of State are formally of Cabinet status and are paid the same salary as the Cabinet Ministers and they may hold independent charge of their department. The Deputy Ministers are paid lesser salary than the Cabinet rank ministers and have no separate charge of a department. Theoretically, the complete body of executives comprises the Council of Ministers, with the cabinet being but one of its three components. In reality, the Cabinet is more important, influential and powerful than the members of the cabinet. The Cabinet consists of a few important senior ministers who are in charge of departments like Finance, Defense, etc. It is described as 'a wheel within a wheel' and is thus the nucleus of the Council of Ministers. According to the 91st Constitutional Amendment (2003) 'the total number of ministers, including the prime Minister, in the Council of Ministers shall not exceed fifteen per cent of the total number of members of the House of the People'.

Another important feature about the Council of Ministers is the notion of collective responsibility. All members of the Cabinet must publicly support all governmental decisions made in Cabinet, even if they do not privately agree with them. This is because the Constitution

states that the Council of Ministers is collectively responsible to the Lok Sabha.

This means that they can stay in office only so long as they enjoy the confidence or pleasure of the Parliament. They are collectively responsible; they sink and swim together. Accordingly, if even one member of the Council of Ministers loses the confidence of the Lok Sabha, either by a vote of no-confidence, rejection of budgetary demands or defeat on any major matter, the entire council of ministers are voted out.

15.4: POWER AND FUNCTIONS THE COUNCIL OF MINISTERS

As the nation's chief executive body, the Council of Ministers performs the following principal functions.

15.4.1: Legislative Power- The Parliament of India is the supreme law making body. The Prime Minister and the cabinet have a firm control over the Parliamentary majority. Thus, the law making powers of the Parliament is also the powers of the Cabinet. The Council of Ministers has a big role to play in the making of the law of the state. Ministers are taken from among the members of the Legislature. They participate in the meeting of the Legislature. They introduce Bills, participate in the discussion and cast their vote. The meeting of the Legislature are summoned and adjourned on the advice of the cabinet. The inaugural address of the president is also prepared by the Council of Ministers. Most of the Bills are rejected and passed accordingly to the will of the Council of Ministers. Council of Ministers has the support of the party in majority in the parliament and this party is always at the beck and call of the cabinet. All the legislative bills are prepared and submitted by the Council of Ministers.

15.4.2: Executive Power- The ministry exercises all the executive powers of the president. All the departments of the Government are under the control of the Ministers and it is their responsibility to run the administration smoothly. The Council of Ministers lays down the policy of Government and in the light of that the department work is carried out. The Council of Ministers executes the decision taken by the Cabinet. They maintain order and peace in the state. All the big and important appointments are made on the advice of the Council of Ministers. It is in charge of administering all the subjects commended to the national government by the union list. Principal among these functions are providing for security and defence of the country, maintaining and conducting the nation's foreign affairs, maintaining the system of communication within the country, keeping the national economy in good health, preserving and

improving inter-state relations and a host of other things. Ministers are put in charge of administrative departments.

15.4.3: Financial Power- The budget of the states is prepared by the Council of Ministers. The Money Bills can only be introduced by theory ministers. There are the ministers who propose imposition of taxes or suggest reduction or abolition of taxes. The Prime Minister and the Cabinet also have an absolute control over the nation's finances. The annual budget is prepared at the instance of the cabinet. The proposals for taxes and expenditures are really made by the Cabinet, and only formally approved by theParliament.

15.4.4: Judicial Powers – The constitution of India is based on the model of Parliamentary sovereignty. The sovereignty of the Parliament derives the sovereignty of the cabinet. The judiciary is not beyond cabinet control. Judges of the Supreme Court and theHigh Courts are appointed and transferred by the President on Cabinet advice. Similarly the President's rights to grant pardon or reprieve or remission of sentencesare also the powers of the Cabinet. Thus, the Indian Cabinet, like its British counterpart enjoys powers of dictatorial dimensions.

15.4.5: Emergency Powers - The President exercises vast emergency powers. The threekinds of emergency such as National, State and financial emergency. In actual practice, all these powers are exercised by the Cabinet in the name of the President.

15.5: ROLE AND POSITION OF THE COUNCIL OF MINISTERS

The above mentioned powers of the Council of Ministers clearly indicate that the ministry is the real ruler of the state. It prevails in the making of laws enforcing them in and the runningof the administration of the state. However, during the time of emergency, the Cabinet loses its importance. When the proclamation of emergency is issued the President can take the administration into his own hands and in this situation the Governor acts as the agent of the President of India.

The union council of ministers is the central executive body of the government. They enjoy wide ranging functions which make their role critical and decisive. The entire administration and even the Parliament rotate around it and seek its leadership in resolving conflicts and managing the affairs of government. This role can be enumerated as follows:

- Formulation, execution, evaluation and revision of public policy in various spheres which the party in power seeks to progress and practice.
- Coordination among various ministries and other organs of the government which might indulge in conflicts, wastefulness, duplication of functions and empire building.
- Preparation and monitoring of the legislative agenda which translated the policies of the government in action through statutory enactments.
- Executive control over administration through appointments, rule-making powers and handling of crises and disasters – natural as well as political.
- Financial management through fiscal control and operation of funds like Consolidated Fund and Contingency Funds of India.
- Review the work of planning and Planning Commission.
- As a policy-formulating body the cabinet makes all kinds of policies, national, internal, external and international are thrashed out in the cabinet.
- A cabinet minister is in-charge of a specific ministry or department and it is his duty to administer the subjects included in his portfolio. In addition, he also shares a collective responsibility with other members of the cabinet for the overall policy for anything of high importance that is done in every branch of public business besides his own.
- The Parliament is the repository of legislative authority and can enact repeal and amend legislation but in reality, it is the cabinet which takes initiative in legislative matters and directs Parliament. It is the cabinet which prepares the legislative measures, introduces them and pilots them through the two houses of Parliament.
- The annual budget is prepared by the cabinet which determines what taxes are to be imposed and how the public revenues are to be spent. Administrative Functions:
- All major appointments reserved for action by the President under the Constitution, e.g., Attorney-General, members of the Union Public Service Commission, Chief Election Commissioner, Judges of the Supreme Court and High Courts, Governors of states, etc., are made by him on the recommendation of the Prime Minister and in consultation with the minister of the department concerned.
- The Secretary is responsible for carrying out the policies laid down by the cabinet and approved by the Parliament. He can instruct the departmental functionaries and

supervise their working. A minister is expected to face questions in the Parliament. He may or may not abide by the advice of his civil servants but he should see to it that the civil servant's freedom to advise is not curtailed.

15.6: SUMMARY

In a parliamentary form of government, the principle of collective responsibility is very important. It means that the council of ministers is collectively responsible to the parliament. The responsibility of the government is not of one minister but of all the ministers. If something goes wrong with the policy of only one minister, the whole council of ministers takes the responsibility. If the parliament rejects the policy of that minister all the ministers have to resign and not that particular minister alone. Remember all the ministers swim and sink together.

15.7: KEY TERMS

- **Minister:** A member of the Council of Ministers responsible for a specific government department or ministry. Ministers are appointed by the President on the advice of the Prime Minister.
- **Cabinet Minister:** A senior minister who heads a government department and is part of the Union Cabinet.
- **Minister of State (MoS):** A minister who assists a cabinet minister. There are two types of MoS – MoS (Independent Charge), who heads a ministry on his/her own, and MoS (Minister of State), who is attached to a specific ministry and works under the supervision of a cabinet minister.
- **Council of Ministers:** The entire body of ministers, including cabinet ministers and ministers of state, collectively responsible for the governance and administration of India.
- **Portfolio:** The specific area of responsibility assigned to a minister. Each minister oversees one or more portfolios related to government departments or ministries.
- **Collective Responsibility:** The principle that holds all members of the Council of Ministers collectively responsible for the decisions and actions of the government. This means that all

ministers must publicly support government policies, even if they personally disagree.

- **Council Meetings:** Regular meetings of the Council of Ministers chaired by the Prime Minister, where important policy decisions are discussed and decisions are taken.
- **Council Secretariat:** The administrative body that provides support to the Council of Ministers, facilitating meetings, drafting agendas, and ensuring the smooth functioning of the government.

15.8: SELF ASSESSMENT QUESTIONS

- The council of ministers are collectively responsible to the Parliament, discuss.
- Discuss the role of Council of Ministers as the chief advisor to the Prime Minister.
- Discuss the power and functions of the council of ministers.

15.9: REFERENCES

Narayan Jayaprakash (1975) 'Nation Building in India', Varanasi, NavachetanPrakashan.

S.C. Kashyap (1999) (Eds,) 'our Parliament', National Book trust

Khanna H. R (2008)'Making of Indian Constitution ', New Delhi, Easton BookCompany.

Sharma, R. N. (2000). Textbook of Educational Philosophy. New Delhi: Kanishka Publishers and Distributers.

UNIT-16: THE UNION TERRITORIES

Structure

- 16.1 Objectives
- 16.2 Introduction
- 16.3 Administration of the UTs
- 16.4 Constitutional Status
- 16.5 Summary
- 16.6 Key Terms
- 16.7 Self Assessment Questions
- 16.8 References

16.1: OBJECTIVES

After going through this unit, you will be able to know:

- Various Union Territories in India
- Administration of the Union Territories in India
- Constitutional Status to the Union Territories of the India

16.2: INTRODUCTION

India is a federal union. It comprises twenty-nine states and seven union territories. They are Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Lakshadweep, National Capital Territory of Delhi, Puducherry. Out of the above seven Union territories, National Capital Territory of Delhi and Puducherry have legislatures, Council of Ministers and Consolidated Funds. The rest of the Union territories are without legislature. The total area covered by the seven Union territories is 10,973 sq. km.

Schedule I Part II of the Constitution of India deals with the Union Territories of India. These territories are administered in accordance with the provisions of Article 239 to 241 of the Constitution of India. Under the Government of India Rules 1961, Ministry of Home Affairs is the nodal ministry for all matters of Union territories relating to Legislation, Finance and Budget, Services and appointment of Lt. Governors and Administrators. Every Union territory is administered by an Administrator appointed by the President under Article 239 of the Constitution of India. In Delhi, Puducherry and Andaman and Nicobar Islands, the Lt. Governors

are designated as Administrators. The Governor of Punjab is appointed as the Administrator of Chandigarh. In the other Union territories, senior IAS officers of the Arunachal Pradesh, Goa, Mizoram and Union territories (AGMUT) cadre are appointed as Administrators. However, the union territories of India have special rights and status due to their constitutional formation and development. The status of "Union Territory" may be assigned to an Indian sub-jurisdiction for reasons such as safeguarding the rights of indigenous cultures, averting political turmoil related to matters of governance, and so on. These union territories could be changed to states in the future for more efficient administrative control.

16.3: ADMINISTRATION OF THE UNION TERRITORIES

Union Territories (UTs) are also known as Federal territories governed by India's Union Government. India is considered to be the seventh-largest nation in the entire world. It consists of provinces, states, and union territories of India. In India, there are 28 states and 8 union territories. In terms of size, geography, and economy, the Union Territories of India are distinct from its states. These areas' residents also have unique traditions and customs. The eight union territories of India are Dadra and Nagar Haveli & Daman, Diu, Andaman and Nicobar Islands, Lakshadweep, National Capital Territory of Delhi, Puducherry, Chandigarh, Ladakh and Jammu, and Kashmir. A union territory is a type of administrative division in the Republic of India. Unlike the states of India, which have their own governments, union territories are federal territories governed, in part or in whole, by the Union Government of India. There are currently eight union territories in India: Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli and Daman and Diu, Delhi, Jammu and Kashmir, Ladakh, Lakshadweep and Puducherry.

The Parliament of India can pass a law to amend the constitution and provide a Legislature with elected Members and a Chief Minister for a union territory, as it has done for Delhi, Jammu and Kashmir and Puducherry. Generally, the President of India appoints an administrator or lieutenant governor for each UT.

Delhi, Puducherry, Jammu and Kashmir operate differently from the other five. They were given partial statehood and Delhi was redefined as the [National Capital Territory] (NCT) and incorporated into a larger area known as the National Capital Region (NCR). Delhi, Puducherry, Jammu and Kashmir have an elected legislative assembly and an executive council of ministers with a partially state-like function.

Due to the existence of union territories, many critics have resolved India into a semi-federal nation, as the central and state governments each have their domains and territories of legislation. Union territories of India have special rights and status due to their constitutional formation and development. The status of "union territory" may be assigned to an Indian sub-jurisdiction for reasons such as safeguarding the rights of indigenous cultures, averting political turmoil related to matters of governance, and so on. These union territories could be changed to states in the future for more efficient administrative control.

The Constitution does not stipulate how tax revenue is to be devolved to the union territories, unlike for the states. The fund's devolution to union territories by the union government has no criteria where all the revenue goes to the union government. Some union territories are provided more funds, while others are given less, arbitrarily by the union government. As union territories are directly ruled by the union government, some union territories get more funds from the union government than entitled on per capita and backwardness basis when compared to states.

After the introduction of GST, UT-GST is applicable in union territories that do not have a legislative assembly. UT-GST is levied at par with the applicable state GST in the rest of the country which would eliminate the previous lower taxation in the union territories.

16.4: CONSTITUTIONAL STATUS

Article 1 (1) of the Indian constitution says that India shall be a "Union of States", which is elaborated under Parts V (The Union) and VI (The States) of the constitution. Article 1 (3) says the territory of India comprises the territories of the states, the union territories and other territories that may be acquired. The concept of union territories was not in the original version of the constitution, but was added by the Constitution (Seventh Amendment) Act, 1956. Article 366(30) also defines Union territory as any union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule. In the constitution wherever it refers to Territories of India, it is applicable to the whole country including union territories. Where it refers to only India, it applies to all states only but not to union territories. Thus, citizenship (part II), fundamental rights (part III), Directive Principles of State Policy (part IV), Judiciary role, the Union Territories (part VIII), Article 245, etc. apply to union territories as it refers specifically to Territories of India. The executive power of the Union (i.e. union of states only) rests with President of India. The

President of India is also the chief administrator of union territories as per Article 239. The union public service commission's role does not apply to all territories of India as it refers to India only in Part XIV.

The constitutional status of a union territory is similar to a state under the perennial president's rule per Article 356 subject to specific exemptions to a few union territories with legislative assembly. As Per Article 240 (1), supreme power is accorded to the president in regulating the affairs of all the union territories except Chandigarh, NCT and Puducherry, including powers to override the laws made by Parliament and the constitution of India. Article 240 (2) allows implementing tax haven laws in these union territories to attract foreign capital and investments into India instead of depending on foreign tax haven countries.

The difference between states as listed in the First Schedule of the constitution and union territories with legislative assembly is that states were given autonomous powers as provided in the constitution without any possible interference by the parliament whereas UTs with legislative assembly (Part VIII) has similar powers but parliament is empowered to modify or repeal or suspend the laws made by a union territory (ultimate authority by the parliament unlike the independent nature of the states).

Three of the union territories have representation in the upper house of the Indian Parliament, the Rajya Sabha: Delhi, Jammu and Kashmir, and Puducherry. Puducherry, Jammu and Kashmir and NCT of Delhi are the only 3 Union Territories that are exceptional among union territories in that each has its own locally elected legislative assembly and have a Chief Minister.

16.5: SUMMARY

There are seven islands in India. They are Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Lakshadweep, National Capital Territory of Delhi, Puducherry. The Government of India has recently introduced a Police Modernisation Scheme for the Union Territories. This was introduced on the basis of the recommendations of the Parliamentary Standing Committee for the Ministry of Home Affairs. The Scheme will focus attention on upgradation of infrastructural facilities, housing, buildings for police stations, mobility, communication, equipment and forensic laboratories. A provision of Rs.884 crore has been made for a period of five years starting from the year 2006-07. A provision of Rs.40 crore was released to the Union territories, including Delhi Police, in 2006-07.

16.6: KEY TERMS

- **Administrator:** Each Union Territory is administered by a Lieutenant Governor (LG) or an Administrator appointed by the President of India.
- **Legislature:** Some Union Territories have a legislative assembly while others are administered directly by the Union government without a legislature. Those with legislatures have limited powers compared to states.
- **Union Territory Council:** In some Union Territories, there exists a Union Territory Council which functions similarly to a legislative assembly but with limited powers. This council consists of members elected from different constituencies.
- **Union Territory Police:** Law enforcement in Union Territories is managed by the Union Territory Police force.
- **Capital:** Each Union Territory has a designated capital city where the administrative headquarters are located. For example, New Delhi is the capital of the Union Territory of Delhi.
- **Administrator's Rule:** In the absence of an elected government, the Union Territory may come under the direct rule of the Administrator, commonly referred to as Administrator's Rule.
- **Special Status:** Some Union Territories may have special provisions or statuses granted to them based on historical, cultural, or geographical reasons. For example, Ladakh and Jammu & Kashmir were granted Union Territory status with special provisions in 2019.
- **Delimitation:** The process of defining the boundaries and constituencies within a Union Territory, particularly important for those with legislative assemblies or councils.

16.7: SELF ASSESSMENT QUESTIONS

- What are the Union Territories of the India?
- Discuss the composition and Administration of the UTs of India.
- What is the Constitutional Status of the UTs of India.

16.8: REFERENCES

Narayan Jayaprakash (1975) 'Nation Building in India', Varanasi, NavachetanPrakashan.

S.C. Kashyap (1999) (Eds,) ' our Parliament' , National Book trust

Khanna H. R (2008)'Making of Indian Constitution ', New Delhi, Easton BookCompany.

Sharma, R. N. (2000). Textbook of Educational Philosophy. New Delhi: Kanishka Publishers and Distributers.

Talesra, H.(2002). Sociological Foundation of Education. New Delhi: Kenosha Publishers Distributors

Ghai. K.K. (2003) 'Indian Government and Politics', Kalyani Publisher, New Delhi.

Yogesh, Atal (1981) 'Building a Nation(essays on India)', Abhinav Publisher, NewDelhi