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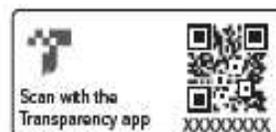
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Mamadgi Anjali  
Mamadgi Aishwarya  
and  
My Native Place  
Dhanasiri (Zaheerabad – Telangana)*

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## About the Author

M Laxmikanth obtained his postgraduate degree in Political Science from Osmania University in 1989. He is the former founder and director of an erstwhile coaching institute called Laxmikanth's IAS Academy, Hyderabad. Other books authored by him include *Governance in India*, *Objective Indian Polity and Public Administration*.

## Preface to the Eighth Edition

I am pleased to announce the release of the latest edition of Indian Polity, now structured as a comprehensive courseware. This edition features two new chapters on North Eastern Council and Judgements Expanding the Scope of Article 21, over 40 Conceptual Videos, Preliminary questions for 2024–2025 with answer keys, and Main questions for 2023-2024—making it both timely and highly relevant for aspirants.

Recognising that videos are now an integral part of the learning journey, we've included in-depth videos on complex topics to help learners gain a clearer and deeper understanding of key concepts in Polity.

With these enhancements, I firmly believe this edition stands as a thoroughly updated and holistic manual for civil services preparation. It is a matter of immense satisfaction that the previous seven editions have received an overwhelmingly positive response from readers, and I am confident that this edition will continue to earn your trust and support.

As always, constructive feedback and specific suggestions for improvement are most welcome and will be sincerely appreciated.

**M Laxmikanth**

## Preface to the First Edition

I have great pleasure in placing this book before the aspirants of the top administrative services. The book has been written to meet the growing requirements of the candidates appearing for the Civil Services Examinations (Preliminary and Main) conducted by the Union Public Service Commission. It directly and fully covers the Indian Polity section of the paper on General Studies and is also useful for certain optional subjects like Public Administration, Political Science, Law, Sociology and Anthropology.

This comprehensive volume would enable the readers to acquire a complete and detailed understanding of the subject. It covers all dimensions (constitutional, non-constitutional, political and administrative) of the subject. My first-hand experience of coaching the candidates for the Civil Services Examinations has been a great source of inspiration and has helped me immensely in writing this book.

An effort has been made to make the contents of the book relevant, authentic, and up-to-date. The constitutional provisions are explained in the light of the debates of the Constituent Assembly of India as well as the judgements of the Supreme Court and the high courts. I have also used tables to make the presentation more clear. The Appendices, provided at the end of the book, serve as a reference section.

I welcome all constructive comments and concrete suggestions from the readers of this book.

**M Laxmikanth**

## Acknowledgements

During the course of writing this book, I have received help, encouragement and assistance from my teachers, students, family members, colleagues, friends, library staff and others. I am thankful to all of them.

I am particularly grateful to my wife, Smt. Mamadgi Vidya, for the encouragement and support that she provided during the preparation of the book.

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I have also used and included information, data, annual reports, other reports and committee/commission reports available on the official websites of the various ministries, departments and organisations of the Government of India. These include the Ministry of Home Affairs, Inter-State Council Secretariat, Election Commission of India, Cabinet Secretariat, Lok Sabha Secretariat, Rajya Sabha Secretariat, Digital Sansad, Ministry of Parliamentary Affairs, Ministry of Finance, Indian Parliamentary Group, Supreme Court of India, Ministry of Personnel, Public Grievances and Pensions, Ministry of Law and Justice, National Legal Services Authority, Ministry of Consumer Affairs, Food and Public Distribution, Ministry of Panchayati Raj, Ministry of Housing and Urban Affairs, Ministry of Tribal Affairs, Union Public Service Commission, Finance Commission of India, Goods and Services Tax Council, National Commission for SCs, National Commission for STs, National Commission for BCs, Commissioner for Linguistic Minorities, Comptroller and Auditor General of India, NITI Aayog, National Human Rights Commission, Central Information Commission, Central Vigilance Commission, Central Bureau of Investigation, Lokpal, National Investigation Agency, National Disaster Management Authority, Ministry of Culture, Ministry of Social Justice and Empowerment, National Foundation for Communal Harmony, Ministry of External Affairs, Press Information Bureau, National Commission for Women, National Commission for Protection of Child Rights, National Commission for Minorities, Ministry of Minority Affairs, Bar Council of India, Law Commission of India, North Eastern Council and others.

The other sources of material were the news items and articles published in The Hindu, The Indian Express, The Times of India, Yojana and Kurukshetra as well as the official websites of the Governments of the USA, the UK, the France, the Japan, the Russia, the China and the Switzerland.

My thanks are also due to Tanweer Ahmad, Nikhil Wadhera, Pankaj Dwivedi and Mausumi Mukherjee of McGraw Hill Education (India) Private Limited for their unstinted cooperation in bringing out this revised edition on time.

**M Laxmikanth**

#### **Year wise break up of UPSC Questions on Indian Polity (General Studies–Preliminary)**

Sl.No.	Year	No. of Questions Asked
1.	2010	10

## INDIAN POLIY BY M LAXMIKANTH 8<sup>TH</sup> EDITION

Sl.No.	Year	No. of Questions Asked
2.	2011	12
3.	2012	20
4.	2013	18
5.	2014	13
6.	2015	15
7.	2016	06
8.	2017	22
9.	2018	15
10.	2019	15
11.	2020	18
12.	2021	18
13.	2022	11
14.	2023	16
15.	2024	19
16.	2025	15

*Note I:* In 2011, the UPSC changed the pattern and syllabus of the Preliminary Examination. In the new scheme, the Indian Polity section has been renamed as "Indian Polity and Governance". It covers Constitution, Political System, Panchayati Raj, Public Policy, Rights Issues, etc. Also, now each question carries two marks (previously one mark)*Note II:* In the above table, the number of questions asked on "Governance" (since 2011) are also included.

### Year wise break up of UPSC Marks on Indian Polity (General Studies—Main)

Sl.No.	Year	No. of Marks Allotted
1.	2010	66

Sl.No.	Year	No. of Marks Allotted
2.	2011	111
3.	2012	47
4.	2013	100
5.	2014	88
6.	2015	100
7.	2016	112
8.	2017	110
9.	2018	125
10.	2019	125
11.	2020	125
12.	2021	125
13.	2022	125
14.	2023	125
15.	2024	110

*Note I:* In 2013, the UPSC changed the pattern and syllabus of the Main Examination. In the new scheme, a separate and full paper on “Governance, Constitution, Polity, Social Justice and International Relations” has been introduced. It carries 250 marks.

*Note II:* In the above table, the number of marks allotted to the questions relating to the “Governance, Social Justice and International Relations” (since 2013) are not included.

### **UPSC Syllabus**

#### **Preliminary Examination**

##### **Paper-I (General Studies)**

Indian Polity and Governance – Constitution, Political System, Panchayati Raj, Public Policy, Rights Issues, etc.

#### **MAIN EXAMINATION**

##### **Paper-II (General Studies-II)**

##### **(Governance, Constitution, Polity, Social Justice and International Relations)**

- Indian Constitution – historical underpinnings, evolution, features, amendments, significant provisions and basic structure
- Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein
- Separation of powers between various organs dispute redressal mechanisms and institutions
- Comparison of the Indian constitutional scheme with that of other countries

- Parliament and State Legislatures – structure, functioning, conduct of business, powers & privileges and issues arising out of these
- Structure, organisation and functioning of the Executive and the Judiciary Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity
- Salient features of the Representation of People’s Act
- Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies
- Statutory, regulatory and various quasi-judicial bodies
- Government policies and interventions for development in various sectors and issues arising out of their design and implementation
- Development processes and the development industry – the role of NGOs, SHGs, various groups and associations, donors, charities, institutional and other stakeholders
- Welfare schemes for vulnerable sections of the population by the Centre and States and the performance of these schemes; mechanisms, laws, institutions and Bodies constituted for the protection and betterment of these vulnerable sections
- Issues relating to development and management of Social Sector/Services relating to Health, Education, Human Resources
- Issues relating to poverty and hunger
- Important aspects of governance, transparency and accountability, e-governance – applications, models, successes, limitations, and potential; citizens charters, transparency & accountability and institutional and other measures
- Role of civil services in a democracy
- India and its neighborhood – relations
- Bilateral, regional and global groupings and agreements involving India and/or affecting India’s interests
- Effect of policies and politics of developed and developing countries on India’s interests, Indian diaspora
- Important International institutions, agencies and fora – their structure, mandate

*Note:* This book focuses exclusively on topics relating to Indian Constitution and Political System and does not include those topics that are covered in Laxmikanth’s *Governance in India* book.

## PART -I CONSTITUTIONAL FRAMEWORK

### In this Part...

1. 1. Historical Background
2. 2. Making of the Constitution
3. 3. Concept of the Constitution
4. 4. Salient Features of the Constitution
5. 5. Preamble of the Constitution
6. 6. Union and Its Territory
7. 7. Citizenship
8. 8. Fundamental Rights
9. 9. Directive Principles of State Policy
10. 10. Fundamental Duties
11. 11. Amendment of the Constitution
12. 12. Basic Structure of the Constitution

## CHAPTER 1 Historical Background

The Britishers came to India in 1608 as traders, in the form of the East India Company, which had the exclusive right of trading in India under a charter granted by Queen Elizabeth I in 1600. In 1765, the Company, which till then had purely trading functions, obtained the 'diwani' (i.e., rights over revenue and civil justice) of Bengal, Bihar and Orissa<sup>1</sup>. This started its career as a territorial power. In 1858, in the wake of the 'sepyo mutiny', the British Crown assumed direct responsibility for the governance of India. This rule continued until India was granted independence on August 15, 1947.

With Independence came the need for a Constitution. Hence, a Constituent Assembly was formed for this purpose in 1946 and on January 26, 1950, the Constitution came into being. However, various features of the Indian Constitution and polity have their roots in the British rule. There were certain events in the British rule that laid down the legal framework for the organisation and functioning of government and administration in British India. These events have greatly influenced our constitution and polity. They are explained here in a chronological order under two major headings:

1. The Company Rule (1773–1858)
2. The Crown Rule (1858–1947)

### THE COMPANY RULE (1773–1858)



#### Regulating Act of 1773

This act was of great constitutional importance as (a) it was the first step taken by the British Government to control and regulate the affairs of the East India Company in India; (b) it recognised, for the first time, the political and administrative functions of the Company; and (c) it laid the foundations of central administration in India.

#### *The features of this Act were as follows:*

1. It designated the Governor of Bengal as the 'Governor-General of Bengal' and created an Executive Council of four members to assist him. The first such Governor-General was Lord Warren Hastings.
2. It made the Governors of Bombay and Madras presidencies subordinate to the Governor-General of Bengal, unlike earlier, when the three presidencies were independent of one another.
3. It provided for the establishment of a Supreme Court at Calcutta (1774) comprising one chief justice and three other judges.
4. It prohibited the servants of the Company from engaging in any private trade or accepting presents or bribes from the 'natives'.
5. It strengthened the control of the British Government over the Company by requiring the Court of Directors (governing body of the Company) to report on its revenue, civil, and military affairs in India.



### **Amending Act of 1781**

In a bid to rectify the defects of the Regulating Act of 1773, the British Parliament passed the Amending Act of 1781, also known as the Act of Settlement.

#### ***The features of this Act were as follows:***

1. It exempted the Governor-General and the Council from the jurisdiction of the Supreme Court for the acts carried out by them in their official capacity. Similarly, it also exempted the servants of the Company from the jurisdiction of the Supreme Court for their official actions.
2. It excluded the revenue matters and the matters arising in the collection of revenue from the jurisdiction of the Supreme Court.
3. It provided that the Supreme Court was to have jurisdiction over all the inhabitants of Calcutta. It also required the Court to administer the personal law of the defendants i.e., Hindus were to be tried according to the Hindu law and Muslims were to be tried according to the Mohammedan law.
4. It laid down that the appeals from the Provincial Courts could be taken to the Governor-General-in-Council and not to the Supreme Court.
5. It empowered the Governor-General-in-Council to frame regulations for the Provincial Courts and Councils.



### **Pitt's India Act of 1784**

The next important act was the Pitt's India Act<sup>2</sup> of 1784.

#### ***The features of this Act were as follows:***

1. It distinguished between the commercial and political functions of the Company.
2. It allowed the Court of Directors to manage the commercial affairs, but created a new body called the Board of Control to manage the political affairs. Thus, it established a system of double government.
3. It empowered the Board of Control to supervise and direct all operations of the civil and military government or revenues of the British possessions in India.

Thus, the act was significant for two reasons: first, the Company's territories in India were for the first time called the 'British possessions in India'; and second, the British Government was given the supreme control over Company's affairs and its administration in India.



### **Act of 1786**

In 1786, Lord Cornwallis was appointed as the Governor-General of Bengal. He placed two demands to accept that post, viz.,

1. He should be given power to override the decision of his council in special cases.
2. He would also be the Commander-in-Chief.

Accordingly, the Act of 1786 was enacted to make both the provisions.



### **Charter Act of 1793**

***The features of this Act were as follows:***

1. It extended the overriding power given to Lord Cornwallis over his council, to all future Governor-Generals and Governors of Presidencies.
2. It gave the Governor-General more powers and control over the governments of the subordinate Presidencies of Bombay and Madras.
3. It extended the trade monopoly of the Company in India for a period of another twenty years.
4. It provided that the Commander-in-Chief was not to be a member of the Governor-General's council, unless he was so appointed.
5. It laid down that the members of the Board of Control and their staff were, henceforth, to be paid out of the Indian revenues.



### **Charter Act of 1813**

***The features of this Act were as follows:***

1. It abolished the trade monopoly of the Company in India i.e., the Indian trade was thrown open to all British merchants. However, it continued the monopoly of the Company over trade in tea and trade with China.
2. It asserted the sovereignty of the British Crown over the Company's territories in India.
3. It allowed the Christian missionaries to come to India for the purpose of enlightening the people.
4. It provided for the spread of western education among the inhabitants of the British territories in India.
5. It authorised the Local Governments in India to impose taxes on persons. They could also punish the persons for not paying taxes.



### **Charter Act of 1833**

This Act was the final step towards centralisation in British India.

***The features of this Act were as follows:***

1. It made the Governor-General of Bengal as the Governor-General of India and vested in him all civil and military powers. Thus, the act vested, for the first time, the Government of India with authority over the entire territorial area possessed by the British in India. Lord William Bentick was the first Governor-General of India.
2. It deprived the Governor of Bombay and Madras of their legislative powers. The Governor-General of India was given exclusive legislative powers for the entirety of British India. The laws made under the previous acts were called as **Regulations**, while laws made under this act were called as **Acts**.
3. It ended the activities of the East India Company as a commercial body, which became a purely administrative body. It provided that the Company's territories in India were held by it 'in trust for His Majesty, His heirs and successors'.
4. The Charter Act of 1833 attempted to introduce a system of open competition for selection of civil servants and stated that the Indians should not be debarred from holding any place, office and employment under the Company. However, this provision was negated after opposition from the Court of Directors.



### **Charter Act of 1853**

This was the last of the series of Charter Acts passed by the British Parliament between 1793 and 1853. It was a significant constitutional landmark.

#### ***The features of this Act were as follows:***

1. It separated, for the first time, the legislative and executive functions of the Governor-General's council. It provided for the addition of six new members called legislative councillors to the council. In other words, it established a separate Governor-General's legislative council which came to be known as the Indian (Central) Legislative Council. This legislative wing of the council functioned as a mini-Parliament, adopting the same procedures as the British Parliament. Thus, legislation, for the first time, was treated as a special function of the government, requiring special machinery and special process.
2. It introduced an open competition system of selection and recruitment of civil servants. The covenanted civil service<sup>3</sup> was, thus, thrown open to the Indians also. Accordingly, the Macaulay Committee (the Committee on the Indian Civil Service) was appointed in 1854.
3. It extended the Company's rule and allowed it to retain the possession of Indian territories on trust for the British Crown. But, it did not specify any particular period, unlike the previous Charters. This was a clear indication that the Company's rule could be terminated at any time the Parliament liked.
4. It introduced, for the first time, local representation in the Indian (Central) Legislative Council. Of the six new legislative members of the Governor-General's council, four members were appointed by the local (provincial) governments of Madras, Bombay, Bengal and Agra.

### **THE CROWN RULE (1858–1947)**



### **Government of India Act of 1858**

This significant Act was enacted in the wake of the Revolt of 1857—also known as the First War of Independence or the ‘sepoy mutiny’. The act known as the **Act for the Good Government of India**, abolished the East India Company, and transferred the powers of Government, territories and revenues to the British Crown.

#### ***The features of this Act were as follows:***

1. It provided that India, henceforth, was to be governed by, and in the name of, Her Majesty. It changed the designation of the Governor-General of India to that of Viceroy of India. He (Viceroy) was the direct representative of the British Crown in India. Lord Canning, thus, became the first Viceroy of India.
2. It ended the system of double Government by abolishing the Board of Control and Court of Directors.
3. It created a new office, Secretary of State for India, vested with complete authority and control over Indian administration. The secretary of state was a member of the British Cabinet and was responsible ultimately to the British Parliament.
4. It established a 15-member council of India to assist the Secretary of State for India. The council was an advisory body. The secretary of state was made the Chairman of the council.
5. It constituted the Secretary of State-in-Council as a body corporate, capable of suing and being sued in India and in England.

It must be noted here that “the act in no substantial way altered the system of government that prevailed in India but confined itself to the improvement of the machinery by which the Indian Government was to be superintended and controlled in England”<sup>4</sup>.



### **Indian Councils Act of 1861**

After the great revolt of 1857, the British Government felt the necessity of seeking cooperation of the Indians in the administration of their country. In pursuance of this policy of association, three acts were enacted by the British Parliament in 1861, 1892 and 1909. The Indian Councils Act of 1861 is an important landmark in the constitutional and political history of India.

#### ***The features of this Act were as follows:***

1. It made a beginning of the representative institutions by associating Indians with the law-making process. It, thus, provided that the Viceroy should nominate some Indians as non-official members of his expanded council. In 1862, Lord Canning, the then Viceroy, nominated three Indians to his legislative council—the Raja of Benaras, the Maharaja of Patiala and Sir Dinkar Rao.
2. It initiated the process of decentralisation by restoring the legislative powers to the Bombay and Madras Presidencies. It, thus, reversed the centralising tendency that started from the Regulating Act of 1773 and reached its climax under the Charter Act of 1833. This policy of

legislative devolution resulted in the grant of almost complete internal autonomy to the provinces in 1937.

3. It also provided for the establishment of new legislative councils for Bengal, North-western Provinces and Punjab, which were established in 1862, 1886 and 1897, respectively.
4. It empowered the Viceroy to make rules and orders for the more convenient transaction of business in the council. It also gave a recognition to the 'portfolio' system, introduced by Lord Canning in 1859. Under this, a member of the viceroy's council was made in-charge of one or more departments of the Government and was authorised to issue final orders on behalf of the council on matters of his department(s).
5. It empowered the Viceroy to issue ordinances, without the concurrence of the legislative council, during an emergency. The life of such an ordinance was six months.



### **Indian Councils Act of 1892**

***The features of this Act were as follows:***

1. It increased the number of additional (non-official) members in the Central and provincial legislative councils, but maintained the official majority in them.
2. It increased the functions of legislative councils and gave them the power of discussing the budget<sup>5</sup> and addressing questions to the executive.
3. It provided for the nomination of some non-official members of the (a) Central Legislative Council by the Viceroy on the recommendation of the provincial legislative councils and the Bengal Chamber of Commerce, and (b) that of the provincial legislative councils by the Governors on the recommendation of the district boards, municipalities, universities, trade associations, zamindars and chambers.

"The act made a limited and indirect provision for the use of election in filling up some of the non-official seats both in the Central and provincial legislative councils. The word **election** was, however, not used in the Act. The process was described as nomination made on the recommendation of certain bodies"<sup>6</sup>.



### **Indian Councils Act of 1909**

This Act is also known as Morley-Minto Reforms (Lord Morley was the then Secretary of State for India and Lord Minto was the then viceroy of India).

***The features of this Act were as follows:***

1. It considerably increased the size of the legislative councils, both Central and Provincial. The number of members in the Central legislative council was raised from 16 to 60. The number of members in the provincial legislative councils was not uniform.
2. It retained official majority in the Central legislative council, but allowed the provincial legislative councils to have non-official majority.

3. It enlarged the deliberative functions of the legislative councils at both levels. For example, members were allowed to ask supplementary questions, move resolutions on the budget and so on.
4. It provided (for the first time) for the association of Indians with the executive councils of the viceroy and Governors. **Satyendra Prasad Sinha** became the first Indian to join the viceroy's executive council. He was appointed as the Law Member.
5. It introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'. Under this, the Muslim members were to be elected only by Muslim voters. Thus, the Act 'legalised communalism' and Lord Minto came to be known as the **Father of Communal Electorate**.
6. It also provided for the separate representation of presidency corporations, chambers of commerce, universities and zamindars.



### Government of India Act of 1919

On August 20, 1917, the British Government declared, for the first time, that its objective was the gradual introduction of responsible Government in India<sup>7</sup>.

The Government of India Act of 1919 was thus enacted, which came into force in 1921. This Act is also known as Montagu-Chelmsford Reforms (Montagu was the Secretary of State for India and Lord Chelmsford was the Viceroy of India).

#### *The features of this Act were as follows:*

1. It provided for the classification of all the subjects of administration into two categories, namely, the central subjects and the provincial subjects. This classification was done by the "Devolution Rules" framed under the Act. These rules facilitated the delegation of authority from the centre to the provinces. In this way, the Act relaxed the central control over the provinces. The central and provincial legislatures were authorised to make laws on their respective list of subjects. However, the structure of government continued to be centralised and unitary.
2. It further divided the provincial subjects into two parts—transferred and reserved. The transferred subjects included public health, education, local self-government, agriculture etc. while the reserved subjects included police, administration of justice, prisons, land revenue, finance etc. The **transferred subjects** were to be administered by the Governor with the aid of Ministers responsible to the legislative council. The **reserved subjects**, on the other hand, were to be administered by the Governor and his executive council without being responsible to the legislative council. This dual scheme of governance was known as 'dyarchy'—a term derived from the Greek word *di-arche* which means double rule. However, this experiment was largely unsuccessful.
3. It introduced, for the first time, bicameralism and direct elections in the country. Thus, the Indian legislative council was replaced by a bicameral legislature consisting of an Upper House (Council of State) and a Lower House (Legislative Assembly). The majority of members of both the Houses were chosen by direct election.

4. It required that the three of the six members of the Viceroy's executive Council (other than the Commander-in-Chief) were to be Indian.
5. It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.
6. It granted franchise to a limited number of people on the basis of property, tax or other qualifications.
7. It created a new office of the High Commissioner for India in London and transferred to him some of the functions hitherto performed by the Secretary of State for India.
8. It provided for the establishment of a public service commission. Hence, a Central Public Service Commission was set up in 1926 for recruiting civil servants<sup>8</sup>.
9. It separated, for the first time, provincial budgets from the Central budget and authorised the provincial legislatures to enact their budgets.
10. It provided for the appointment of a statutory commission to inquire into and report on its working after ten years of its coming into force.
11. It proposed the establishment of a Chamber of Princes (also known as Narendra Mandal). The chamber was inaugurated in 1921. It consisted of 120 members i.e., Princes of 108 states and 12 representatives of other states. It was headed by the Viceroy (Governor-General). It facilitated the consultation and discussion on the matters of common interest.

**Simon Commission** In November 1927 (i.e., 2 years before the schedule), the British Government announced the appointment of a seven-member statutory commission under the chairmanship of Sir John Simon to report on the condition of India under its new Constitution. All the members of the commission were British and hence, all the parties boycotted the commission. The commission submitted its report in 1930 and recommended the abolition of dyarchy, extension of responsible Government in the provinces, establishment of a federation of British India and princely states, continuation of communal electorate and so on. To consider the proposals of the commission, the British Government convened three round table conferences of the representatives of the British Government, British India and Indian princely states. On the basis of these discussions, a 'White Paper on Constitutional Reforms' was prepared and submitted for the consideration of the Joint Select Committee of the British Parliament. The recommendations of this committee were incorporated (with certain changes) in the next Government of India Act of 1935.

**Communal Award** In August 1932, Ramsay MacDonald, the British Prime Minister, announced a scheme of representation of the minorities, which came to be known as the Communal Award. The award not only continued separate electorates for the Muslims, Sikhs, Indian Christians, Anglo-Indians and Europeans but also extended it to the depressed classes (Scheduled Castes). Gandhiji was distressed over this extension of the principle of communal representation to the depressed classes and undertook a fast unto death in Yerawada Jail (Poona) to get the award modified. At last, there was an agreement between the Congress and Dr. B.R. Ambedkar, the leader of the depressed classes. The agreement, known as the Poona Pact, retained the Hindu joint electorate and gave reserved seats to the depressed classes.

The British Government accepted the Poona Pact and modified the Communal Award in respect to the depressed classes (Scheduled Castes). This means that the provisions of separate electorates for the depressed classes were dropped from the scheme of representation contained in the Communal Award. Subsequently, the provisions of the Poona Pact were incorporated in the next Government of India Act of 1935. In other words, the composition of the central and provincial legislatures under the 1935 Act was based on this modified Communal Award.



### **Government of India Act of 1935**

The Act marked a second milestone towards a completely responsible government in India. It was a lengthy and detailed document having 321 Sections and 10 Schedules.

#### ***The features of this Act were as follows:***

1. It provided for the establishment of an All-India Federation consisting of provinces and princely states as units. The Act divided the powers between the Centre and units in terms of three lists—**Federal List** (for Centre, with 59 items), **Provincial List** (for provinces, with 54 items) and the Concurrent List (for both, with 36 items). Residuary powers were given to the Viceroy (Governor-General). However, the federation never came into being as the princely states did not join it.
2. It abolished dyarchy in the provinces and introduced 'provincial autonomy' in its place. The provinces were allowed to act as autonomous units of administration in their defined spheres. Moreover, the Act introduced responsible Governments in provinces, that is, the Governor was required to act with the advice of ministers responsible to the provincial legislature. This came into effect in 1937 and was discontinued in 1939.
3. It provided for the adoption of dyarchy at the Centre. Consequently, the federal subjects were divided into reserved subjects and transferred subjects. However, this provision of the Act did not come into operation at all.
4. It introduced bicameralism in six out of eleven provinces. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.
5. It reserved a certain number of general seats for the depressed classes (Scheduled Castes). It also extended the special representation to women and labour (workers).
6. It abolished the Council of India, established by the Government of India Act of 1858. The secretary of state for India was provided with a team of advisors.
7. It extended franchise. About 14 per cent of the total population got the voting right.
8. It provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.

9. It provided for the establishment of not only a Federal Public Service Commission, but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.
10. It provided for the establishment of a Federal Court, which was set up in 1937.
11. It separated Burma (now Myanmar) from India.
12. It created two new provinces of Orissa and Sind.
13. It provided for safeguards to protect the interests of minorities.
14. It provided for the establishment of a Federal Railway Authority to look after the administration of railways.
15. It provided for the appointment of an Auditor-General of India to audit the accounts of the federation and the provinces.



### **Indian Independence Act of 1947**

On February 20, 1947, the British Prime Minister Clement Atlee declared that the British rule in India would end by June 30, 1948; after which the power would be transferred to responsible Indian hands. This announcement was followed by the agitation by the Muslim League demanding partition of the country. Again on June 3, 1947, the British Government made it clear that any Constitution framed by the Constituent Assembly of India (formed in 1946) cannot apply to those parts of the country which were unwilling to accept it. On the same day (June 3, 1947), Lord Mountbatten, the Viceroy of India, put forth the partition plan, known as the **Mountbatten Plan**. The plan was accepted by the Congress and the Muslim League. Immediate effect was given to the plan by enacting the Indian Independence Act<sup>2</sup> (1947).

#### ***The features of this Act were as follows:***

1. It ended the British rule in India and declared India as an independent state from August 15, 1947.
2. It provided for the partition of India and creation of two independent dominions of India and Pakistan with the right to secede from the British Commonwealth.
3. It abolished the office of Viceroy and provided, for each dominion, a Governor-General, who was to be appointed by the British King on the advice of the dominion cabinet. His Majesty's Government in Britain was to have no responsibility with respect to the Government of India or Pakistan.
4. It empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution for their respective nations and to repeal any act of the British Parliament, including the Independence act itself.
5. It empowered the Constituent Assemblies of both the dominions to legislate for their respective territories till the new constitutions were drafted and enforced. No Act of the British Parliament

passed after August 15, 1947 was to extend to either of the new dominions unless it was extended thereto by a law of the legislature of the dominion.

6. It abolished the office of the Secretary of State for India and transferred his functions to the Secretary of State for Commonwealth Affairs.
7. It proclaimed the lapse of British paramountcy over the Indian princely states and treaty relations with tribal areas from August 15, 1947.
8. It granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.
9. It provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, till the new Constitutions were framed. The dominions were, however, authorised to make modifications in the Act.
10. It deprived the British Monarch of his right to veto bills or ask for reservation of certain bills for his approval. But, this right was reserved for the Governor-General. The Governor-General would have full power to assent to any bill in the name of His Majesty.
11. It designated the Governor-General of India and the provincial governors as constitutional (nominal) heads of the states. They were made to act on the advice of the respective council of ministers in all matters.
12. It dropped the title of Emperor of India from the royal titles of the King of England.
13. It discontinued the appointment to civil services and reservation of posts by the secretary of state for India. The members of the civil services appointed before August 15, 1947 would continue to enjoy all benefits that they were entitled to till that time.

At the stroke of midnight of 14–15 August, 1947, the British rule came to an end and power was transferred to the two new independent Dominions of India and Pakistan<sup>10</sup>. Lord Mountbatten became the first Governor-General of the new Dominion of India. He swore in Jawaharlal Nehru as the first Prime Minister of independent India. The Constituent Assembly of India formed in 1946 became the Parliament of the Indian Dominion.

The members of both, the Interim Government (1946) and the First Cabinet of Independent India (1947), are mentioned in [Tables 1.1](#) and [1.2](#) respectively.

**Table 1.1** Interim Government (1946)

Sl. No.	Members	Portfolios Held
1.	Jawaharlal Nehru	Vice-President of the Council; External Affairs and Commonwealth Relations

Sl. No.	Members	Portfolios Held
2.	Sardar Vallabhbhai Patel	Home, Information and Broadcasting
3.	Dr. Rajendra Prasad	Food and Agriculture
4.	Dr. John Mathai	Industries and Supplies
5.	Jagjivan Ram	Labour
6.	Sardar Baldev Singh	Defence
7.	C.H. Bhabha	Works, Mines and Power
8.	Liaquat Ali Khan	Finance
9.	Abdur Rab Nishtar	Posts and Air
10.	Asaf Ali	Railways and Transport
11.	C. Rajagopalachari	Education and Arts
12.	I.I. Chundrigar	Commerce
13.	Ghaznafar Ali Khan	Health
14.	Jogendra Nath Mandal	Law

**Note:** The members of the Interim Government were members of the Viceroy's Executive Council. The Viceroy continued to be the head of the Council. But, Jawaharlal Nehru was designated as the Vice-President of the Council.

**Table 1.2** First Cabinet of Independent India (1947)

Sl. No.	Members	Portfolios Held
1.	Jawaharlal Nehru	Prime Minister; External Affairs and Commonwealth Relations; Scientific Research
2.	Sardar Vallabhbhai Patel	Home, Information and Broadcasting; States
3.	Dr. Rajendra Prasad	Food and Agriculture
4.	Maulana Abul Kalam Azad	Education
5.	Dr. John Mathai	Railways and Transport
6.	R.K. Shanmugham Chetty	Finance
7.	Dr. B.R. Ambedkar	Law
8.	Jagjivan Ram	Labour
9.	Sardar Baldev Singh	Defence
10.	Raj Kumari Amrit Kaur	Health
11.	C.H. Bhabha	Commerce
12.	Rafi Ahmed Kidwai	Communication
13.	Dr. Shyama Prasad Mukherjee	Industries and Supplies
14.	V.N. Gadgil	Works, Mines and Power

<sup>1</sup>The Mughal Emperor, Shah Alam, granted 'Diwani' to the Company after its victory in the Battle of Buxar (1764).

<sup>2</sup>It was introduced in the British Parliament by the then Prime Minister, William Pitt.

<sup>3</sup>At that time, the Civil Services of the company were classified into covenanted civil services (higher civil services) and uncovenanted civil services (lower civil services). The former was created by a law of the Company, while the later was created otherwise.

<sup>4</sup>M. V. Pylee, *Constitutional History of India*, S. Chand & Company Ltd., New Delhi, Fifth Edition, 2011, p. 16.

<sup>5</sup>The system of Budget was introduced in British India in 1860.

<sup>6</sup>V. N. Shukla, *The Constitution of India*, Eastern Book Company, Tenth Edition, 2001, p. A-10.

<sup>7</sup>The declaration thus stated: 'The policy of His Majesty's Government is that of the increasing association of Indians in every branch of the administration, and the gradual development of self-government institutions, with a view to the progressive realisation of responsible government in India as an integral part of the British Empire'.

<sup>8</sup>This was done on the recommendation of the Lee Commission on Superior Civil Services in India (1923–24).

<sup>9</sup>The Indian Independence Bill was introduced in the British Parliament on July 4, 1947 and received the Royal Assent on July 18, 1947. The act came into force on August 15, 1947.

<sup>10</sup>The boundaries between the two Dominions were determined by a Boundary Commission headed by Radcliff. Pakistan included the provinces of West Punjab, Sind, Baluchistan, East Bengal, North-Western Frontier Province and the district of Sylhet in Assam. The referendum in the North-Western Frontier Province and Sylhet was in favour of Pakistan.

## CHAPTER 2 Making of the Constitution

### Demand for a Constituent Assembly

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M.N. Roy, a pioneer of the communist movement in India. In 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India. In 1938, Jawaharlal Nehru, on behalf of the INC declared that 'the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise'. This view was endorsed and reiterated by the INC by passing a resolution in 1939.

The demand was finally accepted in principle by the British Government in what is known as the 'August Offer' of 1940. In 1942, Sir Stafford Cripps, a Member of the Cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after World War II. The Cripps Proposals were rejected by the Muslim League, which wanted India to be divided into two autonomous states with two separate Constituent Assemblies. Finally, a Cabinet Mission<sup>1</sup> was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

### COMPOSITION OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan.

#### *The features of the scheme were:*

1. The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the princely states. Out of 296 seats allotted to British India, 292 members were to be drawn from the eleven governors' provinces<sup>2</sup> and four from the four Chief Commissioners' provinces<sup>3</sup>, one from each.



2. Each province and princely state (or group of states in case of small states) were to be allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population.
3. Seats allocated to each British province were to be divided among the three principal communities—Muslims, Sikhs and General (all except Muslims and Sikhs), in proportion to their population.
4. The representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote.

5. The representatives of the princely states were to be nominated by the heads of the princely states.

It is, thus, clear that the Constituent Assembly was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise<sup>4</sup>.

The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July–August 1946. The Indian National Congress won 208 seats, the Muslim League 73 seats and the small groups and independents got the remaining 15 seats. However, the 93 seats allotted to the princely states were not filled as they decided to stay away from the Constituent Assembly.

Although the Constituent Assembly was not directly elected by the people of India on the basis of adult franchise, the Assembly comprised representatives of all sections of Indian society—Hindus, Muslims, Sikhs, Parsis, Anglo–Indians, Indian Christians, SCs, STs including women of all these sections. The Assembly included all important personalities of India at that time, with the exception of Mahatma Gandhi.

The allocation of seats in the Constituent Assembly, the results of the elections to the Constituent Assembly, the community-wise representation in the Constituent Assembly and the women members of the Constituent Assembly are mentioned in [Tables 2.1](#), [2.2](#), [2.3](#) and [2.4](#) respectively.

### WORKING OF THE CONSTITUENT ASSEMBLY

The Constituent Assembly held its first meeting on December 9, 1946. The Muslim League boycotted the meeting and insisted on a separate state of Pakistan. The meeting was, thus, attended by only 207 members. *Dr. Sachchidananda Sinha, the oldest member, was elected as the temporary Chairman of the Assembly, following the French practice.*

On December 11, 1946, Dr. Rajendra Prasad was elected as the permanent Chairman (President) of the Assembly. Similarly, on January 25, 1947, H.C. Mukherjee was elected as the Vice-President of the Assembly. Later on, the Assembly resolved to have two Vice-Presidents. Accordingly, on July 16, 1947, V. T. Krishnamachari was elected as the second Vice-President of the Assembly.



### Objectives Resolution

On December 13, 1946, Jawaharlal Nehru moved the historic ‘Objectives Resolution’ in the Assembly. It laid down the fundamentals and philosophy of the constitutional structure. It read:

1. This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution
2. Wherein the territories that now comprise British India, the territories that now form the Indian States and such other parts of India as are outside India and the States as well as other territories as are willing to be constituted into the independent sovereign India, shall be a Union of them all; and
3. Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the

Constitution, shall possess and retain the status of autonomous units together with residuary powers and exercise all powers and functions of Government and administration save and except such powers and functions as are vested in or assigned to the Union or as are inherent or implied in the Union or resulting therefrom; and

4. Wherein all power and authority of the sovereign independent India, its constituent parts and organs of Government are derived from the people; and
5. Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
6. Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
7. Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and
8. This ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.”

This Resolution was unanimously adopted by the Assembly on January 22, 1947. It influenced the eventual shaping of the constitution through all its subsequent stages. Its modified version forms the Preamble of the present Constitution.



### **Changes by the Independence Act**

The representatives of the princely states, who had stayed away from the Constituent Assembly, gradually joined it. On April 28, 1947, representatives of the six states<sup>5</sup> were part of the Assembly. After the acceptance of the Mountbatten Plan of June 3, 1947, for the partition of the country, the representatives of most of the other princely states took their seats in the Assembly. The members of the Muslim League from the Indian Dominion also entered the Assembly.

The Indian Independence Act of 1947 made the following three changes in the position of the Assembly:

1. The Assembly was made a fully sovereign body, which could frame any Constitution it pleased. The act empowered the Assembly to abrogate or alter any law made by the British Parliament in relation to India.
2. The Assembly also became a legislative body. In other words, two separate functions were assigned to the Assembly, that is, making of the Constitution for free India and enacting of ordinary laws for the country. These two tasks were to be performed on separate days. Thus, the Assembly became the first Parliament of free India (Dominion Legislature). Whenever the Assembly met as the Constituent body it was chaired by Dr. Rajendra Prasad and when it met as the legislative body<sup>6</sup>, it was chaired by G.V. Mavlankar. These two functions continued till November 26, 1949, when the task of making the Constitution was over.
3. The Muslim League members (hailing from the areas<sup>7</sup> included in the Pakistan) withdrew from the Constituent Assembly for India. Consequently, the total strength of the Assembly came down

to 299 as against 389 originally fixed in 1946 under the Cabinet Mission Plan. The strength of the Indian provinces (formerly British Provinces) was reduced from 296 to 229 and those of the princely states from 93 to 70. The state-wise membership of the Assembly as on December 31, 1947, is shown in [Table 2.5](#).



### **Other Functions Performed**

In addition to the making of the Constitution and enacting of ordinary laws, the Constituent Assembly also performed the following functions:

1. It ratified India's membership of the Commonwealth in May 1949.
2. It adopted the national flag on July 22, 1947.
3. It adopted the national anthem on January 24, 1950.
4. It adopted the national song on January 24, 1950.
5. It elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.

In all, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days. The Constitution-makers had gone through the Constitutions of about 60 countries, and the Draft Constitution was considered for 114 days. The total expenditure incurred on making the Constitution amounted to ₹64 lakh.

On January 24, 1950, the Constituent Assembly held its final session. It, however, did not end, and continued as the provisional parliament of India from January 26, 1950, till the formation of new Parliament<sup>8</sup> after the first general elections in 1951–52.

The complete list of the sessions of the Constituent Assembly is given in [Table 2.6](#).

### **COMMITTEES OF THE CONSTITUENT ASSEMBLY**

The Constituent Assembly appointed a number of committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees. The names of these committees and their Chairman are given below:



### **Major Committees**

1. Union Powers Committee – Jawaharlal Nehru
2. Union Constitution Committee – Jawaharlal Nehru
3. Provincial Constitution Committee – Sardar Patel
4. Drafting Committee – Dr. B.R. Ambedkar
5. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Sardar Patel. This committee had the following five sub-committees:

- (a) Fundamental Rights Sub-Committee – J.B. Kripalani
- (b) Minorities Sub-Committee – H.C. Mukherjee
- (c) North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – Gopinath Bardoloi
- (d) Excluded and Partially Excluded Areas (other than those in Assam) Sub-Committee – A.V. Thakkar
- (e) North-West Frontier Tribal Areas Sub-Committee<sup>8a</sup>
  - 6. Rules of Procedure Committee – Dr. Rajendra Prasad
  - 7. States Committee (Committee for Negotiating with States) – Jawaharlal Nehru
  - 8. Steering Committee – Dr. Rajendra Prasad



### Minor Committees

- 1. Finance and Staff Committee – Dr. Rajendra Prasad
- 2. Credentials Committee – Alladi Krishnaswami Ayyar
- 3. House Committee – B. Pattabhi Sitaramayya
- 4. Order of Business Committee – Dr. K.M. Munshi
- 5. Ad-hoc Committee on the National Flag – Dr. Rajendra Prasad
- 6. Committee on the Functions of the Constituent Assembly – G.V. Mavalankar
- 7. Ad-hoc Committee on the Supreme Court – S. Varadachari (Not an Assembly Member)
- 8. Committee on Chief Commissioners' Provinces – B. Pattabhi Sitaramayya
- 9. Expert Committee on the Financial Provisions of the Union Constitution – Nalini Ranjan Sarkar (Not an Assembly Member)
- 10. Linguistic Provinces Commission – S.K. Dar (Not an Assembly Member)
- 11. Special Committee to Examine the Draft Constitution – Jawaharlal Nehru
- 12. Press Gallery Committee – Usha Nath Sen
- 13. Ad-hoc Committee on Citizenship – S. Varadachari (Not an Assembly Member)



### Drafting Committee

Among all the committees of the Constituent Assembly, the most important committee was the Drafting Committee set up on August 29, 1947. It was this committee that was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members. They were:

1. Dr. B.R. Ambedkar (*Chairman*)
2. N. Gopaldaswamy Ayyangar
3. Alladi Krishnaswamy Ayyar
4. Dr. K.M. Munshi
5. Syed Mohammad Saadullah
6. N. Madhava Rau (He replaced B.L. Mitter who resigned due to ill-health)
7. T.T. Krishnamachari (He replaced D.P. Khaitan who died in 1948)

The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was published in February, 1948. The people of India were given eight months to discuss the draft and propose amendments. In light of the public comments, criticisms and suggestions, the Drafting Committee prepared a second draft, which was published in October, 1948.

The Drafting Committee took less than six months to prepare its draft. In all it sat only for 141 days.

### **ENACTMENT OF THE CONSTITUTION**

Dr. B.R. Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948 (first reading). The Assembly had a general discussion on it for five days (till November 9, 1948).

The second reading (clause by clause consideration) started on November 15, 1948, and ended on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly.

The third reading of the draft started on November 14, 1949. Dr. B.R. Ambedkar moved a motion—‘the Constitution as settled by the Assembly be passed’. The motion on Draft Constitution was declared as passed on November 26, 1949, and received the signatures of the members and the president. Out of a total 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution. This is also the date mentioned in the Preamble as the date on which the people of India in the Constituent Assembly adopted, enacted and gave to themselves this Constitution.

**The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules.** The Preamble was enacted after the entire Constitution was already enacted.

Dr. B.R. Ambedkar, the then Law Minister, piloted the Draft Constitution in the Assembly. He took a very prominent part in the deliberations of the Assembly. He was known for his logical, forceful and persuasive arguments on the floor of the Assembly. He is recognised as the ‘Father of the Constitution of India’. This brilliant writer, constitutional expert and undisputed leader of the Scheduled Castes is also known as the ‘chief architect of the Constitution of India’.

On November 19, 2015, the Government of India has decided to celebrate the November 26 of every year as the “Constitution Day” (“Samvidhan Divas”) to promote constitutional values among citizens.

### **ENFORCEMENT OF THE CONSTITUTION**

Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and short title contained in Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 came into force on November 26, 1949, itself.

The remaining provisions (the major part) of the Constitution came into force on January 26, 1950. This day is referred to in the Constitution as the 'date of its commencement', and celebrated as the Republic Day.

January 26 was specifically chosen as the 'date of commencement' of the Constitution because of its historical importance. It was on this day in 1930 that *Purna Swaraj* day was celebrated, following the resolution of the Lahore Session (December 1929) of the INC.

With the commencement of the Constitution, the Indian Independence Act of 1947 and the Government of India Act of 1935, with all enactments amending or supplementing the latter Act, were repealed. The Abolition of Privy Council Jurisdiction Act (1949) was however continued.

### EXPERTS COMMITTEE OF THE CONGRESS

While elections to the Constituent Assembly were still in progress, on July 8, 1946, the Congress Party (Indian National Congress) appointed an Experts Committee for the purpose of preparing material for the Constituent Assembly. This committee consisted of the following members<sup>8b</sup>:

1. Jawaharlal Nehru (Chairman)
2. M. Asaf Ali
3. K.M. Munshi
4. N. Gopaldaswami Ayyangar
5. K.T. Shah
6. D.R. Gadgil
7. Humayun Kabir
8. K. Santhanam

Later, on the Chairman's proposal, it was resolved that Krishna Kripalani be co-opted as member and convener of the committee.

The committee had two sittings, the first at New Delhi from July 20 to 22, 1946, and the second at Bombay from August 15 to 17, 1946.

Apart from a number of notes prepared by its members, the committee discussed the procedure to be adopted by the Constituent Assembly, the question of the appointment of various committees and the draft of a resolution on the objectives of the constitution to be moved during the first session of the Constituent Assembly.<sup>8c</sup>

On the role played by this committee in the making of the Constitution, Granville Austin, an American constitutional expert, observed: "It was the Congress Experts Committee that set India on the road to her present Constitution. The committee members, working within the framework of the Cabinet

Mission Scheme, made general suggestions about autonomous areas, the powers of provincial Governments and the Centre, and about such issues as the princely states and the amending power. They also drafted a resolution, closely resembling the Objectives Resolution”.<sup>8d</sup>

### CRITICISM OF THE CONSTITUENT ASSEMBLY

The critics have criticised the Constituent Assembly on various grounds. These are as follows:

1. **Not a Representative Body:** The critics have argued that the Constituent Assembly was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise.
2. **Not a Sovereign Body:** The critics maintained that the Constituent Assembly was not a sovereign body as it was created by the proposals of the British Government. Further, they said that the Assembly held its sessions with the permission of the British Government.
3. **Time Consuming:** According to the critics, the Constituent Assembly took an unduly long time to make the Constitution. They stated that the framers of the American Constitution took only four months to complete their work. In this context, Naziruddin Ahmed, a member of the Constituent Assembly, coined a new name for the Drafting Committee to show his contempt for it. He called it a “**Drifting Committee**”.

The time taken by the framers of other constitutions is given in [Table 2.7](#).

4. **Dominated by Congress:** The critics charged that the Constituent Assembly was dominated by the Congress party. In this context, Granville Austin, an American constitutional expert, remarked: “The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was the Congress and the Congress was India.”<sup>9</sup>
5. **Lawyer–Politician Domination:** It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.
6. **Dominated by Hindus:** According to some critics, the Constituent Assembly was a Hindu dominated body. Lord Viscount Simon called it ‘a body of Hindus’. Similarly, Winston Churchill commented that the Constituent Assembly represented ‘only one major community in India’.

### IMPORTANT FACTS

1. The elephant was adopted as the symbol (seal) of the Constituent Assembly.
2. Sir B.N. Rau was appointed as the constitutional advisor (Legal Advisor) to the Constituent Assembly.
3. H.V.R. Iyengar was the Secretary to the Constituent Assembly.
4. S.N. Mukherjee was the chief draftsman of the constitution in the Constituent Assembly.
5. Prem Behari Narain Raizada was the calligrapher of the Indian Constitution. The original constitution was handwritten by him in a flowing italic style.

6. The original version was beautified and decorated by artists from Shantiniketan including Nand Lal Bose and Beohar Rammanohar Sinha.
7. Beohar Rammanohar Sinha illuminated, beautified and ornamented the original Preamble calligraphed by Prem Behari Narain Raizada.
8. The calligraphy of the Hindi version of the original constitution was done by Vasant Krishan Vaidya and elegantly decorated and illuminated by Nand Lal Bose.

### HINDI TEXT OF THE CONSTITUTION

Originally, the Constitution of India did not make any provision with respect to an authoritative text of the Constitution in the Hindi language. Later, a provision in this regard was made by the 58th Constitutional Amendment Act of 1987. This amendment inserted a new Article 394-A in the last part of the Constitution i.e., Part XXII. This article contains the following provisions:

1. The President shall cause to be published under his authority:

(i) The translation of the Constitution in Hindi language. The modifications which are necessary to bring it in conformity with the language, style and terminology adopted in the authoritative texts of the Central Acts in Hindi can be made in it. All the amendments of the Constitution made before such publication should be incorporated in it.

(ii) The translation in Hindi of every amendment of the constitution made in English.

2. The translation of the Constitution and its every amendment published shall be construed to have the same meaning as the original text in English. If any difficulty arises in this matter, the President shall cause the Hindi text to be revised suitably.
3. The translation of the Constitution and its every amendment published shall be deemed to be, for all purposes, its authoritative text in Hindi.

**Table 2.1** Allocation of seats in the Constituent Assembly of India (1946)

Sl. No.	Areas	Seats
1.	British Indian Provinces (11)	292
2.	Princely States (Indian States)	93
3.	Chief Commissioners' Provinces (4)	4
	Total	389

**Table 2.2** Results of the Elections to the Constituent Assembly (July–August 1946)

Sl. No.	Name of the Party	Seats won
1.	Congress	208
2.	Muslim League	73
3.	Unionist Party	1
4.	Unionist Muslims	1
5.	Unionist Scheduled Castes	1
6.	Krishak – Praja Party	1
7.	Scheduled Castes Federation	1
8.	Sikhs (Non-Congress)	1
9.	Communist Party	1
10.	Independents	8
	Total	296

**Table 2.3** Community-wise Representation in the Constituent Assembly (1946)

Sl. No.	Community	Strength
1.	Hindus	163
2.	Muslims	80
3.	Scheduled Castes	31
4.	Indian Christians	6

Sl. No.	Community	Strength
5.	Backward Tribes	6
6.	Sikhs	4
7.	Anglo-Indians	3
8.	Parsees	3
	Total	296

**Table 2.4** Women Members of the Constituent Assembly

Sl. No.	Name	Constituency
1.	Ammu Swaminathan	Madras/General
2.	Annie Mascarene	Travancore and Cochin Union
3.	Begum Aizaz Rasul	United Provinces/Muslim
4.	Dakshayani Velayudan	Madras/General
5.	G. Durgabai	Madras/General
6.	Hansa Mehta	Bombay/General
7.	Kamla Chaudhri	United Provinces/General
8.	Leela Ray	West Bengal/General
9.	Malati Chowdhury	Orissa/General
10.	Purnima Banerji	United Provinces/General

Sl. No.	Name	Constituency
11.	Rajkumari Amrit Kaur	Central Provinces and Berar/General
12.	Renuka Ray	West Bengal/General
13.	Sarojini Naidu	Bihar/General
14.	Sucheta Kripalani	United Provinces/General
15.	Vijayalakshmi Pandit	United Provinces/General

**Note:** In total, the Constituent Assembly had 15 women members.

**Source:** Selected Speeches of Women Members of the Constituent Assembly, Rajya Sabha Secretariat, 2012, page (ix).

**Table 2.5** State-wise Membership of the Constituent Assembly of India as on December 31, 1947

Sl. No.	Name	No. of Members
<b>A. Provinces (Indian Provinces)—229</b>		
1.	Madras	49
2.	Bombay	21
3.	West Bengal	19
4.	United Provinces	55
5.	East Punjab	12
6.	Bihar	36
7.	C.P. and Berar	17

	Sl. No.	Name	No. of Members
	8.	Assam	8
	9.	Orissa	9
	10.	Delhi	1
	11.	Ajmer-Merwara	1
	12.	Coorg	1
<b>B.</b>	<b>Indian States (Princely States)—70</b>		
	1.	Alwar	1
	2.	Baroda	3
	3.	Bhopal	1
	4.	Bikaner	1
	5.	Cochin	1
	6.	Gwalior	4
	7.	Indore	1
	8.	Jaipur	3
	9.	Jodhpur	2
	10.	Kolhapur	1
	11.	Kotah	1

Sl. No.	Name	No. of Members
12.	Mayurbhanj	1
13.	Mysore	7
14.	Patiala	2
15.	Rewa	2
16.	Travancore	6
17.	Udaipur	2
18.	Sikkim and Cooch Behar Group	1
19.	Tripura, Manipur and Khasi States Group	1
20.	U.P. States Group	1
21.	Eastern Rajputana States Group	3
22.	Central India States Group (including Bundelkhand and Malwa)	3
23.	Western India States Group	4
24.	Gujarat States Group	2
25.	Deccan and Madras States Group	2
26.	Punjab States Group	3
27.	Eastern States Group I	4
28.	Eastern States Group II	3

Sl. No.	Name	No. of Members
29.	Residuary States Group	4
	Total	299

**Table 2.6** Sessions of the Constituent Assembly at a Glance

Sessions	Period
First Session	December 9–23, 1946
Second Session	January 20–25, 1947
Third Session	April 28–May 2, 1947
Fourth Session	July 14–31, 1947
Fifth Session	August 14–30, 1947
Sixth Session	January 27, 1948
Seventh Session	November 4, 1948–January 8, 1949
Eighth Session	May 16–June 16, 1949
Ninth Session	July 30–September 18, 1949
Tenth Session	October 6–17, 1949
Eleventh Session	November 14–26, 1949

**Note:** The Assembly met once again on January 24, 1950, when the members appended their signatures to the Constitution of India.

**Table 2.7** Time Taken by the Framers of Other Constitutions<sup>10</sup>

Sl. No.	Country	No. of Articles	Working Period	Time Taken
1	U.S.A.	7	May 25, 1787 to September 17, 1787	Less than 4 months
2	Canada	147	October 10, 1864 to March 1867	About 2 years and 6 months
3	Australia	128	March 1891 to July 9, 1900	About 9 years
4	South Africa	153	October 1908 to September 20, 1909	1 year

**Table 2.8** Articles Related to Short Title, Commencement, Hindi Text and Repeals at a Glance

Article No.	Subject Matter
393	Short title
394	Commencement
394A	Authoritative text in Hindi language
395	Repeals

<sup>1</sup>The Cabinet Mission consisting of three members (Lord Pethick Lawrence, Sir Stafford Cripps and A.V. Alexander) arrived in India on March 24, 1946. The Cabinet Mission published its plan on May 16, 1946.

<sup>2</sup>These include Madras, Bombay, UP, Bihar, Central Provinces, Orissa, Punjab, NWFP, Sindh, Bengal and Assam.

<sup>3</sup>These include Delhi, Ajmer–Merwara, Coorg and British Baluchistan.

<sup>4</sup>The Government of India Act of 1935 granted limited franchise on the basis of tax, property and other qualifications.

<sup>5</sup>These include Baroda, Bikaner, Jaipur, Patiala, Rewa and Udaipur.

<sup>6</sup>For the first time, the Constituent Assembly met as Dominion Legislature on November 17, 1947 and elected G.V. Mavalankar as its speaker.

<sup>7</sup>These are West Punjab, East Bengal, NWFP, Sindh, Baluchistan and Sylhet District of Assam. A separate Constituent Assembly was set up for Pakistan.

<sup>8</sup>The Provisional Parliament ceased to exist on April 17, 1952. The first elected Parliament with the two Houses came into being in May 1952.

<sup>8a</sup>One of the political consequences of the British Government's statement of June 3, 1947, was that following a referendum, the North-West Frontier Province and Baluchistan became part of the territory of the Dominion of Pakistan and as a result the tribal areas in this region became a concern of that Dominion. The Sub-Committee on the Tribal Areas in the North-West Frontier Province and Baluchistan was not therefore called upon to function on behalf of the Constituent Assembly of India. (B. Shiva Rao, *The Framing of India's Constitution: Select Documents*, Volume III, p. 681.)

The members of this Sub-Committee were: Khan Abdul Ghaffar Khan, Khan Abdul Samad Khan and Mehr Chand Khanna. The information about the Chairman is not found.

<sup>8b</sup>B. Shiva Rao, *The Framing of India's Constitution*, Select Documents, Volume 1, p. 326.

<sup>8c</sup>*Ibid.*

<sup>8d</sup>Granville Austin, *The Indian Constitution – Cornerstone of a Nation*, Oxford, 1966, pp. 32–33.

<sup>9</sup>*Ibid*, p. 8.

<sup>10</sup>J.R. Siwach, *Dynamics of Indian Government and Politics*, Sterling Publishers Private Limited, Second Edition, 1990, p. 10.

## CHAPTER 3 Concept of the Constitution

### MEANING

The term 'constitution' is derived from the Latin word *constituere*, which means 'to establish' or 'to set-up'. In the present sense, the term 'constitution' refers to a set of principles, which specify the organisation and working of the government and the relationship between the government and the people in terms of their rights and duties.

The constitution is variously described as the 'fundamental law of the land', 'supreme law of the state', 'basic law of the country', 'instrument of the government', 'rules of the state', 'basic structure of the polity', 'grundnorm of the country' and so on.

Political scientists and Constitutional experts have defined the constitution in the following way:

**Gilchrist:** "The constitution consists of that body of rules or laws which determine the organization of government, the distribution of powers to the various organs of government, and the general principles on which these powers are to be exercised."<sup>1</sup>

**Gettel:** "The fundamental principles that determine the form of a state are called its constitution. These include the method of which the state is organised, the distribution of its sovereign powers among the various organs of government, the scope and manner of exercise of governmental functions, and the relation of the government to the people over whom its authority is exercised".<sup>2</sup>

**Wheare:** "The Constitution describes the whole system of government of a country, the collection of rules which establish and regulate or govern the government."<sup>3</sup>

**Wade and Phillips:** "A constitution is a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of those organs."<sup>4</sup>

### FUNCTIONS

The constitutional scholar, Elliot Bulmer, has very well identified the functions (or purposes) of a constitution. His list is comprehensive and includes the following points<sup>5</sup>:

1. It can declare and define the boundaries of the political community.
2. It can declare and define the nature and authority of the political community.
3. It can express the identity and values of a national community.
4. It can declare and define the rights and duties of citizens.
5. It can establish and regulate the political institutions of the community.
6. It can divide or share power between different layers of government or sub-state communities.
7. It can declare the official religious identity of the state and demarcate relationships between sacred and secular authorities.

8. It can commit states to particular social, economic, or developmental goals.

## QUALITIES

There are some qualities (or characteristics) of a good constitution. These are explained below:

1. **Brevity:** A constitution should be precise and should not contain unwanted provisions. A lengthy constitution with too many details creates confusion in the interpretation of its clauses.
2. **Clarity:** A constitution should specify its provisions in clear terms. A complicated language would reduce the degree of its understanding.
3. **Definiteness:** A constitution should contain a definite meaning for its provisions. The ambiguous and different meanings would increase the discretion of the judges in their interpretation.
4. **Comprehensiveness:** A constitution should be comprehensive in laying down the powers of the government as well as the rights and duties of the citizens. This would reduce the scope for controversies and litigations.
5. **Suitability:** A constitution should reflect the needs and aspirations of the people. It must be suitable to the historical, socio-cultural, economic and political conditions of the nation.
6. **Stability:** A constitution should facilitate political stability and should not allow easy tampering. This would strengthen the obedience of the citizens to the constitution.
7. **Adaptability:** A constitution should be dynamic and not static. It should be able to adapt itself to changing situations and requirements. It should be a living document.

## CLASSIFICATION

The constitutions are classified into the following types:

### 1. Evolved and Enacted

On the basis of evolution, the constitutions are classified into evolved and enacted constitutions. An evolved constitution is the outcome of a slow and gradual evolutionary process. Its provisions are contained in the form of conventions, practices, principles, and judicial decisions. It is also known as a cumulative constitution and the British Constitution is a good example in this regard.

An enacted constitution, on the other hand, is deliberately made by a constituent assembly or a constitutional council or promulgated by a king or parliament. Its provisions are contained in the form of a book or a document or a series of documents. It is also known as a conventional constitution and the American and Indian Constitutions are the good examples in this regard.

### 2. Written and Unwritten

On the basis of incorporation of provisions, the constitutions are classified into written and unwritten constitutions. A written constitution is one in which the provisions are incorporated in the form of a book or a document or a series of documents. It is consciously formulated and adopted by a body known as the constituent assembly or the constitutional convention or by any other name. It is also known as a

documentary constitution or a codified constitution. The constitutions of the USA, Canada, Japan, France and India are some of the good examples in this regard.

An unwritten constitution, on the other hand, is one in which most of the provisions are not incorporated in the form of a book or a document or a series of documents. It is found in the form of conventions, practices, principles, charters, statutes, and judicial decisions. It is a product of historical evolution and not deliberately formulated by a body. It is also known as a non-documentary constitution or an uncoded constitution and the constitutions of UK, New Zealand and Israel are the good examples in this regard.

The distinction between a written constitution and an unwritten constitution is more or less the same as is between an evolved constitution and an enacted constitution.

### **3. Rigid and Flexible**

Based on the method of amendment, the constitutions are classified into rigid and flexible constitutions. This classification was given by Lord James Bryce<sup>6</sup>.

A rigid constitution is one, which cannot be amended in the same manner as the ordinary laws. It requires a special procedure for its amendment. In other words, it makes a distinction between the constitutional law and the ordinary law. A flexible constitution, on the other hand, is one which can be amended in the same manner as the ordinary laws. It does not require a special procedure for its amendment. In other words, it does not make a distinction between the constitutional law and the ordinary law.

A flexible constitution is also known as an elastic constitution and the constitutions of UK and New Zealand are some good examples in this regard. A rigid constitution is also known as an inelastic constitution and the constitutions of the USA, Australia and Switzerland are some examples in this regard. The Constitution of India is neither rigid nor flexible, but a synthesis of both.

### **4. Federal and Unitary**

Based on the nature of relationship between the national government and the regional governments, the constitutions are classified into federal and unitary constitutions. A federal constitution is one which provides for a division of power between the national government and the regional governments. It enables them to operate in their respective jurisdictions independently. A unitary constitution, on the other hand, is one which provides for the concentration of power in the hands of the national government. It makes the regional governments to operate as the subordinate agencies of the national government and exercise only such powers which may be delegated to them by the national government.

Federal constitution is prevalent in the USA, Switzerland, Australia, Canada, Russia, Brazil, and some other states. Unitary constitution is prevalent in the UK, France, Japan, China, Italy, Norway, and other states. The Constitution of India contains both the federal provisions as well as the unitary provisions. Hence, it was described as quasi-federal by K.C. Wheare.

### **5. Procedural and Prescriptive**

According to the constitutional scholar, Elliot Bulmer, two broad constitutional archetypes can be identified: the procedural and the prescriptive. The difference between these two types of constitutions relate to the nature and purposes of the document itself<sup>7</sup>.

A procedural constitution defines the legal and political structures of public institutions and sets out the legal limits of government power to protect democratic processes and fundamental human rights.

In addition to describing how the government functions, a prescriptive constitution assumes (or attempts to impose) a broad consensus on common societal goals that public authorities must strive to achieve.

## CONSTITUTIONALISM AND CONSTITUTIONAL GOVERNMENT

### 1. Meaning

The concepts of constitution and constitutionalism are closely related to each other. But, there are a few differences between them; like:

1. A country may have a constitution but not constitutionalism, as in the case of a dictatorship. Unlimited power jeopardise freedom of the people and absolute power corrupts absolutely. Therefore, a constitution should be permeated with constitutionalism<sup>8</sup>.
2. Constitutionalism connotes, in essence, limited government or limitation on government. It is the antithesis of arbitrary powers. Only when the constitution of a country seeks to decentralise power instead of concentrating it at one point and also imposes other restraints thereon, does a country have not only a constitution but constitutionalism<sup>9</sup>.
3. The concept of constitutionalism is that of a polity governed by or under a constitution that ordains essentially limited government and rule of law as opposed to arbitrary, despotic, authoritarian or totalitarian rule. Constitutional government should necessarily be democratic government. Arbitrary power in the hands of any individual or institution – even if conferred by a constitutional document – is a negation of the concept of constitutionalism<sup>10</sup>.
4. Constitutionalism desires a political order in which the power of the government are limited. It is another name for the concept of a limited, and for this reason, a “civilized” government. The real justification of the constitution finds place in having a “limited government” and of requiring those who govern to conform to laws and rules<sup>11</sup>.

### 2. Definition

The concepts of constitutionalism and constitutional government have been defined in the following way:

**Friedrich:** “Constitutionalism provides a system of effective restraints upon governmental action. It is a body of rules ensuring fairplay, thus rendering the government responsible”<sup>12</sup>.

**Roucek:** “Constitutionalism means essentially limited government. It is the antithesis of government by the unrestrained will be of rulers. Regardless of the actual form of effectiveness of restraints, it assumes limitations on government as opposed to arbitrary government”<sup>13</sup>.

**Wheare:** “Constitutional government means something more than a government according to the terms of a constitution. It means government according to rule as opposed to arbitrary government; it means government limited by the terms of a constitution, not government limited only by the desires and capacities of those who exercise power”<sup>14</sup>.

**Ybema:** “A form of government can only be classified as constitutional when the rulers are subject to a body of rules and principles, which limit the exercise of their power. Constitutional government is the antithesis of arbitrary rule”<sup>15</sup>.

### 3. Elements

The constitutional scholar, Louis Henkin, identified eight elements (features or principles) of constitutionalism. These are mentioned below<sup>16</sup>:

1. Popular sovereignty
2. Rule of law
3. Democratic government (responsible and accountable government)
4. Separation of powers (checks and balances)
5. An independent judiciary
6. Civilian control of the military
7. Police governed by law and judicial control
8. Respect for individual rights

<sup>1</sup>Gilchrist, R.N., Principles of Political Science, 1961, p. 211.

<sup>2</sup>Gettell, R.G., Political Science, 1956, p. 244.

<sup>3</sup>Wheare, K.C., Modern Constitutions, 1956, p. 1.

<sup>4</sup>Wade and Phillips, Constitutional Law, 1965, p. 1.

<sup>5</sup>Elliot Bulmer, What is a Constitution? Principles and Concepts, International IDEA Constitution – Building Primer 1, Second Edition, 2017, International Institute for Democracy and Electoral Assistance, pp. 6–7.

<sup>6</sup>Bryce, J., Studies in History and Jurisprudence, Volume 1, p. 127.

<sup>7</sup>Same as footnote 5 above, pp. 9–10.

<sup>8</sup>Mamta Rao, Constitutional Law, Second Edition, EBC Publishing Ltd., Lucknow, 2021, p. 8.

<sup>9</sup>Ibid.

<sup>10</sup>Kashyap, Dr. Subhash C., Constitutional Law of India, Second Edition, Volume 1, Universal Law Publishing, Gurgaon, 2015, p. 7.

<sup>11</sup>Johari, J.C., Comparative Politics, Fourth Edition, Sterling Publishers Private Limited, New Delhi, 2011, p. 217.

<sup>12</sup>Friedrich, Carl J., Constitutional Government and Democracy, Oxford and IBH, Calcutta, 1964, p. 25.

<sup>13</sup>Roucek, J.S. and Others, Introduction to Political Science, 1954, p. 981.

<sup>14</sup>Wheare, K.C., Modern Constitutions, Oxford University Press, London, 1956, p. 137.

<sup>15</sup>Ybema, S.P., Constitutionalism and Civil Liberties, Leiden University Press, Leiden, 1973, p. 1.

<sup>16</sup>Henkin, Louis, A New Birth of Constitutionalism: Genetic Influences and Genetic Defects, Chapter 2 in Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives, Edited by Michel Rosenfeld, Duke University Press, Durham, 1994, pp. 39–54.

## CHAPTER 4: Salient Features of the Constitution

The Indian Constitution is unique in its contents and spirit. Though borrowed from almost every Constitution of the world, the Constitution of India has several salient features that distinguish it from the Constitutions of the other countries.

It should be noted at the outset that a number of original features of the Constitution (as adopted in 1949) have undergone a substantial change, on account of several amendments, particularly 7th, 42nd, 44th, 73rd, 74th, 97th and 101st Amendments. In fact, the 42nd Amendment Act (1976) is known as 'Mini-Constitution' due to the important and large number of changes made by it in various parts of the Constitution. However, in the *Kesavananda Bharati* case<sup>1</sup> (1973), the Supreme Court ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution.

### SALIENT FEATURES OF THE CONSTITUTION

The salient features of the Constitution, as it stands today, are as follows:

#### 1. Longiest Written Constitution

Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution. The Constitution of India is the lengthiest of all the written Constitutions of the world. It is a very comprehensive, elaborate and detailed document.

Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. Presently, it consists of a Preamble, about 470 Articles (divided into 25 Parts) and 12 Schedules. The various amendments carried out since 1951 have deleted about 20 Articles and one Part (VII) and added about 95 Articles, four Parts (IVA, IXA, IXB and XIVA) and four Schedules (9, 10, 11 and 12). No other Constitution in the world has so many Articles and Schedules<sup>2</sup>.

The Parts, Important Articles and Schedules of the Constitution of India are mentioned in [Tables 4.1, 4.2](#) and [4.3](#) respectively.

Four factors have contributed to the elephantine size of our Constitution. They are:

1. Geographical factors, that is, the vastness of the country and its diversity.
2. Historical factors, e.g., the influence of the Government of India Act of 1935, which was bulky.
3. Single Constitution for both the Centre and the states.
4. Dominance of legal luminaries in the Constituent Assembly.

The Constitution contains not only the fundamental principles of governance, but also detailed administrative provisions. Further, those matters which in other modern democratic countries have been left to the ordinary legislation or established political conventions have also been included in the constitutional document itself in India.

Till 2019, the erstwhile State of Jammu and Kashmir had its own constitution and thus enjoyed a special status by virtue of Article 370 of the Constitution of India. In 2019, this special status was abolished by a presidential order known as “The Constitution (Application to Jammu and Kashmir) Order, 2019”. This order superseded the earlier order known as “The Constitution (Application to Jammu and Kashmir) Order, 1954”. The 2019 order extended all the provisions of the Constitution of India to Jammu and Kashmir also.

Further, the Jammu and Kashmir Reorganization Act, 2019, bifurcated the erstwhile State of Jammu and Kashmir into two separate Union territories, namely, the Union territory of Jammu & Kashmir and the Union territory of Ladakh.

## 2. Drawn from Various Sources

The Constitution of India has borrowed most of its provisions from the Constitutions of various other countries as well as from the Government of India Act of 1935<sup>3</sup>. Dr. B.R. Ambedkar proudly acclaimed that the Constitution of India has been framed after ‘ransacking all the known Constitutions of the World’<sup>4</sup>.

The structural part of the Constitution is, to a large extent, derived from the Government of India Act of 1935. The philosophical part of the Constitution (the Fundamental Rights and the Directive Principles of State Policy) derives its inspiration from the American and Irish Constitutions, respectively. The political part of the Constitution (the principle of Cabinet Government and the relations between the Executive and the Legislature) has been largely drawn from the British Constitution<sup>5</sup>.

The other provisions of the Constitution have been drawn from the Constitutions of Canada, Australia, Germany, USSR (now Russia), France, South Africa, Japan and so on.

The most profound influence and material source of the Constitution is the Government of India Act, 1935. The Federal Scheme, Judiciary, Governors, Emergency Powers, the Public Service Commissions and most of the administrative details are drawn from this Act. More than half of the provisions of Constitution are identical to or bear a close resemblance to the Act of 1935<sup>6</sup>.

The features (provisions) of the Constitution that have been borrowed from various sources are mentioned in [Table 4.4](#).

## 3. Blend of Rigidity and Flexibility

Constitutions are also classified into rigid and flexible. A rigid Constitution is one that requires a special procedure for its amendment, as for example, the American Constitution. A flexible constitution, on the other hand, is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution.

The Constitution of India is neither rigid nor flexible, but a synthesis of both. Article 368 provides for two types of amendments:

1. Some provisions can be amended by a special majority of the Parliament, i.e., a two-third majority of the members of each House present and voting, and a majority of the total membership of each House.

2. Some other provisions can be amended by a special majority of the Parliament and with the ratification by half of the total states.

At the same time, some provisions of the Constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. Notably, these amendments do not come under Article 368.

#### **4. Federal System with Unitary Bias**

The Constitution of India establishes a federal system of Government. It contains all the usual features of a federation, viz., two Governments, division of powers, written Constitution, supremacy of Constitution, rigidity of Constitution, independent judiciary and bicameralism.

However, the Indian Constitution also contains many unitary or non-federal features, viz., a strong Centre, single Constitution, single citizenship, flexibility of Constitution, integrated judiciary, appointment of state governor by the Centre, all-India services, emergency provisions and so on.

Moreover, the term 'Federation' has nowhere been used in the Constitution. Article 1, on the other hand, describes India as a 'Union of States' which implies two things: one, the Indian Federation is not the result of an agreement by the states; and two, no state has the right to secede from the federation.

Hence, the Indian Constitution has been variously described as 'federal in form but, unitary in spirit', 'quasi-federal' by K.C. Wheare, 'bargaining federalism' by Morris Jones, 'co-operative federalism' by Granville Austin, 'federation with a centralising tendency' by Ivor Jennings and so on.

#### **5. Parliamentary form of Government**

The Constitution of India has opted for the British Parliamentary System of Government rather than the American Presidential System of Government. The parliamentary system is based on the principle of co-operation and co-ordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs.

The parliamentary system is also known as the 'Westminster'<sup>2</sup> Model of Government, responsible Government and Cabinet Government. The Constitution establishes the parliamentary system not only at the Centre, but also in the states.

##### ***The features of parliamentary government in India are:***

1. Presence of nominal and real executives
2. Majority party rule
3. Collective responsibility of the executive to the legislature
4. Membership of the ministers in the legislature
5. Leadership of the Prime Minister or the Chief Minister
6. Dissolution of the lower House (Lok Sabha or Assembly)

Even though the Indian parliamentary system is largely based on the British pattern, there are some fundamental differences between the two. For example, the Indian Parliament is not a sovereign body

like the British Parliament. Further, the Indian State has an elected head (republic) while the British State has a hereditary head (monarchy).

In a parliamentary system whether in India or Britain, the role of the Prime Minister has become so significant and crucial that the political scientists like to call it a 'Prime Ministerial Government'.

## **6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy**

The doctrine of sovereignty of Parliament is associated with the British Parliament, while the principle of judicial supremacy with that of the American Supreme Court.

Just as the Indian parliamentary system differs from the British system, the scope of judicial review power of the Supreme Court in India is narrower than that of what exists in the US. This is because the American Constitution provides for 'due process of law' against that of 'procedure established by law' contained in the Indian Constitution (Article 21).

Therefore, the framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of judicial supremacy. The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review. The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power.

## **7. Integrated and Independent Judiciary**

The Indian Constitution establishes a judicial system that is integrated as well as independent.

The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are high courts at the state level. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts enforces both the central laws as well as the state laws, unlike in USA, where the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary.

The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution. Hence, the Constitution has made various provisions to ensure its independence—security of tenure of the judges, fixed service conditions for the judges, all the expenses of the Supreme Court charged on the Consolidated Fund of India, prohibition on discussion on the conduct of judges in the legislatures, ban on practice after retirement, power to punish for its contempt vested in the Supreme Court, separation of the judiciary from the executive, and so on.

## **8. Fundamental Rights**

Part III of the Indian Constitution guarantees six fundamental rights to all the citizens:

1. Right to Equality (Articles 14–18)
2. Right to Freedom (Articles 19–22)
3. Right against Exploitation (Articles 23–24)
4. Right to Freedom of Religion (Articles 25–28)

5. Cultural and Educational Rights (Articles 29–30) and
6. Right to Constitutional Remedies (Article 32)

Originally, the Constitution provided for seven Fundamental Rights. However, the Right to Property (Article 31) was deleted from the list of Fundamental Rights by the 44th Amendment Act of 1978. It is made a legal right under Article 300-A in Part XII of the constitution.

The Fundamental Rights are meant for promoting the idea of political democracy. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. They are justiciable in nature, that is, they are enforceable by the courts for their violation. The aggrieved person can directly go to the Supreme Court which can issue the writs of *habeas corpus*, *mandamus*, prohibition, *certiorari* and *quo warranto* for the restoration of his rights.

However, the Fundamental Rights are not absolute and subject to reasonable restrictions. Further, they are not sacrosanct and can be curtailed or repealed by the Parliament through a Constitutional Amendment Act. They can also be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.

### 9. Directive Principles of State Policy

According to Dr. B.R. Ambedkar, the Directive Principles of State Policy is a 'novel feature' of the Indian Constitution. They are enumerated in Part IV of the Constitution. They can be classified into three broad categories— socialistic, Gandhian and liberal–intellectual.

The Directive Principles are meant for promoting the ideal of social and economic democracy. They seek to establish a 'welfare state' in India. However, unlike the Fundamental Rights, the directives are non-justiciable in nature, that is, they are not enforceable by the courts for their violation. Yet, the Constitution itself declares that 'these principles are fundamental in the governance of the country, and it shall be the duty of the state to apply these principles in making laws'. Hence, they impose a moral obligation on the state authorities for their application. But, the real force (sanction) behind them is political, that is, public opinion.

In the *Minerva Mills* case<sup>8</sup> (1980), the Supreme Court held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles'.

### 10. Fundamental Duties

The original constitution did not provide for the Fundamental Duties of the citizens. These were added during the operation of internal emergency (1975–77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.

Part IV-A of the Constitution (which consists of only one Article 51-A) specifies the eleven Fundamental Duties viz., to respect the Constitution, national flag and national anthem; to protect the sovereignty, unity and integrity of the country; to promote the spirit of common brotherhood amongst all the people; to preserve the rich heritage of our composite culture and so on.

The fundamental duties serve as a reminder to citizens that while enjoying their rights, they also have to be quite conscious of duties they owe to their country, their society and to their fellow-citizens. However, like the Directive Principles, the duties are also non-justiciable in nature.

### **11. A Secular State**

The Constitution of India stands for a Secular State. Hence, it does not uphold any particular religion as the official religion of the Indian State. The following provisions of the Constitution reveal the secular character of the Indian State:

1. The term 'secular' was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.
2. The Preamble secures to all citizens of India liberty of belief, faith and worship.
3. The State shall not deny to any person equality before the law or equal protection of the laws (Article 14).
4. The State shall not discriminate against any citizen on the ground of religion (Article 15).
5. Equality of opportunity for all citizens in matters of public employment (Article 16).
6. All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).
7. Every religious denomination or any of its sections shall have the right to manage its religious affairs (Article 26).
8. No person shall be compelled to pay any taxes for the promotion of a particular religion (Article 27).
9. No religious instruction shall be provided in any educational institution maintained by the State (Article 28).
10. Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).
11. All minorities shall have the right to establish and administer educational institutions of their choice (Article 30).
12. The State shall endeavour to secure for all the citizens a Uniform Civil Code (Article 44).

The Western concept of secularism connotes a complete separation between the religion (the church) and the state (the politics). This negative concept of secularism is inapplicable in the Indian situation where the society is multireligious. Hence, the Indian Constitution embodies the positive concept of secularism, i.e., giving equal respect to all religions or protecting all religions equally.

Moreover, the Constitution has also abolished the old system of communal representation<sup>9</sup>, that is, reservation of seats in the legislatures on the basis of religion. However, it provides for the temporary reservation of seats for the scheduled castes and scheduled tribes to ensure adequate representation to them.

## 12. Universal Adult Franchise

The Indian Constitution adopts universal adult franchise as a basis of elections to the Lok Sabha and the state legislative assemblies. Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth and so on. The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act of 1988.

The introduction of universal adult franchise by the Constitution-makers was a bold experiment and highly remarkable in view of the vast size of the country, its huge population, high poverty, social inequality and overwhelming illiteracy.<sup>10</sup>

Universal adult franchise makes democracy broad-based, enhances the self-respect and prestige of the common people, upholds the principle of equality, enables minorities to protect their interests and opens up new hopes and vistas for weaker sections.

## 13. Single Citizenship

Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship.

In countries like the USA, on the other hand, each person is not only a US citizen but also a citizen of the particular state to which he belongs. Thus, he owes allegiance to both and enjoys dual sets of rights— one conferred by the National government and another by the state government.

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them.

Despite the constitutional provision for a single citizenship and uniform rights for all the people, India has been witnessing communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes. This means that the cherished goal of the Constitution-makers to build a united and integrated Indian nation has not been fully realised.

## 14. Independent Bodies

The Indian Constitution not only provides for the legislative, executive and judicial organs of the Government (Central and state) but also establishes certain independent bodies. They are envisaged by the Constitution as the bulkworks of the democratic system of Government in India. These are:

1. Election Commission to ensure free and fair elections to the Parliament, the state legislatures, the office of President of India and the office of Vice-president of India.
2. Comptroller and Auditor-General of India to audit the accounts of the Central and state governments. He acts as the guardian of public purse and comments on the legality and propriety of Government expenditure.
3. Union Public Service Commission to conduct examinations for recruitment to All-India services<sup>11</sup> and higher Central services and to advise the President on disciplinary matters.
4. State Public Service Commission in every state to conduct examinations for recruitment to state services and to advise the governor on disciplinary matters.

The Constitution ensures the independence of these bodies through various provisions like security of tenure, fixed service conditions, expenses being charged on the Consolidated Fund of India, and so on.

### **15. Emergency Provisions**

The Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectively. The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

The Constitution envisages three types of emergencies, namely:

1. National emergency on the ground of war or external aggression or armed rebellion<sup>12</sup> (Article 352)
2. State emergency (President's Rule) on the ground of failure of Constitutional machinery in the states (Article 356) or failure to comply with the directions of the Centre (Article 365)
3. Financial emergency on the ground of threat to the financial stability or credit of India (Article 360)

During an emergency, the Central Government becomes all-powerful and the states go into the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

### **16. Three-tier Government**

Originally, the Indian Constitution, like any other federal Constitution, provided for a dual polity and contained provisions with regard to the organisation and powers of the Centre and the states. Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of Government (i.e., local) which is not found in any other Constitution of the world.

The 73rd Amendment Act of 1992 gave constitutional recognition to the panchayats (rural local governments) by adding a new Part IX and a new Schedule 11 to the Constitution. This Part provides for a three-tier system of panchayati raj in every state, i.e., Panchayats at the village, intermediate and district levels. Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local governments) by adding a new Part IX-A and a new Schedule 12 to the Constitution. This Part provides for three types of municipalities in every state, i.e., nagar panchayat for a transitional area, municipal council for a smaller urban area and municipal corporation for a larger urban area.

### **17. Co-operative Societies**

The 97th Constitutional Amendment Act of 2011 gave a constitutional status and protection to co-operative societies. In this context, it made the following three changes in the Constitution:

1. It made the right to form co-operative societies a fundamental right (Article 19).
2. It included a new Directive Principle of State Policy on promotion of co-operative societies (Article 43-B).

3. It added a new Part IX-B in the Constitution which is entitled as “The Co-operative Societies” (Articles 243-ZH to 243-ZT).

The new Part IX-B contains various provisions to ensure that the co-operative societies in the country function in a democratic, professional, autonomous and economically sound manner. It empowers the Parliament in respect of multi-state cooperative societies and the state legislatures in respect of other co-operative societies to make the appropriate law.

## **CRITICISM OF THE CONSTITUTION**

The Constitution of India, as framed and adopted by the Constituent Assembly of India, has been criticized on the following grounds:

### **1. A Borrowed Constitution**

The critics opined that the Indian Constitution contains nothing new and original. They described it as a ‘borrowed Constitution’ or a ‘bag of borrowings’ or a ‘hotch-potch Constitution’ or a ‘patchwork’ of several documents of the world constitutions. However, this criticism is unfair and illogical. This is because, the framers of the Constitution made necessary modifications in the features borrowed from other constitutions for their suitability to the Indian conditions, at the same time avoiding their faults.

While answering the above criticism in the Constituent Assembly, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, said: “One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly, what are the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure, on an inadequate study of the Constitution”.<sup>13</sup>

### **2. A Carbon Copy of the 1935 Act**

The critics said that the framers of the Constitution have included a large number of the provisions of the Government of India Act of 1935 into the Constitution of India. Hence, they called the Constitution as a “Carbon Copy of the 1935 Act” or an “Amended Version of the 1935 Act”. For example, N. Srinivasan observed that the Indian Constitution is “both in language and substance a close copy of the Act of 1935”. Similarly, Sir Ivor Jennings, a British Constitutional, said that “the Constitution derives directly from the Government of India Act of 1935 from which, in fact, many of its provisions are copied almost textually”.

Further, P.R. Deshmukh, a member of the Constituent Assembly, commented that “the Constitution is essentially the Government of India Act of 1935 with only adult franchise added”.

The same Dr. B.R. Ambedkar answered the above criticism in the Constituent Assembly in the following way: “As to the accusation that the Draft Constitution has reproduced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a

Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration".<sup>14</sup>

### **3. Un-Indian or Anti-Indian**

According to the critics, the Indian Constitution is 'un-Indian' or 'anti-Indian' because it does not reflect the political traditions and the spirit of India. They said that the foreign nature of the Constitution makes it unsuitable to the Indian situation or unworkable in India. In this context, K. Hanumanthaiya, a member of the Constituent Assembly, commented: "We wanted the music of Veena or Sitar, but here we have the music of an English band. That was because our Constitution-makers were educated that way".<sup>15</sup> Similarly, Lokanath Misra, another member of the Constituent Assembly, criticized the Constitution as a "slavish imitation of the west, much more – a slavish surrender to the west".<sup>16</sup> Further, Lakshminarayan Sahu, also a member of the Constituent Assembly, observed: "The ideals on which this draft Constitution is framed have no manifest relation to the fundamental spirit of India. This Constitution would not prove suitable and would break down soon after being brought into operation".<sup>17</sup>

### **4. An Un-Gandhian Constitution**

According to the critics, the Indian Constitution is un-Gandhian because it does not contain the philosophy and ideals of Mahatma Gandhi, fondly known as 'Bapu' or 'Father of the Nation' in India. They opined that the Constitution should have been raised and built upon village panchayats and district panchayats. In this context, the same member of the Constituent Assembly, K. Hanumanthaiya, said: "That is exactly the kind of Constitution Mahatma Gandhi did not want and did not envisage".<sup>18</sup> T. Prakasam, another member of the Constituent Assembly, attributed this lapse to Ambedkar's non-participation in the Gandhian movement and the antagonism towards the Gandhian ideas.<sup>19</sup>

### **5. Elephantine Size**

The critics stated that the Indian Constitution is too bulky and too detailed and contains some unnecessary elements. Sir Ivor Jennings, a British Constitutionalist, observed that the provisions borrowed were not always well-selected and that the constitution, generally speaking, was too long and complicated.<sup>20</sup>

In this context, H.V. Kamath, a member of the Constituent Assembly, commented: "The emblem and the crest that we have selected for our assembly is an elephant. It is perhaps in consonance with that our constitution too is the bulkiest that the world has produced".<sup>21</sup> He also said: "I am sure, the House does not agree that we should make the Constitution an elephantine one".<sup>22</sup>

### **6. Paradise of the Lawyers**

According to the critics, the Indian Constitution is too legalistic and very complicated. They opined that the legal language and phraseology adopted in the constitution makes it a complex document. The same Sir Ivor Jennings called it a "lawyer's paradise".

In this context, H.K. Maheswari, a member of the Constituent Assembly, observed: "The draft tends to make people more litigious, more inclined to go to law courts, less truthful and less likely to follow the methods of truth and non-violence. If I may say so, the draft is really a lawyer's paradise. It opens up vast avenues of litigation and will give our able and ingenious lawyers plenty of work to do".<sup>23</sup>

Similarly, P.R. Deshmukh, another member of the Constituent Assembly, said: “I should, however, like to say that the draft of the articles that have been brought before the House by Dr. Ambedkar seems to my mind to be far too ponderous like the ponderous tomes of a law manual. A document dealing with a constitution hardly uses so much of padding and so much of verbiage. Perhaps it is difficult for them to compose a document which should be, to my mind, not a law manual but a socio-political document, a vibrating, pulsating and life-giving document. But, to our misfortune, that was not to be, and we have been burdened with so much of words, words and words which could have been very easily eliminated.”<sup>24</sup>

**Table 4.1** Parts of the Constitution at a Glance

Parts	Subject Matter	Articles Covered
I	The Union and its territory	1 to 4
II	Citizenship	5 to 11
III	Fundamental Rights	12 to 35
IV	Directive Principles of State Policy	36 to 51
IV-A	Fundamental Duties	51-A
V	The Union Government	52 to 151
	Chapter I – The Executive	52 to 78
	Chapter II – Parliament	79 to 122
	Chapter III – Legislative Powers of President	123
	Chapter IV – The Union Judiciary	124 to 147
	Chapter V – Comptroller and Auditor-General of India	148 to 151
VI	The State Governments	152 to 237
	Chapter I – General	152

Parts	Subject Matter	Articles Covered
	Chapter II – The Executive	153 to 167
	Chapter III – The State Legislature	168 to 212
	Chapter IV – Legislative Powers of Governor	213
	Chapter V – The High Courts	214 to 232
	Chapter VI – Subordinate Courts	233 to 237
VII	The States in Part B of the First Schedule (deleted)	238 (deleted)
VIII	The Union Territories	239 to 242
IX	The Panchayats	243 to 243-0
IX-A	The Municipalities	243-P to 243-ZG
IX-B	The Co-operative Societies	243-ZH to 243-ZT
X	The Scheduled and Tribal Areas	244 to 244-A
XI	Relations between the Union and the States	245 to 263
	Chapter I – Legislative Relations	245 to 255
	Chapter II – Administrative Relations	256 to 263
XII	Finance, Property, Contracts and Suits	264 to 300-A
	Chapter I – Finance	264 to 291
	Chapter II – Borrowing	292 to 293

<b>Parts</b>	<b>Subject Matter</b>	<b>Articles Covered</b>
	Chapter III – Property, Contracts, Rights, Liabilities, Obligations and Suits	294 to 300
	Chapter IV – Right to Property	300-A
XIII	Trade, Commerce and Intercourse within the Territory of India	301 to 307
XIV	Services under the Union and the States	308 to 323
	Chapter I – Services	308 to 314
	Chapter II – Public Service Commissions	315 to 323
XIV-A	Tribunals	323-A to 323-B
XV	Elections	324 to 329-A
XVI	Special Provisions relating to Certain Classes	330 to 342-A
XVII	Official Language	343 to 351
	Chapter I – Language of the Union	343 to 344
	Chapter II – Regional Languages	345 to 347
	Chapter III – Language of the Supreme Court, High Courts, and so on	348 to 349
	Chapter IV – Special Directives	350 to 351
XVIII	Emergency Provisions	352 to 360
XIX	Miscellaneous	361 to 367
XX	Amendment of the Constitution	368

Parts	Subject Matter	Articles Covered
XXI	Temporary, Transitional and Special Provisions	369 to 392
XXII	Short title, Commencement, Authoritative Text in Hindi and Repeals	393 to 395

**Note:** Part VII (dealing with Part-B states) was deleted by the 7th Amendment Act (1956). On the other hand, both Part IV-A and Part XIV-A were added by the 42nd Amendment Act (1976), while Part IX-A was added by the 74th Amendment Act (1992), and Part IX-B was added by the 97th Amendment Act (2011).

**Table 4.2** Important Articles of the Constitution at a Glance

Articles	Deals with
1	Name and territory of the Union
3	Formation of new states and alteration of areas, boundaries or names of existing states
13	Laws inconsistent with or in derogation of the fundamental rights
14	Equality before law
15	Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
16	Equality of opportunity in matters of public employment
17	Abolition of untouchability
19	Protection of certain rights regarding freedom of speech, etc.
21	Protection of life and personal liberty
21A	Right to elementary education
25	Freedom of conscience and free profession, practice and propagation of religion

Articles	Deals with
30	Right of minorities to establish and administer educational institutions
32	Remedies for enforcement of fundamental rights including writs
38	State to secure a social order for the promotion of welfare of the people
40	Organisation of village panchayats
44	Uniform civil code for the citizens
45	Provision for early childhood care and education to children below the age of 6 years.
46	Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections
50	Separation of judiciary from executive
51	Promotion of international peace and security
51A	Fundamental duties
72	Power of president to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
74	Council of ministers to aid and advise the president
110	Definition of Money Bills
112	Annual financial statement (Budget)
123	Power of president to promulgate ordinances during recess of Parliament
143	Power of president to consult Supreme Court

Articles	Deals with
155	Appointment of governor
161	Power of governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
163	Council of ministers to aid and advise the governor
169	Abolition or creation of legislative councils in states
200	Assent to bills by governor (including reservation for President)
213	Power of governor to promulgate ordinances during recess of the state legislature
226	Power of high courts to issue certain writs
239AA	Special provisions with respect to Delhi
249	Power of Parliament to legislate with respect to a matter in the State List in the national interest
262	Adjudication of disputes relating to waters of inter-state rivers or river valleys
263	Provisions with respect to an inter-state council
275	Grants from the Union to certain states
279A	Goods and Services Tax Council
280	Finance Commission
300	Suits and proceedings
300A	Persons not to be deprived of property save by authority of law (Right to property)

Articles	Deals with
311	Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a state.
312	All-India Services
315	Public service commissions for the Union and for the states
320	Functions of Public service commissions
323-A	Administrative tribunals
324	Superintendence, direction and control of elections to be vested in an Election Commission
330	Reservation of seats for scheduled castes and scheduled tribes in the House of the People
335	Claims of scheduled castes and scheduled tribes to services and posts
352	Proclamation of Emergency (National Emergency)
356	Provisions in case of failure of constitutional machinery in states (President's Rule)
360	Provisions as to financial emergency.
365	Effect of failure to comply with, or to give effect to, directions given by the Union (President's Rule)
368	Power of Parliament to amend the Constitution and procedure therefor

**Table 4.3** Schedules of the Constitution at a Glance

Numbers	Subject Matter	Articles Covered
<b>First Schedule</b>	1. Names of the States and their territorial jurisdiction.	1 and 4
	2. Names of the Union Territories and their extent.	
<b>Second Schedule</b>	Provisions relating to the emoluments, allowances, privileges and so on of:	59, 65, 75, 97, 125, 148, 158, 164, 186 and 221
	1. The President of India	
	2. The Governors of States	
	3. The Speaker and the Deputy Speaker of the Lok Sabha	
	4. The Chairman and the Deputy Chairman of the Rajya Sabha	
	5. The Speaker and the Deputy Speaker of the Legislative Assembly in the states	
	6. The Chairman and the Deputy Chairman of the Legislative Council in the states	
	7. The Judges of the Supreme Court	
	8. The Judges of the High Courts	
	9. The Comptroller and Auditor-General of India	
<b>Third Schedule</b>	Forms of Oaths or Affirmations for:	75, 84, 99, 124, 148, 164, 173, 188 and 219

Numbers	Subject Matter	Articles Covered
	1. The Union ministers	
	2. The candidates for election to the Parliament	
	3. The members of Parliament	
	4. The judges of the Supreme Court	
	5. The Comptroller and Auditor-General of India	
	6. The state ministers	
	7. The candidates for election to the state legislature	
	8. The members of the state legislature	
	9. The judges of the High Courts	
<b>Fourth Schedule</b>	Allocation of seats in the Rajya Sabha to the states and the union territories.	4 and 80
<b>Fifth Schedule</b>	Provisions relating to the administration and control of scheduled areas and scheduled tribes.	244
<b>Sixth Schedule</b>	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.	244 and 275
<b>Seventh Schedule</b>	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 98 subjects (originally 97), the State List contains 59 subjects (originally 66) and the Concurrent List contains 52 subjects (originally 47).	246

Numbers	Subject Matter	Articles Covered
<b>Eighth Schedule</b>	Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages. They are: Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Odia, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92nd Amendment Act of 2003. Oriya was renamed as 'Odia' by the 96th Amendment Act of 2011.	344 and 351
<b>Ninth Schedule</b>	Acts and Regulations (originally 13 but presently 282) <sup>25</sup> of the state legislatures dealing with land reforms and abolition of the zamindari system and of the Parliament dealing with other matters. This schedule was added by the 1st Amendment (1951) to protect the laws included in it from judicial review on the ground of violation of fundamental rights. However, the Supreme Court ruled that the laws included in this schedule after April 24, 1973 <sup>26</sup> , are open to judicial review.	31-B
<b>Tenth Schedule</b>	Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52nd Amendment Act of 1985, also known as Anti-defection Law.	102 and 191
<b>Eleventh Schedule</b>	Specifies the powers, authority and responsibilities of Panchayats. It has 29 matters. This schedule was added by the 73rd Amendment Act of 1992.	243-G
<b>Twelfth Schedule</b>	Specifies the powers, authority and responsibilities of Municipalities. It has 18 matters. This schedule was added by the 74th Amendment Act of 1992.	243-W

**Table 4.4** Sources of the Constitution at a Glance

	Sources	Features Borrowed
1.	Government of India Act of 1935	Federal Scheme, Office of Governor, Judiciary, Public Service Commissions, Emergency provisions, Advisory Jurisdiction of the Supreme Court and administrative details.

	Sources	Features Borrowed
2.	British Constitution	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
3.	US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.
4.	Irish Constitution	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
5.	Canadian Constitution	Federation with a strong Centre, vesting of residuary powers in the Centre and appointment of state governors by the Centre.
6.	Australian Constitution	Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.
7.	Weimar Constitution of Germany	Emergency provisions relating to suspension of Fundamental Rights.
8.	Soviet Constitution (USSR, now Russia)	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
9.	French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
10.	South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha.
11.	Japanese Constitution	Procedure established by Law.



<sup>1</sup>*Kesavananda Bharati vs. State of Kerala, (1973)*

<sup>2</sup>The American Constitution originally consisted of only 7 Articles, the Australian 128, the Chinese 138, and the Canadian 147.

<sup>3</sup>About 250 provisions of the 1935 Act have been included in the Constitution.

<sup>4</sup>*Constituent Assembly Debates*, Volume VII, pp. 35–38.

<sup>5</sup>P.M. Bakshi, *The Constitution of India*, Universal, Fifth Edition, 2002, p. 4.

<sup>6</sup>Brij Kishore Sharma, *Introduction to the Constitution of India*, Seventh Edition, 2015, PHI Learning Private Limited, p. 42.

<sup>7</sup>Westminster is a place in London where the British Parliament is located. It is often used as a symbol/synonym of the British Parliament.

<sup>8</sup>*Minerva Mills vs. Union of India*, (1980).

<sup>9</sup>The 1909, 1919, and 1935 Acts provided for communal representation.

<sup>10</sup>Even in the western countries, the right to vote was extended only gradually. For example, USA gave franchise to women in 1920, Britain in 1928, USSR (now Russia) in 1936, France in 1945, Italy in 1948 and Switzerland in 1971.

<sup>11</sup>At present, there are three All-India services, namely Indian Administrative Service (IAS), Indian Police Service (IPS) and Indian Forest Service (IFoS). In 1947, Indian Civil Service (ICS) was replaced by IAS and the Indian Police (IP) was replaced by IPS and were recognised by the Constitution as All-India Services. In 1963, IFoS was created and it came into existence in 1966.

<sup>12</sup>The 44th Amendment Act (1978) has replaced the original term 'internal disturbance' by the new term 'armed rebellion'.

<sup>13</sup>*Constituent Assembly Debates*, Volume VII, pp. 35–38.

<sup>14</sup>*Ibid.*

<sup>15</sup>*Constituent Assembly Debates*, Volume XI, p. 616.

<sup>16</sup>*Constituent Assembly Debates*, Volume VII, p. 242.

<sup>17</sup>*Constituent Assembly Debates*, Volume XI, p. 613.

<sup>18</sup>*Constituent Assembly Debates*, Volume XI, p. 617.

<sup>19</sup>*Constituent Assembly Debates*, Volume VII, p. 387.

<sup>20</sup>Ivor Jennings, *Some Characteristics of the Indian Constitution*, Oxford University Press, Madras, 1953, pp. 9–16.

<sup>21</sup>*Constituent Assembly Debates*, Volume VII, p. 1042.

<sup>22</sup>*Constituent Assembly Debates*, Volume VIII, p. 127.

<sup>23</sup>*Constituent Assembly Debates*, Volume VII, p. 293.

<sup>24</sup>Constituent Assembly Debates, Volume IX, p. 613.

<sup>25</sup>Though the last entry is numbered 284, the actual total number is 282. This is because, three entries (87,92 and 130) have been deleted and one entry is numbered as 257-A.

<sup>26</sup>This is the date on which the Supreme Court delivered its judgement in the Kesavananda Bharati vs. State of Kerala case. This case is popularly known as the Fundamental Rights case.

## CHAPTER 5: Preamble of the Constitution

The American Constitution was the first to begin with a Preamble. Many countries, including India, followed this practice. The term ‘preamble’ refers to the introduction or preface to the Constitution. It contains the summary or essence of the Constitution. N.A. Palkhivala, an eminent jurist and constitutional expert, called the Preamble as the ‘identity card of the Constitution.’

The Preamble to the Indian Constitution is based on the ‘Objectives Resolution’, drafted and moved by Pandit Nehru, and adopted by the Constituent Assembly<sup>1</sup>. It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words —Socialist, Secular and Integrity.

### TEXT OF THE PREAMBLE

The Preamble in its present form reads:

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

JUSTICE, Social, Economic and Political;

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

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”.

### INGREDIENTS OF THE PREAMBLE

The Preamble reveals four ingredients or components:

1. Source of authority of the Constitution: The Preamble states that the Constitution derives its authority from the people of India.
2. Nature of the Indian State: It declares India to be of a sovereign, socialist, secular democratic and republican polity.
3. Objectives of the Constitution: It specifies justice, liberty, equality and fraternity as the objectives.
4. Date of adoption of the Constitution: It stipulates November 26, 1949, as the date.

### KEY WORDS IN THE PREAMBLE

Certain key words—Sovereign, Socialist, Secular, Democratic, Republic, Justice, Liberty, Equality and Fraternity—are explained as follows:

## 1. Sovereign

The word 'sovereign' implies that India is neither a dependency nor a dominion of any other nation, but an independent state<sup>2</sup>. There is no authority above it, and it is free to conduct its own affairs (both internal and external).

Though in 1949, India declared the continuation of her full membership of the Commonwealth of Nations and accepted the British Crown as the head of the Commonwealth, this extra-constitutional declaration does not affect India's sovereignty in any manner<sup>3</sup>. Further, India's membership of the United Nations Organisation (UNO) also in no way constitutes a limitation on her sovereignty<sup>4</sup>.

Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

## 2. Socialist

Even before the term 'socialist' was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy. In other words, what was hitherto implicit in the Constitution has now been made explicit. Moreover, the Congress party itself adopted a resolution<sup>5</sup> to establish a 'socialistic pattern of society' in its Avadi session as early as in 1955 and took measures accordingly.



Notably, the Indian brand of socialism is a 'democratic socialism' and not a 'communistic socialism' (also known as 'state socialism') which involves the nationalisation of all means of production and distribution and the abolition of private property. Democratic socialism, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side-by-side<sup>6</sup>. As the Supreme Court says, 'Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity<sup>7</sup>. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards the Gandhian socialism'<sup>8</sup>.

The new Economic Policy (1991) of liberalisation, privatisation and globalisation has, however, diluted the socialist credentials of the Indian State.

## 3. Secular

The term 'secular' too was added by the 42nd Constitutional Amendment Act of 1976. However, as the Supreme Court said in 1974, although the words 'secular state'<sup>9</sup> were not expressly mentioned in the Constitution, there can be no doubt that Constitution-makers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the fundamental right to freedom of religion) have been included in the constitution.

The Indian Constitution embodies the positive concept of secularism, i.e, all religions in our country (irrespective of their strength) have the same status and support from the state<sup>10</sup>.

## 4. Democratic

A democratic<sup>11</sup> polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people.

Democracy is of two types—direct and indirect. In direct democracy, the people exercise their supreme power directly as is the case in Switzerland. There are four devices of direct democracy, namely, **Referendum, Initiative, Recall** and **Plebiscite**<sup>12</sup>. In indirect democracy, on the other hand, the representatives elected by the people exercise the supreme power and thus carry on the government and make the laws. This type of democracy, also known as representative democracy, is of two kinds—parliamentary and presidential.

The Indian Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions. Universal adult franchise, periodic elections, rule of law, independence of judiciary, and absence of discrimination on certain grounds are the manifestations of the democratic character of the Indian polity.

The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.

This dimension was stressed by Dr. Ambedkar in his concluding speech in the Constituent Assembly on November 25, 1949, in the following way:

“Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity. The principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty, would kill individual initiative”.<sup>12a</sup>

In the same context, the Supreme Court observed in 1997 that: “The Constitution envisions to establish an egalitarian social order rendering to every citizen social, economic and political justice in a social and economic democracy of the Bharat Republic”.

## 5. Republic

A democratic polity can be classified into two categories—monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position, that is, he/she comes to office through succession, e.g., Britain. In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period, e.g., USA.

Therefore, the term 'republic' in our Preamble indicates that India has an elected head called the president. He/she is elected indirectly for a fixed period of five years.

A republic also means two more things: one, vesting of political sovereignty in the people and not in a single individual like a king; second, the absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.

## 6. Justice

The term 'justice' in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles.

Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs and OBCs) and women.

Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as 'distributive justice'.

Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.

The ideal of justice—social, economic and political—has been taken from the Russian Revolution (1917).

## **7. Liberty**

The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.

The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation.

Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. However, liberty does not mean 'license' to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself. In brief, the liberty conceived by the Preamble or fundamental rights is not absolute but qualified.

The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789–1799).

## **8. Equality**

The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.

The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality—civic, political and economic.

The following provisions of the chapter on Fundamental Rights ensure civic equality:

1. Equality before the law (Article 14).
2. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
3. Equality of opportunity in matters of public employment (Article 16).
4. Abolition of untouchability (Article 17).
5. Abolition of titles (Article 18).

There are two provisions in the Constitution that seek to achieve political equality. One, no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article 325). Two, elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage (Article 326).

The Directive Principles of State Policy (Article 39) secures to men and women equal right to an adequate means of livelihood and equal pay for equal work.

## 9. Fraternity

Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Article 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities.

The Preamble declares that fraternity has to assure two things—the dignity of the individual and the unity and integrity of the nation. The word ‘integrity’ has been added to the preamble by the 42nd Constitutional Amendment (1976).

According to K.M. Munshi, a member of the Drafting Committee of the Constituent Assembly, the phrase ‘dignity of the individual’ signifies that the Constitution not only ensures material betterment and maintain a democratic set-up, but that it also recognises that the personality of every individual is sacred. This is highlighted through some of the provisions of the Fundamental Rights and Directive Principles of State Policy, which ensure the dignity of individuals. Further, the Fundamental Duties (Article 51-A) also protect the dignity of women by stating that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women, and also makes it the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.

The phrase ‘unity and integrity of the nation’ embraces both the psychological and territorial dimensions of national integration. Article 1 of the Constitution describes India as a ‘Union of States’ to make it clear that the states have no right to secede from the Union, implying the indestructible nature of the Indian Union. It aims at overcoming hindrances to national integration like communalism, regionalism, casteism, linguism, secessionism and so on.

### SIGNIFICANCE OF THE PREAMBLE

The Preamble embodies the basic philosophy and fundamental values—political, moral and religious—on which the Constitution is based. It contains the grand and noble vision of the Constituent Assembly, and reflects the dreams and aspirations of the founding fathers of the Constitution. In the words of Sir Alladi Krishnaswami Iyer, a member of the Constituent Assembly who played a significant role in making the Constitution, ‘The Preamble to our Constitution expresses what we had thought or dreamt so long’.

According to K.M. Munshi, a member of the Drafting Committee of the Constituent Assembly, the Preamble is the ‘horoscope of our sovereign democratic republic’.

Pandit Thakur Das Bhargava, another member of the Constituent Assembly, summed up the importance of the Preamble in the following words: ‘The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution’.

Sir Ernest Barker, a distinguished English political scientist, paid a glowing tribute to the political wisdom of the authors of the Preamble. He described the Preamble as the 'key-note'<sup>13</sup> to the Constitution. He was so moved by the text of the preamble that he quoted<sup>14</sup> it at the opening of his popular book, *Principles of Social and Political Theory* (1951).

M. Hidayatullah, a former Chief Justice of India, observed, 'Preamble resembles the Declaration of Independence of the United States of America, but is more than a declaration. It is the soul of our Constitution, which lays down the pattern of our political society. It contains a solemn resolve, which nothing but a revolution can alter'<sup>15</sup>.

### **PREAMBLE AS PART OF THE CONSTITUTION**

One of the controversies about the Preamble is as to whether it is a part of the Constitution or not.

In the *Berubari Union*<sup>16</sup> case (1960), the Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution, and is thus a key to the minds of the makers of the Constitution. Further, where the terms used in any article are ambiguous or capable of more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble. Despite this recognition of the significance of the Preamble, the Supreme Court specifically opined that Preamble is *not* a part of the Constitution.

In the *Kesavananda Bharati* case<sup>17</sup> (1973), the Supreme Court rejected the earlier opinion and held that Preamble *is* a part of the Constitution. It observed that the Preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble. In the *LIC of India* case<sup>18</sup> (1995) also, the Supreme Court again held that the Preamble is an integral part of the Constitution.

Like any other part of the Constitution, the Preamble was also enacted by the Constituent Assembly; but, after the rest of the Constitution was already enacted. The reason for inserting the Preamble at the end was to ensure that it was in conformity with the Constitution as adopted by the Constituent Assembly. While forwarding the Preamble for votes, the President of the Constituent Assembly said, 'The question is that Preamble stands part of the Constitution'<sup>19</sup>. The motion was then adopted. Hence, the current opinion held by the Supreme Court that the Preamble is a part of the Constitution, is in consonance with the opinion of the founding fathers of the Constitution.

However, two things should be noted:

1. The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.
2. It is non-justiciable, that is, its provisions are not enforceable in courts of law.

### **AMENDABILITY OF THE PREAMBLE**

The question as to whether the Preamble can be amended under Article 368 of the Constitution arose for the first time in the historic *Kesavananda Bharati* case (1973). It was urged that the Preamble cannot be amended as it is not a part of the Constitution. The petitioner contended that the amending power in Article 368 cannot be used to destroy or damage the basic elements or the fundamental features of the Constitution, which are enshrined in the Preamble.

The Supreme Court, however, held that the Preamble is a part of the Constitution. The Court stated that the opinion tendered by it in the *Berubari Union* (1960) in this regard was wrong, and held that the Preamble can be amended, subject to the condition that no amendment is done to the 'basic features'. In other words, the Court held that the basic elements or the fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 368. The Court observed, 'The edifice of our Constitution is based upon the basic elements mentioned in the Preamble. If any of these elements are removed, the structure will not survive and it will not be the same Constitution or it cannot maintain its identity. An amending power cannot be interpreted so as to confer power on the Parliament to take away any of these fundamental and basic characteristics of the polity'.

The Preamble has been amended only once so far, in 1976, by the 42nd Constitutional Amendment Act, which has added three new words—Socialist, Secular and Integrity—to the Preamble. This amendment was held to be valid.

<sup>1</sup>Moved by Nehru on December 13, 1946 and adopted by the Constituent Assembly on January 22, 1947.

<sup>2</sup>Till the passage of the Indian Independence Act, 1947, India was a dependency (colony) of the British Empire. From August 15, 1947 to January 26, 1950, India's political status was that of a dominion in the British Commonwealth of Nations. India ceased to be a British dominion on January 26, 1950, by declaring herself a sovereign republic. However, Pakistan continued to be a British Dominion until 1956.

<sup>3</sup>To dispel the lurking fears of some members of the Constituent Assembly, Pandit Nehru said in 1949 thus: 'We took pledge long ago to achieve *Purna Swaraj*. We have achieved it. Does a nation lose its independence by an alliance with another country? Alliance normally means commitments. The free association of the sovereign Commonwealth of Nations does not involve such commitments. Its very strength lies in its flexibility and its complete freedom. It is well-known that it is open to any member-nation to go out of the commonwealth if it so chooses'. He further stated, 'It is an agreement by free will, to be terminated by free will'.

<sup>4</sup>India became a member of the UNO in 1945.

<sup>5</sup>The Resolution said: 'In order to realise the object of Congress and to further the objectives stated in the Preamble and Directive Principles of State Policy of the Constitution of India, planning should take place with a view to the establishment of a socialistic pattern of society, where the principal means of production are under social ownership or control, production is progressively speeded up and there is equitable distribution of the national wealth'.

<sup>6</sup>The Prime Minister, Indira Gandhi, said, 'We have always said that we have our own brand of socialism. We will nationalise the sectors where we feel the necessity. Just nationalisation is not our type of socialism'.

<sup>7</sup>*G.B. Pant University of Agriculture and Technology vs. State of Uttar Pradesh* (2000).

<sup>8</sup>*Nakara vs. Union of India* (1982).

<sup>9</sup>On the basis of the attitude of the state towards religion, three types of states can be conceived of:

1. *Atheistic State*: The state is anti-religion and hence, condemns all religions.

2. *Theocratic State*: The state is pro- religion and hence, declares one particular religion as the state religion, as for example, Bangladesh, Burma, Sri Lanka, Pakistan, and so on.
3. *Secular State*: The state is neutral in the matter of religion and hence, does not uphold any particular religion as the state religion, as for example, USA and India.

G.S. Pande, *Constitutional Law of India*, Allahabad Law Agency, eighth edition, 2002, p. 222.

<sup>10</sup>The then Union Law Minister, H.R. Gokhale defined this concept as: 'There will be freedom, liberty of faith and worship, whatever religion you belong to. The State will not have anything to do, as a state, with any religion excepting to treat every religion equally, but the State will not have any foundation of religion'. Similarly, P.B. Gajendragadkar, a former Chief Justice of India, defined secularism as in the Indian Constitution in the following way: 'The State does not owe loyalty to any particular religion as such: it is not irreligious or anti-religious; it gives equal freedom to all religions'.

<sup>11</sup>The term 'democracy' is derived from two Greek words, namely, *Demos* and *Kratia* meaning 'People' and 'rule' respectively.

<sup>12</sup>*Referendum* is a procedure whereby a proposed legislation is referred to the electorate for settlement by their direct votes.

*Initiative* is a method by means of which the people can propose a bill to the legislature for enactment.

*Recall* is a method by means of which the voters can remove a representative or an officer before the expiry of his term, when he fails to discharge his duties properly.

*Plebiscite* is a method of obtaining the opinion of people on any issue of public importance. It is generally used to solve the territorial disputes.

<sup>12a</sup>B. Shiva Rao, *The Framing of India's Constitution: Select Documents*, Volume IV, p. 944.

<sup>13</sup>He said that the Preamble of the Indian Constitution states 'in a brief and pithy form the argument of much of the book; and it may accordingly serve as a key-note'.

<sup>14</sup>He wrote: 'I am all the more moved to quote it because I am proud that the people of India should begin their independent life by subscribing to the principles of a political tradition which we in the west call western, but which is now something more than the western'.

<sup>15</sup>M Hidayatullah, *Democracy in India and the Judicial Process*, p. 51.

<sup>16</sup>Reference by the President of India (1960) under Article 143 of the Constitution on the implementation of the Indo-Pakistan agreement of 1958, relating to Berubari union and exchange of enclaves.

<sup>17</sup>*Kesavananda Bharati vs. State of Kerala* (1973).

<sup>18</sup>*LIC of India vs. Consumer Education and Research Centre* (1995).

<sup>19</sup>'*Constituent Assembly Debates*', Volume 10, pp. 450–456.

## CHAPTER 6 Union and Its Territory

Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.

### UNION OF STATES

Article 1 describes India, that is, Bharat as a 'Union of States' rather than a 'Federation of States'. This provision deals with two things: one, name of the country; and two, type of polity.

There was no unanimity in the Constituent Assembly with regard to the name of the country. Some members suggested the traditional name (Bharat), while other advocated the modern name (India). Hence, the Constituent Assembly had to adopt a mix of both ('India, that is, Bharat')

Secondly, the country is described as 'Union' although its Constitution is federal in structure. According to Dr. B.R. Ambedkar, the phrase 'Union of States' has been preferred to 'Federation of States' for two reasons: one, the Indian Federation is not the result of an agreement among the states like the American Federation; and two, the states have no right to secede from the federation. The federation is a Union because it is indestructible. The country is an integral whole and divided into different states only for the convenience of administration<sup>1</sup>.

According to Article 1, the territory of India can be classified into three categories:

1. Territories of the states
2. Union territories
3. Territories that may be acquired by the Government of India at any time.

The names of states and union territories and their territorial extent are mentioned in the first schedule of the Constitution. At present, there are 28 states and 8 union territories. The provisions of the Constitution pertaining to the states are applicable to all the states in the same manner<sup>2</sup>. However, the special provisions (under Part XXI) applicable to the States of Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunachal Pradesh, Goa and Karnataka override the general provisions relating to the states as a class. Further, the Fifth and Sixth Schedules contain separate provisions with respect to the administration of scheduled areas and tribal areas within the states.



Notably, the 'Territory of India' is a wider expression than the 'Union of India' because the latter includes only states while the former includes not only the states, but also union territories and territories that may be acquired by the Government of India at any future time. The states are the members of the federal system and share a distribution of powers with the Centre. The union territories and the acquired territories, on the other hand, are directly administered by the Central government.

Being a sovereign state, India can acquire foreign territories according to the modes recognised by international law, i.e., cession (following treaty, purchase, gift, lease or plebiscite), occupation (hitherto

unoccupied by a recognised ruler), conquest or subjugation. For example, India acquired several foreign territories such as Dadra and Nagar Haveli; Goa, Daman and Diu; Puducherry; and Sikkim since the commencement of the Constitution. The acquisition of these territories is discussed later in this chapter.

Article 2 empowers the Parliament to 'admit into the Union of India, or establish, new states on such terms and conditions as it thinks fit'. Thus, Article 2 grants two powers to the Parliament: (a) the power to admit into the Union of India new states; and (b) the power to establish new states. The first refers to the admission of states which are already in existence, while the second refers to the establishment of states which were not in existence before. Notably, Article 2 relates to the admission or establishment of new states that are not part of the Union of India. Article 3, on the other hand, relates to the formation of or changes in the existing states of the Union of India. In other words, Article 3 deals with the internal re-adjustment *inter se* of the territories of the constituent states of the Union of India.

### **PARLIAMENT'S POWER TO REORGANISE THE STATES**

Article 3 authorises the Parliament to:

1. form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state;
2. increase the area of any state;
3. diminish the area of any state;
4. alter the boundaries of any state; and
5. alter the name of any state.

However, Article 3 lays down two conditions in this regard: one, a bill contemplating the above changes can be introduced in the Parliament only with the prior recommendation of the President; and two, before recommending the bill, the President has to refer the same to the state legislature concerned for expressing its views within a specified period.

Further, the power of Parliament to form new states includes the power to form a new state or union territory by uniting a part of any state or union territory to any other state or union territory<sup>3</sup>.

The President (or Parliament) is not bound by the views of the state legislature and may either accept or reject them, even if the views are received in time. Further, it is not necessary to make a fresh reference to the state legislature every time an amendment to the bill is moved and accepted in Parliament<sup>4</sup>. In case of a union territory, no reference need be made to the concerned legislature to ascertain its views and the Parliament can itself take any action as it deems fit.

It is, thus, clear that the Constitution authorises the Parliament to form new states or alter the areas, boundaries or names of the existing states without their consent. In other words, the Parliament can redraw the political map of India according to its will. Hence, the territorial integrity or continued existence of any state is not guaranteed by the Constitution. Therefore, India is rightly described as 'an indestructible union of destructible states'. The Union Government can destroy the states whereas the state governments cannot destroy the Union. In USA, on the other hand, the territorial integrity or continued existence of a state is guaranteed by the Constitution. The American Federal government

cannot form new states or alter the borders of existing states without the consent of the states concerned. That is why the USA is described as ‘an indestructible union of indestructible states.’

Moreover, the Constitution (Article 4) itself declares that laws made for admission or establishment of new states (under Article 2) and formation of new states and alteration of areas, boundaries or names of existing states (under Articles 3) are not to be considered as amendments of the Constitution under Article 368. This means that such laws can be passed by a simple majority and by the ordinary legislative process.

Does the power of Parliament to diminish the areas of a state (under Article 3) include also the power to cede Indian territory to a foreign country? This question came up for examination before the Supreme Court in a reference made by the President in 1960. The decision of the Central Government to cede part of a territory known as Berubari Union (west Bengal) to Pakistan led to political agitation and controversy and thereby necessitated the Presidential reference. The Supreme Court held that the power of Parliament to diminish the area of a state (under Article 3) does not cover cession of Indian territory to a foreign country. Hence, Indian territory can be ceded to a foreign state only by amending the Constitution under Article 368. Consequently, the 9th Constitutional Amendment Act (1960) was enacted to transfer the said territory to Pakistan.

On the other hand, the Supreme Court in 1969 ruled that, settlement of a boundary dispute between India and another country does not require a constitutional amendment. It can be done by executive action as it does not involve cession of Indian territory to a foreign country.

The various laws made by the Parliament under Article 3 are mentioned in [Table 6.4](#).

#### **EXCHANGE OF TERRITORIES WITH BANGLADESH**

The 100th Constitutional Amendment Act (2015) was enacted to give effect to the acquiring of certain territories by India and transfer of certain other territories to Bangladesh in pursuance of the agreement and its protocol entered into between the Governments of India and Bangladesh. Under this deal, India transferred 111 enclaves to Bangladesh, while Bangladesh transferred 51 enclaves to India. In addition, the deal also involved the transfer of adverse possessions and the demarcation of a 6.1 km undemarcated border stretch. For these three purposes, the amendment modified the provisions relating to the territories of four states (Assam, West Bengal, Meghalaya and Tripura) in the First Schedule of the Constitution. The background of this amendment is as follows:

1. India and Bangladesh have a common land boundary of approximately 4096.7 kms. The India-East Pakistan land boundary was determined as per the Radcliffe Award of 1947. Disputes arose out of some provisions in the Radcliffe Award, which were sought to be resolved through the Bagge Award of 1950. Another effort was made to settle these disputes by the Nehru-Noon Agreement of 1958. However, the issue relating to division of Berubari Union was challenged before the Supreme Court. To comply with the opinion rendered by the Supreme Court, the Constitution (9th Amendment) Act, 1960 was passed by the Parliament. Due to the continuous litigation and other political developments at that time, the Constitution (9th Amendment) Act, 1960 could not be notified in respect of territories in former East Pakistan (presently Bangladesh).<sup>4a</sup>
2. On May 16, 1974, the Agreement between India and Bangladesh concerning the demarcation of the land boundary and related matters was signed between both the countries to find a solution

to the complex nature of the border demarcation involved. This Agreement was not ratified as it involved, inter alia, transfer of territory which requires a Constitutional Amendment. In this connection, it was also required to identify the precise area on the ground which would be transferred. Subsequently, the issues relating to demarcation of un-demarcated boundary; the territories in adverse possession; and exchange of enclaves were identified and resolved by signing a Protocol on September 6, 2011, which forms an integral part of the Land Boundary Agreement between India and Bangladesh, 1974. The Protocol was prepared with support and concurrence of the concerned state governments of Assam, Meghalaya, Tripura and West Bengal.<sup>4b</sup>

## EVOLUTION OF STATES AND UNION TERRITORIES



### Integration of Princely States

At the time of independence, India comprised two categories of political units, namely, the British provinces (under the direct rule of British government) and the princely states (under the rule of native princes but subject to the paramountcy of the British Crown). The Indian Independence Act (1947) created two independent and separate dominions of India and Pakistan and gave three options to the princely states viz., joining India, joining Pakistan or remaining independent. Of the 552 princely states situated within the geographical boundaries of India, 549 joined India and the remaining 3 (Hyderabad, Junagarh and Kashmir) refused to join India. However, in course of time, they were also integrated with India—Hyderabad by means of police action, Junagarh by means of referendum and Kashmir by the Instrument of Accession.

In 1950, the Constitution contained a four-fold classification of the states and territories of the Indian Union—Part A, Part B and Part C states and Part D territories. In all, they numbered 29. Part A states comprised nine erstwhile governor’s provinces of British India. Part B states consisted of nine erstwhile princely states with legislatures. Part C states consisted of erstwhile chief commissioner’s provinces of British India and some of the erstwhile princely states. These Part C states (in all 10 in number) were centrally administered. The Andaman and Nicobar Islands were kept as the solitary Part D territories.

This four-fold classification of the states and territories (1950) is given in [Table 6.1](#).

**Table 6.1** Territory of India in 1950

States in Part A	States in Part B	States in Part C	Territories in Part D
1. Assam	1. Hyderabad	1. Ajmer	1. Andaman and Nicobar Islands
2. Bihar	2. Jammu and Kashmir	2. Bhopal	
3. Bombay	3. Madhya Bharat	3. Bilaspur	

States in Part A	States in Part B	States in Part C	Territories in Part D
4. Madhya Pradesh	4. Mysore	4. Cooch-Bihar	
5. Madras	5. Patiala and East Punjab	5. Coorg	
6. Orissa	6. Rajasthan	6. Delhi	
7. Punjab	7. Saurashtra	7. Himachal Pradesh	
8. United Provinces	8. Travancore-Cochin	8. Kutch	
9. West Bengal	9. Vindhya Pradesh	9. Manipur	
		10. Tripura	



#### **Dhar Commission and JVP Committee**

The integration of princely states with the rest of India has purely an ad hoc arrangement. There has been a demand from different regions, particularly South India, for reorganisation of states on linguistic basis. Accordingly, in June 1948, the Government of India appointed the Linguistic Provinces Commission under the chairmanship of S.K. Dhar to examine the feasibility of this. The commission submitted its report in December, 1948, and recommended the reorganisation of states on the basis of administrative convenience rather than linguistic factor. This created much resentment and led to the appointment of another Linguistic Provinces Committee by the Congress in December, 1948, itself to examine the whole question afresh. It consisted of Jawaharlal Nehru, Vallabhai Patel and Pattabhi Sitaramayya and hence, was popularly known as the JVP Committee. It had no chairman or convenor. It submitted its report in April, 1949, and formally rejected language as the basis for reorganisation of states.

However, in October, 1953, the Government of India was forced to create the first linguistic state, known as Andhra state, by separating the Telugu speaking areas from the Madras state. This followed a prolonged popular agitation and the death of Potti Sriramulu, a Congress person of standing, after a 56-day hunger strike for the cause.



#### **Fazl Ali Commission**

The creation of Andhra state intensified the demand from other regions for creation of states on linguistic basis. This forced the Government of India to appoint (in December, 1953) a three-member States Reorganisation Commission under the chairmanship of Fazl Ali to re-examine the whole question. Its other two members were K.M. Panikkar and H.N. Kunzru. It submitted its report in September 1955 and broadly accepted language as the basis of reorganisation of states. But, it rejected the theory of ‘one language–one state’. Its view was that the unity of India should be regarded as the primary consideration in any redrawing of the country’s political units. It identified four major factors that can be taken into account in any scheme of reorganisation of states:

1. Preservation and strengthening of the unity and security of the country.
2. Linguistic and cultural homogeneity.
3. Financial, economic and administrative considerations.
4. Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.

The commission suggested the abolition of the four-fold classification of states and territories under the original Constitution and creation of 16 states and 3 centrally administered territories. The Government of India accepted these recommendations with certain minor modifications. By the States Reorganisation Act (1956) and the 7th Constitutional Amendment Act (1956), the distinction between Part A and Part B states was done away with and Part C states were abolished. Some of them were merged with adjacent states and some other were designated as union territories. As a result, 14 states and 6 union territories were created on November 1, 1956. These are mentioned in [Table 6.2](#).

**Table 6.2** Territory of India in 1956

States	Union Territories
1. Andhra Pradesh	1. Andaman and Nicobar Islands
2. Assam	2. Delhi
3. Bihar	3. Himachal Pradesh
4. Bombay	4. Laccadive, Minicoy and Amindivi Islands
5. Jammu and Kashmir	5. Manipur
6. Kerala	6. Tripura
7. Madhya Pradesh	

States	Union Territories
8. Madras	
9. Mysore	
10. Orissa	
11. Punjab	
12. Rajasthan	
13. Uttar Pradesh	
14. West Bengal	

The States Reorganisation Act (1956) established the new state of Kerala by merging the Travancore – Cochin State with the Malabar District of Madras state and Kasargode of South Canara (Dakshina Kannada). It merged the Telugu-speaking areas of Hyderabad state with the Andhra state to create the Andhra Pradesh state. Further, it merged the Madya Bharat state, Vindya Pradesh state and Bhopal state into the Madya Pradesh state. Similarly, it merged the Saurashtra state and Kutch state into that of the Bombay state, the Coorg state into that of Mysore state; the Patiala and East Punjab States Union (Pepsu) into that of Punjab state; and the Ajmer state into that of Rajasthan state. Moreover, it created the new union territory of Laccadive, Minicoy and Amindivi Islands from the territory detached from the Madras state.



### New States and Union Territories Created After 1956

Even after the large-scale reorganisation of the states in 1956, the political map of India underwent continuous changes due to the pressure of popular agitations and political conditions. The demand for the creation of some more states on the basis of language or cultural homogeneity resulted in the bifurcation of existing states.

**Maharashtra and Gujarat** In 1960, the bilingual state of Bombay was divided<sup>5</sup> into two separate states— Maharashtra for Marathi-speaking people and Gujarat for Gujarati-speaking people. Gujarat was established as the 15th state of the Indian Union.

**Dadra and Nagar Haveli** The Portuguese ruled this territory until its liberation in 1954. Subsequently, the administration was carried on till 1961 by an administrator chosen by the people themselves. It was converted into a union territory of India by the 10th Constitutional Amendment Act, 1961.

Later, in 2020, this union territory was merged with the union territory of Daman and Diu in order to form a new union territory of Dadra and Nagar Haveli and Daman and Diu. This was done by the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019.

**Goa, Daman and Diu** India acquired these three territories from the Portuguese by means of a police action in 1961. They were constituted as a union territory by the 12th Constitutional Amendment Act, 1962. Later, in 1987, Goa was conferred a statehood.<sup>6</sup> Consequently, Daman and Diu was made a separate union territory.

Again, in 2020, the union territory of Daman and Diu was merged with the union territory of Dadra and Nagar Haveli in order to form a new union territory of Dadra and Nagar Haveli and Daman and Diu. This was done by the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019.

**Puducherry** The territory of Puducherry comprises the former French establishments in India known as Puducherry, Karaikal, Mahe and Yanam. The French handed over this territory to India in 1954. Subsequently, it was administered as an 'acquired territory', till 1962 when it was made a union territory by the 14th Constitutional Amendment Act.

**Nagaland** In 1963, the State of Nagaland was formed<sup>7</sup> by taking the Naga Hills and Tuensang area out of the state of Assam. This was done to satisfy the movement of the hostile Nagas. However, before giving Nagaland the status of the 16th state of the Indian Union, it was placed under the control of the governor of Assam in 1961.

**Haryana, Chandigarh and Himachal Pradesh** In 1966, the State of Punjab was bifurcated<sup>8</sup> to create Haryana, the 17th state of the Indian Union, and the union territory of Chandigarh. This followed the demand for a separate 'Sikh Homeland' (*Punjabi Subha*) raised by the Akali Dal under the leadership of Master Tara Singh. On the recommendation of the Shah Commission (1966), the Punjabi-speaking areas were constituted into the unilingual state of Punjab, the Hindi-speaking areas were constituted into the State of Haryana and the hill areas were merged with the adjoining union territory of Himachal Pradesh. In 1971, the union territory of Himachal Pradesh was elevated<sup>9</sup> to the status of a state (18th state of the Indian Union).

**Manipur, Tripura and Meghalaya** In 1972, the political map of Northeast India underwent a major change.<sup>10</sup> Thus, the two union territories of Manipur and Tripura and the sub-state of Meghalaya got statehood and the two union territories of Mizoram and Arunachal Pradesh (originally known as North-East Frontier Agency—NEFA) came into being. With this, the number of states of the Indian Union increased to 21 (Manipur 19th, Tripura 20th and Meghalaya 21st). Initially, the 22nd Constitutional Amendment Act (1969) created Meghalaya as an 'autonomous state' or 'sub-state' within the state of Assam with its own legislature and council of ministers. However, this did not satisfy the aspirations of the people of Meghalaya. The union territories of Mizoram and Arunachal Pradesh were also formed out of the territories of Assam.

**Sikkim** Till 1947, Sikkim was an Indian princely state ruled by Chogyal. In 1947, after the lapse of British paramountcy, Sikkim became a 'protectorate' of India, whereby the Indian Government assumed responsibility for the defence, external affairs and communications of Sikkim. In 1974, Sikkim expressed its desire for greater association with India. Accordingly, the 35th Constitutional Amendment Act (1974) was enacted by the parliament. This amendment introduced a new class of statehood under the constitution by conferring on Sikkim the status of an 'associate state' of the Indian Union. For this purpose, a new Article 2-A and a new schedule (10th Schedule containing the terms and conditions of

association) were inserted in the Constitution. This experiment, however, did not last long as it could not fully satisfy the aspirations of the people of Sikkim. In a referendum held in 1975, they voted for the abolition of the institution of Chogyal and Sikkim becoming an integral part of India. Consequently, the 36th Constitutional Amendment Act (1975) was enacted to make Sikkim a full-fledged state of the Indian Union (the 22nd state). This amendment amended the First and the Fourth Schedules to the Constitution and added a new Article 371-F to provide for certain special provisions with respect to the administration of Sikkim. It also repealed Article 2-A and the 10th Schedule that were added by the 35th Amendment Act of 1974.

**Mizoram, Arunachal Pradesh and Goa** In 1987, three new States of Mizoram<sup>11</sup>, Arunachal Pradesh<sup>12</sup> and Goa<sup>13</sup> came into being as the 23rd, 24th and 25th states of the Indian Union respectively. The union territory of Mizoram was conferred the status of a full state as a sequel to the signing of a memorandum of settlement (Mizoram Peace Accord) in 1986 between the Central government and the Mizo National Front, ending the two-decade-old insurgency. Arunachal Pradesh had also been a union territory from 1972. The State of Goa was created by separating the territory of Goa from the Union Territory of Goa, Daman and Diu.

**Chhattisgarh, Uttarakhand and Jharkhand** In 2000, three more new States of Chhattisgarh<sup>14</sup>, Uttarakhand<sup>15</sup> and Jharkhand<sup>16</sup> were created out of the territories of Madhya Pradesh, Uttar Pradesh and Bihar, respectively. These became the 26th, 27th and 28th states of the Indian Union, respectively.

**Telangana** In 2014, the new state of Telangana came into existence as the 29th state of the Indian Union. It was carved out of the territories of Andhra Pradesh.

The Andhra State Act (1953) formed the first linguistic state of India, known as the state of Andhra, by taking out the Telugu speaking areas from the State of Madras (now Tamil Nadu). Kurnool was the capital of Andhra state and the state high court was established at Guntur.

The States Reorganisation Act (1956) merged the Telugu-speaking areas of Hyderabad state with the Andhra state to create the enlarged Andhra Pradesh state. The capital of the state was shifted to Hyderabad.

Again, the Andhra Pradesh Reorganisation Act (2014) bifurcated the Andhra Pradesh into two separate states, namely, the Andhra Pradesh (residuary) and the Telangana.

**Jammu & Kashmir and Ladakh** Till 2019, the erstwhile State of Jammu and Kashmir had its own constitution and thus enjoyed a special status by virtue of Article 370 of the Constitution of India. In 2019, this special status was abolished by a presidential order known as “The Constitution (Application to Jammu and Kashmir) Order, 2019”. This order superseded the earlier order known as “The Constitution (Application to Jammu and Kashmir) Order, 1954”. The 2019 order extended all the provisions of the Constitution of India to Jammu and Kashmir also.

**Table 6.3** Territory of India (as of now)

States	Union Territories
1. Andhra Pradesh	1. Andaman and Nicobar Islands

States	Union Territories
2. Arunachal Pradesh	2. Chandigarh
3. Assam	3. Dadra and Nagar Haveli and Daman and Diu
4. Bihar	4. Delhi (National Capital Territory)
5. Chhattisgarh	5. Jammu and Kashmir
6. Goa	6. Ladakh
7. Gujarat	7. Lakshadweep
8. Haryana	8. Puducherry
9. Himachal Pradesh	
10. Jharkhand	
11. Karnataka	
12. Kerala	
13. Madhya Pradesh	
14. Maharashtra	
15. Manipur	
16. Meghalaya	
17. Mizoram	
18. Nagaland	

States	Union Territories
19. Odisha	
20. Punjab	
21. Rajasthan	
22. Sikkim	
23. Tamil Nadu	
24. Telangana	
25. Tripura	
26. Uttarakhand	
27. Uttar Pradesh	
28. West Bengal	

Further, the Jammu and Kashmir Reorganisation Act, 2019, bifurcated the erstwhile State of Jammu and Kashmir into two separate union territories, namely, the union territory of Jammu and Kashmir and the union territory of Ladakh.

The union territory of Jammu and Kashmir comprises all the districts of the erstwhile State of Jammu and Kashmir except the Kargil and Leh districts which have gone to the union territory of Ladakh.

Thus, the number of states and union territories increased from 14 and 6 in 1956 to 28 and 8 (as of now), respectively. This present position is indicated in [Table 6.3](#).

**Change of Names** The names of some states and union territories have also been changed. The United Provinces was the first state to have a new name. It was renamed 'Uttar Pradesh' in 1950. In 1969, Madras was renamed<sup>17</sup> 'Tamil Nadu'. Similarly, in 1973, Mysore was renamed<sup>18</sup> 'Karnataka'. In the same year, Laccadive, Minicoy and Amindivi Islands were renamed<sup>19</sup> 'Lakshadweep'. In 1992, the Union Territory of Delhi was redesignated as the National Capital Territory of Delhi (without being conferred the status of a full-fledged state) by the 69th Constitutional Amendment Act, 1991. In 2006, Uttaranchal was renamed<sup>20</sup> as 'Uttarakhand'. In the same year, Pondicherry was renamed<sup>21</sup> as 'Puducherry'. In 2011, Orissa was renamed<sup>22</sup> as 'Odisha'.

**Table 6.4** Laws Made by Parliament Under Article 3 of the Constitution

Sl. No.	Acts	Provisions
1.	Assam (Alteration of Boundaries) Act, 1951	Altered the boundaries of the State of Assam by ceding a strip of territory comprised in that State to Bhutan.
2.	Andhra State Act, 1953	Formed the first linguistic state, known as the State of Andhra, by taking out the Telugu speaking areas from the State of Madras. Kurnool was the capital of Andhra State and the state high court was established at Guntur.
3.	Himachal Pradesh and Bilaspur (New State) Act, 1954	Formed the new state of Himachal Pradesh by uniting the existing States of Himachal Pradesh and Bilaspur.
4.	Chandernagore (Merger) Act, 1954	Merged the territory of Chandernagore (a former enclave of French India) into the State of West Bengal.
5.	States Reorganisation Act, 1956	Made the extensive changes in the boundaries of various states for the purpose of meeting the linguistic, regional and local demands. It created 14 states and 6 union territories. The States were: Andhra Pradesh, Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal. The Union Territories were: Andaman and Nicobar Islands, Delhi, Himachal Pradesh, Laccadive, Minicoy and Amindivi Islands, Manipur and Tripura. It established the new state of Kerala by merging the Travancore-Cochin State with the Malabar district of Madras State and the Kasargode of South Canara (Dakshina Kannada).
		It merged the Telugu-speaking areas of Hyderabad State with the Andhra State to create the Andhra Pradesh State. Further, it merged the Madhya Bharat State, Vindhya Pradesh State and Bhopal State into the Madhya Pradesh State. Similarly, it merged the Saurashtra State and Kutch State into that of the Bombay State; the Coorg State into that of Mysore State; the Patiala and East Punjab States Union (PEPSU) into that of Punjab State; and the Ajmer State into that of Rajasthan State. Moreover, it created the new union territory of Laccadive, Minicoy and Amindivi Islands from the territory detached from the Madras State.

Sl. No.	Acts	Provisions
6.	Bihar and West Bengal (Transfer of Territories) Act, 1956	Provided for the transfer of certain territories from the State of Bihar to the State of West Bengal.
7.	Rajasthan and Madhya Pradesh (Transfer of Territories) Act, 1959	Provided for the transfer of certain territories from the State of Rajasthan to the State of Madhya Pradesh.
8.	Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959	Provided for the alteration of boundaries of the States of Andhra Pradesh and Madras.
9.	Bombay Reorganisation Act, 1960	Formed the new State of Gujarat (15th state) by taking out the Gujarati speaking areas from the state of Bombay and renamed the other part of the Bombay State as Maharashtra State. The city of Ahmedabad was made the capital of Gujarat.
10.	Acquired Territories (Merger) Act, 1960	Provided for the merger into the States of Assam, Punjab and West Bengal of Certain territories acquired from Pakistan under the agreements entered into between the Governments of India and Pakistan, in 1958 and 1959.
11.	State of Nagaland Act, 1962	Formed the new State of Nagaland (16th state) by taking out the Naga Hills – Tuensang Area from the State of Assam. The Naga Hills – Tuensang Area was a tribal area of Assam specified in the Sixth Schedule of the Constitution.
12.	Punjab Reorganisation Act, 1966	Formed the new State of Haryana (17th state) by taking out the Hindi speaking areas from the State of Punjab. It also made Chandigarh a new Union Territory as well as a common capital for both Punjab and Haryana.
13.	Bihar and Uttar Pradesh (Alteration of Boundaries) Act, 1968	Provided for the alteration of boundaries of the States of Bihar and Uttar Pradesh.

Sl. No.	Acts	Provisions
14.	Andhra Pradesh and Mysore (Transfer of Territory) Act, 1968	Provided for the transfer of certain territory from the State of Mysore to the State of Andhra Pradesh.
15.	Madras State (Alteration of Name) Act, 1968	Changed the name of the State of Madras to that of State of Tamil Nadu.
16.	Assam Reorganisation (Meghalaya) Act, 1969	Formed an autonomous state (sub-state) known as Meghalaya, within the State of Assam.
17.	State of Himachal Pradesh Act, 1970	Elevated the Union Territory of Himachal Pradesh to the status of a state (18th state).
18.	North-Eastern Areas (Reorganisation) Act, 1971	Elevated the two Union Territories of Manipur and Tripura to the status of states (19th state and 20th state respectively). It also conferred full statehood on Meghalaya (21st state), which was previously a sub-state within the State of Assam. Further, it formed the two Union Territories of Mizoram and Arunachal Pradesh out of the territories of Assam.
19.	Mysore State (Alteration of Name) Act, 1973	Changed the name of the state of Mysore to that of the State of Karnataka.
20.	Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973	Changed the name of the Union Territory of the Laccadive, Minicoy and Amindivi Islands to that of the Union Territory of Lakshadweep.
21.	Haryana and Uttar Pradesh (Alteration of Boundaries) Act, 1979	Provided for the alteration of boundaries of the States of Haryana and Uttar Pradesh.
22.	State of Mizoram Act, 1986	Elevated the Union Territory of Mizoram to the status of a state (23rd state).

Sl. No.	Acts	Provisions
23.	State of Arunachal Pradesh Act, 1986	Elevated the Union Territory of Arunachal Pradesh to the status of a State (24th state).
24.	Goa, Daman and Diu Reorganisation Act, 1987	Formed the new State of Goa (25th State) by separating the territory of Goa from the Union Territory of Goa, Daman and Diu.
25.	Madhya Pradesh Reorganisation Act, 2000	Formed the new state of Chhattisgarh (26th state) out of the territories of the State of Madhya Pradesh.
26.	Uttar Pradesh Reorganisation Act, 2000	Created the new State of Uttaranchal (27th state) by carving out its territory from that of the territories of the state of Uttar Pradesh.
27.	Bihar Reorganisation Act, 2000	Established the new State of Jharkhand (28th state) by separating its territory from the territories of the State of Bihar.
28.	Uttaranchal (Alteration of Name) Act, 2006	Changed the name of the State of Uttaranchal to that of the State of Uttarakhand.
29.	Pondicherry (Alteration of Name) Act, 2006	Renamed the Union Territory of Pondicherry as the Union Territory of Puducherry.
30.	Orissa (Alteration of Name) Act, 2011	Changed the name of the State of Orissa to that of the State of Odisha.
31.	Andhra Pradesh Reorganisation Act, 2014	Formed the new state of Telangana (29th state) by carving out its territory from the territories of the state of Andhra Pradesh.
32.	Jammu and Kashmir Reorganisation Act, 2019	Bifurcated the erstwhile state of Jammu and Kashmir into two separate Union territories, namely, the Union territory of Jammu and Kashmir and the Union territory of Ladakh.
33.	Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019	Merged the erstwhile two separate union territories (the union territory of Dadra and Nagar Haveli and the union territory of Daman and Diu) in order to form a new union territory of Dadra and Nagar Haveli and Daman and Diu.

**Table 6.5** Articles Related to Union and its Territory at a Glance

Article No.	Subject-matter
1.	Name and territory of the Union
2.	Admission or establishment of new states
2A.	Sikkim to be associated with the Union—(Repealed)
3.	Formation of new states and alteration of areas, boundaries or names of existing states
4.	Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

<sup>1</sup>*Constituent Assembly Debates*, Volume 7, p. 43.

<sup>2</sup>Till 2019, the erstwhile State of Jammu and Kashmir enjoyed a special position by virtue of Article 370 of the Indian Constitution. It had its own separate State Constitution.

<sup>3</sup>Added by the 18th Constitutional Amendment Act of 1966.

<sup>4</sup>*Babulal vs. State of Bombay* (1959).

<sup>4a</sup> This information is downloaded from the website of Ministry of Law and Justice (Legislative Department), Government of India.

<sup>4b</sup> *Ibid.*

<sup>5</sup>By the Bombay Reorganisation Act, 1960.

<sup>6</sup>By the Goa, Daman and Diu Reorganisation Act, 1987.

<sup>7</sup>By the State of Nagaland Act, 1962, with effect from December 1, 1963.

<sup>8</sup>By Punjab Reorganisation Act, 1966.

<sup>9</sup>By the State of Himachal Pradesh Act, 1970, with effect from January 25, 1971.

<sup>10</sup>By the North-Eastern Areas (Reorganisation) Act, 1971, with effect from January 21, 1972.

<sup>11</sup>By the State of Mizoram Act, 1986, with effect from February 20, 1987.

<sup>12</sup>By the State of Arunachal Pradesh Act, 1986, with effect from February 20, 1987.

<sup>13</sup>By the Goa, Daman and Diu Reorganisation Act, 1987.

<sup>14</sup>By the Madhya Pradesh Reorganisation Act, 2000.

<sup>15</sup>By the Uttar Pradesh Reorganisation Act, 2000.

<sup>16</sup>By the Bihar Reorganisation Act, 2000.

<sup>17</sup>By the Madras State (Alteration of Name) Act, 1968, with effect from January 14, 1969.

<sup>18</sup>By the Mysore State (Alteration of Name) Act, 1973.

<sup>19</sup>By the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Act, 1973.

<sup>20</sup>By the Uttaranchal (Alteration of Name) Act, 2006.

<sup>21</sup>By the Pondicherry (Alteration of Name) Act, 2006.

<sup>22</sup>By the Orissa (Alteration of Name) Act, 2011.

## CHAPTER 7 Citizenship

### MEANING AND SIGNIFICANCE

Like any other modern state, India has two kinds of people—citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Aliens, on the other hand, are the citizens of some other state and hence, do not enjoy all the civil and political rights. They are of two categories—friendly aliens or enemy aliens. Friendly aliens are the subjects of those countries that have cordial relations with India. Enemy aliens, on the other hand, are the subjects of that country that is at war with India. They enjoy lesser rights than the friendly aliens, e.g., they do not enjoy protection against arrest and detention (Article 22).

The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):

1. Right against discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
2. Right to equality of opportunity in the matter of public employment (Article 16).
3. Right to freedom of speech and expression, assembly, association, movement, residence and profession (Article 19).
4. Cultural and educational rights (Articles 29 and 30).
5. Right to vote in elections to the Lok Sabha and state legislative assembly.
6. Right to contest for the membership of the Parliament and the state legislature.
7. Eligibility to hold certain public offices, that is, President of India, Vice-President of India, judges of the Supreme Court and the high courts, governor of states, attorney general of India and advocate general of states.

Along with the above rights, the citizens also owe certain duties towards the Indian State, as for example, paying taxes, respecting the national flag and national anthem, defending the country and so on.

In India, both citizens by birth as well as naturalised citizens are eligible for the office of President while in USA, only a citizen by birth and not a naturalised citizen is eligible for the office of President.

### SINGLE CITIZENSHIP

Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship. The citizens in India owe allegiance only to the Union. There is no separate state citizenship. The other federal states like USA and Australia, on the other hand, adopted the system of double citizenship.

In USA, each person is not only a citizen of USA but also of the particular state to which he/she belongs. Thus, he/she owes allegiance to both and enjoys dual sets of rights—one set conferred by the national government and another by the state government. This system creates the problem of discrimination, that is, a state may discriminate in favour of its citizens in matters like right to vote, right to hold public

offices, right to practice professions and so on. This problem is avoided in the system of single citizenship prevalent in India.

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them. However, this general rule of absence of discrimination is subject to some exceptions, viz,

1. The Parliament (under Article 16) can prescribe residence within a state or union territory as a condition for certain employments or appointments in that state or union territory, or local authority or other authority within that state or union territory. Accordingly, the Parliament enacted the Public Employment (Requirement as to Residence) Act, 1957, and thereby authorised the Government of India to prescribe residential qualification only for appointment to non-Gazetted posts in Andhra Pradesh, Himachal Pradesh, Manipur and Tripura. As this Act expired in 1974, there is no such provision for any state except Andhra Pradesh<sup>1</sup> and Telangana<sup>2</sup>.
2. The Constitution (under Article 15) prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth and not on the ground of residence. This means that the state can provide special benefits or give preference to its residents in matters that do not come within the purview of the rights given by the Constitution to the Indian citizens. For example, a state may offer concession in fees for education to its residents.
3. The freedom of movement and residence (under Article 19) is subjected to the protection of interests of any schedule tribe. In other words, the right of outsiders to enter, reside and settle in tribal areas is restricted. Of course, this is done to protect the distinctive culture, language, customs and manners of schedule tribes and to safeguard their traditional vocation and property against exploitation.
4. Till 2019, the legislature of the erstwhile state of Jammu and Kashmir was empowered to:
  1. define the persons who are permanent residents of the state; and
  2. confer any special rights and privileges on such permanent residents as respects:
    1. employment under the state government;
    2. acquisition of immovable property in the state;
    3. settlement in the state; and
    4. right to scholarships and such other forms of aid provided by the state government.

The above provision was based on Article 35-A of the Constitution of India. This Article was inserted in the constitution by “The Constitution (Application to Jammu and Kashmir) Order, 1954”. This order was issued by the President under Article 370 of the Constitution which had provided a special status to the erstwhile state of Jammu and Kashmir. In 2019, this special status was abolished by a new presidential order known as “The Constitution (Application to Jammu and Kashmir) Order, 2019”. This order superseded the earlier 1954 order<sup>3</sup>.

The Constitution of India, like that of Canada, has introduced the system of single citizenship and provided uniform rights (except in few cases) for the people of India to promote the feeling of fraternity

and unity among them and to build an integrated Indian nation. Despite this, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes. Thus, the cherished goal of the founding fathers and the Constitution-makers to build an united and integrated Indian nation has not been fully realised.

### CONSTITUTIONAL PROVISIONS

The Constitution deals with the citizenship from Articles 5 to 11 under Part II. However, it contains neither any permanent nor any elaborate provisions in this regard. It only identifies the persons who became citizens of India at its commencement (i.e., on January 26, 1950). It does not deal with the problem of acquisition or loss of citizenship subsequent to its commencement. It empowers the Parliament to enact a law to provide for such matters and any other matter relating to citizenship. Accordingly, the Parliament has enacted the Citizenship Act (1955), which has been amended from time to time.

According to the Constitution, the following four categories of persons became the citizens of India at its commencement i.e., on January 26, 1950:

1. A person who had his/her domicile in India and also fulfilled any one of the three conditions, viz., if he/she was born in India; or if either of his/her parents was born in India; or if he/she has been ordinarily resident in India for five years immediately before the commencement of the Constitution, became a citizen of India.
2. A person who migrated to India from Pakistan became an Indian citizen if he/she or either of their parents or any of their grandparents was born in undivided India and also fulfilled any one of the two conditions viz., in case he/she migrated to India before July 19, 1948<sup>4</sup>, he/she had been ordinarily resident in India since the date of his/her migration; or in case he/she migrated to India on or after July 19, 1948, he/she had been registered as a citizen of India. But, a person could be so registered only if he/she had been resident in India for six months preceding the date of his/her application for registration.
3. A person who migrated to Pakistan from India after March 1, 1947, but later returned to India for resettlement could become an Indian citizen. For this, he/she had to be resident in India for six months preceding the date of his/her application for registration<sup>5</sup>.
4. A person who, or any of whose parents or grandparents, was born in undivided India but who is ordinarily residing outside India shall become an Indian citizen if he/she has been registered as a citizen of India by the diplomatic or consular representative of India in the country of his/her residence, whether before or after the commencement of the Constitution. Thus, this provision covers the overseas Indians who may want to acquire Indian citizenship.

To sum up, these provisions deal with the citizenship of (a) persons domiciled in India; (b) persons migrated from Pakistan; (c) persons migrated to Pakistan but later returned; and (d) persons of Indian origin residing outside India.

The other constitutional provisions with respect to the citizenship are as follows:

1. No person shall be a citizen of India or be deemed to be a citizen of India, if he/she has voluntarily acquired the citizenship of any foreign state.

2. Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament.
3. Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

### **CITIZENSHIP ACT, 1955**

The Citizenship Act (1955) provides for acquisition and loss of citizenship after the commencement of the Constitution.



Originally, the Citizenship Act (1955) also provided for the Commonwealth Citizenship. But, this provision was repealed by the Citizenship (Amendment) Act, 2003.



### **Acquisition of Citizenship**

The Citizenship Act of 1955 prescribes five ways of acquiring citizenship, viz, birth, descent, registration, naturalisation and incorporation of territory:

**1. By Birth** A person born in India on or after January 26, 1950 but before July 1, 1987 is a citizen of India by birth irrespective of the nationality of his/her parents.

A person born in India on or after July 1, 1987 but before December 3, 2004 is considered as a citizen of India only if either of his/her parents is a citizen of India at the time of his/her birth.

Further, those born in India on or after December 3, 2004 are considered citizens of India only if both of their parents are citizens of India or one of whose parents is a citizen of India and the other is not an illegal migrant at the time of their birth.

The children of foreign diplomats posted in India and enemy aliens cannot acquire Indian citizenship by birth.

**2. By Descent** A person born outside India on or after January 26, 1950 but before December 10, 1992 is a citizen of India by descent, if his/her father was a citizen of India at the time of his/her birth.

A person born outside India on or after December 10, 1992 is considered as a citizen of India if either of his/her parents is a citizen of India at the time of his/her birth.

From December 3, 2004 onwards, a person born outside India shall not be a citizen of India by descent, unless his/her birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period. An application, for registration of the birth of a minor child, to an Indian consulate shall be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.

Further, a minor who is a citizen of India by virtue of descent and is also a citizen of any other country shall cease to be a citizen of India if he or she does not renounce the citizenship or nationality of another country within six months of his/her attaining full age.