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I - Semester

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INDIAN CONSTITUTION

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INTRODUCTION

India, also known as *Bharat*, is a Union of States. It is a Sovereign Socialist Secular Democratic Republic with a parliamentary system of government. The Republic is governed in terms of the Constitution of India, which was adopted by the Constituent Assembly on 26 November 1949, and came into force on 26 January 1950. The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the Executive of the Union is the President. As per Article 79 of the Constitution of India, the council of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advice the President, who shall exercise his/her functions in accordance to the advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head.

The Indian Constitution is the document that was created after the long struggle of India's independence. It embodies the ethos of the Indian freedom struggle and the dreams of the Indian people. The Constitution of India envisions India to be a 'democratic, secular, socialist, republic'. It lays down the laws of the land, provides the framework for administration of governance and also gives direction to policies to be undertaken by the governments at the state and the Central level. The country has a federal form of government. The Union government is divided into three separate but interrelated branches, namely legislative, executive and judiciary. Like the British parliamentary model, the leadership of the executive is drawn from and responsible to the legislative body, i.e., Indian Parliament. Article 50 of the Constitution stipulates the separation of the judiciary from the executive. However, the executive controls judicial appointments and many of the conditions of work.

This book, *Indian Constitution* has been divided into fourteen units. The book has been written in keeping with the self-instructional mode or the SIM format wherein each Unit begins with an Introduction to the topic, followed by an outline of the Objectives. The detailed content is then presented in a simple and organized manner, interspersed with Check Your Progress questions to test the student's understanding of the topics covered. A Summary along with a list of Key Words, set of Self-Assessment Questions and Exercises and Further Readings is provided at the end of each Unit for effective recapitulation.

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BLOCK - I
HISTORICAL BACKGROUND AND MAKING
OF THE CONSTITUTION

*Constitution Development
under British Rule*

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UNIT 1 CONSTITUTION
DEVELOPMENT UNDER
BRITISH RULE

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1.0 INTRODUCTION

The 18th century in India was an important period of transition and remains the subject of continuing debate among scholars of late medieval and modern Indian history. The two main debates on the 18th century are the nature of transition from a centralized Mughal polity to the emergence of regional confederations, and the nature of the transformation brought about by the increasing role of the English East India Company in the economic, commercial, and financial life of the

*Self-Instructional
Material*

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subcontinent. We see the rise of a new economic order, and decentralization of political power which went hand-in-hand with a broader localization process.

The death of Aurangzeb in 1707 laid bare a patchwork of several sovereignties, a network of fragmented and layered forms of regional political powers that had been partly masked and managed by the practices of Mughal state and sovereignty. The 18th century was marked by the emergence of regional polities, the so called successor states like Awadh, Bengal and Hyderabad, although they were politically and financially independent from Mughal state, but always used the Mughal symbols and titles for legitimacy and political stability. It is generally viewed that the East India Company's expansion in India took place due to a power vacuum left after Aurangzeb's death. In the debates of continuity and change, historians have presented enduring socio-economic structures such as financial institutions and information networks that emphasize the utility of Indian agents or collaborators in facilitating early company rule.

East India Company Rule brought about dramatic changes in the Indian political situation. Company officials were mostly interested in enriching themselves and plundering India for company profits. Whatever administrative reforms that were brought in were an attempt to create an efficient plundering machine and to stabilize Company rule in India. Due to the terrible conditions under the Company, it was inevitable that Indians would rise in revolt. The 1857 revolt resulted in India transitioning from Company to Crown Rule. It was under Crown Rule after 1857 that some attempts were made by the British to create a modern administrative set-up. These were the first steps that went into the making of the Indian Constitution. However, conditions were far from perfect. India was still a colony of a foreign country.

Indian nationalism took birth in the nineteenth century as a result of the conditions created by British rule. Nationalist leaders of India demanded many reforms in constitutional arrangements during the colonial rule. To meet some of their demands, the British enacted some legislations, such as the Government of India, Act 1858; the Indian Council Act, 1861; the Indian Council Act, 1892; the Indian Council Act, 1909; the Government of India Act, 1919; and the Government of India Act, 1935. The Constituent Assembly of India was elected in 1946 to write the Constitution of India. Following India's independence from Great Britain, its members served as the nation's first Parliament.

In this unit, you study about the advent of the Company rule followed by the Crown rule and the establishment of the interim government in India.

1.1 OBJECTIVES

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

- After going through this unit, you will be able to:
- Explain the reforms initiated by the British Governor Generals of India
- Discuss the salient features of the crown rule

- State the formation of the interim government in India after the end of the Second World War

1.2 COMPANY RULE (1773-1858)

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In 1717, the Mughal emperor issued a *farmaan* by which it granted special benefits to the English East India Company, namely, exemption of taxes on goods imported and exported from Bengal. However, this concession did not ensure that they could trade in Bengal without paying any taxes. The Company servants like other Indian traders had to pay taxes. This misinterpretation of the *farmaan* became a constant cause of dispute between the nawabs of Bengal and the Company. All the nawabs of Bengal, beginning from Murshid Quli Khan to Alivardi Khan, refused to sympathize with the Company's misconstrued explanation of the *farmaan* and even forced them to pay a huge amount as indemnity if they used the *dastaks* wrongly.

In 1741, when Muhammad Shah Rangila was the Mughal sovereign, Alivardi Khan, the governor of Bengal, announced himself independent and established his capital at Murshidabad. In 1756, with Alivardi's demise, and in the absence of any rightful successor, several factions vied with each other to make their chosen candidate the Nawab of Bengal. Though Alivardi wanted his grandson, Siraj-ud-Daulah, son of his youngest daughter, to acquire the nawabship, the latter's succession to the throne was not accepted by other contenders, such as Shaukat Jang (*faujdar* of Purnea) and Ghasiti Begam, eldest daughter of Alivardi. In the wake of increasing court intrigues, the English East India Company took the opportunity to win factions in their favour and work against the Nawab, and thereby lead to a headlong confrontation with the Nawab.

As Bengal, in the 18th century, was the most prosperous province, the English East India Company considered it economically and politically, extremely lucrative. Hence, it is natural that they wanted to consolidate their position further in Bengal. They wanted to base their operations in Calcutta. There were other European contenders too in Bengal, namely, the Dutch, having their factory at Chinsura, and the French with their factory at Chandernagor.

Siraj-ud-Daulah became the Nawab of Bengal in 1756. Apart from having several foes in the family who were not happy with the succession, he was immature and lacked adequate skills to tackle the situation. In the South, the English East India Company and the French were vying against each other. Without seeking Nawab Siraj-ud-Daulah's consent, the English began to build fortifications in Calcutta. They even chose to disregard the Nawab's order to curtail augmentation of their military resources and abuse the use of *dastaks* granted to them by the *farmaan* of 1717. Also, Company servants began misusing the concessions granted by the *farmaan* of 1717 by extending the privileges over their private trade too. Causing further economic loss to Bengal, the officials began to profit by selling off the *dastaks* to the Indian merchants. Another cause of discontentment towards

the English for Siraj was their conscious move to give protection to Siraj's foe Krishna Das, son of Raja Rajballava.

1.2.1 The Battle of Plassey (1757)

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To punish the highhandedness of the Company, Siraj-ud-Daulah retaliated by striking Calcutta on 16 June 1756 and bringing it under his sway by 20 June 1756. The English were caught unawares and the Nawab's huge force was no match to their troops. Most Englishmen escaped to Fulda, only twenty miles down the Hoogly, and the rest were held back as prisoners.

It was Siraj's folly to have allowed the English to flee to Fulda and not annihilate them entirely from Fulda. Again, after capturing Calcutta, he did not attempt to consolidate his position and ensure its defense from any counter attack. Such errors are seldom overlooked in history. In January 1757, the English troops, headed by Robert Clive and Watson, attacked Calcutta and recaptured it. Siraj-ud-Daulah was compelled to consent to the Treaty of Alinagar (as Calcutta was renamed in 9 February 1757), agree to all their claims. Having strengthened their position, the English wanted to embarrass the Nawab further and in March 1757, they sent their troops to strike at the French settlement at Chandernagor.

As Siraj wanted to seek French support in his fight against the English, he requested Clive to refrain from aggression towards the French. This prompted Clive to conspire against the Nawab and ally with those in the court and army who were dissatisfied with Siraj's succession to the throne, namely, Mir Jafar, Mir Bakshi, Jagath Seth and Amin Chand.

Owing to the betrayal of Mir Jafar and Rai Durlab, Siraj, despite being armed with a huge contingent, was defeated by the small army of English soldiers under Robert Clive in the Battle of Plassey (23 June 1757). Siraj-ud-Daulah was held captive and finally was killed by Mir Jafar's son Miran. Clive placed Mir Jafar on the throne of Bengal. In lieu of nawabship, Mir Jafar had to pay a huge sum to the English, and part with the 24 Parganas. The enormity of the wealth looted from Bengal can be gauged by the fact that almost 300 boats were required to carry the spoils to Fort William.

The Battle of Plassey was not a battle in the real sense, as the Nawab's army was headed by Mir Jaffer and Rai Durlabh, who had shifted their allegiance towards the English and made no effort to contest the English troops. As demands for more presents and bribes from the Company's servants increased, the coffer of Mir Jafar soon became barren. When Mir Jafar became unable to meet the Company's expectations any further, the English replaced him by his son-in-law Mir Qasim. The newly appointed nawab won the favour of the English by granting them the zamindari of the districts of Burdwan, Midnapur and Chittagong and rewarding them with expensive gifts.

Consequences of Plassey

According to Sir Jadunath Sarkar, an eminent historian, 23 June 1757, marked the end of the medieval period in India and the beginning of the modern period.

Retrospectively speaking, in the years following Plassey (1757–76), that not even covered a single generation, one notices the waning out of the medieval practice of theocratic rule, which can be considered as a fallout of the Battle.

The Company's resident at the Nawab's *darbar*, Luke Scrafton, in his observations on post-Plassey Bengal had commented, 'The general idea at this time entertained by the servants of the Company was that the battle of Plassey did only restore us to the same situation we were in before the capture of Calcutta (by Siraj-ud-Daulah); the *Subah* (*subedar*) was conceived to be as independent as ever, and the English returned into their commercial character...' This observation overlooks the fact that most of the restrictions inflicted on the nawab post Plassey had been already been enforced on Mir Jafar in a treaty signed (5 June 1757) before the onset of the battle.

However, Plassey did not make the English the rightful legal rulers of Bengal. The Supreme Court of Calcutta even pointed out that apart from those living in Calcutta, other English officials were not British subjects. Thus, post Plassey, the English did not shed their 'commercial character'. This was all the more evident when the English won the Battle of Buxar (1764). However, the commercial activities of the English were gradually becoming political as Clive, determined to yield more benefits, pressurized the meek puppet nawab, Mir Jafar, to concede more privileges. During this period, the Marathas also suffered a crushing defeat at Panipat and the French underwent heavy losses owing to a shipwreck in South India, thereby leaving no serious contenders to challenge the English in Bengal.

After Plassey, it was quite unexpected that the Marathas would be routed, or the French would be subdued, thereby allowing the English to gain control over Bengal. It was the event of the next ten years that turned paramount influence into a new regime.

The English obtained a few immediate military and commercial benefits after Plassey. They worked their way to consolidate their position politically in the 'three provinces abounding in the most valuable production of nature and art'. Their confidence got further boosted when the French were ousted from Bengal. They took this opportunity to consolidate their position in the south. In fact, foreseeing perhaps the potentials of the English, Clive had advised Pitt the Elder, a prominent member of the King's government in London, to request the Crown to take over direct control over Bengal and lay the foundation of the British Empire.

1.2.2 Dual Government

In Bengal's history, the Treaty of Allahabad (1765) is extremely significant as it ushered in a new administrative mechanism, which laid down the foundation of the British administrative system in India. Hence, the Nawab's administrative powers were clipped, bringing in a new mechanism of power devoid of responsibility and vice versa.

We need to understand the meaning of the *diwani* and *nizamat* functions to understand the dual system of government better. The provincial administration in

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the Mughal period was divided into two levels: the *nizamat* (military defense, police and administration of justice) functions which were looked after by *subedar* or governor and his officials, and the *diwani* affairs (management of revenues and finances) which were handled by another similar such set of officials under another *subedar*. These officers were answerable to the central government and they kept a check on each other. Murshid Quli was in charge of Bengal, when Aurangzeb died.

By signing the treaty of Allahabad (with Shah Alam II), the English obtained *diwani* and *nizamat* rights in lieu of ₹26 lakh as annual pension and ₹53 lakh, respectively. However, the Company had received the *diwani* rights from the Mughal emperor and the *nizamat* powers from the nawab. In a treaty signed earlier in February 1765 with Nawab Najm-ud-Daulah, the Company had already secured all *nizamat* powers, including military, defence and foreign affairs. Though the Company kept all administrative matters under his control, the *diwani* and the *nizamat* operations were handled by its Indian representatives. As this administrative mechanism involved both the Nawab and the Company, it is referred as the Dual or double Government of Bengal.

The Dual Government had badly affected the administration. While there was no discipline and order, trade and commerce suffered, and merchants almost became paupers, thriving industries, such as of silk and textiles, collapsed, agriculture was evaluated by the Company to be unyielding and thereby, peasants were subjected to dire poverty. The outbreak of the great famine of 1770 reflected the flaws of the Company's indirect governing policy. Around 10 million people lost their lives in the famine, which meant almost a third of the population of Bengal and Bihar. However, during this period of utter distress when the people in desperation were even feeding on the dead to survive, Company's servants and *gomastas* continued with their illegal private trade. While exercising monopoly over the obtainable grain, they even seized the seeds to be used for successive harvests from the peasants.

The Company, under Cartier's governorship (1769–1772), chose to overlook the high mortality and the reduction of cultivable land, granted absolutely no remittance on land revenue, instead increased it by 10 per cent for the following year.

The high mortality rate affected the obtainable quantum of production from agriculture and seriously upset the economic well-being of the province. As the revenue-paying capacity dwindled, the zamindars failed to collect adequate revenue. This in turn had an impact on the Company's income and as it lost its cultivators and artisans.

1.2.3 East India Company as Sovereign Ruler of Bengal

Clive's Dual Government proved to be a complete failure. In 1772, Warren Hastings became the governor of Bengal, and embarked upon an offensive plan that would remove 'the mask of Mughal sovereignty' from the soil of Bengal, and make the English the rightful rulers. The Company servants were made responsible for dual administration. The Nawab practically had no share in administration. The pension

granted to Shah Alam II was discontinued and he was compelled to part with Allahabad and Kora, which were sold out to Shuja-ud-Daulah.

In this way, within a span of two decades, the reins of Bengal's administration passed over to the Company. Unfortunately, under Company rule, the most prosperous and industrially developed province soon became steeped in abject poverty and suffering that became augmented in the wake of famines and epidemics. Gaining control over Bengal, the English had become successful in founding a colonial empire and fulfill its imperial designs.

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1.2.4 Battle of Buxar

The Battle of Buxar (1764) was fought between the forces under the command of the British East India Company led by Hector Munro, and the combined armies of Mir Qasim, the Nawab of Bengal; Shuja-ud-Daula the Nawab of Awadh; and the Mughal Emperor Shah Alam II.

When Robert Clive and his Company officials had emptied the Nawab's treasures completely, they thought Mir Jafar to be incapable of yielding any further benefits. Few English officials like Holwel were lobbying against Mir Jafar. Mir Qasim, son-in-law of Mir Jafar replaced him as Nawab on 27 September 1760. As rewards of his Nawabship, Mir Qasim had to concede Burdwan, Midnapore and Chittagaon to the East India Company. He shifted the capital to Munger. Though during the initial years, he accepted British domination, however, the increasing misuse of the *dastaks* by the Company servants and the consequent losses to the treasury exasperated him to abolish the *dastak* system and exempt duties on trade for all. This precipitated the deposition of Mir Qasim, with Mir Jafar being reinstated to Nawabship. Mir Qasim planned an offensive at Buxar (22 October 1764) against the English by allying with Shah Alam II, the Mughal king and Shuja-ud-Daulah, the Nawab of Awadh. However, the joint forces of the Indian sovereigns could not win against the well-trained and regulated English troops, armed with advanced ammunitions. The failure at Buxar made it evident that India lacked in industrial and technological development.

After reinstating Mir Jafar to the throne of Bengal, the English negotiated a treaty with Shah Alam at Allahabad in 1765 by which the latter conceded *diwani* rights to the Company in lieu of a pension of ₹26 lakhs from the Company and ₹53 lakhs from the Nawab of Bengal. Shuja-ud-Daulah, who was a party to the same treaty had to agree to give Allahabad and Kara to the Mughals as well as part with the zamindari of Banaras to Balwant Rai, who was an English loyalist.

In Bengal, between 1765 and 1772, an innovative governing machinery, the dual system of administration, was introduced. With the Company's consent, the Nawab appointed Raja Shitab Rai and Reza Khan as deputy *diwans*, who in actual terms were delegated to work for the English rather than the Nawab. By acquiring the *diwani* rights (authority of revenue collection), the Company virtually became the de facto power, while the Nawab remained the titular head responsible for civil and criminal administration. The inhabitants of the region suffered the most through this arrangement. To understand the motive behind such a decision, it may

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be reasoned out that this system of administration reflected the Company's inexperience in matters related to administration, as the Company was essentially a trading body.

Since 1765, the Company became the actual sovereign of Bengal, gaining exclusive rights over all military and political affairs. The Nawab was made responsible for the defense of the British, within and outside Bengal. The East India Company exercised direct control over *diwani* functions, which gave them the right to collect the revenues of Bengal, Bihar and Orissa. The Company had indirect hold over the *nizamat* functions, namely, judicial and police rights, also possessing the right to nominate the deputy subedar.

Political Implications of the Battle of Buxar

The Battle of Buxar established British control over Bengal. Buxar revealed the political and military shortfalls of the Indian rulers and the decadence of the Mughal Empire. With increasing intrigues and factionalism at the Nawab's court, and with vested interests coming into play, corruption increased and Company officials like Clive used the opportunity to become wealthy. The Treaty of Allahabad signed by Shuja-ud-Daulah and Shah Alam II with the English granted the latter the right to trade freely in Awadh. Moreover, the English possessed the right to station an army at Awadh, which were to be maintained by Shuja-ud-Daulah. In lieu of transferring the *diwani* rights over Bengal, Bihar and Orissa to the English, Shah Alam II received Kora and Allahabad and an annual pension of ₹26 lakhs.

Consequences of the Battle of Buxar

Though the Battle of Buxar was precipitated by the alliance drawn by Mir Qasim with Shuja-ud-Daulah and thereby had caused political repercussions in Bengal, Mir Qasim's decision to break up the alliance even before Munro's attack, saved him. It appears that Shuja-ud-Daulah was the most affected by the defeat at Buxar, making him a nominal power. The influential position that he held in North India got curbed overnight. To get back his lost prestige, he tried to annex Varanasi, Chunar and Allahabad, but could not progress further when his troops abandoned him. Trying to launch another offensive against the English, he went from place to place to ally with other powers. He even sought shelter from the Ruhelas and Bangash Afghans, who had been traditional enemies of his family. However, with all his attempts becoming futile, he surrendered to the English in May 1765 and sought shelter. Prior to Shuja's surrender, Shah Alam had accepted the English supremacy and remained under their protection.

Militarily Buxar was very significant for the English. The English victory at Plassey was not entirely commendable as Siraj suffered defeat when his generals betrayed him. However, there was no instance of betrayal at Buxar. The English troops emerged victorious defeating an experienced politically influential personality like Shuja. After having established their position in Bengal, Buxar laid out the path for British supremacy over north India.

Treaty of Allahabad

In May 1765, Clive was entrusted the governorship of Bengal for the second time. The Company officials were looking for the appropriate means to tackle Shuja and Shah Alam. There were no further annexation plans with regard to Shuja's territories, which was already under the sway of the English forces. The newly acquired responsibility of governing both Awadh and Allahabad prompted the English to look for innovative designs.

According to the Treaty of Allahabad, the concluding agreement drawn with Shuja-ud-Daulah, (16 August 1765), the territories earlier belonging to Shuja, except Allahabad and Kora, were given back. Shah Alam was given Allahabad and Kora. Also, Shuja was assured regular revenue payment from his zamindari of Varanasi, which was presented by the English to Balwant Singh for having helped them during Buxar. In this way, the Company established 'Perpetual and universal peace, sincere friendship and firm union' with the Nawab. It was also agreed that if a third party attacked any one of the powers, the other party to the Treaty would assist him in ousting the intruder by sharing his troops totally or partially. The Nawab had to bear the expenses of the Company's army if it assisted the Nawab. However, it is not clear if the Company met the expenses of the Nawab's army when the Company used its services. Also, the Nawab had to pay ₹50 lakh as compensation for the war, and grant permission to the Company to continue duty-free trade in his territories.

1.2.5 The Puppet Nawabs of Bengal

Post-Buxar, Mir Jafar was reinstated to the throne of Bengal by the English. By agreeing to reduce his troops, Mir Jafar had curbed the military powers of the nawab further. He was unable to bring in any formidable political or administrative changes in Bengal at this stage because he had a very weak personality and had developed a negative approach considering the unpleasant political situation he had to tackle and his ailment (believed to be suffering from leprosy). The English success at Buxar, followed by Mir Jafar's demise sealed the fate of the nawabs in Bengal and laid the foundation of the British empire in Bengal.

The Company made Najm-ud-Daulah, Mir Jafar's minor son, the nawab and signed a treaty with him that made the throne completely subservient to the English. Muhammad Reza Khan was appointed deputy governor by the nawab under English directives. Khan looked after the entire administration, and he could only be replaced with the approval of the governor and Council. The governor and Council's approval were also essential while appointing or removing revenue collectors.

Subsequently, the Nawab's status deteriorated further. After resuming for his second term of governorship in May 1765, Clive pressurized Najm-ud-Daulah to grant all the revenues to the Company in exchange of an annual pension of ₹50 lakh. When Najm-ud-Daulah died in 1766, he was succeeded by his minor brother Saif-ud-Daulah, who was granted a pension of ₹12 lakh only. Before his death (1770), he had signed a treaty with the English in 1766 by which he had granted all

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matters related to the administration and protection of the provinces of Bengal, Bihar and Orissa to the English.

The pension amount was further reduced to ₹10 lakh when Najm-ud-Daulah was succeeded by his minor brother Mubarak-ud-Daulad. That the powers of the nawabs had been completely curbed is evident from the following comment made by a judge of the Supreme Court at Calcutta in 1775 regarding the status of the nawab and calling him as 'a phantom, a man of straw'.

Let us now study the efforts taken by the following British Governor Generals of India.

1.2.6 Reforms Initiated by Warren Hastings

Working as an administrative clerk in the East India Company, Warren Hastings reached Calcutta in 1750. He gradually climbed up the ladder and was appointed as the the President of Kasimbazar, by Governor of Bengal in 1772. Later, he became Governor General of Bengal in 1774 under the Regulating Act.

Administrative reforms

Warren Hastings embarked upon the task of initiating the following administrative measures:

- **Setting up a Board of Revenue at Calcutta:** Replacing the *diwans*, a Board of Revenue was created at Calcutta. It was entrusted with the task of overseeing the collection of land revenue.
- **Appointment of English collectors:** Revenue was to be collected by English collectors directly chosen by him.
- **Transfer of treasury from Murshidabad to Calcutta:** Bengal became the administrative capital when the coffer was shifted to Calcutta.
- **Reorganization of the Nawab's affairs:** Munni Begum, the widow of Mir Jaffer was given the responsibility to supervise household affairs and become the regent to the minor Nawab.
- **Stoppage of tribute to Shah Alam:** Hastings discontinued the payment of pension to Shah Alam II.
- **Reduction of pension of the Nawab of Bengal:** The pension to the Nawab of Bengal was decreased to ₹16 lakh.

Judicial reforms

The judicial reforms, initiated by Hastings include:

- Clipping judicial powers of zamindars
- Setting up civil and criminal courts in every district
- Creating the Sadar Diwani Adalat
- Writing out judicial proceedings
- Selecting the Indian judges in criminal courts

- Changes initiated in existing rules and laws wherever deemed necessary
- Meting out justice to Muslims as per the Quran, and insisting on following the *shastras* to settle matters related to marriage, succession and religion

Financial reforms

To improve the financial status of the Company, at a time when the treasury was almost bare and the Company was compelled to take loans, Hastings introduced the following measures:

- In lieu of a payment of ₹30 lakhs, the districts of Kara and Allahabad were sold to Shuja-ud-Daulah–Nawab of Awadh.
- The annual tribute to the Nawab of Bengal was reduced to ₹16 lakhs from ₹32 lakhs.
- To enhance the financial position of the Company, he wanted to develop trade relations with Bhutan and Tibet where he sent a mission.
- When Shah Alam sought Maratha protection, he stopped the payment of the annual pension of ₹25 lakh payable to him.
- In lieu of the district of Benaras and a sum of ₹40 lakh, he agreed to assist Shuja-ud-Daulah .
- To reduce expenditure the amount of money given as pension to Company servants were reduced.
- Currency was regularized.
- Unyielding offices were closed to minimize expenditure.

Revenue reforms

The following revenue reforms were proposed by Hastings:

- British land revenue collectors were directly chosen by him to collect land revenue and execute the reforms.
- The Board of Revenue at Calcutta was appointed to supervise land revenue administration.
- The Quinquennial land revenue system was initiated.
- To help the members of the Revenue Board, local officers called *Rai Rayan*, were appointed.
- The Quinquennial system was replaced by the one-year settlement which was decided in favour of the highest bidder.
- Understanding the sufferings of the people, other taxes were removed, but land revenue was collected at a set rate.

Commercial reforms

Hastings introduced the following commercial reforms:

- **Decreasing customs duties:** Apart from salt, betel nut and tobacco, duties on all goods were decreased by 2.5 per cent. Both locals and Europeans had to pay customs duties.

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- **Removing numerous customs posts:** As trade got affected owing to a large number of customs posts, only five customs posts were retained, namely, Calcutta, Hughli, Murshidabad, Patna and Dhaka.

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Abolition of the *dastak* system

With the removal of *dastaks*, the Company servants had no option but to pay duties for their personal goods, which reduced corruption and augmented the Company's revenues.

Sending commercial mission to other countries: To improve trade, commercial missions were dispatched to countries like Bhutan, Tibet and Egypt.

Social reforms

To encourage Islamic studies, he founded the Calcutta Madrasa in 1781, which was the first educational institution founded by the British Government. Thereafter, the Sanskrit College was established at Benaras by Jonathan Duncan in 1792. Under Hastings' patronage William Wilkins had translated the *Gita* and Nathaniel Halhed had compiled a digest of Hindu laws.

Consequences of these Reforms

Though he succeeded in improving the governing machinery, he did not receive adequate government support. Also, he had to entertain the whims and fancies of his seniors who wanted to fill up the posts by their favoured candidates and not by those chosen on the basis of their merit. Struggling against all odds, he managed to provide his successor, Lord Cornwallis, with a strong administrative structure. Hence, it may well be said that if Lord Clive had established the territorial foundation of the British Empire in Bengal, Hastings had given the British administrative structure a solid foundation.

Impeachment

In protest against the Pitts India Bill, Warren Hastings resigned from office in 1785. Accused of the Rohilla War, Nand Kumar's murder, the case of Chet Singh and for having accepted bribes, he was impeached for seven years from 1788 to 1795. By the time he was acquitted (23 April 1795), he had no money left and had become a pauper.

Regulating Act of 1773

The British government directed the affairs of the Company through the Regulating Act, 1773. It was particularly initiated with to serve this purpose. Warren Hastings was formally declared to be as Governor General of Bengal and he was to be assisted by an executive council comprising four members.

The Act empowered the Governor General-in-council to make rules, ordinances and regulations that were meant to bring order and establish civil

government. Through this Act, Hastings was able to convert a trading company into an administrative body that formed the basis of the British Empire in India.

Main Provisions

The main specifications of the Regulating Act, 1773 are listed below:

- The King of England was in charge of the East India Company. High officials of the company, judges and member of the court of directors were to be nominated.
- The qualifying sum to gain voting right in the court of proprietors was increased from £500 to £1000.
- The directors, who were earlier elected annually, had to continue office for four years, and a quarter of the number were to be re-elected annually.
- A Supreme Court comprising a Chief Justice and three other judges was established in Bengal. Apart from the Governor General and the members of his Council, it entailed civil, criminal, admiralty and ecclesiastical jurisdiction over all British subjects in the Company's dominions.
- The Governor General and his four councillors were to look after civil and military affairs and they who were mentioned in the Act in the first instance. They were to hold office for five years and during their tenure they could only be removed by the king on the representation of the court of directors.
- Though he had a casting vote which were to be used to break a stalemate, the Governor General had to abide by the decision of the majority of the Council.
- In matters of war and peace, the Governor General's decision was considered final, above the opinions expressed by the Governors of Madras and Bombay. Salaries were augmented if officers showed better merit. Company servants were not permitted to accept presents or bribes and indulge in private trade.
- Only with the prior permission of the Home Secretary could the Governor General- in-council make rules.
- The Governor General-in-council had the right to issue rules, ordinances and regulations, though they had to be registered in the Supreme Court.

Important Features of the Act

Important features of this Act include:

- It made it clear that the administration of Indian territories was not a personal affair of the Company servants. The British Parliament was empowered to make amendments.
- This Act initiated the course of territorial integration and administrative centralization in India.

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- It started a process of parliamentary control over administrative decisions taken by the Company.
- The Act set up a Supreme Court of Judicature comprising a Chief Justice and three other members. The Act provided the license to the British government to have a say in the internal affairs of the Company.
- A council of four members was established to help the Governor General. Though these members were to hold office for five years, they could only be removed by the British Crown.
- The Supreme Government was entrusted 'from time to time to make and issue rules, ordinances, and regulations the good order and civil government' of the British territories.
- The Presidency of Bengal was made superior to other presidencies and the governor of Bengal was appointed as Governor General. Governors and the Councils of Madras and Bombay were had to follow the decisions taken by the Governor General and Council of Bengal.

The Defects of the Regulating Act

The defects of the Regulating Act of 1773 have been outlined below:

- The Governor General did not have any veto power. Hastings often had to struggle with his councillors who could easily impose their decisions on him by majority voting.
- The jurisdiction of the Supreme Court and its relation with the Governor General in Council was not specified.
- The presidencies of Madras and Bombay often declared war, without consulting the Governor General and Council of Bengal. In case of Marathas and Haidar Ali, the Bombay government and Madras Council, respectively, chose to decide on their own.
- The reports sent by the Governor General in council in India was not considered seriously and was not analyzed systematically.
- The Court of Directors had become 'more or less permanent oligarchy' Also, the Court of proprietors enjoyed immunity from any scrutiny based on moral grounds. These privileges gave them allowance to participate in intrigues and create factions which plagued the home government internally.

1.2.7 Reforms Initiated by Charles Cornwallis

Charles Cornwallis was sent to India by the Court of Directors in the year 1786. He was entrusted the responsibility of executing the policy of peace given in Pitt's India Act and to restructure the administrative system in India. Some of his major responsibilities were as follows:

- To find out a solution for land revenue problem.
- To set up a judiciary which is honest as well as efficient.
- To restructure the commercial division of the East India Company.

In order to restructure the administrative system, Cornwallis used the basic structure of administration designed by Warren Hastings and made some modifications in it. The structure designed by Cornwallis remained in force till 1858.

Reforms in Judicial Administration, Public Revenue and Other Services

Cornwallis became Governor General of Bengal and he introduced a number of reforms, which are as follows:

- **Reforms in the judicial system:** Cornwallis believed that District Collector should have more authority than they already had. The Court of Directors had also instructed the same. Thus, in 1787, Collectors were appointed judges of *Diwani Adalats* and were given charge of districts. The District Collectors were given powers of Magistrates so that they could judge criminal cases. However, some limitations were imposed on them in trying these cases.

Some more changes were made in the administrative structure from 1790 to 1792. *Foujdari Adalats* were abolished and four circuit courts were established in their place. Out of these four circuit courts, three were for Bengal and one was for Bihar. The European servants were given the authority to preside over these courts. These European servants took help from Muftis and Qazis while trying the cases. These courts went to districts two times in a year and tried cases.

The *Sadr Nizamat Adalat* at Murshidabad was also abolished. A Mohammedan judge used to preside over this court. In place of this court, another court was established in Calcutta. These courts consisted of the Governor General and members of the Supreme Council. The Chief *Qazis* and two Muftis assisted them.

Thus, the new judicial system had petty courts, districts courts, four provincial courts and *Sadr Diwani Adalat*. *Daroga* courts and district courts, four circuit courts and *Sadr Nizamat Adalat* were established for trying criminal cases.

- **Cornwallis code:** In 1793, Cornwallis made a code of regulations for guiding those servants of the East India Company who were working in the judicial department. Cornwallis took Sir George Barlow's help for preparing this code. The commercial and administrative services were demarcated clearly in this code. Before the preparation of this code, Cornwallis realized that the Board of Revenue was not able to settle a large number of cases. In order to solve this matter, *mal adalats* were formed in every district. Collectors were made the heads of these courts and they were given revenue powers as well. The administrative structure was in existence even before Cornwallis but he was the one who made the system harmonious and cohesive.

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Cornwallis introduced a system in which people could lodge a complaint against collectors and servants for not fulfilling their duties. The government could also be sued in the court. He abolished inhuman punishments such as capital punishment and mutilation of limbs. The European people living in the districts had to follow the new judicial system.

- **Reforms in Public Services:** The servants of East India Company wanted to earn a lot of money. Since, the salaries of these servants were low, they accepted bribe from people in order to earn more money. They also confiscated the lands of zamindars in an unjust manner. In order to solve these problems, Cornwallis raised their salaries and terminated some of the servants. After this, he hired employees for the Company solely on the basis of their merits. He did not allow any of the employees to carry out trade in their private capacity.

He did not trust Indians and behaved with them in a scornful manner. Thus, his behaviour towards Indians was criticized. He did not recruit Indian on high posts and gave such posts to Europeans. He divided districts into small units and took away police powers from the zamindars. A superintendent and representative of the company, who resided in those districts, were given the charge of these units.

- **Reforms in the Commercial Department of the Company:** When the Board of Trade was established, it were asked to obtain goods from Indian and European contractors. These contractors supplied goods of inferior quality at a very high price. The Board instead of checking these practices, took bribe through them. Due to these corrupted practices of the commercial department, Cornwallis took action against the Board of Trade. He reduced the number of Board members from eleven to five. The method of obtaining goods was also changed and the Board was instructed to obtain goods from commercial agents and residents. This way, he brought reforms in the commercial department.
- **Reforms in the Collection of Revenue and Permanent Settlement:** It is really important to find a suitable method for revenue collection in order to improve the condition of farmers. The methods used by Robert Clive and Warren Hastings worsened the situation of farmers. Thus, in 1786, the Court of Directors recommended that Cornwallis should make ten years settlement with zamindars which can later be made permanent. Cornwallis with the help of John Shore tried to find a suitable method for revenue collection. To solve this problem, they had a discussion on the following three questions:
 1. Should the settlement be made with zamindars or tillers?
 2. How much share should the state get in the produce of land?
 3. Should the settlement be permanent or for a fixed term?

On the first question, John Shore believed that settlement should be made with zamindars as they own the lands. Cornwallis was an English landlord, thus, he agreed with John Shore. Moreover, the Court of Directors also supported Cornwallis.

On the second question, Shore believed that the state's share should be decided on the basis of the actual collection of the year 1790–1791. Cornwallis was also of the same opinion.

However, their opinions differed on the third question. Shore believed that settlement should be made for ten years, but Cornwallis wanted permanent settlement of revenue. Finally, in the year 1790, he declared settlement to be for ten years but in 1793, the settlement was made permanent. Therefore, permanent settlement was made in Bengal, Bihar, Orissa, Benaras and Northern part of Tamil Nadu.

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Permanent Settlement

Some of the important features of Permanent Settlement were as follows:

- The settlement was made with zamindars as they were recognized as owners of land as long as they pay revenue.
- Zamindars were asked to pay land revenue to the government. The amount of land revenue was made fixed and they were promised that it would not be increased. In case zamindars failed to pay revenue, the government had the authority to sell their land through public auction. They were required to pay 89 per cent of the collected rent to the state and could keep the rest with themselves.
- Zamindars were allowed to sell or mortgage their land. They were also allowed to give their land to someone else if they wanted to.
- It was expected that zamindars would make efforts to improve the conditions of the farmers or tillers who were working on their land.
- The Government promised them that it would not interfere in its matters till the time they pay their revenue in time.

Merits of Permanent Settlement

Some of the merits of permanent settlement are as follows:

- Under Permanent Settlement, zamindars had to pay fixed amount as land revenue. In cases when zamindars were not able to pay their land revenue, the government used to sell their lands to recover their land revenue. Thus, the British government was sure of its income.
- The fixed income in the form of fixed land revenue gave economic stability to the British government. This made the province of Bengal prosperous.
- Permanent Settlement saved the British government from the expenditure

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which it had to incur in order to extract land revenue from zamindars. Earlier the British government spent a lot of money in order to assess land on a regular basis.

- This settlement encouraged zamindars to improve the agricultural land to earn more money. Earlier the zamindars did not make efforts to improve their land as the British government used to take away most of their profit in the name of land revenue.
- This settlement made zamindars wealthy and they could invest money in trade, commerce and industry. It helped the provinces to prosper at a fast pace.
- The settlement made zamindars loyal to the British so much so that they supported the British even during the rebels in India.
- Though the government could not increase the amount of land revenue yet it could extract more money from the zamindars in the form of taxes.

Demerits of Permanent Settlement

Some of the demerits of permanent settlement were as follows:

- Since the zamindars did not take part in the cultivation of land, they moved to cities to spend a luxurious life. Before moving to cities, they appointed some middlemen to take care of their land. These middlemen exploited the farmers and tillers and made their lives miserable.
- The system of the Permanent Settlement ignored the interests of peasants, farmers and tillers. They were left on the misery of zamindars who oppressed them for earning more.
- In the long run, the Permanent Settlement proved disadvantageous to the government as they could not increase the amount of land revenue when the prices of the crops increased.

1.2.8 Reforms Initiated by Lord Wellesley

Though the Subsidiary Alliance System was formed in the second half of the 18th century, yet the credit of this policy goes to Lord Wellesley as it developed from 1798 to 1805 when Lord Wellesley was the Governor General of India.

The system of Subsidiary Alliance was introduced by Dupleix, the French Governor by giving his army to Indian rulers on rent. The same policy was adopted by many Governor Generals of the East India Company such as Robert Clive. In 1765, the English signed a treaty with Awadh at Allahabad. As per this treaty, the English promised that their troops would protect Awadh and the Nawab would bear the expenses of the troops. They also appointed an English resident in the court of the Nawab and was asked to bear his expenses as well.

In 1787, when Lord Cornwallis was the Governor General, the Nawab of Carnatic promised that he would not take help from any foreign power without

obtaining permission from the Company. Similarly, in 1798, the Nawab of Awadh promised Sir John Shore that no European would be employed in Awadh.

In this way, the Subsidiary alliance system was in existence even before the Governor Generalship of Lord Wellesley. However, the system developed fully when he added some elements in this system. Indian states were asked to yield some of the territories to the Company if they wanted to sign this treaty. This way, the company succeeded in expanding its empire in India. Let us study the development stages of the policy of Subsidiary Alliance:

- Stage 1:** The Company offered its army on rent to Indian states. These states were asked to pay cash in return. In 1768, Hyderabad signed this pact.
- Stage 2:** The Company offered that it would keep its army ‘near the boundaries of Indian states’ in order to ‘protect’ the states. In lieu of this service, the state was asked to pay an annual fee. In 1784, Sindhia accepted this offer.
- Stage 3:** The Company offered that it would keep its army ‘inside the boundaries of Indian States’ to ‘protect’ the state. The states were asked to pay annual fee in return. In 1798, Hyderabad agreed to sign treaty with the company.
- Stage 4:** The Company offered to keep its army inside the boundaries of the Indian states to protect the state. In lieu of this ‘service’, the company asked the states to give some part of their territory. In 1800, Hyderabad signed this treaty and in 1801, Oudh also signed the treaty with the Company.

Features of the Subsidiary Alliance

Some features of the Subsidiary Alliance were as follows:

- The Company promised to protect the states from outside attack.
- The rulers had to bear the expenses of the British force which was employed for the protection of the state.
- The rulers could not employ any foreigner in their states without the permission of the Company. They could not build diplomatic ties with other States.
- The rulers had to bear the expenses of the British resident which was appointed in their court.
- The Company followed the policy of non-interference as far as the internal matters of the states were concerned.

Advantages of the Subsidiary Alliance to the Company

The Subsidiary Alliance benefited the Company in the following ways:

- The Subsidiary Alliance proved advantageous for the Company in many ways.

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- With the help of this system, the Company maintained a large army at the expense of the Nawabs. They could use this army in annexing other territories or protect their own empire.
- As per the treaty, the Nawabs were not allowed to employ any foreigner in their states without their permission. This reduced the threat which the Company had from Europeans and the French.
- Since the states were not allowed to build ties with other states, the Company felt secured in India as Indian states could not stand united to rebel against the Company.
- The treaty made Nawabs puppets in the hands of the Company as they had to seek permission from the Company on a number of issues.
- In lieu of the 'services', the Company asked for fertile lands of the territories of Nawabs so that they could earn more money with the help of these lands. This way, Nawabs lost a lot of money of the States and this made the states poor.

1.2.9 Lord Dalhousie: Doctrine of Lapse

The youngest Governor General of British India was Lord Dalhousie. His methods of annexing Indian States were as follows:

(a) Annexations by conquest

1. **Punjab:** The Sikhs were defeated by the British in the First Sikh War but had not made Punjab part of the Empire. Even after the defeat the Sikhs were strong and powerful. They were keen on taking revenge. Lord Dalhousie was part of the second war. After the war, Punjab became part of British Empire. Maharaja Dalip Singh sent to England on a pension. Under Sir John Lawrence as Chief Commissioner of the province, Sikhs became loyal to the British. After this, he made the settlement of the province.
2. **Sikkim:** When the King of Sikkim arrested two British officers, Dalhousie attacked Sikkim and made it a part of the Empire.
3. **Lower Burma.** After the defeat of Burma after the Burmese War in 1824, trade relations were established with Burma and it also became part of the Empire.

(b) Doctrine of Lapse

The rulers of Indian princely states had the right to adopt a child and make that child the successor. The British government agreed to this and made this right official by declaring, 'Every ruler, under Hindu laws, is free to nominate his successor, real or adopted son. The Company's government is bound to accept this right'. In 1831, the Company declared, 'The Government may accept or

reject, according to the situation, the application of Indian rulers to nominate his adopted son as his heir.’

The policy of the British administration was not clear. At times it rejected such an application at times it accepted. There was no real logic given behind such decisions. For example, it permitted Baijibai, the widow of Daulat Rao Sindhia, to nominate Jankoji, her adopted son, as the successor king in 1827. However, the Company rejected the claim of Ram Chandra Rao’s adopted son at Jhansi in 1835.

Lord Dalhousie made three distinct categories for Indian States:

1. British Charter created states: If there was no biological heir then the British Empire would annex the state.
2. Subordinate States: Permission of the East India Company was needed to validate the heir in case of adoption.
3. Independent States: These had the freedom to appoint any heir as they chose.

The first policy was called the Doctrine of Lapse. Satara was the first State to which this policy was applied in 1848. Appa Sahib, the king of this state, did not have any child and before his death he had adopted a son. Other states to which this policy was applied were Jaipur, Sambhalpur, Baghat, Udaipur, Jhansi and Nagpur.

The queen of Jhansi, Rani Laxmi Bai stood up for her right and fought the British. But when her struggle was not successful she rebelled against the Empire in the revolt of 1857.

Dalhousie also annexed the state of Karoli and did not accept the adopted son as heir. But this decision was overruled by the court. The rules of annexure between the second and third category were not clear. Even though many of the states so annexed were under the control of the Mughals, they had no power to decide the legality of the heir, as the East India Company by then had become very powerful. And on the pretext of some excuse or the other, the states were annexed.

This arbitrary rule of annexure became one of the reasons for the Revolt of 1857 and all united to stand up against the British. Lord Canning another Governor General, later legalized adoption.

Reforms

Lord Dalhousie also brought about many reforms, such as follows:

- (a) **Social Reforms:** He enacted the Widow Remarriage Act. And also amended the conversion laws of Hindus which made it possible for Hindus who converted into other religion to inherit. Even though this could have led to opposition from orthodox Hindus, it was a bold step on his part.

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(b) Administrative and Military Reforms: He revamped the working of the administration and made different departments for different jobs and got rid of old systems. He appointed a separate Lieutenant Governor for Bengal. A separate District Magistrate was appointed for each district and given greater powers. He introduced Non Regulation System in newly conquered territories. In newly annexed states of Punjab and Pegu in Burma he made many new administrative changes which were appreciated widely. By appointing a Chief Commissioner with civil and military powers the efficiency of the Government improved. This system was introduced in Punjab, Central Provinces, Oudh and Burma. The Commissioner reported directly to the Governor General and Simla became the summer capital of India.

The policies helped expand the British Empire. This enabled to take strategic steps regarding deploying of troops. Thus the headquarters of the Bengal Artillery were shifted from Calcutta to Meerut. Simla became the permanent headquarters of the army.

(c) Commercial Reforms: Lord Dalhousie advocated a free trade policy which immensely benefitted the British.

(d) Establishment of Public Works Department: The public works department that he set up made roads, bridges and canals. The Grand Trunk Road and a road from Dhaka to Arakan made it possible for army movement from Bengal to Burma. He modernized the postal and telegraph system in India. He was the one who introduced a uniform postage stamp for all in India. Through irrigation canals and steamer services on major water ways like Hooghly, Indus and Irravaddy also improved and so did other means of communication.

(e) Educational Reforms: Many reforms were also made in the field of education, one of them being the introduction of the Indian Civil Services Examination. In 1853 Sir Charles Wood sent out a policy document on education. This was known as the Woods Dispatch.

- Regional language was to be taught in the Anglo-Vernacular Schools
- Universities were set up in Bombay, Calcutta and Madras
- Colleges offering degrees were affiliated to the Universities
- Education was made secular in nature
- Each province set up an education department
- Teacher's Training Institutions were to be set up
- Privatization of education was encouraged and Government aid was given
- A Director General of Education was recommended for the whole of India

(f) Post, Railways, and Telegraph: A lot of attention was paid to this area as the defense and law and order of the country depended on this. Through this he encouraged British enterprises to invest in India. Lord Dalhousie

also promised all facilities to these companies. The railways changed the face of the country and brought people from all corners and regions together.

Check Your Progress

1. In which year did Siraj-ud-Daulah became the Nawab of Bengal?
2. What was the outcome of the dual government?
3. Identify the warring sides in the Battle of Buxar.

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1.3 CROWN RULE (1858-1947)

The Government of India Act, 1858 ended the Company's rule and transferred the governance of the country directly to the British Crown. The Company's rule was, thus, terminated and the administration was carried out in the name of the Crown through the Secretary of the State. The Secretary assumed the powers of the Company's Board of Directors as well as the Board of Control. The Secretary of State, accountable to the British Parliament, needed to be supported by the Council of India consisting of 15 members. The Crown was required to appoint eight members for the Council, while the Board of Directors was to elect the remaining seven. The main features of this Act were as follows:

- It made the administration of the country unitary as well as rigidly centralized. Though the territory was divided into provinces with a Governor or Lieutenant Governor headed by his executive council, yet the provincial governments were mere agents of the Government of India. They had to function under the superintendence, direction and control of the Governor-General in all matters related to the governance of the province.
- It made no provision for separation of functions. The entire authority for the governance of India—civil, military, executive and legislative was handed over to the Governor-General of the Council, who was accountable to the Secretary of the State.
- The Secretary of the State had absolute control over the Indian administration.
- The entire machinery of administration was made bureaucratic.

The Act of 1858 was initiated for 'the better Government of India'. Thus, it introduced many significant changes in the home government. However, these changes were not related to the administrative set-up of India. Major changes were made in the Constitution of India after the severe crisis of 1857–58. There were many reasons behind the introduction of these changes. All legislative procedures were centralized by the Charter Act of 1833. The sole authority for legislating and passing decrees, while implementing them for the economy, rested with the Legislative Council (Centre). Though the functioning of the Legislative Council was set up by the Charter Acts of 1833, the Act was not followed properly. The Council resulted into a debating society or a Parliament on a smaller scale,

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claiming all privileges and functions of the representative body. While acting as an independent legislature, the Council did not function well with the home government. As a result, the first Council Act was passed in 1861 after holding discussions between the home government and the Government of India.

1.3.1 Indian Council Act, 1861

The Indian Council Act, 1861 introduced a representative institution in India for the first time. As per this Act, the Executive Council of the Governor-General was to comprise some Indians as non-official members for transactions of legislative business. It initiated the process of decentralization by restoring the legislative powers to the Bombay and the Madras Presidencies. Another feature of the Act was its statutory recognition of the portfolio system.

If we see in depth, the Indian Council Act was a part of a legislation that was passed by the Parliament of Great Britain in 1861, which converted the Executive Council of the Viceroy of India into a Cabinet on the portfolio system. This cabinet had six ordinary members, each of whom was in charge of an independent department in the Calcutta Government comprising home, government, revenue, law and finance, and public works (post 1874). The Military Commander in Chief worked with the Council as a special member. Under the provisions of the Act, the Viceroy was allowed to overrule the Council when he deemed it necessary.

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

The Act added a fifth member to the executive council of the Viceroy. The member was assumed to be a gentleman of legal professional service and a jurist. The Act further gave powers to the Governor-General to enact rules for convenient business transactions in the Council. Lord Canning used the power to pioneer the portfolio system in the Government of India. Until then, the Government's rules administered the executive council as a whole due to which all official documents were brought under the notice of the council members.

As per the provisos of the Act, Canning divided the government amongst the council members. With this, the foundation of the Cabinet government was formed in India. The Act further declared that each administrative branch would have its own spokesman and head in the government, who would be responsible for the entire administration and defence. The new system witnessed the daily administrative matters taken care by the member-in-charge. In important cases, the concerned member used to present the matters before the Governor-General and consult him before taking any decision. The decentralization of business brought in some efficiency in the system, however, it could not be accomplished thoroughly.

The Indian Council Act of 1861 also introduced a number of legislative reforms in the country. The number of members in the Viceroy's executive council was increased, wherein, it was declared that additional members should be six to the minimum and twelve to the maximum. These were directly nominated by the Governor-General for two years. Not less than 50 per cent of the members were non-official members. The Act did not make any statutory provisions for admitting Indians. However, a few non-official seats of high rank were offered to Indians. The Council's functions were strictly confined to the legislative affairs. It did not have any control over the administration, finance and the right of interpellation.

The Act reinstated the legislative powers of implementing and amending laws to the provinces of Madras and Bombay. Nevertheless, the provincial councils could not pass any laws until they had the consent of the Governor-General. Besides, in few matters, the prior approval of the Governor-General was made compulsory. After the Act, the legislative councils were formed in Bengal, Punjab and the north-western provinces during 1862, 1886, 1889, and so forth.

The Act significantly laid down the mechanical set-up of the government. There were three independent presidencies formed into a common system. The legislative and the administrative authority of the Governor-General-in-Council was established over different provinces. Further, the Act also gave legislative authority to the governments of Bombay and Madras. It laid many provisos for creating identical legislative councils in other provinces. This led to the decentralization of legislative powers which culminated in autonomy grants to the provinces under the Government of India Act, 1935.

However, no attempts were made under the Council Act of 1861, to distinguish the jurisdiction of the Central Legislature from the Local Legislature in the federal Constitution. Furthermore, the main functions of the Legislative Councils, as established under the Act, were not carried out properly. Even the Councils could not perform in conformity to the Act. The Act could not establish representative government in India on the basis of the England Government. It declared that the colonial representative assemblies would largely discuss financial matters and taxation. The Act paved the path for widespread agitation and public alienation.

1.3.2 Indian Council Act, 1892

It is important to understand the evolution of this Act. The Indian Constitution was incepted after the Act of 1861. The legislative reforms created under the Acts of 1861 failed miserably in meeting the demands and aspirations of the people of India. The small elements of non-officials, which mainly comprised big *Zamindars*, Indian princes or retired officials, were entirely unaware of the problems of the common man. Thus, the commoners of India were not happy.

The nationalist spirit began to emerge in the late 19th century. The establishment of universities in the presidencies led to educational developments in the country. The gulf between the British and the Indians in the field of Civil Services

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was not liked by the Indians. The Acts enacted by Lord Rippon, that is, the Vernacular Press Act and the Indian Arms Act of 1878, infuriated Indians to a great extent.

The controversy between the two governments over the banishment of 5 per cent cotton duties made Indians aware of the injustice of the British government. This gave rise to the formation of the Indian National Congress in 1885. The main aim of the Congress was to organize public opinions in India, make the grievances public and demand reforms from the British Government.

Initially, the attitude of the British Government towards the Indian National Congress was good but it changed when Lord Dufferin attacked the Congress from the front. He tried to belittle the significance of the Congress leaders and ignored the importance of the movement launched by the Congress. He secretly sent proposals to England to liberalize the councils and appoint a committee which would plan the enlargement of the provincial councils.

As a result, a Committee Report was sent to the home authorities in England to make changes in the Councils' composition and functions. The Report was aimed at giving Indians a wider share in the administration. In 1890, the Conservative Ministry introduced a bill in the House of Lords in England based on these proposals. The House of Lord took two years to adopt measures in the form of the Indian Council Act of 1892.

The Indian Council Act of 1892 was known to have dealt entirely with the powers, functions and compositions of the legislative councils in India. In respect of the Central Legislature, the Act ensured that the number of additional members should only be between six and twelve. An increase in the members was regarded worthless. Lord Curzon supported it saying that the efficiency of the body had no relation with the numerical strength of its members.

The Council Act of 1892 affirmed that 2/5th of the total members in the Council should be non-officials. Some of them were to be nominated and others were elected. The election principle was compromised to some extent. According to the Act, the members of the legislatures were given equal rights to express themselves in financial issues. It was decided that all financial affairs statements would be prepared in the legislation. However, the members were not allowed to either move resolutions or divide the houses as per financial concerns. The members could only put questions limited to the governmental matters of interest on a six days' notice.

The Indian Council Act of 1892 also brought in many new rules and regulations. However, the only significant feature of the Act was the introduction of election procedure. The term 'election' was carefully used in the Act. In addition to the elected official members, the Act pronounced that there should be five non-official members. It further said that these members should be elected by the official members of the provincial legislatures of Bombay, Madras, Calcutta, the north-western province and the Calcutta Chamber of Commerce. The Governor-General had the authority to nominate the five non-official members.

The bodies were allowed to elect the members of District Boards, Municipalities, Universities and the Chamber of Commerce but the election methods

were not clearly mentioned. The elected members were officially regarded as 'nominated' in spite of the fact that the recommendations of each legislative body was taken into consideration for the selection of these members. Often the person favoured by majority was not considered 'elected', but was directly recommended for nomination. According to this Act, the members were allowed to make observations on the budget and give their suggestions on how revenue can be increased and expenditure can be reduced. The principle of election, as introduced by the Acts of 1892, was used in the formation of the Constitution as well.

Nevertheless, there were numerous faults and drawbacks in the Acts of 1892 because of which the Act could not satisfy the needs of the Indian nationalists. It was criticized in various sessions of the Indian National Congress. The critics did not like the election procedure mentioned in the Act. They also felt that the functions of the legislative councils were rigorously confined.

1.3.3 Indian Council Act, 1909

This Act changed the name of the Central Legislative Council to the Imperial Legislative Council. The size of the councils of provinces was enlarged by including non-official members. The functions of the legislative councils were increased by this Act.

Lord Morley, the Secretary of State for Indian Affairs, announced that his government wished to create new reforms for India, wherein the locals would be granted more powers in legislative affairs. Both Lord Morley and Lord Minto believed that terrorism in Bengal needed to be countered. The Indian Government appointed a committee to propose a scheme of reforms. The committee submitted the report and the reforms mentioned in the report were agreed upon by Lord Minto and Lord Morley. Thus, the Act of 1909 was passed by the British Parliament, also referred as the Minto-Morley Reforms.

The Act of 1909 was significant due to the following reasons:

- It facilitated elections of Indians in Legislative Councils. Prior to this, some Indians were appointed at Legislative Councils, majority of which remained under the appointments of the British Government.
- The electoral principle introduced under the Act laid down the framework for a parliamentary system.
- Muslims had expressed serious concern that a 'first past the post' British type of electoral system would leave them permanently subject to Hindu majority rule. The Act of 1909 as demanded by the Muslim leadership stipulated:
 - o That Indian Muslims should be allotted reserved seats in the Municipal and District Boards, in the Provincial Councils, and in the Imperial Legislature
 - o That the number of reserved seats be in excess of their relative population (25 per cent of the Indian population)

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- o That only Muslims should vote for candidates for Muslim seats ('separate electorates')

Following were the salient features of the Act of 1909:

- The number of members of the Legislative Council at the Centre was increased from sixteen to sixty.
- The number of members of the Provincial Legislatives was also increased. It was made fifty in the provinces of Bengal, Bombay and Madras. For the rest of the provinces, the number was thirty.
- The members of the Legislative Councils were divided into four categories both at the Centre and within the provinces. These categories were ex-officio members (Governor-General and the members of their Executive Councils), nominated government official members by the Governor-General, nominated non-governmental and non-official members by the Governor-General, and members elected by different categories of Indians.
- Muslims were granted the right of a separate electorate.
- Official members were needed to be in majority. However, in provinces, non-official members formed the majority.
- The Legislative Council members were allowed to discuss budgets, recommend amendments, and vote in some matters excluding some matters which were categorized under 'non-voted items'. The members were also entitled to seek answers to their concerns during the legislative proceedings.
- India's Secretary of State was empowered to increase the number of executive councils from two to four in Madras as well as Bombay.
- Two Indians were to be nominated in the Council of the Secretary of State for Indian affairs.
- The power for nominating one Indian member to the executive council was with the Governor-General.

The provision for concessions under the Act was a constant source of strife between the Hindu and Muslim population from 1909 to 1947. British statesmen generally considered reserved seats as regrettable as it encouraged communal extremism. The Hindu politicians tried to eliminate reserved seats as they considered them to be undemocratic. They also believed that the reserved seats would hinder the development of a shared Indian national feeling among Hindus and Muslims.

1.3.4 Government of India Act, 1919

The Government of India Act, 1919 was an Act of the Parliament of the United Kingdom. It was passed to expand participation of the natives in the Government of India. The Act embodied the reforms recommended in the joint report of Sir

Edwin Montagu and Lord Chelmsford. The retraction of British imperialism was a result of India's enthusiastic participation in World War I.

The Act broadly ideated a dual form of government, called diarchy, for the major provinces. It also affirmed that a High Commissioner residing in London would represent India in Great Britain. The Government of India Act was enacted for ten long years, i.e. from 1919 to 1929.

According to the Act, the Viceroy was responsible for controlling areas of defence, communications and foreign affairs. The Government was responsible to take care of the matters related to health and education. Besides, there was a bicameral legislature located at the Centre, comprising legislative assembly with 144 members, out of which 41 were nominated.

The Council of States constituted 34 elected members and 26 nominated members. The Princely States were responsible for keeping control over political parties. The Indian National Congress was not satisfied with this law, and regarded it as 'disappointing'. There was a special session held in Bombay under Hasan Imama, wherein reforms were degenerated. Nevertheless, leaders, such as Surendranath Banerjee, appreciated these reforms.

This Act introduced important changes in the home government, at the Centre, as well as at the Provinces. The changes introduced by the Act were as follows:

1. **System of diarchy in the provinces:** According to this system, the subjects of administration were to be divided into two categories: central and provincial. The central subjects were exclusively kept under the control of the central government. On the other hand, the provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.
2. **Central control over the provinces was relaxed:** Under this provision, subjects of all-India importance were brought under the category 'central', while matters primarily relating to the administration of the provinces were put under 'provincial' subjects. This meant a relaxation of the previous central control over the provinces not only in administrative but also in legislative and financial matters. The previous provincial budgets were removed by the Government of India and the provincial legislatures were empowered to present their own budgets and levy taxes according to the provincial sources of revenue.
3. **Indian legislature was made more representative:** The Indian legislature was made bi-cameral. It consisted of the upper house named the Council of States and the lower house named the Legislative Assembly. The Council of States had 60 members out of which 34 were elected. The Legislative Assembly had 144 members out of which 104 were elected. Nevertheless, the Centre did not introduce any responsibility and the Governor-General in Council remained accountable to the British Parliament. The Governor-General's

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overriding powers in respect of the central legislation were retained in many forms.

The British Government in 1927 appointed a Statutory Commission, as envisaged by the Government of Act of 1919, to make an enquiry in the functioning of the Act and to announce that the domination status was the goal of Indian political developments. Sir John Simon was the Chairman of the Commission which gave its final report in 1930. This report was given consideration at a Round Table Conference that created a White Paper.

The White Paper was examined by Joint Select Committee of the British Parliament. Lord Linlithgow was appointed the President of the Joint Select Committee. The Committee presented a draft Bill on 5 February 1935. The Bill was discussed for forty-three days in the House of Commons and for thirteen days in the House of Lords. After the signatures of the King, the Bill was enforced in July 1935 as the Government of India Act, 1935.

1.3.5 Government of India Act, 1935

The main features of the system introduced by the Government of India Act, 1935 were as follows:

Federal features with provincial autonomy: The Act established an all-India Federation comprising the provinces and princely states as units. It segregated powers between the Centre and the units into three lists, i.e., the Federal List, the Provincial List and the Concurrent List. Though the Act advocated the use of the provinces and the Indian states as units in a federation, it was optional for the Indian states to join the federation. No Indian state accepted this provision and hence the federation envisaged by the Act was not operational.

The provincial autonomy was initiated in April 1937. Within its defined sphere, the provinces were no longer delegates of the central government but were autonomous units of the administration. The executive authority of a province was to be exercised by a Governor on behalf of the Crown and not as a subordinate of the Governor-General. The Governor acted in consultation with the ministers who were accountable to the legislature. However, the Governor was given some additional powers which could be exercised by him at his 'discretion' or in the exercise of his 'individual judgement' in certain matters without ministerial advice.

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

Bi-cameral legislature: The Central Legislature was made bi-cameral which consisted of the federal assembly and Council of States. It also introduced bi-cameralism in six out of eleven provinces, such as Assam, Bombay, Bengal, Madras, Bihar, and the United Province. However, the legislative powers of the central and provincial legislatures had various limitations and neither of them had the features of a sovereign legislature.

Federal Legislature needed to comprise two houses: The Council of State (Upper House) and the Federal Assembly (Lower House). The Council of State was required to have 260 members, out of which 156 needed to be elected from British India and 104 to be nominated by the rulers of princely states. The Federal Assembly was required to include 375 members, out of which 250 members were required to be elected by the Legislative Assemblies of the British Indian provinces and 125 to be nominated by the rulers of princely states.

Division of powers between Centre and provinces: The legislative powers were divided between the provinces and the centre into three lists—the Federal List, the Provincial List, and the Concurrent List. There was a provision for Residuary Subjects also. The Federal List for the Centre consisted of fifty-nine items such as External Affairs; Currency and Coinage; Naval, Military and Air forces; and Census. The Provincial List consisted of fifty-four items which dealt with subjects such as Police, Provincial Public Services and Education. The Concurrent List comprised thirty-six items dealing with subjects like Criminal Law and Procedure, Civil Procedure, Marriage and Divorces, and Abortion. The Residuary powers were given to the Governor-General. He was empowered to authorize the Federal or the Provincial Legislature to ratify a law for any matter if not listed in any of the Legislative Lists. The provinces were, however, given autonomy with respect to subjects delegated to them.

Other salient features of the Government of India Act, 1935 were:

- The Central Legislature was empowered to pass any bill though the bill required the Governor-General's approval before it became law. The Governor-General too had the power to pass ordinances.
- The Indian Council was removed. In its place, few advisors were nominated to assist the Secretary of State of India.
- The Secretary of State was not allowed to interfere in the governmental matters of Indian Ministers.
- Sind and Orissa were created as two new provinces.
- One-third of members could represent the Muslim community in the Central Legislature.
- Autonomous provincial governments were set up in eleven provinces under ministries which were accountable to legislatures.
- India was separated from Burma and Aden.

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- The Federal Court was established in the Centre.
- The Reserve Bank of India was established.

The Indian National Congress as well as the Muslim League were strictly against the Act but they participated in the provincial elections of 1936-37, which were held under stipulations of the Act. At the time of independence, the two dominions of India and Pakistan accepted the Act of 1935, with few amendments, as their provisional constitution.

1.3.6 Government of India Act, 1947

The Indian Independence Act, 1947 was the legislation passed and enacted by the British Parliament that officially announced the Independence of India and the Partition of India. The legislation of the Indian Independence Act was designed by Clement Attlee. The Indian political parties, the Indian National Congress, the Muslim League and the Sikh community came to an agreement on the transfer of power from the British Government to the independent Indian Government, and the Partition of India. The Agreement was made with Lord Mountbatten, which was known as the 3 June Plan or Mountbatten Plan.

The Indian Independence Act, 1947 can be regarded as the statute ratified by the Parliament of the United Kingdom propagating the separation of India along with the independence of the dominions of Pakistan and India.

Events Leading to the Indian Independence Act

- (a) **3 June Plan:** On 3rd June 1947, a plan was proposed by the British Government that outlined the following principles:
- The principle of Partition of India was agreed upon by the British Government.
 - The successive governments were allotted dominion status.
- (b) **Attlee's Announcement:** On 20th February 1947, the Prime Minister of UK, Clement Attlee announced:
- (i) Latest by June 1948, the British Government would endow absolute self-government to British India.
 - (ii) After deciding the final transfer date, the future of princely states would be decided.

The Indian Independence Act, 1947 came into inception from the 3rd June Plan.

Structure of the Act

- 20 sections
- 3 schedules

The Indian Independence Bill was formally introduced in the British Parliament on 4 July 1947 and received the royal assent on the 18 July 1947. It

removed all limitations upon the responsible government (or the elected legislature) of the natives. It said that until they developed their own Constitutions, their respective Governor-Generals and Provincial Governors were to enjoy the same powers as their counterparts in other dominions of the Commonwealth. It meant that India and Pakistan would become independent from 15 August 1947.

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1.4 INTERIM GOVERNMENT

After the end of the Second World War, and the large scale protest that followed the INA trials, it became clear to the British that it was not possible for them to hold on to India. Thus, the interim government of India was formed on 2nd September 1946 from the newly elected constituent assembly of India that had the task of assisting the transition of India and Pakistan from British rule to independence.

After the Second World War ended, all the prisoners who participated in Quit India Movement were released. A Cabinet Mission in 1946 formulated proposals for the formation of a government that would lead to an independent India. The elections related to constituent assembly were not directly done, instead members were elected from each provincial assemblies. The Indian National Congress won some 69% seats where majority elected were Hindus. Muslims retained those seats which were allocated to them.

Viceroy's executive council

The Viceroy's executive council became the executive branch of the interim government. With the powers of prime minister bestowed on the vice-president of the council, it was transformed. It was a position headed by the Congress leader Jawaharlal Nehru. The senior Congress leader Vallabhbhai Patel held the second most powerful position in the council, heading the department of home affairs, information and broadcasting. Asaf Ali, a Muslim leader of the Congress, was the head for the department of railways and transport. Jagjivan Ram, a scheduled caste leader, headed the department of Labour and Rajendra Prasad headed Food and Agriculture. Liaquat Ali Khan, member of the League, headed the department of Finance.

Nature of the assembly

The constituent assembly consisting of indirectly elected representatives was set up for drafting a constitution for India. The constituent assembly took three years to draft the constitution and acted as the first parliament of India. The members of the assembly were not elected on the basis of adult franchise and Muslim and Sikhs were given special representation as 'minorities'. The assembly met for the first time in New Delhi on 9th December 1946 and the last session of assembly was held on 26 November 1947. The total number of sittings of the constituent assembly was 166.

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Background and election

The constituent assembly was held when India was under British Rule and negotiations were made between the leaders and members in the cabinet mission of 1946. The constituent assembly consisted of 217 representatives, inclusive of 15 women.

In June 1947, when the Partition of India seemed inevitable, delegations from the various provinces of Sindh, East Bengal, Baluchistan, west Punjab withdrew in order to form the constituent assembly of Pakistan for which the meeting was held in Karachi.

Constitution and elections

The assembly began its first session with 207 members attending on 9th December 1946. The assembly approved the draft constitution on 26th November 1949. On 26th January 1950, the constitution took effect in India and India was proclaimed as a Republic. The constituent assembly became the provisional parliament of India which continued till the first elections took place in 1952.

Organization

On 9 December, 1946 Dr. Sachchidananda Sinha was made the pro-term chairman of the constituent assembly. After that Dr. Rajendra Prasad became the president of constituent assembly. Sir Benegal Narasingh Rau was the one to prepare the original draft of the constitution. B.R. Ambedkar later became the chairman of the drafting committee of the constitution.

The Assembly's work was organized into five stages:

- A report was asked to be presented by the committee on basic issues
- B.N. Rau, prepared an initial draft, on the basis of these committees as well as the research made by him into the constitutions of other countries
- B.R. Ambedkar presented a detailed draft of the constitution that was published for public discussion and comments and later became the chairman of the drafting committee
- The constitution that was drafted was then discussed and amendments were made as per requirement before enactment
- Lastly, the constitution was adopted. A committee called the Congress assembly party played a critical role in its adoption

Check Your Progress

4. What did the Indian Council Act, 1861 introduce for the first time in India?
5. Why was the constituent assembly set up?

1.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Siraj-ud-Daulah became the Nawab of Bengal in 1756.
2. The outcome of the Dual government was that it had badly affected the administration. There was hardly any discipline and order and commerce suffered heavy losses.
3. The Battle of Buxar (1764) was fought between the forces under the command of the British East India Company led by Hector Munro, and the combined armies of Mir Qasim, the Nawab of Bengal; Shuja-ud-Daula the Nawab of Awadh; and the Mughal Emperor Shah Alam II.
4. The Indian Council Act, 1861 introduced a representative institution in India for the first time.
5. The constituent assembly was set-up for drafting a constitution for India.

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1.6 SUMMARY

- In 1717, the Mughal emperor issued a *farmaan* by which it granted special benefits to the English East India Company, namely, exemption of taxes on goods imported and exported from Bengal.
- All the nawabs of Bengal, beginning from Murshid Quli Khan to Alivardi Khan, refused to sympathize with the Company's misconstrued explanation of the *farmaan* and even forced them to pay a huge amount as indemnity if they used the *dastaks* wrongly.
- To punish the highhandedness of the Company, Siraj-ud-Daulah retaliated by striking Calcutta on 16 June 1756 and bringing it under his sway by 20 June 1756.
- The Battle of Buxar (1764) was fought between the forces under the command of the British East India Company led by Hector Munro, and the combined armies of Mir Qasim, the Nawab of Bengal; Shuja-ud-Daula the Nawab of Awadh; and the Mughal Emperor Shah Alam II.
- The Battle of Buxar established British control over Bengal. Buxar revealed the political and military shortfalls of the Indian rulers and the decadence of the Mughal Empire.
- Working as an administrative clerk in the East India Company, Warren Hastings reached Calcutta in 1750. He gradually climbed up the ladder and was appointed as the the President of Kasimbazar, by Governor of Bengal in 1772. Later, he became Governor General of Bengal in 1774 under the Regulating Act.
- Charles Cornwallis was sent to India by the Court of Directors in the year 1786. He was entrusted the responsibility of executing the policy of peace

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given in Pitt's India Act and to restructure the administrative system in India.

- Though the Subsidiary Alliance System was formed in the second half of the 18th century, yet the credit of this policy goes to Lord Wellesley as it developed from 1798 to 1805 when Lord Wellesley was the Governor General of India.
- The Government of India Act, 1858 ended the Company's rule and transferred the governance of the country directly to the British Crown.
- The Act of 1858 was initiated for 'the better Government of India'. Thus, it introduced many significant changes in the home government.
- The Indian Council Act of 1892 also brought in many new rules and regulations. However, the only significant feature of the Act was the introduction of election procedure.
- The Indian Independence Act, 1947 was the legislation passed and enacted by the British Parliament that officially announced the Independence of India and the Partition of India.
- After the end of the Second World War, and the large scale protest that followed the INA trials, it became clear to the British that it was not possible for them to hold on to India.

1.7 KEY WORDS

- **Farmaan:** It was a royal order bearing the seal of the emperor during the Mughal period of Indian history.
- **Nawab:** It is an honorific title ratified and bestowed by the reigning Mughal emperor to semi-autonomous Muslim rulers of princely states in South Asia.
- **Subedar:** It is a historical rank in the Nepal Army, Indian Army and Pakistan Army, ranking below British commissioned officers and above noncommissioned officers.
- **Dual government:** The dual government of Bengal was a double system of administration, which was introduced by Robert Clive. The British East India Company obtained the actual power; whereas the responsibility and charge of administration was entrusted to the Nawab of Bengal.

1.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the Battle of Plassey.
2. What were the consequences of the Battle of Buxar?

3. What were the features of the Dual government?
4. What were the advantages of the Subsidiary Alliance to the Company?
5. Mention the salient features of the Indian Council Act, 1892.
6. Briefly mention the events leading to the Indian Independence Act.
7. Mention the formation of the interim government in India after the end of the Second World War.

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Long-Answer Questions

1. Describe the reforms initiated by Warren Hastings under the East India Company's rule.
2. Comment on the term: 'puppet nawabs' of Bengal with reference to the Treaty of Allahabad.
3. Highlight the importance of the Cornwallis Code with reference to reforms that were implemented in the judicial system.
4. Discuss the terms and conditions of the Doctrine of Lapse implemented by Lord Dalhousie.
5. Analyse the significance of the Indian Council Act, 1861.
6. Explain the changes introduced by the Government of India Act, 1919.

1.9 FURTHER READINGS

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UNIT 2 MAKING OF THE INDIAN CONSTITUTION

Structure

- 2.0 Introduction
 - 2.1 Objectives
 - 2.2 Composition of the Constituent Assembly
 - 2.2.1 Committees of the Constituent Assembly
 - 2.3 Enactment of the Constitution
 - 2.4 Answers to Check Your Progress Questions
 - 2.5 Summary
 - 2.6 Key Words
 - 2.7 Self Assessment Questions and Exercises
 - 2.8 Further Readings
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2.0 INTRODUCTION

Most countries in the world have a Constitution. The Constitution serves several purposes. First, it lays out certain ideals that form the basis of the kind of country that we as citizens aspire to live in. A Constitution tells us what the fundamental nature of our society is. A Constitution helps serve as a set of rules and principles that all persons in a country can agree upon as the basis of the way in which they want the country to be governed.

As discussed the making of Indian Constitution was in progress even before the country attained independence in 1947. The British enacted some legislations, such as the Government of India, Act 1858; the Indian Council Act, 1861; the Indian Council Act, 1892; the Indian Council Act, 1909; the Government of India Act, 1919; and the Government of India Act, 1935. The Constituent Assembly of India was elected in 1946 to write the Constitution of India. The previous unit introduced you to the process of Constitution development under the British Rule. This unit will introduce you to the composition of the Constituent Assembly, several committees constituted under the Constituent Assembly to facilitate the process of formation of the Constitution of India.

2.1 OBJECTIVES

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

- Discuss the composition of the Constituent Assembly
- Identify the committees of the Constituent Assembly
- Explain the enactment of the Constitution

2.2 COMPOSITION OF THE CONSTITUENT ASSEMBLY

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The idea of making the Constitution cannot be attributed to the Constituent Assembly alone. It needs to be seen from the evolutionary perspective. The adoption of the famous Motilal Nehru Resolution in 1924 and 1925, on national demand, was a historic event. It is because the central legislature had, for the first time, lent its support to the growing demand of the future Constitution of India. It also agreed to the opinion that the Constitution of India should be framed by Indians themselves. In November 1927, the Simon Commission was appointed without any Indians represented in it. Therefore, all-party meetings, held at Allahabad, voiced the demand for the right to participate in the making of the Constitution of their country.

Earlier on 17 May 1927, at the Bombay session of the Congress, Motilal Nehru had moved a resolution. The resolution called upon the Congress Working Committee to frame the Constitution for India in consultation with the elected members of the central and provincial legislatures, and the leaders of political parties. Adopted by an overwhelming majority with amendments, it was this resolution on the Swaraj Constitution which was later restated by Jawaharlal Nehru in a resolution passed by the Madras Session of the Congress on 28 December 1927.

In all-party conference in Bombay on 19 May 1929, a committee was appointed under the chairmanship of Motilal Nehru. The committee established the principles of the Constitution of India. The Report of the Committee, which was submitted on 10 August 1928, later became famous as the Nehru Report. It was the first attempt by Indians to frame the Constitution for their country.

The Report depicted the perception of the modern nationalists. It also provided an outline of the Constitution of India. The outline was based on the principles of dominion status and it suggested that the government should be made on the parliamentary pattern. The Report asserted the principle that sovereignty belongs to Indians. It laid down a set of fundamental rights and provided for a federal system with maximum autonomy granted to the units. The residuary powers were given to the central government.

A broad parliamentary system with government responsible to the parliament, a chapter on justifiable Fundamental Rights and Rights of Minorities envisaged in the Nehru Report in 1928 largely embodied the Constitution of the independent India.

The Third Round Table Conference issued a White Paper outlining the British Government's proposal for Constitutional reforms in India. However, the joint parliamentary committees, which examined this proposal, observed that 'a specific grant of constituent power to authorities in India is not at the moment a practicable proposition'. In its response, the Congress Working Committee in June 1934 declared that the only satisfactory alternative to the White Paper was that the

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Constitution be drawn out by the Constituent Assembly. They demanded that the members of the Constituent Assembly be elected on the basis of adult suffrage. Significantly, this was the first time that a definite demand for a Constituent Assembly was formally put forward.

The failure of the Simon Commission and the Round Table conference gave rise to the ratification of the Government of India Act, 1935. The Congress in its Lucknow Session in April 1936 adopted a resolution in which it declared that no Constitution imposed by an outside authority shall be acceptable to India. The resolution asserted that it has to be framed by an Indian Constituent Assembly elected by the people of India on the basis of adult franchise. On 18 March 1937, the Congress adopted another resolution in Delhi which asserted these demands.

After the outbreak of the Second World War in 1939, the demand for a Constituent Assembly was reiterated in a long statement issued by the Congress Working Committee on 14 September 1939. Gandhi wrote an article in the *Harijan* on 19 November 1939, in which he expressed the view that the Constituent Assembly alone can produce a Constitution for the country which truly and completely represents the will of Indians. It declared that the Constituent Assembly was the only way out to arrive at the solution of communal and other problems of the country. The demand was partially considered by the British Government in the 'August Offer of 1940'.

In March 1942, the British Government sent the Cripps Mission to India with a draft declaration which needed to be implemented at the end of the Second World War. The main proposals of the Mission were: (i) the Constitution of India was to be framed by an elected Constituent Assembly of the Indian people; (ii) the Constitution should give dominion status to India, i.e., equal partnership of the British Commonwealth of Nations; (iii) there should be an Indian union, comprising all the provinces and Indian states; and (iv) any province or Indian state, which was not prepared to accept the Constitution would be free to retain its Constitutional position existing at that time. With such provinces, the British Government could enter into separate Constitutional arrangements.

However, the Cripps Mission was a failure and no steps were taken for the formation of the Constituent Assembly until the World War in Europe came to an end in May 1945. In July, when the new labour government came to power in England, Lord Wavell affirmed that His Majesty's intention was to convene a Constitutional making body as soon as possible.

In 1946, the British Cabinet sent three members, including Cripps to make another serious attempt to solve the problem. However, the Cabinet delegation rejected the claim for a separate Constituent Assembly and a separate state for the Muslims. It forwarded the following proposals:

- (i) There would be a Union of India, comprising both British India and states, and having jurisdiction over the subjects of foreign affairs, defence and communications. All residuary powers would belong to the provinces and the states.

- (ii) The Union should comprise an executive and a legislature having representatives from the provinces and states.

To explain the actual meaning of the clauses of the proposals of the Cabinet Mission, the British Government published the following statement: On 6 December 1946 ‘Should a Constitution come to be framed by the Constituent Assembly in which large section of the Indian population had not been represented? His Majesty’s government would not consider imposing such a Constitution upon any restrictive part of the country.’

The British Government for the first time pondered over the likelihood of forming two constituent assemblies and two states. The Cabinet Mission recommended a basic framework for the Constitution and laid down a detailed procedure to be followed by the Constitution making body. In the election for the 296 seats, the Congress won 208 seats including all the General seats except nine. The Muslim League won 73 seats.

With the Partition and independence of the country on 14 and 15 August 1947, the Constituent Assembly of India was said to have become free from the fetters of the Cabinet Mission Plan. Following the acceptance of the plan of 3 June, the members of the Muslim League from the Indian dominion also took their seats in the Assembly. The representatives of some of the Indian states had already entered the Assembly on 28 April 1947. By 15 August 1947, most of the states were represented in the Assembly and the remaining states also sent their representatives in due course. The Constituent Assembly, thus, became a body fully representative of the states and provinces in India, free from external authority. It could change any law made by the British Parliament.

Composition of the Constituent Assembly

The Constituent Assembly was first held to meeting 9 December 1946. It included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well. Further, the delegations from provinces of Sind, East Bengal, West Punjab, Baluchistan and the North West Frontier Province in June 1947 formed the Constituent Assembly of Pakistan in Karachi. After India became independent, the Constituent Assembly became the Parliament of India. The Constituent Assembly was indirectly elected by the Provincial Legislative Assembly members (Lower House only), as per the scheme of the Cabinet Delegations. The prime features of the scheme were:

- Every Indian state or group of states and the province were allotted a specific number of seats relative to their populations respectively. Due to this, the provinces were needed to elect 292 members and the Indian states were assigned a minimum number of 93 seats.
- Each provincial seat was distributed amongst three major communities— Muslim, Sikh and General proportional to their respective populations.

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- Within the Provincial Legislative Assembly, each community member elected his own representatives through proportional reorientation with single transferable vote.
- The selection method for Indian representatives had to be determined through consultation.

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

2.2.1 Committees of Constitution Assembly

Let us discuss the committees to draft the constitution.

Committees to Draft a Constitution

The salient principles of the proposed Constitution were outlined by various committees of the Assembly. There were twenty-two major committees formed by the Constituent Assembly to handle different tasks of the making of the Constitution. Out of these, ten focused on procedural affairs and twelve on substantive affairs. The reports of these committees created the basis for the first draft of the Constitution.

1. Committees on Procedural Affairs

The committees on procedure affairs were:

- (i) The Steering Committee (Chairman: Dr K.M. Munshi)
- (ii) The Rules of Procedure Committee (Chairman: Dr Rajendra Prasad)
- (iii) The House Committee
- (iv) The Hindi-translation Committee
- (v) The Urdu-translation Committee
- (vi) The Finance and Staff Committee
- (vii) The Press Gallery Committee
- (viii) The Committee based on the Indian Independence Act of 1947
- (ix) The Order of Business Committee
- (x) The Credential Committee

2. Committees on Substantial Affairs

The committees on Substantial affairs were:

- (i) The Drafting Committee (Chairman: B. R. Ambedkar)
- (ii) The Committee for negotiating with States (Chairman: Dr Rajendra Prasad)
- (iii) The Union Constitution Committee (Chairman: Jawaharlal Nehru)
- (iv) The Provincial Constitution Committee (Chairman: Sardar Patel)
- (v) A Special Committee to examine the Draft Constitution (Chairman: Sir Alladi Krishnaswami Iyer)
- (vi) The Union Powers Committee (Chairman: Pandit Jawaharlal Nehru)
- (vii) The Committee on Fundamental Rights and Minorities (Chairman: Sardar Patel)
- (viii) The Committee on Chief Commissioners Provinces
- (ix) The Commission of Linguistic Provinces
- (x) An Expert Committee on Financial Provisions
- (xi) Ad-hoc Committee on National Flag
- (xii) Ad-hoc Committee on the Supreme Court

During its entire sitting, the Constituent Assembly had 11 sessions and 165 days of actual work. After three years of efforts, the historic document, i.e., the Constitution of the free India was adopted by the Assembly on 26 November 1949. It came into force on 26 January 1950.

The draft Constitution had 315 Articles and 13 Schedules. The final form of the Constitution, as it was originally passed in 1949, had 395 Articles and eight Schedules. This shows that the original draft had undergone considerable changes. In fact, there were over 7000 amendments which were proposed to be made in the Draft Constitution. Of these 2473 were actually moved, debated and disposed of. It was indeed a great democratic exercise as discussion, debates and deliberation were encouraged. There was also a great tolerance of criticism. It was truly a full-fledged democratic procedure which helped in the making of the Constitution.

2.3 ENACTMENT OF THE CONSTITUTION

The Constitution of India was made by the Constituent Assembly which represented nearly all shades of opinions existing at that time in the country. The first session of the Constituent Assembly was held on 9 December 1946 and the assembly finally passed the Constitution on 26 November 1949. However, the Constitution was inaugurated only on 26 January 1950, which was the twentieth anniversary of the day on which the Indian National Congress adopted the Resolution on *Purna Swaraj* and had ever since become the Republic Day of India.

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Most members of the Constituent Assembly (e.g. Jawaharlal Nehru, Patel, Azad, Ambedkar, Sitaramayya, Ayyar, N. G. Ayyangar, etc.) belonged to an extremely small, westernized professional middle-class, moulded by the 19th century English education system and sustained a radical social perspective based largely on the European experience in the 20th century. This was particularly true of those 20 member core group that comprised the most influential members of the Constituent Assembly. The ideology of the members of the Assembly clearly reflected on the Constitution of India. A study of the Constitution shows that it embodies the liberal-democratic ideology to a very large extent. However, the Constitution also depicts slight socialist and Gandhian leanings.

The members of the Assembly drafted the Constitution that expressed the aspirations of the nation. They skillfully selected and modified the provisions that they borrowed from other Constitutions, helped by the experts. The Assembly members also applied to their task with great effectiveness two wholly Indian concepts, consensus and accommodation. Accommodation was applied to the principles to be embodied in the Constitution. For example, India's membership in the Commonwealth reconciled the incompatibles of republicanism and monarchy. The solution of the *panchayat* question was also based on accommodation. Consensus was the aim of the decision-making process, the single most important source of the Assembly's effectiveness.

Check Your Progress

1. When was the Simon Commission appointed?
2. When was the first meeting of the Constituent Assembly held?
3. List some of the members of the Constituent Assembly.

2.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Simon Commission was appointed in 1927.
2. The first meeting of the Constituent Assembly was held on 9 December 1946.
3. Some member of the Constituent Assembly were Nehru, Patel, Azad, Ambedkar, Ayyar, and so on.

2.5 SUMMARY

- The idea of making the Constitution cannot be attributed to the Constituent Assembly alone. It needs to be seen from the evolutionary perspective.

The adoption of the famous Motilal Nehru Resolution in 1924 and 1925, on national demand, was a historic event.

- The Third Round Table Conference issued a White Paper outlining the British Government's proposal for Constitutional reforms in India.
- However, the Cripps Mission was a failure and no steps were taken for the formation of the Constituent Assembly until the World War in Europe came to an end in May 1945.
- The Constituent Assembly was first held on 9 December 1946. It included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well.
- The Constitution of India was made by the Constituent Assembly which represented nearly all shades of opinions existing at that time in the country. The first session of the Constituent Assembly was held on 9 December 1946 and the assembly finally passed the Constitution on 26 November 1949.

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2.6 KEY WORDS

- **Sovereignty:** It means the absence of external and internal limitations on the state.
- **Socialist:** He is someone who supports the political philosophy of socialism, which is a governmental system that advocates community ownership and control of all lands and businesses rather than individual ownership.

2.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. What was the main objective of the resolution passed by Motilal Nehru in 1927?
2. Write a short note on the Nehru report.
3. Identify the committees established under the Constituent Assembly to facilitate the making of the Indian Constitution.

Long-Answer Questions

1. Discuss the events which led to the formation of the Constituent Assembly.
2. Describe the composition of the Constituent Assembly.
3. Critically analyse the enactment of the Indian Constitution.

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2.8 FURTHER READINGS

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BLOCK - II

SALIENT FEATURES OF THE CONSTITUTION

*Features of the Indian
Constitution*

**UNIT 3 FEATURES OF THE INDIAN
CONSTITUTION**

NOTES

Structure

- 3.0 Introduction
- 3.1 Objectives
- 3.2 Salient Features of the Indian Constitution
 - 3.2.1 Preamble
- 3.3 Fundamental Rights and Duties
- 3.4 Directive Principles of State Policy
 - 3.4.1 Relationship between Fundamental Rights and Directive Principles
- 3.5 Answers to Check Your Progress Questions
- 3.6 Summary
- 3.7 Key Words
- 3.8 Self Assessment Questions and Exercises
- 3.9 Further Readings

3.0 INTRODUCTION

The first historical session of Indian Constituent Assembly held its meeting on 9 December 1946 under the chairmanship of Dr. Sachidananda Sinha. On 11 December, it elected Dr. Rajendra Prasad as its permanent president. The membership of the Constituent Assembly included all eminent Indian leaders. Pt. Jawaharlal Nehru introduced the objectives Resolution on 13 December 1946. After a full discussion and debate, the Constituent Assembly passed the objectives Resolution on 22 January 1947. It clearly laid down the ideological foundations and values of the Indian Constitution and it guided the work of the Constituent Assembly.

When on 15 August 1947, India became independent; the Constituent Assembly became a fully sovereign body and remained so till the inauguration of the Constitution of India. During this period, it acted in a dual capacity: first as the Constituent Assembly engaged in the making of the Indian Constitution, and secondly as the Parliament of India, it remained involved in legislating for the whole of India. For conducting its work in a systematic and efficient manner, the Constituent Assembly constituted several committees which were to report on the subjects assigned to them. Some of these committees were committees on procedural matters while others were committees on substantive matters. The reports of these committees provided the bricks and mortar for the formulation of the Constitution of India.

*Self-Instructional
Material*

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In the making of the Constitution, a very valuable role was played by the Drafting Committee. The Committee was constituted on 29 August 1947 with Dr. B. R. Ambedkar as its chairman. The Drafting Committee submitted its report (draft) to the Constituent Assembly on 21 February 1948 and the Constituent Assembly held debates on it. On the basis of these discussions, a new draft was prepared by the Drafting Committee and submitted to the Assembly on 4 November 1948. From 14 November 1949 to 26 November 1949 the final debate was held on the draft. 26 November was observed as the Independence Day every year as long as the British Rule in India. Later, in order to perpetuate the memory of the great pledge of the 'Purna Swaraj Day' 26 January 1950 was chosen to be the day of the commencement of our Constitution and was declared as Republic with Dr. Rajendra Prasad as its first president.

On completion of the constitution-making task of the Constituent Assembly, Dr. Rajendra Prasad said: 'I desire to congratulate the Assembly on accomplishing a task of such tremendous magnitude. It is not my purpose to appraise the value of the work that the Assembly has done or the merits and demerits of the Constitution which it has framed, I am content to leave that to others and posterity.' This unit deals with the features of the Indian Constitution.

3.1 OBJECTIVES

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

- Recognize the salient features of the Indian Constitution
- List the main features of the Preamble of the Indian Constitution
- Discuss the Fundamental Rights and Duties enshrined in the Indian Constitution
- Analyse the relationship between Fundamental Rights and Directive Principles of State Policy

3.2 SALIENT FEATURES OF THE INDIAN CONSTITUTION

Some important features of the Indian Constitution are mentioned below:

1. **Provision of adult franchise:** The Constituent Assembly adopted the principle of adult franchise with the full belief that the introduction of a democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being of the common man.
2. **Fundamental Rights and Directive Principles:** As Granville Austin observes, the fundamental rights and directive principles of state policy are the 'conscience of the Constitution' of India. Fundamental rights recognize the importance of the individual. They are basically political and civil liberties of the citizens of India against the encroachment by the state. These are

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justiciable rights, for if any of these rights are violated, the affected individual is entitled to move to the Supreme Court or the High Court for the protection and enforcement of his rights. The directive principles of state policy are basically economic rights and represent socialist objectives. They inscribe the objectives of a modern welfare state as distinguished from a merely regulatory or negative state. It is the duty of the state to follow these principles both in the matter of administration as well as in the making of laws.

3. **Secular state:** By adding the word 'secular' to the existing description of the country as a 'Sovereign Democratic Republic', in the Preamble, the commitment to the goal of secularism has been spelled out in clear terms.
4. **Cabinet government:** The Constitution establishes cabinet type of government both at the centre and in the states.
5. **Federal form of government:** The Constitution establishes a federal form of government in India but with a strong unitary bias. Though normally the system of government is federal, the Constitution enables the federation to transform into a unitary state.
6. **Single citizenship:** All the Indians irrespective of their domicile enjoy a single citizenship of India. The principle of single citizenship was provided for in order to foster strong bond of social and political unity among the people of India.
7. **Independent judiciary:** The Supreme Court and the High Courts of India were made independent of the influence of the executive.
8. **Protection of minorities and provision of reservation:** By providing protection to the minority groups in India and by providing reservation to the SC/STs, the Constitution made the Indian state a welfare state.

Philosophy of the Constitution

The Preamble to the Indian Constitution was formulated in the light of the 'Objectives Resolution' which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947. Also, the drafting committee of the Constituent Assembly, after a lot of deliberations, decided that the 'Preamble stands part of the Constitution'.

3.2.1 Preamble

The Preamble to the Constitution of India reads:

We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC and to secure to its citizens:

- JUSTICE, social, economic and political;
- LIBERTY of thought, expression, belief, faith and worship;
- EQUALITY of status and opportunity; and to promote them all;

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- **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.

The wordings of the Preamble make it clear that the basic tasks which the Constitution makers envisaged for the Indian state were to achieve the goals of justice, liberty, equality and fraternity. These objectives help us to decode the messages and mandates of our Constitution in terms of our contemporary needs and futuristic perspectives.

Amendment to the Preamble

By Section 2 of the Constitution (forty-second Amendment Act, 1976), two amendments were made in the Preamble.

- (a) Instead of 'Sovereign Democratic Republic' India was declared 'Sovereign Socialist Secular Democratic Republic.'
- (b) For the words 'Unity of the Nation', the words 'Unity and Integrity of the Nation' were inserted.

Explanation of the Preamble

A careful study of the Preamble reveals the following points:

- (a) **Source of the Constitution:** The first and the last words of the Preamble, i.e., 'We, the people of India' 'adopt, enact and give to ourselves this Constitution' convey that the source of the Constitution is the people of India. The people have formulated their Constitution through the Constituent Assembly which represented them.
- (b) **Nature of the Indian political system:** The Preamble also discusses the nature of Indian political system. The Indian polity is sovereign, socialist, secular, democratic republic.
 - (i) **Sovereign:** After the implementation of the Constitution on 26 January 1950, India became sovereign. It was no longer a dominion. Sovereignty means the absence of external and internal limitations on the state. It means that Indians have the supreme power in deciding their destiny.
 - (ii) **Socialist:** After the forty-second Constitutional Amendment, the Constitution of India declares itself a socialist polity. The Indian socialist state aims at securing to its people 'justice—social economic and political'. A number of provisions in Part IV of the Constitution dealing with the Directive Principles of State Policy are intended to bring about a socialist order of society.
 - (iii) **Secular:** Secularism is another aspect of the Indian polity which was included by the forty-second Constitutional Amendment. Secularism

in India contains both negative as well as positive connotation. In its negative connotation, it denotes absence of religious discrimination by the State. Positively; it means right to freedom of religion. However, secularism does not mean the right to convert from one religion to another.

- (iv) **Democracy:** The Preamble declares India to be a democratic country. The term 'democratic' is comprehensive. In its broader sense, it comprises political, social and economic democracy. The term 'democratic' is used in this sense in the Preamble and calls upon the establishment of equality of status and opportunity.

In a narrow political sense, it refers to the form of government, a representative and responsible system under which those who administer the affairs of the state are chosen by the electorate and are accountable to them.

- (v) **Republic:** Lastly, the Preamble declares India to be a republic. It means the head of the state is elected. The position is not hereditary. The President of India, who is the head of the state, is elected by an electoral college.

- (c) **Objectives of the political system:** The Preamble proceeds further to define the objectives of the Indian political system. These objectives are four in number: Justice, Liberty, Equality and Fraternity.

- **Justice:** The term implies a harmonious reconciliation of individual conduct with the general welfare of the society. In the light of 'Objectives Resolution' and the Preamble, the idea of socio-economic justice signifies three things:
 - (i) The essence of socio-economic justice in a country can be valued only in terms of positive, material and substantive benefits to the working class, in the form of services rendered by the state. Socio-economic justice, in the negative sense, means curtailment of the privileges of the fortunate few in the society, while positively, it suggests that the poor and the exploited should have the full right and opportunity to rise to the highest station in life.
 - (ii) Socio-economic justice is qualitatively higher than political justice.
 - (iii) The stability of the ruling authority is relative to its ability to promote the cause of socio-economic justice for the common man. On an empty stomach, adult franchise would soon become a mockery. Political justice too, would soon lose its significance if socio-economic justice is not forthcoming.

The objectives to secure justice for the citizens got concrete reflection in the provisions of Chapters III and IV, namely, the Fundamental Rights and Directive Principles.

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- **Liberty:** The term ‘liberty’ is used in the Preamble both in the positive and negative sense. In the positive sense, it means the creation of conditions that provide the essential ingredients necessary for the fullest development of the personality of the individual by providing liberty of thought, expression, belief, faith and worship. In the negative sense, it means absence of any arbitrary restraint on the freedom of individual action.
- **Equality:** Liberty cannot exist without equality. Both liberty and equality are complementary to each other. Here, the concept of equality signifies equality of status, the status of free individuals and equality of opportunity.
- **Fraternity:** Finally, the Preamble emphasizes the objective of fraternity in order to ensure both the dignity of the individual and the unity of the nation. ‘Fraternity’ means the spirit of brotherhood, the promotion of which is absolutely essential in our country, which is composed of people of many races and religions.
- **Dignity:** It is a word of moral and spiritual import and imposes a moral obligation on the part of the Union to respect the personality of the citizen and to create conditions of work which will ensure self-respect.

The use of the words, unity and integrity, has been made to prevent tendencies of regionalism, provincialism, linguism, communalism and secessionism and any other separatist activity so that the dream of national integration on the lines of enlightened secularism is achieved.

Check Your Progress

1. List any two features of the Indian Constitution.
2. What are the two amendments made to the Preamble to the Constitution?

3.3 FUNDAMENTAL RIGHTS AND DUTIES

Laski had rightly remarked that every state is known by the rights that it maintains. The Constitution of India, assuring the dignity of the individual, provided for the deepest meaning and essence and for the greatest motivation to incorporate ‘fundamental rights’. As Granville Austin observed:

The fundamental rights, therefore, were to foster the social revolution by creating a society egalitarian to the extent that all citizens were to be equally free from coercion or restriction by the state or by society privately. Liberty was no longer to be privilege of the few.

The inclusion of a chapter on fundamental rights in the Constitution was symbolic of the great aspirations of the Indian people. In fact, it is these rights that

offer the main justification for the existence of a state. The demand for a Charter of Rights in the Indian Constitution had its deep-seated roots in the Indian National Movement. It was most implicit in the formation of the Indian National Congress in 1885 that aimed at ensuring the same rights and privileges for the Indians that the British enjoyed in their own country. However, the first explicitly and systematic demand for fundamental rights appeared in the Constitution of India Bill, 1895. This bill was also known as Swaraj Bill of 1895. A series of Congress resolutions that were adopted between 1917 and 1919 repeated the demands and claims for civil rights and equity of status. Following this, drafting of seven fundamental rights under the Commonwealth of India Bill, 1925 took place.

The Congress also passed a resolution in Madras in 1927 that declared that the basis of the future Constitution of India must be a declaration of fundamental rights. This demand was further reiterated in the Nehru Report of 1928. In March 1931, the Congress once again adopted a resolution on fundamental rights and economic and social changes. However, the Simon Commission had considered the question but rejected it. The Government of India Act, 1935 did not contain any document pertaining to the declaration of rights. The next major document on rights was the Sapru Report of 1945. On the side of the British, the various British Constitutional experts like Wheare, Dicey, Jennings and even Laski did not favour the idea. It was only the Cabinet Mission Plan that conceded to the Indian demand for a Bill of Rights for the first time. The inclusion of rights in the Constitution vested on three major reasons:

- (a) To keep a check on the arbitrary action of the executive
- (b) To reach to the desired goal of socio-economic justice
- (c) To ensure security to minority groups in India

The final shape to the fundamental rights was given by the Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas, under the chairmanship of Sardar Patel, which the Constituent Assembly accepted and adopted to make it Part III of the Constitution.

The pertinent question that arises here is as to why the rights in Part III alone are considered fundamental? There are other rights as well that are important and even justifiable, for example, the right to vote under Article 325. The justification goes that the rights in Part III are:

- (a) More in consonance with the natural rights
- (b) Gifts of the state
- (c) Gifts of the Constituent Assembly

The Constitution of India contained seven fundamental rights originally. But the Right to Property was repealed in 1978 by the Forty-Fourth Constitutional Amendment bill during the rule of the Janata Government. These fundamental rights constitute the soul of the Constitution and thereby provide it a dimension of permanence. These rights enjoy an esteemed position as all

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legislations have to conform to the provisions of Part III of the Constitution. Not only this, its remarkable feature is these rights encompass all those rights which human ingenuity has found to be essential for the development and growth of human beings.

The salient features of the fundamental rights are:

- Fundamental rights are an integral part of the Constitution and hence cannot be altered or taken away by ordinary legislation. Any law passed by any legislature in the country would be declared null and void to the extent it is derogatory to the rights guaranteed by the Constitution.
- The chapter on fundamental rights in the Constitution is the most comprehensive and detailed one. It not only enumerates the fundamental rights guaranteed to the Indian citizens, but also provides comprehensive details of each right.
- Fundamental rights as embodied in our Constitution can be divided into two broad categories, namely, those which impose restrictions of negative character on the state without conferring special titles on the citizens. There are positive rights, which confer privileges on the people, e.g. Article 18 desires the State not to confer any special titles on the citizens. Similarly, Article 17 abolishes untouchability. These can be easily categorized in the former category. Right to liberty, equality or freedom to express or worship come under the second category.
- As being justifiable, if any of these rights are violated, the affected individual is entitled to move the court for the protection and enforcement of his rights. The Supreme Court may declare a law passed by the Parliament or a State Legislature in India or the orders issued by any executive authority as null and void, if these are found to be inconsistent with the rights.
- The Indian Constitution does not formulate fundamental rights in absolute terms. Every right is permitted under certain limitations; and reasonable restrictions can be imposed at any time in the larger interests of the community. In some cases, restrictions have been imposed by the Constitution itself. Article 19, for example, guarantees to all citizens, freedom of speech and expression.
- During the operation of an Emergency, the President may suspend all or any of the fundamental rights and may also suspend the right of the people to move the High Courts and the Supreme Court for the enforcement of the fundamental rights. When a National Emergency is declared under Article 352 on account of war or external aggression, fundamental right to freedom guaranteed under Article 19 stands automatically suspended under Article 358. The President is also empowered under Article 359 to suspend, by order, the enforcement of other fundamental rights also, during the period of Emergency.

- Some of these fundamental rights are only guaranteed to the citizens of India, while the rights relating to protection of life, freedom or religion, right against exploitation are guaranteed to every person whether he/she is a citizen or an alien to the country. This means that our Constitution draws a distinction between citizens and aliens in the matter of enjoyment of fundamental rights.
- The chapter on fundamental rights is not based on the theory of natural or unremunerated rights. The Indian Courts cannot enquire into any fundamental right that is not enumerated in the Constitution.
- The fundamental rights can be amended but they cannot be abrogated because that will violate the basic structure of the Constitution.
- They expressly seek to strike a balance between written guarantee of individual rights and the collective interests of the community.

The Constitution classifies fundamental rights into six categories:

- Right to equality (Articles 14–18)
- Right to freedom (Articles 19–22)
- Right against exploitation (Articles 25–28)
- Right to freedom of religion (Articles 25–28)
- Cultural and educational rights (Articles 29–30)
- Right to Constitutional remedies (Article 32)

Right to Equality

Article 14 declares that the state shall not deny any person the equality before the law or the equal protection of laws within the territory of India. As interpreted by the courts, it means that though the state shall not deny to any person equality before law or the equal protection of law, it shall have the right to classify citizens, provided that such a classification is rational and is related to the object sought to be achieved by the law.

Equality before law: Equality before law does not mean an absolute equality of men which is physically impossible. It means the absence of special privileges on grounds of birth, creed or the like in favour of any individual. It also states that individuals are equally subjected to the ordinary laws of the land.

Equal protection of laws: This clause has been taken verbatim from the XIV amendment to the American Constitution. Equal protection means the right to equal treatment in similar circumstances both with regard to the legal privileges and liabilities. In other words, there should be no discrimination between one person and another, if their position is the same with regard to the subject matter of legislation. The principle of equal protection does not mean that every law must have a universal application for all persons, who are not by nature, circumstance or attainments (knowledge, virtue or money) in the same position as others. Varying

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needs of different classes or persons require separate treatment and a law enacted with this object in view is not considered to be violative of equal protection. The Constitution, however, does not stand for absolute equality. The state may classify persons for the purpose of legislation. But this classification should be on reasonable grounds. Equal protection has reference to the persons who have same nature, attainments, qualifications or circumstances. It means that the state is debarred from discriminating between or amongst the same class of persons in so far as special protection, privileges or liabilities are concerned. Thus, equal protection does not require that every law must be all-embracing, all-inclusive and universally applicable.

Prohibition of Discrimination (Article 15)

Article 15(1) prohibits discrimination on certain grounds. It declares, 'The state shall not discriminate against any citizen on ground of religion, race, caste, sex, place of birth or any of them.' This discrimination is prohibited with regard to '(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) 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 class of citizens or for scheduled castes and scheduled tribes. The special treatment meted out to women and children is in the larger and long-term interest of the community itself. 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. While freedom contained in Article 14 is available to all persons, that in Article 15 is available only to the citizens and, therefore, it cannot be invoked by non-citizens.

Article 15(2) proclaims that no citizen shall, on grounds only of religion, race, caste, sex and place of birth be subject to any disability, liability, restriction or condition with regard to:

- Access to shops, public restaurants, hotels and places of public entertainment
- 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

The prohibition in this clause is levelled not only against the state but also against private persons.

Article 15(3) provides that the state shall be free to make any special provision for women and children. This sub-article is in the nature of an exception in favour of women and children. Thus, the provision of free education for children

up to a certain age or the provision of special maternity leave for women workers is not discrimination. However, discrimination in favour of women in respect of political rights is not justified, as women are not regarded as a backward class in comparison to men for special political representation.

Article 15(4) allows the state to make special provision for the advancement of any socially and educationally backward classes of citizens, including the scheduled castes and the scheduled tribes. The state is, therefore, free to reserve seats for them in the legislature and the services. This Article only allows the state to make special provisions for these classes. Inserted under Ninety-Third Constitutional Amendment Act, this clause conferred on the state the power to make any special provision by law for the advancement of any socially and educationally backward class or for the scheduled castes or the scheduled tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institutions.

Equality of Opportunity (Article 16)

Article 16(1) reads: 'There shall be equality of opportunity for all citizens in matters relating to employment to any office under the state.' It confers on every citizen, a right to equality of economic opportunity, and subsequently provides that no citizen shall be discriminated against in this respect on grounds only of religion, race, caste, descent, place of birth or any of them. However, an equality of opportunity is only between equals, i.e. between persons who are either seeking the same employment or have obtained the same employment. In other words, equality means equality between members of the same class or employees, and not between members of different classes.

Article 16 (2) reads: 'No citizen shall, on grounds only of religion, race, caste, sex, descent, place or birth, residence or any one of them be ineligible for or discriminated against in respect of any employment or office under the state.'

Article 16 (3) says that the President is competent to allow states to make residency as a necessary qualification in certain services for ensuring efficiently of work.

Article 16 (4) allows the state to reserve appointments in favour of a backward class of citizens which in its opinion is not adequately represented in the services under the state. The Supreme Court had held that such reservation should generally be less than 50 per cent of the total number of seats in a particular service. Over and above the minimum number of reserved seats members of backward classes are free to compete with others and be appointed to non-reserved seats, if otherwise, they are eligible on merit.

Article 16 (5) allows the state to provide that in case of appointment to religious offices, or offices in religious institutions, the candidates shall possess

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such additional qualifications or be members of that religious institution. This is an exception to the general rule that the state shall not discriminate on ground of religion in providing equal economic opportunities to the citizens.

Although Article 16 guarantees equality of opportunity in matters of public employment for all citizens and is expected to provide a bulwark against considerations of caste, community and religion, the result so far has been far from satisfactory.

Social Equality by Abolition of Untouchability (Article 17)

Complete abolition of untouchability was one of the items in Mahatma Gandhi's programme for social reform. The present Article adopts the Gandhian ideal without any qualification in abolishing untouchability and in forbidding its practice. It also declares that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

The practice of untouchability is a denial of human equality in an acute form. In pursuance of Article 17, the Parliament has enacted the Untouchability Offences Act, 1955, which was later amended in 1976. It prescribes punishment for the practice of untouchability, in any form, up to a fine of ₹ 500 or an imprisonment of 6 months or both, depending upon the seriousness of the crime.

Social Equality by Abolition of Titles (Article 18)

Article 18 is a radical application of the principle of equality it seeks to prevent the power of the state to confer titles from being abused or misused for corrupting the public life, by creating unnecessary class divisions in the society. The object of the Article is to prevent the growth of any nobility in India. Creation of privileged classes is contrary to the equality of status promised to all citizens by the Preamble to the Constitution.

Article 18(1) declares: 'No title, not being a military or academic distinction shall be conferred by the state'. It means that no authority in India is competent to confer any title on any person, excepting the academic title, or military titles of general, Major or Captain. Article 18(2) prohibits the citizens of India from receiving any title from any foreign state. This is an absolute bar. On the other hand, Article 18(3) prohibits the citizens from accepting any title from any foreign state without the consent of the President of India, if and so long they are holding any office of profit or trust under the state. And, Article 18(4) prohibits both the citizens and aliens, who are holding any office of profit or trust under the state from accepting any present, emolument or office of any kind, from or under any foreign State.

Article 18, however, does not prohibit the institutions other than the state from conferring titles of honours by way of honouring their leaders or men of merit.

Right to Freedom (Articles 19, 20, 21 and 22)

Article 19 of the Constitution guarantees seven civil freedoms to the citizens as a matter of their right. Included in Clause 1 of Article 19, these freedoms are:

- Freedom of speech and expression
- Right to assemble peacefully and without arms
- Right to form associations or unions
- Right to move freely throughout the territory of India
- Right to reside and settle in any part of the territory of India
- Right to practice any profession, or to carry on any occupation, trade or business

Freedom of Speech and Expression

The safeguarding of the freedom of speech and expression is essential to allow men to speak as they think on matters vital to them, and also to expose falsehood. Freedoms of speech and expression lie at the foundation of all democratic organizations, for without political discussion, no political education is possible.

Freedom of expression in this clause means right to express one's convictions and opinions freely by word of mouth, writing, printing, picture or any other manner addressed to the eyes or ears. It, thus, includes not only the freedom of press but also the expression of one's ideas in any other form.

Freedom of speech and expression also includes the freedom not to speak. Thus, the freedom to remain silent is included in this freedom. However, an individual is not free from the obligation of giving evidence in the judicial proceedings subject to Constitutional and statutory provisions.

As amended by the First and the Sixteenth Amendment Acts, Clause 2 of Article 19(1)(a) entitles the state to impose restrictions on any one or more of the following grounds:

- Sovereignty and integrity of India
- Security of the state
- Friendly relations with foreign states
- Public order
- Decency or morality
- Contempt of court
- Defamation
- Incitement to an offence

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Right of Peaceful Unarmed Assembly

Article 19 (1)(b) guarantees to every citizen the right to assemble peaceably and without arms. This right is subject to the following limitations:

- Assembly must be peaceful
- Assembly must be unarmed
- Must not be in violation of public order

Freedom of Association and Unions [Articles 19 (1) and (4)]

Article 19(1)(c) guarantees to all citizens the right to form associations and unions, the formation of which is vital to democracy. If free discussion is essential to democracy, no less essential is the freedom to form political parties to discuss questions of public importance. They are essential as much as they present to the government alternative solutions to political problems. Freedom of association is necessary not only for political purpose but also for the maintenance and enjoyment of the other rights conferred by the Constitution.

In short, the freedom of association includes the right to form an association for any lawful purpose. It also includes the right to form trade union with the object of negotiating better conditions of service for the employees.

Clause 4 of the Article 19 empowers the state to make reasonable restrictions upon this right on grounds only of:

- Sovereignty and integrity of India
- Public order
- Morality

Freedom of Movement and Residence

Articles 19(1)(D) and (E) guarantee to all citizens the right to move freely throughout the territory of India and to reside and settle in any part of the territory of India. These freedoms are aimed at the removal of all hindrances in the enjoyment of these rights.

The freedom of movement of a citizen has three aspects:

- Freedom to move from any part of his country to any other part
- Freedom to move out of his country
- Freedom to return to his country from abroad

The second of these provisions is not guaranteed by our Constitution as a fundamental right and has been left to be determined by Parliament by law.

Freedom of movement and residence is subject to restrictions only on the following grounds:

- In the interest of any scheduled tribes
- In the interest of the general public, i.e. public order morality and health

Freedom of Profession

Article 19(1)(f) guarantees to all citizens right to practice any profession or to carry on any occupation, trade or business. The freedom of profession, trade or business means that every citizen has the right to choose his own employment, or take up any trade, subject only to the limitations mentioned in Clause (6).

The right is subject to reasonable restrictions, which may be imposed by the state in the interest of general public. The state may prescribe professional or technical qualifications necessary for carrying on any business, trade or occupation. It also has the right itself, or through a corporation, to carry on any occupation, trade or business to the complete or partial exclusion of private citizens.

Protection in Criminal Convictions (Article 20)

Article 20 (1) declares that ‘a person cannot be convicted for an offence that was not a violation of law in force at the time of the commission of the act., nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.’ Clause 2 declares: ‘No person shall be prosecuted and punished for the same offence more than once.’ And, Clause 3 says that ‘no person accused of any offence shall be compelled to be a witness against himself.’

Right to Life and Personal Liberty (Article 21)

Article 21 says that no person shall be deprived of his life or personal liberty, except according to procedure established by law. The object of this Article is to serve as a restraint upon the executive, so that it may not proceed against the life or personal liberty of the individual, except under the authority of some law and in conformity with the procedure laid down therein. This Article can be invoked only if a person is detained by or under the authority of the state. Violation of the right to personal liberty is not enforceable when it is violated by a private individual, and then the remedy lies in the Constitutional law.

Furthermore, the Supreme Court on various occasions ruled that the expression ‘life’ in Article 21 does not connote merely physical or animal existence, but includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life.

Right to Information

As interpreted by the Supreme Court, the right to information flows from Article 19(1)(a) of the Constitution. Concerned Bill, however, was introduced in the Parliament as Freedom of Information Bill, 2002 which along with certain restrictions made it mandatory for the government to provide information pertaining to public sphere. This right of information was further illustrated by the Supreme Court, which held that ‘a voter has a fundamental right to know the antecedents of a candidate’. Accordingly, Supreme Court struck down some parts of

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Representation of People (Amendment) Act, 2002 by making a clear distinction between the Constitutional right of a voter and his rights under general laws. The Court declared that voter's fundamental right to know the antecedents of a candidate is independent of statutory right under election law.

Right to Education (Article 21(a))

Under Eighty-Sixth Amendment Act 2002, right to education was provided. For this purpose a new Article in Part III was inserted and two Articles in Part IV were amended. The newly inserted Article 21(a) declared that 'The state shall provide free compulsory education to all children of the age of 6–14 years in such manner as the state may, by law, determine.'

Protection against Arrest and Detention (Article 22)

Article 22 has two parts: Part I consists of Clauses 1 and 2, and deals with the rights of persons arrested under the ordinary criminal law. Part II consists of Clauses 3–7 and deals with the right of persons who are detained under the law of preventive detention.

Clauses 1 and 2 of this Article recognize the following rights of the persons arrested under ordinary criminal law:

- The arrested person shall, as soon as possible, be informed of the grounds of his arrest. The arrested person will be in a position to make an application to the appropriate court for bail, or move to the High Court, for the grant of the writ of habeas corpus.
- The second protection granted by Clause 1 is that the arrested person shall be given the opportunity of consulting and of being defended by the legal practitioner of his choice. This clause confers only right to engage a lawyer. It does not guarantee the right to be supplied with a lawyer, free of charge, nor does it guarantee the right to engage a lawyer who has been disqualified to practice under the law.
- Clause 2 declares that the arrested person shall be produced before the nearest magistrate within 24 hours of his arrest, excluding the time necessary for journey from the place of arrest to the court of the magistrate.

Preventive Detention

Clause 3 of Article 22 constitutes an exception to Clauses 1 and 2. The result is that enemy-aliens (i.e. foreigners belonging to the countries which are the enemies of the state) and other persons who are detained under the law of preventive detention have neither the right to consult nor to be defended by a legal practitioner.

Clause 4 requires that a person may be detained under the Preventive Detention Act for 3 months. If a person is to be detained for more than 3 months,

it can be only in the following cases:

- Where the opinion of an Advisory Board, constituted for the purpose has been obtained within 10 weeks from the date of detention
- Where the person is detained under law made by the Parliament for this Clause 5 considers two things, namely:
 - o That the detainee should be supplied with the grounds of the order of detention
 - o That he should be provided with the opportunity of making representation against that order to the detaining authority for the consideration of the Advisory Board.

Clause 6 declares that the detainee cannot insist for the supply of all the facts, which means evidence and which the government may not consider in public interest. In this context, the Supreme Court has held that an order of detention is malafide, if it is made for a purpose other than what has been permitted by the legislature.

Clause 7 of this Article gives exclusive power to the Parliament to:

- Prescribe the circumstances under which and the cases in which a person may be detained for more than 3 months without obtaining the opinion of the an Advisory Board
- The period of such detention (which it has determined to be not more than twelve months); and
- The procedure to be followed by an Advisory Board

The Preventive Detention Act, 1950 was passed by the Parliament, which initially constituted the law of Preventive Detention in India. The Act was amended 7 times, each for a period of 3 years. The revival of anarchist forces obliged Parliament to enact a new Act, named The Maintenance of Internal Security Act (MISA) in 1971, having provision broadly similar to those of Preventive Detention Act of 1950. In 1974, Parliament passed the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) as an economic adjunct of the MISA. MISA was repealed in 1978, but COFEPOSA still remains in force. Further, in 1980, National Security Act (NSA) was enacted. According to the NSA, the Maximum period for which a person may be detained shall be 6 months from the date of detention. Next in the series was Essential Services Maintenance Act (ESMA), 1980, and also the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 which empowered the government to ban strikes, lockouts and lay-offs and gave powers to dismiss strikers and erring employees, arrest them without warrant, try them summarily, impose fine and imprison them. An upsurge in terrorist activities, further, compelled the government to enact The Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985, which, in fact, empowered the executive for suppression of all kind of dissent and was widely criticized for being undemocratic.

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In the wake of intensified terrorist activities in many parts of the country, Vajpayee government was compelled with yet another enactment in 2002, named as Prevention of Terrorism Act (POTA), which has been criticized for its probable misuse.

Right against Exploitation (Articles 23 and 24)

Clause 1 of Article 23 prohibits traffic of human beings, beggars and other similar forms of forced labour, and makes the contravention of this prohibition an offence punishable in accordance with law. In this context, 'traffic in human beings,' includes the institutions of slavery and prostitution. 'Begar' means involuntary or forced work without payment, e.g. tenants being required to render certain free services to their landlords.

Under Clause 2 of this Article, the state has been allowed to require compulsory service for public purposes, viz. national defiance, removal of illiteracy or the smooth running of public utility services like water, electricity, postage, rail and air services. In matters like this, the interests of the community are directly and vitally concerned and if the government did not have this power, the entire life would come to a standstill. In making any service compulsory for public purposes, the state has, however, been debarred from making discrimination on grounds only of religion, race, caste, class or any of them.

Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine, or engaged in any other hazardous employment. Our Constitution goes in advance of the American Constitution in laying down a Constitutional prohibition against employment of children below the age of 14 in factories, mines or other difficult employments, e.g. railways or transport services. Our Parliament has passed necessary legislation and made it a punishable offence.

Right to Freedom of Religion (Articles 25–28)

In pursuance of the goal of liberty of belief, faith and worship enshrined in the Preamble to the Constitution, Articles 25–28 underline the secular aspects of the Indian state.

Article 25(1) grants to all persons the freedom of conscience, and the right to freely profess, practice and propagate religion. This Article secures to every person, a freedom not only to subscribe to the religion of his choice, but also to execute his belief in such outward acts as he thinks proper. He is also free to propagate his ideas to others.

Clause 2 of this Article allows the state to make law for the purpose of regulating economic, financial or other activities of the religious institutions. At the same time, it allows the state to provide from, and carry on social welfare programmes, especially by throwing open the Hindu religious institutions of a public character to all classes and sections of Hindus, including the Sikhs, the Jains and the Buddhists.

The Parliament enacted the Untouchability Offences Act, 1955, which prescribes punishment for enforcing religious disabilities on any Hindu simply because he belongs to a low caste. The purpose of this reform is to overcome the evils of Hindu religion.

Explanation 1 to Article 25 declares that the wearing or carrying of *kirpan* (sword) by the Sikhs shall be deemed to be included in the profession of Sikh religion. Basu points out that this right is granted subject to the condition that no Sikh will carry more than one sword without obtaining licence.

Article 26 guarantees to every religious denomination the following rights:

- To establish and maintain institutions for religious and charitable purpose
- To manage its own affairs in matters of religion
- To own and acquire movable and immovable property
- To administer such property in accordance with law

While rights guaranteed by Article 25 are available only to the individuals and not to their groups, those under Article 26 are conferred on religious institutions and not on individuals. In this Article, religious denomination means a religious sect or body having a common faith and organization and designated by a distinctive name. This was the definition accepted by the Supreme Court. This Article grants to a religious denomination complete autonomy in deciding what rites and ceremonies were essential according to the tenets of a religion. No outside authority has any jurisdiction to interfere in its decisions in such matters.

Article 27 declares that ‘No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination’.

This Article secures that the public funds raised by taxes shall not be utilized for the benefit of any particular religion or religious denomination. Thus, a local authority which raises taxes from persons of all communities who reside within its jurisdiction would not be entitled to give aid to those educational institutions which provide instructions relating to any particular religion. In other words, an educational institution, which provides compulsory instructions relating to a particular religion is not entitled to any financial aid from the state.

Article 28 is confined to educational institutions, maintained, aided or recognized by the state. Clause 1 of this Article relates to educational institutions wholly maintained out of the state funds. It completely bans imparting of religious instructions in such institutions. Clause 2 relates to educational institutions which are administered by the state under some endowment or trust, like the Banaras Hindu University. In such institutions religious instructions may be given.

Cultural and Educational Rights (Articles 29–30)

The object of Article 29 is to give protection to the religious and linguistic minorities. Clause 1 of Article 29 declares that any section of the Indian citizens, having a

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distinct language, script or culture of its own, shall have the right to conserve the same. The right to conserve or protect a language includes the right to agitate for the protection of that language. It also means that every minority group shall have the right to impart instructions to the children of their own community in their own languages.

Clause 2 of Article 29 is a counterpart of Article 15. It says that there should be no discrimination against children on grounds only of religions, race, caste or language, in the matters of admission into any educational institution maintained or aided by the state. Thus, this clause gives to an aggrieved minority of citizens the protection in matters of admission to educational institutions against discrimination on any of these grounds. The persons belonging to Scheduled Castes or Tribes are in any case to be given special protection in matters of admission to educational institutions.

The Supreme Court observed that preference in admission given by institutions, established and administered by minority community, to candidates belonging to their own community in their institutions on grounds of religion alone is violation of Article 29(2). Minorities are not entitled to establish and administer educational institutions for their exclusive benefit.

Clause 1 of Article 30 is a counterpart of Article 26, and guarantees the right to all linguistic or religious minorities to establish and administer educational institutions of their choice. It entitles the minority community to impart instructions to the children of their community in their own language.

The right to establish educational institutions of their choice amounts to the establishment of the institutions which will serve the needs of the minority community, whether linguistic or religious. When such institutions are established and seek aid from the state, it cannot be denied to them simply on the ground that they are under the management of a linguistic or religious minority.

Right to Constitutional Remedies (Articles 32, 33, 34 and 35)

A declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The Constitution accords a concurrent jurisdiction for this purpose on the Supreme Court under Article 32, and on the state High Courts under Article 226. An individual who complains the violation of his fundamental rights can move the Supreme Court or the state High Court for the restoration of his fundamental rights.

Article 32(1) declares that the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights included in Part III of the Constitution is guaranteed. Clause 1, thus, guarantees the right to move the Supreme Court for the enforcement of fundamental rights. In other words, the right to move the Supreme Court for the violation of fundamental rights is itself a fundamental right.

Article 32(2) empowers the Supreme Court to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto or certiorari, whichever may be appropriate for the enforcement of any of the fundamental rights.

Habeas corpus: The writ of habeas corpus literally means ‘have the body’. It is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention. Thus, habeas corpus is the citizen’s guarantee against arbitrary arrest or detention. By virtue of this writ, the Supreme Court or the High Court can have any detained person produced before it for examining whether he has been lawfully detained or not, and for dealing with the case in accordance with the Constitution and the laws in force at that time.

Mandamus: The writ of mandamus means ‘we command’. It is an order directing person, or body, to do his legal duty. It lies against a person, holding a public office or a corporation or an inferior court, for it is to ask them to perform their legal duties. They are under legal obligation not to act contrary to law, without the authority of law, or in excess of authority conferred by law. As such, mandamus is available in the following cases:

- To compel the performance of obligatory duties imposed by law
- To restrain action which is taken without the authority of law, contrary to law, in excess of law

Certiorari: The writ of certiorari means ‘to be more fully informed of’. It is issued by a superior court to an inferior court requesting the latter to submit the record of a case pending before it. It lies not only against the inferior courts but also to any person, body or authority, having the duty to act judicially. It may be issued to the Union government, the state governments, municipalities or other local bodies, universities, statutory bodies, the individual ministers, public officials and departments of the state. It is not available against private persons for the enforcement of fundamental rights, because these rights are available only against the state.

Prohibition: The writ of prohibition is issued by a superior court to an inferior court preventing it from dealing with a matter over which it has no jurisdiction. It is generally issued to transfer a case from a lower to a higher court. When an inferior court takes up for hearing a matter over which it has no jurisdiction, the person against whom proceedings have been taken can move the superior court for the writ of prohibition. If the request is guaranteed by the superior court, the inferior court is stopped from continuing the proceedings in that case, and the case is transferred to another court to secure justice.

Quo warranto: The writ of quo warranto is issued to stop the irregular and unlawful assumption of any public position by any person. Through this writ, the

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courts may grant an injunction to restrain a person from acting in any office to which he is not entitled, and may also declare the office vacant.

Article 32(3) provides that, without prejudice to the powers conferred on the Supreme Court by Articles 32(1) and (2), the Parliament may by law empower any court to issue these writs for the purpose of the enforcement of the fundamental rights.

Article 32(4) provides that fundamental rights guaranteed by Article 32(1) shall not be suspended except as otherwise provided by this Constitution.

Fundamental Duties (Article 51(a))

The Constitution of India laid disproportionate emphasis on the rights of citizens as against their duties. With the result, the Constitution of India did not incorporate any chapter of fundamental duties. It was during the 'Internal Emergency', declared in 1975, that the need and necessity of fundamental duties was felt and accordingly a Committee under the Chairmanship of Sardar Swaran Singh was appointed to make recommendations about fundamental duties. The Committee suggested for inclusion of a chapter of fundamental duties, provision for imposition of appropriate penalty or punishment for non-compliance with or refusal to observe any of the duties and also recommended that payment of taxes should be considered as one of the fundamental duties. But these recommendations were not accepted by the Congress government.

However, under the Forty-Second Amendment, carried out in 1976, a set of fundamental duties of Indian citizens was incorporated in a separate part added to Chapter IV under Article 51(a). Under this Article, this shall be the duty of every citizen of India:

- To abide by the Constitution and respect the national flag and national anthem
- To cherish and follow the noble ideas, which inspired our national freedom struggle
- To protect the sovereignty, unity and integrity of India
- To defend the country
- To promote the spirit of common brotherhood amongst the people of India transcending religious, linguistic, regional or sectional diversities and laws to renounce practices derogatory to women
- To preserve the rich heritage of our composite culture
- To protect and improve the natural environment
- To develop the scientific temper and spirit of enquiry
- To safeguard public policy
- To strive towards excellence in all spheres of individual and collective activity

- As a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years (this clause was inserted through Eighty-Sixth Amendment Act 2002)

Insertion of these Fundamental Duties along with Directive Principles of State Policy suggests that these are not justifiable. In fact, the Constitution does not define how these will be implemented. No punishment or compulsive provisions have been mentioned on their violation. According to D. D. Basu, the legal utility of these duties is similar to that of the directives as they stood in 1949, while the directives were addressed to the state without any sanction, so are the duties addressed to the citizens without any legal sanction for their violation.

Also the duties enumerated are quite vague and can be interpreted in more than one ways. It is, therefore, very difficult to have their universally acceptable definitions. One of the duties of the citizens is to follow the noble ideals that inspired our freedom struggle, while each section, which participated in freedom struggle, had its own ideals. The term 'noble ideal', therefore, becomes ineffable and vague. Another duty expects every citizen of India to value and preserve the rich heritage of composite culture. A question that can be asked as to which is India's composite culture. Similarly, it is difficult to define scientific temper, humanism or spirit of enquiry.

Notwithstanding these criticisms, the fundamental duties have been the accepted part of the Constitution. These duties may act as a social check on reckless activities indulged in by irresponsible citizens and as a reminder to citizens that while exercising or claiming the right they have also to be conscious of these duties they owe to the nation and to their fellow citizens. In brief, the incorporation of fundamental duties in the Constitution was, no doubt, an attempt to balance the individual's civic 'freedoms' with his civic 'obligations' and, thus, to fill a gap in the Constitution.

3.4 DIRECTIVE PRINCIPLES OF STATE POLICY

Directive principles depict the social and economic aspects of human rights. The Directive Principles of State Policy, included in Part IV of our Constitution seek to realize the high ideals of justice, liberty, equality and fraternity, enshrined in the Preamble to the Constitution. These principles reflect Gandhi's constructive programme for socio-economic welfare of the people of India. These constitute an instrument of instructions to the legislatures and the executives at all levels as to how they should exercise their respective powers and aim at attaining the economic, educational and social welfare of the people. Behind them is the sanction of public opinion which is stronger, and more effective than even the sanction of the courts.

Incorporating most of these principles, the framers of the Constitution were primarily influenced by the identical provisions in the Irish Constitution which, in turn, had drawn inspiration from the Spanish Constitution. They were also, to a

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great extent, influenced by the Charter of the United Nations and the Charter of Human Rights. No less was the inspiration drawn by them from the Constitutions of socialist democracies, particularly that of the USSR.

These directives relate to specific socio-economic objectives, calling upon the state to strive to promote the welfare of the people in all fields, especially in social, economic and political. These directives lay down the lines on which the machinery of the government should function under this Constitution.

These directives fall into three main categories:

- The ideals, especially economic, which the framers of the Constitution directed the state to strive for
- The instructions and directions to the future legislatures and executives as to the manner in which they should exercise their respective powers
- The economic and educational rights which the citizens are authorized to expect from their duly constituted legislatures and executives

The Directive Principles of State Policy, as included in Part IV of the Constitution, have been enumerated under Articles 36 to 51.

These principles aim at the establishment of a welfare state in India committed to the realization of the ideals proclaimed in the Preamble to the Constitution.

Article 36 defines the term state and declares that it has the same meaning in Part IV as it has in Part III. This means that the Constitution directs not only the legislatures and executives of the Union and the states but also the local authorities, like district boards and village panchayats, to implement these principles through their laws, policies and programmes.

Article 37 describes the nature of these principles as follows:

- That these principles shall not be enforceable by any law
- That these principles shall be fundamental in the governance of the country
- That it shall be the duty of the state to apply these principles in making laws

Article 38 declares 'The state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life'.

It declares that the social order envisaged for Indian people would be assured not only in the political field, but also in the social and economic fields. As a matter of fact, the state is charged to frame its policies in such a way as to provide necessary elements of growth and adjustment which are essential for a progressive society.

Article 39 describes that the state is directed to ensure various economic rights to the citizens. In the first place, it is to ensure that the citizens, both men and women, should have the right to an adequate means of livelihood.

Secondly, the state is required to so distribute the ownership and control of the material resources of the community as to sub-serve the common good. It is to ensure the operation of economic system that does not result in the concentration of wealth and means of production in the hands of a few. The objective is to prevent the growth of an economic system which may be detrimental to the interest of the community as a whole.

The state is also to secure 'equal pay for both men and women'. The inclusion of this provision was inspired by a similar provision contained in Article 41 of the International Labour Organization and the Seventh Principle of the Universal Declaration of Human Rights Article 122. The purpose of this clause is to ensure economic equality with regard to the equal proportion of wages with the work.

The state should ensure that the health and strength of workers, men and women, and the tender-aged children are not abused. The state is to ensure that the citizens are not forced by economic necessity to take up jobs which are unsuited to their age and strength. The state is also to protect childhood and youth against exploitation and against moral and material abandonment.

Article 39(A) has been inserted to enjoin the state to provide 'free' aid to the poor and to take other steps to ensure equal justice to all, which is offered by the Preamble.

Article 40 directs the state to organize village panchayats and to vest them with such powers and authority as may be necessary to enable them to function as units of self-government. For the implementation of the provisions of this Article, Seventy-Third Amendment Act was passed vesting various degrees of power of self-government and civil and criminal justice in the hands of the panchayats. Owing to the lack of proper education, narrow-mindedness and local politics, the system of panchayat administration has not been a big success.

Article 41 deals with the economic and educational rights of the citizen. It directs the state to ensure them the right to work, the right to education and the right to public assistance in case of unemployment, old-age, sickness or disablement.

Article 42 directs the state to make provisions for securing just and human conditions of work, and for maternity relief. Adequate provisions have been made by the state through Labour Laws and Factories Acts and the rules of service for the employees of the Union and the states.

Article 43 also deals with the rights of the citizens. It directs the state to ensure all workers, agricultural, industrial or otherwise the following rights:

- Right to work
- Right to a living wage

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- Right to such conditions of work ensures a decent standard of life and full enjoyment of leisure and social and cultural opportunities

Through Forty-Second Amendment Article 43(a) has been inserted in order to direct the state to ensure the participation of workers in the management of industry and other undertaking. This is a positive step in advancement of socialism in the sense of economic justice.

Article 44 directs the state to endeavour to secure for the citizens a uniform code throughout the territory of India. The purpose of this Article is to enable the legislature to make an attempt to unify the 'personal law' of the country.

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

Article 46 directs the state to promote the educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections. It also directs the state to protect these people from social injustice and from all forms of exploitation. For this purpose, seats have been reserved for them in all educational institutions, and a fairly wide range of scholarships have also been provided for them.

Article 47 can be split into two parts:

- The direction to the state to raise the level of nutrition and the standard of living of its people and the improvement of their health
- Direction to the state to bring about prohibition of intoxicating drinks and drugs, which are injurious to health, except for medical purposes

The subject matter of Article 48 centres round the preservation and improvement of cattle and the prohibition of cow slaughter. The protection conferred by this Article extends only to cows, calves and the other animals which are capable of yielding milk or being used for some work.

Article 48(a) has been inserted, through Forty-Second Amendment, in order to direct the state to protect and improve the environment and to safeguard the forests and wildlife of the country.

Article 49 directs the state to protect, preserve and maintain monuments, places or objects of artistic or historic interest or of national importance. The state is to ensure that these monuments and objects are not spoiled, disfigured, destroyed, removed or exported. The aim of this Article is to preserve the nation's cultural heritage.

Article 50 directs the state to take steps to separate the judiciary from the executive in public services of the state. The separation of judiciary from the executive would eliminate many evils, which follow from the combination of two positions in the same person.

Article 51 directs the state to so shape its foreign policy as to attain the following objectives:

- Promotions of international peace and security
- Maintenance of just and honourable relations between nations

- Respect for international law and treaty obligations in the dealings of organized people with one another
- Settlement of international disputes by arbitration

India's foreign policy is essentially based on these principles. Nehru's famous formulation of 'Panchsheel', the five principles of peaceful co-existence, have been accepted by most of the civilized nations. Based on Constitutional provisions, these principles are:

- Mutual respect for each other's territorial integrity and sovereignty
- Non-aggression
- Non-interference in each other's internal affairs
- Equality and mutual benefit
- Peaceful co-existence

3.4.1 Relationship between Fundamental Rights and Directive Principles

Fundamental rights incorporated in Part III and the directive principles in Part IV form an organic unit.

Article 13 provides that any law passed in violation of Part III of the Constitution dealing with fundamental rights is void to the extent of such violation. Initially the Supreme Court, however, adopted a legal attitude by declaring that the directive principles cannot abridge, curtail or stand in the way of the fundamental rights. The court, thus, held that the former are subordinated to the latter. But later on the judiciary has substantially modified its attitude towards directive principles. It started taking note of directive principles in determining the scope of fundamental rights. The directives now command more respect from the judiciary than they initially did.

Article 37 makes the Directive Principles of the State Policy non-justifiable. In case of the state of Madras vs. Champakam Dorairajan, 1951, the Court laid down the following principles in describing the relationship of the directive principles with fundamental rights:

- The 'Directive Principles of State Policy' cannot override fundamental rights, because the former are unenforceable under Article 37 while the latter are enforceable under Article 32.
- Directive principles cannot abridge, curtail or stand in the way of fundamental rights, because they are sacrosanct and supreme.
- Directive principles have to conform to, and run as subsidiary to fundamental rights.
- The state action under directive principles is subject to legislative and executive powers, i.e. a directive principle can be implemented only by the agency which is authorized to make law on that subject.

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- If the power of the state with respect to the subject relating to directive principles is limited by the Constitution, the state cannot exceed it.

Later, the Court accepted that fundamental rights could be amended by the prescribed procedure and thereby directive principles can be implemented. In this period, the court evolves ‘the Principles of Harmonious construction’. This meant that ordinarily the directive principles were subordinate to the fundamental rights and the state could not infringe on fundamental rights of any individual even on the plea of protecting the weaker sections of society as mentioned in the chapter on directive principles. The state, however, could put restrictions on fundamental rights in order to implement directive principles or otherwise by making amendments in the Constitution. This attitude was reflected through *Sajjan Singh vs. State of Rajasthan, 1967*, when the court held that directive principles are also fundamental in the government of the country and provisions of Part III must be interpreted harmoniously with these principles.

Check Your Progress

3. What is the importance of Part III of the Indian Constitution?
5. Why are fundamental duties important?

3.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. Two features of the Indian Constitution are the following:
 - Single citizenship
 - Independent judiciary
2. By Section 2 of the Constitution (forty-second Amendment Act, 1976), two amendments were made in the Preamble. (a) Instead of ‘Sovereign Democratic Republic’ India was declared ‘Sovereign Socialist Secular Democratic Republic.’ (b) For the words ‘Unity of the Nation’, the words ‘Unity and Integrity of the Nation’ were inserted.
3. Part III of the Indian Constitution is important because it contains the fundamental rights.
5. If there are rights with no responsibilities, it becomes one sided. That is the reason fundamental duties are introduced so that there will be a balance between rights and duties.

3.6 SUMMARY

- The Constituent Assembly adopted the principle of adult franchise with the full belief that the introduction of a democratic government on the basis of

adult suffrage will bring enlightenment and promote the well-being of the common man.

- The Constitution establishes a federal form of government in India but with a strong unitary bias. Though normally the system of government is federal, the Constitution enables the federation to transform into a unitary state.
- The Preamble to the Indian Constitution was formulated in the light of the 'Objectives Resolution' which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947.
- Laski had rightly remarked that every state is known by the rights that it maintains. The Constitution of India, assuring the dignity of the individual, provided for the deepest meaning and essence and for the greatest motivation to incorporate 'fundamental rights'.
- The Indian Constitution does not formulate fundamental rights in absolute terms. Every right is permitted under certain limitations; and reasonable restrictions can be imposed at any time in the larger interests of the community.
- Article 14 declares that the state shall not deny any person the equality before the law or the equal protection of laws within the territory of India.
- The safeguarding of the freedom of speech and expression is essential to allow men to speak as they think on matters vital to them, and also to expose falsehood.
- In pursuance of the goal of liberty of belief, faith and worship enshrined in the Preamble to the Constitution, Articles 25–28 underline the secular aspects of the Indian state.
- A declaration of fundamental rights is meaningless unless there are effective judicial remedies for their enforcement. The Constitution accords a concurrent jurisdiction for this purpose on the Supreme Court under Article 32, and on the state High Courts under Article 226.
- Directive principles depict the social and economic aspects of human rights. The Directive Principles of State Policy, included in Part IV of our Constitution seek to realize the high ideals of justice, liberty, equality and fraternity, enshrined in the Preamble to the Constitution.
- Through Forty-Second Amendment Article 43(a) has been inserted in order to direct the state to ensure the participation of workers in the management of industry and other undertaking. This is a positive step in advancement of socialism in the sense of economic justice.
- Fundamental rights incorporated in Part III and the directive principles in Part IV form an organic unit. Article 13 provides that any law passed in

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violation of Part III of the Constitution dealing with fundamental rights is void to the extent of such violation.

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3.7 KEY WORDS

- **Justice:** The term implies a harmonious reconciliation of individual conduct with the general welfare of the society.
- **Fraternity:** It means the spirit of brotherhood, the promotion of which is absolutely essential in our country, which is composed of people of many races and religions.
- **Habeas corpus:** The writ of habeas corpus literally means 'have the body'; it is a writ or order to an executive authority to produce the body of a person, who has been detained in prison and to state the reasons for his detention.
- **Mandamus:** The writ of mandamus means 'we command'; it is an order directing person, or body, to do his legal duty.
- **Certiorari:** The writ of certiorari means 'to be more fully informed of'; it is issued by a superior court to an inferior court requesting the latter to submit the record of a case pending before it.

3.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. List the important features of the Constitution of India.
2. Provide the explanation of the Preamble of the Indian Constitution.
3. How would you interpret 'Right to Equality'?
4. What is the 'Right to Freedom'?
5. What are fundamental duties? What is the significance of fundamental duties?

Long-Answer Questions

1. Describe the aspects of the Preamble of the Constitution.
2. What are the salient features of the fundamental rights?
3. How are fundamental rights classified in the Indian Constitution?
4. How are fundamental rights and fundamental duties interconnected?
5. 'Directive Principles of State Policy aim at establishing a welfare state.' Explain.

3.9 FURTHER READINGS

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UNIT 4 PARLIAMENTARY GOVERNMENT

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Structure

- 4.0 Introduction
- 4.1 Objectives
- 4.2 Features of Parliamentary System
- 4.3 Current Trends
- 4.4 Merits and Demerits of Parliamentary System of Government
- 4.5 Answers to Check Your Progress Questions
- 4.6 Summary
- 4.7 Key Words
- 4.8 Self Assessment Questions and Exercises
- 4.9 Further Readings

4.0 INTRODUCTION

Ex-Prime Minister of the United Kingdom Sir Anthony Eden spoke some significant words regarding India opting for the Parliamentary democracy. In his view, ‘of all the experiments attempted since the beginning of time, the Indian venture into Parliamentary government is most exciting. A vast subcontinent is attempting to apply to its tens and thousands of millions a system of free democracy. It is a brave thing to try to do so; if it succeeds, its influence in Asia, is incalculable for good.’ Tracing the journey of Parliamentary democracy in India reveals much about the general nature of its operations all around the world. This unit discusses the features of the parliamentary system of government, the latest trends of India’s parliamentary democracy and the merits and demerits of the parliamentary system of government.

4.1 OBJECTIVES

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

- List the features of the parliamentary system of government
- Analyse the latest trends of India’s parliamentary democracy
- Discuss the merits and demerits of the parliamentary system of government

4.2 FEATURES OF PARLIAMENTARY SYSTEM

The British government introduced the parliamentary system in India. Whether or not it was a conscious decision on their part is debatable—some feel that they were not completely familiar with the system themselves. Many of the modern

thinkers have even gone to the extent of saying that the system was introduced by the British government in a state of ‘absent-mindedness’.

The real intentions behind the mindset of the British rulers cannot be traced completely. However, a closer look at their writings can help one get an idea of their perspective. Governor General Lord Hastings wrote in his private journal in 1818:

A time not very remote will arrive when England will, on sound principles of policy, wish to relinquish the domination which she gradually assumed over this country, and from which she cannot at present recede. At that hour it would be the proudest boast, and most delightful, reflection, that she had used her sovereignty towards enlightening her temporary subjects, so as to enable the native communities to walk alone in the paths of justice, and to maintain, with probity, towards the benefactors that commercial intercourse in which we should then find a solid interest.

Such texts not only show the real motives behind the British mindset, but are also a reflection of the long-term relations of the country with Britain, which continue to exist till today.

Quasi-Parliamentary System

The parliamentary system began in India as early as 1853, after the initiation of the Indian Council Act. Before this Act came into being, all powers remained in the hands of the Governor General along with his Council.

The Charter Act of 1833 had introduced the first constituents of what we call ‘institutional specialization’. Thus, the law-making meeting began to get separated from the executive meetings. Furthermore, the council and the legislative were expanded with the introduction of a fourth member. This member was assigned the job of drafting the laws.

The 1853 Act further enlarged the numbers and, finally, there were six members in total. Two of them were assigned the post of judges. The remaining four members were given representation of four specific provinces, which included Bombay, Madras, North West Frontier and Bengal.

Initially, all the six members were British and no Indian members were allowed to be associated with this procedure.

India has been following the system of representative democracy since its independence. The whole system is dependent on some very basic principles. These are:

(i) Voting rights

Voting rights and the manner in which the whole system of voting works is different for every country. In Britain, for instance, women were not allowed to vote but were given the right to franchise in 1918. In India, the system of Universal Adult Franchise is followed and the elections for Lok Sabha, State Legislature and the Three-tier Panchayati Raj are held through this franchise.

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All adult citizens of our country, irrespective of their castes, religions, or sex, enjoy equal rights to vote. Earlier, the age limit for voting was twenty-one but this was changed in the year 1988 in the 61st Amendment of the Indian Constitution. This age limit has now been reduced to eighteen.

Exceptions: Although every adult citizen in the country is bestowed voting rights, there are a few exceptions. Someone who is found culpable of election offense, someone who is punished by the law, and people who are not mentally stable are not allowed to vote.

(ii) Political parties

A democratic system of any form, especially parliamentary democracy, cannot be thought of without the presence of the party system. Political parties are essential for the representation and protection of the masses, and form the backbone of representative democracy.

There are numerous party structures in India and all around the world, differing in their ideologies and ideals. Some common peculiarities are:

- Definite objective
- Activity on the fundamentals of ideas and principles
- Organizational structure
- Stability
- General stand-points regarding public issues
- Eventual objective for attaining governmental power

(iii) Party system

The party system of any country is decided upon the existing and prevalent political culture of that country. Similarly, the political culture of the society is dependent upon the values and attitudes of the people living in that society. Accordingly, depending upon the number of parties which exist in a country, the political party system is divided into:

- (a) Single party system
- (b) Bi-party system
- (c) Multi-party system

India follows a multi-party system as there are a great number of parties operating at all levels in the country. In India, political parties are divided into three types. These are:

- National party
- State party
- Local party

There are a number of factors which influence the functioning of the party system in India. These are:

- Coexistence of the political parties
- Principles and ideologies of parties
- Elements of caste, class and race
- Number of political parties
- Party coalition and alliances

To become a national party, political parties need to have completed at least five years in service to political activities, along with securing a minimum of four per cent of the total number of votes in previous elections to state legislature. To become a national party, a political party must have recognition in four or more states.

Election Commission

The Election Commission was set up with the purpose that free and fair elections would take place in a country. With the increasing significance of elections in the democratic setup of India, the agency of Election Commission becomes a body of importance. It was formed as per the provision in the Constitution of India. The Election Commission conducts elections for the Parliament and the State Legislatures.

The composition of the Election Commission includes election commissioners, along with one chief election commissioner. The number of election commissioners is decided by the Indian President.

The chief election commissioner is the acting chairman of the election commission. Although the President has the right to decide upon the numbers of election commissioners, he still has to follow the rules enacted under the Parliament. In addition to this, the president may also appoint local election commissioners for the assistance of the Election Commission. There is also a state Election Commission for each state.

Responsibilities

The responsibilities of the Election Commission include:

- Preparing the list of voters
- Renewing the list of voters after each census and before every election
- Declaring the time of the elections
- Fixing dates for filing and scrutinizing nominations for the election
- Fixing dates for the counting of votes
- Allotting symbols and providing recognition to political parties

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- Preparing and implementing of the 'code of conduct' which needs to be followed by all the parties
- Settlement of election disputes
- Declaring of election results
- Scrutinizing the expenses of the election and of candidates

Ruling and the Opposition Parties

The party which wins the majority of seats in the elections comes into power. In case one single party is unable to gain majority, an alliance of parties comes into power. The losing party or alliance of parties performs the role of the opposition.

The opposition also has a significant part to play in democracy. Its duties and responsibilities include:

- Opposing the repressive tendencies of the ruling party
- Criticizing and scrutinizing the drawbacks of the administration and exposing them in front of the public
- Opposing the misdemeanor of the ruling party and its leaders and generating the public opinion against those misdeeds
- Evolving and forming substitute policies and strategies
- Imparting the general public with political enlightenment

Decentralization

Democratic nations of the world put great emphasis on the decentralization of power. In India, several measures have been taken in this view. The Panchayat Raj system is an example of this idea of decentralization. Besides this, in the 73rd and the 74th Amendment of the Indian constitution, more power was given to self-governmental institutions so that democratic governance could be made more effective.

The features of these amendments were:

- Quinquennial elections were made compulsory at local administrative levels.
- Local-self-governments got structural consistency throughout the state.
- The state election commission got the responsibility of conducting elections for the Panchayats.
- *Grama Sabhas* were formed to make sure that people participated in the process of development.
- Local bodies were given greater power to interfere with planning and development activities.

Challenges

In every Parliamentary system, there are rapid developments which do not exist without challenges. By meeting challenges and eradicating problems, a democratic

system grows and the nation, in turn, prospers. These difficulties and challenges include:

- Unemployment
- Disruptive tendencies
- Terrorism
- Illiteracy
- Political instability
- Nepotism
- Parochialism
- Corruption

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4.3 CURRENT TRENDS

India's Parliamentary democracy has not only belied fears and apprehensions, it has stood the test of time. India has successfully conducted fifteen general elections in the largest democracy on earth. Moreover, the Parliamentary system has ensured 'peaceful transfer of power, more than once from one party to another party or alliance' surviving, of course, many pressures, stresses and strains. In spite of the coalition governments, which have become almost an inescapable reality in India's multi-party system, and the instability syndrome which, at times, has undermined the faith of well-meaning critics in Parliamentary democracy, India has, till date, experienced a good deal of political stability.

However, the journey traversed by Indian democracy has not always been a smooth-sailing affair. The 1977 election which overthrew the Indira regime and brought to power a non-Congress government and showed to the world that the Indian electorate had 'an enormous sense of responsibility and uncanny wisdom' to rise to the occasion and safeguard India's Parliamentary democracy. Since the Congress party lost power in 1989, no single party has been able to secure an absolute majority in the Lok Sabha. It has virtually made coalition governments inevitable.

Those coalition governments have a built-in-element of fragility, which, in turn, adds to the instability syndrome. To be more specific, by and large, coalition governments have become precariously unstable, barring some exceptions like the non-Congress coalition government of Atal Bihari Vajpayee (1999-2004), and the Congress led UPA government of Dr Manmohan Singh. This instability syndrome has eaten into the vitals of the Indian body politic, forcing upon the nation frequent elections with huge expenditure which could have been profitably used for the country's growth and development. This has led many critics to think that the Parliamentary system has outlived its utility and that there is need to change over to the presidential model. The way the

present UPA-II government functioned forced everyone to come up with ways to ensure stable tenure for the coalitions. The country experienced small coalition partners like Trinamool Congress.

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In terms quality, the first Lok Sabha in India consisted of outstanding Parliamentarians. The system left behind an exemplary mark in the Parliamentary history in terms of discipline, decorum and optimum utilization of Parliamentary time. More or less, the same type of healthy debate and discussion with an exemplary degree of Parliamentary discipline and decorum continued in the early Parliaments. But, unfortunately, at present 'healthy debate and discussions which form the hallmark of Parliamentary democracy' are overshadowed by disruption, confrontation, and forced adjournments of the house. The Parliament gets stalled and is forced to close the session before its original schedule to conclude. This results in the massive wastage of public money and loss of working hours. The Parliament finds itself unable to discuss and deliberate on important issues such as poverty, unemployment and price rise, which affect the people most.

In spite of what has been favourably said outlining positive dimensions of India's Parliamentary democracy, we need to make an honest self-introspection and identify the weaknesses and areas of concern which negatively affect the health and well-being of the democracy of the nation. The major problem areas which affect the health of India's Parliamentary democracy are:

- Instability syndrome
- Criminalization of politics
- The nature of recent functioning of India's Parliament

To improve the functioning of the Parliament the following issues need to be addressed:

- Quality of debates and discussion in the Parliament needs to be improved.
- Absenteeism among members (which has assumed alarming proportions) needs to be checked to avoid making a mockery of the Parliamentary democracy.
- The increasing indiscipline and unruly behaviour of the members and the increasing tendency to disrupt the House and stall Parliamentary proceedings needs to be kept in check. It amounts to paralyzing the activity of governance and legislation.
- More time needs to be devoted to law-making and strengthening the committee system to oversee the government's functions in a better way.
- A strict code of conduct for people's representatives, implementing the policy of 'No work, No pay', needs to be set.

4.4 MERITS AND DEMERITS OF PARLIAMENTARY SYSTEM OF GOVERNMENT

Let us first discuss the merits.

Merits

Some of the merits of the parliamentary form of government are as follows:

1. Harmony between Executive and Legislature

In a Parliamentary form of government, there is close cooperation between the executive and the legislature. As ministers belong to the ruling party or parties enjoying majority in the legislature, they do not face difficulty in getting the support and approval of the legislature for the policies and programmes of the government. Thus, there is less confrontation than seen in Presidential form of government.

2. Clean Government

While the Council of Ministers as a whole is responsible to the legislature, the individual ministers are also individually responsible to it for their respective acts of omission and commission.

3. Quick Decision Making

Lord Bryce has praised the Parliamentary form of government for its capacity to take quick decisions. As the ruling party enjoys majority support in the legislature, it can take swift decisions to meet any contingency.

4. Flexible

There is a lot of flexibility in the Parliamentary system of government. The system can adapt to any situation including emergency situations that may arise. Moreover, one Cabinet Minister or even the Prime Minister may be replaced by a new one without much controversy to tackle any serious situation.

5. Conducive to National Integration

While trying to address the concerns of different regions and cultures of the nation, the Parliamentary form of government helps in promoting national integration

Demerits

Some of the demerits of the parliamentary form of government are as follows:

1. Weak Separation of Powers

The separation of powers in a parliamentary system is weak. Since ministers are members of the ruling party or coalition, they dictate policy making despite policy-making being the domain of the legislature.

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2. Cabinet Dictatorship

The Council of Ministers, with the support of the majority in the lower house of the legislature, tends to be authoritarian and irresponsible. Since they have the support of the majority, they ride rough shot over the views of the opposition.

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3. Partisanship

In a Parliamentary system, political parties are guided by partisan motives rather than by national or people's interests. The ruling party and the opposition think of each other as rivals. The ruling party does not care for the criticism of the opposition, while the opposition sometimes opposes for the sake of opposing.

4. Control by Bureaucracy:

In parliamentary system, although the Cabinet is powerful, real power is held by the bureaucracy. The ministers, being mostly amateurs with no domain experience, completely rely on bureaucrats for advice and guidance. Bureaucrats are also not accountable to the legislature.

Check Your Progress

1. Why is the introduction of the parliamentary system in India by the British debatable?
2. What did the Charter Act of 1833 introduce?
3. Name the four provinces under the 1853 Act.
4. What was the result of the 1977 election in India?
5. What are the problem areas affecting the health of India's Parliamentary democracy?

4.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The introduction of the parliamentary system in India is debatable since many feel that the British were not completely familiar with the system themselves.
2. The Charter Act of 1833 had introduced the first constituents of what we call 'institutional specialization'.
3. The 1853 Act assigned four member to four provinces, namely, Bombay, Madras, the North West Frontier, and Bengal.
4. The 1977 election overthrew the Indira regime and brought to power a non-Congress government.

5. The major problem areas which affect the health of India's Parliamentary democracy are:

- Instability syndrome
- Criminalization of politics
- The nature of recent functioning of India's Parliament

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4.6 SUMMARY

- The British government introduced the parliamentary system in India. Whether or not it was a conscious decision on their part is debatable—some feel that they were not completely familiar with the system themselves.
- The parliamentary system began in India as early as 1853, after the initiation of the Indian Council Act. Before this Act came into being, all powers remained in the hands of the Governor General along with his Council.
- Voting rights and the manner in which the whole system of voting works is different for every country.
- The composition of the Election Commission includes election commissioners, along with one chief election commissioner. The number of election commissioners is decided by the Indian President.
- The Panchayat Raj system is an example of this idea of decentralization. Besides this, in the 73rd and the 74th Amendment of the Indian constitution, more power was given to self-governmental institutions so that democratic governance could be made more effective.
- India's Parliamentary democracy has not only belied fears and apprehensions, it has stood the test of time. India has successfully conducted fifteen general elections in the largest democracy on earth.
- In terms quality, the first Lok Sabha in India consisted of outstanding Parliamentarians. The system left behind an exemplary mark in the Parliamentary history in terms of discipline, decorum and optimum utilization of Parliamentary confrontation, and forced adjournments of the house.

4.7 KEY WORDS

- **Quasi-Parliamentary:** It refers to a procedure concerned with the promulgation of rules based on authority derived from the legislature by statute.
- **Parochialism:** It means a limited or narrow outlook, especially focused on a local area; narrow-mindedness.
- **Quinquennial:** It means recurring in every five years.

4.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

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Short-Answer Questions

1. Mention the factors which influence the functioning of the party system in India.
2. State the current trends of India's Parliamentary democracy in your own words.

Long-Answer Questions

1. What are the responsibilities of the Election Commission of India?
2. Discuss the merits and demerits of the parliamentary system of government.

4.9 FURTHER READINGS

Smith, V.A. 1981. (ed Percival Smith). *The Oxford History of Modern India*. USA: Oxford University Press.

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UNIT 5 EMERGENCY PROVISIONS OF THE INDIAN CONSTITUTION

NOTES

Structure

- 5.0 Introduction
- 5.1 Objectives
- 5.2 Emergency Powers of the President
- 5.3 President's Rule
- 5.4 Financial Emergency
- 5.5 Answers to Check Your Progress Questions
- 5.6 Summary
- 5.7 Key Words
- 5.8 Self Assessment Questions and Exercises
- 5.9 Further Readings

5.0 INTRODUCTION

According to Dr. B.R Ambedkar, the Indian Federation is distinct in itself because it has the potential to convert itself into a unitary system during the times of emergency. In India, the emergency provisions are such that the Constitution empowers the federal government to take on the strength of unitary government whenever the circumstances arise. When such situations arise, emergency should be the last resort to be adopted to ensure that India's federal system of government is affected in the least.

There are three types of emergencies under the Indian Constitution namely:

- National Emergency
- Failure of constitutional machinery in states
- Financial Emergency

They are discussed in the unit.

5.1 OBJECTIVES

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

- Explain the emergency powers of the President
- Discuss the circumstances in which the President's rule is imposed
- State the provisions under which the Centre can declare financial emergency

5.2 EMERGENCY POWERS OF THE PRESIDENT

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Part XVIII of the Constitution is entitled 'Emergency Provisions'. It deals with the circumstances in which a state of emergency can be proclaimed by the President and the steps he or she may take to cope with it. The purpose is to restore the normal functions of the government at the earliest opportunity. The framers of the Constitution have provided for three types of emergencies, namely:

- (a) Emergency caused by war, external aggression or internal revolt;
- (b) Emergency caused by the breakdown of the Constitutional machinery in the states; and
- (c) Emergency caused by the threat to financial stability or credit of India, or of any part of the territory thereof.

5.3 PRESIDENT'S RULE

One of the most conspicuous and widely used instruments of Central power over the States is the provision for President's rule under Article 356. This was meant as a 'safety valve' in the political system to prevent an authority vacuum in case of a breakdown of constitutional machinery in a particular state. However, in practice, this article has been so frequently used for purely partisan interests that it has become a poison for our political system.

President's rule can be imposed either on the recommendations of the Governor or even without, that is, on the satisfaction of the President (in other words, the Prime Minister) himself or herself. During the period 1950–89, there were 79 presidential/Central interventions in the State. The bulk of these emergencies were declared during the Congress rule under Indira Gandhi (48) and during the reign of the Janata Party (16). The dissolution of nine State Assemblies and proclamation of President's rule in 1977 as well as in 1980 was a political move and a blow to the federal democratic structure of the country.

The use of Article 356 perceptibly declined in the 1990s after the end of the one party dominance. It was in 1997 that for the first time, the President openly asked the Prime Minister and his cabinet to reconsider the proposal for the dismissal of UP State government before signing the proclamation.

The Governor can advise the President to impose emergency (under Article 356) in case there is a breakdown of the state constitutional machinery in the state. In the past, the Governors of different states dismissed the state governments and imposed emergency due to partisan reasons. This discretionary role of the Governor in dismissing the governments and that of imposition of President's rule became so controversial that the Supreme Court, which until 1993 considered it purely a political matter, in its verdict in March 1994, held the dismissal of governments and imposition of President's rule in Nagaland (1988), Karnataka

(1989) and Meghalaya (1991) unconstitutional. In *S.A. Bommai and others vs. the Union of India* case, the Supreme Court tried to give some guidelines so that the Governor's discretionary power of imposing emergency under Article 356 is not misused.

However, in 2005, the use of Article 356 became a centre of debate. During February 2005 elections, no party could get majority in the Bihar Assembly. In such a situation, Governor Buta Singh recommended the President's rule to the Central government. His recommendation was accepted by the United Progressive Alliance (UPA) government and was further approved by the President. However, instead of being dissolved, the Assembly was kept under suspended animation, obviously hoping some leader could be in a position to stake claim to form a government. Thus, the possibility of change in the loyalties of members was accepted as legitimate. Later, when challenged, the Supreme Court invalidated the imposition of the President's Rule and ordered for the fresh elections that were held in October–November 2005.

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5.4 FINANCIAL EMERGENCY

Under Article 360, the Centre can declare financial emergency. After this, the President can suspend the provisions which are related to the division of revenue between the Union and the states. He/She can also suspend grant-in-aid to the states.

According to Article 360

- (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect
- (2) A Proclamation issued under clause (1)
 - (a) may be revoked or varied by a subsequent Proclamation;
 - (b) shall be laid before each House of Parliament;
 - (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament: Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty

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days a resolution approving the Proclamation has been also passed by the House of the People

- (3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose
- (4) Notwithstanding anything in this Constitution
- (a) any such direction may include
 - (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;
 - (ii) a provision requiring all Money Bills or other Bills to which the provisions of Article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;
 - (b) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and the High Courts
- PART XIX
MISCELLANEOUS

Check Your Progress

1. Name the types of emergencies mentioned in the Indian Constitution.
2. State the Article of the Constitution under which the Centre can declare financial emergency.

5.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The framers of the Constitution have provided for three types of emergencies, namely:
 - (a) Emergency caused by war, external aggression or internal revolt;
 - (b) Emergency caused by the breakdown of the Constitutional machinery in the states; and
 - (c) Emergency caused by the threat to financial stability or credit of India, or of any part of the territory thereof.
2. Under Article 360, the Centre can declare financial emergency.

5.6 SUMMARY

- Part XVIII of the Constitution is entitled 'Emergency Provisions'. It deals with the circumstances in which a state of emergency can be proclaimed by the President and the steps he or she may take to cope with it.
- President's rule can be imposed either on the recommendations of the Governor or even without, that is, on the satisfaction of the President (in other words, the Prime Minister) himself or herself.
- The Governor can advise the President to impose emergency (under Article 356) in case there is a breakdown of the state constitutional machinery in the state.
- However, in 2005, the use of Article 356 became a centre of debate. During February 2005 elections, no party could get majority in the Bihar Assembly.
- Under Article 360, the Centre can declare financial emergency. After this, the President can suspend the provisions which are related to the division of revenue between the Union and the states. He/She can also suspend grant-in-aid to the states.
- If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

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5.7 KEY WORDS

- **Partisan:** This term refers to a strong supporter of a party, cause, or person.
- **Money Bill:** It can originate only in the Lok Sabha. A money bill is generally related to the imposition, remission or alteration of any tax.

5.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the emergency powers of the president.
2. Why did the use of Article 356 become a centre of debate in 2005?

Long-Answer Questions

1. Discuss the provisions of the Constitution under which financial emergency can be imposed.
2. Analyse the significance of the Article 356 with reference to the imposition of the President's rule.

5.9 FURTHER READINGS

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- Smith, V.A. 1981. (ed Percival Smith). *The Oxford History of Modern India*. USA: Oxford University Press.
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UNIT 6 CITIZENSHIP

Structure

- 6.0 Introduction
- 6.1 Objectives
- 6.2 Citizenship: Meaning and Significance
- 6.3 Citizenship Act, 1955
- 6.4 Answers to Check Your Progress Questions
- 6.5 Summary
- 6.6 Key Words
- 6.7 Self Assessment Questions and Exercises
- 6.8 Further Readings

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6.0 INTRODUCTION

India is a democracy and the citizens of India are free to exercise their constitutional rights. They are also obligated to obey the law of the land and fulfill their duties when required. All the Indian citizens are free to enjoy their legal rights and privileges irrespective of their religions, castes and regions. It means that sovereignty rests with the people of India. They govern themselves through their representatives elected on the basis of universal adult franchise. Besides, the Constitution confers on Indian citizens some fundamental rights which are considered to be the essence of a democratic system. This unit, at the outset, makes you familiar with the term, 'citizen' and defines the word, 'citizenship'. In addition to this, the unit elaborates on the different provisions of the Citizenship Act, 1955. The Act also describes the conditions in which a person's citizenship is terminated.

6.1 OBJECTIVES

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

- Discuss the meaning of citizenship
- Analyse the significance of citizenship
- List the salient features of the Citizenship Act, 1955

6.2 CITIZENSHIP: MEANING AND SIGNIFICANCE

Aristotle, the great Greek philosopher, had once commented, 'A citizen is one who permanently shares in the administration of justice and the holding of office.' The statement of definition suits aptly to a democratic citizen. However, one should always remember that elements of citizenship reside in all nations that include the

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most repressive, authoritarian and totalitarian states also. The explanation of citizenship is a complex phenomenon and its various usages tend to project its various meanings. These include:

- Citizenship is an indicator of morality, that is, one's good behaviour makes a person, a good citizen.
- Citizenship, as an empirical and descriptive term, refers to a specific set of obligations and rights vested in eligible persons in a specific nation or state.
- Citizenship, as an analytic term, refers to the protection that a state offers and the opportunities that a state creates for its core members for the sake of political participation.

On closer scrutiny, one may agree that it is the integrative perspective that needs to be adopted, especially because it is, without doubt, tied to the notion of welfare. Welfarism, as we may understand, is often regarded as a compensation for inequalities and a means to equal treatment. This actually counters privatization and marketization, and virtually supports the integration of the larger community. Not to forget that while citizenship pronounces an ideal condition for equality, it may remain fettered as political systems reside in the hierarchies of class, caste, sex, race and religion.

Most often, citizenship is seen as a legal entitlement, that is having a specific nationality, holding a passport, and deriving from this status the rights and duties as guaranteed by the Constitution. This formal relationship is also supplemented by a whole set of socio-economic and ideological practices associated with nationalism. This leads to various mechanisms of exclusion and inclusion of particular groups and categories of individuals that include the women, the racial groups, the non-propertied, the children and the differently-abled. Citizenship thereby justifies the dynamic concept of need as an open political issue. It identifies a universal set of principles that guarantee common human needs. It further justifies that all persons as citizens are equal before law and, therefore, no person or a group is legally privileged, so that the disadvantaged and the marginalized are enabled to participate in the national activities as dignified citizens of the country.

Coming closer to the Indian perspective, citizenship is one of the many striking features of the Indian Constitution. The tremendousness of the task that needed to delineate on the issue of citizenship involved:

- To unite a population of over 300 million (of that time), a population that was not at all homogeneous.
- To handle the vast size of the population, but not the Greek way that determined the size and population of the city-states.
- To dissociate the princely state from entering into negotiations with any foreign power and thus become islands of independent territories within the country.

- To address the communal problems whose magnitude could be seen during the partition of the country.

The clause of citizenship is thereby incorporated in Part II of the Indian Constitution. It reads as:

At the commencement of this constitution every person who has his domicile in the territory of India and

- Who was born in the territory of India; or
- Either of whose parents was born in the territory of India; or
- Who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India

Part II of the Indian Constitution defined various categories of Indian citizens at the commencement of the constitution. A citizen of a given state is a person who enjoys full membership of the political community or state. Citizens are different from aliens or mere residents who do not have all the rights which go to make full membership of a state. Thus, in India, aliens do not enjoy all the fundamental rights that are secured to the citizens. Again, citizens alone have the right to hold certain high offices such as those of President, Vice President, Governor of a State, Judge of the Supreme Court, High Court judge, Attorney General and the Advocate General. The right to vote to the Union or State Legislature is reserved for citizens alone, and also, only a citizen of India can become a member of the Union or State Legislature. Citizenship includes only natural persons and not juristic persons like corporations.

To be entitled to citizenship under the first category, namely, by domicile, Article 5 lays down two conditions.

- He must at the commencement of the Constitution, have his domicile in the territory of India.
- Such person must fulfill any one of the three conditions laid down, namely
 1. He must have been born in the territory of India, or
 2. Either of his parents must have been born in the territory of India
 3. He must have been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the constitution.

Domicile in India

Domicile in India was considered to be an essential requirement for acquiring the status of Indian citizenship. The term 'domicile' is not defined in the constitution. Ordinarily, it means a permanent home or place where he resides with the intention of remaining there for an indefinite period. Domicile is not the same thing as residence. Residence implies a purely physical fact, the fact of just being and living

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in a particular place. But domicile is not only residence; it is residence coupled with intention to live indefinitely in the place. There are two kinds of domicile:

1. Domicile of origin
2. Domicile of choice

Every person is born with a domicile of origin. It is a domicile received by him at his birth. The domicile of origin of every person of legitimate birth is the country in which at the time of his birth his father was domiciled. Hence, the domicile of origin, though received at birth, need not be either the country in which the infant is born, or the country in which his parents are residing, or the country to which his father belongs by race or allegiance or the country of the infant's nationality. In the case of a posthumous child, his domicile will be that of the country in which his father was domiciled at the time of his (father's) death. The domicile of origin is thus a concept of law and clings to a man till he abandons it. An independent person is allowed to give up his domicile of origin. But the domicile of origin prevails until a new domicile has been acquired.

Every independent person can acquire a domicile of choice by combination of:

- Actual residence in a particular place, and
- Intention to remain there permanently or for an indefinite period

While the domicile of origin is received by operation of law at birth, the domicile of choice is acquired by the actual removal to another country accompanied by his *animus manendi*, that is, the state of mind having formed a fixed intent to make his place of residence or settlement, a permanent home. The domicile of choice continues until the former domicile has been resumed or another has been acquired. A man or an unmarried woman of full age is an independent person. By marriage a woman acquires a domicile of her husband, if she had not the same domicile before. But the wife's domicile no longer follows her husband if they are separated by the sentence of a competent court or if the husband is undergoing a sentence of transportation.

A minor or a married woman is said to be a dependent person. Neither of these classes has the legal capacity to make a change of domicile, and both of these classes are liable to have it changed by the act of another person, who, in the case of an infant, is generally the father and in the case of a married woman is always the husband. A widow retains the domicile of her late husband until changed by her own act. Domicile is different from citizenship. The person may possess one nationality or citizenship and different domicile or he may have a domicile but no nationality. Domicile implies connection with territory, not membership of community which is at the root of the notion of citizenship or nationality.

It must be noted that there is only one citizenship for the whole of India. There is no separate state-level citizenship. Every citizen has the same rights, privileges and immunities offered by the citizenship, no matter in which state he resides. In contrast, the US has a dual citizenship that is, one for USA and one for

the state. Therefore in certain matters, the states do discriminate in favour of their own citizens. In India, there being only one citizenship, no such discrimination is possible by the states. Like citizenship, domicile is also one for the whole of India.

It may be emphasized here that the definition of citizenship in Article 5 was at the commencement of the constitution. Thus, persons born after the commencement of constitution are not citizens under this Article.

Rights of Citizenship

Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this constitution if;

- He or either of his parents or any of his grand parents was born in India as defined in the Government of India Act, 1935 and
- (i) in the case where such person has so migrated before 19 July 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
- (ii) in the case where such person has so migrated on or after 19 July 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the commencement of this constitution in the form and manner prescribed by that government.

Provided that no person shall be so registered unless he has been a resident in the territory of India for at least six months immediately preceding the date of his application.

- Notwithstanding anything in Articles 5 and 6, a person who has after 1 March 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India. Provided that nothing in this Article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purpose of clause (b) of Article 6 be deemed to have migrated to the territory of India after the 19 July 1948.
- Notwithstanding anything in Article 5, any person who or either of whose parents or any of whose grandparents were born in India as defined in the Government of India Act, 1935 and who is ordinarily residing in any country outside India as so defined shall be deemed to be citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefore to such diplomatic or consular representative, whether before or after commencement of this constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

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- No person shall be a citizen of India by virtue of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign state.
- Every person who is deemed to be a citizen of India under any of the foregoing provisions of any laws that may be made by Parliament, continue to be such citizen.
- Nothing in the forgoing provision of this part shall derogate from the power of Parliament to make any provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

In conclusion, Parliament has the power to make laws with respect to citizenship, naturalisation and aliens. The object of this Article is to make it clear that notwithstanding the fact that certain rules relating to citizenship are contained in Part II, Parliament shall have unfettered power to make any provision relating to acquisition, termination, etc. of citizenship. Parliament in exercise of its power has enacted in 1955, the Citizenship Act. This Act provides for the acquisition and termination of citizenship. The Act identified five types of citizens: by birth, descent, registration, naturalisation and incorporation of territory. In the wake of the Assam agitation, a memorandum of agreement was signed by central government with the leaders of the agitation. As per this agreement, the Act was amended in 1986, adding Article 6A, which made way for a sixth type of citizenship, according to which people born in India and either of whose parents is a citizen of India at the time of their birth, unless excluded, were to be considered the citizens of India.

6.3 CITIZENSHIP ACT, 1955

The Citizenship Act, 1955

ACT NO. 57 OF 1955 1 [30th December, 1955]

An Act to provide for the acquisition and termination of Indian citizenship. [30th December, 1955.]

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:

1. Short title. This Act may be called the Citizenship Act, 1955 .
2. Interpretation.
 - (1) In this Act, unless the context otherwise requires,-
 - (a) “a Government in India” means the Central Government or a State Government;
 - (b) “citizen”, in relation to a country specified in the First Schedule, means a person who, under the citizenship or nationality law for the time being in force in that country, is a citizen or national of that country;
 - (c) “citizenship or nationality law”, in relation to a country specified in the First Schedule, means an enactment of the legislature of

that country which at the request of the Government of that country, the Central Government may, by notification in the Official Gazette, have declared to be an enactment making provision for the citizenship or nationality of that country: Provided that no such notification shall be issued in relation to the Union of South Africa except with the previous approval of both Houses of Parliament.

- (d) “Indian consulate” means the office of any consular officer of the Government of India where a register of births is kept, or where there is no such office, such office as may be prescribed;
- (e) “minor” means a person who has not attained the age of eighteen years;
- (f) “person” does not include any company or association or body of individuals, whether incorporated or not;
- (g) “prescribed” means prescribed by rules made under this Act;
- (h) “undivided India” means India as defined in the Government of India Act, 1935, as originally enacted.

- (2) For the purposes of this Act, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.
- (3) Any reference in this Act to the status or description of the father of a person at the time of that persons’s birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father’s death; and where that death occurred before, and the birth occurs after, the commencement of this Act, the status or description which would have been applicable to the father had he died after the commencement of this Act shall be deemed to be the status or description applicable to him at the time of this death.
- (4) For the purposes of this Act, a person shall be deemed to be of full age if he is not a minor, and of full capacity if he is not of unsound mind.

Acquisition of citizenship

3. Citizenship by birth. 1[

- (1) Except as provided in sub-section (2), every person born in India,-
 - (a) on or after the 26th day of January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1986 (51 of 1986);

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(b) on or after such commencement and either of whose parents is a citizen of India at the time of his birth, shall be a citizen of India by birth.]

(2) A person shall not be such a citizen by virtue of this section if at the time of his birth-

(a) his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

4. Citizenship by descent.

(1) 2[A person born outside India,-

(a) on or after the 26th January, 1950 , but before the commencement of the Citizenship (amendment) Act, 1992 (39 of 1992) shall be a citizen of India by descent if his father is a citizen of India at the time of his birth:]

(b) on or after such commencement, shall be a citizen of India by descent if either of his parents is a Citizen of India at the time of his birth:] Provided that if the father of such a person 3[referred to in clause (a)] was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless-

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India: 2[Provided further that if either of the parents of such person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless-

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 1992 , whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India.]

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

- (3) For the purposes of the proviso to sub-section (1), 1[any person] born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

5. Citizenship by registration.

- (1) Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the prescribed authority may, on application made in this behalf, register as a citizen of India any person who is not already such citizen by virtue of the Constitution or by virtue of any of the other provisions of this Act and belongs to any of the following categories:-
- (a) persons of Indian origin who are ordinarily resident in India and have been so resident for 2[five years] 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) 3[persons who are, or have been, married to citizens of India and are ordinarily resident in India and have been so resident for five years immediately before making an application for registration.]
 - (d) minor children of persons who are citizens of India; and
 - (e) persons of full age and capacity who are citizens of a country specified in the First Schedule: Provided that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India may, by law or practice of that country, become citizens of that country by registration.
Explanation. For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, 4[was born in undivided India.
- (2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.
- (3) No person who has renounced, or has been deprived of, his Indian citizenship, or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.
- (4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

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(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b) (ii) of Article 6 or Article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

6. Citizenship by naturalisation.

(1) Where an application is made in the prescribed manner by any person of full age and capacity who is not a citizen of a country specified in the First Schedule for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation: Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

(2) The person to whom a certificate of naturalisation is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalisation as from the date on which that certificate is granted.

6A. 1[Special provisions as to citizenship of persons covered by the Assam Accord.

(1) For the purposes of this section-

- (a) “Assam” means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985);
- (b) “detected to be a foreigner” means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946), and the Foreigners (Tribunals) Order, 1964 by Tribunal constituted under the said Order;
- (c) “specified territory” means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985);
- (d) a person shall be deemed to be of Indian origin, if he, or either of his parents or any of his grandparents was born in undivided India;
- (e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who-

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner; shall register himself in accordance with the rules made by the Central Government in this behalf under Section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

Explanation.—In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall,-

(i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

(ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order having jurisdiction in accordance with such rules as the Central Government may make in this behalf under Section 18 and decide the question in conformity with the opinion received on such reference.

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of

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a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967), and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) Without prejudice to the provisions of Section 8,-

(a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985), a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;

(b) if any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985 or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation.—Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person-

(a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985), is a citizen of India;

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985), under the Foreigners Act, 1946 (31 of 1946).

(8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.

7. Citizenship by incorporation of territory. If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette,

specify the persons who shall be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

Termination of Citizenship

8. Renunciation of citizenship.

- (1) If any citizen of India of full age and capacity, who is also a citizen or national of another country, makes in the prescribed manner a declaration renouncing his Indian citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India: Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.
- (2) Where 1[a person] ceases to be a citizen of India under sub-section (1), every minor child of that person shall thereupon cease to be a citizen of India: Provided that any such child may, within one year after attaining full age, make a declaration that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.
- (3) For the purposes of this section, any woman who is, or has been, married shall be deemed to be of full age.

9. Termination of citizenship.

- (1) Any citizen of India who by naturalisation, registration or otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India: Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.
- (2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

10. Deprivation of citizenship.

- (1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of Article 5 of the Constitution or by registration otherwise than under clause (b) (ii) of Article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central Government under this section.

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- (2) Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that-
- (a) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or
 - (b) that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or
 - (c) that citizen has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged, in or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or
 - (d) that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years; or
 - (e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.
- (3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that that person should continue to be a citizen of India.
- (4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and, if the order is proposed to be made on any of the grounds specified in sub-section (2) other than clause (e) thereof, of his right, upon making application therefor in the prescribed manner, to have his case referred to a committee of inquiry under this section.
- (5) If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) other than clause (e) thereof and that person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a Committee of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

- (6) The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.

Supplemental

11. Commonwealth citizenship. Every person who is a citizen of a Commonwealth country specified in the First Schedule shall, by virtue of that citizenship, have the status of a Commonwealth citizen in India.
12. Power to confer rights of Indian citizen on citizens of certain country.
 - (1) The Central Government may, by order notified in the Official Gazette, make provisions on a basis of reciprocity for the conferment of all or any of the rights of a citizen of India on the citizens of any country specified in the First Schedule.
 - (2) Any order made under sub-section (1) shall have effect notwithstanding anything inconsistent therewith contained in any law other than the Constitution of India or this Act.
13. Certificate of citizenship in case of doubt. The Central Government may, in such cases as it thinks fit, certify that a person, with respect to whose citizenship of India a doubt exists, is a citizen of India; and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.
14. Disposal of application under Sections 5 and 6.
 - (1) The prescribed authority or the Central Government may, in its discretion, grant or refuse an application under Section 5 or Section 6 and shall not be required to assign any reasons for such grant or refusal.
 - (2) Subject to the provisions of Section 15, the decision of the prescribed authority or the Central Government on any such application as aforesaid shall be final and shall not be called in question in any court.
15. Revision.
 - (1) Any person aggrieved by an order made under this Act by the prescribed authority or any officer or other authority (other than the Central Government) may, within a period of thirty days from the date of the order, make an application to the Central Government for a revision of that order: Provided that the Central Government may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

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(2) On receipt of any such application under sub-section (1), the Central government shall, after considering the application of the aggrieved person and any report thereon which the officer or authority making the order may submit, make such order in relation to the application as it deems fit, and the decision of the Central Government shall be final.

16. Delegation of powers. The Central Government may, by order, direct that any power which is conferred on it by any of the provisions of this Act other than those of Section 10 and Section 18 shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be so specified.

17. Offences. Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

18. Power to make rules.

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the registration of anything required or authorized under this Act to be registered, and the conditions and restrictions in regard to such registration;

(b) the forms to be used and the registers to be maintained under this Act;

(c) the administration and taking of oaths of allegiance under this Act and the time within which and the manner in which, such oaths shall be taken and recorded;

(d) the giving of any notice required or authorized to be given by any person under this Act;

(e) the cancellation of the registration of, and the cancellation and amendment of certificates of naturalisation relating to, persons deprived of citizenship under this Act, and the delivering up of such certificates for those purposes;

(ee) [the manner and form in which and the authority to whom declarations referred to in clauses (a) and (b) of sub-section (6) of section 6A shall be submitted and other matters connected with such declarations;]

(f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;

(g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in

respect of the taking of an oath of allegiance, and in respect of the supply of certified or other copies of documents;

- (h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;
- (i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of civil courts;
- (j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and
- (k) any other matter which is to be, or may be, prescribed under this Act.

(3) In making any rule under this section, the Central Government may provide that a breach thereof shall be punishable with fine which may extend to one thousand rupees.

(4) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

19. [Repeals.] Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and Sch. I.

Check Your Progress

1. Who, according to Aristotle, is a citizen?
2. What does domicile of a person mean?

6.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. According to Aristotle, 'A citizen is one who permanently shares in the administration of justice and the holding of office.'
2. The domicile of a person means a permanent home or place where he resides with the intention of remaining there for an indefinite period.

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6.5 SUMMARY

- Aristotle, the great Greek philosopher, had once commented, ‘a citizen is one who permanently shares in the administration of justice and the holding of office.’
- On closer scrutiny, one may agree that it is the integrative perspective that needs to be adopted, especially because it is, without doubt, tied to the notion of welfare. Welfarism, as we may understand, is often regarded as a compensation for inequalities and a means to equal treatment.
- Domicile in India was considered to be an essential requirement for acquiring the status of Indian citizenship.
- Every person is born with a domicile of origin. It is a domicile received by him at his birth. The domicile of origin of every person of legitimate birth is the country in which at the time of his birth his father was domiciled.
- It must be noted that there is only one citizenship for the whole of India. There is no separate state-level citizenship. Every citizen has the same rights, privileges and immunities offered by the citizenship, no matter in which state he resides.
- parliament has the power to make laws with respect to citizenship, naturalisation and aliens.
- Every person who is a citizen of a Commonwealth country specified in the First Schedule shall, by virtue of that citizenship, have the status of a Commonwealth citizen in India.

6.6 KEY WORDS

- **Animus manendi:** It is a Latin term which means ‘the intention of remaining.’
- **Privatization:** The transfer of ownership, property or business from the government to the private sector is termed privatization.

6.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Define citizenship.
2. Write a short note on single citizenship with reference to India.
3. Name the two kinds of domicile.

Long-Answer Questions

Citizenship

1. Discuss the rights of citizenship.
2. Describe the conditions in which a person's citizenship is terminated as per the Citizenship Act, 1955.
3. Describe the various provisions of the Citizenship Act, 1955.

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6.8 FURTHER READINGS

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UNIT 7 PROCEDURE FOR AMENDMENT

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Structure

- 7.0 Introduction
- 7.1 Objectives
- 7.2 Amendment of the Indian Constitution and its Types
- 7.3 Answers to Check Your Progress Questions
- 7.4 Summary
- 7.5 Key Words
- 7.6 Self Assessment Questions and Exercises
- 7.7 Further Readings

7.0 INTRODUCTION

The procedure for amending the Constitution of India is the process of making changes to the nation's fundamental law or supreme law. The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution. This procedure safeguards the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India. In this unit, you will deal with the procedure for amending the constitution.

7.1 OBJECTIVES

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

- Explain the procedure for amending the Constitution of India
- Identify the types of constitutional amendment in India
- Critically analyse the amendment procedure of the Indian Constitution

7.2 AMENDMENT OF THE INDIAN CONSTITUTION AND ITS TYPES

Power of Parliament to amend the Constitution and procedure therefor.—(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article. (2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall

be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in— (a) article 54, article 55, article 73, 1 [article 162, article 241 or article 279A] or (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or (c) any of the Lists in the Seventh Schedule, or (d) the representation of States in Parliament, or (e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent. (3) Nothing in article 13 shall apply to any amendment made under this article. *(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground. (5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.]

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Types

Although Article 368 essentially provides for two types of amendments to the Indian Constitution, that is, by a special Parliamentary majority as well as through ratification by half of the Indian states through simple majority. However, some articles do provide amendment of certain provisions of the constitution through a simple majority of the Parliament. However, such amendments are not considered to be amendments according to Article 368. Let us discuss these in detail.

The Indian Constitution can be amended in three ways.

- (i) Amendment by simple majority of the Parliament:** There are a number of provisions of the Constitution that can be amended by a simple majority of both houses of Parliament. These provisions include:
- Admission or establishment of new states.
 - Abolition or creation of legislative councils in states.
 - Allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
 - Rules of procedure in Parliament.
 - Privileges of the Parliament, its members and its committees.
 - Conferment of more jurisdiction on the Supreme Court.
 - Citizenship-acquisition and termination.
 - Elections to Parliament and state legislatures.
 - Delimitation of constituencies.

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(ii) Amendment by special majority of the Parliament: A special majority in parliament means a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. Through this special majority of parliament the following provisions can be amended:

- Fundamental Rights
- Directive Principles of State Policy
- All other provisions which are not covered by the first and third categories

(iii) Amendment by special majority of parliament and consent of states: The provisions related to the federal structure of the Indian constitution can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. The provisions that can be amended through provision include:

- Election of the President and its manner.
- Extent of the executive power of the Union and the states
- Supreme Court and high courts
- Distribution of legislative powers between
- The Union and the states
- Any of the lists in the Seventh Schedule
- Representation of states in Parliament
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself)

Criticisms of the Amendment Procedure

Some of the criticisms of the Amendment Procedure of the Indian Constitution are as follows:

1. In India, no provision for a special body like Constitutional Convention like in the United States exists for amending the constitution. In India, the constituent power is vested in the Parliament and only in few cases, in the state legislatures.
2. The power to initiate an amendment to the Constitution lies with the Parliament only and not with any state legislature. In addition, a major part of the Constitution can be amended without taking into account state legislature. Only in a few cases is the consent of the legislature in the states require.
3. The process of amendment to the constitution is the same as the passage of ordinary bills. At the same time, unlike ordinary bills, no provision exists for a joint session of parliament in case there is a deadlock over a constitution amendment bill.

Check Your Progress

1. What do you understand by the procedure for amending the Constitution of India?
2. What do you understand by the term 'special majority' in parliament?

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7.3 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The procedure for amending the Constitution of India is the process of making changes to the nation's fundamental law or supreme law.
2. A special majority in parliament means a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting.

7.4 SUMMARY

- The procedure for amending the Constitution of India is the process of making changes to the nation's fundamental law or supreme law.
- The procedure of amendment in the constitution is laid down in Part XX (Article 368) of the Constitution.
- This procedure safeguards the sanctity of the Constitution of India and keeps a check on arbitrary power of the Parliament of India.
- An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament.
- No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.
- A special majority in parliament means a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting.
- The provisions related to the federal structure of the Indian constitution can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority.
- In India, no provision for a special body like Constitutional Convention like in the United States exists for amending the constitution.
- The power to initiate an amendment to the Constitution lies with the Parliament only and not with any state legislature.

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7.5 KEY WORDS

- **Amendment:** An amendment is a formal or official change made to a law, contract, constitution, or other legal document. It is based on the verb to amend, which means to change for better. Amendments can add, remove, or update parts of these agreements.
- **Legislative Council:** Legislative council is a permanent committee chosen from both houses that meets between sessions of a state legislature to study state problems and plan a legislative program.
- **Parliament:** In modern politics and history, a parliament is a legislative body of government.

7.6 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. What are the major amendments of the Constitution of India?
2. What are the types of constitutional amendment in India?
3. Identify the types of majorities used in the Indian Parliament.
4. How do you pass an amendment to the Constitution?

Long Answer Questions

1. Explain the procedure for amending the Constitution of India.
2. Discuss the provisions that can be amended by special majority of the Parliament.
3. Critically analyse the amendment procedure of the Indian Constitution.
4. How many methods are there to amend the Constitution of India?

7.7 FURTHER READINGS

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UNIT 8 INTER-STATE COUNCILS- ZONAL COUNCILS- INTERSTATE TRADE AND COMMERCE

*Inter-State Councils-Zonal
Councils-Interstate Trade
and Commerce*

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Structure

- 8.0 Introduction
- 8.1 Objectives
- 8.2 Inter-State Councils
 - 8.2.1 Aims of Inter-State Council (ISC)
- 8.3 Zonal Councils
 - 8.3.1 Functions and Goals of the Zonal Councils
- 8.4 Interstate Trade and Commerce
- 8.5 Answers to Check Your Progress Questions
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- 8.7 Key Words
- 8.8 Self Assessment Questions and Exercises
- 8.9 Further Readings

8.0 INTRODUCTION

The Inter State Council is a non-permanent constitutional body setup by a presidential order on the basis of provisions in Article 263 of the Constitution of India. The body was formed by a Presidential Order dated 28 May 1990 on recommendation of the Sarkaria Commission. Whereas, Zonal Councils are advisory councils and are made up of the states of India that have been grouped into six zones to foster cooperation among them. Five Zonal Councils were set up vide Part-III of the States Reorganisation Act, 1956. In this unit, you will learn about the Inter State Council and zonal councils. This unit will also deal with the concept of interstate councils, zonal councils and interstate trade and commerce.

8.1 OBJECTIVES

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

- Identify the role of Sarkaria Commission in setting up the inter-state council
- Explain the various aims of inter-state council
- Discuss the main objectives of forming inter-state council (ISC)
- Describe the several goals of zonal councils
- Examine the objective behind the principle of freedom of inter-State commerce

8.2 INTER-STATE COUNCILS

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The Indian Constitution provides several provisions for the smooth operation of the state, the Inter-State Council (ISC) is also such a constitutional body which is temporary in nature and set by the order of the president according to the provisions made in the constitution of India article number 263. The inter-state council was formed in the year 1990 based on the recommendation made by the Sarkaria commission. The Sarkaria commission was a committee established for the examination of several corruption charges made against the political leaders. The chairman of the commission was Justice Ranjit Singh Sarkaria. He was a retired judge of the Supreme Court of India. Following were other members of the committee:

- Shri B. Sivaraman (Cabinet Secretary)
- Dr S.R. Sen (former Executive Director of IBRD)
- Rama Subramaniam (Member Secretary)

The commission conducted detailed studies and collected information regarding the issue and held discussions with the stakeholders. Finally, the commission has prepared its detailed 1600 pages reports in the year 1988. This Commission has given as many as 247 recommendations. These recommendations still considered as the relationship between Central and state governments, specifically to the legislative matters. This report has also highlighted the role and functions of the state governor as well as the use of article 356 of the Indian Constitution. Despite of the recommendations the government has not yet completely implemented the report. Since the report is very wide and based on the information and collected data. The report is based on 247 specific recommendations those are covered under 17 chapters. Some of the specific recommendations of the commission are listed below those are showing its relation with centre- state relationship:

- If any matter related to legislation which is concerned to the state, then it should be consulted with the state by the central government.
- The matters related to the division of river water distribution has to be taken care according to the article 256 of the Indian Constitution.
- The state government has to be given enough prominence while making appointment of the State Governor.

The following are the other recommendations those are made by this Commission for the appointment of the State Governor:

- (i) The appointment of the State Governor, from a panel to be prepared by the State Legislature.
- (ii) The appointment of the State Governor, from a panel to be prepared by the State Government or invariably by the Chief Minister.

- (iii) Sarkaria commission has pointed out the need of consultation with state Chief Minister by the central government before the appointment of the Governor in the State.
- (iv) It is mandatory for the proper working of the democratic system that the appointment of the Governor should be made based on the mutual understanding of both state and union government.
- (v) The relation between Governor and the Chief Minister should be healthy.

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According to the Sarkaria commission, objective of consultation with states chief minister is to find out specific goals those are to be achieved by the proposed appointment. It was felt by the Sarkaria commission, that Central government is not taking proper consultation with the state government before appointment of the Governor. Sarkaria commission has even pointed out that in many cases state government is not aware or knowing about the future governor of the state. The State Governor is appointed by the central government even without taking any opinion from the state government. In many cases only final name and report reaches to the chief minister of the state that particular person will be the next governor of the state. In a few cases, no prior information is shared with the state government as far as the appointment of state government is concerned.

The Sarkaria commission Suggested many points to resolve issue and recommended that prior consultation by the Prime Minister with the Vice President of India, as well as with the speaker of the Lok Sabha may be consulted while making appointment of the Governor. By adopting such practice the credibility of the central government enhances. The selection process becomes more transparent, indeed desirable for the healthy functioning of the democratic country. The consultation between the Prime Minister, vice president and Lok Sabha speaker helps in making the system more parliamentary.

Sarkaria commission has recommended that the Governor should be from any other state and the Governor should not belong to that particular state where he is going to be appointed. Also the Governor should not be actively participating in the state politics from quite some time and if the proposed appointment is from any other part of the country then there may be less probability of his or her indulging in the state politics.

Indian Supreme Court has also emphasized the need of implementing the Sarkaria commission many a times as far as selection and appointment of the State Governor is concerned.

Several institutions are formed for the implementing and suggesting policies for the smooth conduct of the democratic system, like a Council is institutional body which is formed for the discussion or making investigation regarding policies. These policies are for the interest of the common for both state and the central government. These policies are to discuss several disputes arising among the different states. In this connection zonal councils are also constituted on the regional

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basis. The zonal councils are constituted based on the regional basis, language, economy, culture and mutual challenges being faced by the stage. However, the inter-state Council is an institution which is of national level. The objective of forming inter-state council is to address the issues related to the regionalism, to increase the unity among the states and to increase the mutual cooperation among the various steps.

8.2.1 Aims of Inter-State Council (ISC)

The inter-state council is formed by the president of India under the Article 263 of the Indian Constitution in the year 1990. This is an institution which is a type of temporary constitutional body and is aimed for the coordination between the Union and the state governments. The constitutional body is not a permanent institution rather it is a body which can be formulated by the Indian President considering the public interest and need of the time. The necessity can be determined by the public interest involved therein. The inter-state councils can be formed despite of the zonal council. ISC can be constituted by the president even if there is already exists a zonal council due to many reasons.

There are several issues arises after the general elections of 1967 when many local parties have elected in the nine States. The emergence of these new political parties have created many new challenges to the central government and it is considered as a new era as far as the relation between centre and state is concerned. Due to the emergence of local parties as regional level new conflicts arisen between centre and state therefore a statutory body was not enough to deal with such challenges. The statutory body like zonal council was not enough to deal with such issues there for a strong constitutional body like inter-state council was very much needed.

Therefore, based on the Sarkaria Commission report inter-state council was established under the Article 263 of the Indian Constitution. The inter-state council therefore is a constitutional body and working as a democratic institution in India to strengthen and to make healthy relations between state and the centre.

In India there are many platforms to discuss various national state regional and zonal issues, i.e. National Development Council, inter-state council, time based high level meetings and conferences being held by the central government, Centre Government the zonal councils, interstate councils and many other constitutional and democratic institutional.

The type of the Council depends mainly on the objective and function of the Council. The zonal councils are the regional platform for the enhancement of Regional Cooperation between the stakeholders of the community. The zonal councils can be established and formed to sort out the issues those are linked between the neighbouring States. Specifically, issues those are linked economically,

culturally and political to each other. The zonal committees are concentrating its aim to the zonal issues considering into account the regional factors of the interest, while the inter-state Council has to look after the overall National interest and prospective in a comprehensive manner.

Inter-state council is the single most constitutional body which is dealing with the union disputes with the states in a comprehensive manner. It means the ISC is the only constitutional body which is focusing to address the union vs state disputes. At the other hand the zonal councils are the platforms to discuss various issues being faced by the different states and intervention of centre maybe in the later stage. The various disputes between the states are resolved through consultation and mutual discussions among the stakeholders at such platforms. Therefore, it is necessary to have inter-state council as well as zonal councils to deal with various disputes among the states at various levels.

The another main objective of forming inter-state council and zonal council is to decentralized the power towards the state up to a maximum level. Also:

- It can be helpful to transfer more financial resources towards the states.
- It will provide ample opportunity to the states to creates its own financial resources to fulfil their implications without least depending on this Central government assistance.
- Advancement of loans to states should be related to as ‘the productive principle’.
- The security of the state can be assured by the deployment of various Central armed forces depending upon the request or the need of the security issues.

There is a provision of forming the Inter-state council and should be composition of the following members:

- Prime Minister, Chairman.
- Chief Ministers of all states.
- Chief ministers of UT’s, those having elected legislative assemblies.
- Administrators of union territories not having legislative assemblies.
- Six central cabinet ministers, including home minister, to be nominated by prime minister.
- Governors of states under president's rule.

Standing Committee

It should be composition of the following members:

- Home minister
- Four members of Cabinet rank
- Seven members from the Chief Ministers of states

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Check Your Progress

1. When was the inter-state council formed?
2. What is the objective of forming inter-state council?

8.3 ZONAL COUNCILS

It was felt by the first Prime Minister Jawaharlal Nehru in the year 1956 to create zonal councils. Idea of creation of zonal council was emerged during the debate on the recommendations of the commission which was established to discuss the reorganisation of the states. This Commission was named as States reorganisation commission. Jawaharlal Nehru has suggested the proposed new states may be reorganized in four or five zones and having an Advisory Council for the development of cooperative working culture. The emphasis was given on the strengthening the habit of cooperative working between these States. The recommendation was made by Nehru to solve the various linguistic and regional based issues in various States those were creating threats to the national solidarity. In view of this high level advisory should be established to reduce the adverse effects of the regional and linguistic differences.

Consequently, Five Zonal Councils were set up vide Part-III of the States Reorganisation Act, 1956. The States Reorganisation Act, 1956 was a major reform of the boundaries of Indian states and its territories and for organising them along linguistic lines. However, many changes were made in the state boundaries of Indian Union after the implementation of the States re-organisation act in 1956, several others changes are still being made and making changes according to the need of time, to overcome various issues among the states.

This act was established by the 7th constitutional amendment of the Year 1956. Constitutional framework was reconstructed for the re-organization of the states in Indian union according to the provisions made in part 1 of the constitution. It was felt that the particular language speaking and cultural domain should be divided into particular boundary area so that the diversity of the community could remain untouched to the other community domain. The British in the 1930s also recognised the principle of federalism, which was carried forward into the governance of independent India.

As it is cleared that the zonal councils were set up under the States Reorganisation Act, 1956. The principal objective of constructing the zonal council was to create a cooperative working culture among the states and zonal boundaries. The zonal Council was, primarily aimed to create the interstate cooperation and coordination for the development and overall progress of the individual States. The individual state progress and development is directly concerned with the development of nation. With this theme the individual states were given more freedom to opt better allotment policies and freedom of decision making was

given so that the regional and linguistic integrity of the area remains untouched. Simultaneously, the efforts were made to create cooperative working culture among the states so that the cooperative and coordinative environment can be developed which is a precondition for the development of the nation as well. The policies related to the zonal councils are aimed at to reduce the strains and stresses that are inherent in the federal politics. The zonal councils can make decisions related to the interest of mutual cooperation and to build a process to relieve the stress and strain. The matters related to the economic and social planning of common interests are taken in this process. If any matter related to social or economic planning is discussed in a cooperative and coordinating fashion, then it becomes easy to resolve it in a comprehensive manner. Even many complex issues can be solved based on the cooperative working. Despite of this, we see many issues that are still pending among many states specifically related to the distribution of river water and natural resources. The distribution of natural resources among the states is still looks like a huge issue which is to be addressed at a larger scale because many natural resources are not yet been distributed equally among the states or as per their satisfaction. For example, the division of assets among Uttar Pradesh and Uttarakhand government are still to be resolved. These issues can be resolved based on the zonal councils and with the mutual cooperation and coordination among the both governments.

Although, to work smoothly, every zonal council made to address any particular issues have its own nuances and undertones, and, therefore, differs from its counterparts both in matters of details and positive achievements. The central zonal council mainly consists of the states. For example, Uttar Pradesh is the largest state of Indian Federal Union from the population perspective. The neighbouring state of Uttar Pradesh, Madhya Pradesh is also one another large state based on geographical area and having several issues related to distribution of natural resources and water river resources. The zonal Council was established to address these issues and several meetings has been held to discuss and found an acceptable solution for both the states.

Although, the British government in year 1947 has given option to more than 500 princely states of India or to opt either to stay with India or Pakistan and there was no compulsion on any princely state while making selection. Any princely state can opt to either go with India or Pakistan, eventually the larger number of the princely states has opted to remain with India and some of them Bhutan, Hyderabad and Kashmir opted for independence, although the armed intervention of India conquered Hyderabad and brought it into the Indian Union.

In the light of the vision of Nehru's five Zonal Councils were set up vide Part-III of the States Re-organisation Act, 1956. The present composition of each of these Zonal Councils is as under:

- The Northern Zonal Council, comprising the States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, National Capital Territory of Delhi and Union Territory of Chandigarh.

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- The Central Zonal Council, comprising the States of Chhattisgarh, Uttarakhand, Uttar Pradesh and Madhya Pradesh.
- The Eastern Zonal Council, comprising the States of Bihar, Jharkhand, Orissa, Sikkim and West Bengal.
- The Western Zonal Council, comprising the States of Goa, Gujarat, Maharashtra and the Union Territories of Daman & Diu and Dadra & Nagar Haveli.
- The Southern Zonal Council, comprising the States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territory of Puducherry.
- Telangana, Andaman and Nicobar Islands, Lakshadweep are not members of any of the Zonal Councils.

However, there are presently special invitees to the Southern Zonal Council. The North Eastern States, i.e., (i) Assam (ii) Arunachal Pradesh (iii) Manipur (iv) Tripura (v) Mizoram (vi) Meghalaya and (vii) Nagaland are not included in the Zonal Councils and their special problems are looked after by the North Eastern Council, set up under the North Eastern Council Act, 1972. The State of Sikkim has also been included in the North Eastern Council vide North Eastern Council (Amendment) Act, 2002 notified on 23rd December 2002. Consequently, action for exclusion of Sikkim as member of Eastern Zonal Council has been initiated by Ministry of Home Affairs. The North Eastern States' special problems are addressed by another statutory body - The North-Eastern Council, created by the North Eastern Council Act, 1971.

The Ministry of Home Affairs (MHA) discharges multifarious responsibilities, the important among them being; nation's internal security, border management, Centre-State relations, administration of Union Territories, management of Central Armed Police Forces, disaster management, etc. Though in terms of entries 1 and 2 of List II, State List, in the Seventh Schedule to the Constitution of India, 'public order' and 'police' are the responsibilities of States. Article 355 of the Constitution enjoins the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. In pursuance of these obligations, the Ministry of Home Affairs continuously monitors the internal security situation, issues appropriate advisories, shares intelligence inputs, extends manpower and financial support, guidance and expertise to the State Governments for maintenance of security, peace and harmony without encroaching upon the constitutional rights of the States.

8.3.1 Functions and Goals of the Zonal Councils

The need of establishing zonal councils was felt immediately after the Indian Independence and it was concluded that there is a need of a platform where the issues related to the states can be discussed and resolved through mutual agreement. The functions and goals of the zonal councils can be understood by the various

issues discussed by the bodies, such as division of boundaries and natural resources. Economic and social planning are also the mainly discussed matter and the issues in this zonal councils. There are similar types of problem in almost all the states, but the method of resolving and tackling those problems may be differing according to the linguistic and cultural background of the state as well as financial condition. If a problem is discussed mutually in coordination with the other states, then the solution can be find out in an efficient manner. The cooperative endeavour for the states is a must for the overall growth of the nation.

Zonal councils are the compact and high level constitutional bodies, and are meant for searching various solutions of the issues and problems being faced by the states. While, they are paying attention to a particular problem, they are also focusing on solution part with their attention on a particular issue keeping regional factors in their mind. However, through the mutual coordination the national interest can also be taken care. In this view, the zonal councils were established to look after following objectives:

- To build national integration environment
- To arrest the development of acute state consciousness, linguism, regionalism and other particular tendencies.
- To create a healthy environment between the centre and state and to exchange their own experiences and ideas based on the cooperation and coordination.
- To build an arrangement of friendly cooperation among the states, so that development policies and projects can be executed smoothly in the states.

Functions of the Councils

Each zonal council is an advisory body and may discuss any matter in which some or all of the States represented in that Council, or the Union and one or more of the States represented in that council. Thus council have a common interest and advise the central government and the government of each state concerned such as to advice the action to be taken on any such matter.

In particular, a zonal council may discuss, and make recommendations with regard to:

- Any matter of common interest in the field of economic and social planning.
- Any matter concerning border disputes, linguistic minorities or inter-state transport.
- Any matter connected with or arising out of, the re-organization of the States under the States Reorganisation Act.

Secretariat of Zonal Councils

It is also mentioned in the status of the zonal councils that a secretariat has to be created so that functioning of the office can be made smooth. The Section 19 of

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the State's Reorganisation Act planes the details about the secretariat and the stops appointments in zonal councils. The expenses for running the office and other administrative works are mentioned in the section 20 of this act. The act also explains about the location of zonal council office and clarifies that the location of the secretariat organ of office should be approachable position. Initially, a secretariat under the home ministry was working and maintaining other zonal offices from the Delhi office only, later it was said that it should have other branches also to the smooth function and contact with other zonal offices. The Ministry of Home Affairs under the Government of India is working as an administrative power for the secretariat and having all the administrative control on the secretariat. The office is generally shared by the Indian home minister. Apart from the other important functions, the zonal Council Secretariat has to look after Centre state, inter-state and other zonal issues. The discussion and undertaking of the issues depending upon the decision of the councils are the instructions given by the standing committee of competent level time to time as per the requirement of the issue. It is the responsibility of the secretariat office to look and take follow up of the issues, notes of the action taken report, recommendations made by the standing committees of the councils. Secretariat keep the union minister informed about the follow up time to time and work to draw the attention of competent authority towards the important issues so that matter could be taken up for the solution.

The Zonal Council Secretariat has a complete organisational structure and it is setup according to the section 19 of State Reorganisation Act. The act explains that each zonal Council should have a secretariat organisation structure and consists of secretary joint secretary and other officers for the important positions. The secretary and other officers are Indian Administrative services officers (IAS officers).

The zonal council is represented by the Chief Secretaries of the respective state. In this position, chief secretary becomes the secretary of the zonal Council. The position changes with rotation and one secretary can hold the office for a period of 1 year at a time. If required, term can further extended by the recommendation of a complete authority.

Functions of the Zonal Council secretariat

For smooth functioning, the zonal council have a complete organisational structure, with the following manners as per the Section 16 (1) of the States Re-organisation Act 1956:

- (a) A Union Minister to be nominated by the President.
- (b) the Chief Minister of each of the States included in the zone and two other Ministers of each such State to be nominated by the Governor and if there is no Council of Ministers in any such State, three members from that State to be nominated by the President.
- (c) where any Union Territory is included in the zone, not more than two members from each such territory to be nominated by the President.

- (2) The Union Minister nominated under clause (a) of sub-section (1) to a Zonal Council shall be its Chairman. The President has nominated Union Home Minister to be the Chairman of all the Zonal Councils.
- (3) The Chief Ministers of the States included in each zone shall act as Vice-Chairman of the Zonal Council for that zone by rotation, each holding office for a period of one year at a time.

Provided that if during that period there is no Council of Ministers in the State concerned, such member from that State as the President may nominate in this behalf shall act as Vice-Chairman of the Zonal Council.
- (4) The Zonal Council for each zone shall have the following persons as Advisers to assist the Council in the performance of its duties, namely:
 - (a) one person nominated by the Planning Commission (now NITI Aayog);
 - (b) the Chief Secretary to the Government of each of the States included in the Zone; and
 - (c) the Development Commissioner or any other officer nominated by the Government of each of the States included in the Zone.

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8.4 INTERSTATE TRADE AND COMMERCE

The freedom of trade and commerce is subject to certain limitations which may be imposed by Parliament or by the Legislatures of the various states, subject to the fact that the limitations contained in the power of Parliament is confined to cases arising from scarcity of goods in one part of the territory of India, and in the case of the States, it must be justified on the ground of public interest. Duties which are levied the Union, but collected and appropriated by the State Stamp duties, duties of excise on medicinal and toilet preparations.

The objective behind the principle of freedom of inter-State commerce is that within the country trade and commerce should develop to the largest possible extent and it should not be hindered by artificial barriers and restrictions imposed by the various States of the Indian federation. Such as follows:

- (i) Taxes levied and collected by the Union but assigned to the States (duties in respect of succession to property other than agricultural land, taxes on the sale or purchase of newspapers, taxes on the consignment of goods, taxes on railways fares and freights, etc.).
- (ii) Taxes levied and collected by the Union and distributed between the Union and the State (on income other than agricultural preparations).
- (iii) Taxes exclusively belonging to toilet preparations.
- (iv) Taxes exclusively belonging to Union, Customs, Corporation Tax, taxes on capital value of assets, surcharge on income tax etc.
- (v) Taxes belonging exclusively to the States (land revenue, Stamp Duty on items included in the list, entertainment tax, taxes on professions not exceeding ₹ 2500, etc.)

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- (vi) Prior recommendation of President is required to Bills affecting taxation in which States are interested (Article 274).
- (vii) The President will appoint a Finance Commission consisting of a chairman and four members every five years or at such earlier time as he considers necessary (Article 280).
- (viii) Parliament determines the qualifications requisite for appointment as its members; the Parliament makes recommendations to the President as to the distribution between the Union and the State of the net proceeds of taxes, the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India.
- (ix) Articles 301 to 307 in Part XIII of the Constitution deal with the trade, commerce and intercourse within the territory of India.
- (x) Article 301 declares that trade, commerce and intercourse throughout the territory of India shall be free.
- (xi) The object of this provision is to break down the border barriers between the states and to create one unit.

Check Your Progress

- 3. Who proposed the idea to create zonal councils?
- 4. What was the principal objective of constructing the zonal council?

8.5 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

- 1. The inter-state council was formed in the year 1990 based on the recommendation made by the Sarkaria commission.
- 2. The objective of forming inter-state council is to address the issues related to the regionalism, to increase the unity among the states and to increase the mutual cooperation among the various steps.
- 3. It was felt by the first Prime Minister Jawaharlal Nehru in the year 1956 to create zonal councils.
- 4. The principal objective of constructing the zonal council was to create a cooperative working culture among the states and zonal boundaries.

8.6 SUMMARY

- Indian Constitution provides several provisions for the smooth operation of the state, the Inter-State Council (ISC) is also such a constitutional body which is temporary in nature and set by the order of the president according to the provisions made in the constitution of India article number 263.

- The commission conducted detailed studies and collected information regarding the issue and held discussions with the stakeholders.
- According to the Sarkaria commission, objective of consultation with states chief minister is to find out specific goals those are to be achieved by the proposed appointment.
- The Sarkaria commission Suggested many points to resolve issue and recommended that prior consultation by the Prime Minister with the Vice President of India, as well as with the speaker of the Lok Sabha may be consulted while making appointment of the Governor.
- Sarkaria commission has recommended that the Governor should be from any other state and the Governor should not belong to that particular state where he is going to be appointed.
- The inter-state council is formed by the president of India under the article 263 of the Indian Constitution in the year 1990.
- It was felt by the first Prime Minister Jawaharlal Nehru in the year 1956 to create zonal councils. Idea of creation of zonal council was emerged during the debate on the recommendations of the commission which was established to discuss the reorganisation of the states.
- This act was established by the 7th constitutional amendment of the Year 1956. Constitutional framework was reconstructed for the re-organization of the states in Indian union according to the provisions made in part 1 of the constitution.
- The need of establishing zonal councils was felt immediately after the Indian Independence and it was concluded that there is a need of a platform where the issues related to the states can be discussed and resolves through mutual agreement.
- It is also mentioned in the status of the zonal councils that a secretariat has to be created so that functioning of the office can be made smooth.
- The objective behind the principle of freedom of inter-State commerce is that within the country trade and commerce should develop to the largest possible extent and it should not be hindered by artificial barriers and restrictions imposed by the various States of the Indian federation.

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8.7 KEY WORDS

- **Governor:** A governor is, in most cases, a public official with the power to govern the executive branch of a non-sovereign or sub-national level of government, ranking under the head of state.
- **Sarkaria Commission:** Sarkaria Commission was set up in 1983 by the central government of India. The Sarkaria Commission's charter was to

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examine the central-state relationship on various portfolios the states and suggest changes within the framework of Constitution of India.

- **Inter State Council:** The Inter State Council is a non permanent constitutional body setup by a presidential order on the basis of provisions in Article 263 of the Constitution of India. The body was formed by a Presidential Order dated 28 May 1990 on recommendation of Sarkaria Commission.

8.8 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. What was the role of Sarkaria Commission in setting up the inter-state council?
2. What are the main objectives of forming inter-state council (ISC)?
3. Identify several goals of zonal councils.
4. Write a short note on the secretariat of zonal councils.

Long Answer Questions

1. Explain the various aims of inter-state council.
2. Discuss the various functions of zonal councils.
3. Describe the various functions of the Zonal Council Secretariat.
4. 'The cooperative endeavour for the states is a must for the overall growth of the nation.' Discuss.
5. Examine the objective behind the principle of freedom of inter-state commerce.

8.9 FURTHER READINGS

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BLOCK - III
PARLIAMENTARY SYSTEM

UNIT 9 PARLIAMENTARY ORGANIZATION

NOTES**Structure**

- 9.0 Introduction
- 9.1 Objectives
- 9.2 The Lok Sabha
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9.0 INTRODUCTION

The Parliament of India is a bicameral institution consisting of the President, and two houses: the Lok Sabha and the Rajya Sabha. The President has the power to summon and prorogue either House of Parliament or to dissolve Lok Sabha, The principal function of the Lok Sabha is to make laws. It can even amend a major portion of the Indian Constitution although it needs ratification by at least half of the states to do so. The Rajya Sabha, on the other hand, is the upper house of the Parliament of India, and serves as the council of states. For the smooth, efficient and the impartial conduct of its proceedings, each House of Parliament has been empowered by the Constitution to have a Chief and a Deputy Chief Presiding Officer. The Chief Presiding Officer of the Lok Sabha is known as the Speaker and that of the Rajya Sabha is known as the Chairman.

9.1 OBJECTIVES

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

- Discuss the powers and functions of the Lok Sabha
- Describe the powers and functions of the Rajya Sabha
- Explain the functioning of parliamentary committees

9.2 THE LOK SABHA

The Lok Sabha is the House of the People as it is directly elected by the people. It is also known as the Lower House. Until 1853, there was no legislative body in India. In 1853, the Charter Act provided some sort of a legislature in the form of a twelve-member Legislative Council. The Indian Independence Act, 1947 declared the Constituent Assembly of India to be a full sovereign body. Apart from being a constitution on 26th January 1950, the Constituent Assembly also started functioning as the Provisional Parliament unit. Later on the Hindi nomenclature was also adopted on 14th May 1954.

The members of this House are elected on the basis of the universal adult suffrage. Every citizen of India who is not less than eighteen years of age is entitled to vote in elections to the Lok Sabha unless he/she is otherwise disqualified under law—Article 326. People such as non-residents, insane people, criminals and those who have been convicted of corrupt electoral practices are not eligible to vote in elections. During these elections, there is no reservation of seats for any minority community other than the Scheduled Castes and Scheduled Tribes provided under Article 330, 341 and 342. The Lok Sabha is presided over by the speaker who is elected in the very first meeting of the Lok Sabha after the general elections for a term of 5 years from amongst the members of the house. The current speaker of the Lok Sabha is Sumitra Mahajan.

The Lok Sabha has a variegated composition. The Indian Constitution prescribes the following composition:

- Not more than 530 [Article 81 (1) (a)] representatives of the States
- Not more than twenty representatives of the Union Territories [Article 81 (1) (b)]
- Not more than two members of the Anglo-Indian community, nominated by the President, if he/she is of opinion that the Anglo-Indian community is not adequately represented in the House of the People (Article 331)

India has adopted a Parliamentary form of government in which the Parliament enjoys a pivotal position. However, unlike England, our Parliament is not supreme. The powers and functions of the Indian Parliament have been limited by the Federal Constitution. Even in case of the amendment to the Constitution,

Supreme Court has held that the Parliament cannot alter the basic features of the Constitution.

The powers and functions of the Parliament will be discussed in the following heads:

9.2.1 Legislative Powers

The principal function of the Indian Legislature is to make laws. The Constitution of India has divided the Legislative powers between the Centre and States. This division has been done according to the list system—the Union List, the State List and the Concurrent List. These lists have the residuary powers of the Union and therefore they fall under the purview of the Parliament.

Along with the state legislature, the Indian Legislature can make laws on the subjects mentioned in the Concurrent List as well. However, in case of conflict between a law made by the Parliament and a State law on a Concurrent subject, the Union law shall prevail. The Constitution also gives supremacy to the Union List. In case there is a conflict and overlapping between the three Lists, it is the Union List that prevails. With regard to State List, ordinarily the State Legislatures make law but in certain circumstances the Union Parliament is empowered to make laws mentioned in the State List. These circumstances are as follows:

- If Rajya Sabha (by not less than two-third majority of members present and voting) passes a resolution declaring a subject mentioned in the State List to have assumed national importance, then the Parliament can legislate on that subject. But such resolution will remain in force for one year only. After the completion of one year, the Rajya Sabha may further pass the same resolution.
- If there is an emergency in the country, the Parliament can make laws with respect to all matters mentioned in the State List.
- If two or more State Legislatures pass a resolution that Parliament should make law on a subject mentioned in the State List, then the Parliament acquires the power to make law on that subject. However, such law will be applicable to such states only. The other states may also adopt it by passing resolution in the respective state legislatures. Such a law can be amended or repealed by the Union parliament only.
- In order to implement any treaty, agreement or conversation with any other country or countries, or any decision made at any international conference, association or other body the Parliament may, if necessary, invade the state List.

Thus, the law making power of the Parliament is very wide. It covers the Union List, the Concurrent List and in certain circumstances even the State List.

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9.2.2 Financial Powers

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The Parliament is the repository of the Union purse. It has the sole power not only to authorize expenditure for the public services and to specify the purpose to which that money shall be appropriated but also to provide the ways and means to raise the revenue required. By means of taxes and other impositions and also to ensure that the money that was granted has been spent for the authorized purposes. Thus, no money can be spent without its approval. The budget is approved by the Parliament. However, the Parliament can discuss the expenditure charged on the Consolidated Fund of India (CFI); it may increase but not decrease the amount. The expenditure charged on the CFI includes the embodiment and the allowances of the President, Vice-President, Deputy Chairman of the Rajya Sabha, Speaker and Deputy Speaker of Lok Sabha and Judges of Supreme Court and High Court. As under the English system, the Lower Houses possess the dominant power in this respect under the Indian Constitution.

9.2.3 Control over the Executive

The parliamentary system of government envisages a close cooperation between the Legislative and the Executive wings of the government. The Executive is responsible towards the Legislature for all its omissions and commissions. The Prime Minister and his Council of Ministers are collectively responsible to the Lok Sabha and not to the Rajya Sabha. By a 'No Confidence Motion', the Lok Sabha can dismiss a Ministry. However, the 'No Confidence Motion' is an extreme motion. There are other ways by which the Parliament exercises control over the Executive, they are as follows:

- By asking questions the Parliament can control the Executive. Members of the Parliament have a right to seek information and receive facts on matters of public importance. However, certain types of questions are not permitted.
- If a member is not satisfied with the answer provided by the Government, then he may demand half an hour discussion on the subject.
- The Parliament also exercises control over the Executive through various motions. Calling Attention, Notices and Adjournment Motion are some such motions by which some recent matter of urgent public importance can be raised. In such condition the Parliament sets aside the normal business and discusses the matter.
- The Executive can be controlled by the Parliament through its various committees, such as the Standing Committees and the ad hoc committees. These committees help to expedite parliamentary business and to scrutinize the Executive activities.

Electoral Functions

The Parliament participates in the election of the President and the Vice-President of India. Besides, both the Houses elect their presiding officers – the Speaker and

Deputy Speaker of the Lok Sabha, Chairman and Deputy Chairman of the Rajya Sabha. The President is elected by an electoral college consisting of the elected members of both the Houses of the Parliament and the elected members of the Legislative Assemblies of the States, while the Vice-President is elected by both the Houses of the Parliament and the Speaker and Deputy Speaker are elected by the Lok Sabha only.

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9.2.4 Judicial Functions

The Parliament can make laws regulating the Constitution, organization, jurisdiction and powers of the Courts. Under the Constitution, the Parliament may by law extend the jurisdiction of a High Court to establish a common High Court for two or more states, and constitute a High Court for a Union Territory. The Parliament may provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State, or for two or more States. The Parliament can also impeach the President, Vice-President, Chief Justice, Judges of the Supreme Court and High Courts, etc. The impeachment can be done only if people in these positions violate the Constitution.

9.2.5 Amending Functions

The Parliament can amend a major portion of the Constitution but it needs ratification by at least half of the States to amend the Constitution. However, the Parliament cannot amend the basic features of the Constitution. In the electoral, judicial and constitution amending functions, both the House of the Parliament have equal powers.

9.2.6 Miscellaneous Functions

Besides the above-mentioned functions and powers, the Parliament also enjoys many other powers, some of which are as follows:

- The Parliament approves the proclamation of emergency. Such an approval is granted by both the Houses with a majority of total number of the House and a majority of not less than two-third members present and voting.
- The Lok Sabha can disapprove the continuation of National Emergency by a simple majority.
- Parliament may admit or establish new states on such terms and conditions as it thinks fit.
- Parliament may do the following:
 - o Form a new state by separation of territory from any state or by uniting two or more states on parts of states or by uniting any territory to a part of any state
 - o Increase and decrease the area of any state
 - o Alter the boundaries and the name of any state

- Parliament may regulate the right of citizenship.
- Parliament may extend the functions of the Union Public Service Commission.
- Parliament may abolish and create the Legislative Councils of States.

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9.3 THE RAJYA SABHA

The Rajya Sabha, referred to by the Constitution as the ‘Council of States’ is the upper house of the Parliament of India. It is sometimes also called the ‘House of Elders’. The Rajya Sabha is a permanent body that is not subject to dissolution. Membership of the Rajya Sabha is limited to 250 members, 12 of whom are nominated by the President for their contributions to art, literature, science, and social services. The remainder of the body is indirectly elected by the state and territorial legislatures through. Members of the Rajya Sabha sit for six-year terms, with one third of the members retiring every two years. The Rajya Sabha is presided over the Chairman of the Rajya Sabha, a function that is performed by the Vice President of India. The current Vice President of India is Venkaiah Naidu.

9.3.1 Special Powers of the Rajya Sabha

The special powers of the Rajya Sabha are in the form of initiation of certain resolutions, which come under the following Articles:

- **Article 67:** A resolution seeking the removal of the Vice-President can originate only in the Rajya Sabha. After it is passed in the Rajya Sabha by a majority vote of members present and voted, it goes for approval to the Lok Sabha.
- **Article 249:** Any resolution seeking creation of one or more all-Indian Services, including All-India Judicial Services, if such is necessary or expedient in the national interest can only be initiated in the Rajya Sabha. Only after the House passes a resolution to this effect by a special majority, i.e., two-thirds of the members present and voting, can the Parliament legislate on this.
- **Article 312:** A resolution seeking legislation on any subject of the State List can only originate in the Rajya Sabha, if it thinks that such is necessary or expedient in the national interest.

Rajya Sabha being a federal chamber enjoys certain special powers under the Constitution. All the subjects/areas regarding legislation have been divided into three Lists—Union List, State List and Concurrent List. The Union and State Lists are mutually exclusive—one cannot legislate on a matter placed in the sphere of the other. However, if Rajya Sabha passes a resolution by a majority of not less than two-thirds of members present and voting saying that it is ‘necessary or expedient in the national interest’ that Parliament should make a law on a matter enumerated in the State List, Parliament becomes empowered to make a law on

the subject specified in the resolution, for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing a similar resolution further. If Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it is necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, the Parliament becomes empowered to create such services by law.

Under the Constitution, the President is empowered to issue proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency. Every such proclamation has to be approved by both the Houses of Parliament within a stipulated period. Under certain circumstances, however, Rajya Sabha enjoys special powers in this regard. If a proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the proclamation remains effective, if the resolution approving it is passed by Rajya Sabha within the period specified in the Constitution under Articles 352, 356 and 360.

9.3.2 Financial Powers

A Money Bill can be introduced only in Lok Sabha. After it is passed by that House, it is transmitted to Rajya Sabha for its concurrence or recommendation. The power of Rajya Sabha in respect of such a Bill is limited. Rajya Sabha has to return such a Bill to Lok Sabha within a period of fourteen days from its receipt. If it is not returned to Lok Sabha within that time, the Bill is deemed to have been passed by both the Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

Rajya Sabha cannot amend a Money Bill; it can only recommend the amendments and Lok Sabha may either accept or reject all or any of the recommendations made by Rajya Sabha. Apart from a Money Bill, certain other categories of Financial Bills also cannot be introduced in Rajya Sabha. There are, however, some other types of Financial Bills on which there is no limitation on the powers of the Rajya Sabha. These Bills may be initiated in either House and Rajya Sabha has powers to reject or amend such Financial Bills like any other Bill. Of course, such Bills cannot be passed by either House of Parliament unless the President has recommended to that House the consideration thereof.

From all this, however, it does not mean that Rajya Sabha has nothing to do in matters relating to finance. The Budget of the Government of India is laid every year before Rajya Sabha also and its members discuss it. Though Rajya Sabha does not vote on Demands for Grants of various Ministries as this matter is exclusively reserved for Lok Sabha, no money, however, can be withdrawn from the Consolidated Fund of India unless the Appropriation Bill has been passed by

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both the Houses. Similarly, the Finance Bill is also brought before Rajya Sabha. Besides, the department-related Parliamentary Standing Committees that examine the annual Demands for Grants of the Ministries/Departments are joint committees having ten members from Rajya Sabha.

The Constitution of India has assigned a unique role to Rajya Sabha in the Indian parliamentary and constitutional set up. Functioning within the parameters of the Constitution, Rajya Sabha, during more than fifty years of its existence, has consistently endeavoured to translate into reality the lofty vision of the founding fathers of our Republic. As a sagacious body reflecting the federal ethos of the Indian polity, Rajya Sabha has held dignified debates on issues of national concern with greater wisdom and focus, poise and equanimity. Its role in broadening and deepening the parliamentary discourse for strengthening the roots of democracy and improving public governance for realizing the larger goal of people's welfare has been truly creditable.

The overall performance of Rajya Sabha has reflected high level of commitment, both at the individual level of members as also at the collective level of the House, to long-term vision for growth and development. To realize this vision, the proceedings of Rajya Sabha need to remain forever relevant and effective for which knowledge of parliamentary rules and application of appropriate parliamentary devices would be paramount.

Evolving with time, Rajya Sabha has devised its rules and procedures and developed healthy conventions and traditions to govern its functioning smoothly. These have been shaped and nurtured continuously by many illustrious predecessors by members of great stature and probity who have adorned this august House and have lent dignity and substance to its proceedings. Parliamentary rules, procedures, customs, conventions and rulings have been developed to enable members to raise issues of public importance freely and effectively within the stipulated legislative time while maintaining the highest standards of parliamentary conduct, whereas, the knowledge of parliamentary rules helps members to ensure improved functioning of the House. Lack of these often results in chaos and disorder in the House.

The credibility of Parliament as the nation's highest representative body is, to a great extent, proportionate to the norms of behaviour and conduct of members. It is, therefore, imperative for the members to observe parliamentary rules and conventions to effectively raise matters of public importance on the floor of the House. The performance of our Parliament and its members is now under close scrutiny of public as well as the media, with the live telecasting of its proceedings. Members of Parliament need to lead and set high standards of behaviour through greater understanding and application of parliamentary rules and procedures to sustain the public trust reposed in them. The parliamentary institutions in our country are dynamically evolving and Rajya Sabha is no exception to it.

Table 9.1 lists the differences between Lok Sabha and Rajya Sabha.

Table 9.1 Differences between Lok Sabha and Rajya Sabha

Lok Sabha	Rajya Sabha
1. The Members of Lok Sabha are directly elected by the eligible voters	The Members of Rajya Sabha are elected by the elected members of State Legislative Assemblies in accordance with the system of proportional representation by means of single transferable vote.
2. The normal life of every Lok Sabha is five years.	Rajya Sabha is a permanent body.
3. Lok Sabha is the House to which the Council of Ministers is responsible under the Constitution. Money Bills can only be introduced in Lok Sabha. Also it is Lok Sabha which grants the money for running the administration of the country.	The Council of Ministers is not responsible to the Rajya Sabha. Money Bills cannot be introduced in Rajya Sabha. The Rajya Sabha does not have the power to grant the money for running the administration of the country.
4. Lok Sabha does not have special powers to declare that it is necessary and expedient in the national interest that Parliament may make laws with respect to a matter in the State List or to create by law one or more all -India services common to the Union and the States.	Rajya Sabha has special powers to declare that it is necessary and expedient in the national interest that Parliament may make laws with respect to a matter in the State List or to create by law one or more all -India services common to the Union and the States.

NOTES**9.4 PARLIAMENTARY COMMITTEES**

The diverse nature of the vast functions of the Parliament make it impossible to make an exhaustive examination of all legislative and other matters that come up before it. It is for this reason that a substantial amount of Parliamentary business is executed in the committees. The committee structure of both the Houses of Parliament are alike barring a few exceptions. Article 118(1) of the Constitution deals with their appointment, terms of office, functions and procedure of conducting business which are also more or less similar and are regulated as per rules made by the two Houses.

A significant amount of its business is, therefore, transacted by what are called the Parliamentary Committees.

Parliamentary committees are of two kinds:

1. Ad hoc committees
2. The standing committees

Ad hoc committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal ad hoc committees are the Select and Joint Committees on Bills. Others like the Railway Convention Committee, the Committees on the Five Year Plans and the Hindi Equivalents Committee were appointed for specific purposes.

Apart from the ad hoc committees, each House of Parliament has standing committees like the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges and the Rules Committee.

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Public Accounts Committee

The Parliamentary power by which it can vote money for specific purposes is meaningless unless it has the power to find out that whether the money has been utilized for the correct purposes or not? This is secured by subjecting the public accounts to an audit by an independent authority – the Comptroller and Auditor General – and, further, the examination of his report by a special committee of Parliament, called the ‘Public Accounts Committee’. A committee of Parliament is preferred because, first, that august body has not the time to undertake the detailed examination of the report; secondly, the scrutiny being essentially technical, can best be done in a committee and lastly, the non-party character of the examination can be possible only in a committee and not in the House.

The Functions of Public Accounts Committee

The function of the committee is to satisfy itself about the following:

- The money shown in the accounts as having been disbursed was legally available or applicable to the service or purpose to which it has been applied or charged
- The expenditure conforms to the authority that governs it
- Every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority

It shall also be the duty of the Public Accounts Committee to do the following:

- To examine, in the light of the report of the Comptroller and the Auditor General, the statement of accounts showing the income and expenditure of state corporations, trading and manufacturing schemes and projects, together with the balance sheets and statements of profit and loss accounts, which the President may have required to be prepared, or are prepared under the provisions of the statutory rules regulating the financing of a particular corporation, trading concern or a project;
- To examine the statement of accounts showing the income and expenditure of autonomous and semi-autonomous bodies, the audit of which may be conducted by the Comptroller and Auditor General of India either under the directions of the President or by a statute of Parliament; and
- To consider the report of the Comptroller and Auditor General in cases where the President may have required him to conduct an audit of any of the receipts or to examine the accounts of stores and stocks.

9.5 FUNCTIONING OF THE PARLIAMENTARY SYSTEM

For the smooth, efficient and impartial conduct of its proceedings, each House of Parliament has been empowered by the Constitution to have a Chief and a Deputy Chief Presiding Officer. The Chief Presiding Officer of the Lok Sabha is known as the Speaker and that of the Rajya Sabha is known as the Chairman. The Speaker is assisted by the Deputy Speaker while the Chairman is assisted by the Deputy Chairman. Each House also has a Chairman to preside over the House in the absence of the Chief Presiding Officers.

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9.5.1 Speaker of the Lok Sabha

The Speaker is the most important conventional and ceremonial head of Lok Sabha. Within the walls of the House, his authority is supreme. The most salient feature of his office is his impartiality. He is expected to wield his authority with the 'cold neutrality of the impartial judge'. His impartiality is ensured by the provision that he would remain above party considerations and that he would vote only in case of a tie.

In India, the Speaker does not sever his party affiliation after being elected to the office. The first speaker G.V. Mavalankar, a Congressman, is credited for establishing such tradition. Except for the two exceptions, Neelam Sanjeeva Reddy and G.S. Dhillon who resigned from their parties after becoming Speaker, the rest of the Speakers have followed the tradition set by Mavalankar. Further, in India, the office of the Speaker is not the end of political career to its incumbent. Speakers have become ministers, Governors, High Commissioners and even the President of India. Consequently, the office of the Speaker has not been untouched by controversies in India.

9.5.2 Powers of the Speaker

As the Chief Presiding Officer of the popularly elected Lok Sabha, the Speaker has been entrusted with many powers by the Constitution and the Rules of the House. He is the spokesman of and to the House. He is the custodian of the privileges and immunities of the House and its members. He is the ex-officio President of the Indian Parliamentary Group and the Head of the Lok Sabha Secretariat.

The following are the powers and functions of the Speaker of Lok Sabha:

- The basic function of the Speaker is to preside over the sessions of the House when he is present in the House. As the Chief Presiding Officer of the House, he fixes the hour of the commencement or termination of a sitting and determines the days on which the House will sit.

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- His decision in all parliamentary matters is final. A request may be made to him for reconsideration but his decision cannot be challenged, criticized or questioned.
- No member can speak in the Lok Sabha without the Speaker's permission. He also decides in what order members will speak and how long a member should continue to speak. He may ask a member to finish his speech and in case the member does not listen, he may order that the member's speech should not go on record. He may also ask a member to withdraw unparliamentarily words.
- He permits a member to speak in his mother tongue if he does not know either English or Hindi.
- The members of the House can only address to the Speaker while speaking.
- All the bills, reports, motions and resolutions are introduced with the Speaker's permission.
- He puts the motion to vote in the Lok Sabha. In case there is a tie, he is empowered with a casting vote. However, he is expected to cast his vote so as to retain his impartiality and independence.
- Except making formal statements while performing his functions, the Speaker does not, ordinarily, participate in the discussion. He seldom addresses the House of his own accord and unless requested by the members, he refrains from expressing his personal opinion.
- He determines a bill to be a money bill and his decision is final. He also certifies a money bill.
 - o He also determines whether a motion of no-confidence in the Council of Ministers is in order. He is also empowered to select amendment in relation to bills and motions and can refuse to allow a member to move an amendment, if he thinks it is unwarranted or unnecessary. Finally, his opinion and consent is final in determining whether to adjourn the House or to postpone its regular business for discussing a matter of general public interest or urgent public importance.
- The Speaker has to conduct the meetings of the House in an orderly manner. Whenever there is conundrum or indiscipline in the House, he has sufficient disciplinary powers to handle such a situation. He derives his disciplinary powers from the Rules of Procedure of the House and his decisions in the matter of discipline cannot be normally challenged. In case of grave disorder, the Speaker may adjourn the House.
- The Speaker is the chief spokesman of the House. He represents its collective voice to the outside world. In the first place, all communications of the House to the President are made through the Speaker in the form of a formal address. On the other hand, all the communications from the President

to the House are made through the Speaker. Similarly, all communications from the Lok Sabha addressed to the Rajya Sabha are sent through the Speaker. And, it is the Speaker who receives all communications addressed to the Lok Sabha by the Rajya Sabha.

- In the event of disagreement over a bill between the Lok Sabha and Rajya Sabha, the President calls a joint-sitting of both the Houses and the Speaker presides over the joint-sitting. In this case, his decisions, rulings and interpretations on matters before the Joint Session are final.
- The Speaker regulates the debates and proceedings of the House. Even at the secret sittings, which are held at the request of the leader of the House, the Speaker determines the manners of reporting, the proceedings and the procedure to be adopted on such occasions.
- The rules relating to asking and answering of the questions depend upon the interpretation of the Speaker. He has a very large discretion in this matter. He may cut short or increase the 'question hour'. He may ignore the condition of the notice period for the question and may permit a question to be asked at a short notice.
- The Speaker is the supreme head of all the parliamentary committees whether nominated by him or chosen by the House. He appoints their chairman and issues such directions to them as he deems necessary. He holds consultations with them from time to time. The committee meetings cannot be held outside the Parliament House without his prior permission nor can officials of state government be summoned by the committee without his consent. The Speaker can remove a member of the committee on the recommendation of its chairman, if the member is absent from two or more consecutive sittings of the committee. Finally, the Speaker himself is the chairman of certain committees of the House, including the Business Advisory Committee, the General Purposes Committee and the Rules Committee.
- The Speaker appoints a committee consisting of three persons for investigating the charges for the removal of Chief Justice and other judges of the Supreme Court and high courts.
- He disqualifies a member if he defects under the anti-defection act. But his decision is subject to judicial review.
- The Speaker is the custodian of the rights and privileges of the members of the Lok Sabha. Without his permission, no member can be arrested in the Parliament. He also accepts the resignation of the members of Lok Sabha.
- He authenticates all the bills passed by the Lok Sabha and sends them to Rajya Sabha or the President, as the case may be.
- The Speaker is also the Head of the Lok Sabha Secretariat, which functions under his control and direction. The Secretary-General is appointed by the Speaker from amongst those who have made their mark in the service of

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Parliament in various capacities. The Secretary-General is always present in the House during its sittings and advises the Speaker. But the Speaker is not bound by his advice.

- The Speaker is the ex-officio President of the Indian Parliamentary Group, which is the Indian branch of the Inter-Parliamentary Union and the Commonwealth Parliamentary Association. He nominates the personnel for various parliamentary delegations to foreign countries.
- The Speaker is also the Ex-officio Chairman of the conference of presiding officers of legislative bodies in India. This body consists of the Chairman and Deputy Chairman of the upper chambers, and the Speakers and Deputy Speaker of the lower chambers of Parliament and Legislatures of States and Union Territories. This body evolves uniform rules for the conduct of proceedings in Indian Legislatures.
- The Speaker enjoys a very formidable position in the Lok Sabha. Not only the framers of the Constitution, but also the leaders of the House, have from time to time, recognized that our Speaker should enjoy the same status and privileges that the Speaker of British House of Commons enjoys. Acharya Kriplani rightly pointed out that the Speaker was not only to guide and regulate the proceedings of the House; he was also ‘the guardian of the liberties of the House and through the House, of the liberties of the people’.

9.6 PRIVILEGES OF PARLIAMENT

According to the British constitutional theorist Erskine May, ‘Parliamentary privilege is the sum of certain rights enjoyed by each House collectively... and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its members. Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by members.

‘When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege and is punishable under the law of Parliament. Each House also claims the right to punish contempts, that is, actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of

its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its members or its officers.’

Parliamentary Organization

What is contempt

‘Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.’

In interpreting these privileges, therefore, attention must be given to the general principle that the privileges of Parliament are granted to members in order that ‘they may be able to perform their duties in Parliament without let or hindrance.’ They apply to individual members ‘only insofar as they are necessary in order that the House may freely perform its functions. They do not discharge the member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects.’ Privileges of Parliament do not place a Member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws, unless there are good and sufficient reasons in the interest of Parliament itself to do so.

Constitutional provisions

The Constitution of India specifies some of the privileges. These are freedom of speech in Parliament; immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof; immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure. No officer or Member of Parliament empowered to regulate procedure or the conduct of business or to maintain order in Parliament can be subject to a court’s jurisdiction in respect of exercise by him of those powers. No person can be liable to any civil or criminal proceedings in any court for publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice. This immunity is also available for reports or matters broadcast by means of wireless telegraphy. This immunity, however, is not available to publication of proceedings of a secret sitting of the House.

In other respects, the powers, privileges and immunities of each House of Parliament and of the members and committees thereof shall be such as may from time to time be defined by Parliament by law and until so defined, shall be those of that House, its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

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Statutory provision

Apart from the privileges as specified in the Constitution, the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion.

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Privileges based on Rules of Procedure and precedents

The Chairman has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member on a criminal charge or for a criminal offence. Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of law, relating to the proceedings of the House without the permission of the House. Members or officers of the House cannot be compelled to attend as witnesses before the other House or a House of a State Legislature or a committee thereof without the permission of the House and without the consent of the member whose attendance is required.

Consequential powers of the House

In addition to the above mentioned privileges and immunities each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are: to commit persons, whether they are members or not, for breach of privilege or contempt of the House; to compel the attendance of witnesses and to send for persons, papers and records; to regulate its procedure and the conduct of its business; to prohibit the publication of its debates and proceedings and to exclude strangers.

Penal powers of the House

If any individual or authority violates or disregards any of the privileges, powers and immunities of the House or members or committees thereof, he may be punished for “breach of privilege” or “contempt of the House”. The House has the power to determine as to what constitutes breach of privilege and contempt. The penal jurisdiction of the House in this regard covers its members as well as strangers and every act of violation of privileges, whether committed in the immediate presence of the House or outside of it.

A person found guilty of breach of privilege or contempt of the House may be punished either by imprisonment, or by admonition (warning) or reprimand. Two other punishments may also be awarded to the members for contempt, namely, ‘suspension’ and ‘expulsion’ from the House.

Check Your Progress

1. What is the principle function of the Indian legislature?
2. Which is the upper house of the parliament of India?
3. State one difference between the Lok Sabha and the Rajya Sabha.

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9.7 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The principle function of the Indian legislature is to make laws.
2. The Rajya Sabha is the house of the parliament of India.
3. The normal life of every Lok Sabha is five years whereas the Rajya Sabha is a permanent body.

9.8 SUMMARY

- The Lok Sabha is known as the House of the People as it is directly elected by the people. It is also known as the Lower House.
- India has adopted a Parliamentary form of government in which the Parliament enjoys a pivotal position.
- The principal function of the Legislature is to make laws. The Constitution of India has divided the Legislative powers between the Centre and States according to List System—the Union List, State List and Concurrent List.
- The parliamentary system of government envisages a close cooperation between the legislative and the executive wings of the government.
- The Parliament can make laws regulating the Constitution, organization, jurisdiction and powers of the Courts.
- The special powers of the Rajya Sabha are in the form of initiation of certain resolutions that come under the following Articles:
 - o Article 67
 - o Article 249
 - o Article 312
- A Money Bill can be initiated in Lok Sabha only and only after it has been passed by the Lok Sabha; it gets transmitted to Rajya Sabha for its concurrence or recommendation.
- The Estimates Committee first came up in April 1950, and its functions got further enlarged in 1953.

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- For the efficient and impartial proceedings, both the Houses of Parliament have been empowered by the Constitution to have a Chief and a Deputy Chief Presiding Officer.
- Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its members.
- Privileges of Parliament do not place a Member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws, unless there are good and sufficient reasons in the interest of Parliament itself to do so.
- Apart from the privileges as specified in the Constitution, the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion.

9.9 KEY WORDS

- **Suffrage:** It is the right to vote in political elections.
- **Neutrality:** It is the state of not supporting or helping either side in a conflict.
- **Amendment:** It is a change or addition to a legal or statutory document.
- **Defection:** It is the desertion of one's country or cause in favour of an opposing one.
- **Guardian:** A person who cares for persons or property is known as the guardian.

9.10 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the legislative and financial powers of the Lok Sabha.
2. What are the miscellaneous functions of the Lok Sabha?
3. Mention the differences between the Lok Sabha and the Rajya Sabha.
4. Briefly mention the functioning of the parliamentary committees.

Long-Answer Questions

1. Discuss the special powers of the Rajya Sabha.
2. Explain the financial powers of the Rajya Sabha.
3. Describe the functioning of the parliamentary system of government.

9.11 FURTHER READINGS

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UNIT 10 PARLIAMENTARY FORUMS

NOTES

Structure

- 10.0 Introduction
 - 10.1 Objectives
 - 10.2 Objectives and Composition of Parliamentary Forum
 - 10.2.1 Composition
 - 10.3 Functions of Parliamentary Forums
 - 10.4 Answers to Check Your Progress Questions
 - 10.5 Summary
 - 10.6 Key Words
 - 10.7 Self Assessment Questions and Exercises
 - 10.8 Further Readings
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10.0 INTRODUCTION

During the Fourteenth Lok Sabha, on 12 May 2005, the then Speaker of Lok Sabha made an observation in the House relating to the constitution of a Parliamentary Forum on Water Conservation and Management to enable Members to discuss critical issues related to water in a structured manner and also to raise the issues more effectively in the House and during the meetings of the Committees. Afterwards, the Parliamentary Forum on Water Conservation and Management was constituted on 12 August 2005. Subsequently, four more Parliamentary Forums-on Children, Youth, Population and Public Health and Global Warming and Climate Change-were constituted in the Fourteenth Lok Sabha.

Upon the constitution of the Fifteenth Lok Sabha in May 2009, all these Parliamentary Forums were reconstituted on 21 January 2010. During the term of the Fifteenth Lok Sabha, the Speaker of Lok Sabha constituted three more Parliamentary Forums-on Disaster Management (on 8 December 2011); Artisans and Craftspeople (on 26 April 2013); and Millennium Development Goals (on 11 December 2013)-thereby increasing the number of Parliamentary Forums to eight. Thus, the Fifteenth Lok Sabha had the following Forums:

1. Parliamentary Forum on Water Conservation and Management
2. Parliamentary Forum on Children
3. Parliamentary Forum on Youth
4. Parliamentary Forum on Population and Public Health
5. Parliamentary Forum on Global Warming and Climate Change
6. Parliamentary Forum on Disaster Management

7. Parliamentary Forum on Artisans and Craftspeople
8. Parliamentary Forum on Millennium Development Goals

This unit discuss parliamentary formus in detail.

10.1 OBJECTIVES

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

- List the objectives of Parliamentary Forums
- Discuss the composition of Parliamentary Forums
- Explain the functions of Parliamentary Forums

10.2 OBJECTIVES AND COMPOSITION OF PARLIAMENTARY FORUM

The objectives behind the constitution of various Parliamentary Forums are:

- to provide a platform to the members to have interaction with Ministers concerned, experts and key officials from the nodal Ministries with a view to have a focused and meaningful discussion on critical issues with a result-oriented approach for speeding up the implementation process;
- to sensitize the Members about the key areas of concern and also about the ground level situation and equip them with the latest information, knowledge, technical know-how and valuable inputs from experts both from the country and abroad for enabling them to raise these issues effectively on the Floor of the House(s) and in the meetings of various Parliamentary Committees; and
- to prepare a data-base on critical issues coming under the ambit of each Parliamentary Forum after culling out relevant information from different sources such as the Ministries concerned, United Nations, NGOs, Internet, Newspapers, etc. and circulation thereof to the Members so that they can meaningfully participate in the discussions held at the meeting of the Forums and seek clarifications from experts/officials from the Ministry present in the meetings.

The Parliamentary Forums do not interfere with or encroach upon the jurisdictions of the Departmentally Related Standing Committees or the Ministry/ Department concerned.

10.2.1 Composition

The guidelines of the respective Forum provide that the Speaker of Lok Sabha is the *ex officio* President of all the Parliamentary Forums, except the Parliamentary Forum on Population and Public Health where the Chairman of Rajya Sabha is the *ex officio* President and the Speaker of Lok Sabha is the *ex officio* Co-

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President. Apart from the President, the Deputy Chairman of Rajya Sabha, Deputy Speaker of Lok Sabha, the Ministers concerned and Chairpersons of the respective Departmentally Related Standing Committee are *ex officio* Vice-Presidents of the Forum.

Each Forum consists of not more than 31 Members (excluding the President, Co-President and Vice-Presidents) out of whom not more than 21 are from Lok Sabha and not more than 10 are from Rajya Sabha.

Members other than the President and Vice-President of the Forums are nominated by the Speaker of Lok Sabha, and the Chairman of Rajya Sabha, as the case may be, from amongst the Leaders of various Political Parties and Groups, or their nominees, who have special knowledge/keen interest in the subject.

Upto five Additional Vice-Presidents/Members, out of whom not more than 3 Members from Lok Sabha and 2 Members from Rajya Sabha, can be nominated by the Speaker of Lok Sabha and the Chairman of Rajya Sabha, as the case may be.

Appointment of Member-Convener

The President of the Forum may appoint a Member-Convener for conducting regular, approved Programmes/Meetings of the Forum. In the case of the Parliamentary Forum on Population and Public Health where the Chairman of Rajya Sabha is the *ex officio* President and the Speaker of Lok Sabha is the *ex officio* Co-President, such Member-Convener may be appointed by the President/Co-President.

Term of Office

The term of office of Members of the Forum remains co-terminus with their membership in the respective Houses. A Member may also resign from the Forum by writing under one's own hand, addressed to the Chairman of Rajya Sabha, or the Speaker of Lok Sabha, as the case may be.

Association of Experts

Experts in the respective fields concerned with the subject matter of each of the Forums are associated as Special Invitees, who may share their views/present papers during the meetings/seminars of the Forum.

10.3 FUNCTIONS OF PARLIAMENTARY FORUMS

Let us go through the functions of the Parliamentary Forums established during the fourteenth and fifteenth sessions of Lok Sabha in India.

1. Parliamentary Forum on Water Conservation and Management

The functions of the Parliamentary Forum on Water Conservation and Management are:

- To identify problems relating to water and make suggestions/recommendations for consideration and taking appropriate action by the government/organizations concerned;
- To identify ways of involving members of parliament in conservation on and augmentation of water resources in their respective States/Constituencies;
- To organize seminars/workshops to create awareness for conservation and efficient management of water; and
- To undertake such other related task as may deem fit.

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2. Parliamentary Forum on Children

The functions of Parliamentary Forum on Children are:

- To enhance awareness and attention of Parliamentarians towards critical issues affecting children's well-being so that they may provide due leadership to ensure their rightful place in the development process.
- To provide a platform to Parliamentarians to exchange ideas, views, experiences, expertise, practices in relation to children, in a structured manner, through workshops, seminars, orientation programmes, etc;
- To provide Parliamentarians an interface with civil society for highlighting children's issues including, inter alia, the Voluntary Sector, Media and Corporate Sector and thereby to foster effective strategic partnerships in this regard as well as to enable Parliamentarians to interact in an institutionalized manner with specialized UN Agencies like UNICEF and other comparable multilateral Agencies on expert reports, studies, news and trend- analyses, etc.
- To undertake any other tasks, projects, assignments, etc. as the Forum may deem fit.

3. Parliamentary Forum on Youth

The functions of the Parliamentary Forum on Youth are:

- To have focused deliberations on strategies to leverage human capital among the youth for accelerating development initiatives;
- To build greater awareness amongst public leaders and at the grass-root level on the potential of youth power for effecting socio-economic change;
- To interact on a regular basis with youth representatives and leaders, in order to better appreciate their hopes, aspirations, concerns and problems;

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4. Parliamentary Forum on Population and Public Health

The functions of the Parliamentary Forum on Population and Public Health are:

- To have focused deliberations on strategies relating to population stabilization and matters connected therewith;
- To discuss and prepare strategies on issues concerning public health;
- To build greater awareness in all sections of the society, particularly at the grass-root level, regarding population control and public health;

5. Parliamentary Forum on Global Warming and Climate Change

The functions of the Parliamentary Forum on Global Warming and Climate Change are:

- To identify problems relating to global warming and climate change and make suggestions/ recommendations for consideration and appropriate action by the government/organizations concerned to reduce the extent of global warming;
- to identify the ways of involving members of parliament to interact with specialists of National and International Bodies working on global warming and climate change with increased effort to develop new technologies to mitigate global warming;
- To identify the ways of involving members of parliament to spread awareness to prevent global warming and climate change.

6. Parliamentary Forum on Disaster Management

The functions of the Parliamentary Forum on Disaster Management are:

- To identify problems relating to disaster management and make suggestions/ recommendations for consideration and appropriate action on by the government/organizations concerned to reduce the effect of disasters;
- To identify the ways of involving the members of parliament to interact with specialists of National and International bodies working on disaster management with increased effort to develop new technologies to mitigate the effect of disasters;
- To organize seminars/workshops to create awareness about the causes and effects of disasters among the members of parliament;

7. Parliamentary Forum on Artisans and Craftspeople

The functions of the Parliamentary Forum on Artisans and Crafts people are:

- To further enhance awareness and attention of parliamentarians towards critical issues affecting artisans and craftsmen so as to preserve and promote traditional art and crafts through various mechanisms;

- To provide a platform to parliamentarians to exchange ideas, views, experiences, expertise and best practices in relation to artisans and craftsmen, in a structured manner through workshops, seminars, orientation programmes and so forth;
- To hold comprehensive dialogue and discussion on the matters relating to the preservation of art and traditional craft and the promotion of artisans and crafts people with expert/organizations at the national and international levels;

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8. Parliamentary Forum on Millennium Development Goals

The functions of the Parliamentary Forum on Millennium Development Goals are:

- To review and enhance awareness and attention of parliamentarians towards critical issues which have bearing on achievement of goals/targets set under Millennium Development Goals by 2015;
- To provide a platform to parliamentarians to exchange ideas, views, experiences, expertise and best practices in relation to implementation of Millennium Development Goals in a structured manner through workshops, seminars, orientation programmes and so forth;
- To enable parliamentarians to interact in an institutionalized manner with specialized UN agencies and other comparable multilateral agencies, expert reports, studies, news and trend-analyses, and others, regarding achievement of Millennium Development Goals and
- To undertake any other tasks, projects, assignments, and others as the forum may deem fit.

Check Your Progress

1. Name the Parliamentary Forums that were constituted during the fourteenth Lok Sabha.
2. Who is the ex officio President of all the Parliamentary Forums?

10.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Parliamentary Forums that were constituted during the fourteenth Lok Sabha are the following:
 - Parliamentary Forum on Water Conservation and Management
 - Parliamentary Forum on Children
 - Parliamentary Forum on Youth

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- Parliamentary Forum on Population and Public Health
 - Parliamentary Forum on Global Warming and Climate Change
2. The Speaker of Lok Sabha is the *ex officio* President of all the Parliamentary Forums, except the Parliamentary Forum on Population and Public Health.

10.5 SUMMARY

- During the Fourteenth Lok Sabha, on 12 May 2005, the then Speaker of Lok Sabha made an observation in the House relating to the constitution of a Parliamentary Forum on Water Conservation and Management to enable Members to discuss critical issues related to water in a structured manner and also to raise the issues more effectively in the House and during the meetings of the Committees.
- During the term of the Fifteenth Lok Sabha, the Speaker of Lok Sabha constituted three more Parliamentary Forums-on Disaster Management (on 8 December 2011); Artisans and Craftspeople (on 26 April 2013); and Millennium Development Goals (on 11 December 2013)-thereby increasing the number of Parliamentary Forums to eight.
- The guidelines of the respective Forum provide that the Speaker of Lok Sabha is the *ex officio* President of all the Parliamentary Forums, except the Parliamentary Forum on Population and Public Health where the Chairman of Rajya Sabha is the *ex officio* President and the Speaker of Lok Sabha is the *ex officio* Co-President.
- Upto five Additional Vice-Presidents/Members, out of whom not more than 3 Members from Lok Sabha and 2 Members from Rajya Sabha, can be nominated by the Speaker of Lok Sabha and the Chairman of Rajya Sabha, as the case may be.
- The President of the Forum may appoint a Member-Convener for conducting regular, approved Programmes/Meetings of the Forum.
- Experts in the respective fields concerned with the subject matter of each of the Forums are associated as Special Invitees, who may share their views/ present papers during the meetings/seminars of the Forum.

10.6 KEY WORDS

- **Ex officio member:** This refers to a member of a body (a board, committee and council) who is part of it by virtue of holding another office.
- **Global Warming:** It is the gradual rise in the earth's temperature caused by high levels of carbon dioxide and other gases in the atmosphere.

10.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. State the objectives behind the constitution of Parliamentary Forums.
2. What is the term of office of the members of the Parliamentary Forums?.

Long-Answer Questions

1. Discuss the composition of the Parliamentary Forums.
2. Explain the functions of the various Parliamentary Forums.

10.8 FURTHER READINGS

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BLOCK - IV

SPECIAL PROVISIONS FOR SOME STATES

NOTES

UNIT 11 SPECIAL STATUS OF JAMMU AND KASHMIR

Structure

- 11.0 Introduction
- 11.1 Objectives
- 11.2 Special Status: An Introduction
- 11.3 Features of Jammu and Kashmir Constitution
- 11.4 Answers to Check Your Progress Questions
- 11.5 Summary
- 11.6 Key Words
- 11.7 Self Assessment Questions and Exercises
- 11.8 Further Readings

11.0 INTRODUCTION

During British rule, Jammu and Kashmir was a princely state and was ruled by Maharaja Hari Singh. Despite being a princely state, Jammu and Kashmir was under the control of British Government excluding all matters of administration and governance. This control includes defence, foreign affairs and control over means of communication. At the time of Indian independence from British, ruler of Jammu and Kashmir Maharaja Hari Singh was given option either to stay with India or remains independent, but under the pressure from internal tribal insurgency Maharaja Hari Singh was finally agreed to sign an agreement. This agreement is known as the instrument of accession to stay with India, with certain terms and conditions mentioned in the treaty signed between the Government of India and Maharaja of Jammu and Kashmir.

If we look at the historical perspective, Jammu and Kashmir was being ruled by Dogra king Maharaja Hari Singh and maintaining firm control on the princely state. At the time of Indian independence, the viceroy Lord Mountbatten had summoned the rulers of all princely states in India and given three options. The ruler of the state had to choose between:

- (i) Join Indian Union
- (ii) Join Pakistan
- (iii) Can remain independent

The accession of Jammu and Kashmir was a circumferential and dramatic event in which India has to make a commitment before the United Nation to follow

the referendum from the state so that the citizens of the Jammu and Kashmir could decide their own future and fate for the betterment. Later in the year 1949, all Indian princely states were requested to submit the representation to the Indian constituent assembly so that appropriate provisions could be added into the draft of Indian Constitution. Simultaneously, the princely states were supported and encouraged to make their own constituent assembly.

Jammu and Kashmir was able to negotiate the terms of accession, initially after receiving the offer from the Government of India. Maharaja Hari Singh of Jammu Kashmir decided to remain independent from the British rule and also decided not to join India or Pakistan and opted for an independent state. After independence, Jammu and Kashmir was attacked by the armed forces, supported by the Pakistani army and there was a great threat to the Jammu and Kashmir by the Pakistani supported militia. Due to this threat, Jammu and Kashmir ruler decided to join India for better security of the state. The Treaty for Accession was made mutually between the then Prime Minister Jawaharlal Nehru and ruler of Jammu and Kashmir. An assurance was given to Jammu and Kashmir ruler to give special provision to the state in the Indian article through making constitutional provision. Therefore, Article 370 was introduced in the Indian Constitution provides special treatment to the Jammu and Kashmir. In this article, many matters like defence, foreign relations, means of communication was kept under the domain of the Indian Constitution. In this article, special power and autonomy was given to the state of Jammu and Kashmir in which provision of separate constitution and flag was also stated. This article has provided freedom to Jammu and Kashmir to make its own constitution and a different flag different then rest of the India.

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11.1 OBJECTIVES

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

- State the Article 370 of Indian Constitution
- Discuss the provisions for permanent residentship in Jammu and Kashmir
- Critically analyse Article 370 of the Indian Constitution
- Identify the issues related to women in Kashmir
- Describe the important features of constitution of Jammu and Kashmir

11.2 SPECIAL STATUS: AN INTRODUCTION

A special status was given to the state of Jammu and Kashmir after making provisions in the Indian Constitution through Article 370. However, Jammu and Kashmir is not the only state which is enjoying the status of special state, but there are a few other states also that have special status and different treatment is provided by the Indian Constitution. However, the case of Jammu and Kashmir

is different from the other Indian states of special status. This special status provides great autonomy to the states and Article 370 of Indian Constitution provides autonomous status to the rest of the Indian states.

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As per the provisions made in the Part XXI of the Constitution of India, the special status deals with temporary and transitional provisions. According to these provisions, Jammu and Kashmir has a prime minister in the place of Chief Minister as the case of other Indian states. Similarly, the position of governor was replaced by the Sadr-e-Riyasat. Sadr-e-Riyasat is nothing, but the president of the state. Slowly with the time, this provision partly withdrawal in the year 1965. Separate Constitution was continued to be functional in the state of Jammu Kashmir with the Article 370 provisions. The provisions made in the Article 35 A, which provides certain rights to the Jammu Kashmir and its people also remained in force. Let us have a look on some of the constitutional provisions that are made in the Article 370 of Indian Constitution:

- Indian Constitution is not completely implemented and applicable to the state of Jammu Kashmir.
- The state of Jammu Kashmir was given a special permission for having its own constitution.
- The legislative power of Central government applicable to the Jammu and Kashmir states is very limited.
- The central government of India having legislative power in the subjects of defence matters, means of communication and matter related to foreign Affairs.
- The other constitutional power given to the Indian Government in the constitution can be extended to the state of Jammu Kashmir with the concurrence of the state government. This concurrence and power only provisional and must be ratified by the constituent assembly of the Jammu and Kashmir state. The duration of state assembly in the state of Jammu and Kashmir is 6 years as compared to 5 years of other Indian states.
- The state of Jammu and Kashmir has its own president and prime minister up to the year of 1965.
- The state of Jammu and Kashmir has a separate flag.
- The citizens of India have no right to purchase any property specifically immovable property in the Jammu and Kashmir.
- Only permanent resident of Jammu and Kashmir have right to purchase the immovable property in the state. According to this provision only permanent and bona fide residents of the state can have the right to purchase land or immovable property in the state of Jammu and Kashmir. It enables great autonomy to the citizen of Jammu and Kashmir. And this separates Jammu and Kashmir from rest of the Indian states. Any resident of any Indian state

cannot buy land or cannot make his house in the state of Jammu and Kashmir. The reason given behind this provision was to protect the internal cultural and social identity integral.

*Special Status of Jammu
and Kashmir*

The constitution was adopted on 17 November 1956 and came into force on 26 January 1957 (Temporary, Transitional and Special Provisions. Art. 370.) Further understanding of Article 370 in case of Jammu and Kashmir can be had, after going through the detailed text of the article as given in the part 21 of Indian Constitution which reads as below:

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- (1) Notwithstanding anything in this Constitution,
 - (a) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir;
 - (b) the power of Parliament to make laws for the said State shall be limited to
 - (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State.
 - (ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.
 - (c) the provisions of article 1 and of this article shall apply in relation to that State;
 - (d) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order 1 specify: Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in paragraph (i) of sub-clause (b) shall be issued except in consultation with the Government of the State: Provided further that no such order which relates to matters other than those referred to in the last preceding provision shall be issued except with the concurrence of that Government.
- (2) If the concurrence of the Government of the State referred to in paragraph (ii) of sub-clause (b) of clause (1) or in the second provision to sub-clause (d) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify: Provided that the

recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.

Explanation

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For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948.

It is mentioned in the Article 3 of Jammu and Kashmir Constitution that the state of Jammu and Kashmir is and shall be an integral part of the Union of India. It is, thus, clear from this statement that Jammu and Kashmir despite of the special provisions will remain an integral part of India. This provides security to the Jammu and Kashmir that it cannot be independent state and has to remain with the Union of India as far as the Preamble of constitution of Jammu and Kashmir explains clearly. The legislative power of the Jammu and Kashmir state extended to all matters except from the matters those are coming under the preview of the Indian Parliament. There are certain legislative matters that are falling under the provisions of the Indian Constitution. The Indian Constitution and Parliament has executive and legislative power of the state of Jammu and Kashmir in specific matters that are related with the defence and foreign Affairs.

The Article 370 was accepted in the Indian Constitution for the state of Jammu and Kashmir and issued by the notification of Government of India and signed by the Indian President Rajendra Prasad in the year 1954. This notification was issued on the recommendation of Indian union government under the prime ministership of Jawaharlal Nehru. This agreement was enacted in the response of the Delhi agreement of 1952. This agreement was finalized between the Indian Prime Minister Jawaharlal Nehru and Prime Minister of Jammu and Kashmir Sheikh Abdullah of that time. According to this treaty the extension of Indian citizenship to the Jammu and Kashmir was considered as a state subject. Here, it should be clarified that there are certain subjects those are falling under the preview of Central Government, while some are falling under the preview of state government, although there are some articles and subjects that are falling in the concurrent list of both state and union government.

Another exception allowed to the state of Jammu and Kashmir was mentioned in Article 35A of the Indian Constitution which provides further autonomy to Jammu and Kashmir. At the time of giving status of special status to Jammu and Kashmir through the presidential order, Bakshi Ghulam Mohammad was the prime minister of Jammu and Kashmir. Bakshi Ghulam Mohammad was from National Conference party.

Addition of article 35 A to the Indian Constitution

There are several questions raised by the different segments of the society within India regarding addition of Article 35 A to the Indian Constitution. Notwithstanding,

the article 35 A and Article 370 are still in force in the state of Jammu and Kashmir and remained popular and debated issues in the Indian politics from the decades. There are support and opposition from the political parties. Some of the Indian political parties are in the favour of Article 370 and 35A, while some of the Indian political parties are questioning special provisions of the Indian Constitution and demanding continuously, to withdraw these articles.

After the approval and addition of Article 370 in the Indian Constitution, Jammu and Kashmir has its own constitution which was adopted in the 17th November 1956. In the constitution of Jammu and Kashmir, it is defined that the permanent resident of the state can only be a person who was a state subject before May 14th, 1950. According to this constitution, the permanent residentship of the state is now state subject. And state has the right to decide the conditions for the permanent citizenship for the Jammu and Kashmir.

It means the citizenship related laws can only be approved by the state legislature assembly of the Jammu and Kashmir state, as Central Government Authority of India has nothing to do with related laws. Indian Union cannot amend or change the law of citizenship in the Jammu and Kashmir, this right is only given to the constituent assembly of the Jammu and Kashmir.

Instrument of Accession (Jammu and Kashmir)

After the Indian Independence from the British rule there was a legal signed agreement between the Maharaja Hari Singh and government of India. Jammu and Kashmir Dominion of India is given in the instrument of accession. It is a legal document and was executed by the Jammu and Kashmir ruler Maharaja Hari Singh on 26th October 1947. The instrument of accession states that ruler of Jammu and Kashmir agreed to accede to the Union of India.

As it is already mentioned that the Jammu and Kashmir was attacked by the Pakistani supported military immediately after the Indian Independence and Maharaja Hari Singh was bound to make a treaty with the Indian government to save the boundaries of Jammu and Kashmir, from Pakistani Occupied Kashmir (pok) invaders. In the month of October 1947, the governor general of India Lord Mountbatten has accepted the accession of Jammu and Kashmir to India with the following remark:

‘it is my Government’s wish that as soon as law and order have been restored in Jammu and Kashmir and her soil cleared of the invader the question of the State’s accession should be settled by a reference to the people.’

Remark made by the governor general Lord Mountbatten has laid down strong foundation to controversy between India and Pakistan regarding the future status of Jammu and Kashmir and there are bilateral blames about the legality of accession of Jammu and Kashmir by India. Pakistan has time and again challenging the legality of accession of Jammu and Kashmir by Indian Government and claiming that accession was fraudulent. In return, India claims that accession of Jammu and

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Kashmir was unconditional and was based on the legal treaty between the ruler of Jammu and Kashmir and Government of India of the time. The accession to India is celebrated on Accession Day, which is held annually on October 26.

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The full text of the Instrument of Accession (Jammu and Kashmir) executed by Maharaja Hari Singh on 26 October 1947 and accepted by Lord Mountbatten of Burma, Governor-General of India, on 27 October 1947 (excluding the schedule mentioned in its third point) is given in the box below:

Whereas the Indian Independence Act 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an Independent Dominion known as India, and that the Government of India Act, 1935 shall, with such omission, additions, adaptations and modifications as the governor-general may by order specify, be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the governor-general, provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof.

Now, therefore, I Shriman Inder Mahander Rajrajeswar Maharajadhiraj Shri Hari Singhji, Jammu and Kashmir Naresh Tatha Tibbetadi Deshahhipathi, Ruler of Jammu and Kashmir State, in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and

I hereby declare that I accede to the Dominion of India with the intent that the governor-general of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of August, 1947, (which Act as so in force is hereafter referred to as "the Act").

I hereby assume the obligation of ensuring that due effect is given to the provisions of the ACT within this state so far as they are applicable therein by virtue of this my Instrument of Accession.

I accept the matters specified in the schedule hereto as the matters with respect to which the Dominion Legislatures may make laws for this state.

I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the ruler of this state whereby any functions in relation to the administration in this state of any law of the Dominion Legislature shall be exercised by the ruler of this state, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

The terms of this my Instrument of accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947 unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

Nothing in this Instrument shall empower the Dominion Legislature to make any law for this state authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this state deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me

transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice Of India.

Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

Nothing in this Instrument affects the continuance of my sovereignty in and over this state, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this state or the validity of any law at present in force in this state.

I hereby declare that I execute this Instrument on behalf of this state and that any reference in this Instrument to me or to the ruler of the state is to be construed as including to my heirs and successors.

Given under my hand this 26th day of OCTOBER nineteen hundred and forty seven.

Hari Singh Maharajadhiraj of Jammu and Kashmir State.

I do hereby accept this Instrument of Accession.

Dated this twenty seventh day of October, nineteen hundred and forty-seven.

(Mountbatten of Burma, Governor General of India).

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Provisions for Permanent Residency

Article 370 of Indian Constitution provides right of defining the permanent residency for the Jammu and Kashmir state. The citizenship of Jammu and Kashmir has become the status objective by the constitutional provision subsequently; it was incorporated in the Jammu and Kashmir constituent assembly that the citizenship qualifications are to be fulfilled by the person who wants to become permanent resident of the Jammu and Kashmir. This provision was said to be discriminatory in nature by certain section of the society. And many people have challenged the respective section of Jammu and Kashmir constitution regarding qualification for the membership of the Legislature. In the Jammu and Kashmir legislature, the membership and qualification of the Legislative Assembly is also defined.

The provision has been made in the Jammu and Kashmir Constitution that a person cannot be qualified or selected to fill a legislature seat in the state until unless he is a permanent resident of Jammu and Kashmir. It is clearly indicated, from the provision that any non-resident can not be a member of legislative of the Jammu and Kashmir assembly. Only legal and permanent residents of the Jammu and Kashmir States can qualify for a legislature seat, no person from outside Jammu and Kashmir is allowed to become a member of constituent assembly.

Simultaneously, similar provisions are made in Jammu and Kashmir constitution regarding the citizenship criteria and employment in government jobs, after the implementation of the Jammu and Kashmir constitution. The post to any Public Service office is also meant for the permanent residents of the Jammu and Kashmir.

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It is also clarified in the constitution that the election of the Legislative Assembly will be based on the adult suffrage but a person, who is having permanent citizenship of the Jammu and Kashmir state and having above 18 years of age having the right to vote for the legislative assembly.

It is clarified in the constitution of Jammu and Kashmir that a person without permanent residentship of the Jammu and Kashmir cannot hold any property in the state of Jammu and Kashmir.

All the state government jobs are meant only for the permanent residents of Jammu and Kashmir, a person who is not a permanent resident of the Jammu and Kashmir cannot obtain job in the Jammu and Kashmir Government.

If a person wants any form of government support and financial aid from the government, he or she must be a permanent resident of Jammu and Kashmir. Similarly, a person cannot join any professional college of Jammu and Kashmir without having permanent residentship of the Jammu and Kashmir. It disqualifies the students from other states to take admission in the government aided colleges in the state of Jammu and Kashmir. The integrity of the state is maintained by such loss by prohibiting other state's students in the professional colleges.

The provisions implementing the Delhi Agreement were as follows:

The state subject of permanent resident in case of Jammu and Kashmir was extended to Indian citizenship. Meanwhile another Article 35A was added to the Indian Constitution. Article 35A further empowers the state legislator for the formulation of legislation so that permanent residents can be privileged. The privileged citizenship was further extended settlement in the state and employment in the state government jobs parallel to the immovable property rights to the permanent residents of Jammu and Kashmir.

The area of jurisdiction of Indian Supreme Court has also been extended to the Jammu and Kashmir in certain cases and disputes petition or the matter can be sought for the Indian Supreme Court. Under certain circumstances and threat to the internal security of the nation, central government can impose emergency in the state of Jammu and Kashmir. If Government of India feels and there are evidences and probability on the Internal security of the country or state, then central government of India can exercise the provision of emergency in the state.

Some of the provisions that were not added in the Delhi agreement during initial formation of constitution of Jammu and Kashmir as well as India related special provisions, such as the financial relationship between the Union and the state of Jammu and Kashmir were accorded as per the other Indian states. Specifically, the custom duty of state was abolished so that business opportunities for the Kashmir could be enhanced. It was largely abolished due to the threat from the internal and external terrorism in the Jammu and Kashmir. It is common thought that the younger generation is moving towards destructive activities due to lack of employment in the state and if employment opportunity could be enhanced

then these youths could be brought back into the mainstream of state as well as of the Union of India.

Various aspects of Article 370 and Criticism

Since the issuance of special state status to Jammu and Kashmir, the issue remained on the agenda of almost all political parties and political activist of different backgrounds. There are favour and opposition with the individual logics and statements. In between, Jammu and Kashmir has faced a long period of insurgency, violence and continuous militancy. The violence caused killing of thousands of innocent people in the state and still continued. The offers are being made from the different segments of the society and political arena to resolve the issue from their own perspectives. But and so far it seems that the provision of special state to Jammu and Kashmir through Article 370 and 35A are debatable and disputed issues. Number of meetings negotiations and dialogues has so far been conducted among the various stakeholders, but the issue of Jammu and Kashmir remained unresolved and killing of innocent people is on the way.

In a recent movement, certain political and social groups have challenged the article 35 A in the Supreme Court of India. In the year 2015, a group of people filed a petition before the Honourable Supreme Court of India regarding article 35A. The petition has claimed that the article 35A was added to the constitution without properly following the procedure prescribed to amend the Indian Constitution. The amendment in Indian Constitution can only made through the provisions given in article 368 of the Indian Constitution. The petitioner has given the reference of this article and claimed that during imposing and approving article 35A, the prescribed procedure which was given in Article 368 was not followed. Therefore, the article 35A should be abolished and have no legal value. The petitioner also claimed that the imposing of such constitutional provision in a particular state violates the provisions and procedures mentioned in the constitution and established by the law. Another claim made in this petition was that the Article 368 of Indian Constitution prescribes that any constitutional amendment should be placed before the parliament for a debate. As it is clear that if a Constitutional Amendment is to be brought, then the proposed amendment should be discussed in the Parliament and should be passed by the Parliament first, by a majority of two third members. The another point was made with the reference to the article 14 of the Indian Constitution which provides equal resident citizen rights to all the citizens of the union, whereas the non-resident citizens from the Indian states do not have the rights and privileges equivalent to the permanent citizens of the Jammu and Kashmir state. It creates condition of conflict to the fundamental rights of the entire nation citizens.

On the other hand, the political leaders from Jammu and Kashmir are backing the Article 370 and 35A to keep the autonomous status of the state untouched. Supporters of the Article 370 and 35A are not in condition to compromise the

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basic rights of Kashmiri people that were granted through these special provisions of the constitution.

Many a times International Agencies like, the United Nation has proposed the stakeholders to mediate the issue so that the dispute could be resolved peacefully. There are continuous offers and suggestions from the international organisations to resolve this issue to stop further violation of human rights and violence against the innocent people.

Issues related to Women in Kashmir

The special provisions made in the Indian Constitution with regards to the permanent citizenship have created the issue of women also. It is being blamed by certain feminist organisations that the fundamental rights of women are being violated under the influence of these special provisions in the state of Jammu and Kashmir. For instance, if a Kashmiri women marry to a man who is not the permanent resident of the state of Jammu and Kashmir then the Kashmiri women loses its permanent citizenship in the state and cannot have the rights as citizens of the Jammu and Kashmir. For example, if a Kashmiri woman married to a non-resident Kashmiri male, she cannot have right on the property neither she can purchase immovable property in the state and loses their right on government jobs and commercial education in government funded organisations. Organisations and activists have categorised such incidence and the violation of fundamental human rights specifically for women in the state of Jammu and Kashmir.

Another aspect of Socio-Economic Development

It is also claimed from certain segment of society specifically, industrial and commercial organisations, that such provisions are prohibiting the overall growth of the state because there is no possibility of making investment in the state for outsider business community not only from India, but from the rest of the world too. The foreign investment in any geographical area is mandatory in the present day business environment for the sake of economic growth. Due to the restriction on property ownership the private sector and the industrialists are not able to take over the required land for establishing the organisations for commercial purposes which blocks the economic growth of Jammu and Kashmir. The supporters of such thoughts claims that if the permission to establish commercial organisations and industry is granted then the state of Jammu and Kashmir can become more prosperous and economically strong. The natural resources available in the state of Jammu and Kashmir are enormous and can be better utilised if the investment from the other part of India could be allowed. The unemployment and illiteracy in the state could also be addressed if the permission of land ownership and citizenship are relaxed in the state of Jammu and Kashmir for other citizens of India. There are claims that the industrial and whole private sector in the Jammu and Kashmir is largely suffering due to the property ownership limitations. The RTE is not implemented in the state due to Article 370, which prohibit the education right of Kashmiri people.

Due to the restriction in the government job for the permanent citizens of the Jammu and Kashmir, the competent professionals from engineering, medical or other commercial areas are not allowed to provide their services in the Kashmir due to which there is a lack of experts in the area which causes the blockage of overall growth of the state.

It is also worth to mention that such autonomy is causing certain discriminative behaviour towards the citizens of Jammu and Kashmir as well as other states of India because there is no enough penetration of experts, which is predominantly required for the development and growth of any society in particular. The political parties from most of the backgrounds are seems primarily responsible to keep the issue unresolved.

Incorporation of Article 35A in the Indian Constitution

In addition to Article 370, another Article 35 A was also incorporated in the Indian Constitution by the President of India through is presidential order in this regard. As stated earlier that Government of India approved the Article 35A with regard to privileges and rights for the permanent residents of Jammu and Kashmir. This order enables citizen of Jammu and Kashmir to have privileges and rights for property, education and employment in government jobs. The Article 35 A with regard to Jammu and Kashmir was questioned at large in Indian political forum through different angles and achieved attention from all corners of the society. Some of the experts are questioning that the President of India has make the amendment in Indian Constitution without putting the matter before the Indian Parliament for the discussion. The matter of Constitutional Amendment should have brought before the Indian Parliament for the proper discussion and approval from the members.

Support of Special provisions to Jammu and Kashmir

There are segments in the society that are claiming that implemented Articles 370 are influenced with the communal feelings. The people those opposing the special status of Jammu and Kashmir with special reference to Article 370 and 35A are not looking the matter in totality but their view is one sided. The supporter of special provisions to come Jammu and Kashmir believes that there are other states in India also that have special provisions. Therefore, the special status of Jammu and Kashmir should be looked from the historical perspectives of Kashmiri people and the autonomy of the people of this land should be preserved. Many experts are in fear and suspects that if Article 370 and 35 A changed, then there might be further conflict in the state. Most of the political parties from Jammu and Kashmir are always backing these special provisions and giving their arguments and logics in the favour of the special provisions. Some extremists are going much ahead from the democratic perspectives and speak about the destructive lines on the issue to further worsening it, rather than to resolve it. There are different opinions on the issue, but it doesn't mean that the political parties and their leaders from top

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cadre have right to give irresponsible statements regarding any proposed amendment in these articles. In the favour, there is an important decision from the high court of Jammu and Kashmir which reads as:

"The Parliament has no power to legislate law about the subject's administration of justice, the land & the other immovable properties. [...]"

This decision from high court of Jammu Kashmir clearly clarify, the condition that Indian Union and its Parliament have no legislative power to abolish or change the subject matters regarding administration of Justice, land ownership and occupying the immovable property and the right of citizenship in the state of Jammu and Kashmir. However, these kinds of justifications are challenged before The Honourable Supreme Court of India.

Demand for Abolition of Article 370

Since its implementation, there are voices from different platforms from Indian political parties and reformist about the evolution of Article 370 with regard to Jammu and Kashmir. Since there are two sides of the matter, one is in favour and other one is in opposition and similar is the case of Article 370. There is opposition and support simultaneously on the issue and both have their own logics and statements. It is believed that it is Article 370 which encourages several extremists' activities in J&K and other parts of the country. It is also argued that it was a temporary arrangement and it was supposed to withdrawn gradually and that it is like a reminder to the people of J&K that they still have to coalesce with the rest of the country.

If India is a nation, then the rights of its citizens in all the states should be equally distributed and there should not be any discrimination among the citizens. This logic looks quite appearing and sound but at the same time the logic given by the political parties and supporters of articles 370 and 35A are equally sound. The fear of Kashmiri people with regard to loss of historical flavour of the state will not be safeguard if these articles are abolished; therefore they are always opposing any amendment to these articles.

Check Your Progress

1. List the special states in India.
2. When was the Article 370 accepted and issued in the Indian Constitution?

11.3 FEATURES OF JAMMU AND KASHMIR CONSTITUTION

As stated earlier that the state of Jammu and Kashmir having separate constitution and this constitution is applicable to the Jammu and Kashmir state only. Initially, this constitution was adopted on 17th November 1956. The constitution of Jammu

and Kashmir came into effect from January 26, 1956. With the time there are many amendments in the constitution as per the demand of the time. Following are the important features of constitution of Jammu and Kashmir:

Emergency Provisions

Indian government through its parliament or any decision cannot declare financial emergency in the state of Jammu and Kashmir. This provision is mentioned in Article 370 that the Union of India has no mandate to declare financial emergency in the state. Such type of emergency can only be imposed on the state in case of War or external aggression on the state. The Union of India has no power to declare emergency in the state on the basis of any internal disturbances or any internal threat. Emergency can be imposed in the state of Jammu and Kashmir only with the request or with the concurrence of government of the Jammu and Kashmir state.

Fundamental Duties, Directive Principles and Fundamental Rights

The 4th part of the Constitution of Jammu and Kashmir is about directive principle of the state policy, whereas part fourth is describing about the fundamental duties. In Indian Constitution, it is clearly mentioned that this constitutional provisions are not applicable to the state of Jammu and Kashmir, but as far as the fundamental rights are concerned article 19 and 31 of the Indian Constitution are equally applicable for the state of Jammu and Kashmir. Eventually, the fundamental rights about the property are guaranteed specifically in this state. In case of Jammu and Kashmir, the fundamental property rights and its ownership is protected for the permanent citizens of the states only. After many efforts the fundamental right of citizens regarding right to education is also not added to the constitution of Jammu and Kashmir. In fact, the right to education is added as a fundamental right of citizens in Indian Constitution. Here also it is different from Indian Constitution in granting the education to all its citizens.

Official Languages

In the constitution of Jammu and Kashmir the official language is Urdu, but at the same time English can be permitted for official purposes until and unless state legislature provides anything else in this regard.

Relations with Government of India

The relation with Union of India is described in the Article 3 of the Constitution of Jammu and Kashmir it reads as:

“The State of Jammu and Kashmir is and shall be an integral part of the Union of India.”

Article 5 of the part II of the constitution explains the executive and legislative powers of the Jammu and Kashmir state. It elaborates that the Legislative Assembly have legislative powers and executive powers in all matters with respect to which

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Indian Parliament has got power to make legislation for the state under the provisions mentioned in the Indian Constitution.

Article 147 of part 12th in the constitution of Jammu and Kashmir explains about the restriction of any amendment to the article 3 and 5 of the constitution. It says 'No Bill shall be introduced or moved in State Legislative Assembly to amend or change above mentioned Articles 3 and 5'. Article 370 of the Constitution of India gives special privilege to the J & K citizens which are:

- (i) There is a provision of dual citizenship for the citizens of the Jammu and Kashmir.
- (ii) The Legislative Assembly of Jammu and Kashmir will have tenure of 6 years while the tenure of Legislative Assembly in rest of the Indian states it is for a period of 5 years.
- (iii) The judgement given by the Supreme Court of India is not valid for the case of Jammu and Kashmir.
- (iv) Permanent residents of Jammu and Kashmir can have the right of land ownership. The people from other states of India cannot have property ownership right in Jammu and Kashmir.
- (v) If a woman gets married to a non-resident of Jammu and Kashmir male then the woman loses its permanent citizenship of Jammu and Kashmir therefore she does not have property ownership right also in the state.
- (vi) Only a permanent resident of Kashmir can own a land in Kashmir. No outsider can have a land in Kashmir. This provision has another drawback that if a woman marries to a Pakistani citizen then the woman can regain her citizenship of Jammu and Kashmir.
- (vii) The legislature related to the state of Jammu and Kashmir is to be passed by the state of Jammu and Kashmir legislation assembly only. The matters related to the defence, Foreign Affairs and means of Communications are the union of India matters.
- (viii) If Indian Parliament passes any bill related to the state of Jammu and Kashmir, then it can be implemented in the state only and only if it is passed by the state legislative assembly mandatorily.
- (ix) The Article 370 of Indian Constitution provides Indian Parliament to implement national as well as financial emergency in the state under the provisions of Article 352. The emergency in the state of Jammu and Kashmir can be imposed in case of any external aggression only.
- (x) The laws prescribed in the sharyat are applicable for the women of Jammu and Kashmir and decisions related to the women in the family matters has to be taken based on the methods those are prescribed in the sharyat.

Special provision under Article 35 A allows the State to prefer the citizens for:

- (i) Only permanent citizens of the state can have the employment in the jobs of the state government.

- (ii) The permanent citizens of the Jammu and Kashmir have the right of land acquisition and ownership.
- (iii) All the settlements related to the states are to be sorted out by the state only and there is no interference or role of the central government in such type of settlements.
- (iv) The scholarship in the educational institute is restricted to the permanent citizens of the state, the citizen of any other Indian state does not have right to have scholarship from the financially supported government educational organisations, but if the organisation is funded by the central government then citizen of India may have right to avail such facilities in the state of Jammu and Kashmir.

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Check Your Progress

- 3. What is the official language of Jammu and Kashmir?
- 4. When did the constitution of Jammu and Kashmir come into effect?

11.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

- 1. At present there are 11 States that enjoy special status and special category status in India; namely, Arunachal Pradesh, Assam, Himachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand.
- 2. The Article 370 was accepted in the Indian Constitution for the state of Jammu and Kashmir and issued by the notification of Government of India and signed by the Indian President Rajendra Prasad in the year 1954.
- 3. In the Constitution of Jammu and Kashmir the official language is Urdu, but at the same time English can be permitted for official purposes until and unless state legislature provides anything else in this regard.
- 4. The Constitution of Jammu and Kashmir came into effect from January 26, 1956.

11.5 SUMMARY

- A special status was given to the state of Jammu and Kashmir after making provision in the Indian Constitution through Article 370.
- As per the provisions made in the Part XXI of the Constitution of India, the special status deals with temporary and transitional provisions.
- According to these provisions, Jammu and Kashmir have a prime minister in the place of Chief Minister as the case of other Indian states.

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- The constitution was adopted on 17 November 1956 and came into force on 26 January 1957.
- It is mentioned in the Article 3 of Jammu and Kashmir Constitution that the state of Jammu and Kashmir is and shall be an integral part of the Union of India.
- The Article 370 was accepted in the Indian Constitution for the state of Jammu and Kashmir and issued by the notification of Government of India and signed by the Indian President Rajendra Prasad in the year 1954.
- After approval and addition of Article 370 in the Indian Constitution, Jammu and Kashmir has its own constitution which was adopted in the 17th November 1956.
- After the Indian Independence from the British rule there was a legal signed agreement between the Maharaja Hari Singh and government of India.
- It is clarified in the constitution of Jammu and Kashmir that a person without permanent residentship of the Jammu and Kashmir cannot hold any property in the state of Jammu and Kashmir.
- The special provisions made in Indian Constitution with regards to the permanent citizenship have created the issue of women also.
- It is also claimed from certain segment of society specifically, industrial and commercial organisations, that such provisions are prohibiting the overall growth of the state because there is no possibility of making investment in the state for outsider business community not only from India, but from the rest of the world too.
- In addition to Article 370, another Article 35 A was also incorporated in the Indian Constitution by the President of India through is presidential order in this regard.
- Indian government through its parliament or any decision cannot declare financial emergency in the state of Jammu and Kashmir.

11.6 KEY WORDS

- **Sadr-e-Riyasat:** Sadr-e-Riyasat is known as the president of the state.
- **Residentship:** Residentship means a person who resides in a place.
- **Legislative Assembly:** Legislative assembly is the name given in some countries to either a legislature, or to one of its branch. The name is used by a number of countries, including member-states of the Commonwealth of Nations and other countries.
- **Provision:** Provision is a statement within an agreement or a law that a particular thing must happen or be done, especially before another can happen or be done.

11.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. State the Article 370 of Indian Constitution.
2. What were the provisions implementing the Delhi Agreement?
3. Write a short note on the issue of women in Kashmir.
4. What are the important features of the constitution of Jammu and Kashmir?

Long Answer Questions

1. Discuss the provisions for permanent residentship in Jammu and Kashmir.
2. Explain the various aspects of Article 370.
3. Critically analyse Article 370 of the Indian Constitution.
4. State the arguments in favour and against on the Article 370 and 35A.

11.8 FURTHER READINGS

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UNIT 12 SPECIAL PROVISIONS FOR SOME STATES LIKE MAHARASHTRA, GUJARAT, NAGALAND AND MANIPUR

Structure

- 12.0 Introduction
- 12.1 Objectives
- 12.2 Division of Bombay
- 12.3 States with Special Provisions
- 12.4 Answers to Check Your Progress Questions
- 12.5 Summary
- 12.6 Key Words
- 12.7 Self Assessment Questions and Exercises
- 12.8 Further Readings

12.0 INTRODUCTION

There are many features of the Indian federal arrangement of the government in which the states are given differential treatment based on the regional and cultural background. The Indian Constitution has taken care of the interests of its population living in different states according to their representation in the country. Some of the Indian states have given specific privilege in the constitution to safeguard the interests of these special states. It was felt during the reorganisation of Indian states immediately after the Independence that the states under question will be given special privilege. The basis of such privilege was beneath the division of geographical boundaries and to ensure equal and balanced distribution of the geographical available natural resources. Special provisions are reserved for these states through the Indian Constitution due to their historical background and other socio-economic factors.

During the formation of the Indian Constitution, it was also considered that the interest of all the states and regions has to be taken care of, while distributing the powers among them. Initially, a framework was prepared so that the division of powers should be kept common for all the states. Despite of these efforts, some states have been given special treatment looking into the historical and geographical circumstances of the particular state under consideration of the constitution framers. The special provisions made in the constitution were mainly in the North Eastern states like Nagaland Arunachal Pradesh Mizoram and Assam. It was due to the large indigenous population of the tribal society with a historical and cultural background and these areas want to retain their traditional form of the

society conditionally. The provision was made through Article 371 of the Indian Constitution. However, giving special provision to a particular geographical area was always questioned and debated since the violence and agitation in different forms is still continued in these areas altogether. It cannot be claimed that if certain facilities are provided to a particular geographical area in question will help peaceful society without any violence or agitation. It is evident that there are unsatisfactory views in the society of many states those having special provisions in the Indian Constitution.

Special Provisions for some States like Maharashtra, Gujarat, Nagaland and Manipur

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12.1 OBJECTIVES

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

- State Article 371 of Indian Constitution
- Explain the special provisions for Maharashtra and Gujarat States under Article 371
- Identify the special provisions that were decided to follow after the formation of Nagaland state
- Discuss the special provision with respect to the State of Manipur

12.2 DIVISION OF BOMBAY

After Indian Independence from British rule, the state of Bombay was equally shared among the population of Gujarat and Maharashtra extended in the area of Vidarbha, Saurashtra and Kutch of the Gujarat. The state of Bombay was divided between Gujarat and Maharashtra. Immediately after the division, there was a demand from the Gujarat people that if Bombay is given to Maharashtra, then the identity as a capital city for them will be lost. To address the agitation and protest of the Gujarati people, some special provisions were suggested in the Article 371 of the Indian Constitution. A board was constituted to look into the matter and some special provisions were opened. The economic backward board was given specific financial authority for the responsibility of the development in the respective area. Thus, development board for both the states has started working on various societal issues such as health, water, transport, agriculture and education. The board was comprehensively looking into the matter of public interest from a development perspective and it was conveyed to the people of both the states that their interest will be taken care even after the division of Bombay. So, by providing the Article 371 in the constitution, it enabled to establish separate development boards for Vidarbha, Marathawada and rest of Maharashtra and Saurashtra, Kutch and rest of Gujarat. The demands of both the geographical areas were taken care through these boards and through the special provisions, which was made in the Article 371 of the Indian Constitution. Article 371 A provides special provisions for the people of Maharashtra and Gujarat those were considered

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to be economically backward at that time. The fear of the people of the affected areas was limited to the ignorance of the area due to its backwardness. The funds distributed in the areas will be limited and the development activities may be hampered and affected. The education of the people was addressed through the joint efforts made by the Union of India as well as both the affected States Maharashtra and Gujarat.

Article 371 of Indian Constitution

The Indian Constitution Amendment Act 1956 (7th amendment) providing special provisions for the states of Andhra Pradesh, Punjab and the state of Bombay, it was further amended in the Bombay reorganisation act 1960 through the constitutional article 371(2). The constitution of India was applicable to the States of Maharashtra and Gujarat with effect from 1.5.1960. This provision came into the force based on the state reorganisation Act 1956. With the enforcement of this act the state of Bombay was formulated on 1.11.1956 comprising the Marathi speaking areas of the erstwhile Bombay State, Vidarbha region of the erstwhile State of Madhya Pradesh, Marathwada region of the erstwhile Hyderabad State and the erstwhile States of Saurashtra and Kutch, subsequently, on 1.5.1960. After the approval of Bombay reorganisation act 1960 the former States of Kutch and Saurashtra were taken out of the State of Bombay to form the new State of Gujarat. The remaining portion of Bombay state was given a new name as Maharashtra.

The Constitution of India provides special provision for different Indian states in which Article 371 is most important. Article 371 describes the modality and different provisions made it with reference to the special state of the Union of India. As far as Article 371 of Indian Constitutions concerned, it talks about the responsibilities given to the governor of the respective state. It was mainly proposed due to the demands and agitation made by the people of the respective state for granting the special provisions for the activities related to the development of the area. Consequently, it was detailed in the Indian Constitution about the special responsibilities given to the governor of the state, so that the interest of the affected people can be looked into. Following is the provision which is explained in the Constitution of India regarding special provision for the state of Maharashtra and the Gujarat:

- (a) the establishment of separate development boards for Vidarbha, Marathwada, and the rest of Maharashtra or, as the case may be. Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly.
 - It is clarified from the reference made in the article that separate boards in the areas of Vidarbha, Marathwada as well as for the rest of the Maharashtra, Saurashtra, which and the remaining Gujarat will be established.

- The development board will be working in the respective area for the overall development of the society. The evaluation of the working of the development board will be placed before the state legislative assembly every year.
 - The evaluation of the economic development board will be done by the state legislative assembly and appropriate suggestions and modification can be suggested so that the activities related to the development can be ensured in the affected areas.
- (b) The equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole. Certain provisions for providing funds will be issued so that the activities related to the development can carry forward for the overall progress of the state. The allocation of the funds in the affected areas will also be subjected to the financial requirement of the entire state also.
- (c) An equitable arrangement providing adequate facilities for technical education and vocational training, such that an adequate opportunity for employment in services under the control of the State Government could be provided with respect of all the said areas, subject to the requirements of the State as a whole.

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Article 371 (2) of the Constitution

As stated above, after the division of Bombay state certain issues was raised by the affected people from the many parts of Vidarbha and Marathawada. Eventually, there is uncertainty among the people while they are merging with the new state from their existing position. The similar was the case with the people of Vidarbha and Marathawada of the Bombay state. It was demanded from the people of Vidarbha and Marathawada to give them special privilege to ensure their economic development. The overall development in the different areas of the society then was taken care in the special provision in which special responsibility to the governor of the state was given through the Presidential order. This special responsibility as power, to the Governor includes the following:

- The governor of the state has the right to establish a separate development board in the areas of Vidarbha, Marathawada of Maharashtra. Also, the Governor can establish a separate board for the affected areas of the Gujarat state.
- After the provisions made in the constitution, and by the order of the President of India three development boards for Maharashtra was established. The three Development Boards were established in Maharashtra:
 1. The Vidarbha Development Board,
 2. The Marathawada Development Board

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3. The Development Board for the Rest of Maharashtra in pursuance to the above constitutional provisions and have been in existence since 1.5.1994.

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Check Your Progress

1. What does Article 371 of the Indian Constitution describe?
2. List the three development boards that were established in Maharashtra.

12.3 STATES WITH SPECIAL PROVISIONS

As per the provisions made in the Indian Constitution, there are 11 Indian states that have special provisions mentioned. They are as follows:

1. Maharashtra
2. Gujarat
3. Nagaland
4. Assam
5. Manipur
6. Sikkim
7. Mizoram
8. Arunachal Pradesh
9. Goa
10. Andhra Pradesh
11. Telangana

The list of states with special provisions was further modified and the number of states for whom special provisions have been made under Article 371 of the Constitution of India are now 12. The then Chief Minister of Goa had requested for granting special status to Goa, on the lines of special status granted to the states of Mizoram, Himachal Pradesh and Uttarakhand under Article 371 or any other provision of the Constitution of India. Further, the representation from these states has given justification that it is mandatory to have these states with special provision so that the transfer of land regulation could be amended and the natural resources of the states could be better utilised and preserved. Only three States have requested for granting special provision and no other state has requested for special provisions under Article 371 of the Constitution of India. The examining committee has not found the justification up to the mark and the permission for addition into special provision, though special states was not granted to these states. This information was given by Minister of State for Home Affairs, Shri Haribhai Parathibhai Chaudhary in written reply to a question by Shri Shantaram Naik in the Rajya Sabha on 02-March-2016.

Justification for special provision to Indian states

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Several justifications were given by the protesters, those demanding for the special provision for Indian states such as security of development as well as protection of the historical and cultural background. It is also demanded that the tribal areas and their integrity have to be preserved as it is in most of the North East Indian states.

The integrity and sovereignty of the tribal areas can be preserved and taken care through the special provisions. However, entire nation cannot be treated with a single parameter of division. In fact, there are areas that are different from one another on the basis of geographical conditions, cultural background and social web. The framers of Indian constitution kept all these demands and justification in the background while drafting the constitution and special provisions was suggested to safeguard the interest of individual areas specifically in the backward areas of Union of India. Part 21 of the constitution provides for certain special provisions for some states. Out of these provisions, only two deserves discussion for our purpose, such as follows:

- (i) Article 371A
- (ii) Article 371G

These articles need special attention, the federal status of Nagaland is governed by Article 371 (A), which many a time is taken to be analogous to Article 370 for India's Jammu and Kashmir. The autonomy given in the Article 370 to the state of Jammu and Kashmir is of total political in nature, whereas 371A provides cultural autonomy to the 'Nagas' of Nagaland. Needless to say that the favour and opposition of the special provisions remain debated since its enactment in Indian Constitution.

Special provision for Maharashtra and Gujarat States under Article 371

As per the provisions for the states of Maharashtra and Gujarat, the special responsibility to the Governor was given. The main objective of granting such special responsibility to the Governor was to establish separate development boards for the affected areas. The development boards for the allocation of equitable funds for the activities related to the expenditure to be incurred for the development in the affected areas. This equitable allocation of the funds was mainly to facilitate the technical and vocational training for the affected people of the Maharashtra and Gujarat. The special responsibilities included the generation of enough opportunities for the employment of the affected people. The Indian president has issued a notification through which the governor of Maharashtra and Gujarat was authorised to take decisions on this regarding the establishment of separate development boards for:

- (i) Vidarbha and Marathwada and rest of the Maharashtra
- (ii) Kutchh and rest of the Gujarat.

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Under Article 371 of the constitution ‘President is authorized to provide that the governor of Maharashtra and Gujarat would have special responsibility for the establishment of separate development boards for Vidarbha, Marathawada and the rest of Maharashtra and Saurashtra Kutch and the rest of Gujarat.’

Sikkim (Article 371F, 36th Amendment Act, 1975)

Sikkim was another state which was given the special status in the Indian Constitution. The provision was made in the Constitution that the members of the Legislative Assembly of Sikkim state have right to elect the representative of Sikkim in the house of people. It was incorporated in the constitution so that the interests and rights of different sections of the society from Sikkim can be safeguarded. Here also the governor of Sikkim state provided with special responsibility of security and to ensure the social and economic development of different sections of the citizens of the Sikkim state.

Nagaland (Article 371A, 13th Amendment Act, 1962)

The provision of special state in Indian constitution was defined in the state of Nagaland also, in which it is mentioned that Parliament have no right to make any legislation with regards to the matters related to the Nagaland or their social practices. The customary laws of Nagas and their respective procedures, administration of civil and criminal justice related decisions will be made based on the Nagas customary laws. This provision provided right to make the appropriate legislation as per Naga customary law for the ownership and transfer of the land and related resources. This right is regard of the concurrence of the state legislative assembly. An agreement based on Act of 1962, between the Union of India and Naga people's convention was agreed in the year 1960. Based on the agreement the special provision was added to the Indian Constitution. According to this provision, the separate Nagaland state was created in the year 1963. After the creation of Nagaland state, additional provision was also made for the Tuensang district of Nagaland in which a Council was made from 35 regional members from the Nagaland. Tuensang district, has given to elect the members of the society in the Assembly. A member of the Tuensang district is Minister for Tuensang Affairs. Governor has the final say on Tuensang-related matters. Subsequently, the Minister is related to the specific matters of Tuensang districts, the right to the Governor for making any final decision in this regard. Through this provision the customary Naga laws were said to be preserved.

The Article 371 A of Indian constitution special provisions of the State of Nagaland have mentioned the details. Act of parliament relating to following matters would not apply to Nagaland unless the state assembly decides so. It safeguards the interests and rights of the Nagaland people in different segments which include the following:

- Religious and social practices of Nagas.
- Nagas customary law and procedure.

- The administration of the matters related to the civil or criminal cases will be taken care through the Naga customary law and there is no restriction to follow the provisions made in Indian Constitution.
- Nagaland has the right to decide the matters related to the ownership and transfer of land and its resources of the Nagaland state.

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In the Indian Constitution, the governor of Nagaland has given special responsibility identical to the other states. These responsibilities and powers include maintenance of peace in the state to establish the law and order. While governor authorised to take any decision related to the maintenance of law and order in the state, the Governor, however has to consult with the Council of Ministers.

After the formation of Nagaland state, it was decided to follow these special provisions for a period of 10 years. This period of 10 years can be further extended with the recommendation made by the regional councils and also as it specified by the State Governor. These provisions can be listed as below:

- (i) The funds allocated by the government of India to the State of Nagaland are to be distributed by the State Governor among the Tuensang district and remaining Nagaland.
- (ii) Administration of Tuensang district shall be carried on by the governor of the Nagaland state.
- (iii) There is a provision of inclusion of a Minister in the state Council of Ministers for the district of Tuensang in Nagaland state.
- (iv) Apart from the recommendations made by the Council of Ministers, the decision related to the matters of Tuensang district is reserved by the Governor.
- (v) The members in the Assembly of Nagaland from the Tuensang district are elected by the regional councils. These members are not elected by the people of the Nagaland through the election process.

The Constitution (Thirteenth Amendment) Act, 1962

The issue of maintaining law and order in the state of Nagaland was the main issue for giving the special status to this state. Therefore the governor of Nagaland, thus authorised to formulate different rules and regulation to assure the peace in the state. The progress of piece making and good governance of the Tuensang district was also a prime challenge to the Union of India before formulating the constitutional article in this regard.

An additional amendment was made in the Indian Constitution in the year 1962 to address the issue of Nagaland with the specific objectives. These provisions are made in the 13th amendment of Indian constitution Act 1962. As stated above that an agreement was signed between the Government of India and the

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representatives of the Naga people's convention in the year 1960. This amendment cleared the way to form the new state of Nagaland. After the formation of state, certain special provisions were made for the state of Nagaland that includes:

- (i) The governor of Nagaland has given special responsibility to maintain the law and order. This responsibility will be continued till the condition of law and order comes to the normalcy.
- (ii) The governor of the Nagaland has generalized responsibility with regard to the financial resources and fund allocation made by the government of India to the newly formed State of Nagaland.
- (iii) The administration of the Tuensang district of Nagaland will be taken care by the appointed governor of the state.
- (iv) This tenure of the government will be initially for a period of 10 years and extendable based on the recommendations and feedback received from the state of the Union of India.
- (v) This initial period of 10 years can further be extended based on the feedback and the condition of law and order in the state. Largely, it was to be decided by the position of the citizens of the state to take care of the state and responsibility on their own shoulders without any external support from the Union of India.
- (vi) The acts made by the Parliament of India shall not be implemented in the state of Naga.
- (vii) The acts of Parliament can only be applied to the Nagaland state if they are concurrence of the Nagaland legislature.
- (viii) It is also mentioned in the Constitution Amendment Bill that the decision made by the governor of the Nagaland state will be full and final. The decision making power of the governor of the state of the Nagaland was totally depending on the decision of the governor of Nagaland state. It provides special responsibility and authority to the governor of the Nagaland state to take the decisions regarding law and order and other matters related to the state of Nagaland.
- (ix) It was primarily made to deal with the law and order condition of the state of the Nagaland because of the certain protest and agitations made in the region. Also provides the authority to the governor of the state to take decision based on his individual judgements for the betterment and to maintain the fees for the citizen of the Nagaland state.

However, there are questions regarding the special provisions made in the Indian Constitution for granting such status that the condition of the Nagaland state has not been improved over the years despite of making different types of

approaches and the efforts jointly by the Union of India as well as from the Nagaland Council of Ministers.

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Manipur (Article 371C, 27th Amendment Act, 1971)

The special provisions are made for the north eastern state Manipur on the 27th Amendment Act of 1971 in the Indian Constitution. This constitutional amendment describes about the various provisions made for the state of Manipur. There are tribal customary laws in the state of Manipur and was demanded by the people of Manipur to safeguard them. Considering the valid demand from the people of Manipur, the constitutional amendment was made in the year 1971 to provide special status for the state of Manipur. In this constitutional provision, again the special responsibility was given to the governor of the state. The purpose of giving certain responsibility to the governor of Manipur was to establish the law of land in the state and to maintain the law and order for the better prosperity of the population of this state. Article 371 C of Indian Constitution provides special provisions for the state of Manipur.

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Andhra Pradesh and Telangana

Article 371D, 32nd Amendment Act, 1973 was substituted by the Andhra Pradesh Reorganisation Act, 2014 was passed. Under 32nd amendment of Indian Constitution 1973, certain special provisions were provided to the state of Andhra Pradesh also. It was felt during the reorganisation of the Indian state immediately after Indian Independence from Britain that the reorganisation of the boundaries will be beneficial for the state for the overall development of these states. 52nd amendment of reorganisation act 1973 was amended in 2014 through the presidential order issued in this matter from the president of India to provide other provision in addition to the previously made. The objective of adding these amendments in the Indian Constitution was to deal with the matters, being raised continuously from the various segments of the society and to ensure the equitable opportunities and facilities to the involved people. It has also eased-out the way for public employment and enhancement of societal education among the population of the state of Andhra Pradesh. In this provision President of India has given certain right, so that profitable opportunities and facilities could be ensured and the state.

Through a presidential order, the right of making arrangement for such facilitation was given to the state government. State government has to organise the facilitation to ensure that educational facility as well as employment to the state of Andhra Pradesh. It was necessary to deal with the difference from the various segments of the society. The directive mentioned in the amendment of Indian constitution says that:

‘any class or classes of posts in the civil service of, or any class or classes of civil posts under, the State into different local cadres for different parts of the State.’

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This provision, in addition allowed state government to work towards the betterment of state education and better employment facility. It is mentioned in the article Art 371E allows for the establishment of a university in Andhra Pradesh by a law of Parliament. But this is not really a ‘special provision’.

Check Your Progress

3. What is stated in Article 370 and 371A?
4. As per the provisions for the states of Maharashtra and Gujarat, the special responsibility to the Governor was given. What was the main objective of granting such special responsibility?

12.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The Article 371 describes the modality and different provisions made it with reference to the special state of the Union of India.
2. The three Development Boards were established in Maharashtra:
 - The Vidarbha Development Board,
 - The Marathawada Development Board
 - The Development Board for the Rest of Maharashtra in pursuance to the above constitutional provisions and have been in existence since 1.5.1994.
3. The autonomy given in the Article 370 to the state of Jammu and Kashmir is of total political in nature, whereas 371A provides cultural autonomy to the 'Nagas' of Nagaland.
4. As per the provisions for the states of Maharashtra and Gujarat, the special responsibility to the Governor was given. The main objective of granting such special responsibility to the Governor was to establish separate development boards for the affected areas.

12.5 SUMMARY

- After Indian Independence from British rule, the state of Bombay was equally shared among the population of Gujarat and Maharashtra extended in the area of Vidarbha, Saurashtra and Kutch of the Gujarat.
- The state of Bombay was divided between Gujarat and Maharashtra. Immediately after the division, there was a demand from the Gujarat people that if Bombay is given to Maharashtra, then the identity as a capital city for them will be lost.

- The Indian Constitution Amendment Act 1956 (7th amendment) providing special provisions for the states of Andhra Pradesh, Punjab and the state of Bombay, it was further amended in the Bombay reorganisation act 1960 through the constitutional Article 371(2).
- Several justifications were given by the protesters, those demanding for the special provision for Indian states such as security of development as well as protection of the historical and cultural background.
- It is also demanded that the tribal areas and their integrity have to be preserved as it is in most of the North East Indian states.
- As per the provisions for the states of Maharashtra and Gujarat, the special responsibility to the Governor was given. The main objective of granting such special responsibility to the Governor was to establish separate development boards for the affected areas.
- Under Article 371 of the constitution ‘President is authorized to provide that the governor of Maharashtra and Gujarat would have special responsibility for the establishment of separate development boards for Vidarbha, Marathawada and the rest of Maharashtra and Saurashtra Kutch and the rest of Gujarat.’
- Sikkim was another state which was given the special status in the Indian Constitution. The provision was made in the Constitution that the members of the Legislative Assembly of Sikkim state have right to elect the representative of Sikkim in the house of people.
- It was incorporated in the constitution so that the interests and rights of different sections of the society from Sikkim can be safeguarded.
- The provision of special state in Indian constitution was defined in the state of Nagaland also, in which it is mentioned that Parliament have no right to make any legislation with regards to the matters related to the Nagaland or their social practices.
- The customary laws of Nagas and their respective procedures, administration of civil and criminal justice related decisions will be made based on the Nagas customary laws.
- An additional amendment was made in the Indian Constitution in the year 1962 to address the issue of Nagaland with the specific objectives. These provisions are made in the 13th amendment of Indian Constitution Act 1962.
- The special provisions are made for the north eastern state Manipur on the 27th Amendment Act of 1971 in the Indian Constitution. This constitutional amendment describes about the various provisions made for the state of Manipur.
- There are tribal customary laws in the state of Manipur and was demanded by the people of Manipur to safeguard them. Considering the valid demand

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from the people of Manipur, the constitutional amendment was made in the year 1971 to provide special status for the state of Manipur.

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12.6 KEY WORDS

- **Presidential executive orders:** Presidential executive orders are rules issued by the president to an executive branch of government.
 - **Federal:** A federal system of government consists of a group of regions that are controlled by a central government.
 - **Special provision:** Special provisions are included in contracts as required to define work or procedures not covered in the standard specifications, and as necessary to supplement or modify items in the standard specifications.
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12.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. State Article 371 of Indian Constitution.
2. Identify the special provisions that were decided to follow after the formation of Nagaland state.
3. Which state in India enjoys a special status under the Indian Constitution?
4. What do you understand by the term 'special provision'?
5. Why are there special provisions for the Tuensang district under Article 371-A?

Long Answer Questions

1. Discuss the importance of Articles 371A and 371G.
 2. Explain the special provision for Maharashtra and Gujarat States under Article 371.
 3. Article 371 C of Indian Constitution provides special provisions for the state of Manipur. Discuss these provisions in detail.
 4. Describe the special provisions related to Nagaland.
 5. Discuss the special provision with respect to the State of Manipur.
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12.8 FURTHER READINGS

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UNIT 13 CREATION AND ADMINISTRATION OF UNION TERRITORIES: SPECIAL PROVISIONS FOR DELHI

Structure

- 13.0 Introduction
- 13.1 Objectives
- 13.2 Union Territories Constitutional Provisions: Article 240 of Indian Constitution
 - 13.2.1 Special Provisions with Respect to Delhi (Article 239AA)
- 13.3 Answers to Check Your Progress Questions
- 13.4 Summary
- 13.5 Key Words
- 13.6 Self Assessment Questions and Exercises
- 13.7 Further Readings

13.0 INTRODUCTION

There are certain geographical areas in the Union of India which comes under the Governance of central government, and not yet have the status of a full-fledged state. The area which comes under the administration and control of central government and not having state legislation is known as a union territory. Union territory is distinct type of administrative division in the Indian democratic system. It is differing from the other states in many ways, such as of the union territory is taken care by the governor of the union territory. The governor of union territory is appointed on the recommendations of the union of India. Union territories are federal territories ruled directly by the union government (central government), hence the name 'union territory'.

In the democratic system of Indian Republic, there is provision of separate states and union territories. There are certain provisions in the Indian Constitution regarding the formation and administration of various Indian states and union territories. The detail process of functioning each of the elements of the nation is described in the Indian Constitution in different articles. It is also mentioned in the Indian Constitution about the acquisition of any of the state or union territories according to the certain circumferences. However, there is an effort to distribute the powers equally among these central and state governments as far as the administration of the system is concerned. However, the administration of union

territories is under the control of union government of India and therefore union government has direct control on the administration of the union territories.

*Creation and Administration
of Union Territories: Special
Provisions for Delhi*

The reorganization of Indian States Act 1956 has described various features that are concerned with the formation of new states and union territories. At the beginning of state reorganization, there were six union territories in the list, but as of now there are seven union territories in the republic of India. National Capital Delhi is also a union territory, but has distinct features as compared to the other union territories of the Republic of India according to Seventh Amendment Act, 1956. This amendment has replaced the States in Part C and Territories in Part D of the First Schedule by the 'Union Territories'. This provision describes, under Part II of the First Schedule were then six in number Delhi, Himachal Pradesh; Manipur; Tripura; Andaman and Nicobar Islands; Laccadive, Minicoy and Amindivi Islands. After subsequent amendment Acts, the following is the list of Union Territories in India:

1. Andaman and Nicobar Islands
2. Chandigarh
3. Dadra and Nagar Haveli
4. Daman and Diu
5. Lakshadweep
6. NCT of Delhi
7. Puducherry

Among these 7 Indian union territories the area of NCR or national capital regions of Delhi and Puducherry have different legislation with the council of ministers and certain allocated funds. Remaining five union territories do not have their own legislature and council of ministers from the elected representatives of the society through the election process. The council of ministers is elected from the valid electoral of the union territories of NCR and Puducherry. Similarly, there are provisions of consolidated funds in the preview of the union territories of NCR and Puducherry. The allocation of the budgets and expenditure are made according to the recommendations of the council of ministers of the union territories. But, the approval of administrative head of NCR has to be taken in the process. While in case of remaining 5 union territories, there are no elected members of ministers do the administration part has to be taken care by the central government appointed governor. Ministry of Home Affairs is the nodal Ministry for all matters of union territories relating to legislation, finance and budget, services and appointment of Lt. Governors and administrators. Every union territory is administered by an administrator appointed by the President under Article 239 of the Constitution of India. In Delhi, Puducherry and Andaman and Nicobar Islands, the Lt. governors are designated as administrators. The Governor of Punjab is appointed as the Administrator of Chandigarh. In the other Union territories, senior IAS officers of the Arunachal Pradesh, Goa, Mizoram and Union territories (AGMUT) cadre are appointed as administrators.

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13.1 OBJECTIVES

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

- Differentiate between state and union territory
- State the Article 239AA of Indian Constitution
- Discuss why union territories were formed in India
- Explain the formation process of union territory
- Describe the legislative assemblies for union territories and their composition
- Discuss the special provision with respect to Delhi

13.2 UNION TERRITORIES CONSTITUTIONAL PROVISIONS: ARTICLE 240 OF INDIAN CONSTITUTION

Before learning about the constitutional provisions for union territories, let us understand the difference between state and union territories.

Difference between States and Union Territories

At the time of Indian independence, the large princely states were converted into the new states and got merged with the neighbouring states and formed the new state. This process was quite appreciable in the case of large geographical areas and population ratio, but there was an issue with the reasons with small geographical areas. The status of full state cannot be given under certain conditions in which geographical area and the population are also major concerns. During the reorganization of Indian states in the year 1956 in the committee has recommended that a separate category for the smaller territories could be made because certain geographical areas or group are not following the uniform pattern to form a full state. These geographical areas were unbalanced, backward and financially weak, also along with the instability in politics for the proper administration of the area. Therefore, the reorganization commission has recommended separate administrative pattern for such scheduled areas, and also recommended that it should be administrated directly from the union government of India. Consequent upon the recommendations of the reorganization committee, the union territories were formed. In a few cases, the Government of India has not merged certain geographical areas into the neighboring state due to technical reasons. Simultaneously, some of the areas were retained as separate from the state safeguard of the historical background of the territories as in the case of Andaman and Nicobar Islands. It was mainly decided after looking into the fact of crucial location for the security of the nation from all perspectives.

Article 240 of the Indian Constitution provides Indian President some specific powers for making the regulation in the case of the union territories of India. The President of India has the power to make such legislation to ensure the overall progress, to maintain peace in the area and assuring good governance in the union territories. However, the President of India does not have power to make any specific legislation for particular union territories. From this view, the president of India has certain powers based on the recommendation of union government can be exercised for the overall growth of the union territory.

Article 1 (1) of the constitution of India describes that:

‘Union of States’, which are elaborated under Parts V (The Union) and VI (The States) of the constitution. Article 1 (3) says the territory of India comprises the territories of the states, the union territories and other territories that may be acquired.

Initially, there was no concept of separate union territories in the Union of India at the time of implementation of Indian Constitution. Later, it was felt necessary to amend the Indian Constitution regarding formation of the separate union territories in the year 1956 through 7th Constitutional Amendment Act 1956. In this amendment it was clearly described about the formation and administration of union territories. This Act of Parliament through presidential order is applicable to whole India. It’s also worth mentioning that if a presidential order or notification of India mention any rule or act implemented in the India then it means, the particular act is implemented in the Indian states only and the same is not applicable in the case of union territories including Jammu and Kashmir. If a presidential order clearly indicates and describe that the particular act is implemented in all the Indian states, including union territories and Jammu and Kashmir, then such order of notification from the President of India is applicable everywhere in the entire India.

Thus, citizenship part II, fundamental rights part III, Directive Principles of State Policy part IV, Judiciary role, the Union Territories part VIII, Article 245, etc., are applicable to union territories as it refers specifically to Territories of India. The executive power of the union (i.e., union of states only) rests with the President of India. The President of India is also the chief administrator of union territories per Article 239. Union public service commission role is not applicable to all territories of India as it refers to India only in Part XIV.

NCT National Capital Territories or National Capital Region

Fundamentally, all the Indian states have their own administration through the elected government from the electoral of the states. This democratic elected government has a fundamental right to administer the entire state. On the contrary, union territories do not have any elected legislative assembly or government for the administration. The administration of union territories is maintained under the administration of Lieutenant Governor. The lieutenant governor is a representative of central government and appointed by the presidential order of India. The national capital territory has administration in control of lieutenant governor. The lieutenant

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governor is representative of the President of India. Therefore, the powers are under the control of union governor as far as the administration of NCR is concerned. There are certain issues related to the administration of NCR between the elected legislative members and the lieutenant governor of the UT. The NCR has elected legislative assembly and legislative members. The elected representatives of legislative assembly have right to choose chief minister of the state. Despite the elected legislative assembly members and chief minister, the powers of administration are not as per as the powers of Chief Minister and legislative members in the other Indian full states.

In this regard, there is a fundamental difference between the Union Territory of Delhi and Puducherry and other Indian states. Both these UT's does not have a complete status of the state. Therefore, a partial statehood status is given to Delhi and it was defined as the national capital territory of Delhi and incorporated into a larger area known as the National Capital Region (NCR). Delhi and Puducherry have an elected legislative assembly and an executive council of ministers with partially state-like function.

The Formation Process of Union Territory

At the time of implementation of the Indian constitution in the year 1949, there was only one union territory Andaman and Nicobar Islands. The other union territories were later included in the list after the recommendations of reorganization of the state commission. Subsequently, NCT of Delhi, Chandigarh and Lakshadweep were formed by separating the territory from pre-existing states, Dadra, Nagar Haveli, Daman and Diu and Puducherry. These territories were formed from acquiring territories that formerly belonged to Portuguese India or French India. The Indian parliament has the right to comment any constitutional article with reference to these union territories and accordingly a notification from presidential order can be released for the same. On the recommendation of the reorganization committee, certain geographical areas were declared as the union territories due to many reasons predominantly as specific historical background of the area, cultural diversity from the neighbouring state, typical geographical location and socio economic condition of the area.

The creation of the union territory depends on different criteria. Due to these specific criteria they have been given special status. Some of these are discussed here:

Initially, in the Indian Constitution, there was no provision for the additional acquired territories in the Indian Republic at the time of independence, therefore such acquired area was declared as a union territory. The culture and ethnicity of these areas is largely different from the rest of the India and they even differ from the neighbouring state. For example, the cultural and historical aspects of Dadra and Nagar Haveli are different from the neighbouring state of Maharashtra and Mangalore. Similarly, the ethnic groups of Andaman and Nicobar Islands are different from the other Indian states.

Constitutional Provisions for the Creation of Union Territory

All stated that the Indian Constitution have defined the process of formation and creation of union territories through the constitutional provisions. Article 2 of Indian Constitution explains that the Indian Parliament through the law that can establish new state on certain terms and conditions.

Article 3 of date Indian Constitution provides that a new state may be formed or established in the following ways:

- (i) By separation of territory from any state
- (ii) By uniting two or more states
- (iii) By uniting any parts of states
- (iv) By uniting any territory to a part of any state

This article gives power to the Indian Parliament for making any desired amendment and the Indian Parliament under this Article can also increase or decrease the area of any state or after the boundaries or change the name of any state.

Legislative Assemblies for Union Territories and their Composition

Section 3 of Indian constitution regarding the administration and functioning of the Government of Union Territories Act, describe the modalities in details. According to Section 3 of Indian Constitution, each UT of India has the option of forming a Legislative Assembly. Each union territory of India has right for selecting its members through direct election from territorial constituencies. The entire union territory is divided into different legislative assemblies and elections are held according to the provisions made by the election commission of India. However, certain members can be nominated by the central government in the legislative assembly of the union territory. The central government cannot nominate more than three persons. These members should not involve in government service to be members of the legislative assembly of the UT. It is identical to the certain reservation policies in function as per the provisions made in the Indian Constitution, likewise in state legislatures as also privileged with such provision, the seats shall be reserved for the Scheduled Castes in the Assembly of the UT. The number of seats reserved should be same in proportion to the total number of seats in the assembly.

Administration of Union Territories (Article 239)

Article 239 (1) of the Indian Constitution provides that every union territory shall be administered by the President acting. The administration is limited, to such extent as he thinks fit; through administrator to be appointed by him with such designation as he may specify. The appointment of the administrator of the union territory is to ensure the smooth functioning of the territory. Many a time appointment of the administrator can be made from the neighbouring union territory or state, as it is in the case of Union Territory of Chandigarh where the administrator of the

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union territory is the governor of Punjab and Haryana state. All the union territories are thus administered by administrator as the agent of the President and not by the governor acting as the head of a state. The President as the executive head of a UT does not function as the head of the central government, but as the head of the Union Territory under powers specially vested in him under Art. 239.

High Courts

Despite the fact that the Indian Parliament has given power to constitute a high court in the union territory to meet the specific purposes mentioned in the Indian Constitution, nevertheless in case of the non-availability of high courts in the territory, the existing High Court of the territory will function as deemed fit according to the constitutional provisions. These provisions are mentioned in the article 241 of the Indian Constitution. The Chandigarh is a union territory is also shared by the state of Punjab and Haryana as their capital and high court also. All the cases related to the state of Haryana and Punjab come under the jurisdiction of the Chandigarh High Court. That is too concurrently to the decision making regarding the cases of the union territory of Chandigarh. This way, it serves multidimensional functions in that particular domain of Indian Union; however, it has been questioned since long back to divide the portion among the stakeholders. Also, the demands have been raised by the residence of Punjab and Haryana to make their separate branches of the High Court for the quicker decisions in the pending cases.

Likewise, the administration of Lakshadweep was taken care by the administrator appointed by the President of India and the matters related to high courts were subjected to the state of Kerala. The Calcutta High Court has got jurisdiction over the Andaman and Nicobar Islands, the Madras High Court has jurisdiction over Pondicherry. The Territory of Daman and Diu comes under Bombay High Court. Delhi has a separate High Court of its own since 1966.

13.2.1 Special Provisions with Respect to Delhi (Article 239AA)

The union territory of Delhi is concerned as a matter of exception as compared to other union territories of India because it has separate legislation and provisions to appoint the administration as well as the functioning of elected legislative assembly members from the population of Delhi. Article 239AA was inserted by 69th amendment act, 1991. It further elaborates administrative functionality for the Union Territory of Delhi. These provisions were recommended as the 69th amendment Act of the year 1991 in the Indian Constitution. After the 69th amendment of Indian Constitution the Union Territory of Delhi was given a new name as NCR or national capital region, from February 1, 1992. The administration of NCR was taken care by appointing the lieutenant governor. The lieutenant governor is appointed by the President of India on the recommendations of the central government and the provisions regarding the appointment of such lieutenant governor of the NCT detailed in the article 239AA. Parallel to this, an additional provision was made in the amendment that NCT of Delhi will be provided with legislative

assembly and its formation will be done through the electoral process which will be as per to the elections process is in the practice as per existing rules and regulations which comes under the preview of the election commission of India. Since then, Delhi has been struggling for a status of full-fledged state of India.

The Article 239AA of the Indian Constitution lays down the basic terminology regarding the formation of legislation regarding state of Delhi. State legislative authority and formation of legislation for the state of Delhi are concurrently identical to the list of the states as mentioned in the Indian Constitution. However, there are a few subjects that are not kept in this list namely:

- Entry 1: Public Order
- Entry 2: Police
- Entry 18: Land
- Entry 64: Offences against the laws Jurisdiction power of all courts

These provisions clarify the list of those subjects that are falling under the preview of state as well as the matters those are falling under the preview of Central list. This means that Delhi has been endowed with a legislative assembly with a chief minister and a council of ministers with limited powers, distinct from the powers available to them in other states. These provisions segregate the Union Territory of Delhi from the rest of the Indian states by restricting elected legislative members up to a certain limit in decision making regarding the NCT. The Article 239 AA has kept the matters covered by entries 1, 2 and 18 of the state list of Seventh Schedule, i.e., public order, police and land outside their purview.

Implication of Provision

This provision has time and again created several conflict among the state and central government as per as NCT is concerned and there was continuous demand to further clarify the matter. In a few cases the opinion of the High Court also been sought to resolve the issue and to define the powers and controls of either of two. The article 239 describes the power allotted to the central government in the areas of Municipal Corporation of Delhi and Delhi police both.

President's Rule on Delhi

President rule can be imposed upon any Indian state or union territory under specific circumference by the president of India, likewise article 239AB deals with President's rule in NCT of Delhi. Article 239AB of Indian Constitution delineates the powers of Indian President to impose president rule in the NCT on the recommendations made by the lieutenant governor of the union territory. If the lieutenant governor of NCT Delhi recommended that the conditions of law and order are beyond the administration, then the president has power to suspend any provisions of Article 239AA. Through this provision the Union Territory of Delhi comes directly under the control of the Indian President.

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Special Provisions for Delhi

All the Territories are under the administration of the central government as per the provisions made in the article 29 of Indian Constitution. Despite administration of the central government directly, these specific geographical areas are not merging with central government neither forming a part of any existing Indian state. More interestingly, despite of complex situation, the union territories of India are able to maintain their existence as specific entity.

Article 239AA of Indian Constitution provides that the Union Territory of Delhi shall now be called the National Capital Territory of Delhi and its administrator. The name of Delhi administrator shall be Lt. Governor.

- It also creates a legislative assembly for Delhi which can make laws on the state list and concurrent list except on these matters: public order, land and police.
- The President shall make appointments to the Council of Ministers including the Chief Minister.

69th Amendment 1991

Previously Delhi was known as the union territories, but after the 69th amendment of Indian Constitution Delhi shall be called National capital territory and shall have a legislative assembly with members. Following points are to be noted:

- The members of Legislative Assembly chosen directly by people from territorial constituencies. These provisions are mentioned in 239AA.
- The administrator thereof appointed under Article 239 shall be designated as the Lieutenant Governor.
- The limitation of making legislation with regard to the density of described in the constitution at the time of giving status of special state. The division of the power regarding making legislation for the NCT, however Legislative Assembly of the NCT have power to make legislation as mentioned in the state list.
- In case of any dispute the law made by Indian Parliament supersedes the legislation made by the Legislative Assembly of the NCT. It indicates that the legislative power is given to the Legislative Assembly of NCT Delhi but taken by the legislative assembly and consequent made laws are coming under the control of parliament.

Constitutional Status of Delhi

According to Article 239 of India constitution Union territory shall be administered by the President. Article 239AA of the Indian Constitution, enacted as per 69th Amendment Act of 1991, confers special provisions for the National Capital Territory of Delhi. It will be administered by the Lieutenant Governor.

Clarification by High Court

The High Court considered Delhi as Union Territory and Lt. Governor as the sole and final administrator, but in the process there exist a few challenges related to the administration of NCT. The High Court ruled that though a specific constitutional provision has been inserted by the Constitution in the 69th Amendment Act, 1991. So as to deal with the administration of the Delhi, it continues to be a UT and does not acquire the status of a state.

The Delhi High Court has held that the special provisions incorporated for Delhi, under Article 239AA of the Constitution; do not negate the effect of Article 239, which empowers the Lieutenant Governor to act independently of his Council of Ministers.

The executive power being co-extensive with the legislative power, it goes without saying that the Government of NCT of Delhi cannot claim any executive power in relation to matters with respect to 'services'.

Lieutenant Governor is not bound to act on the aid and advice of the Council of Ministers. The court ruled that the concurrence of the Lt. Governor is mandatory for all administrative decisions of Council of Ministers of Delhi.

General Administration of NCT

There is an elected government of the state of Delhi and is the governing authority of the Indian national capital territory of Delhi. It has total 11 districts and 70 members of the legislative assembly. Elected legislative members are called as MLAs. The nature of Delhi Legislative Assembly is of unicameral type. Matter related to the different dispute among various parties can be put before the High Court of Delhi for the jurisdiction as it has its own High Court in Delhi.

Delhi being one of the largest metropolitan city of the world and the general administration of civic bodies is done through different Corporations. One such corporation is taking care for the municipality of Delhi and is known as The Municipal Corporation of Delhi (MCD). It has the responsibility to handle the civic administration for the city as part of the Panchayati Raj Act. The Delhi Development Authority was created in 1957 under the provisions of the Delhi Development Act to promote and secure the development of Delhi.

Delhi has its own police department and is responsible to maintain law and order situation in the state do the department of Delhi Police comes under the Indian home ministry.

Delhi is the capital of India and is the centre of a wide range of political, cultural, social and economic activities. The Delhi police have to play a number of roles so far maintenance of law and order is concerned. The Delhi Police (DP) is the Law enforcement agency for the National Capital Territory of Delhi (NCT). It does not have jurisdiction over the adjoining areas of the National Capital Region. They come under the jurisdiction of the Ministry of Home Affairs (MHA),

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Government of India and not the Government of Delhi. The headquarters are located at Indraprastha Estate, New Delhi. The Delhi High Court has jurisdiction over Delhi, which also has two lower courts: The Small Causes Court for civil cases, and the Sessions Court for criminal cases. Unlike other states in India, the Delhi Police reports to the Ministry of Home Affairs, Government of India and not answerable to the state government. Headed by the Police Commissioner, it is one of the largest metropolitan police forces in the world.

Some of the Important Aspects mentioned in the Central Government Act

The Government of National Capital Territory of Delhi Act, 1991 was approved by the Indian Parliament in the year 1991 and after that the Union Territory of Delhi was given the status of partial statehood. Some of the highlights from the ACT are given as it is from the article in the reference:

THE GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI ACT,
1991, No. 1 of 1992 [2nd January, 1992.]

An Act to supplement the provisions of the Constitution relating to the Legislative Assembly and a Council of Ministers for the National Capital Territory of Delhi and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty- Second Year of the Republic of India Assent to Bills.

When a Bill has been passed by the Legislative Assembly, it shall be presented to the Lieutenant Governor and the Lieutenant Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President: Provided that the Lieutenant Governor may, as soon as possible after the presentation of the Bill to him for assent, return the Bill if it is not a Money Bill together with a message requesting that the Assembly will reconsider the Bill or any specified provisions thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Assembly will reconsider the Bill accordingly, and if the Bill is passed again with or without amendment and presented to the Lieutenant Governor for assent, the Lieutenant Governor shall declare either that he assents to the Bill or that he reserves the Bill for the consideration of the President:

Bills reserved for consideration. When a Bill is reserved by the Lieutenant Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom: Provided that where the Bill is not a Money Bill, the President may direct the Lieutenant Governor to return the Bill to the Legislative Assembly together with such a message as is mentioned in the first proviso to section 24 and, when a Bill is so returned, the Assembly shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the Assembly with or without amendment, it shall be presented again to the President for his consideration. With the insertion of Article 239AA by virtue of the Sixty-ninth Amendment, the Parliament envisaged a representative form of Government for the NCT of Delhi. The said provision intends to provide for the Capital a directly elected Legislative Assembly which shall have legislative powers over matters falling within the State List and the Concurrent List, barring those excepted, and a mandate upon the Lieutenant Governor to act on the aid and

advice of the Council of Ministers except when he decides to refer the matter to the President for final decision. We may call it as pragmatic interpretation of a constitutional provision, especially the one that has the effect potentiality to metamorphose a workable provision into an unnecessary and unwarranted piece of ambiguity. In such a situation, the necessity is to scan the anatomy of the provision and lift it to the pedestal of constitutional ethos with the aid of judicial creativity that breathes essentiality of life into the same. It is the hermeneutics of law that works.

Reference: The government of National Capital Territory of Delhi Act, 1991, No. 1 of 1992.

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Check Your Progress

1. Define the term 'union territory'.
2. How many union territories does India have?

13.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

1. The area which comes under the administration and control of central government and not having state legislation is known as the union territory. Union territory is distinct type of administrative division in the Indian democratic system.
2. The reorganization of Indian States Act 1956 has described various features that are concerned with the formation of new states and union territories. At the beginning of state reorganization, there were six union territories in the list, but as of now there are seven union territories in the republic of India.

13.5 SUMMARY

- There are certain geographical areas in the Union of India which comes under the Governance of central government, and not yet have the status of a full-fledged state. The area which comes under the administration and control of central government and not having state legislation is known as the union territory.
- Union territory is distinct type of administrative division in the Indian democratic system.
- In the democratic system of Indian Republic, there is provision of separate states and union territories. There are certain provisions in the Indian Constitution regarding the formation and administration of various Indian states and union territories.
- The reorganization of Indian States Act 1956 has described various features that are concerned with the formation of new states and union territories.

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- Article 240 of the Indian Constitution provides Indian President some specific powers for making the regulation in the case of the union territories of India. The President of India has the power to make such legislation to ensure the overall progress, to maintain peace in the area and assuring good governance in the union territories.
- Fundamentally, all the Indian states have their own administration through the elected government from the electoral of the states.
- At the time of implementation of the Indian constitution in the year 1949, there was only one union territory Andaman and Nicobar Islands. The other union territories were later included in the list after the recommendations of reorganization of the state commission.
- Section 3 of Indian constitution regarding the administration and functioning of the Government of Union Territories Act, describe the modalities in details.
- According to Section 3 of Indian Constitution, each UT of India has the option of forming a Legislative Assembly.
- Article 239 (1) of the Indian Constitution provides that every union territory shall be administered by the President acting.
- The union territory of Delhi is concerned as a matter of exception as compared to other union territories of India because it has separate legislation and provisions to appoint the administration as well as the functioning of elected legislative assembly members from the population of Delhi.

13.6 KEY WORDS

- **Lieutenant Governor:** The lieutenant governor is a representative of central government and appointed by the presidential order of India.
- **National Capital Region:** The National Capital Region is a coordinated planning region centred upon the National Capital Territory of Delhi in India. It encompasses the entire NCT of Delhi and several districts surrounding it from the states of Haryana, Uttar Pradesh and Rajasthan.
- **Territory:** Territory is defined as an area of land under the jurisdiction of a ruler or state.

13.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short Answer Questions

1. Differentiate between state and union territory.
2. State the Article 239AA of Indian Constitution.

3. What do you understand by the imposition of President's rule in Delhi?
4. What is the constitutional status of Delhi?
5. Discuss the general administration of the NCT.

*Creation and Administration
of Union Territories: Special
Provisions for Delhi*

Long Answer Questions

1. Discuss why union territories were formed in India?
2. Explain the formation process of union territory.
3. Describe the legislative assemblies for union territories and their composition.
4. Discuss the special provision with respect to Delhi.
5. Critically comment on the 69th Amendment Act of the Indian Constitution.

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13.8 FURTHER READINGS

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BLOCK - V
FOREIGN POLICY

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**UNIT 14 OVERVIEW OF INDIA'S
FOREIGN POLICY**

Structure

- 14.0 Introduction
- 14.1 Objectives
- 14.2 Principles and Objectives of India's Foreign Policy
 - 14.2.1 Foundation of India's Foreign Policy
 - 14.2.2 Objectives of India's Foreign Policy
 - 14.2.3 Principles of India's Foreign Policy
 - 14.2.4 Nehru and India's Foreign Policy
- 14.3 Nuclear Doctrine of India
- 14.4 Answers to Check Your Progress Questions
- 14.5 Summary
- 14.6 Key Words
- 14.7 Self Assessment Questions and Exercises
- 14.8 Further Readings

14.0 INTRODUCTION

The foreign policy of a country, often referred to as the foreign relations policy, comprises self-interest strategies adopted by the state to protect its national interests and achieve its goals in the international scenario. These approaches are strategically used to interact with other countries. The world is getting increasingly interconnected or 'globalized'. We are not merely a handful of individual states any more. We rely on each other for economic as well as military support.

Due to the increasing level of globalization and transnational activities, states may also have to interact with non-state actors in order to maximize benefits of multilateral international cooperation. Since national interest is most important, foreign policies are designed by the governments of various countries using high-level decision-making processes.

How the rest of the world views one state is of great significance. Harsh foreign policies are often coupled with military action or economic embargoes. Dealing with the complications of other countries may lead to countries becoming isolationists. However, foreign policy cannot be prevented from becoming isolationist either.

The essence of India's foreign policy can be traced back to the freedom movement. The freedom fighters, while fighting for independence, were also involved

in other important causes. The fundamentals that emerged at that time are still relevant today. India's foreign policy primarily focusses on having cordial relations, equality of all the states, emphasis on the principles of non-alignment and conducting international relations with equality.

Foreign policy is, therefore, nothing but a policy that governs international relations. Foreign policy is important for understanding the behaviour of other states. A foreign policy involves various objectives. There are also certain goals that are to be achieved through foreign policy.

This unit will introduce you to the principles and objectives of India's foreign policy and the nuclear doctrine of India.

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14.1 OBJECTIVES

After going this unit, you will be able to:

- List the objectives of India's foreign policy
- Discuss the principles of India's foreign policy
- Analyse India's nuclear doctrine

14.2 PRINCIPLES AND OBJECTIVES OF INDIA'S FOREIGN POLICY

India won Independence in 1947 and became the world's largest democratic state after United States of America. India is also the world's second most populous country after China. It consists of people belonging to six major religions and sixteen major languages are spoken here. India, after Independence, did not want to be dominated by either of the military blocs. After the Second World War, the world was divided and dominated by two military blocs led by the capitalist US and communist USSR. The ideological differences between the US and the USSR led to tensions and the rivalry between these two blocs was referred to as the Cold War. India has always believed in a policy of peace and non-violence both in domestic and foreign affairs. India's foreign policy is based on non-alignment, i.e., not aligned to either of the military blocs. India's foreign policy made it possible for her to pursue a policy of peace and take independent action without pressure from either of the military blocs. Having been a colony for so long, India wanted to use its resources for rebuilding and developing the country, rather than spending it on arms. Thus, India adopted the policy of non-alignment.

The foreign policy of a country is determined by a number of historical and domestic factors. In case of India also, several such factors have been responsible for shaping the principles and objectives of the foreign policy. Every head of government and his/her foreign minister leaves an impact of his/her personality on the country's foreign policy. Jawaharlal Nehru was not only the Prime Minister but

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also the Foreign Minister for over 17 years. These were the formative years of independent India. After Independence, Jawaharlal Nehru explained the basic determinants of India's foreign policy in a speech in Lok Sabha, where he said 'Foreign policy is a policy inherent in the circumstance of India, inherent in the past thinkers of India, inherent in the whole mental outlook of India, inherent in the conditioning of the Indian mind during our struggle for freedom and inherent in the circumstances of the world today.' This included virtually all the basic determinants of foreign policy whether geographical conditions, economic compulsions, cultural norms, political traditions and ideals, domestic and international milieu.

14.2.1 Foundation of India's Foreign Policy

During the British rule, India was surrounded by states like Afghanistan, Nepal, Sikkim, Bhutan and Tibet in the North and by Ceylon (now Sri Lanka) in the South. The Partition of British India in 1947, created two new states, India and Pakistan. This division was the result of the religious, social, ethnic and linguistic differences. These factors also disrupted the economic and cultural ties of both nations. The western and eastern parts of India were partitioned leading to the formation of West Pakistan (now Pakistan) and East Pakistan (now Bangladesh). After Independence, the leaders of India tried to build a secular state in which national identity would be above regional, religious or cultural identities. The movements for regional autonomy in Punjab, Jammu and Kashmir, Tamil Nadu and Assam were regarded as threats to Indian unity and the neighbours of India like Pakistan and Sri Lanka and later Bangladesh supported these movements. Moreover, despite the commitment of Congress leaders to the idea of secularism, communal tensions and the rising influence of Hindu political parties pushed the Indian government to identify Indian greatness with Hinduism. The inability of Indian leaders to check anti-Muslim communal violence resulted in strained ties with its Muslim neighbours.

During their regime, the British colonial rulers regarded most of South Asia as a strategic unit and they tried to exclude external powers from this region. To defend this strategic region, the British rulers set up a barrier of buffer states which surrounded India and tried to isolate India from Russia and China, as it could be threatened from the north by these nations. In order to protect India from the south, the British rulers used naval power. After Independence, the leaders of India adopted this policy by establishing a position in cultural as well as geographical perspectives. India's foreign relation was affected by this geo-strategic perception in three ways. First, India endeavoured by treaty, alliance, threats of force or economic embargo to overthrow any move by its neighbours that was judged to be harmful to its own security interests. Only Pakistan and China have been able to resist Indian actions. The Indian elite regarded their country as a regional peace-keeper whose efforts were completely defensive, rather than as a regional enforcer who imposed difficult conditions on its neighbours by virtue of its size and military strength. Second, the intervention of extra-regional powers in the region of South

Asia threatened the security of India, although it had already created a predominant position in the region. India opposed any attempts by powers external to the region, whether by invitation of New Delhi's neighbours or not, to involve themselves or to establish a presence in the region. Therefore, India always criticized Pakistan's alliance with China, the Soviet aggression of Afghanistan, the United States' military assistance to Pakistan and US naval presence on Diego Garcia. India never granted Moscow's request of the Soviet navy base in the region despite the 1971 friendship treaty with the Soviet Union.

The programme of India to build the military strength to defend its territory is essential and security interests got intertwined in the foreign policy of India. India's secret nuclear weapons programme and to develop its ballistic missile strained ties with Pakistan, China and the United States. India's refusal to sign the 1968 Treaty on the Non-Proliferation of Nuclear Weapons stemmed as much from Pakistan's similar stance as from India's belief that the treaty discriminated against the development of peaceful nuclear technology by non-nuclear weapons states and failed to prevent the qualitative and quantitative vertical proliferation of nuclear weapons among the nations already possessing nuclear arms. In 1995, 174 other states gave their approval for an indefinite extension of the treaty though India continued to refuse to sign and condemned the same as 'perpetuating nuclear discrimination'.

Historical Background

British India nurtured semi-autonomous diplomatic relations before Independence. After gaining independence from the British government in 1947, India became part of the Commonwealth of Nations, lending support to independence movements such as the Indonesian National Revolution.

The Partition and disputes over territories such as Kashmir kept India's relations with Pakistan strained for many years. During the Cold War, India adhered to the foreign policy of non-alignment. In other words, it remained unaligned with any major power bloc. However, it not only maintained friendly ties with the Soviet Union but also received sizeable military support from it.

With the end of the Cold War, India's foreign policy was also affected. The country sought to make its relations—both diplomatic and economic—with the US, China, the European Union, Israel, Japan, Mexico and Brazil, very strong. India maintains close ties with the members of the Association of South East Asian Nations (ASEAN), the African Union, the Arab League and Iran. India nurtures military ties with Russia. Its second largest military partner is Israel. It also builds a strong strategic partnership with the US.

The Indo-US civilian nuclear agreement, which was signed and implemented in 2008, reflected the positive progress in Indo-American relations.

India's foreign policy objectives in 1947 were to achieve a peaceful environment, strategic space and autonomy, free of entanglement in Cold War

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conflicts or alliances, while it concentrated on the domestic tasks of integration and nation building. Non-alignment as a policy was the ability to judge issues on the merits and their effect on India's interests and as our first Prime Minister Nehru used to say, 'enlightened self-interest'. Indian nationalism has not been based on a shared language or common religion or ethnic identity. As we sought to build a plural, democratic, secular, and tolerant society of our own, it was natural that we would look for and promote the same value abroad.

14.2.2 Objectives of India's Foreign Policy

The goals of India's foreign policy are simple and straightforward. The primary and overriding goal has always been the maintenance and promotion of international peace and security. The ideals and objectives of India's domestic as well as foreign policy are enshrined in the Constitution of India. A former Foreign Secretary of India, Muchkund Dubey wrote,

The primary purpose of any country's foreign policy is to promote its national interest, to ensure its security, safeguard its sovereignty, contribute to its growth and prosperity and generally enhance its stature, influence and role in the comity of nations. A country's foreign policy should also be able to serve the broader purpose of promoting peace, disarmament and development and of establishing a stable, fair and equitable global order.

The foreign policy-makers set out certain objectives before they proceeded to lay down basic principles and formulate the policy. Several of these objectives are common, though the degree of emphasis always varies.

After Independence, India had to determine the objectives of its foreign policy under very difficult situations. Internally, the Partition of British India left a deep hatred and ill-will and led to the creation of Pakistan. India was till then one economic unit. Its division created many economic problems, which were further complicated by the arrival of millions of Hindus and Sikhs, who migrated from Pakistan and had to be rehabilitated.

India, very soon, was involved in a war in Kashmir that was imposed by Pakistan-backed tribals that belonged to the North-West frontier. The leftists organized strikes which further threatened the Indian economy. India had to tackle this gigantic problem to provide its vast population with the basic necessities of life, like food, clothing and shelter. India also did not have a strong military capacity. A hostile Pakistan compounded India's security problem. India also had to deal with another problem. It was related to internal consolidation. When the British left India in 1947, there were small pockets of French and Portuguese possessions. India's first efforts naturally were to negotiate with the two powers. After prolonged negotiations, the French agreed to withdraw but military action was taken in 1961, to liberate Goa and other Portuguese pockets.

In the meantime, the Cold War had begun and East-West ties were deteriorating very fast. The international situation was not very comfortable. In this situation, India decided that world peace would be a cardinal feature of India's

foreign policy. India desired peace not merely as an ideal, but also as an essential condition for its own security. As Nehru opined, 'India's approach to peace is a positive, constructive approach, not a passive, negative, neutral approach'. India, in its message to the world, has always insisted on using peaceful methods to solve all problems. Peace meant not only avoidance of war, but also reduction of tension and if possible end of the Cold War. An effective body like the United Nations was required to maintain a world order based on understanding and cooperation. International peace would not be possible until the use of weapons was not reduced.

A very important objective was to root out other causes of war by measures such as liberation of subject peoples and the elimination of racial discrimination. In order to achieve this goal, India would pursue an independent foreign policy without following any big power camp. It would also have to support and put its faith in the United Nations. A primary objective of the foreign policy meant pursuit of peace. Thus, India's goal of peace was not only directed by its self-interest, but also by idealism imbibed from Mahatma Gandhi.

Elimination of wants and diseases and illiteracy was another objective of the foreign policy. These ills were not only part of the Indian society, but also of many developing countries of Asia and Africa. While the domestic policy of India was directed at removal of want and disease, it was closely related with the question of foreign aid and assistance. Besides, India cooperated with various international agencies like WHO, FAO, UNICEF and UNESCO to fight against disease, starvation, poverty, illiteracy and famine in various underdeveloped or developing countries.

Voluntarily, India has chosen to remain a member of the Commonwealth of Nations. This association of free and sovereign countries who were colonies in the erstwhile British Empire now recognizes the British Queen as the Head of the Commonwealth and not as the Crown of a Republic like India. Before 1949, only British Dominions were members of, what was called, the British Commonwealth. All the dominions had the British Crown as their monarch. After becoming a republic, India did not want to leave the Commonwealth and decided to accept the British monarch as the head of state. India as well as other member countries continued to cooperate with the Commonwealth for mutual benefits.

India's objective, therefore, is to maintain friendly relations with all, avoid military alliances, pursue non-alignment as a moral principle, seek peaceful settlement of international disputes and promote universal brotherhood and humanism by pursuing and advocating the five principles contained in *Panchsheel*. The ideals of non-interference and peaceful co-existence have faithfully been observed by India. All these objectives have been achieved through principles and decisions of India's foreign policy. India has remained committed to peaceful settlement of disputes between states or nations, although wars were imposed upon India by Pakistan as well as China. India has always tried to pursue friendly relations with all the countries, particularly with its neighbours. India still wishes to

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work in pursuit of world peace and therefore for this reason it has been insisting on complete elimination of nuclear weapons and strengthening of the United Nations.

14.2.3 Principles of India's Foreign Policy

The basic principles of the Indian foreign policy are based on the non-aligned movement and *Panchsheel*. The term non-alignment was coined by Jawaharlal Nehru. Non-alignment refers to not aligning with any of the two power blocs during the era of Cold War. It means that India is independent to pursue its own foreign policy. Furthermore, *Panchsheel*, the second most important principle of Indian foreign policy, was signed on 29 April 1954 between India and China.

1. Non-alignment

India played an important role in the multilateral movements of colonies and newly independent countries that developed into the Non-Aligned Movement. The chief architects of the policy of Non-Aligned Movement (NAM) were Jawaharlal Nehru, Joseph Broz Tito of Yugoslavia and President Nasser of Egypt. Most of the countries in Asia and Africa were impressed by this policy and therefore joined the non-aligned movement. Today, almost all the countries of Asia and Africa are its members. The first non-aligned conference was held in Belgrade in 1961. The Non-Aligned Movement stands for peace, independence and disarmament. It condemns imperialism, colonialism and racial discrimination. The Non-Aligned Movement succeeded in following its programme of support to countries struggling for their independence, cooperating and providing financial assistance to countries for their economic development and condemning any form of discrimination.

India had always taken an active part in world affairs. Even before gaining independence, India had involved itself in international affairs. India had condemned fascist aggression by Germany, Italy and Japan which led to the Second World War. India took a strong stand against the white minority regime that practised apartheid in South Africa. As a peace-loving nation, India supported the cause of disarmament at various international forums. The term 'Non-Alignment' itself was coined by the Indian Prime Minister, Jawaharlal Nehru during his speech in 1954 in Colombo, Sri Lanka.

It is important to understand that the concept of non-alignment of Nehru is neither non-involvement in world affairs nor neutralism. It is, in fact, an activist policy that demands taking up specific sides based on the merit of each case. This implies that issue-bound tilts in non-alignment are legitimate and the concept therefore, does not imply equidistant from both the super powers. Non-alignment is the soul and substance of India's foreign policy. It is a policy of avoiding alignment with any power bloc. Nehru claimed that non-alignment implied no political or military commitment to any bloc. It signifies a deliberate detachment from either bloc or determination to judge every issue of international concern on its own merit. According to Nehru, non-alignment is freedom of action, which is part of

independence. It is a means of safeguarding national independence and contributing to world peace. On the other side, India's geographical situation—its location at the junction of South East Asia and Middle East and its strategic position in the Indian Ocean and as a neighbour of communist China in the North—made it imperative to keep away from military alliances. The policy of non-alignment is in accordance with Indian philosophy and tradition.

2. *Panchsheel* and peaceful co-existence

With the end of the Second World War, movements of national independence and liberation blossomed in Asia, Africa and Latin America. Newly independent countries demanded the establishment of new patterns of international relations based on equality to maintain their national sovereignty and develop their economies. The five principles of peaceful co-existence were produced in response to this strong and common demand of newly independent nations. India and China, being two giants of Asia, established diplomatic ties on 1 April 1950. On 29 April 1954, the two nations signed an agreement on trade and communications between the Chinese region of Tibet and India. This was the first time the Five Principles of Peaceful Co-existence was introduced into the preface of the agreement. The then Chinese Premier Zhou En-Lai visited India and Myanmar in 1954, at the invitation of the two countries and held talks with the then Indian and Myanmar counterparts, Jawaharlal Nehru and U Nu.

Consequently, in the 'Joint Declaration of Chinese and Indian Premiers' issued on 28 June 1954 and the 'Joint Declaration of Chinese and Myanmar Premiers' issued the next day, the Five Principles of Peaceful Co-existence were officially announced as the basic norms guiding the Sino-Indian and Sino-Myanmar relations. The Sino-Indian joint declaration proposed that 'these principles are not only applicable to relations between nations, but also to the general international relationship', while the Sino-Myanmar joint declaration expressed the hope that 'these principles will be observed by all nations'. After one year, in April 1955, China, India and Myanmar initiated the five Principles of Peaceful Co-existence. 29 newly independent countries from Asia and Africa held the historic 'Asian-African Conference' in Bandung, Indonesia. As a result of the common efforts of the participants, the conference adopted the 'Declaration on Promotion of World Peace and Cooperation' and formulated the ten principles of the Bandung Conference.

These ten principles, which contained points relating to the five principles of peaceful co-existence, were an extension and development of the latter. Since then, the five principles of peaceful co-existence have been recognized and accepted by more and more countries and international organizations. Several international meetings have been incorporated into a series of major international documents, including declarations adopted by the UN General Assembly. The five principles were reaffirmed not only in the documents on China's establishment of diplomatic ties with more than 160 states, but also in treaties as well as communiqués signed by

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China with other countries. The five principles mentioned in the preamble of the agreement are as follows:

- Mutual respect for each other's territorial integrity and sovereignty
- Mutual non-aggression
- Mutual non-interference in each other's internal affairs
- Equality and mutual benefits
- Peaceful co-existence

The term *Panchsheel* is found in ancient Buddhist literature and refers to the five principles of good conduct of individuals:

- (i) Truth
- (ii) Non-violence
- (iii) Celibacy
- (iv) Refrain from drinking
- (v) Vow not to steal

The term *Panchsheel* soon became so popular that Nehru called it an 'international coin'. By the end of 1956, many countries of the world including Afghanistan, Myanmar, Indonesia, Egypt, Nepal, Poland, USSR, Saudi Arabia and Yugoslavia had endorsed *Panchsheel*. In 1959, the UN General Assembly also resolved to adopt the five principles. In 1955, the Indonesian President Sukarno also announced five principles of Indonesian National Policy. These five principles called *Panchashila* were:

- (i) Faith in nationalism
- (ii) Faith in humanity
- (iii) Faith in independence
- (iv) Faith in social justice
- (v) Faith in God

However, the five principles of *Panchsheel* declared in 1954 were neither principles of good conduct of the individual nor of nationalism. These were the principles of behaviour of sovereign states in their foreign relations. These are normal expectations from civilized nations in their behaviour with each other. To respect the territorial integrity of others and not to commit aggression are vital objectives of friendly international relations.

3. Freedom of dependent people

Anti-colonialism and anti-imperialism has been a matter of faith with India's foreign policy-makers. Having been a victim of British imperialism for a long time, India decided to oppose all forms of colonialism and imperialism. Therefore, for this

reason, India decided to extend full support to the cause of freedom of dependent people of Asia and Africa. The Dutch colony of Indonesia had been overtaken by the Japanese during the Second World War. When, after the defeat of Japan, the Netherlands tried to establish its rule again; India opposed it even in the United Nations and cooperated with Indonesia in its efforts to gain independence. Again, India fully supported the freedom struggles in Asian and African countries such as Malaya, Libya, Algeria, Tunisia, and Gold Coast (now Ghana). India also supported the cause of independence of the people of Namibia who were under prolonged colonial rule of racist South Africa. Promotion of self-determination of all colonial people was, thus, an important objective and principle of India's foreign policy.

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4. Foreign economic aid and India's independent policy

Economic development of a nation like India was an urgent necessity. Soon after independence India devoted its energies towards planned and rapid all-round development. However, India faced the lack of adequate resources and technical know-how. India had already decided on non-alignment as the basic policy. The financial and technological help that India required could come either from the US or the Soviet Union. It was believed that the USSR would not help a non-communist country. The government as well as the business community in India realized that the US would be the only country that could give substantial help to India. Yet India did not want to compromise on the principles of non-alignment, independence and sovereignty of the country. By 1949, India had come quite close to the United States, despite its firm decision not to accept any aid with strings. Many sections of the Indian industry were putting pressure on the Government of India to secure foreign capital as nationalization of industry was not practicable. The success of communist China made India realize that there was a danger of communism raising its head in India also, unless economic development was initiated in a big way, naturally with foreign aid. To avoid Chinese Communist type of success in the country, even in the United States, there was growing realization of the need to help India. Thus, the process of economic assistance from the US to India began.

India also started accepting aid from the World Bank and a number of other countries, as the process of development accelerated. In the course of time, Soviet suspicion of India being a pro West Country was removed. India welcomed aid from the Eastern bloc also. Then, two new economic powers began to emerge as the Soviet Union experienced difficulties. Germany and Japan became industrially developed states and started providing aid to many states, including India. Unfortunately, the Western states have been unwilling to transfer technology to India and other developing states. India tried to maintain independence in decision-making and foreign policy. At times, it was charged with being pro-West and at other times, with a clear tilt towards the Soviet Union. However, India tried to maintain a balance and pursue an independent policy. Under Indira Gandhi's regime,

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India chose to go in for large-scale nationalization. As socialism was a goal of the Indian economy (42-Amendment, 1976), the western nations began to disbelieve India's policy of independent decision-making and non-alignment. India decided to liberalize its economy in mid-1991, and after the disintegration of Soviet Union, India's economy naturally moved closer to the capitalist world.

5. Opposition to racial discrimination

India believes in equality of all human beings. Its policy aims to oppose all forms of racial discrimination. South Africa was the worst example of discrimination against and exploitation of coloured peoples, including those of Indian origin. India gave complete support to the cause of the victims of social discrimination. Not only did India cut off diplomatic ties with South Africa in 1949, but also used its influence in the application of comprehensive sanctions against the white minority racist regime of South Africa. No facility to the racist regime was allowed by India, and it opposed the system within and outside the United Nations and stood by the demand of racial equality.

In the early 1994, Apartheid was finally given up and a majority government was duly elected and installed under the leadership of Nelson Mandela. By achieving the goal of racial equality in South Africa, India re-established its ties with that country. India has regularly supported the establishment of such society as it is an egalitarian human society in which discrimination based on colour, race and class, does not exist.

6. Support to the United Nations

India is one of the founding members of the United Nations (UN) and many of its specialized agencies. India has complete faith in international organizations and agencies. India strongly believes in international peace and security. India does not support the usage of weapons, despite having nuclear weapons and wants their elimination and considerable reduction of conventional weapons and armed forces. It believes that these goals can be achieved by strengthening the United Nations. India is an important member of the group of non-aligned in the UN. It is also a prominent Afro-Asian Member of the world body. India has sponsored and supported several progressive measures in the UN and its agencies.

Vijay Laxmi Pandit, an Indian, was elected President of the United Nations General Assembly in 1953. India has been a non-permanent member of the UN Security Council for a number of terms. Again, India has been elected for a non-permanent member of the UN Security Council and is functioning as a member from 2011. India's contribution to the cause of world peace has been universally recognized. To serve in collective security and peace-keeping efforts, India has enthusiastically responded to the call of the United Nations. India sent a medical unit in the Korean War as well as participated actively in the repatriation of the prisoners of war after the Korean crisis. India had also sent help at the call of the United Nations for peace-keeping to Egypt, Congo and Yugoslavia.

7. Peaceful settlement of international disputes

Disputes among nations are unavoidable. There can only be two methods for the settlement of international disputes:

- (i) War
- (ii) Peaceful settlement

War has been the most commonly used method of deciding disputes from the pre-historic days. War was considered the legitimate means of deciding disputes. It resulted in the victory of one nation over the other. India's foreign policy goal is peaceful settlement of dispute—here, the emphasis is on 'peaceful' rather than 'settlement'. Therefore, if India's goal is international peace, peaceful settlement of disputes is the natural means. The founding fathers of the Constitution of India were keen to remind all future governments that India as a nation desired peaceful settlement of international dispute. Article 51 of the Constitution of India (in part IV, Directive Principles of State Policy) lays down that the state shall endeavour to seek peaceful settlement of international disputes. India does not support 'negotiation through strength' and considers it illogical. Although India itself had to face wars imposed upon it, its faith in pacific (peaceful) means was not shaken.

Generally, in nations like Britain, the basic principles of foreign policy do not radically change whenever there is change of government. India has adopted this tradition and even when Prime Ministers and foreign Ministers have changed, India's basic policy commitments have remained unaltered or unchanged.

8. The Gujral Doctrine

The Gujral Doctrine is a set of five principles that guide the conduct of foreign relations with India's nearest neighbours, which were spelt out by I. K. Gujral, first as External Affairs Minister and later as the Prime Minister. Among other factors, these five principles arise from the belief that India's stature and strength cannot be divorced from the quality of its relations with its neighbours. Therefore, it recognizes the significance of friendly, cordial relations with neighbours. These principles are as follows:

- With neighbours like Bangladesh, Bhutan, Maldives, Nepal and Sri Lanka, India does not expect reciprocity, but gives and accommodates whatever it can in good faith and trust
- No South Asian country should permit its territory to be used against the interest of another country of the region
- No country should interfere in the internal affairs of another
- All South Asian countries must respect each other's territorial integrity and sovereignty

All disputes should be settled through peaceful bilateral negotiations

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The doctrine advocated people-to-people contacts, particularly between India and Pakistan, to create an atmosphere that would enable the countries concerned to sort out their differences in an amicable manner.

The Gujral Doctrine, summed up in one sentence as, the policy of giving unilateral concession to neighbours and promoting people-to-people contact, is aimed at improving relations by friendly gestures or actions. The Doctrine presents India as a big country willing to unilaterally help the smaller neighbours. It was widely believed to have been authored by Gujral's close friend Professor Bhabani Sengupta.

The Gujral Doctrine became an important principle of India's foreign policy, in the context of changed international environment in post-Cold War world. The Gujral Doctrine became significant when at the Foreign Secretary-level talks between India and Pakistan in June 1997, the two countries identified eight areas for negotiations so as to build confidence and see friendly resolution of all disputes.

9. India's Option of Nuclear Weapons

The atomic energy research was initiated by Jawaharlal Nehru and the first Chairman of the Atomic Energy Commission was Dr. Homi Bhabha. Jawaharlal Nehru never stressed on the fact that nuclear weapons should be acquired; however he never opposed the idea either. It was widely believed that the atomic energy should be developed for peaceful purposes. It was only much later that India started developing nuclear power.

The Bangladesh Crisis of 1971 proved that China, an ally of Pakistan, would help Pakistan in the development of nuclear weapons. Therefore, it became important for India to develop nuclear weapons so that it could safeguard its territories.

India conducted its first nuclear test in May 1974. It was declared by India that the test was only a 'Peaceful Nuclear Explosion' due to the hue and cry in the international community. India constantly refuses to sign the discriminatory Non-Proliferation Treaty of 1968, which recognized only five nuclear weapon states and bound the signatories not to proliferate nuclear weapons.

In May 1998, Prime Minister Atal Behari Vajpayee took the bold decision of ordering five nuclear tests. The tests conducted in absolute secrecy enabled India to declare it a nuclear weapon state. India boldly faced bombardment of criticism and severe sanctions imposed upon it by the US and its friends. Vajpayee declared categorically that India was a nuclear weapon state and that it did not need to conduct any more tests. India till today refuses to sign the NPT and the CTBT.

14.2.4 Nehru and India's Foreign Policy

Jawaharlal Nehru is the architect of the foreign policy of modern India. He carefully handled India's violent domestic situation in the years immediately after

Independence. The major contribution of Nehru lies in the field of foreign policies. Nehru, in his capacity as the foreign minister, subjected the foreign policy to much controversy and debate, like his economic policies. He was as influenced by socialism as with Gandhi's ideals of Satyagraha. Nehru's foreign policy was characterized by two major ideologies:

- (i) He wanted India to have an identity that would be independent of any form of apparent commitment to either power bloc, the US or the USSR.
- (ii) He had an unshaken faith in goodwill and honesty in matters of international affairs.

The first policy ultimately led to the attack of 1962, as all the clauses of the *Panchsheel* or five-point agreement of 1954 between New Delhi and Peking (now Beijing), were openly disobeyed. This breach of faith was a major shock for Nehru and also the reason for his death.

Nehru and NAM

The greatest success of Nehru's non-committal international politics was the formation of NAM. Nehru found allies in Tito, Nasser, Sukarno, U Nu and Dr Kwame Nkrumah at a later stage in his new alliance. In the beginning, NAM formed with newly-independent and long-colonized nations of Asia and Africa, was not taken seriously, either by the Eastern bloc (Communist bloc) led by the USSR or the Western bloc (Capitalist bloc) led by the US. When NAM was established and began to function collectively by not aligning with either bloc, then its importance was understood. It also felt a great degree of international pressure from both parts of the globe. However, Nehru proceeded with his mission. It was realized that the NAM was not just a platform of neutral and inactive states, but a great test for his courage. The main objective of NAM was to decolonize the countries that were fighting for their independence. The process of decolonization was adopted and favoured by the NAM member countries with peaceful agreement.

Nehru and the China Crisis

The foreign policy of Jawaharlal Nehru regarding China has been criticized. Nehru wanted to establish a very friendly and mutually beneficial relationship with China. For this purpose, the five-point agreement or the *Panchsheel* accord between New India and China was signed in 1954. After signing this agreement, China began to patrol certain parts of the Indian border from 1955. India had opened up for negotiations to solve the problem peacefully. While India, under Nehru's guidance, wanted to take one issue at a time, the Chinese government, under Chou En-Lai wished to treat the border issue in its complete form at one time. The *Panchsheel* agreement was violated by the Chinese government. In 1962, China attacked India. It was a great shock, not only Nehru but also to the entire international community. At that time, the Indian military was not prepared for the

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war. Both the Super powers such as the US and the USSR extended token help to India. The Soviet Union was engaged with the Cuban Missile Crisis but President Khrushchev extended some help to the country. However, American assistance was very less as compared to Pakistan, which was given massive military help in 1954.

Nehru played his last master stroke in international policy, as he turned the military defeat into a moral victory for India. The Chinese attack did not change the foreign policy of India. However, Nehru was forced through internal opposition party criticism to change his standpoint on international affairs. Nehru accepted that absolute goodwill was not essential when dealing with international problems. Jawaharlal Nehru's dreams were more or less severely damaged. It was also a grand unexpected revelation. India's national interest was the most important governing principle of Nehru's foreign policy. However, Nehru was not a realist of Kautilya–Morgenthau school. He was deeply impressed by his leader, Mahatma Gandhi who was an idealist and insisted on the application of moral principles in the conduct of all politics. Nehru, therefore, did not find any incompatibility between India's national interest and the legitimate interests of other nations. When Nehru formulated the foreign policy of free India, he insisted on national interest, as an idealist than a realist as is clear from his policy of non-alignment in general, and his decision to ascertain the wishes of the people of Jammu and Kashmir on the question of the state's merger with India. His idealist approach is clear in his agreement with the Chinese Prime Minister Chou En-lai in 1954 that allowed full integration of Tibet with China.

Nehru and the Kashmir Problem

Kashmir was a continuous problem and Nehru could not successfully negotiate the Kashmir problem with Pakistan. Nehru believed in honest fellow-feeling and political philanthropy. He even tried to negotiate with the Pakistani government through the United Nations. However, all peaceful agreements were denied by the Pakistani military rulers. Even the offer of a plebiscite was rejected in 1950. Kashmir, as a Muslim dominated territory remained strategically dangerous for the security of the nation. The no solution to the Kashmir problem was reached. To this day, it remains a bone contention between India and Pakistan. It is also an international problem in South Asia.

14.3 NUCLEAR DOCTRINE OF INDIA

The advent of nuclear weapons after World War II has given a new meaning to what is known as threat to a nation. Nations of the world since the end of World War II have continued to pursue their nuclear capability which may be attributed to reasons like national power, scientific advancement and technological prowess and of course, national prestige and security. When India gained independence in

1947, the nuclear age had already dawned, but Indian leaders took the decision of non-alignment with any of the power blocs. The Indian leaders were of the opinion that nuclear weapons were weapons of mass destruction and therefore the non-use of these was essential for the security of all the nations of the world. At the same time, the leaders of India also recognized the fact that nuclear technology was beneficial for economic development especially of a nation like India, which was under the colonial rule for several years. The Indian Government in 1948 passed the Atomic Energy Act in 1948.

In the 1950s, nuclear testing took place above the ground and India became a leader in calling an end to nuclear testing as the first step to end the nuclear arms race. Addressing the Lok Sabha on 2 April, 1954, shortly after a major hydrogen bomb test had been conducted, Pt. Jawaharlal Nehru stated that 'nuclear, chemical and biological energy and power should not be used to forge weapons of mass destruction'. He called for negotiations for prohibition and elimination of nuclear weapons and in the interim, a standstill agreement to halt nuclear testing. The world had by then witnessed less than 65 tests. Our call was not heeded. In 1963, an agreement was concluded to ban atmospheric testing, but by this time, countries had developed the technologies for conducting underground nuclear tests and the nuclear arms race continued unabated.

Theoretically, all nations of the world know that it is essential to eliminate nuclear weapons for world peace. However, there is little unanimity among nations on how this can be achieved. Nuclear weapon proliferation today is the greatest threats to the world and its nations, but little has been done and implemented to change this nuclear order.

In 1965, along with a small group of non-aligned nations, India put forward the international non-proliferation agreement under which nuclear weapon countries would give up their nuclear arsenals provided other countries did not develop or acquire such weapons. However, this balance was absent from the Nuclear Non-Proliferation Treaty of 1968 which India did not sign.

Today, nine states (China, France, India, Israel, North Korea, Pakistan, Russia, the United Kingdom, and the United States) have nuclear weapons, and more than thirty others (including Japan, Germany, and South Korea) have the technological ability to quickly acquire them. This access is a lucrative option to proliferation of nuclear weapons and therefore the major threat that arises is that the line to use these weapons for military use and civilian use will soon be dissolved. Therefore, today, the non-proliferation regime is under serious threat; more so from nations like North Korea and Iran.

It was in 1974 that India first exhibited its nuclear ability. These tests were received by the world with shock and at that time considered to be a reckless defiance to the non-proliferation treaty. These tests were viewed as major threats to not only the national security, but also the world peace at large. India's objective of nuclearization has always been an issue of debate. While, the main

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factor has been national security, there were several contributing factors that led to India entering the nuclear arms race. The very first factor that led to India giving a thought to the development of a nuclear program was the testing of a nuclear device by China. After a period of nuclear slow-down, India accelerated its nuclear program in 1980s when Pakistan was rumoured to put forth strong nuclear capabilities. In 1998, India conducted nuclear tests in response to Pakistan test firing the medium range Ghauri missile that could target the main cities of India. However, these tests by India were criticized as reaction to prior proliferation relations of India with Pakistan. Also, India was concerned over Chinese assistance to Pakistan's nuclear program which put India's security from the north at threat. This led to India gearing up its nuclear program for national security.

India's nuclear policy is in fact product of long and deep-thinking of eminent people and leaders of India. The following few elements have shaped India's nuclear policy since its development:

- India has remained firmly opposed to nuclear weaponization and development of weapons of mass destruction.
- India has time and again desired that the international community accepts and implements a time-bound program for disarmament without any discriminatory provisions.
- India is firm in acquiring and developing nuclear technology for peaceful purposes with an ultimate aim of self-reliance and economic development.
- India has been willing to submit itself to controls, inspections and safeguards, if these are made equally applicable to all countries irrespective of their power and influence.

While, India started pursuing its peaceful nuclear program in the 1950s, it was in the 1960s that several developments took place and that triggered changed in India's nuclear programme. After the death of Pandit Jawaharlal Nehru, India started to develop its nuclear program to counter the Chinese program. India's defeat in the 1962 border conflict with China proved its military unpreparedness, and exacerbated tensions between the two countries. The result of the war in a real sense altered India's view of nuclear weapons. This was coupled with China's testing of a nuclear weapon in 1964, making Indian politicians question the wisdom of their nuclear policies. The Nuclear debate was again renewed in 1964-65, which mostly centred on the threat from China. The Chinese nuclear explosion did set off a debate within India on the need to make the bomb. In addition to the conflict with China, India also indulged in several conflicts with Pakistan on border issues. After its victory over Pakistan in 1965, India furthered its regime for the development of a nuclear bomb.

In 1970, India began a more overt program for the development of nuclear weapons. India was forced to rethink over its nuclear logics because of the following reasons:

- Visit of US President Nixon to China.
- China's tilt towards Pakistan in the war of 1971 against India.
- China's launch of a long-range rocket carrying a satellite into the orbit.

These reasons led to India carrying out its first underground nuclear explosion in 1974. Technically, this test made the sixth nuclear power and India a nuclear power capable state. It, however, also brought about several problems.

The first problem was that India's underground nuclear tests complicated the global nuclear scenario. Pakistan further got an alibi to intensify its nuclear programmes and the Pakistan government started its secret nuclear programme. This test was also a define reason for Pakistan to develop a uranium enrichment centrifuge as Kahuta. India also had to bear the brunt of smaller nuclear power states. This program was also criticized by the western countries and US stopped giving aid to India. The ramifications of these tests can be summarised as follows:

'The US Secretary of State, Henry Kissinger, passing through Delhi after the 1974 test, asked India to delay further testing until after the Non-Proliferation Treaty Review Conference scheduled for 1975. The Canadian government, like the US, was very surprised at the Indian test of May 1974. The plutonium used in the nuclear device was produced by the Canadian aided nuclear reactor—CIRUS. Earlier, Indian officials had repeatedly assured Canada that the government did not intend to explode a nuclear device. Prime Minister Trudeau had warned Mrs. Gandhi that in the event of India conducting any nuclear test, Canada would cut off all nuclear cooperation as well as all economic aid. If the two responses are compared, the United States had a mild response compared to Canada. The Cold War between the Soviet Union and United States was a major reason behind the United States' mild response. Henry Kissinger perhaps at that moment did not want to alienate India, as he feared this would end up leading India to take up sides with the Soviet Union. According to Robert J. Einhorn, deputy assistant secretary of state for non-proliferation in the Bill Clinton Administration, In 1974, if Indira Gandhi had gone ahead with a weapons programme, it would have been a different non-proliferation order because NPT came into being in 1970 and in 1974 many states were still undecided about it. By not weaponizing then, India, in effect, supported the NPT and ensured its success.'

When Indira Gandhi returned to power in 1980, Pakistan has become a major player in South Asian politics and was supported and aided by the US. US did not interfere in Pakistan's nuclear program and India had to put hold on its 1983-83 nuclear tests because of fear of US stopping all aid. India, however, had to rethink of its nuclear program because of constant threat from Pakistan. In 1984, after Indira Gandhi was killed, Rajiv Gandhi became the Prime Minister

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of India and pressurised US to interfere in Pakistan's nuclear program. However, when the same was not done, India accelerated its missile program and an Integrated Guided Missile Program (IGMP) was formulated in 1983. In 1983, IGMP started the development of the five missile systems. The programme included an anti-tank missile (Nag), two surface-to-air missiles (Akash and Trishul), one medium range surface-to-surface missile (Prithvi), and an intermediate range missile (Agni).

In the 1990s, the underground nuclear blasts in India and Pakistan got the attention of the entire world. South Asia became the hot spot of nuclear tension and India and Pakistan were considered to be at the brink of a nuclear war. India detonated five nuclear devices in Pokhran on May 11 and 13, thus making India a nuclear weapons capable state. Before the dust in Pokhran could even settle, Pakistan detonated six nuclear devices on May 28 and 30 in Chagai. These developments in the countries changed the security environment in South Asia forever. India was now not ready to become a destabilising nuclear force in international security.

In the 2000s, new developments took place in India's nuclear program. October 2008 saw India and US signing a pact for the peaceful use of nuclear energy. The following are the main aspects of India-US nuclear deal:

- The agreement did not affect India's nuclear program development for military purposes.
- The countries agreed to facilitate nuclear trade.
- India and the US agreed to transfer nuclear materials, non-nuclear materials and equipment.
- India was allowed to develop strategic reserve of nuclear fuel.

India's nuclear policy has been marked by restraints and openness. India has not violated any international agreement as far as the use and test of nuclear weapons is concerned. India observes voluntary moratorium and refrains from conducting nuclear tests. India has also indicated readiness to participate in negotiations in the Conference on Disarmament in Geneva on a Fissile Material Cut-off Treaty. The basic objective of this treaty is to prohibit future production of fissile materials for use in nuclear weapons or nuclear explosive devices. India has also maintained effective control on export of nuclear materials as well as related technologies.

India's nuclear policy is the one that states that while possessing nuclear warheads, India can propose and push multi-lateral international disarmament for a nuclear free and threat free world. However, while India endorses all such efforts, it also does not compromise on developing its strength as a nuclear nation. India is ready to exhibit its nuclear strength and the ballistic defence system if its security is threatened by the two neighbouring nuclear states.

Nuclearisation of South Asia- Viewing India’s Nuclear Regime from a Broader Perspective

*Overview of India's
Foreign Policy*

The nuclearisation of South Asia is an issue that concerns the world today. South Asia has two nuclear powers- India and Pakistan that not only share borders but also a great history of animosity. India and Pakistan both indulge in the production and development of more reliable nuclear weapons. India and Pakistan are considered to possess almost 200 nuclear weapons and the numbers are increasing amidst the research being carried out in this field. Nuclear experts are more worrisome as these countries are continuously producing fissile material, increasing their capacity to produce plutonium and deploying additional delivery vehicles. They are also in the process of building small tactical nuclear weapons for quick deployment.

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The proliferation of weapons of mass destruction in South Asia is also an issue of great concern for the world. Also it is to be noted that the nuclearisation of India and Pakistan could not avert war situations in these countries over the last few decades.

In the aftermath of the nuclear tests of India and Pakistan, several strategists argued that the balance of terror caused by the possession of nuclear weapons would reduce possibility of war between India and Pakistan. However, these assumptions were proved wrong and India and Pakistan were almost at the brink of a war in 1998 in Kargil after the countries tested their nuclear weapons. It is also said that during the war, Pakistan deployed its nuclear weapons around the LOC and if the war had converted into a full-fledged war, Pakistan would have used these weapons causing mass destruction in South Asia.

The nuclearisation of India had in many ways affected the India-US foreign policy. The Kargil war brought about changes in the views of the US about the nuclearisation of these South Asian nations. Since then, India and Pakistan have always been under pressure from the US to resolve the issue peacefully because the US fears that another war between India and Pakistan will lead to a nuclear exchange which would be harmful not only for these nations but also the entire world.

The US is interested in preventing war between India and Pakistan and therefore wants India and Pakistan to sign the CTBT- Comprehensive Test Ban Treaty. These nations are also being asked to stop the production of Fissile material and join Fissile Material Control Treaty negotiations. The US is also pressurising India and Pakistan to practice tight control on the export of goods and equipment related to nuclear material. This has in many ways influenced and brought about changes in the India-US as well as India-Pakistan foreign policy.

Check Your Progress

1. What is the primary focus of India’s foreign policy?
2. When did India pass the Atomic Energy Act?
3. List the main aspects of India-US nuclear deal.

14.4 ANSWERS TO CHECK YOUR PROGRESS QUESTIONS

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1. India's foreign policy primarily focusses on having cordial relations, equality of all the states, emphasis on the principles of non-alignment and conducting international relations with equality.
2. The Indian Government passed the Atomic Energy Act in 1948.
3. The following are the main aspects of India-US nuclear deal:
 - The agreement did not affect India's nuclear program development for military purposes.
 - The countries agreed to facilitate nuclear trade.
 - India and the US agreed to transfer nuclear materials, non-nuclear materials and equipment.
 - India was allowed to develop strategic reserve of nuclear fuel.

14.5 SUMMARY

- The foreign policy of a country, often referred to as the foreign relations policy, comprises self-interest strategies adopted by the state to protect its national interests and achieve its goals in the international scenario.
- India's foreign policy is based on non-alignment, i.e., not aligned to either of the military blocs. India's foreign policy made it possible for her to pursue a policy of peace and take independent action without pressure from either of the military blocs.
- The foreign policy of a country is determined by a number of historical and domestic factors.
- British India nurtured semi-autonomous diplomatic relations before Independence. After gaining independence from the British government in 1947, India became part of the Commonwealth of Nations, lending support to independence movements such as the Indonesian National Revolution.
- The goals of India's foreign policy are simple and straightforward. The primary and overriding goal has always been the maintenance and promotion of international peace and security.
- The basic principles of the Indian foreign policy are based on the non-aligned movement and Panchsheel. The term non-alignment was coined by Jawaharlal Nehru.
- India is one of the founding members of the United Nations (UN) and many of its specialized agencies. India has complete faith in international organizations and agencies. India strongly believes in international peace and security.

- The Gujral Doctrine is a set of five principles that guide the conduct of foreign relations with India's nearest neighbours, which were spelt out by I. K. Gujral, first as External Affairs Minister and later as the Prime Minister.
- Jawaharlal Nehru is the architect of the foreign policy of modern India. He carefully handled India's violent domestic situation in the years immediately after Independence.
- The foreign policy of Jawaharlal Nehru regarding China has been criticized. Nehru wanted to establish a very friendly and mutually beneficial relationship with China.

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14.6 KEY WORDS

- **Foreign policy:** It is the relation among countries concerning all issues of international relevance like disarmament, peace, climate change, decolonization, justice and so forth.
- **Alliance:** It is a union or association formed for mutual benefit, especially between countries or organizations.
- **Secularism:** It refers to harmonious co-existence of different religions with each other.
- **Power bloc:** It is an association of groups, especially nations, having a common interest and acting as a single political force.
- **Panchsheel:** It refers to five principles that govern relations between states (*Panch* in Sanskrit means 'Five' and *Sheel* means 'virtue').
- **Plebiscite:** It is the direct vote of all the members of an electorate on an important public question such as a change in the constitution.

14.7 SELF ASSESSMENT QUESTIONS AND EXERCISES

Short-Answer Questions

1. Write a short note on the foundation of India's foreign policy.
2. What are the objectives of India's foreign policy?
3. Briefly mention the principle of non-alignment.

Long-Answer Questions

1. Explain the various factors important for the formulation of the foreign policy.
2. Describe the principles of India's foreign policy.
3. 'Jawaharlal Nehru is the architect of the foreign policy of modern India.' Elucidate the statement.
4. Discuss the status of India with reference to the nuclear regime.

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