

Indian Polity and Governance

The Constitution of India was drawn up by a Constituent Assembly. The Assembly met for the first time on December 9, 1946. It was not a truly representative body as its members were indirectly elected by those who were themselves elected on a narrow franchise. The Assembly constituted a Drafting Committee, under the chairmanship of Dr. B. R. Ambedkar, to frame a constitution for India. Indian Constitution was adopted on November 26, 1949 and it came into effect on January 26, 1950. It is the longest written Constitution in the world containing 395 Articles, 22 Parts and 12 Schedules. During 60 years of its existence, Indian Constitution has undergone several amendments and demand to review it completely has also been raised. But, in spite of all these changes, the 'basic structure' of the Indian Constitution remains intact.

Development of the Indian Constitution British rule in India ended on 15th August 1947 and India emerged as an independent and sovereign republic. Certain features of Indian Polity or Constitution can be understood better

Acts that facilitated constitutional development during British rule

- Regulating Act, 1773
- Amending Act, 1781
- Pitt's India Act, 1784
- Act of 1786
- Charter Act, 1793
- Charter Act, 1813
- Charter Act, 1833
- Charter Act, 1853
- Government of India Act, 1858
- Indian Councils Act, 1861
- Indian Councils Act, 1892
- Indian Councils Act, 1909
- Government of India Act, 1919
- Government of India Act, 1935
- Indian Independence Act, 1947

with a brief review of the constitutional set up in the preceding periods. As modern political institutions originated and developed in India mainly during the British rule, the origin and growth of the Indian Constitution has its roots in the British period of Indian history. The British came to India in the 17th century as traders. From 1773 onwards, various Acts were passed by the British Government for the governance of India.

Indian Polity and Governance

MAIN PROVISIONS OF IMPORTANT ACTS PASSED IN BRITISH INDIA

Regulating Act, 1773

- (i) First attempt by the British Parliament to regulate the affairs of the East India Company;
- (ii) Centralised the administration of Company's territories in India;
- (iii) Governor of Bengal was designated as the Governor General of Bengal and Council of 4 members was appointed for Bengal;
- (iv) Bombay and Madras Presidencies were subordinated to Bengal Presidency;
- (v) Supreme Court was set up at Calcutta; and
- (viii) Company's servants were forbidden from accepting bribes or doing private trade.

Amending Act, 1781:

It settled the question of jurisdiction of the Supreme Court

Pitt's India Act, 1784

- (i) It was the first effective substitution of Parliamentary Control over East India Company as it transferred the Indian affairs of the Company into the hands of the British Government;
- (ii) Abolished dual system of governance.
- (iii) Board of Control consisting of 6 Parliamentary Commissioners was constituted to control civil, military and revenue affairs of India;
- (iv) Court of Directors had to comply with the orders and directions of the Board;
- (v) Strength of Governor-General's Council reduced to 3;
- (vi) Control of Governor-General-in-Council on Bombay and Madras Presidency was enlarged and made more effective.

Act of 1786:

Governor-General became the Commander-in-Chief of Indian Forces.

Charter Act, 1793

- (i) East India Company's monopoly over trade was extended for 20 more years
- (ii) Expenses and salaries of the Board of Control to be charged on Indian Revenue; and
- (iii) Governor-General could over-ride his Council.

Indian Polity and Governance

Charter Act, 1813

- (i) East India Company was deprived of its trade monopoly in India except in tea and opium trade with China;
- (ii) All Englishmen could trade with India subject to certain restrictions;
- (iii) Rules and procedures were made for use of Indian revenue; and
- (iv) A sum of Rs. 1 lakh was earmarked annually for education.

Charter Act, 1833

- (i) Governor-General of Bengal became the Governor-General of India;
- (ii) Company was asked to close its business at the earliest;
- (iii) It put an end on Company's trade monopoly even in tea and opium with China;
- (iv) Government of Madras and Bombay was deprived of legislative powers;
- (v) A fourth member (Law Member) was added to the Council of Governor-General;
- (vi) Government Service was thrown open to the people of India;
- (vii) All laws made by Governor General-in- Council, henceforth came to be known as Acts and not regulations;
- (viii) Provision was made for appointment of Law Commission for codification of laws; and
- (ix) Slavery was abolished.

Charter Act, 1853

- (i) For the first time a separate legislative machinery consisting of 12-member Legislative Council was created;
- (ii) Law Member was made a full member of the Executive Council of the Governor- General. Six additional members were added for legislative purposes; and
- (iii) Recruitment of Civil Services was based on open annual competitive examination.

Government of India Act, 1858

- (i) Rule of company in India ended and that of the Crown began;
- (ii) System of double government ended as both the Court of Directors as well as the Board of Control was abolished;

Indian Polity and Governance

(iii) Secretary of State for India was appointed. He was assisted by a 15-member Council (India Council). He was to exercise the powers of the Crown;

(iv) Secretary of State was to be a member of the British Cabinet;

(v) Secretary of State governed India through the Governor General;

(vi) Governor-General was to be called the Viceroy and was the direct representative of the Crown in India; and

(vii) A unitary and highly-centralised administrative structure was created.

WHAT DO YOU UNDERSTAND BY THE TERMS

'DIARCHY' AND 'DEVOLUTION RULES'?

In Indian administration, these terms were used for the first time in the Government of India Act, 1919 (Montague-Chelmsford Reforms)

Diarchy: It meant Dual Government. The Provincial subjects of administration were to be divided into two categories -- "Transferred" and "Reserved". The transferred subjects were to be administered by the Governor with the aid of Ministers responsible to the Legislative Council. The reserved subjects were to be administered by the Governor and his Executive Council without any responsibility towards the Legislature.

Devolution Rules: Through these Rules, subjects of administration were divided into two categories -- "Central" and "Provincial". Subjects of all-India importance (like Railways, Finance) were brought under the category of Central, while matters relating to the administration of the provinces were classified as provincial.

Indian Councils Act, 1861

(i) Policy of Association of Indians in legislation started;

(ii) Portfolio system was introduced;

(iii) For legislation; Executive Council of Viceroy was enlarged by 6 to 12 members composed of half non-official members. Thus foundation of Indian Legislature was laid down;

(iv) Legislative powers of the Presidency Governments, abolished in 1833, were restored; and

(v) Viceroy could issue ordinances in case of emergency.

Indian Councils Act, 1892:

It was the beginning of representative system in India.

Indian Polity and Governance

(i) Though the majority of official members was retained, the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils.

(ii) Non-official members of the Provincial Council were to be nominated by certain local bodies such as universities, district boards, municipalities, etc.; and

(iii) Councils were given the power to discuss budget and to question the Executive.

Indian Councils Act, 1909:

Also known as the Morley-Minto Reforms

(i) Introduced, for the first time, an element of elections to the Legislative Councils;

(ii) In Provincial Legislative Councils, nonofficial members were to be in majority; and

(iii) This Act introduced the system of separate electorates (for Muslims).

Government of India Act, 1919:

Popularly known as Montague-Chelmsford Reforms

(i) The idea of "Responsible Government" was stressed;

(ii) Office of the High Commissioner of India was created in London;

(iii) Indian Legislature became "bicameral" for the first time;

(iv) Communal representation was extended to Sikhs;

(v) Secretary of State for India was now to be paid from British revenue; and

(vi) Diarchy was introduced in provinces by dividing subjects of administration between official members and elected members.

Government of India Act, 1935

(i) It provided for the establishment of an All- India Federation consisting of the British Provinces and the Princely States. The joining of Princely States was voluntary. The Federation never came into being.

(ii) Diarchy was introduced at the Centre. Diarchy in Provinces was replaced by 'Provincial Autonomy' and they were granted separate legal identity. Responsible governments were set up in States under Prime (Chief) Ministers elected by Legislatures;

(iii) Governor was given special responsibilities (or discretion) in several matters;

SOURCES OF INDIAN

CONSTITUTION

1. Seminal Sources:

- Constituent Assembly Debates
- Reports of Committees of the Constituent Assembly
- Nehru Report
- Lahore Session of the Indian National Congress
- Objectives Resolution
- Government of India Act, 1935
- Impact of various Constitutions

2. Developmental Sources:

- Amendments of the Constitution
- Judicial Decisions
- Parliamentary Statutes
- Commentaries of Constitutional Experts
- Rules, Regulations, Ordinances, etc.
- Constitutional Practices

(iv) Three-fold division of powers was done- Federal, Provincial and Concurrent Lists. Residuary powers were to be with the Governor-General;

(v) The India Council of Secretary of State for India was abolished;

(vi) Principle of separate electorate was extended further to include Anglo-Indians, Indian Christians and Europeans also; and

(vii) A Federal Court was to be constituted with a Chief Justice and 10 other Judges. This was set up in 1937.

Indian Independence Act, 1947:

This Act did not lay down any provision for the administration of India but merely stated that from the "appointed date (Aug. 15, 1947), in place of India as defined in the Government of India Act, 1935, there would be two independent Dominions to be known as "India" and Pakistan", and the Constituent Assembly of each Dominion would have unlimited powers to frame and adopt any Constitution, and to repeal any Act of the British Parliament."

SOURCES OF INDIAN CONSTITUTION

The sources of Indian Constitution include the imaginative aspirations of the nationalist leaders, the actual working of the Government of India Act, 1935, and the experience gained from the actual working of some of the Constitutions of important countries of the world. Moreover, its sources include

Indian Polity and Governance

not only the sources upon which the founding fathers of our Constitution drew but also the developmental sources such as the judicial decisions, constitutional amendments, constitutional practices and so on. The sources of the Indian Constitution can thus be divided into the following two categories:

1. Seminal Sources

Constituent Assembly Debates: Constituent Assembly was constituted under the Cabinet Mission Plan to frame the Indian Constitution. Its members included distinguished lawyers, intellectuals and patriots who took two years, eleven months and eighteen days to prepare the Constitution. During the course of this period, debates on all the aspects of the Constitution were held in a free and fair manner. These debates produced an intelligent opinion in the light of which every word of the Constitution was screened carefully and intelligently.

Reports of Committees of the Constituent Assembly: The Constituent Assembly appointed various types of committees to make reports on different aspects. Some of the most important committees included Union Powers Committees, Union Constitution Committee, Provincial Constitution Committee, etc. Advisory Committed on the rights of citizens, minorities and tribal

ON WHAT POINTS THE INDIAN CONSTITUTION

IS INFLUENCED BY THE ACT OF 1935?

The Indian Constitution has been influenced by the Government of India Act, 1935 on the following points:

- (i) Federal set-up;
- (ii) Distribution of powers in three lists;
- (iii) Provincial autonomy;
- (iv) Office of the Governor;
- (v) Bicameral legislature;
- (vi) President's or Governor's power to issue ordinances; and
- (vii) Structure of the Supreme Court.

and excluded areas ad hoc Committee regarding the Supreme Court Committee on financial relations between the Union and States. The reports of these committees were thoroughly discussed in the Drafting Committee. It was on the basis of the reports made by such committees that the draft of the Constitution was prepared.

Nehru Report: The British Government had announced the formation of the Simon Commission for making a report on the working of the Government of India Act, 1919 and suggest constitutional measures required for the efficient administration of Indian. The Congress decided to boycott this Commission because no Indian was taken on it. Instead it announced the formation of a committee

Indian Polity and Governance

under the leadership of Motilal Nehru to make recommendations about the desired constitutional set up for India. The Committee made certain recommendations which are known as the Nehru Report.

The main Clauses of this Report were :

- (i) grant of Empire;
- (ii) Creation of a federal structure for India
- (iii) bicameralism at the Centre;
- (iv) Parliamentary and responsible Government in Provinces;
- (v) guarantee of Fundamental Right; and
- (vi) establishment of Supreme Court as the final court of appeal.

Lahore Session of the Congress: The Congress at its Lahore session held in 1929 resolved to make India a Republic.

Objectives Resolution: Jawharlal Lal Nehru moved in the Constituent Assembly the Objectives Resolution embodying the aspirations of nationalist India. The Objectives Resolution clearly spelled out making India a sovereign republic where the ultimate supreme power should be vested with the people. It stated that the people would get social, economic and political justice, liberties of all types and equality. Upliftment of the backward people and areas would be ensured and the structure of the country would be federal.

Government of India Act 1935: At the time the Constitution for free India was being framed, India was governed by the Government of India Act, 1935. The fathers of the Indian Constitution drew heavily on the experience and the provisions of this Act. According to Jennings - "The Constitution derives directly from the Government of India Act, 1935 from which, in fact, many of its provision are copied textually."

Impact of Various Constitutions: The founding fathers of the Indian Constitution were wise enough to borrow from the experience gained in the working of various other Constitutions. It is on this account that the Constitution of India is regarded as a bag of borrowing from the various working Constitutions.

(1) British Constitution: The British Constitution (Mother of all Constitution) had its

impact in the following respects;

- (i) Constitutional head of State
- (ii) Lower House of Parliament (Lok Sabha) is more powerful than the Upper House;
- (iii) Responsibility of Council of Ministers towards Parliament;

Indian Polity and Governance

(iv) Parliamentary system of Government ; and

(v) Prevalence of Rule of Law.

(2) US Constitution: The Constitution of the United States had its impact in following respects:

(i) Preamble of the Constitution

(ii) Provision of Fundamental Rights;

(iii) Functions of the Vice-President.

(iv) Amendment of the Constitution;

(v) Nature and functions of the Supreme Court; and

(vi) Independence of Judiciary.

(3) Australian Constitution: Australian Constitution gave us a long list of concurrent powers and the procedure for solving deadlock over concurrent subjects between the Centre and the States.

(4) Irish Constitution: The Irish Constitution gave us the Directive Principles of State Policy and the method of nominating members of the Rajya Sabha.

(5) Weimer Constitution of Germany: The Weimer Constitution of Germany had its impact upon the powers of the President as well as on provisions related to Emergency.

(6) Canadian Constitution: Indian Constitution borrowed the provisions of a strong nation; the name of Union of India; and vesting residuary powers with the Union; from Canada.

(7) South African Constitution: The procedure of amendment with a two-thirds majority in Parliament and the election of the members of the Rajya Sabha on the basis of proportional representation by the State Legislatures have been borrowed from the Constitution of South Africa.

2. Development Sources

Indian Constitution is not a static document. It has grown with the changing needs. Thus amendments, judicial decisions, political practices, parliamentary statutes, rules, regulations and ordinances are the developmental sources of the Constitution.

Amendments of the Constitution: During the course of 60 years the Constitution has been amended about 94 times and a few other amendments are in the pipeline. In this way, the present shape of the Constitution is quite different from the original document. The 42nd Amendment made it clear that the Indian Constitution is more flexible than rigid. This Amendment is often termed as 'the mini Constitution of India' due to enormous changes it effected to the Indian Constitution.

Indian Polity and Governance

Judicial Decisions: The judicial decisions given by the Supreme Court on important issues have added new dimensions to the Constitution. It is in the light of such decisions that further constitutional amendments are made in the Constitution. Some of the most important judicial decisions are:

- (i) Gopalan vs. State of Madras;
- (ii) State of Madras vs. Champakam;
- (iii) Golak Nath vs. State of Punjab; and
- (iv) Keshavanand Bharti vs. Kerala State.

Parliamentary Statutes: Parliament has also made various statutes for furnishing details of the various Articles contained in the Constitution. It is the Constitution which itself empowers the Parliament to enact laws on certain Articles for details. These statutes are considered as constitutional laws. Without their existence, a detailed study of the Constitution is not possible.

Commentaries of Constitutional Experts: While interpreting the Constitution, the views of the distinguished constitutional experts, whether Indian or foreign, enjoy special importance. The most notable constitutional experts are Jennings, Gledhill, Alexandrowit, D.D. Basu, Palkhiwala, V.N. Shukla, etc. Their views are not given legal recognition but due regard is paid to them by the judges. Moreover, true significance of any provision of the Constitution can be understood in the light of their views.

Rules, Regulations, Ordinances, etc.: Each House of the Parliament is empowered to make rules for its efficient working. The President has also got the right to make rules for fixing the constitutional subjects. President of India is also empowered to make rules with respect to the condition of services of the members of the Union Public Service Commission. He can also frame rules to establish peace and efficient administration of the Union Territories. Above all, the President has also the power to issue ordinances when Parliament is not in session. All these rules, regulations and ordinances serve as sources of the Constitution.

Constitutional Practices: Although the Constitution of India is the most detailed in the world, still certain practices independent of the Constitution have developed in India.

A few examples of such a practice can be enumerated as follows:

- The Central Government takes before hand the advice of the State Government in the appointment of its Governor.
- Governor can be recalled by the Central Government on the advice of the State Government concerned.
- Governor should not belong to the state to which he is appointed.
- One of the judges of the Supreme Court must belong to the minority community.
- The senior most judge of the Supreme Court should be appointed as the Chief Justice of India.
- The leader of the majority party in Lok sabha is appointed as the Prime Minister.

FRAMING OF INDIAN CONSTITUTION

Indian Polity and Governance

It was under the Cabinet Mission Plan of 1946 that the Constituent Assembly was constituted to frame a Constitution for India. The Constituent Assembly, which had been elected for undivided India and held its first sitting on Dec. 9, 1946, reassembled on Aug. 14, 1947, as the sovereign Constituent Assembly for the Dominion of India. As a result of the partition under the Plan of June 3, 1947, a separate Constituent Assembly was set up for Pakistan. The representatives of Bengal, Punjab, Sind, North-Western Frontier Province, Baluchistan and the Sylhet district of Assam (which had joined Pakistan by a referendum) ceased to be members of the Constituent Assembly of India, and there was a fresh election in the new Provinces of West Bengal and East Punjab. (Hence, when the Constituent Assembly reassembled on Oct. 31, 1947) the membership of the House was reduced to 299. Of these 284 were actually present on Nov. 26, 1949, and appended their signatures to the Constitution that was finally passed. President of the Constitution Assembly was Dr. Rajendra Prasad.

MEMBERS OF THE

DRAFTING COMMITTEE

1. Dr. B.R.Ambedkar (Chairman)
2. N. Gopalaswamy Ayyanagar
3. Alladi Krishnaswamy Ayyar
4. K.M. Munshi
5. Mohd. Saadullah,
6. B.L. Mitter (later replaced by N. Madhava Rao)
7. Dr. D.P.Khaitan (replaced on death by T.T. Krishnamachari)

Acceptance of the Constitution: On Aug. 29, 1947, the Constituent Assembly appointed a Drafting Committee under the chairmanship of Dr. Ambedkar. This committee came out with a draft Constitution of India in Feb. 1948. The Constituent Assembly next met in Nov. 1948 to consider the provisions of the Draft Committee, clause by clause. The second reading of the clauses was completed by Oct. 17, 1949, and the third reading on Nov. 26, 1949, when the Constitution received the signature of the President of the Assembly and was declared as passed. While certain provisions of the constitution - those relating to citizenship, elections, provisional Parliament, etc. were given immediate effect, the rest of the Constitution came into force on Jan. 26, 1950 because the Congress had been celebrating Independence Day on January 26 every year since 1930. The Constituent Assembly itself became the first provisional parliament. The first elections to parliament were held in 1952.

HOW THE CONSTITUENT ASSEMBLY OF INDIA

WAS CONSTITUTED?

The Constituent Assembly of India was elected through indirect election by the members of the Provincial Legislative Assembly (Lower House only), according to the scheme recommended by the Cabinet Delegation. The essentials of this scheme were as follows:

(i) The Provinces elected 292 members; while the Indian States were allotted a maximum of 93 seats. (ii) The seats in each province were distributed among the three main committees Muslim, Sikh, and General, in proportion to their respective population.

(iii) Members of each community in the Provincial Legislative Assembly elected their own representatives by the method of proportional representation with single transferable vote.

(iv) The method of selection in the case of representatives of Indian States was to be determined by nomination.

PHILOSOPHY OF INDIAN CONSTITUTION

On January 22, 1947 the Constituent Assembly adopted the Objectives Resolution drafted by Jawaharlal Nehru. The Objective Resolution contained the fundamental propositions of the Constitution and set forth the political ideas that should guide its deliberations. The main principles of the resolution were:

1. India is to be an independent, sovereign republic.
2. It is to be a democratic union with an equal level of self-government in all the constituent parts;
3. All power and the authority of the Union Government and governments of the constituent parts is derived from the people;
4. The Constitution must strive to obtain and guarantee to the people justice based upon social, economic and political equality of opportunity and equality before law;
5. There should be freedom of thought, expression, belief, faith, worship, vocation, association and action;
6. The Constitution must provide just rights for minorities, and people from backward and tribal areas, etc. so that they can be equal participants of social, economic and political justice
7. The Constitution should secure for India, a due place in the community of nations.

Indian Polity and Governance

The philosophy of a Constitution consists of the ideals for which the constitution stands and the policies which the Constitution enjoins upon the rulers of the Community to follow. The Constitution of India reflects the impact of our ideology in the following spheres:

(i) Democracy: We have borrowed the modern form of democracy from the West. Under this system, democracy means the periodic responsibilities of the Government to go to the people. For this purpose; elections have been held every five-year to elect a Government by the people. However, democracy covers even the economic and social aspects of life. This aspect of democracy is well reflected in the Directive Principles of State Policy. They are aimed at human welfare, co-operation, international brotherhood and so on.

(ii) Secularism: Secularism is the hallmark of the Indian Constitution. People professing different religions have the freedom of religious worship of their own choice. All the religions have been treated alike. The fact appreciated in India was that all religions love humanity and uphold truth. All the social reformers and political leaders of modern Indian have advocated religious tolerance, religious freedom and equal respect for all the religions. This very principle has been adopted in the Constitution of India where all religions enjoy equal respect. However, the word 'secularism' was nowhere mentioned in the Constitution as adopted in 1949. The word 'secularism' has now been added to the Preamble to the Constitution through the 42nd Amendment passed in 1976.

(iii) Socialism: Socialism is not new to India. Vedanta philosophy has socialism in it. The national struggle for freedom had this aim also in view. Jawaharlal Nehru referred to himself as a socialist and republican. Almost all the parties in India profess to promote democratic socialism. These principles are included in the Directive Principles of State Policy. However, to lay emphasis on this aspect, the word 'socialism' was specifically added to the Preamble to the Constitution through the 42nd Amendment.

(iv) Decentralization: India has always practiced decentralisation through the Panchayat system. Mahatma Gandhi also advocated decentralisation. It is on this account that he is regarded as a philosophical anarchist. We have introduced the Panchayati Raj system in India to achieve the objective of decentralisation. The concept of cottage industries as laid down in the Directive Principles of State Policy also refers to decentralisation.

(v) Mixed Economy: Co-existence is a salient feature of our ideology. Co-existence has manifested itself through a mixed system of economy. In this system we have allowed both the private and public sectors of economy to work simultaneously. Large scale and essential industries have been put in the public sector.

(vi) Humanism: Humanism is a salient feature of Indian ideology. Indian ideology regards the whole humanity as one big family. It believes in resolving international disputes through mutual negotiations. This is what we find in the Directive Principles of State Policy.

(vii) Spiritualism: Spiritualism refers to what inspires and promotes the people to be their best selves. It creates a feeling of sacrifice, peace, non-violence, tolerance and cooperation. It is the basic feature of

Indian Polity and Governance

Indian philosophy. We have tried to achieve this through equality in all spheres of life. This leads to social welfare.

(viii) Liberalism: Liberalism does not refer to the Western concept of liberalism. It refers, in the Indian context, to self government, secularism, nationalism, economic reforms, constitutional approach, and representative institutions etc. all these concepts were advocated by the modern Indian leaders. All these elements have been incorporated in the Indian Constitution by virtue of which we want to establish a Welfare State in India. Everything has to be achieved through constitutional means.

(ix) Sarvodaya: Sarvodaya refers to the welfare of all. It is different from the welfare of the majority. It seeks to achieve the welfare of all without exception. It is referred to as Ram Rajya. The concept of Sarvodaya was developed by Mahatma Gandhi, Acharya Vinoba Bhave and J.. Narayan under which the material, spiritual, moral and mental development of everyone is sought to be achieved. The Preamble to the Indian Constitution and the Directive Principles of State Policy represent this ideal.

(x) Gandhism: Gandhism represents an ethical and moral India. Gandhi set a new example of fighting foreign rule through non-violence. He taught the importance of non-violence and truth. He advocated untouchability, cottage industry, prohibition, adult education and the uplift of villages. He wanted a society free of exploitation and decentralized in character. All these Gandhian principles have found an honourable place in the Constitution of India.

WHAT IS THE DIFFERENCE BETWEEN 'INDIAN' AND 'AMERICAN' JUDICIAL REVIEW?

Based on the principle of Judicial Review, the American Supreme Court has acquired the power to so interpret the Constitution that it has come to be known as the third chamber of the Constitution, whereas, in India the Supreme Court does not enjoy the power of adding to the Constitution but it can only strike down any act or any legislation on the ground that it is contrary to the basic framework of the Constitution or violative of the procedure established by law.

As the Indian Constitution stands today, the judiciary in India has the right to review legislative enactments and executive acts provided they are brought before the courts except for a few specific acts like the discretionary powers of the governors, the privileges and immunities of the members of the legislatures, etc. In pronouncing its verdict on legislative acts and executive actions the Supreme Court primarily bases itself on what is known as the basic framework of the Constitution—a phrase which has never been spelt out so that others could know the ingredients that go into the making of the basic frame work of the Constitution. However, it is clear from the constitution as it is today that the Parliament has the right to amend the constitution as long as it does not erode the basic frame work of the constitution. Thus, making additions or deleting some Articles of the constitution is the power of the Parliament but not that of the Supreme Court as in the case of the U.S.

NATURE AND FEATURES OF INDIAN CONSTITUTION

Indian Polity and Governance

Every constitution aims to build up a governmental structure based upon certain basic principles. And these principles are more or less well established. Although some of these principles are common to most constitution, there are others which vary from constitution to constitution. The constitution of India is not an exception to this rule and it has its own basic principles. India, a union of states, is a sovereign, socialist, secular, democratic, republic. The constitution of a country is the basic or supreme law. Indian constitution is federal in structure but with unitary features. It is a lengthy and legalistic document, but reasonably flexible. Its major features include.

Popular Sovereignty

Indian Constitution proclaims the sovereignty of the people in its Preamble itself. The idea is reaffirmed in several places in the Constitution, particularly in the chapter dealing with elections. Article 326 declares that "the elections to the House of people and the Legislative Assembly of every state shall be on the basis of adult suffrage". As a result, the Governments at the Centre and in the States derive their authority from the people who choose their representatives for Parliament and the State Legislatures at regular intervals. Further, those who wield the executive power of the government are responsible to the legislature 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. This is the principle of popular sovereignty

Rule of Law

According to this axiom, people are ruled by law but not by men, that is, the basic truism that no man is infallible. The axiom is vital to democracy. More important is the inherent meaning that the 'law' is the sovereign in democracy. The chief ingredient of law is custom which is nothing, but the habitual practices and beliefs of common people over long years. In the

WHY THE CONSTITUENT ASSEMBLY ADOPTED

THE PRINCIPLE OF ADULT FRANCHISE?

In spite of the ignorance and illiteracy of large sections of the Indian people, the constitution Assembly adopted the principle of adult franchise with faith in the common man and the ultimate success of democratic rule. The Assembly was of the opinion that democratic government on the basis of adult suffrage would alone "bring enlightenment and promote well-being." All that the Constitution provides is that every adult citizen of India shall have right to vote. This becomes significant when viewed in the background that for quite a long time, the women in many parts of Europe did not enjoy any such right. In addition, under the Government of India Act, 1935, hardly 15 per cent Indian citizens had this right. According to some thinkers this is the boldest step which has been taken by our constitution fathers. This shows that they had full faith in the capacity of the people of India to use their right properly. Some critics of course felt that it was premature to give to the people of India this right when there was poverty and illiteracy and the masses were yet politically not mature. But constitution fathers took a bold step and resolved to go ahead and wanted to make a beginning in this direction right earnestly.

final analysis, rule of law means the sovereignty of the common man's collective wisdom. Apart from this crucial meaning, rule of law means a few more things like

- (a) there is no room for arbitrariness;
- (b) each individual enjoys some fundamental rights; and
- (c) the highest judiciary is the final authority in maintaining the sanctity of the law of the land. It is this spirit that make Article 14 (all are equal before law and all enjoy equal protection of laws) meaningful, like providing legal assistance to the needy, promotion of Lok Adalats and the venture of the Supreme court known as "public interest litigation". Also, as per today's law of the land, any litigant can appeal to the presiding judicial authority to argue the case by himself or seek legal assistance with the help of the judiciary.

Judicial Review

The right of the judiciary to review executive acts and legal enactments when they are not in conformity with the established law of the land and its procedures is known as judicial review.

Socialism

Increasing intervention as well as participation by the State in the economic field has been a distinguishing feature of the twentieth century. There is hardly any country today in which the State is not actively engaged in a variety of economic activities. In varying degrees, governments everywhere are involved in economic, industrial, commercial management. This is broadly described as the influence of socialist ideas on State activity. Even before the adoption of a new Constitution, the Government of

Indian Polity and Governance

independent India had made clear its policy to enter the economic field in a very active manner. The Industrial Policy Resolution of 1948 gives ample evidence of this. It envisaged a greater role for the State in the economic development of the country. Certain industries such as atomic energy, manufacturing of arms and ammunition were declared to be the sole monopoly of the State. The right of the State to nationalise any major industry and bring it within the public sector was also clearly stated. The Directive Principles of State Policy, however, unmistakably set out the socialist objective of the Constitution; although one might point out that they do not go far enough to establish a full fledged socialist order.

Socialism in Constitutional Amendments

Successive amendments to the Constitution of India clearly show that the direction is more towards the realisation of socialist than the democratic ideal. The constitution was amended several times with a view to realising this objective. Among those amendments, special mention may be made of the First, Fourth, Seventeenth, Twenty fifth, Twenty ninth, Thirty fourth and Forty second Amendments. Almost all of these gave precedent to the Directive Principles over Fundamental Rights in the implementation of certain legislative enactments. The Forty second Amendment (1976) went a step further and amended the permeable of the

WHAT ARE THE FEATURES OF A SECULAR DEMOCRACY?

The distinguishing features of a secular democracy as contemplated by the Constitution of India are:

- (i) The State will not identify itself with or be controlled by any religion
- (ii) While the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an antagonist or an atheist), it will not accord an preferential treatment to any of them
- (iii) No discrimination will be shown by the State against any person on account of his religion or faith
- (iv) The right of every citizen, subject to any general condition, to enter any office under the state will be equal to that of the fellow citizens. Political equality which entitles any Indian citizen to seek the highest office under the State is the heart and soul of secularism as envisaged by Constitution.

Constitution to include specifically the term "socialist" which was absent in the original form in which it was enacted.

Secularism

Indian Constitution aims to establish a secular state. This does not mean that the State in India is anti-religious. India has declared its identity as a "Sovereign, Socialist, Secular, Democratic, Republic." The attributes of Socialist and Secular were added in 1976 by the 42nd Amendment to the Constitution. The

Indian Polity and Governance

bulky document does not attempt to define secularism. However, a definition is derived from the fundamental right that proclaims that "The State shall not discriminate against any citizen on grounds of religion, race, caste, sex place of birth or any one of them." The Indian State has no religion of its own. The fundamental right of speech and freedom also means the right to preaching and

HOW THE CONSTITUTION ENSURES INDEPENDENCE OF THE JUDICIARY?

In its bid to establish complete independence of the judiciary, the Indian Constitution has first erected a wall of separation between the executive and the judiciary. After effecting such separation, it has created conditions that are conducive to making the judiciary independent. Thus, rigid qualifications are laid down for the appointment of Judges and provision has been made for compulsory consultation of the Chief justice of India in the appointment of every judge of the Supreme Court and the High Courts. Conditions of service of a Judge cannot be altered to his/her disadvantage, once he/she is appointed. Judges are given high salaries and their conduct is made a subject beyond the scope of discussion in the legislature. They can be removed from office only for proved misbehaviour. For this purpose, both the houses of Parliament will have to pass resolutions against the Judge supported by a two third majority of those who sit and vote and atleast an absolute majority of the total membership of the house.

proselytising religion. This is made clearer in Articles 25-28, "Subject to public order, morality and health... all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion". Every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes, to maintain its own affairs in matters of religion. No person shall be compelled to pay any taxes for promotion of any particular religion. No religious instructions shall be provided in any educational institutions wholly maintained out of the State funds.

Judicial Independence

The framers of Indian Constitution were aware that democratic freedom was meaningless in the absence of an independent machinery to safeguard it. No subordinate or agent of the government could be trusted to be just and impartial in judging the merits of a conflict in which the government itself was a party. Similarly, a judiciary, subordinate either to the Center or the State could not be trusted as an impartial arbiter of conflicts and controversies between the Center and the State. These were compelling reasons for the creation of an independent judiciary as an integral part of the Constitution and for the adoption of judicial independence as a basic principle of the Constitution.

WHY THE FRAMERS OF INDIAN CONSTITUTION CHOSE 'FEDERALISM'?

The framers of Indian Constitution turned to federalism as a solution of a number of problems they confronted in their attempt to frame a constitution of a new united India. Particularly, they wanted to preserve both the "infinite variety and the innate unity" that animated the length and breadth of India. The choice of federalism as a constitutional form and as the basis of a national government in India was not a sudden development upon the transfer of power on 15th August, 1947. It was there for many years and, in a limited form, it was already in operation in British India. For the resolution of the constitutional problem of a multi-racial, multi-lingual and multi-communal country like India with a vast area and a huge population, federalism was only a natural choice. Nevertheless, the framers were cautious to ensure that the unity they sought to establish through federalism was of an abiding nature and in case of a future conflict between that unity and the diversity preserved under the Constitution; the former should prevail over the other. In other words, it was their intention to create an indestructible Union and the supremacy of the Union over the states in a number of matters vitally affecting the interest of the nation.

Federalism

Federalism is one of the most important aspects of modern constitutions. It is established all over the world perhaps, as the only form of political organization suited to communities with a diversified pattern of objectives, interests and traditions, who seek to join together in the pursuit of common objectives and interests and the cultivation of common traditions. The basic objective of federalism is thus unity in diversity, devolution in authority and decentralisation in administration. Its fundamental characteristic is the division of powers between two sets of governments - a Central Government and State Government - each independent of the other in its own sphere of activity.

Federal vs. Unitary Features

India has two governments functioning at the national and state levels with a clear cut distribution of powers. Both the State and the Union Government, draw their authority from the Constitution. The supremacy of the Republic lies not with either the Union Government or the State Governments but with the Constitution. To uphold the legal supremacy of the Constitution, the power to interpret the constitution has been vested in the judiciary. Thus, the Indian Constitution has four federal features:

- (a) clear division of powers between the two governments;
- (b) dual system of government;
- (c) supremacy of the Constitution; and
- (d) authority of the judiciary to interpret the constitution.

WHAT ARE THE 'UNITARY' FEATURES OF INDIAN CONSTITUTION?

There are some unitary features in Indian Constitution. They may be enlisted as below:

- (1) Right of the Governor to reserve a Bill for Presidential assent;
- (2) Role and functions of the State Governors;
- (3) Emergency provisions of the Constitution regarding proclamation of national emergency, financial emergency and President's rule;
- (4) Provisions of the Constitution enabling Parliament to legislate for the States;
- (5) Uniform All-India Services;
- (6) Single and uniform citizenship;
- (7) Uniform and integrated judicial system; and
- (8) Constitutional scheme of distribution of legislative, administrative and financial powers between the Union and the States also has a strong unitary bias

The word 'federation' has not been used anywhere in the Constitution. In fact, India has been described as a Union of States. The provinces and the princely States were not sovereign entities before they joined the federation. The states are not 'inviolable' or 'indestructible' as in the USA. Parliament can by law change or alter the areas and boundaries of any State. No state has the right to secede from the Union. All the constituent States of the Union are not equal. The Union Territories do not enjoy the same status as the States. Unlike the American Constitution, the Indian Constitution does not provide for any safeguards for the protection of the rights of States. Except Jammu & Kashmir, no state has its own Constitution as in the U.S. Whereas the consent of the States is vital for an amendment of the American Constitution, the consent of the States in India is necessary only in regard to a few specific matters.

Parliamentary Government

The framers of our Constitution preferred parliamentary system of government. Our infant democracy could ill-afford any confrontation between executive and the legislature if they were separate and independent of each other. The President of India is the constitutional head of the Union Executive, but he exercises the executive power, vested in him, in accordance with the advice of the Union Council of Ministers. The real executive power thus vests with the Council of Ministers with the Prime Minister as the head. The Council of ministers is collectively responsible to the Lok Sabha. The same is true of the relationship between the Governors and the Council of Ministers in the States. The parliamentary system of government both at the Centre and in the State is based on adult suffrage whereby all citizens of India who are not less than 18 years of age and not otherwise disqualified by the Constitution or any law, have the right to vote. It is a bold political experiment in view of the vastness of the country, its large population, poverty and illiteracy. Though some current practices have vitiated the process of election, adult franchise has not shaped people's political perceptions.

Why the Indian Constitution is lengthy?

Indian Polity and Governance

It is the most lengthy and legalistic constitutional document any country has so far adopted. One reason is that the Constitution has drawn from a variety of sources. The other is that the constitution-makers ensured that no element of uncertainty was left. It codifies in detail the relationship between the Union and the States and the State's interests and contains both justiciable and non-justiciable rights as well as fundamental duties. As the Constitution is not only a legal document, but an instrument of social change, it has to be a detailed document in order to ensure that it stands the test of any situation in future. Also, care has been taken to ensure that the Constitution is not subverted or perverted by any future government, thus, there are numerous in-built constitutional safeguards. Another reason for the length of the Constitution is that, there are temporary, transitional and special provisions for the state of Jammu and Kashmir and it also take care of the regional problems in States like Gujarat, Maharashtra, Andhra Pradesh, Sikkim, Assam, Nagaland and Manipur. The legalistic nature of the Constitution is also partly because of heavy borrowings from the Government of India Act of 1935.

Rigidity vs. Flexibility

Some eminent constitutionalists are of the view that the Indian constitution is rigid. But, then how it has been possible to amend the constitution over 90 times. Indian constitution is more flexible than the American constitution, which requires ratification of amendments by three-fourths of the States. In Indian constitution, only amending of a few provisions requires ratification of amendments by three fourths of the states. In our constitution only amending of a few provisions requires ratification by half of the State Legislatures. While most of the provisions of the Constitution can be amended by two thirds majority of each of the Houses of Parliament and many of the provisions can be altered or modified by a simple majority. Also, the constitution can be supplemented by simple legislations like the Citizenship Act, National Security Act, and the Untouchability Act etc. Moreover, the scope for the growth of conventions to supplement the Constitution makes it more flexible. Conventions govern the privileges and rights of the legislature, the functioning of the cabinet system, the status of the Cabinet Secretariat, etc.

Single Citizenship

In a federation there is usually double citizenship. A citizen belongs to the State in which he is born and also enjoys the citizenship rights of the federation, to which his state has joined as a unit. This is one of the basic principles of federalism, that the states in a federation are units of federation, but do not give up their individual entity. But in India, there is single citizenship. Citizens belong to the Indian Union and not to any state. Provision for single citizenship for the whole of India was perhaps intentional. The constitution fathers did not like that regionalism and other disintegrating tendencies which had already raised their ugly heads and were endangering the very security and integrity of country, should be further encouraged by providing double citizenship. Provision for double citizenship would have naturally stood on the way of emotional and national integration. The people in the State would have thought more in terms of the State than the country as a whole. Single citizenship has undoubtedly forged a sense of unity among the people of India and image of United India is reflected by this provision.

INDIAN CONSTITUTION:

Indian Polity and Governance

AT A GLANCE

Part I : Union and its Territory

Article 1: Name & territory of Union.

Art. 2: Admission of new States.

Art. 2A: (Repealed).

Art. 3: Formation of new States & alteration of areas, boundaries or names of existing States.

Art. 4: Laws made under article 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

Part II : Citizenship

Art. 5 : Citizenship at the commencement of the Constitution.

Art. 6 : Citizenship right of certain persons who migrated to India from Pakistan.

Art. 7 : Rights of citizenship of certain migrants to Pakistan.

Art. 8: Rights of citizenship of persons of Indian origin residing outside India.

Art. 9 : Persons voluntarily acquiring citizenship of a foreign state not to be citizens.

Art. 10: Continuance of the rights of citizenship.

Art. 11: Parliament to regulate the right of citizenship by law.

Part III : Fundamental Rights

Art. 12 : General Definition (For the word " the State").

Art. 13 : Laws inconsistent with or in derogation of the fundamental rights. Right to Equality

Art. 14 : Equality before law.

Art. 15 : No discrimination on grounds of religion, race, caste, sex or place of birth.

Art. 16 : Equality of opportunity in matters of public employment.

Art. 17 : Abolition of Untouchability.

Art. 18 : Abolition of titles.

Right to Freedom

Art. 19 : Protection of certain rights regarding freedom of speech etc.

Art. 20 : Protection in respect of conviction for offences.

Art. 21 : Protection of life & personal liberty.

Art. 22 : Protection against arrest and detention in certain cases.

Art. 23 : Prohibition of traffic in human beings and forced labour.

Art. 24 : Prohibition of employment of children in factories etc.

Right to Freedom of Religion

Art. 25 : Freedom of conscience & free profession, practice & propagation of religion.

Art. 26 : Freedom to manage religious affairs.

Art. 27 : Freedom as to payment of taxes for promotion of any particular religion.

Indian Polity and Governance

Art. 28 : Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

Cultural and Educational Rights

Art. 29 : Protection of minorities' interests.

Art. 30 : Right of minorities to establish and administer education of institutions.

Art. 31 : [Repealed].

Saving of Certain Laws

Art. 31 A : Saving of laws providing for acquisition of estates etc.

Art. 31 B : Validation of certain Acts and Regulations.

Art. 31 C : Saving of laws giving effect to certain directive principles.

Art. 31 D : [Repealed].

Right to Constitutional Remedies

Art. 32 : Remedies for enforcement of right conferred by this Part.

Art. 32 A : [Repealed].

Art. 33 : Power of Parliament to modify the rights conferred by this Part in their application to forces, etc.

Art. 34 : Restriction of rights conferred by this part while martial law in any area.

Art. 35 : Legislation to give effect to the provision of this part.

Part IV : Directive Principles of State Policy

Art. 36 : Definition

Art. 37 : Application of the principles contained in this Part.

Art. 38 : State to secure a social order for the promotion of welfare of the people.

Art. 39 : Certain principles of policy to be followed by the State.

Art. 39 A : Equal justice & free legal aid.

Art. 40 : Organisation of village panchayats.

Art. 41: Rights to work, to education & to public assistance in certain cases.

Art. 42 : Provision for just & humane conditions of work and maternity relief.

Art. 43 : Living wage etc. for workers.

Art. 43 A : Participation of workers in management of industries.

Art. 44 : Uniform Civil Code for the citizens.

Art. 45 : Provision for free & compulsory education for children.

Art. 46 : Promotion of educational & eco. interests of SCs, STs & OBCs.

Art. 47 : Duty of the State to raise the level of nutrition & the standard of living & to improve public health.

Art. 48 : Organisation of agriculture & animal husbandry.

Art. 48 A : Protection & improvement of environment, forests & wild life.

Art. 49 : Protection of monuments & places & objects of national importance.

Art. 50 : Separation of judiciary.

Indian Polity and Governance

Art. 51 : Promotion of international peace.

Part IV A : Fundamental Duties

Art. 51A: Ten Fundamental Duties were incorporated through the 42nd Amendment, 1976.

Part V : The Union

Chapter I : The Executive

President and Vice- President

Art. 52 : The President of India.

Art. 53 : Executive power of the Union.

Art. 54 : Election of President.

Art. 55 : Manner of election of President.

Art. 56 : Term of office of President.

Art. 57 : Eligibility for re-election.

Art. 58 : Qualification for President.

Art. 59 : Conditions of President's office.

Art. 60 : Oath or affirmation of President.

Art. 61: Impeachment procedure of the President.

Art. 62 : Time of holding election to fill vacancy in the office of President & the term of office of person elected to fill casual vacancy.

Art. 63 : The Vice-President of India.

Art. 64 : The Vice- President to be ex- officio chairman of the Council of States.

Art. 65 : The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence of President.

Art. 66 : Election of Vice-President.

Art. 67 : Term of office of Vice-President.

Art. 68 : Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.

Art. 70 : Discharge of President's function in other contingencies.

Art. 71 : Matters relating to/connected with, the election of President or Vice- President.

Art. 72 : Power of President to grant pardon, etc., and to suspend, remit or commute sentences in certain cases.

Art. 73 : Extent of executive power of Union.

Council of Ministers

Art. 74 : Council of Ministers to aid and advise President.

Art. 75 : Other provisions as to Ministers.

Attorney - General for India

Art. 76 : Attorney - General for India.

Indian Polity and Governance

Conduct of Government Business

Art. 77 : Conduct of business of the Government of India.

Art. 78 : Duties of P. M. as respects the furnishing of information to the President.

Chapter II : Parliament

Art. 79 : Constitution of Parliament.

Art. 80 : Composition of Council of states.

Art. 81 : Composition of the House of the People.

Art. 82 : Readjustment after each Census.

Art. 83 : Duration of Houses of Parliament.

Art. 84 : Qualification for the membership of the Parliament.

Art. 85 : Session of Parliament, prorogation and dissolution.

Art. 86 : Right of President to address and send messages to houses.

Art. 87 : Special address by the President.

Art. 88 : Rights of Ministers and Attorney- General as respects Houses.

Officers of Parliament

Art. 89: The Chairman and Deputy Chairman of the Council of States.

Art. 90 : Vacation and resignation of , and removal from, the office of Deputy Chairman.

Art. 91 : Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

Art. 92 : Chairman or the Dy. Chairman not to preside while a resolution for his removal from office is under consideration.

Art. 93 : The Speaker and Deputy Speaker of the House of the People.

Art. 94 : Vacation and resignation of, and removal from the offices of Speaker and Deputy Speaker.

Art. 95 : Power of the Deputy Speaker or person to perform the duties of the office of, or to act as Speaker.

Art. 96 : Speaker or Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

Art. 97 : Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.

Art. 98 : Secretariat of Parliament. Conduct of Business

Art. 99 : Oath or affirmation by members.

Art. 100 : Voting in Houses, power of Houses to act notwithstanding vacancies & quorum.
Disqualification of Members

Art. 101 : Vacation of seats.

Art. 102 : Disqualifications for membership.

Art. 103 : Decision on questions as to disqualifications of members.

Art. 104 : Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.

Indian Polity and Governance

Art. 105 : Power, privileges, etc., of the Houses of Parliament and of the members and committees there of.

Art. 106 : Salaries & allowances of MPs.

Legislative Procedure

Art. 107 : Provisions as to introduction and passing of bills.

Art. 108: Joint sitting of both houses in certain cases.

Art. 109 : Special procedure in respect to money bills.

Art. 110 : Definition of " Money Bills".

Art. 111 : Assent to Bills.

Procedure in Financial Matters

Art. 112 : Annual financial statement.

Art. 113 : Procedure in Parliament with respect to estimates.

Art. 114 : Appropriation Bills.

Art. 115 : Supplementary, additional or excess grants.

Art. 116 : Votes on account, votes of credit and exceptional grants.

Art. 117 : Special provisions as to Financial Bills.

Art. 118 : Rules of procedure.

Art. 119 : Regulation by law of procedure in Parliament in relation to financial business.

Art. 120 : Language used in Parliament.

Art. 121 : Restriction on discussion in Parliament.

Art. 122 : Courts not to inquire into proceeding of Parliament.

Chapter III : Legislative Powers of the President

Art. 123 : Power of President to promulgate Ordinances during recess of parliament.

Chapter IV : The Union Judiciary

Art. 124 : Establishment and Constitution of Supreme Court.

Art. 125 : Salaries, etc., of Judges.

Art. 126 : Acting C. Justice.

Art. 127 : Appointment of ad hoc Judges.

Art. 128 : Attendance of retired Judges at sitting of the Supreme Court.

Art. 129 : S. Court to be a court of record.

Art. 130 : Seat of Supreme Court.

Art. 131: Original jurisdiction of the S. Court

Art. 131 A : [Repealed].

Art. 132 : Appellate jurisdiction of S. Court.

Art. 133 : Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters.

Art. 134 : Appellate jurisdiction of Supreme Court in regard to criminal matters.

Art. 134 A : Certificate for appeal to the Supreme Court.

Indian Polity and Governance

Art. 135 : Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.

Art. 136 : Special leave to appeal by the Supreme Court.

Art. 137 : Review of judgments or orders by the Supreme Court.

Art. 138 : Enlargement of the jurisdiction of the Supreme Court.

Art. 139 : Conferment on the Supreme Court of powers to issue certain writs.

Art. 139 A : Transfer of certain cases.

Art. 140 : Ancillary powers of S. Court.

Art. 141 : Law declared by Supreme Court to be binding on all courts.

Art. 142 : Enforcement of decrees and orders of S. Court and orders as to discovery.

Art. 143 : Power of President to consult Supreme Court.

Art. 144 : Civil and judicial authorities to act in aid of the Supreme Court.

Art. 144 A : [Repealed].

Art. 145 : Rules of Court, etc.

Art. 146 : Officers and servants and the expenses of the Supreme Court.

Art. 147 : Interpret.

Chapter V : Comptroller and Auditor General of India (CAG)

Art. 148 : CAG- of India.

Art. 149 : Duties and powers of the CAG.

Art. 150 : Form of accounts of the Union and of the States.

Art. 151 : Audit reports.

Part VI : The States

Chapter I

Art. 152 : Definition.

Chapter II : The Executive

The Governor

Art. 153 : Governors of States.

Art. 154 : Executive power of State.

Art. 155 : Appointment of Governor.

Art. 156 : Term of office of Governor.

Art. 157 : Qualifications for appointment as Governor.

Art. 158 : Conditions of Governor's office.

Art. 159 : Oath of affirmation by Governor.

Art. 160 : Discharge of the functions of the Governor in certain contingencies.

Art. 161 : Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

Art. 162 : Extent of executive power of State.

Indian Polity and Governance

Council of Ministers

Art. 163 : Council of Ministers to aid and advise Governor.

Art. 164 : Other provisions as to Ministers.

The Advocate - General for the State

Art. 165 : Advocate - General.

Conduct of Government Business

Art. 166 : Conduct of business of the Government of a State.

Art. 167 : Duties of Chief Minister as respects the furnishing of information to Governor, etc.

Chapter III : The State Legislature

Art. 168 : Cont. of Legislatures in States.

Art. 169 : Abolition or creation of Legislative Council in States.

Art. 170 : Composition of Legislative Assemblies.

Art. 171 : Composition of Legis. Councils.

Art. 172 : Duration of State Legislatures.

Art. 173 : Qualification for membership of the State Legislature.

Art. 174 : Sessions of the State Legislature, prorogation and dissolution.

Art. 175 : Right of Governor to address and send messages to the House or Houses.

Art. 176 : Special address by the Governor.

Art. 177 : Rights of Ministers and Advocate General as respects the Houses.

Officers of the State

Legislature

Art. 178 : The Speaker and Deputy Speaker of the Legislative Assembly.

Art. 179 : Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

Art. 180 : Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker.

Art. 181 : The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

Art. 182 : The Chairman and Deputy Chairman of the Legislative Council.

Art. 183 : Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.

Art. 184 : Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

Art. 185 : The Chairman or the Deputy Chairman of the Legislative Council not to preside while a resolution for his removal from office is under consideration.

Art. 186 : Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.

Art. 187 : Secretariate of State Legislature.

Indian Polity and Governance

Conduct of Business

Art. 188 : Oath or affirmation by members.

Art. 189 : Voting in Houses, power of Houses to act notwithstanding vacancies & quorum.

Disqualifications of Members

Art. 190 : Vacation of seats.

Art. 191 : Disqualification for membership.

Art. 192 : Decision on questions as to disqualifications of members.

Art. 193 : Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.

Art. 194 : Powers, privileges, etc, of the Houses of Legislatures and of the members and committees thereof.

Art. 195 : Salaries & allowances of members.

Legislative Procedure

Art. 196 : Provisions as to introduction and passing of Bills.

Art. 197 : Restriction on powers of Legislative Council as to Bills other than Money Bills.

Art. 198 : Special procedure in respect of Money Bills.

Art. 199 : Definition of " Money Bills".

Art. 200 : Assent to Bills.

Art. 201 : Bills reserved for consideration.

Procedure in Financial Matters

Art. 202 : Annual financial statement.

Art. 203 : Procedure in Legislature with respect to estimates.

Art. 204 : Appropriation Bills.

Art. 205 : Supplementary, additional or excess grants.

Art. 206 : Votes on account, votes of credit and exceptional grants.

Art. 207 : Special provisions as to Financial Bills.

Procedure Generally

Art. 208 : Rules of procedure.

Art. 209 : Regulation by law of procedure in the Legislature of the State in relation to financial business.

Art. 210 : Language to be used in the Legislature.

Art. 211 : Restriction on discussion in the Legislature.

Art. 212 : Courts not to inquire into proceeding of the Legislature.

Chapter IV : Legislative Power of the Governor

Art. 213 : Power of Governor to promulgate ordinances during recess to Legislature.

Chapter V : The High Courts in the States

Art. 214 : High Courts for States.

Indian Polity and Governance

- Art. 215 : High Courts to be Courts of record.
Art. 216 : Constitution of High Courts.
Art. 217 : Appointment and conditions of the office of a Judge of High court.
Art. 218 : Application of certain provisions relating to Supreme Court to High Courts.
Art. 219 : Oath or affirmation by Judges of High Court.
Art. 220 : Restriction on practice after being a Permanent Judge.
Art. 221 : Salaries, etc., of Judges.
Art. 222 : Transfer of a Judge from one High Court to another.
Art. 223 : Acting Chief Justice.
Art. 224 : Appointment of additional and acting Judges.
Art. 224 A : Appointment of retired Judges at sitting of High Courts.
Art. 225 : Jurisdiction of existing High Courts.
Art. 226 : Power of High Courts to issue certain writs.
Art. 226 A : [Repealed].
Art. 227 : Power of superintendence over all courts by the High Court.
Art. 228 : Transfer of cases to High Courts.
Art. 228 A : [Repealed].
Art. 229 : Officers and servants and the expenses of High Courts.
Art. 230 : Extension of jurisdiction of High Courts to union territories.
Art.231 : Establishment of a common High Court for two or more states.
Chapter VI : Subordinate Courts
Art. 233 : Appointment of district Judges.
Art. 233 A : Validation of appointments of, and judgments, etc., delivered by, certain district judges.
Art. 234 : Recruitment of persons other than district judges to the Judicial service.
Art. 235 : Control over subordinate courts
Art. 236 : Interpretation.
Art. 237 : Application of the provisions of this Chapter to certain class or classes of magistrates.

Part VII : The States in Part B of the First Schedule [Repealed]

- Art. 238 : [Repealed].

Part VIII : Union Territories

- Art. 239 : Administration of U. Territories.
Art. 239 A : Creation of local Legislatures or Council of Ministries or both for certain Union territories.
Art. 239 B : Power of administrator to promulgate Ordinances in recess of Legislature.
Art. 240 : Power of President to make regulations for certain Union territories.
Art. 241 : High Courts for Union territories
Art. 242 : [Repealed].

Part IX : The Panchayats

Indian Polity and Governance

Art. 243 : Definitions.

Art. 243A : Gram Sabha.

Art. 243 B : Constitution of Panchayats.

Art. 243 C : Composition of Panchayats.

Art. 243D : Reservation of seats.

Art. 243 E : Duration of Panchayats etc.

Art. 243 F : Disqualifications for members.

Art. 243 G : Powers, authority and responsibilities of Panchayats.

Art. 243 H : Powers to impose taxes by, and Funds of, the Panchayats.

Art. 243 I : Constitution of Finance Commission to review financial position.

Art. 243 J : Audit of accounts of Panchayats.

Art. 243 K : Elections to the Panchayats.

Art. 243 L : Application to Union territories.

Art. 243 M : Part not to apply to certain areas.

Art. 243 N : Continuance of existing laws and Panchayats.

Art. 243 O : Bar to interference by courts in electoral matters.

Part IX A : The Municipalities

Art. 243 P : Definitions.

Art. 243 Q : Constitution of Municipalities.

Art. 243 R : Composition of Municipalities.

Art. 243 S : Constitution and composition of Wards, Committees, etc.

Art. 243 T : Reservation of seats.

Art. 243 U : Duration of Municipalities, etc.

Art. 243 V : Disqualifications for members.

Art. 243 W : Powers, authority and responsibilities of Municipalities, etc.

Art. 243 X : Power to impose taxes by, and Funds of, the Municipalities.

Art. 243 Y : Finance commission.

Art. 243 Z : Accounts of Municipalities.

Art. 243 ZA : Municipalities Elections.

Art. 243 ZB : Application to U. territories.

Art. 243 ZC: Not to apply to certain areas.

Art. 243 ZD : Committee for district planning.

Art. 243 ZE : Committee for Metropolitan planning.

Art. 243 ZF : Continuance of existing laws and Municipalities.

Art. 243 ZG : Bar to interference by Courts in electoral matters.

Part X : Scheduled & Tribal Areas

Art. 244 : Administration of Scheduled areas and Tribal Areas.

Art. 244 A : Formation of an autonomous State comprising certain tribal areas in Assam and creation of local Legislature or Council of Ministers or both therefore.

Indian Polity and Governance

Part XI : Relations Between the Union and the States

Chapter I : Legislative

Relations

Distribution of Legislative Powers

Art. 245 : Extent of laws made by Parliament

Art. 246 : Subject- matter of laws made by Parliament and by the Legislatures of States.

Art. 247 : Power of Parliament to provide for the establishment of certain additional courts.

Art. 248 : Residuary powers of legislation.

Art. 249 : Power of Parliament to legislate with respect to a matter in the State List in the national interest.

Art. 250 : Power of Parliament to legislate with respect to any matter in the State List if Emergency is in operation.

Art. 251 : Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.

Art. 252 : Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

Art. 253 : Legislation for giving effect to international agreements.

Art. 254 : Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

Art. 255 : Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.

Chapter II : Administrative Relations

Art. 256 : Obligation of States and the Union.

Art. 257 : Control of the Union over States in certain cases.

Art. 257 A : [Repealed].

Art. 258 : Power of the Union to confer powers, etc, on States in certain cases.

Art. 258 A : Power of the States to entrust functions to the Union.

Art. 259 : [Repealed].

Art. 260 : Jurisdiction of the union in relation to territories outside India.

Art. 261 : Public acts, records and judicial proceedings.

Disputes relating to Waters

Art. 262 : Adjudication of disputes relating to waters of inter-State rivers. Co- Ordination between States

Art. 263: Provisions with respect to an inter- State Council.

Part XII : Finance, Property, Contracts and Suits

Chapter I : Finance

Art. 264 : Interpretation.

Indian Polity and Governance

Art. 265 : Taxes not to be imposed save by authority of law.

Art. 266 : Consolidated Funds and public accounts of India and of the States.

Art. 267 : Contingency Fund.

Distribution of Revenues between the Union and the States

Art. 268 : Duties levied by the union but collected and appropriated by the States.

Art. 269 : Taxes levied and collected by the Union but assigned to the States.

Art. 270 : Taxes levied and collected by the Union and distributed between the Union and the States.

Art. 271 : Surcharge on certain duties and taxes for purposes of the Union.

Art. 272 : Taxes which are levied and collected by the Union and may be distributed between the Union and the States.

Art. 273 : Grants in lieu of export duty on jute and jute product.

Art. 274 : Prior recommendation of president require to bills affecting taxation in which states are interested.

Art. 275 : Grants from union to certain states.

Art. 276 : Taxes on professions, trades, callings and employments.

Art. 277 : Savings.

Art. 278 : [Repealed].

Art. 279 : Calculation of "net proceeds", etc.

Art. 280 : Finance Commission.

Art. 281 : Exemption to property and income of State from Union taxation.

Miscellaneous Financial Provisions

Art. 282 : Expenditure defrayable by the Union or a State out of its revenues.

Art. 283: Custody, etc., of Consolidated funds, contingency Funds and moneys credited to the public accounts.

Art. 284: Custody of suitors, deposits and other moneys received by public servants & courts

Art. 285: Exemption of property of the Union from State taxation.

Art. 286: Restrictions as to imposition of tax on the sale or purchase of goods.

Art. 287: Exemption from electricity taxes.

Art. 288: Exemption from taxation by States in respect of water or electricity in certain cases.

Art. 289: Exemption to property and income of State from Union taxation.

Art. 290: Adjustment in respect of certain expenses and pensions.

Art. 290 A : Annual payment to certain Devaswon Funds.

Art. 291: [Repealed].

Chapter II : Borrowing

Art. 292: Borrowing by Govt. of India.

Art. 293: Borrowing by States.

Chapter III : Property, Contracts, Rights, Liabilities, Obligations & Suits

Art. 294: Succession to property, assets, rights liabilities and obligations in certain cases.

Indian Polity and Governance

Art. 295: Succession to property, assets, rights, liabilities and obligations in other cases.

Art. 296: Property accruing by escheat or lapse or as Bona Vacantia.

Art. 297: Things of value within territorial waters or continental shelf and resources of the exclusive economic zone.

Art. 298: Power to carry on trade, etc.

Art. 299: Contracts.

Art. 300: Suits and proceedings.

Chapter IV : Right to Property

Art. 300 A: Persons not to be deprived of property save by authority of law.

Part XIII : Trade, Commerce & Intercourse within the Territory of India

Art. 301: Freedom of trade, commerce etc.

Art. 302: Power of Parliament to impose restrictions on trade, commerce etc.

Art. 303: Restrictions on the Legislative powers of the Union and of the States with regard to trade and commerce.

Art. 304: Restrictions on trade, commerce and intercourse among States.

Art. 305: Saving of existing laws and laws providing for State monopolies.

Art. 306: [Repealed].

Art. 307: Appointment of authority for the purposes of articles 301 to 304.

Part XIV : Services under Union & States

Chapter I : Services

Art. 308: Interpretation.

Art. 309: Recruitment and conditions of service of persons serving the Union or a State.

Art. 310: Tenure of office of persons serving the union or a state.

Art. 311: Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

Art. 312: All - India services.

Art. 312 A: Power of Parliament to vary to revoke conditions of service of officers of certain services.

Art. 313: Transitional provisions.

Art. 314: [Repealed].

Chapter II : Public Service Commissions

Art. 315: Public Service Commission for the Union and for the states.

Art. 316: Appointment and term of office.

Art. 317: Removal and suspension of a member of a Public Service Commission.

Art. 318: Power to make regulations as to conditions of service of members and staff of the Commission.

Art. 319: Prohibition as to the holding of offices by members of Commission on ceasing to be such members.

Art. 320: Functions of Public Service Commissions.

Indian Polity and Governance

Art. 321: Power to extend functions of public service commissions.

Art. 322: Expenses of Public Service Commissions.

Part XIV A : Tribunals

Art. 323 A: Administrative tribunals.

Art. 323 B: Tribunals for other matters.

Part XV : Elections

Art. 324: Superintendence, direction and control of elections to be vested in an Election Commission.

Art. 325: No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.

Art. 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

Art. 327: Power of Parliament to make provision for elections to Legislatures.

Art. 328: Power of Legislature of a State to make provision with respect to elections to such Legislature.

Art. 329: Bar to interference by courts in electoral matters.

Art. 329 A: [Repealed].

Part XVI : Special Provisions Relating to Certain Classes

Art. 330: Reservation of seats for SCs and STs in the House of the People.

Art. 331: Representation of the Anglo-Indian community in the House of the People.

Art. 332: Reservation of seats for SCs and STs in Legislative Assemblies of the States.

Art. 333: Representation of the Anglo-Indian community in the Legislative Assemblies of the States.

Art. 334: Reservation of seats and special representation to cease after [fifty years].

Art. 335: Claims of SCs and STs to services and posts.

Art. 336: Special provision for Anglo-Indian community in certain services.

Art. 337: Special provision with respect to educational grants for the benefit of Anglo- Indian community.

Art. 338: Special Officer for SCs, STs, etc.

Art. 339: Control of the Union over the administration of Scheduled Areas and the welfare of STs.

Art. 340: Appointment of a Commission to investigate backward classes.

Art. 341: Scheduled Castes.

Art. 342: Scheduled Tribes.

Part XVII : Official Language

Chapter I : Language Union

Art. 343: Official language of the Union.

Art. 344: Commission and Committee of Parliament on official language.

Art. 345: Official languages of a State.

Art. 346: Official language for communication between one State and another or between a State and the Union.

Indian Polity and Governance

Art. 347: Special provision relating to language spoken by a section of the population of a State.

Chapter III : Language of the SC, High Courts etc.

Art. 348: Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.

Art. 349: Special procedure for enactment of certain laws relating to language.

Chapter IV : Special Directives

Art. 350: Language to be used in representations for redress of grievances.

Art. 350 A: Facilities for instruction in mother tongue at primary stage.

Art. 350 B: Special officer for linguistic minorities.

Art. 351: Directive for development of the Hindi language.

Part XVIII : Emergency Provisions

Art. 352: Proclamation of Emergency.

Art. 353: Effect of proclamation of Emergency.

Art. 354: Application of provisions relating to distribution of revenues while a Proclamation of Emergency in operation.

Art. 355: Duty of the Union to protect States against external aggression and internal disturbance.

Art. 356: Provisions in case of failure of constitutional machinery in States.

Art. 357: Exercise of legislative powers under Proclamation issued under article 356.

Art. 358: Suspension of provisions of article 19 during emergencies.

Art. 359: Suspension of the enforcement of the rights.

Art. 359 A: [Repealed].

Part XIX : Miscellaneous

Art. 361: Protection of President and Governors and Raj pramukhs.

Art. 361 A: Protection of publication of proceedings of Parliament and State Legislatures.

Art. 362: [Repealed].

Art. 363: Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.

Art. 363 A: Recognition granted to Rulers of Indian States to cease and Privy purses to be abolished.

Art. 364: Special provisions as to major ports and aerodromes.

Art. 365: Effect of failure to comply with, or to give effect to, directions given by the union

Art. 366: Definitions.

Art. 367: Interpretation.

Part XX : Constitutional Amendment

Art. 368: Power of Parliament to amend the Constitution and procedure therefore.

Part XXI : Temporary, Transitional and Special Provisions

Art. 369: Temporary power to Parliament to make laws to matters in State List.

Art. 370: Temporary provisions with respect to the State of Jammu and Kashmir.

Art. 371: Special provision with respect to the States of Maharashtra and Gujarat.

Indian Polity and Governance

- Art. 371 A: Special provision with respect to the State of Nagaland.
Art. 371 B: Special provision with respect to the State of Assam.
Art. 371 C: Special provision with respect to the State of Manipur.
Art. 371 D: Special provisions with respect to the State of Andhra Pradesh.
Art. 371 E: Establishment of Central University in Andhra Pradesh.
Art. 371 F: Special provisions with respect to the State of Sikkim.
Art. 371 G: Special provision with respect to the State of Mizoram.
Art. 371 H : Special provision with respect to the State of Arunachal Pradesh.
Art. 371 I: Special provision with respect to the State of Goa.
Art. 372: Continuance in force of existing laws and their adaptation.
Art. 372 A : President's legal power.
Art. 373: Power of President to make order in respect of persons under preventive detention in certain cases.
Art. 374: Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before his Majesty in Council.
Art. 375: Courts authorities and officers to continue to function subject to the provisions of the Constitution.
Art. 376: Provisions for High Court Judges.
Art. 377: Provisions as to Comptroller and Auditor General of India.
Art. 378: Provisions for Public Service Commissions.
Art. 378 A: Special provisions as to duration of Andhra Pradesh Legislative Assembly.
Art. 379-391: [Repealed].
Art. 392: Power of the President to remove difficulties.

Part XXII : Short Title, Commencement, Text

- Art. 393: Short title.
Art. 394: Commencement.
Art. 394 A: Authoritative text in the Hindi language.
Art. 395: Repeals.

SCHEDULES

FIRST SCHEDULE

- I. -The States.
II. -The Union territories.

SECOND SCHEDULE

PART A-- Provisions as to the President and the Governors of States.

PART B-[Repealed.]

PART C-Provisions as to the Speaker and the Deputy Speaker of the House of the People and the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of

Indian Polity and Governance

the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council of a State.

PART D- Provisions as to the Judges of the Supreme Court and of the High Courts.

PART E- Provisions as to the Comptroller and Auditor-General of India.

THIRD SCHEDULE

Forms of Oaths or Affirmations.

FOURTH SCHEDULE : Allocation of seats in the Council of States.

FIFTH SCHEDULE : Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes.

PART A-General.

PART B-Administration and Control of Scheduled Areas and Scheduled Tribes.

PART C- Scheduled Areas.

PART D-Amendment of the Schedule.

SIXTH SCHEDULE : Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.

SEVENTH SCHEDULE : List I - Union List, List II- State List, List III- Concurrent List

EIGHTH SCHEDULE : Languages.

NINTH SCHEDULE : Validation of certain Acts and Regulations.

TENTH SCHEDULE : Provisions as to disqualification on ground of defection.

ELEVENTH SCHEDULE : Powers, authority and responsibilities of Panchayats.

TWELFTH SCHEDULE : Powers, authority and responsibilities of Municipalities, etc.

PREAMBLE

The PREAMBLE to the Indian Constitution (as amended in 1976) 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;

Indian Polity and Governance

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 hereby ADOPT, ENACT and GIVE TO OURSELVES this Constitution.

Objectives of Indian Constitution

The preamble sets out the main objectives of the Constitution; the objective which the Constitution-makers intended to be realised through it. It is the key to open the mind of the Constitutionmakers. The preamble is a legitimate aid in the construction of the provisions of the Constitution. Generally, for purposes of interpretation, the preamble of the Constitution stands in the same position as the preamble of an Act.

Purposes of the Preamble

The framers of the Constitution of India set out two purposes in the preamble.

1. First, to constitute India into a Sovereign Democratic Republic. It is Republic because the head of the State is not a hereditary monarch. It is Democratic because the Constitution rests on the people's will, and the institutions set up under it shall seek to give effect to democratic principles. It is Sovereign because the Constitution does not recognise the legal supremacy of another country over India. Her membership of the Commonwealth of the Nations is not inconsistent with her independent and sovereignstatus. The words 'socialist' and 'secular' were added in the Preamble by the Forty-

WHAT IS THE SIGNIFICANCE OF THE PREAMBLE?

The preamble specifies the source of authority, the system of government, the objectives to be attained by the political system and the date of the adoption and enactment of the Constitution. Though the Preamble is not enforceable in a court of law and generally, not considered a part of the Constitution, it provides a key to the understanding and interpretation of the Constitution; it has, therefore, been described as the soul of the Constitution. In case of doubt the Supreme Court has referred to the Preamble to elucidate vague aspects of the Constitution.

second Amendment. The addition of 'socialist' indicates the incorporation of the philosophy of 'socialism' in the Constitution which aims at elimination of inequality in income and status and standards of life and may enable the courts to lean more and more in favour of nationalisation and State ownership of an industry. It is yet to be seen how the new economic policy adopted by the Narsimha Rao Government since 1991 oriented towards free market and privatisation is to be viewed in the

Indian Polity and Governance

courts. The word 'secular' simply recognises the concept of secularism as manifested in the guarantee of freedom of religion as a fundamental right in the Constitution.

2. Second, to secure to citizens justice - social, economic, and political; liberty of thought, expression, faith, and worship; equality of status and opportunity; and to promote among the people of India fraternity, assuring dignity of the individual and the unity and integrity of the nation. Although the expressions, 'justice', 'liberty', 'equality', and 'fraternity', may not be susceptible to exact definitions, yet they are not mere platitudes. They are given content by the enacting provisions of the Constitution particularly by Part III of the fundamental rights and Part IV, the Directive Principles of State Policy.

EXPLANATION OF PREAMBLE

Sovereign Republic

The Preamble begins with the words, "We, the people of India....", thus clearly indicating the source of all authority under the Constitution. The Preamble establishes the ultimate sovereignty of the people of India on whose authority the Constitution rests. It points out the Constitution of India has been ordained by the people of India through their representatives in Constituent Assembly.

In the present times, the term 'sovereignty' may be losing rigid connotations of "supreme and absolute power acknowledging no superior" -no modern state can be considered sovereign in that sense. However, through the words of the Preamble, what is sought to be established is the oneness of the people of India (not the people of different states but of one nation), that the sovereignty vests in the collectivity, and that the people of India are not subordinate to any external authority. With the enactment of the Constitution, India was no longer a 'dominion' it was a 'republic'.

IS PREAMBLE A PART OF THE CONSTITUTION?

The preamble of an Act is not recognised as part of the Act because it is not enacted and adopted by the enacting body in the same manner as the acting provisions. The preamble of Indian Constitution was, however, enacted and adopted by the same procedure as the rest of the Constitution. This difference was not brought to the notice of the Supreme Court in Berubari Union and Exchange of Enclaves case where it observed that "the preamble is not part of the constitution". Later when the constituent history of the preamble was brought to the notice of the Court in Keshavananda Bharti v. State of Kerala it held that "the preamble of the Constitution was part of the Constitution and the observations to the contrary in Berubari Union case were not correct".

The recognition of the preamble as an integral part of the Constitution makes the preamble a valuable aid in the construction of the provisions of the Constitution because unlike the preamble to an Act, the preamble of the Constitution occupies the

Indian Polity and Governance

same position as other enacting words or provisions of the Constitution .

A republic derives its powers directly or indirectly from the people and "is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour" (Madison). India is a republic in that sense. From January 26, 1950 when the Constitution commenced, India ceased to owe allegiance to the British crown. India has a President as head of the Union, elected indirectly for a fixed term by the people's representatives. All citizens are equal in law, there is no privileged class, every citizen has the right to try for any public office irrespective of caste, race, sex or religion.

Despite declaring itself a republic India remained a member of the Commonwealth of Nations. Indeed the group of nations accommodated India's status as a sovereign independent republic owing no allegiance to the British Crown: the 'British Commonwealth of Nations' became simply 'Commonwealth of Nations'. The King or Queen would be the 'symbolic' head of the Commonwealth as far as India was concerned, and the decisions at the conferences of the Commonwealth will not be binding on Indians. India's conduct would be based on 'free will'. The decision to remain in the Commonwealth was in keeping with the ideal of promoting international cooperation and peace - a concept expressed in our Constitution.

Democracy

The term 'democracy' has assumed different connotations for different people. But common to all forms of democracies is the participation of the people directly or indirectly. India has adopted the representative parliamentary democracy. The Constitution makes no provision for direct control by the people through such devices as 'referendum' and 'initiative'. However, the people of India exercise their sovereignty through a Parliament at the Centre and a legislature in each State elected on the basis of universal adult franchise. The Executive is responsible to the popular house of the Legislature.

Indian Polity and Governance

Beyond political democracy, the Preamble also envisages social and economic democracy. Equality in the political sphere gives each adult citizen the power to vote freely. Equality must also pervade society and economic conditions, as far as possible. Dr. Ambedkar considered social and economic democracy to be the real goals to strive for. Jawharlal Lal Nehru too felt that political structure would weaken and disintegrate if socio-economic problems like poverty and gross inequalities are not tackled and removed. A vote, after all, does not mean much to a starving person. It is in this context that the Preamble speaks of justice, equality, liberty and fraternity.

Socialism

While the original Constitution did not mention any particular ideology, it did give expression to the resolve of securing to the citizens economic justice and equality of opportunity. This is the essence of socialism. The word 'socialist' was introduced in the Preamble by the 42nd Amendment. The term, however, is not defined in the Constitution. It may be pointed out that the socialism envisaged in India does not mean abolition of private property or nationalisation of all means of production. Thus a 'mixed economy' was envisaged, along with provision of equal opportunity, abolition of vested interests, and elimination of inequality in income and status and standards of living. In the present context of economic liberalisation, however, the socialist credentials of our State may well be questioned.

Secularism

The term 'secular' was inserted in the Preamble only in 1976, but the state envisaged by the Constitution was always a secular state - it could not have been otherwise in a country of such a vast size and diversity of culture and religions. Indeed, the fraternity and unity of the country could be built only on a secular basis.

The term 'secular', has not been defined in the Constitution but its operative meaning may be drawn from the different provisions of the Constitution. Discrimination on the basis of religion is forbidden to the State. Equality is assured to all irrespective of religion. Freedom of faith, belief and worship is allowed to all. The State is to be impartial towards all religions. Furthermore, the state does not uphold any particular religion as the state religion, but protects all religions equally.

Justice

The Preamble speaks of social, economic and political justice. The concept of justice goes beyond its narrow legal connotation. Significantly the words 'social' and 'economic' occur before the word 'political'.

Social justice implies that discrimination on the basis of birth, caste, race, sex or religion should cease. To that end all citizens should enjoy equal opportunities in the matter of public appointment. It is the good of all people that the Government must strive to achieve. The concept of a welfare state as envisaged in the Directive Principles is an embodiment of guidelines for ensuring the social justice expected in the Preamble.

Indian Polity and Governance

Economic justice implies that the gap between the rich and the poor is bridged, and the exploitation ceases. Removal of poverty is to be achieved not by taking away assets from those who have but by ensuring a more equitable distribution of national wealth and resources among those who contribute to its creation. Thus the Directive Principles call upon the state to try and secure ownership and control over resources to subserve common good, reduce concentration of wealth, ensure equal pay for equal work, and see that people, especially women and children, are not abused or forced by economic want into work unsuitable for their age or strength.

Political justice implies that all citizens should have equal opportunity to participate in the political system. One person-one vote is ensured irrespective not only of caste, sex or religion, but also of proprietary or educational qualifications. It is the basis of the political democracy envisaged in the Constitution.

Liberty

Democracy is closely connected with the idea of liberty; certain minimal rights must be enjoyed by every person in a community for a free and civilised existence. These basic rights are spelt out by the Preamble as freedom of thought, expression, belief, faith and worship. The chapter on Fundamental Rights guarantees these freedoms explicitly, subject to certain regulations; after all, liberty is not to degenerate into licence if democracy is to survive.

Equality

Rights have no meaning if they cannot be enjoyed equally by all members of the community. To ensure that it is possible for all to enjoy these rights, social and economic equality is sought to be achieved. The Fundamental Rights enjoin the State not to discriminate between citizen and citizen simply on the basis of caste, race, sex or religion. Public places are open to all citizens, titles of honour stand abolished, untouchability is abolished, among other things. The rule of law is to prevail: all citizens are equal before law and enjoy equal protection of the laws of the land. Political equality is provided by the principle of universal adult franchise and by allowing, at least in principle, any citizen the opportunity to participate in the process of governance. Economically, the same ability and work entitles persons to the same salary. Exploitation of individual or group is to be removed.

Fraternity

A democratic system would function in a healthy manner only if there is a spirit of brotherhood of oneness, among the people of the land. India being a land of immense diversity is all the more in need of this spirit of unity - the sense of belonging to one nation. The principle of common citizenship is directed towards strengthening this sense of 'unity and integrity' of the nation. Fraternity is also sought to be promoted by ensuring equal rights to all. Fraternity, said DR. Ambedkar, "is the principle which gives unity and solidarity to social life". It is the feeling that will protect the unity of India against external attack or disintegration through internal unrest born of social, political and economic causes.

Indian Polity and Governance

Fraternity, how ever is not possible unless the dignity of each individual is preserved and respected. Maintaining this dignity requires the guarantee of certain minimal justiciable rights to each individual. The ensure that an individual is free from want and misery - without which freedom, ideas of self-respect and dignity are meaningless- the Directive Principles have been framed calling upon the State to form its policies to benefit all citizens equally in the matter of providing adequate means of livelihood. The State is also asked to provide just and humane conditions of work and create conditions in which a decent standard of life and full enjoyment of leisure and social and cultural opportunities become possible for all the people of this land. It is in keeping with the principle of individual dignity that the practice of untouchability has been abolished by the Constitution.

In the context of fraternity, it may also be mentioned that India's Constitution goes beyond national boundaries, and speaks of the ideal of universal brotherhood, an international fraternity with all nations and peoples coexisting in peace and amity.

THE UNION AND ITS TERRITORY

Part I of the Indian Constitution comprises four Articles concerned with the territory of India. Article 1 stipulates that India, that is Bharat, shall be a Union of States. The States and territories of India are to be specified in the First Schedule. It is to be noted that the expression, 'Union of India' includes only the states which are members of the federal system and share a distribution of powers with the Union while the 'territory of India' includes the entire area over which the sovereignty of India extends.

The Indian federation was not the result of an agreement between independent States. By the Indian Independence Act 1947, the principal states were given the option of joining India or Pakistan or remaining independent. The integration of the princely states was managed well by Sardar Patel. It may be recalled that in the original Constitution there were four categories of States and Territories - part A which included the nine erstwhile provinces of British India, Part B comprising the five Princely States

with legislatures, Part C which includes five centrally administered states, and Part D mentioning the territory of Andaman and Nicobar Islands. But since the Seventh Amendment Act, 1956, all the States (except for Jammu & Kashmir) belong to one class and all the constitutional provisions relating the states apply to all of them in the same manner. However, it may be pointed out in this connection that certain special provisions applicable to Maharashtra, Gujarat,, Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Arunachal Pradesh, Mizoram and Goa override the general provisions pertaining to the States as a class. As for the administration of certain Scheduled Areas and Tribal Areas within the States, the provisions are specially listed in the Fifth and Sixth Schedules.

'INDIAN TERRITORY' IS OF HOW MANY TYPES?

The territory of India falls under three categories :

(i) State territories, (ii) the Union territories and (iii) territories which may be acquired by the Government of India. No Parliamentary legislation is required to acquire a foreign territory. It is the inherent attribute of a sovereign State to acquire new territories. Article 1(3) (c), in including the acquired territory as part of the Indian territory, merely states a factual situation and does not confer a power on Parliament to acquire foreign territory. The Union Territories are centrally administered according to provisions contained in Part VII of the Constitution. They are governed by the President through an Administrator appointed by him.

At present there are 28 states in India. Since 1987, there are seven Union Territories : Delhi, Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Pondicherry and Chandigarh.

Article 1 of the Constitution says that India is a Union of States, and the States and the territories thereof are specified in the First Schedule. None of the constituent units of the Indian Union was sovereign and independent in the sense the American colonies or the Swiss Cantons were before they formed their federal unions. The Constituent Assembly of India, deriving its power from the sovereign people, was unfettered by any previous commitment in evolving a constitutional pattern suitable to the genius and requirements of the Indian people as a whole. The Constitution contemplated changes of the territorial limits of the constituent States and there was no guarantee about their territorial integrity.

Admission or establishment of new States: Article 2 enables Parliament by law to admit into the Union or establish new States on such terms as it thinks fit. It will be noted that there are two powers given to Parliament by Article 2 namely : (i) the power to admit into the Union new States and

(ii) the power to establish new States. The first refers to the admission of duly organised political communities and second to the admission or formation of a State where none existed before. It will be recalled that the territory acquired by the Union becomes Indian Territory by virtue of clause (3) (c) of Article 1. No Parliamentary sanction is required for acquisition of territory. But a territory acquired by the Government of India, though factually becomes territory of India from the date of its acquisition, the formal or legal assimilation is brought about only by Parliamentary legislation made either under this article when the acquired territory is established as a new State of the Union, or when the acquired territory is merged into an existing State Under Article 3 of the Constitution.

The admission or establishment of a new State will be on such terms and conditions as Parliament may think fit. There is nothing in the Constitution which would entitle a new State, after its formation or admission into the Union, to claim complete equality of status with a state existing at the commencement of the Constitution, or formed thereafter under Article 3 of the Constitution. The analogy of the Australian Constitution where complete equality of status with other States and to all

Indian Polity and Governance

"State rights " are guaranteed is inapplicable to the Indian Constitution, because Section 6 of the Constitution of Australia expressly provides that the expression "State" shall include such colonies or territories as may be "admitted into or established" by the Commonwealth as States. In India, on the other hand, Article 2 gives complete discretion to Parliament to admit or establish new States on such terms and conditions as "it thinks fit".

Formation of new States and alteration of areas, boundaries or names of existing States –

Parliament may by law -

- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the name of any State;

The Constitution contemplated changes of the territorial limits of the constituent States and there was no guarantee about their territorial integrity. The new States may be established in different ways laid down in the article, namely : (i) by separation of territories from any State (ii) by uniting two or more States, (iii) by uniting parts of States and (iv) by uniting any territory to a part of any State.

The law referred to in Articles 2 and 3 may alter or amend the First Schedule of the Constitution which sets out the names of the States and description of territories thereof, and the Fourth Schedule allotting seats in the Council of State in the Union Parliament. The law so made may also make supplemental, incidental and consequential provisions which would include provisions relating to the setting up of the legislative, executive and judicial organs of the State essential to effective State administration under the Constitution, expenditure and distribution of revenue, apportionment of assets and liabilities, provision as to services, application and adaptation of laws, transfer of proceedings and other related matters. No State can, therefore, be formed, admitted or set up by law under Article 4 by Parliament which has not effective legislative, executive or judicial organs.

What is the role of States in alteration of their areas, boundaries or names?

In regard to a Bill under Article 3 of Indian Constitution, there are two conditions. Firstly, no Bill shall be introduced in either House of Parliament except on the recommendation of the President. Secondly, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has to be referred by the President to the Legislature of the State for expressing its views thereon. The period within which the State Legislature must express its views has to be specified by the President, but he may extend the time so specified. If the period specified or extended expires and no views of the State Legislature are received, the second condition laid down in the provision is fulfilled. Also, it is not necessary to make fresh reference to the State Legislature every time an amendment of the proposal contained in the Bill is proposed and accepted in accordance with the rules of procedure of

Indian Polity and Governance

Parliament so long as the amendment is germane to the subject-matter of the original proposal or is not a direct negation thereof.

Reorganisations of States

The grouping of the states at independence was done more on the basis of historical and political principles than social, cultural or linguistic divisions. There was not enough time to undertake a proper reorganisation of the units at the time of making the Constitution. Article 2 empowers Parliament to admit into the Union, or establish, new States on such terms and conditions as it thinks fit. By Article 3, Parliament has the power by law to form a new State from the territory of any State or by uniting two or more states, increase or decrease the area of any State, or alter the boundaries or the name of any State. The only conditions laid down for the making of such a law are that (i) such a bill must be introduced only on the recommendation of the President is to refer it to be the concerned State Legislature which would express its views within a specified period. The President is not, however, bound by the views of the State Legislature. However, in the case of Jammu and Kashmir, the consent of the State Legislature is required before a bill on such alterations is introduced in Parliament. Article 4 stipulates that any such law may make supplemental, incidental or other consequential provisions and may amend the First and Fourth Schedules without going through the Constitutional Amendment process. A simple majority and ordinary legislature procedure is enough for Parliament to form new States or alter existing State boundaries.

It may be noted that these Article does not apply to cession of territory to a foreign state. Any treaty or agreement involving ceding Indian Territory to an outside authority requires a constitutional amendment to be implemented.

First States Reorganization Commission

The Government appointed a commission under S.K. Dhar to examine the feasibility of reorganisation of States on linguistic basis. The S.K.Dhar Commission preferred reorganization for administrative convenience rather than on a linguistic basis. A Congress Committee under Jawaharlal Nehru, Sardar Patel and Pattabhi Sitaramayya (the JVP Committee) too did not favour a linguistic base. However, in 1953 the first linguistic state came into being in Andhra Pradesh, created by separating the Telugu speaking areas from the State of Madras. This followed a prolonged agitating and the death of Potti Sriamulu after a 56- day hunger strike. As there were several more demands for States on a linguistic basis, a commission was set up under justice F.Fazl Ali with H.N. Kunzru and K.M. Panikkar, as members to study the demand. This commission is known as the First States Reorganization Commission. It submitted its report in 1955. Its suggestions were accepted with modifications and the States Reorganisation Act was passed in 1956. As a result, the fourfold distribution of States was replaced by 14 States and six Union Territories (Andaman and Nicobar Islands, Delhi, Himachal Pradesh, Laccadive, Minicoy and Amandivi, Manipur and Tripura) vide the Seventh Constitution Amendment.

Acquired Territories

Indian Polity and Governance

Besides, the States and Union Territories, the territories of India include any area acquired by India by purchase, treaty, cession or conquest. These are to be administered by the Government of India subject to legislation by Parliament. Thus, the French settlement of Pondicherry which was ceded to India by the French Government in 1954 was being administered as an acquired territory till 1962 when it was constituted as a Union Territory. The Portuguese territories of Goa, Daman and Diu were acquired by annexation and administered as acquired territory till they were incorporated as Union Territory in 1961. Goa was given the status of a State in 1987. Sikkim was admitted as a full-fledged State of the Indian Union after a referendum in that country favoured its becoming a constituent unit of India.

It does not matter how the acquisition has been brought about. It may be by conquest, it may be by cession following treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler, or it may be under the terms of an agreement between two States. In cases where the only fact available is the de facto exercise of complete sovereignty by one State in a particular area, the sovereignty of that State over that area and the area being regarded as part of the territory of that State would prima facie follow. But this would apply normally only to cases where sovereignty and control was exercised by unilateral action. Where, however, the exercise of power and authority and the right to administer is referable to an agreement between two States, the question whether the territory has become integrated with and become part of the territory of the State exercising de facto control, depends wholly on the terms upon which the new government was invited or permitted to exercise such control and authority.

The precedents are clear that no cession of Indian territory can take place without a constitutional amendment. However, an agreement to refer the dispute regarding boundary line dividing two neighbouring countries and the very fact of referring such a dispute implies that the executive may do such acts as are necessary for permanently fixing the boundary. A settlement of a

WHAT IS AN 'ACQUIRED TERRITORY'?

A territory can be said to have been acquired when the Indian Union acquires sovereignty over such territory. The expression 'acquired' should be taken to be a reference to 'acquisition' as understood in public international law. If there was any public notification, assertion or declaration by which the Government of India had declared or treated a territory as part and parcel of India, the courts would be bound to recognise an 'acquisition' as having taken place, with the consequence that the territory would be part of the territory of the Union within Articles 1(3) (c). A statement by the Government of India that it did not consider a particular area to have been acquired by it is binding on the Court.

boundary dispute cannot, therefore, be held to be, a cession of territory. It contemplates a suitable boundary, and it is so fixed. The case is one in which each contending State ex facie is uncertain of its

Indian Polity and Governance

own right and therefore, consents to the appointment of arbitral machinery. Such a case is plainly distinguishable from a case of cession of territory known to be home territory.

CITIZENSHIP

The provisions of citizenship are covered by Articles 5 to 11 of Indian Constitution and are embodied in Part II of the Constitution. Article 5 refers to citizenship not in any general sense but to citizenship on the date of the commencement of the Constitution. It was not the object of this Article to lay down a permanent law of citizenship for the country. That business was left to the Parliament of India. Accordingly, at the commencement of the Constitution, every person who had his domicile in the territory of India and

(a) who was born in India, or

(b) either of whose parents was born in India, or

(c) who had been ordinarily resident in India for not less than five years immediately preceding the commencement of the Constitution, was to be considered a citizen of India.

Persons of Indian origin who had been residing outside India at the commencement of the Constitution were given the free choice of becoming Indian citizens under the above provisions if they so desired. The only condition that they had to fulfill in his connection was to get themselves registered as Indian citizens by the diplomatic or consular representatives of India in the country where they were residing (Art. 8).

Articles 6 and 7 deal with two categories of persons, namely, those who were residents in India but had migrated to Pakistan and those who were residents in Pakistan but had migrated to India. Those who migrated from Pakistan to India were divided into two categories:

(a) those who came before July 19, 1948 and

(b) those who came after that date.

According to article 6 those who came before July 19, would automatically become citizens on the commencement of the Constitution, and those who came after July 19 would become such provided they had been registered in the form and manner prescribed for this purpose by the Government of India. These two articles thus provided for all cases of mass migration from Pakistan to India without making any distinction between one community and another, although the partition of the country itself was based upon such as a distinction.

Article 7 provides for those who had migrated to Pakistan but who had returned to India from Pakistan with the intention of permanently residing in India. Such a provision had to be made because the Government of India, in dealing with persons who left India for Pakistan and who subsequently returned

Indian Polity and Governance

from Pakistan to India, allowed them to come and settle permanently under what is called a "permit system". This permit system was introduced from July 19, 1948.

The Citizenship Act, 1955

A comprehensive law dealing with citizens was passed by Parliament in 1955 in accordance with the powers vested in it by Article 11 of the Constitution. The provisions of the Act may be broadly divided into three parts, acquisition of citizenship, termination of citizenship and supplemental provisions.

Acquisition of Citizenship

The Act provides five modes of acquiring the citizenship of India. These are:

WHY THE ISSUE OF INDIAN CITIZENSHIP WAS NOT PERMANENTLY SETTLED BY THE CONSTITUTION?

There is hardly any constitution in which an attempt has been made to embody a detailed nationality law. But since India's Constitution is of a republican character and provision is made throughout the Constitution for election to various offices under the State by and from among the citizens, it was thought essential to have some provisions which precisely determined who was an Indian citizen at the commencement of the Constitution. Otherwise, there could have arisen difficulties in connection with the holding of particular offices and even with the starting of representative institutions in the country under the republican Constitution. This is why Parliament has been given plenary power to deal with the question of nationality and enact any law in this connection that it deems suited to the conditions of the country. Such Parliamentary power embraces not only the question of acquisition of citizenship but also its termination as well as any other matter relating to citizenship (Art. 11) Also under Article 9 of the Constitution, and person who voluntarily acquires the citizenship of any foreign State, even if qualified for Indian citizenship under any provision of the Constitution, may not be a citizen of India.

(1) By Birth: Every person born in India on or after January 26, 1950, shall be a citizen of India by birth. There are two exceptions, to this rule, namely, children born to foreign diplomatic personnel in India and those of enemy aliens whose birth occurs in a place then under occupation by the enemy.

Indian Polity and Governance

(2) By Descent : A person born outside India on or after January 26, 1950, shall be citizen of India by descent if his father or mother is a citizen of India at the time of his birth. Children of those who are citizens of India by descent, as also children of non-citizens who are in service under a government in India, may also take advantage of this provision and become Indian citizens by descent, if they so desire, through registration.

(3) By Registration : Any person who is not already an Indian citizen by virtue of the provisions of the Constitution or those of this Act can acquire citizenship by registration if that person belongs to any one of the following five categories :

- (a) Persons of Indian origin who are ordinarily resident in India and who have been so resident for at least six months immediately before making an application for registration.
- (b) Persons of Indian origin who are ordinarily resident in any country or place outside undivided India;
- (c) Women who are, or have been, married to citizens of India;
- (d) Minor children of persons who are citizens of India; and
- (e) Persons of full age and capacity who are citizen of the Common wealth countries or the Republic of Ireland.

(4) By Naturalisation : Any person who does not come under any of the categories mentioned above can acquire Indian citizenship by naturalisation if his application for the same has been accepted by the Government of India and certificate is granted to him to that effect. An applicant for a naturalisation certificate has to satisfy the following conditions:

- (a) He is not a citizen of a country which prohibits Indians becoming citizens of that country by naturalisation;
- (b) He has renounced the citizenship of the country to which he belonged;
- (c) He has either resided in India or has been in the service of a government in India, normally, for one year immediately prior to the date of application;
- (d) During the seven years proceeding the above mentioned one year, he has resided in India or been in the service of a government in India for a period amounting in the aggregate to not less than four years;
- (e) He is of good character;
- (f) He has an adequate knowledge of a language specified in the Constitution;
- (g) If granted a certificate, he intends to reside in India or enter into, or continue in service under a government in India.

The Act provides, however, for a conspicuous exemption under which any or all of the above conditions may be waived in favour of a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally. Every person to whom a certificate of naturalisation is granted has to take an oath of allegiance solemnly affirming that he will bear true faith and allegiance to the Constitution of India as by law established, and that he will faithfully observe the laws of India and fulfill his duties as a citizen of India.

Indian Polity and Governance

(5) By Incorporation of Territory : If any territory becomes part of India, the Government of India, by order, may specify the persons who shall be citizen of India by reason of their connection with that territory.

Termination of Citizenship

The Act envisages three situations under which a citizen of India may lose his Indian nationality. These are:

(1) By Renunciation: If any citizen of India who is also a national of another country renounces his Indian citizenship through a declaration in the prescribed manner, he ceases to be an Indian citizen of registration of such declaration. When a male person ceases to be a citizen of India, every minor child of his also ceases to be a citizen of India. However, such a child may within one year after attaining full age, becomes Indian citizen by making a declaration of his intention to resume Indian citizenship.

(2) By Termination: Any person who acquired Indian citizenship by naturalisation, registration or otherwise,, of he or she voluntarily acquired the citizenship of another country at any time between January 26, 1950, the date of commencement of the Constitution, and December 30, 1955, the date of commencement of this Act, shall have ceased to be a citizen of India from the date of such acquisition.

(3) By Deprivation: The Central Government is empowered to deprive a citizen of his citizenship by issuing an order under 10 of the Act. But, this power of the Government may not be used in case of every citizen; it applies only to those who acquired Indian citizenship by naturalisation or by virtue only of clause (c) of Article 5 of the Constitution or by registration. The possible grounds of such deprivation are : obtaining of a citizenship certificate by means of fraud, false representation, concealment of any material fact; disloyalty of disaffection towards the Constitution shown by act or speech; assisting an enemy with whom India is at war; sentence to imprisonment in any country for a term of not less than two years within the first five years after the acquisition of Indian citizenship and continuous residence outside Indian for a period of seven years without expressing in a prescribed manner his intention to retain his Indian citizenship. The Act also provides for reasonable safeguards in order to see that a proper procedure is followed in every case of deprivation of citizenship.

Single Citizenship

The most important aspect of the constitutional provisions dealing with citizenship is that it has established a unified or single system of citizenship law for the whole country. A citizen of India is accepted legally as a citizen in every part of the territory of India with almost all the benefits and privileges that attend such a status. This is in striking contrast to the system of double citizenship that prevails in some federal states. Before the inauguration of the Constitution, there were two broad divisions among Indian citizens, British Indian subjects and state subjects. Since there were over 500 Indian States, the State subjects themselves were further subdivided into as many groups of citizens as there were states. Thus, the term Indian citizenship had little precise legal significance except that the Indian people as a whole came under the overall jurisdictions of the British Government that ruled India. The abolition of such distinctions makes the essential unity of the nation a reality. A single citizenship for the entire country removes much of the artificial State barriers that prevailed in pre Independence days and facilitates the freedom of trade and commerce throughout the territory of India.

Indian Polity and Governance

There is, however one barrier still that hinders that full realisation of the ideal of a single citizenship established under the Constitution. This is the existence of what are known as "domiciliary rule" in the different states in India. The term "domicile" is difficult to define. According to the rules prevailing today, in the different States in India, domicile requirements vary from three to fifteen years' continuous residence within the State in addition to other conditions. Thus, the status of domicile is given only to a permanent resident of the State. On the basis of such a distinction, there exist practices in different States which amount to gross discrimination as between citizen and citizen. The also engender provincialism and parochialism which tend to disrupt the unity to the nation. Domiciliary rules which govern eligibility to public services in most of the State illustrate this point. Such rules are applied in some State not only to determine eligibility for appointment to public services but also to regulate admission to higher educational institutions, the awards of contracts and rights in respect of fisheries, ferries, toll-bridges, forests and excise shops. The conditions to be satisfied for acquiring a domicile in some of the states are of such an extremely rigorous nature that it is almost impossible for any person to satisfy them.

FUNDAMENTAL RIGHTS

The success or failure of a democracy depends largely on the extent to which civil liberties are enjoyed by the citizens in general. A democracy aims at the maximum development of the individual's personality, and the personality of the individual is inseparably bound with his liberty. Only a free society can ensure the all-round progress of its members which ultimately helps the achievement of human welfare. Thus, every democracy pays special attention to securing this bare objective to the maximum extent without, at the same time, endangering the security of the state itself. A common device that is adopted by most of them for this purpose is to incorporate a list of fundamental rights in their constitutions and guarantee them from violation by executive and legislative authorities.

The Indian constitution contains the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend upon the will of any majority or minority. No majority has the right to abrogate such rights. In fact, the legitimacy of the majority to rule is derived from the existence of these rights. These rights include all the basic liberties such as freedom of speech, movement and association, equality before law and equal protection of laws, freedom of religious belief and cultural and educational freedoms. The constitution has classified these rights into seven categories and one of them is the right to constitutional remedies which entitles every aggrieved person to approach even the Supreme Court of India to restore to him any fundamental right that may have been violated. It is, thus, a basic affirmation of the Constitution that the political system that it establishes should provide conditions favourable for the maximum development of the individual's personality. The framers of the Constitution were conscious of the fact that in the absence of the enjoyment of the above mentioned rights, such development of the personality was impossible and democracy would sound an empty word. Having spent most of their lives under a foreign rule and having fought relentlessly for the enjoyment of these rights by themselves, it was only natural that they should have wanted to embody them in the Constitution they framed for the establishment of a democratic political order. They hoped to build this political order on the firm foundation of the freedom of political competition. The prime importance of these rights is that while the will of the

Indian Polity and Governance

majority decides how these freedoms are to be implemented, the existence of the freedoms themselves is not subject to that will. On the contrary, these freedoms set the conditions under which the will of the majority is to be formed and exercised.

It must be stressed, however, that the fundamental freedoms guaranteed to the individual under the Constitution are not absolute. Individual rights, however, basic they are, cannot override national security and general welfare. For, in the absence of national security and general welfare, individual rights themselves are not secure. Freedom of speech does not mean freedom to abuse another; freedom of movement does not mean freedom of physical attack on others. The Constitution has made express provisions dealing with such limitations of fundamental rights so that those who seek to enjoy the rights may also realise the obligation attending them.

Public and Private Rights

The rights which were thus selected by the Constituent Assembly fall broadly into two categories-public and private-but both have the same purpose in view, namely, to put an end to arbitrary rule. Among the public or political rights were the right often to choose their rulers, the right to hold them responsible for their conduct, the right to share in law-making and the right to bear arms. Among the private rights were the right to personal freedom, the right to freedom of religious belief, the right to thought and expression, and the right to quality and to the possession and use of property.

Right to Equality (Arts. 14,15,16,17 & 18)

Article 14 declares that "the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India". Thus, Article 14 stands for the establishment of a situation under which there is complete absence of any arbitrary discrimination by the laws themselves or in their administration. The Right to Equality affords protection not only against discriminatory laws passed by legislatures but also prevents arbitrary discretion being vested in the executive. In the modern State, the executive is armed with vast

WHAT ARE 'JUSTICIABLE' AND 'NON JUSTICIABLE' RIGHTS?

The real problem that confronted the framers of Indian Constitution was how to limit their selection of rights to certain categories only. What rights were fundamental and what are not, and why? If the rights of life, liberty and property were fundamental, what about right to employment and education? Has not the traditional concept of fundamental rights in its individualistic setting undergone a change in the modern era of the welfare State? The framers had no doubt about the answers to these questions. They were quite conscious of the change in the character of the modern state. They knew that the age of the American Bill of Rights which believed in the "perfectibility of man and the malignancy of Government" had gone for ever. And yet, it was a task of utmost difficulty. This was because the State in India was not yet in a position to guarantee the right to employment or education. It was a matter of physical impossibility, not the lack of will. Hence, they divided these rights into two categories, justiciable and non-justiciable. Justiciable rights are those which can be enforced by a court of law. Part III of the Constitution which is entitled "Fundamental Rights" contains justiciable rights like the right of life, liberty and property. Part IV, "The Directive principles of State Policy, contains non-justiciable rights such as right to employment and education. The citizen has no judicial remedy if he is denied the enjoyment of these rights.

powers, in the matter of enforcing bylaws, rules and regulations as well as in the performance of a number of other functions. The equality clause prevents such powers being exercised in a discriminatory manner.

Article 14 prevents discriminatory practices only by the State and not by individuals. For instance, if a private employer like the owner of a private business concern discriminates in choosing his employees or treats his employees, unequally, the person discriminated against will have no judicial remedy.

What is the difference between "equality before the law" & "equal protection of laws"?

The phrase "equality before the law" occurs in almost all written constitutions that guarantee fundamental rights. Equality before the law is an expression of English Common Law while "equal protection of laws": owes its origin to the American Constitution. Both the phrases aim to establish what is called the "equality to status and of opportunity" as embodied in the Preamble of the Constitution. While equality before the law is a somewhat negative concept implying the absence of any special privilege in favour of any individual and the equal subjection of all classes to the ordinary law, equal protection of laws is a more positive concept employing equality of treatment under equal circumstances.

Prohibition of Discrimination on Certain Grounds (Art. 15)

Indian Polity and Governance

Not content with a mere general declaration of the right to equality, and fully conscious of the types of discrimination prevalent in the country, the framers of Indian Constitution went a step further in Article 15, which is more illustrative in character than introducing anything substantially new. Yet, there is one striking feature in it which brings within its scope, although in a limited way, the actions of the private individuals. According to the Article, "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Further, on the basis of any of these grounds a citizen cannot be denied access to shops, public restaurants or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public."

Article 15 has, however, two notable exceptions in its application. The first of these permits the State to make special provision for the benefit of women and children. The second, allows the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. The special treatment noted out to women and children is in the larger and long range interest of the community itself. It also recognises the social customs and background of the country as a whole. The second exception was not in the original Constitution but was later on added to it as a result of the First Amendment of the Constitution in 1951.

Equality of Opportunity in matters of Public Employment (Art. 16)

Article 16 guarantees equality of opportunity in matters of public employment. In the first part of the Article, the general rule is laid down that there shall be equal opportunity for all citizens, wherever they are living in matters of employment under the State, thereby the universality of Indian citizenship is emphasized. According to this, the State is prohibited from showing any discrimination against any citizen on grounds of religion, caste, race, sex, descent, place of birth or residence. The next clauses are in the nature of exceptions. According to the first, residence qualifications may be made necessary in the case of appointments under the State for particular positions. But instead of leaving it to individual States to make any rules they like in this regard, the power is vested in Parliament to prescribe the requirement as to residence within the State. This is intended to make the qualifying test uniform throughout India. The second exception is in favour of reservation of positions in public employment for any backward class of citizens. This is meant to help those who had very little share so far in public employment. The determination of a backward community is a matter that is left to each State Government. The third exception seeks to take out of the scope of the general principle the management of the affairs of any religious or denominational institution under any special law providing for the same.

Abolition of Untouchability (Art. 17)

Article 17 abolishes "untouchability" and its practice in any form is made an offence punishable under the law. No article in the Constitution was adopted with such unanimity and so great an acclamation and

Indian Polity and Governance

enthusiasm as this article. The custom of untouchability had not only thrown millions of the Indian population into abysmal gloom and despair, shame and disgrace, but it had also eaten into the very vitals of the nation. There would be no better sign of the determination to eradicate the evil than incorporating this Article into the chapter on Fundamental Rights in the Constitution.

The Untouchability Offences Act was amended in 1976 making its penal clauses more stringent. The Act has been also renamed as the Protection of Civil Rights Act. One significant new provision of the Act is that a person convicted of an untouchability offence will be disqualified for contesting the elections. It was for the first time that such a provision became a law in the history of elections in India.

Abolition of Titles (Art. 18)

In the creation of a society which seeks to establish political, social and economic equality and thereby aspires to become truly democratic, there is no room for some individuals to hold titles thus creating artificial distinctions among members of the same society. Recognition of titles and the consequent creation of a hierarchy of aristocracy had been denounced as an antidemocratic practice as early as the eighteenth century by both the American and the French revolutions. In India, the practice of the British Government conferring a number of titles every year mostly on their political supporters and Government officers, had already created peculiar class of nobility among the people. It was difficult, on principle, for independent India to recognise and accept these titles apart from considerations of the merit of those who held them. Article 18, therefore, abolished all titles and the State is prohibited from conferring titles on any person. The only exception made to the strict rule of non-recognition of titles is that provided in favour of academic or military distinctions.

Right to Freedom (Art.19)

Personal Liberty is the most fundamental of fundamental rights. Articles 19 to 22 deal with different aspects of this basic right. Taken together, these four articles form a charter of personal liberties, which provides the backbone of the chapter on Fundamental Rights. Of these, Article 19 is the most important and it may rightly be called the key-article embodying the "basic freedoms" under the Constitution, guaranteed to all citizens. These are the rights:

- 1) To freedom of speech and expression.
- 2) To assemble peaceably and without arms.
- 3) To form associations or unions;
- 4) To move freely throughout the territory of India;
- 5) To reside and settle in any part of the territory of India and
- 6) To practice any profession, or to carry on any occupation, trade or business.

It is impossible to exaggerate the importance of these freedoms in any democratic society. Indeed, the very test of a democratic society is the extent to which these freedoms are enjoyed by the citizens in general. These freedoms as a whole constitute the liberty of the individual.

What restrictions are put on the freedom of speech and expression?

There are eight restrictions on the freedom of speech and expression. These are in respect of the:

1. Sovereignty and integrity of India

2. Security of the State
3. Friendly relations with foreign State
4. Public order
5. Decency or morality
6. Contempt of court
7. Defamation
8. Incitement to violence

Freedom of the Press

There had been much criticism, both within Constituent Assembly and outside, of the omission of a specific reference to freedom of the Press and the failure to guarantee it along with the freedom of speech. The omission was considered a serious lapse on the part of the Drafting Committee by the protagonists of "Free Press" as a separate right. Nevertheless, the Drafting Committee did not think, it necessary to incorporate right of this nature in the chapter of Fundamental Rights.

Speaking on behalf of the Committee, Dr. Ambedkar said that the Press was merely another way of expression of an individual or a citizen. 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 managers of the Press are all citizens and, therefore, when they choose to write in newspapers, they are merely exercising their right of expression. Therefore, no special mention is necessary of the freedom of the Press. The word "expression" that is used in Article 19(1) (a) in addition to "speech" is comprehensive enough to cover the freedom of Press.

Other rights covered under the Right to Freedom (Art.19)

Right to Assemble [Art. 19 (1) (b) and 19 (3)]: One of the basic protections of free speech is the right of free assembly. In fact, freedom of assembly and freedom of speech go hand in hand. The framers of the Constitution knew that the right to peaceably assemble, public debate and discussion, for political activities and such other purposes was essential to make the freedom of speech and expression real. Hence, the constitutional guarantee to assemble peaceably and without arms. The right to assembly can be restricted only in the interest of public order and the restrictions ought to be reasonable.

Right to Form Associations and Unions [Art, 19 (1) (c) and 19(4)]: The right guaranteed to form association or unions is more or less a charter for all working people in this country. The right to form associations or union can be restricted only in the interest of public order or morality. There can be no association or union for an illegal or conspiratorial purpose. Nor can The right to form associations or unions however, is not available to every citizen in the same measure. A member of the public services, although he is a citizen cannot claim the right to the extent that a private citizen can. Being a Government servant, he is bound by his service rules and he cannot challenge his service rules on the ground that they stand in his way of fully enjoying the right to form associations.

Right to Free Movement and to Residence [Art. 19(1) (d), (e) and 19 (5)]: The right to move freely throughout the territory of India, to reside and settle in any part of it are guaranteed under sub-clauses

(d) and (e) respectively of clause (1) of Article 19. The importance of the freedom of movement and residence cannot be exaggerated. In fact, the enjoyment of the freedoms guaranteed under the other rights depends largely on the freedom of movement unhampered and uncircumscribed. The state's power to place reasonable restrictions of these freedoms is limited.

Freedom of Profession, Occupation, Trade or Business [Art 19 (1) (g) and 19 (6)]: Article 19 (1) (g) guarantees the freedom to practice any profession or to carry on any occupation, trade or business. A doubt was expressed in the Constituent Assembly whether these were fundamental rights at all. Perhaps the only other Constitutions which have given them the status of fundamental rights are those of Ireland and Switzerland. It seems that the framers of the Indian Constitution had been influenced by the complex social system that prevailed in India, in seeking to guarantee rights such as these. It has been the bane of India's social life that professions were inherited rather than acquired. A society dominated by Caste, and professions based upon Caste or religion, have little to offer for the building up of a community enlivened by social mobility and dynamism. Such a society is often intolerant to persons who change the traditional professions of their ancestors and is eager to maintain a petrified social order. A constitutional guarantee of the right to take up the profession, calling, trade or business of one's choice is indeed a significant aid to the building up of a dynamic and democratic society.

Protection in Respect of Conviction for Offences (Art-20)

Article 20, affords protection against arbitrary and excessive punishment to any person who commits an offence. There are four such guaranteed protections:

- (1) A person can be convicted of an offence only if he has violated a law in force at the time when he is alleged to have committed the offence;
- (2) No person can be subjected to greater penalty than what might have been given to him under the law that was prevalent when he committed the offence;
- (3) No person can be prosecuted and punished for the same offence more than once.
- (4) No person accused of an offence can be compelled to be a witness against himself.

Protection of Life and Personal Liberty (Art -21)

Article 21, is one of the shortest in the constitution over which there took place one of the longest and most through going discussions in the Constituent Assembly. It enacts that no person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21, gives protection to life and personal liberty to the extent therein mentioned. It does not recognise the right to life and personal liberty as an absolute right but limits the scope of the right itself. The absolute right is, by the definition in the article, qualified by the risk of its being taken away in accordance with the procedure established by law. It is this circumscribed right which is substantively protected by Article 21, as against the executive as well as the legislature,, for the Constitution has conditioned its deprivation by the necessity for a procedure established by law made by the legislature. While sub-clauses 2 to 6 of Article 19 have put a limit on the fundamental right of a citizen, Article 21 along with Article 22 puts a limit on the power of the State given under Article 246, read with the legislative lists. Under the Constitution, life and personal liberty are balanced by restrictions on the

Indian Polity and Governance

rights of the citizens as laid down in Article 19, and by the checks put upon the State by Article 21 and 22.

Right to Education (Art-21 A)

This right was inserted in the list of fundamental rights by the 86th Amendment Act, 2002. It provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

Protection against Arrest and Detention (Art - 22)

Article 22 guarantees three rights. First, it guarantees the right of every person who is arrested to be informed of the cause of his arrest, secondly, his right to consult, and to be defended by a lawyer of his choice. Thirdly, every person arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours and shall be kept in continued custody only with his authority. All these rights are without any qualifications and are, therefore, in absolute terms.

There are however two exceptions to the universal application of the rights guaranteed under the first two clauses of Article 22. These relate to.

- 1) Any person who is an enemy alien, or
- 2) Any person who is arrested or detained under any law providing for preventive detention.

India won freedom from foreign rule as a result of great sacrifices by thousands of patriots. Many of them died in British jails in the course of the struggle for independence, many others spent years of their lives in prison. Naturally, freedom and liberty are gifts too precious to all of them who lived to see India free. And they wanted to safeguard these rights and facilitate their enjoyment as best as possible. Against this background it is easy to understand and appreciate the deep rooted feeling against what happened to be personal freedom during the emergency. At the same time, it must be remembered that democratic freedom in India is still too young and tender a plant to be capable of defending itself easily against overt or covert onslaughts that may be directed against it by elements which have no regard either for democratic liberties or orderly progress. Vigilance is still required to protect the country's hard won freedom and national unity from forces of subversion and violent revolution