UNIT 1: HISTORICAL BACKGROUND OF THE INDIAN CONSTITUTION

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Historical Background of the Indian Constitution

1.4 Let Us Sum Up

1.5 Further Reading

1.6 Answers to Check Your Progress

1.7 Model Questions

1.1 LEARNING OBJECTIVES

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

- discuss the historical background of the Indian Constitution
- discuss important Acts such as the Regulating Act of 1773, the Pitt's India Act of 1784, Charter Acts of 1813, 1833, 1853, Government of India Acts of 1858, Indian Councils Act of 1861, 1892 and1909
- discuss the important Acts such asthe Government of India Act of 1919 andthe Government of India Act 1935
- explain some of the important Missions and Plans introduced in India during the colonial period for the purpose of the transfer of power from the British Crown to the Indian Government.

1.2 INTRODUCTION

In India, the Constitution is regarded as the supreme law of the country. The Constitution of India was adopted on 26thNovember, 1949. Enactment of the Indian Constitution has a long history. The Constitution of India was adopted after a long struggle of the Indian people and a number of Acts enacted during the colonial period had contributed in this process. In this unit, we will discuss the historical background of the Indian Constitution.

1.3 HISTORICAL BACKGROUND OF THE INDIAN CONSTITUTION

We all know that on 15th August, 1947, British rule came to an end and after the partition of the country, power was transferred to the two independent countries, namely, India and Pakistan. With the coming into effect of the Constitution on 26th January, 1950, India became a sovereign and democratic republic. It is very important to discuss the constitutional background of the Indian Constitution.By the middle of the nineteenth century most of India was controlled by the British, either directly by the East India Company or through the system of treaties and alliances with the Princely States. During this period, certain measures of constitutional reforms were introduced. In this section we will discuss the various Rules and Acts passed during the British regime which have had a profound influence on the framing of the Indian Constitution.



Warren Hastings: : He was the first Governor-General of Bengal from 1772 to 1785.

- **The Regulating Act of 1773:** During the reign of ***Warren Hastings,*** the Regulating Act of 1773 was passed.The Regulating Act initiated the process of centralization in India. Some of the important provisions of this Act were:
  i) The Governor of Bengal was made the Governor General. The first man to be appointed to this post was Warren Hastings. A Council, consisting of four members, was created to assist the Governor General.
  ii) The Governor General and the Council were empowered to make rules and regulations and issue of ordinance for maintaining order within the Company's territories in India.
  iii) The Governor General and the Council were empowered to control the Presidency Governments.
  iv) This Regulating Act also provided for the establishment of a Supreme Court with wide jurisdictions. The Supreme Court consisted of a Chief Justice and three other judges.
- **Pitt's India Act, 1784:** Anotherimportant Act passed during the Colonial rule was the Pitt's India Act of 1784. For the first time, this

Act referred the Company's territory in India as 'the British Possession in India'. This Act led to the reorganisation of East India Company's Government in India and it created a dual authority. It created the Board of Control (BOC) which consisted of the Chancellor of Exchequer, one Secretary of State and four Privy Councillors. This Act also led to the formation of the Court of Directors (COD) and in case of jurisdiction, the BOC wasgiven superior power over the COD. Again this Act also provided thatthe Governor General's Council was to consist of three members.

- **Charter Act of 1813:** The Charter Act of 1813 was another landmark in the process of constitutional development of India. The Actwas enacted on the eve of the end of the lease of 20 years granted to the East India Company. This Act renewed the Company's lease for another 20 years. But at the same time, it reduced the Company's monopoly of trade with India, except forthe trade of tea. The Act opened the Indian trade to all the British subjects. The Act tried to impose certain regulations on the Company. It provided that the Company had to maintain two separate accounts for its commercial transaction and territorial possessions. The Act also allowed the Missionaries to come to India and settle down with the purpose of introducing reforms among the Indians. This Charter Act increased the power of the Board of Control regarding the power of supervision and control. It empowered the Board of Control to make rules and regulations for the civil and military servants of the Company.
- **Charter Act of 1833:** The Charter Act of 1833 ended East India Company's monopoly over trade in India in 1834. The Act provided that the Company had to administer Indian territories 'in trust for His Majesty's heirs and successors'. The Act also created one integrated Government under the Governor General instead of three different Presidencies. One important provision of the Act was that it introduced the system of legislative centralisation in India. Under this provision the Governor General-in-Council was given the power to make laws, rules and regulations across the Indian territories under Company's

possession. The Charter Act of 1833 led to certain important changes in the composition of the Board of Control. Provision was made for the appointment of other ministers like the Lord President of the Council, the Lord Privy Seal, the First Lord of the Treasury, the Principal Secretaries of State, the Chancellor of the Exchequer etc in the Board of Control. The Act also provided for the constitution of a Law Commission and empowered the Governor General to appoint the members of the Law Commission.

- **Charter Act of 1853:** The Charter Act of 1853 was an important Act which brought certain important changes in the governance system of India. This Act separated the legislative body from the executive body. For this purpose the Act provided for the establishment of a Legislative Council which was to be constituted of the Governor General, Executive Councillors, the Chief Justice and one of the Judges of the Supreme Court of Bengal. Four members who are servants of the Company are also to be appointed as the members of the Legislative Council. The Charter Act empowered the Crown to appoint a Law Commission in England. This Law Commission was to examine the reports of the Indian Law Commission and make necessary recommendations for legislation. The Charter Act also increased the strength of the Council of the Governor General for legislative purpose.

CHECK YOUR PROGRESS



Q.1: In which year was the Pitt's India Act enacted?

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Q.2: Which Act introduced legislative centralism in India?

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Q.3: Mention any two provisions of the Regulating Act of 1773.

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- **The Government of India Act of 1858:** The British Parliament passed the Government of India Act of 1858. Through this Act control over India was transferred from the East India Company to the British Crown and thus India came under the direct rule of the British Government. The Act of 1858 laid down the structure of government in India. The Act created the office of the Viceroy of India who was to be assisted by an Executive Council. Through this Act the Board of Control and the Court of Directors were abolished and the powers of these agencies were transferred to the Secretary of State for India and the Indian Council. The Indian Council was to be headed by the Secretary of State for India.
- **Indian Councils Act of 1861:** The Indian Councils Act of 1861 was passed by the British Parliament. It introduced certain reforms in the governance system of India. The Indian Councils Act of 1861 turned the Viceroy of India's office into a cabinet based on the portfolio system. This Act also led to legislative decentralisation in India. This Act restored to the Legislative Councils of Bombay and Madras Presidencies the power of making laws. Similar legislative councils were also createdin other provinces. All the measures, enacted by the Legislative Councils, could become Act only after receiving consent by the Governor-General. Thus the Act provided absolute veto power to the Governor-General regarding enactment of laws. This Act also empowered the Governor-General to issue ordinance and to create new provinces for legislative purpose. The Indian Councils Act of 1861 increased the strength of the Governor-General's Executive Council by adding one Law member and thus

the total number of the Council was five. Thus, this Act brought about major changes in the representative institutions in India.

- **Indian Councils Act of 1892:** The British Parliament passed Indian Councils Act of 1892 and the principle of indirect election was introduced. The elected members could ask questions and seek other information from the Government regarding matter of public importance. This Act increased the strength of the Central and provincial legislative councils by increasing the number of the Additional Members. The Indian Councils Act of 1892 also enlarged the jurisdiction of the legislative councils. The legislative councils were provided the power to discuss financial matters under certain conditions. Thus, the Indian Council Act of 1892 is of great importance in the process of constitutional development of India, since it provided the foundation of representative government by introducing the principle of indirect election.
- **The Indian Councils Act or the Morley-Minto Reforms of 1909:** The Indian Councils Act of 1909, more popularly known as Morley-Minto Reforms of 1909 is a significant event in the constitutional history of India. The Act provided for enlargement of the size of the central and provincial legislative councils. The powers and functions of the central and provincial councils were also increased, specially in financial matters. The members of the Councils were empowered to move resolutions in the Councils. However, the resolutions were to be in a particular format as defined by the Government. Another provision of the Act was that it introduced the system of disqualification on any member of the legislative councils who was found as political offender. The Indian Councils Act of 1909 provided for three types of electorates. These three types of electorates were- General Electorate, Class Electorate and Special Electorate.The General Electorate comprised the non-official members of the Provincial Legislative Councils, Municipal and District Board. The Class Electorate was composed of the landholders' constituencies and Mohammedans and the Special Electorate consisted of the

Presidency Corporations, the Universities, Chambers of Commerce, Port Trusts, Planting and Trade interests,etc. One important thing to be mentioned here is that this Act, for the first time, provided appointment of Indians to the Executive Councils at the Centre and at the provinces. Lord Sinha was the first Indian who got the opportunity to be appointed as the Law Member of the Governor-General's Executive Council.

The Indian Councils Act of 1909 was criticised on the ground that the main purpose of the Act was to pursue the policy of Divide and Rule in India. That is why, it introduced special electorate for the Muslims.



CHECK YOUR PROGRESS

Q.4: Which Act transferred the control over India from the East India Company to the British Crown?

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Q.5: Which Act introduced legislative decentralisation in India?

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Q.6: In India, during the colonial period, the principle of indirect election was introduced in the year .....
(Fill in the blank)

- **Government of India Act of 1919:** The British Parliament passed the Government of India Act of 1919 which is also known as Montague-Chelmsford Reforms. The Act made many important changes in the Central and provincial Governments. The Act introduced a bicameral legislature at the centre. The two Houses were- Legislative Assembly (Lower House) and Council of States (Upper House). The powers and functions of both the Houses were also increased. The number of Indian members in the Executive Council of the Governor General was raised from one to three. The system of direct election was introduced.



Dyarchy: A system of dual Government.

The Government of India Act, 1919 made many changes in the provincial Government too. A system of ***Dyarchy*** was introduced in the Provinces. The subjects which were dealt with by the Provincial Government were divided into two sets: Transferred and Reserved Subjects. The Governor administered the Reserved Subjects with the help of the Ministers chosen by him from the elected members of the legislature. The Governor General could shift a subject from Transferred to Reserved Part. The Act created two lists of Subjects (departments) and divided them into Central and Provincial Governments. The Central List included the subjects such as Defence, Currency, Commerce, Communication, Telegraph, Foreign Relations, Customs, Civil and criminal law etc. whichwere given to the Central Government. On the other hand, the Provincial List included such subjects which were of provincial interest, such as Local-Self Government, Education, Public Works, Agriculture, Public Health, Revenue, Irrigation, Water Supplies, etc. These were given to the provincial Government. The Act created a post of a High Commissioner for India. The term of his office was six years. The Act of 1919 was an important landmark in the constitutional development of India and opened a new era of responsible Government.

- **Nehru Report, 1928:** On 19th May, 1928 an All Party Conference was held to discuss the various issues relating desires and demands of the people of India. After the Conference a Committee was formed under the Chairmanship of Shri Motilal Nehru. The Committee prepared and published a report on 14th August, 1928. This Report is known as the Nehru Report. Some of the important recommendations of the Nehru Report were:



Dominion: An autonomous nation within the British Empire.

i) The Committee recommended that India should be given ***dominion status*** and that the Government would derive all power and authority from the people of the country.

ii) India should have its own Constitution and secularism should be its basic feature.

iii) The Committee also recommended for federal structure of government for India and a bicameral legislature at the central level.

iv) The provision of communal electorate, which was provided by the Morley-Minto Reforms of 1909, was to be abolished and joint electorate with special reservation for minorities should be introduced.

v) The Constitution should provide fundamental rights to the people of India.

vi) The Committee also recommended that the Supreme Court should be the Court of Final Appeal in India.

The Indian National Congress in its Calcutta Session held on 31 December, 1928 accepted the Nehru Report. This Report had profound influence on the development of the constitutional process in India.

- **Simon Commission Report, 1930:** In 1927, a Commission was appointed to explore the possibility of developing a representative government in India. This Commission was chaired by Sir John Simon and the Commission was known as the Simon Commission. The Commission published its report in the year 1930. The Commission recommended that Dyarchy should be abolished in the provinces and the provinces should be provided full autonomy including the department of law and order. To ensure autonomy of the provinces the Commission recommended for the constitution of provincial fund so that provinces could get adequate fund. The Commission also recommended the enlargement of the provincial legislature. The Commission recommended for reconstitution of the central legislature. The Commission was of the view that the central legislature should be bicameralone consisting of the Federal Assembly and the Council of State. The commission was of the view that the Central Legislative Assembly was to be called 'Federal Assembly' which was to be reconstituted on the basis of the representation of the provinces and other areas of British India in

proportion to their population. Regarding the tenure, the Commission recommended that the Federal Assembly and the Council of State should have the tenure of five and seven years respectively. The Commission recommended for a federal form of government for India. Regarding judiciary, the Commission recommended the High Courts should be placed under the administrative control of the Government of India.



CHECK YOUR PROGRESS

Q.7: The Government of India Act, 1919 introduced a bicameral legislature at the centre. (True/False)

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Q.8: Mention two recommendations of the Nehru Report, 1928.

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Q.9: What was the tenure of the Federal Assembly as recommended by the Simon Commission?

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- **Government of India Act of 1935:** The British Parliament passed the Government of India Act of 1935 which was so valuable and important that most provisions of this Act were taken by the framers of the Indian Constitution. The British Parliament passed the Government of India Act 1935 after discussion on the Simon Commission Report in the three Round Table Conferences held in 1930, 1931 and 1932. The Act was a very lengthy written document. The Act proposed to form an All India Federation. All the provinces were to be members of a federation.

  The Government of India Act, 1935 kept the supremacy of the British Parliament intact. The Act clearly stated that the British

Parliament was the ultimate authority which had the right to decide the time and the nature of the Dominion Status to be achieved by India. The Government of India Act of 1935 provided a bicameral legislature at the Centre consisting of Federal assembly (Lower House) and Council of States (Upper House). The Act introduced Dyarchy system at the Centre. The Central Subjects were divided into the Reserved and the Transferred subjects. The Act provided for the division of powers by creating Federal list, Provincial List, Concurrent List and also a provision for Residuary Subjects. The Act established a Federal Court at Delhi. The Federal Court would have both Original and Appellate jurisdictions. The Federal Court was to decide inter-state disputes and also heard appeals against the decisions of the High Courts. However, the final court remained with the Privy Council. The system of Dyarchy in the provinces was replaced by the Provincial autonomy in the Provinces. The popular Ministers, who were to be appointed by the Governor from among the members of the Provincial Legislature, were to be given the responsibility of administering the province. The Ministers were to be responsible to the provincial legislature. The Act introduced a bicameral legislature (viz, Legislative Assembly and Legislative Council) in six out of total eleven provinces. The Legislative Council was the Upper Chamber and the Legislative Assembly was the Lower Chamber. A Federal Public Service Commission was established.



LET US KNOW

Two main provisions of the Government of India Act, 1935 were:

i) the introduction of a federal polity in India, and

ii) the establishment of Provincial autonomy in the British Indian Provinces.



LET US KNOW

At present, seven Indian States have bicameral Legislatures. They are:

i) Andhra Pradesh
ii) Telangana
iii) Bihar
iv) Jammu and Kashmir
v) Karnataka
vi) Maharashtra
vii) Uttar Pradesh

- **The Cripps Mission:** In 1942, the Cripps Mission was sent to India from Great Britain under the leadership of Sir Stafford Cripps. The Cripps Mission arrived in India on March 22, 1942. Some of the proposals of the Mission included the grant of dominion status to India after the Second World War and the setting up of an elected body for framing a Constitution for India after the World War II. The Indian states would have the right to participate in the constitution framing or making body. The Cripps Mission recommended that until the framing of the Constitution, His Majesty's Government would retain control and direction over India regarding the defence aspects as a part of World War II strategy.

  However, the Cripps proposals were rejected by almost all political parties and sections in India including the Indian National Congress and the Muslim League on different grounds.

- **The Cabinet Mission Plan, 1946:** After the end of the World War II in 1945, the political scenario of Great Britain also experienced changes. In the election of 1945 the Labour Party, for the first time, defeated the Conservative Party. Clement Attlee of the Labour Party became the Prime Minister of Great Britain. This Government of Britain was sympathetic to the cause of India, regarding its independence. With a view to discuss the various aspects regarding constitutional settlement in India, British Prime Minister Attlee sent a high power Cabinet Mission in 1946 to India. The members of this Mission were: Lord Pethick Lawrence, Sir Stafford Cripps and Mr. A. V. Alexander.

This Cabinet Mission also had detailed discussion with the Indian leaders and the British authorities in India. After discussion the Mission provided some proposals for giving India a new constitutional set up. The chief proposals of the Cabinet Mission Plan were:

i) To establish a Union of India consisting of the British Provinces and Indian PrincelyStates.

ii) The Union of India would deal with subjects like foreign affairs, defence and communication, etc.

iii) The Union would have an executive and a legislature constituted from British India and the States' representatives.

iv) The Provinces would be categorised under three Groups- Group A, Group B and Group C. Group A would consist of Madras, Bombay, U.P, Bihar, Central Province and Orissa. Panjab, North West Frontier Province and Sindh would come under Group B and Group C would consist of Bengal and Assam.

v) All provinces would be free to form Groups with their own executives and legislatures.

vi) To establish a Constituent Assembly to draft the constitution for India. The members of the Constituent Assembly were to be elected by the Provincial Assemblies of the Provinces.

vii) An interim Government was to be set up with fourteen representatives of the major Political Parties.

Initially, the proposals were accepted by the Indian National Congress but the Muslim League under the leadership of Md. Ali Zinnah rejected the proposals and left the Interim Government.

Disagreement and conflict between the Congress and Muslim League continued. At this juncture, ***Lord Mountbatten*** proposed a plan to Divide India into two parts- India and Pakistan. The Congress and Muslim League accepted the plan. On the basis ofthe **Mountbatten Plan**, the British Parliament passed the **Indian Independence Act** on July 18, 1947 and ultimately on August 15, 1947 India became an independent nation. According to the proposals of the Cabinet Mission Plan, a Constituent Assembly was formed as



Albert Victor Nicholas Louis Francis Mountbatten (25 June 1900-27 August 1979): He was the last viceroy of the British Indian Empire and became the first Governor-General of independent India in 1947.

a representative body. It was accepted that the Constituent Assembly would act as the Dominion Legislature until the Constitution was framed and India was administered according to the provisions of the Government of India Act, 1935 with some necessary modifications.



LET US KNOW

The Indian Constitution is federal in structure. But, the Constitution describes India "as a Union of States". Article 1 of the Indian Constitution says that India shall be a Union of States.



CHECK YOUR PROGRESS

Q.10: Under which Act was a Federal Court established?

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Q.11: Which Plan proposed the plan to divide India into two parts- India and Pakistan?

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Q.12: Which Party formed the Government in Great Britain in the elections of 1945?

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Q.13: Mention two proposals of the Cabinet Mission Plan.

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1.4 LET US SUM UP

- Adoption of the Indian Constitution has a long history. A number of Acts enacted during the colonial period had contributed in this process.

- Some of the important Acts which have influenced the constitutional development of Indiawere the Regulating Act of 1773,Pitt's India Act of 1784, Charter Acts of 1813, 1833 and 1853.
- The Government of India Act of 1858 transferred the power to govern India from the Company to the British Crown and henceforth India came under the direct rule of the British government. The Indian Councils Act of 1861 introduced certain reforms in the governance system of India.
- The Indian Council Act of 1892 is of great importance in the process of constitutional development of India. It introduced the principle of indirect election in India.
- The Indian Councils Act of 1909, more popularly known as Morley-Minto Reforms of 1909, is a significant event in the constitutional history of India. This Act of 1909 provided for three types of electorates, such as General Electorate, Class Electorate and Special Electorate.
- The British Parliament passed the Government of India Act of 1919 which introduced a bicameral legislature at the centre. This Act introduced the system of Dyarchy in the Provinces.
- The British Parliament passed the Government of India Act of 1935 which was so valuable and important that most provisions of this Act were taken by the framers of the Indian Constitution.
- Reports of some Commissions, constituted during that time, also contributed in the process of constitutional development in India. Some of these Reports were- the Nehru Report of 1928, Simon Commission Report of 1930, Cripps Mission Report of 1942,Cabinet Mission Report of 1946.
- The British Parliament passed the Indian Independence Act on July 18, 1947 and ultimately on August 15, 1947 India became an independent nation. The Constituent Assembly of Indiaframed the Constitution for free India.



1.5 FURTHER READING

1) Chander, Prakash (2000). *Indian Government and Politics*. New Delhi: Cosmos Bookhive Pvt. Ltd.

2) Ghai, K. K. (2007). *Indian Government and Politics*. New Delhi: Kalyani Publishers.

3) Pylee, M. V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.



1.6 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: 1784

Ans. to Q. No. 2: The Charter Act of 1833

Ans. to Q. No. 3: i) The Governor of Bengal was made the Governor General. A Council, consisting of four members, was created to assist the Governor General.

ii) The Governor General and the Council were empowered to make rules and regulations and issue of ordinance for maintaining order within the Company's territories in India.

Ans. to Q. No. 4: The Government of India Act of 1858.

Ans. to Q. No. 5: The Indian Councils Act of 1861

Ans. to Q. No. 6: 1892

Ans. to Q. No. 7: True

Ans. to Q. No. 8: i) The Committee recommended that India should be given dominion status. In India Government would derive all power and authority from the people of the country.

ii) India should have its own Constitution and secularism should be its basic feature.

Ans. to Q. No. 9: Five years

Ans. to Q. No. 10: Government of India Act of 1935

Ans. to Q. No. 11: Mountbatten Plan

Ans. to Q. No. 12: Labour Party

Ans To Q. No.13: i) To establish a Union of India consisting of British Provinces and Indian States.

ii) To establish a Constituent Assembly to draft the constitution for India. The members of the Constituent Assembly were to be elected by the Provincial Assemblies of the Provinces.



1.7 MODEL QUESTIONS

A) Very Short Questions

Q.1: Who was the first Governor General of Bengal?

Q.2: Which Act introduced Special Electorate for the Muslim community?

Q.3: State the composition of the Board of Control as provided by the Pitt's India Act, 1784.

Q.4: Mention any four subjects included in the Central List as recommended by the Government of India Act 1919.

B) Short Questions (answer each question in around 150 words)

Q.1: Write a short note on the Regulating Act of 1773.

Q.2: Write briefly about the changes introduced by the Indian Councils Act of 1861 in India.

Q.3: Write about the three categories of electorates as provided by the Indian Councils Act or the Morley- Minto Reforms of 1909.

Q.4: Write a short note on the Simon Commission Report of 1930.

C) Long Questions (answer each question in around 300-500 words)

Q.1: Discuss the process of constitutional development in India from the period1773 to 1909.

Q.2: Explain the contribution of the Government of India Acts of 1919 and 1935 in the constitutional development process of India.

Q.3: Discuss the constitutional development process of India from the period 1919 to 1947.

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UNIT 2: MAKING OF THE INDIAN CONSTITUTION

UNIT STRUCTURE

2.1 Learning Objectives

2.2 Introduction

2.3 Making of the Indian Constitution

2.4 Formation of the Constituent Assembly

2.5 Drafting Committee

2.6 Adoption of the Constitution of India

2.7 Let Us Sum Up

2.8 Further Reading

2.9 Answer To Check Your Progress

2.10 Model Questions

2.1 LEARNING OBJECTIVES

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

- explain the formation of Constituent Assembly
- analyze the role of the Drafting Committee
- discuss the process of adoption of the Constitution of India.

2.2 INTRODUCTION

By the end of the second decade of the twentieth century, there was a growing consciousness among the people of India that they must have the right of self-determination and should have a Constitution of their own. In the previous units, we have discussed in what ways the demand for the Constitution of India emerged during the Freedom struggle. In the early 20thcentury the demand for the Constitution became more intensified. During the time of the First World War, Bal GangadharTilak and Annie Besant had launched a Home Rule agitation. It is considered to be one of the milestones in the development of the constitutional process in India. In this unit, we shall discuss the process of constitutional development in India with special reference to the role of the Constituent Assembly and the Drafting Committee.

2.3 MAKING OF INDIAN CONSTITUTION

During the Freedom Movement, the demand was raised to form a Constituent Assembly to frame the Constitution of free India and accordingly the Constituent Assembly of India came into existence after a long struggle. A representative body of the people of India namely Constituent Assembly had its first meeting on 9 December, 1946. The Constituent Assembly has been working for about three years since December 9, 1946. As a result of the sincere efforts of the Constituent Assembly,the Constitution of India was adopted on 26 November, 1949 and promulgated on 26 January, 1950. The Constitution of India is said to be a borrowed constitution. The credit of its framers lies in assimilating the best features of each of the existing constitutions and in modifying them to suit the needs of the country.

2.4 FORMATION OF THE CONSTITUENT ASSEMBLY

In India, during the first half of the 20th century, the demand for self-determination was raised with a new vigour. The 33rd session of the Indian National Congress, held in December 1918, passed the resolution that the Indians should have the right to self-determination and for that India must have a Constitution of its own. In 1924, Motilal Nehru was the president of the Indian National Congress, raised the demand for a “scheme of a Constitution for India. The Bombay session of the Indian National Congress, held in the year 1927, again passed a resolution that the Congress Working Committee should frame the Constitution for India in consultation with the elected members of the Central and Provincial Legislatures. In 1934, leading political thinker and the founder of the Communist Party of India, M. N. Roy raised the demand for a Constituent Assembly to frame the Constitution for India for the first time.The Swaraj Party further raised this demand in the same year. The Indian National Congress repeated this demand in a resolution passed at the Faizpur Session on December 28, 1936. In 1939, the Working Committee of the Indian National Congress passed a resolution asserting for India’s independence and formation of a Constituent Assembly. The demand of the Indians for a Constituent Assembly was conceded in March 1942,

when Sir Stafford Cripps brought the proposals of the British Government in India. The British Government came to the discussion table in order to achieve active co-operation of Indian National Congress during World War II, when Great Britain was facing a great threat from Japan. The Indian National Congress considered other proposals of Sir Stafford Cripps as inadequate and rejected them, but the idea of the constituent assembly remained. After the end of the World War II, the Labour Party formed the government in Britain and it accepted the demand of the Indian people for independence. The British government sent the Cabinet Mission to India in 1946 to discuss the procedure of transfer of power from the British government to the Indian leadership and the Cabinet Mission accepted the demand of the formation of the Constituent Assembly for framing the Constitution of free India.

The Constituent Assembly of India was supposed to becomposed of the representatives of the dominant communities of India, seats being distributed among the different provinces and states roughly in the ratio of one member to a million of the population. The election to the Constituent Assembly was held under the Cabinet Mission Plan in July 1946. Out of 210 general seats, the Congress won 199 and the Muslim League captured 73 seats out of a total of 78 Muslim seats. Many top ranking Congress and Muslim League leaders, eminent statesman, administrators, eminent Jurists and public man drawn from all walks of life were electedto the Constituent Assembly.The Constituent Assembly was scheduled to meet on December 9, 1946, but the Muslim League boycotted it and demanded a separate Constituent Assembly and the establishment of Pakistan. In the Mountbatten Plan, the demand for establishment of Pakistan and a separate Constituent Assembly for her was accepted.

In the wake of the partition of the India, the composition of the Constituent Assembly underwent further changes, because some of the parts and provinces were ceded to Pakistan and consequently could not be represented in the Constituent Assembly. The total strength of the Assembly came down from 389 to 299. The representatives from princely states slipped from 93 to 70 while from that of British India and Chief Commissioners provinces declined from 296 to 229.

Constituent Assembly met first on 9th December, 1946 under the chairmanship of Dr. Sachidanand Sinha and on 11th December, 1946 elected Dr. Rajendra Prasad as its permanent chairperson. The Constituent Assembly had a number of committees and the most important was the Drafting Committee.

Objective Resolution: On 13 December, 1946 Jawaharlal Nehru moved the Objective Resolution which provided the ideological foundation of the Indian Constitution. The Constituent Assembly in its first two sessions devoted itself to the framing of the Objective Resolution. The Constituent Assembly passed the Objective Resolution on 22 January, 1947.The Resolution stated that–

- 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.
- 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 British India and the state as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all.
- Wherein all powers and authority of the sovereign Independent India, its constituent parts and organs of government are derived from the people
- Wherein shall be guaranteed and secured to all the people of India Justice, social, political and economic; 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.
- Wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes.
- Wherein 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.

- This ancient land attains its rightful and honoured place in the world and makes it a full and willing contribution to the promotion of world peace and the welfare of mankind.

It is evident that the Objective resolution highlighted the basic requirement of the people which were deliberately needed by the Indian citizens for their betterment.



CHECK YOUR PROGRESS

Q.1: Who launched the Home Rule agitation in India?

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Q.2: 'In which year was the Faizpur Session of Indian National Congress held?

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Q.3: Jawaharlal Nehru moved the objective resolution on ..... (Fill in the blank)

Q.4: Who was the permanent chairperson of the Constituent Assembly?

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Q.5: In which year did the Cabinet Mission come to India?

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Q.6: Write briefly about the formation of the Constituent Assembly.

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2.5 DRAFTING COMMITTEE

There were a number of Committees within the ambit of Constituent Assembly. The most important of all the Committees was the Drafting Committee. The task of preparing a draft of the Constitution, in accordance with the decisions taken on the reports of the various committees, was entrusted to the Drafting Committee under the Chairmanship of ***Dr. B. R. Ambedkar***. The Drafting Committee was constituted on 29th August, 1947 and consisted of the following members– Dr. B. R. Ambedkar (Chairman), Sir N. Gopalaswami Ayyangar, Sir Alladi Krishnaswamy Ayyar, Dr. K. M. Munshi, Sir Sayed Muhammad Saadulla, Sir N. Madhava Rau and Sri D. PKhaitan. Sri T. T. Krishnamachariwas appointed as amember of the Committee after the death of Sri D. P. Khaitan.

Under the Chairmanship of Dr. B. R. Ambedkar, the Drafting Committee submitted the draft constitution consisting of 397 Articles and 8 Schedules before the Constituent Assembly. The Drafting Committee embodied the decision of the Assembly with alternative and additional proposals in the form of a "Draft Constitution of India", which was published in February 1948. It took less than six months to prepare its draft. At the second stage of its consideration, the draft was considered Article by Article. In the process of scrutiny, 7,635 amendments to various Articles had been received. Of these 2,473 were actually moved and discussed. The rest were either withdrawn or overlapped with each other. The Constituent Assembly met for 114 days to devote itself to the consideration of the draft constitution.



Bhimrao Ramji Ambedkar (14 April, 1891-6 December, 1956) : He was a distinguished social reformer, jurist , economist and political leader of India and was the first Law Minister of India. He was awarded the Bharat Ratna posthumously in 1990.



LET US KNOW

The Constituent Assembly constituted different Committees to deal with different aspects of the Constitution. Among these, one of the committees constituted was the North-East Frontier Tribal Areas and Assam, Excluded and Partially Excluded Areas Sub-Committee under Sri Gopinath Bordoloi.

2.6 ADOPTION OF CONSTITUTION OF INDIA

The report submitted by the various committees were considered by the Constituent Assembly at the plenary session and most of the decisions were unanimously taken. The Constituent Assembly held eleven plenary sessions. Since the task of preparing the draft of the Constitution was entrusted upon the Drafting Committee, the Committee submitted its report on 21st February, 1948. A sufficient time gap was allowed to enable the people, the press as well as the provincial legislatures to hold free and frank discussions on the report. The Drafting Committee presented a draft constitution to the Constituent Assembly which started a general discussion on the draft constitution on 4th November, 1948. The second reading on the draft constitution was completed by the Assembly on 17th October, 1949. The Constituent Assembly finally adopted the Constitution on 26th November, 1949 and the President of the Assembly formally assigned his signature to the Constitution. Thus the Constituent Assembly which held its first meeting on 9th December, 1946, took 2 years, 11 months and 18 days to complete the work.

It goes to the credit of the Constituent Assembly that despite various tensions prevailing in the country at the time of the enactment of the Constitution, it succeeded in providing a Constitution which received unanimous support from the various sections of the society and thus succeeded in maintaining the unity of the country.

The adoption of the Constitution of India was indeed an event of great constitutional significance and Dr. Rajendra Prasad, the president of the Constituent Assembly expressed satisfaction over the stupendous job accomplished by the Assembly. Eminent scholar of the Indian Constitution Professor Granville Austin describes the adoption of the Constitution of India as “the greatest political venture since Philadelphia” referring to the adoption of the Constitution of the USA in 1787 in the Philadelphia Convention.



CHECK YOUR PROGRESS

Q.7: Who was the chairperson of Drafting Committee of Indian Constitution?

.....

Q.8: Mention the names of the members of the Drafting Committee of Indian Constitution.

.....

.....

.....

Q.9: The constitution of India was adoptedon .....
(Fill in the blank)

Q.10: Who opined "The adoption of the Constitution of India is the greatest political venture since Philadelphia"?

.....



2.7 LET US SUM UP

- In India the demand for the Constitution was raised during the freedom movement. During the time of the First World War, Bal Gangadhar Tilak and Annie Besant had launched a Home Rule Agitation. It is considered to be one of the milestones in the development of the constitutional process in India. With the effort of Motilal Nehru, for the first time, a systematic demand was madefor the adoption of a Constitution for the Indians.
- In India, the demand for a Constituent Assembly was for the first time made by M.N Roy in 1934. The Swaraj Party further raised this demand in the same year. The Indian National Congress repeated this demand in a resolution passed at the Faizpur Session on December 28, 1936. In 1939, Working Committee of the Indian National Congress passed a resolution asserting for India's independence and formation of a Constituent Assembly.

- The Constituent Assembly of India consisted of the representatives of the dominant communities of India, seats being distributed among the different provinces and states roughly in the ratio of one member to a million of the population. The election to the Constituent Assembly was held under the Cabinet Mission Plane in July 1946. Out of 210 general seats, the Congress won 199 and the Muslim League captured 73 seats out of a total of 78 Muslim seats.
- The Constituent Assembly met first on 9th December, 1946 under Dr. Sachidanand Sinha and on 11th December, 1946 and it elected Dr. Rajendra Prasad as its permanent chairperson. The Constituent Assembly had a number of committees and the most important was the Drafting Committee.
- On 13 December, 1946 Jawaharlal Nehru moved the Objective Resolution which provides the ideological foundation of the Indian Constitution.
- The task of preparing a draft of the Constitution, in accordance with the decisions taken on the reports of the various committees of the Constituent Assembly, was entrustedupon the Drafting Committee under the Chairmanship of Dr. B. R. Ambedkar.
- The Constituent Assembly finally adopted the Constitution on 26th November, 1949 and the President of the Assembly formally assigned his signature to the Constitution. The Constituent Assembly which held its first meeting on 9th December, 1946, took 2 years, 11 months and 18 days to complete the work.



2.8 FURTHER READING

1) Chander, Prakash (2000). *Indian Government and Politics*. New Delhi: Cosmos Bookhive Pvt. Ltd.
2) Ghai, K. K. (2007). *Indian Government and Politics*. New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K. K. (2006). *Select Constitutions.* New Delhi: S. Chand and Company.

4) Pylee, M. V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.



2.9 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: Annie Besant and Bal Gangadhar Tilak.

Ans, to Q. No. 2: 1936

Ans. to Q. No. 3: 13th December, 1946.

Ans, to Q. No. 4: Dr. Rajendra Prasad.

Ans. to Q. No. 5: 1946

Ans. to Q. No. 6: The Constituent Assembly of India consisted of the representative of the dominant communities of India, seats being distributed among the different provinces and states roughly in the ratio of one member to a million of the population. The election to the constituent assembly was held under the Cabinet Mission Plane in July 1946. Out of 210 general seats, the congress won 199 and the Muslim League captured 73 seats out of a total of 78 Muslim seats. To the constituent assembly many top ranking Congress and Muslim League leaders, eminent statesman, administrators, eminent Jurists and public man drawn from all walks of life were elected.

Ans. to Q. No. 7: Dr. B. R. Ambedkar

Ans. to Q. No. 8: Dr. B. R. Ambedkar (Chairman), Sir N. Gopalaswami Ayyangar, Sir Alladi Krishnaswamy Ayyar, Dr. K. M. Munshi, Sir Sayed Muhammad Saadulla, Sir N. Madhava Rau and Sri D. P. Khaitan.

Ans. to Q. No. 9: 26th November, 1949

Ans. to Q. No. 10: Professor Granville Austin.



2.10 MODEL QUESTIONS

A) Very Short Questions

Q.1: In which year was the Bombay session of the Indian National Congress held?

Q.2: How many seats were captured by the Indian National Congress in the election to the Constituent Assembly?

Q.3: Mention the names of any two members of the Drafting Committee.

B) Short Questions (Answer each question in about 150 words)

Q.1: Write a short note on the Objectives Resolution.

Q.2: Write briefly about the Composition of the Constituent Assembly.

C) Long Questions (Answer each question in about 300-500 words)

Q.1: Examine the role of the Drafting Committee in the framing of the Indian Constitution.

Q.2: Analyse the process of adoption of the Indian Constitution.

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UNIT 3: PHILOSOPHY AND IDEALS OF THE INDIAN CONSTITUTION

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Philosophy and Ideals of the Indian Constitution

3.3.1 The Preamble

3.4 Sources of the Indian Constitution

3.5 Let Us Sum Up

3.6 Further Reading

3.7 Answers to Check Your Progress

3.8 Model Questions

3.1 LEARNING OBJECTIVES

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

- discuss the Philosophy and ideals of the Indian Constitution
- discuss the sources of the Indian Constitution.

3.2 INTRODUCTION

In the previous unit, we discussed the formation of the Constituent Assembly and learnt about the Objective Resolution moved by Jawaharlal Nehru in the Constituent Assembly on 13 December, 1946. After a full discussion and debate, the Constituent Assembly passed the Objective Resolution on January 22, 1947. The resolution clearly laid down the ideological foundations and values of the Indian Constitution. The Preamble to the Indian Constitution embodies all the ideals which were listed in the Objective Resolution. In this unit, we shall discuss the philosophy and ideals of the Indian Constitution as incorporated in the Preamble to the Constitution of India. At the same time, a brief background regarding the sources of the Indian Constitution shall also be put forward.

3.3 PHILOSOPHY AND IDEALS OF THE INDIAN CONSTITUTION

The philosophy and ideals of the Indian Constitution are reflected in the Preamble to the Constitution of India. Our Constitution may be said to be an expansion and explanation of the Preamble. Supreme Court Chief Justice, Justice Subba Rao opined, "Preamble contains, in a nutshell, its ideals and its aspirations." To understand the philosophy and ideals of the Indian Constitution, we must know the Preamble in the first place. Let us define and analyze the Preamble to the Indian Constitution.

3.3.1 The Preamble

The Oxford Advanced Learner's Dictionary defines the word "Preamble" as an introduction to a book or a written document. The Constitution of India starts with a Preamble. It is the most precious part of the Constitution. It is the soul of the Constitution. The Preamble of the Indian Constitution says:

"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 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."

From the Preamble we can understand the philosophy and ideals of the Indian Constitution. The philosophy and ideals of the Indian Constitution are discussed as follows:

- **Popular Sovereignty:** The Preamble begins with the words "We the people of India……" and ends with the words "……adopt,

enact and give to ourselves this Constitution". It indicates that ultimate sovereignty lies with the people of India who collectively constitute the supreme source of authority in the country. The Constitution is regarded as the supreme law of the state, but the supreme power of the state is vested upon the people of India.

- **India as a Sovereign State:** The Preamble declares India as a sovereign state. It is free from any external control. No foreign power can interfere in the internal affairs of India. India can determine her foreign affairs according to her free will.
- **India as a Socialist State:** The word 'Socialist' has been added in the Preamble by the 42nd Amendment in 1976. It means the Constitution of India has a great objective to secure social and economic equality and fair distribution of wealth among all sections of people in the country. By inserting the term 'socialist', it has not only brought a feeling of equal status among the people but also strengthened the philosophical foundation of the Indian Constitution. Some socialistic principles are also distinctly reflected in the Articles 39, 41, 42 and 43 which are incorporated in the Directive Principles of State Policy.
- **India as a Secular State:** The word 'Secular' has been included in the Preamble by the 42nd Amendment in 1976. The characteristic of Indian secularism is that India does not recognize any religion as the official or state religion and treats all religions equally. Moreover, different communities in India have the right to practise their own faiths. Thus, secularism is one of the ideals of the Indian Constitution.
- **India as a Democratic State:** The Preamble describes India as a democratic state. The prime philosophy and ideal of the Indian Constitution is to make India a democratic state. India is regarded as the largest democratic state in the world. According to Abraham Lincoln, "Democracy is by the people, for the people and of the people." The Constitution of India has established a parliamentary democracy in India marked by universal adult franchise, periodic

election to choose the government, majority rule, rule of law, decentralization of power, rule of law, independence of the judiciary, etc.

- **India as a Republic:** The Preamble declares India to be a *republic*. What it means is that the Head of the State in India, that is the President of India, is an elected head. He is not a hereditary ruler. The President of India who is the Chief Executive and nominal head of our country is indirectly elected by the people.
- **To ensure Justice:** Justice implies that the Government will try to promote the welfare of all the sections of the people. The Preamble provides for three types of Justice- social, economic and political. To ensure social justice the Constitution has made special arrangements for the weaker sections of the society, abolished untouchability, provided free education up to a certain standard, etc. With a view to providing political justice, the Constitution has introduced the principle of universal adult franchise and has given an equal right to all adult citizens to be elected or appointed to public services. Economic justice implies that the Constitution seeks to ensure economic security for the common people and to do way with unequal distribution of income and wealth.
- **To ensure Liberty:** The other important philosophy and ideal of the Indian Constitution is to ensure liberty to its citizens for the all round development of their personality. Accordingly, the Preamble provides for liberty of thought, expression, belief, faith and worship. The Constitution of India provides a number of Fundamental Rights to the citizens and also protects theses rights.
- **To ensure Equality:** Equality is the basis of a democratic state. Equality is necessary for the development of a society. Hence, the term 'equality' has been inserted in the Preamble to our Constitution. Equality has been guaranteed by the 'Rule of Law'. To establish equality, our Constitution has provided for the Right to Equality as a Fundamental Right. The Indian Constitution

ensures equality before the eyes of law to all persons, citizens and non-citizens. The Constitution also prohibits discrimination on grounds of religion, race, caste, sex, place of birth or any of them.

- **To promote Fraternity among the people:** The term fraternity has been incorporated in the Preamble as a means of assuring the dignity of the individual and the unity and integrity of the nation. The term 'dignity of the individual' means that the personality of the individual should be recognized, because, the recognition of the personality and the dignity of the individual is an essential condition to promote fraternity among the people. To promote fraternity and a feeling of brotherhood among the people, certain attempts have been made for the removal of social distinctions and inequalities based on caste, class, creed, language, religion, region, etc. Without unity among its citizens, a state could not be successful. The framers of the Indian Constitution were fully aware of the diversities prevailing in the country. Accordingly, the word integrity was added in the Preamble by the 42nd Amendment to emphasize the fundamental unity of the country against the divisive forces of regionalism, communalism and the like.
- **India as a Welfare state:** India is committed to the ideal of a welfare state and must establish socio- economic justice. The Preamble lays the foundation of a welfare state in India. Acharya Kripalini, who was the President of the Indian National Congress, said, "The Preamble contains the mystic principle of a welfare state." India is committed to democracy and respects individual liberty, providing to all her citizens, the equality of status and opportunity. The Directive Principles of State Policy involving social, economic, political and cultural goals are like instructions to the state. They, aim at establishing a welfare state in India.

The Preamble to the Indian Constitution has a great significance. It is important to mention here that, in the 'Biruberi Case'

(AIR1960 SC 845) the Supreme Court held that the Preamble is not a part of the Constitution. But the famous 'Keshavananda Bharti - vs. - State of Kerala' (AIR 1973 SC 1461) has held that the Preamble is a part of the Constitution. It was also held in this case that, the Preamble could be amended by the Parliament under Article 368 but the 'Basic Structure' of the Constitution could not be changed. Thus, the Preamble can be amended but our Parliament cannot amend the Constitution in a way that it damages or destroys the objectives specified in the Preamble.

LET US KNOW



According to A. V. Dicey, the British jurist and constitutional theorist, Rule of Law has three meanings–

- No man can be punished except for a breach of law
- No man is above the law
- The general principles of the Constitution are the result of judicial decisions.

ACTIVITY 3.1



Try to find out the names of a few republics in the world.

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CHECK YOUR PROGRESS



Q.1: By which amendment have the words 'Secular', 'Socialist' and 'integrity' been included in the Preamble?

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Q.2: The supreme source of authority as enshrined in the Preamble

to the Constitution of India is the people of India. (True/False)

.....

Q.3: Why is India called a Republic?

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Q.4: The 'Keshavananda Bharti - vs. - State of Kerala' (AIR 1973 SC 1461) case has held that the Preamble is not a part of the Constitution. (True/False)

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Q.5: Discuss the concept of justice as incorporated in the Preamble to the Constitution of India.

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3.4 SOURCES OF THE INDIAN CONSTITUTION

The Indian Constitution is drawn from many sources. Keeping in mind the needs and conditions of India the framers of the Indian Constitution borrowed different features freely from the different constitutions of the world. Therefore, some critics have described the Indian Constitution as a "bag of borrowings" and a "hotch potch Constitution".

The sources of the Indian Constitution are:

- **The British Constitution:** The British Constitution influenced a lot on framers of the Constitution of India. The Parliamentary form of Government, the Cabinet System of Government, the superior position of the lower House as compared to the Upper House and the rule of law etc. were adopted by the framers of the Indian Constitution from the British constitution. In India, like the King of Britain, the head of the State, i.e. the President is only a nominal head and actually the real executive power is exercised by the Prime

Minister with the help of the Council of Ministers who are accountable to the Parliament.

- **The Constitution of the United States of America:** The Fundamental Rights which are incorporated in the Part III of the Indian Constitution are based on the "Bill of Rights" of the United States of America. The concept of independent, impartial and unitary form of Judiciary and the functions of the Vice President of India are borrowed from the Constitution of the United States of America.
- **The Constitution of Canada:** The term 'Union of India' which is in Article 1 of the Indian Constitution is taken from the Canadian Constitution. The framers of the Indian Constitution have borrowed our federal system from Canada though some of its features have been taken from the Australian and South African constitutions. Like the Canadian Constitution, in India, the Residuary powers have been vested in the hands of the Central Government.
- **The Irish Constitution:** Our Constitution provides for the Directive Principles of State Policy under Part IV of the Constitution. These are derived from the Irish Constitution. The provision of nomination of certain members to the Rajya Sabha (Upper House) from different fields like, art, culture, science, social services etc. are taken from the Irish Constitution.
- **The Constitution of South Africa:** The framers of the Indian Constitution were also greatly influenced by the Constitution of South Africa. The procedure of amendment and the provisions relating to the election of Rajya Sabha members reflect the influence of the Constitution of South Africa.
- **The Constitution of Germany:** The power of the President to suspend the Fundamental Rights during emergency was adopted from the Weimer Constitution of Germany.
- **The Government of India Act, 1935:** The Government of India Act, 1935 is the biggest source of our Constitution. The framers of the Indian Constitution have adopted many provisions from this Act. The relations between the Union and the States and the three lists

(Union, State and Concurrent) dividing governmental powers between them were taken from that Act. According to Prof. Jennings, "The Constitution derives directly from the Government of India Act, 1935, from which in fact many of its provisions are copied almost textually."

CHECK YOUR PROGRESS



Q.6: The Parliamentary form of Government is borrowed from the Constitution of ..... (Fill in the Blanks).

Q.7: Mention the important provisions taken from the Constitution of the United States.

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Q.8: Write the name of the Act which greatly influenced the framing of the Constitution of India.

.....

Q.9: Why the Indian Constitution is called a "bag of borrowings"? (within 50 words)

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.....



3.5 LET US SUM UP

- The Indian Constitution is drawn from many sources. Keeping in mind the needs and conditions of India the framers of the Indian Constitution borrowed different features freely from the different constitutions of the world.

- The main sources which have influenced the framing of the Indian Constitution include the British Constitution, the US Constitution, the Constitution of Canada, the Irish Constitution, the Constitution of South Africa, the Constitution of Germany and the Government of India Act, 1935.
- The British Constitution influenced a lot on framers of the Constitution of India. The Parliamentary form of Government, the Cabinet System of Government, etc., were adopted by the framers of the Indian Constitution from the British Constitution. Similarly, the Fundamental Rights which are incorporated in the Part III of the Indian Constitution are based on the "Bill of Rights" of the United States of America.
- The term 'Union of India' which is in Article 1 of the Indian Constitution is taken from the Canadian Constitution. The framers of the Indian Constitution have borrowed our federal system from Canada though some of its features have been taken from the Australian and South African constitutions.
- Our Constitution provides for the Directive Principles of State Policy under Part IV of the Constitution. These are derived from the Irish Constitution.
- The framers of the Indian Constitution were also greatly influenced by the Constitution of South Africa. Again, the power of the President to suspend the Fundamental Rights during emergency was adopted from the Weimer Constitution of Germany.
- The Government of India Act, 1935 is the biggest source of our Constitution. The framers of the Indian Constitution have adopted many provisions from this Act. The relations between the Union and the States and the three lists (Union, State and Concurrent) dividing governmental powers between them were taken from that Act.
- The Preamble begins with the words "We the people of India……" and ends with the words "……adopt, enact and give to ourselves this Constitution". It indicates that ultimate sovereignty lies with the people of India who collectively constitute the supreme source of authority in the country. The Preamble declares India as a sovereign

state. It is free from any external control.

- The word 'Socialist' has been added in the Preamble by the 42nd Amendment in 1976. It means the Constitution of India has a great objective to secure social and economic equality and fair distribution of wealth among all sections of people in the country.
- The word 'Secular' has been included in the Preamble by the 42nd Amendment in 1976. The characteristic of Indian secularism is that India does not recognize any religion as the official or state religion and treats all religions equally.
- The Preamble describes India as a democratic state. The prime philosophy and ideal of the Indian Constitution is to make India a democratic state.
- The Preamble declares India to be a *republic*. What it means is that the Head of the State in India, that is the President of India, is an elected head. He is not a hereditary ruler.
- Justice implies that the Government will try to promote social, economic and political justice for the welfare of all sections of the society.
- The other important philosophy and ideal of the Indian Constitution is to ensure liberty to its citizens for the all round development of their personality.
- The term 'equality' has been inserted in the Preamble to our Constitution. The Indian Constitution ensures equality before the eyes of law to all persons, citizens and non- citizens.
- The term fraternity has been incorporated in the Preamble as a means of assuring the dignity of the individual and the unity and integrity of the nation.



3.6 FURTHER READING

1) Chander, Prakash (2000). *Indian Government and Politics*. New Delhi: Cosmos Bookhive Pvt. Ltd.
2) Ghai, K. K. (2007). *Indian Government and Politics*. New Delhi: Kalyani Publishers.

3) Kapur, Anup Chand and Misra, K. K. (2006). *Select Constitutions.* New Delhi: S. Chand and Company.

4) Pylee, M. V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.



3.7 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: By the 42nd Amendment in 1976.

Ans. to Q. No. 2: True

Ans. to Q. No. 3: The Head of the State in India, i.e., the President of India, is an elected head. He is not a hereditary ruler. Therefore India is called a Republic.

Ans. to Q. No. 4: False

Ans. to Q. No. 5: Justice implies that the Government will try to promote social, economic and political justice.To ensure social justice the Constitution has made special arrangements for the weaker sections of the society, abolished untouchability,etc. With a view to providing political justice, the Constitution gives the right to vote and be elected to all adult citizens. On the economic front, justice implies that the Constitution seeks to ensure economic security for the common people.

Ans. to Q. No. 6: The British Constitution

Ans. to Q. No. 7: 1) The Fundamental Rights which are incorporated in the Part III of the Indian Constitution is based on the United States “Bill of Rights”.

2) The concept of independent, impartial and unitary form of Judiciary

Ans. to Q. No. 8: The Government of India Act, 1935

Ans. to Q. No. 9: The framers of the Indian Constitution borrowed different features freely from the different constitutions of the world because of the needs and conditions of India. The important provisions are taken from the British Constitution, the Constitution of U.S.A., and constitution of Canada, South Africa etc. and the Government of

India Act, 1935. Therefore, the Indian Constitution is called a "bag of borrowings".



3.8 MODEL QUESTIONS

A) Very Short Questions

Q.1: From which Constitution has the term "Union of India" been borrowed?

Q.2: With whom does ultimate sovereignty lie in India?

B) Short Questions (Answer each question in about 150 words)

Q.1: Write two important sources of the Indian Constitution.

Q.2: Discuss justice and liberty as ideals of the Indian Constitution.

Q.3: Discuss the Government of India Act, 1935 as a source of the Indian Constitution.

C) Long Questions (Answer each question in about 300-500 words)

Q.1: Describe the philosophy and ideals enshrined in the Preamble to the Constitution of India.

Q.2: Write a note on the sources of the Indian Constitution.

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UNIT 4: FEATURES OF THE INDIAN CONSTITUTION

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Salient Features of the Indian Constitution

4.4 Let Us Sum Up

4.5 Further Reading

4.6 Answers to Check Your Progress

4.7 Model Questions

4.1 LEARNING OBJECTIVES

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

- explain the salient features of the Indian Constitution
- examine some distinctive features of the Indian Constitution such as lenghtiest Constitution, mixture of federal and unitary fetaures, etc.

4.2 INTRODUCTION

We all know that on 15 August, 1947, British rule in India came to an end and after partition of the country, power was transferred to two independent nations, namely, India and Pakistan. On 26 January, 1950, the Constitution of India came into effect and India turned into a sovereign democratic republic. The Constitution is the embodiment of ideas, objectives and aspirations of the people of a state. Keeping in mind the uniqueness of our country, the Constitution of India is framed on the basis of some strong philosophical foundations. In keeping with such a strong philosophical foundation, our Constitution incorporates certain salient features for which it has become one of the famous Constitutions of the world. In this unit we will discuss the features of the Indian Constitution.

4.3 SALIENT FEATURES OF THE INDIAN CONSTITUTION

The constitution of a state is not only the fundamental law of the state, but it is also like a mirror of its social, political and economic systems. Each constitution grows and develops within a particular environment. The Constitution of India is unique in many ways. Several special features of the Indian Constitution distinguish it from many other constitutions of the world. The salient features of the Indian Constitution of India described as follows:

- **Written Constitution:** The Constitution of India is a written document. To draft the Indian Constitution, a Drafting Committee was constituted by the Constituent Assembly under the Chairmanship of Dr. B. R. Ambedkar. The Constituent Assembly was a representative body which was indirectly elected by the people. It consisted of 389 members out of whom 296 members were elected from British India and 93 members were the 'representatives of Native States'. The elections to the Constituent Assembly were held in 1946 and Dr. Rajendra Prasad was elected the President of the Constituent Assembly. The Drafting Committee prepared the draft of the Constitution. After long efforts, the new Constitution was finally adopted on November 26, 1949. Thus, the Indian Constitution came into force on January 26, 1950.
- **The Lengthiest Constitution:** The Indian Constitution is the lengthiest, bulkiest and most detailed Constitution in the World. It originally contained 395 Articles (divided into 22 Parts) and 8 Schedules at the time of its enforcement. At present, the Constitution of India has 448 Articles, divided into 25 Parts and 12 Schedules. The Constitution of India contains a detailed list of Fundamental Rights, Directive Principles of State Policy, distribution of Powers between Centre and the States, Official Languages, Election and many other provisions over and above laying out the provisions regarding the executive, legislature and judiciary.
- **Partly Rigid and Partly Flexible:** The Constitution of India is neither too rigid nor too flexible. A flexible constitution is that in which its provisions may be amended or modified by ordinary legislative process, whereas, in the case of a rigid constitution, a special

procedure is required to be followed for the amendment or revision of its provisions. The Indian Constitution follows three methods for amendment. Firstly, some of the provisions can be amended by a simple majority of the Parliament. Secondly, some provisions may be amended by a special majority of the Parliament and thirdly, some other provisions which are federal in character may be amended only with a joint initiative of both the Parliament and the State legislature. The framers of the Indian Constitution adopted this system so that the Indian Constitution can adapt itself to the changing circumstances while still retaining its basic characteristics. Because of all these provisions, the Indian Constitution is characterized by the mixture of flexibility and rigidity.

- **Supremacy of the Constitution:** The Constitution of India is the supreme law of the country. All the three organs of the Government i.e.: the Executive, Legislature and Judiciary function under the Constitution of India and are controlled by it. They cannot violate the Constitution.
- **Mixture of Federal and Unitary Features:** The Constitution of India establishes India as a partly Federal and partly unitary government. The word 'Federalism' is not mentioned anywhere in the Constitution. It describes India as a 'Union of States'. Because of the peculiar features of the Indian Constitution, some experts describe it as a 'quasi-federal state'. Indian federalism is also known as 'co-operative federalism'. Some of the federal features included in the Indian Constitution are written constitution, supremacy of the constitution, division of powers and distribution of powers between the centre and the states, a strong judiciary, bicameral legislature etc. But, India cannot be called a true federation because some non-federal features or unitary features like– a strong centre, some rigid methods of amendment of the constitution, single citizenship, common All-India services, uniformity of judiciary, emergency provisions enjoyed by the President, appointment of Governors in the States, are distinctly noticed in the Constitution. Therefore, the Constitution of

India is a mixture of federal and unitary features.

- **Parliamentary Government:** The Constitution of India provides for a Parliamentary form of Government on the British model. In the Parliamentary form of Government, the Head of the State is nominal, whereas the Prime Minster who is the leader of the majority in the Parliament is the real executive. In India, the President is only the nominal head of our country and the real and actual powers of the government are exercised by the Prime Minister.
- **Secularism:** Secularism is another important feature of the Indian Constitution. The word has been included in the Preamble by the 42nd Amendment in 1976. India does not recognize any religion as the state or official religion and treats all religions equally. All the people of India are given the liberty of thought, expression, belief and worship and there is no discrimination on the grounds of religion, caste or community. The State shall not make any discrimination against any person on the ground of his or her religion.
- **Provision of Fundamental Rights:** The Fundamental Rights are contained in Part-III of the Constitution from Articles 12 to 35.The framers of the Constitution derived inspiration from the 'Bill of Rights' from the Constitution of the U.S.A. Fundamental Rights are justiciable in the sense that a person can approach the court in case of violation of his or her Fundamental Rights. The Supreme Court of India is the Guardian of the rights and liberties of the people. They are not absolute. The Government can impose reasonable restrictions on them, specially for maintaing morality and law and order in the society. The significance of the Fundamental Rights is that they protect the liberty and the freedom of the citizens against encroachment by the state. Originally, the Constitution provided for seven Fundamental Rights. But the Right to Property was abolished by the 44th Constitutional Amendment Act of 1978. At present, there are six Fundamental Rights. These six Fundamental Rights are- Right to Equality, Right to Freedom, Right Against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, Right to

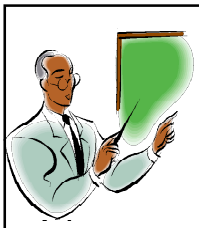
Constitutional Remedies.

- **Fundamental Duties:** Fundamental Duties are incorporated in Article 51A of Part IVA of the Constitution by the 42nd Constitutional Amendment Act of 1976. The original Constitution did not contain the fundamental duties. The Fundamental Duties are very important for the overall development of the country, these Duties must be performed by the citizens of India. These duties are not legally binding upon the citizens. Some of the duties include abiding by the Constitution and to respect its ideals and institutions and the National Flag and National Anthem, to defend the country and render national service, to develop the scientific temper, humanism and the spirit of inquiry and reform, to safeguard public property, to value and preserve the rich heritage of our composite culture etc.
- **Directive Principles of State Policy:** Another distinctive feature of the Indian Constitution is the Directive Principles of State Policy described in Part IV of our Constitution from Articles 36-51. These Directive Principles are fundamental in the governance of our Country and it is the duty of the state to apply these principles in making laws. These principles aim at securing social and economic freedoms by appropriate state action. These Directive Principle of State Policy are categorised as Socialist and Economic Principles, Gandhian principles and International Principles
- **Independent and Impartial Judiciary:** A basic feature of the Indian Constitution is independence of the judiciary. The judiciary is separated from the other two organs i.e. executive and legislature. The tenure of the Judges of the Supreme Court and High Court is fixed and the judges cannot be removed by simple procedure. Independence of judiciary is very essential for the success of democracy. This independent judiciary acts as the guardian of the Indian Constitution.
- **Division of Powers between the Centre and the States:** Another important feature of the Indian Constitution of India is the division of powers between the Central and State Government. For this purpose three lists have been included in the Seventh Schedule of the Constitution. These three list are– the Union List, the State List, and

the Concurrent List. Over the subjects incorporated in the Union List the Central Government has exclusive jurisdiction, like that the State Government has jurisdiction over the subjects included in the State List. On the subjects included in the Concurrent List both the Central Government and the State Government have power.

- **Universal Adult Franchise:** The Universal Adult Franchise is introduced by the Constitution and thus, all adult citizens above the age of 18 years, irrespective of their religion, caste, race, color and sex are entitled to participate in the election process.
- **Single Citizenship:** To promote the feeling of unity and oneness among the people of India, the framers of the Indian Constitution provided for a single citizenship for its citizens. It means that all the citizens of this country are Indian Citizens only. In a Federation like the United States of America, dual citizenship is a very important federal feature, unlike India.
- **Emergency Powers:** The Indian Constituion has provided for emergency powers so that the whole nation can meet with any emergency situation of the country or any part thereof may be faced with. The emergency powers are vested in the hands of the President of India. There are three kinds of Emergency powers. These are- National Emergency (Article-352), Emergency in a State (Article 356) and Financial Emergency (Article 360).

The above are some of the important salient features of the Indian Constitution which makes it one of the most unique and distinct constitutions in the world.



LET US KNOW

National Emergency (Article-352) was declared three times respectively in 1962, 1971 and in 1975 in our country. Emergency in a State (Article 356) (commonly called President's Rule) has been imposed many times in different States of India.



ACTIVITY 4.1

Do you know how many times President's Rule has been declared in Assam? Try to find out the reasons behind the same.

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CHECK YOUR PROGRESS

Q. 1: The Indian Constitution has ..... Schedules. (Fill in the blank).

Q. 2: Indian federalism is also known as "co-operative federalism" ? (True/False)

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Q. 3: Mention any four Fundamental Duties incorporated in the Constitution of India.

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Q 4: Mention four important features of the Indian Constitution.

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Q. 5: Mention four unitary features of the Indian Constitution?

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Q. 6: Through which Amendment the Right to Property is removed from the list of Fundamental Rights?

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Q 7: State the names of the three lists which divides powers between the Central Government and the State Governments.

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Q 8: Write briefly about Emergency Powers of the President of India as a feature of the Indian Constitution.

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4.4 LET US SUM UP

- The Indian Constitution is the lengthiest, bulkiest and most detailed Constitution in the World. It contains at present 448 Articles, divided into 25 Parts and 12 Schedules. The Constitution of India contains a detailed list of Fundamental Rights, Directive Principles of State Policy, distribution of Powers between Centre and the States, Official Languages, Election and many other provisions over and above laying out the provisions regarding the executive, legislature and judiciary.
- The Indian Constitution is characterized by the mixture of flexibility and rigidity. The framers of the Indian Constitution adopted this system so that the Indian Constitution can adapt itself to the changing circumstances while still retaining its basic characteristics.
- The Constitution of India is the supreme law of the country. All the three organs of the Government i.e.: the Executive, Legislature and Judiciary function under the Constitution of India and are controlled by it. They cannot violate the Constitution.

Financial Emergency (Article 360) has not been declared till now.

- The Constitution of India establishes India as a partly federal and partly unitary government. Some of the federal features included in the Indian Constitution are written constitution, supremacy of the constitution, etc. But, India cannot be called a true federation because some non-federal features or unitary features like- a strong centre, some rigid methods of amendment of the constitution, single citizenship, etc. Therefore, the Constitution of India is a mixture of federal and unitary features.
- Some other important features of the Indian Constitution include provision of a Parliamentary form of Government on the British model, Secularism, Fundamental Rights, Independent and impartial Judiciary, Division of Powers between the Centre and the States, Universal Adult Franchise, Single Citizenship and Emergency Powers.



4.5 FURTHER READING

1) Chander, Prakash (2000). *Indian Government and Politics*. New Delhi: Cosmos Bookhive Pvt. Ltd.
2) Ghai, K. K. (2007). *Indian Government and Politics*. New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K. K. (2006). *Select Constitutions.* New Delhi: S. Chand and Company.
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4.6 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: 12 Schedules

Ans. to Q. No. 2: True

Ans. to Q. No. 3: i) To abide by the Constitution and to respect its ideals and institutions and the National Flag and National Anthem,

ii) to defend the country and render national service,

iii) to develop the scientific temper, humanism and the spirit of inquiry

and reform,

iv) to safeguard public property, to value and preserve the rich heritage of our composite culture.

Ans. to Q. No. 4: i) Written and Lengthiest Constitution

ii) Partly flexible and partly rigid Constitution

iii) Supremacy of the Constitution.

iv) Universal Adult Franchise

Ans. to Q. No. 5: i) Strong Centre, ii) Single Citizenship, iii) Common All-India Services, iv) Emergency provisions exercised by the President.

Ans. to Q. No. 6: 44th Amendment

Ans. to Q. No. 7: The Union List, the State List, and the Concurrent List.

Ans. to Q. No. 8: The Indian Constituion has provided for emergency powers so that the whole nation can meet with any emergency situation the country or any part thereof may be faced with. The emergency powers are vested in the hands of the President of India. There are three kinds of Emergency powers. These are-National Emergency (Article-352), Emergency in a State (Article 356) and Financial Emergency (Article 360).



4.7 MODEL QUESTIONS

A) Very Short Questions

Q.1: Through which Amendment Act have Fundamental Duties been incorporated in the Constitution of India?

Q.2: What are the categories of the Directive Principles of State Policy?

Q.3: How many Schedules does the Indian Constitution presently contain?

Q.4: Mention any two federal features of the Indian Constitution.

B) Short Questions (Answer each question in about 150 words)

Q.1: Discuss secularism and fundamental duties as features of the Indian Constitution.

Q.2: Why is the Indian state regarded as a mixture of Unitary and Federal features?

C) Long Questions (Answer each question in about 300-500 words)

Q.1: Describe the features of the Indian Constitution.

UNIT 5: FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES OF INDIAN CITIZENS

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Meaning of Fundamental Rights

- 5.3.1 Features of Fundamental Rights
- 5.3.2 Types of Fundamental Rights
- 5.3.2 Restrictions on Fundamental Rights

5.4 Fundamental Duties

5.5 Let Us Sum Up

5.6 Further Reading

5.7 Answers To Check Your Progress

5.8 Model Questions

5.1 LEARNING OBJECTIVES

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

- describe the meaning of Fundamental Rights incorporated in the Indian Constitution
- discuss the types and features of Fundamental Rights
- explain the restrictions of Fundamental Rights
- describe the Fundamental Duties incorporated in the Indian Constitution

5.2 INTRODUCTION

This unit introduces you to the Fundamental Rights of Indian citizens. There are six Fundamental Rights of Indian citizens incorporated in Part III of the Indian Constitution. These rights are unique in the sense that without these, no one can lead a free and independent life. Therefore, the framers of the Indian Constitution provided some Fundamental Rights for Indian

citizens. Democracy can not work if the people do not have rights. Inclusion of Fundamental Rights prevents the government. from becoming despotic. Fundamental Rights are essential for moral and material development of the people also. People can develop their best self and personality through these rights. Though these rights are guaranteed by the Constitution, yet the state can take back these rights temporarily during proclamation of emergency to maintain public order, security and so on. At the same time these rights are justifiable also. The courts can protect and safeguard them, if someone's rights are violated. After all, Fundamental Rights are indispensable for the full development of the human personality. Besides, this unit introduces you to Fundamental Duties of the Indian citizens. These duties are enshrined in Part IV of the Constitution. These duties are some responsibilities or obligations of the citizens which they need to carry out for the peace and prosperity of the nation.

5.3 MEANING OF FUNDAMENTAL RIGHTS

Fundamental Rights fulfil some basic and essential conditions of good life for human progress. These are fundamental in the sense that in the absence of these rights citizens cannot develop their personality and their own self. These rights are not the same as ordinary rights of citizen. Fundamental Rights are enshrined in the Constitution. These are Constitutionally protected and guaranteed to the citizens while ordinary rights are protected by the ordinary law of the country. Fundamental Rights are inviolable in ordinary situation. Only under reasonable circumstances, these rights are suspended temporarily. Right to Life, Freedom of Speech and Expression, Right to Equality, Right to Religion, Right to Personal Liberty, Right to Education are some important Fundamental Rights of Indian citizen .Every state incorporates these Fundamental Rights in their own Constitution and citizens can enjoy them . If anybody's Fundamental Rights are violated by force he or she can go to the court seeking legal assistance for restoration of their rights. Democratic countries like India, USA, Japan, France, Switzerland and many other countries enlisted some Fundamental Rights

for the citizen. These are basic rights of individuals without which democracy becomes meaningless. The Constitution of India has embodied a number of Fundamental Rights in Part III. Citizens can enjoy these rights within some definite limitations.

5.3.1 Features of Fundamental Rights

Necessary features of Fundamental Rights are as follows:

- Fundamental Rights are an indispensable part of our Constitution. Twenty-four articles are enjoined with these Fundamental Rights. Parliament can amend Fundamental Rights by a special procedure.
- While essentially, Fundamental Rights are available to Indian citizens alone, some Fundamental Rights such as the right to life and liberty and the right to religious freedom are available to both citizens and aliens.
- Fundamental Rights are not absolute. Citizens can enjoy them only within some reasonable restrictions imposed on these rights by the Constitution. Fundamental Rights without prescribed conditions may disrupt public order.
- Fundamental Rights are suspendable during the time of emergency and rights of the citizen are curtailed temporarily except right to life and personal liberty (Article 20 and Article 21)
- Fundamental Rights are justiciable also. A citizen can go to the court for enforcement of his or her Fundamental Rights in case of their violation.Under Article 32 and Article 226 of the Indian Constitution, a citizen can approach the Supreme Court and High Court respectively in this regard.
- Fundamental Rights are amendable also. Parliament can amend these rights by a special procedure.
- Fundamental Rights aim at balancing collective interests with individual interests.

- Fundamental Rights are superior to ordinary law of the land. They are conferred a special sanctity.
- Some Fundamental Rights are positive while some others are negative in nature. Certain provisions of Part III of the Indian Constitution are of the nature of prohibitions as they place constitutional limitations on the authority of the state. For instance, no authority of the State can deny to any person equality before the law or the equal protection of the laws.This actually may be termed as a negative right.On the other hand, other rights such as the Right to Freedom, etc., could be termed as positive rights.

5.3.2 Types of Fundamental Rights

There are six types of Fundamental Rights in our Constitution

I. Right to Equality (Article 14 – Article 18)
II Right to Freedom (Articles 19 – Article 22)
III Right against Exploitation (Articles 23 – Article 24)
IV Right to Freedom of Religion (Articles 25 – Article 28)
V Cultural and Educational Rights (Articles 29 – Article 30)
VI Right to Constitutional Remedies (Article 32)



LET US KNOW

Right to Property, which was a fundamental right has been eliminated from the list of Fundamental Rights by the Forty-Fourth Constitution Amendment Act, 1978, and abolished it as the country intends to promote the socialistic objectives. So, now it is an ordinary legal right.

The six categories of Fundamental Rights are discussed below:

I. RIGHT TO EQUALITY ((Article 14 – Article 18): It implies equality before the law and equal protection of the laws within the territory of India. No man is above the law of the land. Every person is subject to the ordinary law and amenable to the jurisdiction of the ordinary

tribunals. Any discrimination is prohibited and equality of opportunity in matters of public employment under the State is ensured. There is no distinction between officials and private citizen and no discrimination on the basis of caste, creed, religion, sex, etc is allowed. But right to equality does not mean absolute equality or universal application . Some exceptions are allowed by the Indian Constitution and these limitations are as follows :

- the President of India or the Governor of a State shall not be answerable to any court for the power exercised or act done by him or her.
- no criminal proceeding shall be instituted against the President or the Governor during his or her term of office
- exemption from taxes on certain classes of property
- imposition of taxes upon different trades and professions
- making special provisions for women and children
- making special provisions for advancement of any socially, economically and educationally backward classes like Schedued Castes and Scheduled Tribes including special employment opportunities, which is called protective discrimination.

II. RIGHT TO FREEDOM (Article 19 – Article 22): This right is a most significant and important right for the citizens. This right confers some positive rights to promote the ideal of liberty. Article 19 guarantees six freedoms to all citizens. These are mentioned below:

As per Article 19 (1), all citizens shall have the right -

(a) to freedom of speech and expression ;
(b) to assemble peacefully and without arms ;
(c) to form associations or unions ;
(d) to move freely throughout the territory of India ;
(e) to reside and settle in any part of the territory of India ; and
(g) to practice any profession , or to carry on any occupation, trade or business

Article 20 and 21 guarantee the right to life, dignity and status. Under Article 20, no person accused of any offence shall be compelled to be a

witness against himself. Similarly, under Article 21, no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 22 provides some safeguards against arbitrary arrest and detention.

Like the Right to Equality, Right to Freedom is not absolute. The State can impose reasonable restrictions upon these rights incorporated in Article-19 to maintain a balance between individual liberty and social control. When a proclamation of emergency is made under Article 352, provisions of Article-19 itself remain suspended (Art. 358)

III. RIGHT AGAINST EXPLOITATION (Article 23 – Article 24): The Indian Constitution recognizes the dignity of the individual against any form of exploitation either by the State or by the privileged section of the society. Therefore, Right against Exploitation prohibits traffic in human beings and forced labour and employment of children in factories, mines or in any other 'hazardous employment'. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Artcle 24)

The provisions of Article 23 and Article 24 are absolute and the State is firm on maintaining the dignity and status of the individual against any form of exploitation.

IV. RIGHT TO FREEDOM OF RELIGION (Article 25- Article 28): The Indian Constitution has adopted a secular ideology and declared India as a ***secular*** state which maintains an attitude of neutrality and impartiality towards all religions. There is no state religion in India. The state will neither establish a religion of its own nor confer any special patronage upon any particular religion. Every person is guaranteed the freedom of conscience and freedom to profess, practice and propagate his own religion subject to public order, morality and health . Every religious group has been given the freedom to manage religious affairs, own and acquire movable and immovable property and administer such property in accordance with the law. The Right to Religion is also subject to certain limitations. The State

has the right and duty to intervene if any religious activity creates public disorder, immorality and so on.

V. CULTURAL AND EDUCATIONAL RIGHTS (Article 29 – Article 30): The Constitution of India guarantees cultural and educational rights for all sections of people irrespective of their religious, racial and cultural diversities. These rights are non-political in nature. To preserve the religious and cultural interests of each community, the Constitution of India incorporated these cultural and educational rights under Article 29 and Article 30. Article 29 guarantees to every minority or section of the people to preserve its language, script and culture notwithstanding the provisions of Article 343 under which the official language of the union shall be Hindi in Devanagari script. The State shall not impose upon any minority group any culture other than the community's own culture Article 29(1). Clause (2) of Article 29 provides that no citizen may be denied admission to State and State aided educational institutions on the grounds only of religion, race, caste or language. Article 30 provides that all communities shall have the right to establish and administer educational institutions of its choice and the state shall not discriminate against them in making grants on grounds of religion, race or language. This is implicit in the right conferred by Article 30 (1)- the right to impart instruction in their own institutions to the children of their own community in their own language.

This right has also some limitations. The State can regulate the affairs of such educational institutions in the interest of efficiency of instruction, discipline, morality and public order.

VI. RIGHT TO CONSTITUTIONAL REMEDIES (Article 32): A right without remedy is a meaningless formality. The Indian Constitution enumerates various rights to its citizen and in order to make these rights effective, it includes some means or remedies in the form of the Right to Constitutional Remedies under Article 32. Article 32 guarantees to every citizen the right to move the Supreme Court or High Courts for enforcement of Fundamental Rights by constitutional

means. Both the Supreme Court under Article 32 and the High Courts under Article 226 can issue necessary ***writs*** for the purpose. When a citizen feels that his or her Fundamental Rights have been violated, he can move the court for the redressal of the same. The Supreme Court under Article 32 and the High Court under Article 226 may issue writs including ***habeas corpus***, ***mandamus, prohibition, quo-warranto*** and ***certiorari*** to safeguard the Fundamental Rights. These are some instruments and means to make Fundamental Rights more effective. The courts have the power to enforce Fundamental Rights by issuing these writs against any authority of the State. The Indian Constitution lays down that any act of the executive or of the legislature which violates Fundamental Rights shall be void and the courts are empowered to declare it as void (Art. 13). Thus, the Constitution of India has made the judiciary "the protector and guarantor of Fundamental Rights". On the other hand, this constitutional right is the "heart and soul" of the Constitution as only it can make Fundamental Rights effective.

However the right to move the court for protection of Fundamental Rights may be suspended during an emergency except those rights provided by Article 20 and Article 21.



LET US KNOW

The 86th Constitution Amendment Act was passed in December, 2002 whereby a new Article, namely, Article 21 A, was inserted in the Constitution of India after Article 21. As per the new Article, "the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." Thus, the Right to Education is now a Fundamental Right which has been accorded the same legal status as the Right to Life under Article 21.Subsequently, the Right of Children to Free and Compulsory Education Act, 2009 was passed. As per the Act, every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his or her neighbourhood.

5.3.3 Restrictions on Fundamental Rights

Though the Constitution of India guarantees all these Fundamental Rights for the citizen, yet there are some limitations and exceptions to these rights also. A citizen cannot enjoy Fundamental Rights absolutely or at will. Within some constitutional limitations, citizens can enjoy their rights. The Constitution of India imposes some reasonable restrictions upon enjoyment of these rights, so that public order, morality and health remain intact. The Constitution always aims at balancing collective interests with individual interests .For example, the Right to Freedom of Religion is subject to restrictions imposed by the State in the interest of public order, morality and health so that the freedom of religion may not be abused. Similarly Rights guaranteed by Article 19 does not mean absolute liberty . Absolute individual rights cannot be guaranteed by any modern state. Therefore our Constitution has empowered the State to impose reasonable restrictions as may be necessary in the larger interests of the community . Our Constitution always attempts "to strike a balance between individual liberty and social control" and to establish a welfare state where collective interests get prominence over individual interests.Freedom of speech and expression [Art.19(1)(a)] is subject to reasonable restrictions imposed by the State relating to defamation, contempt of court, decency or morality, security of the state, friendly relations with foreign states , incitement to an offence, public order, maintenance of the sovereignty and integrity of India . Freedom of Assembly [Art.19(1)(b)] is also subject to reasonable restrictions imposed by the State in that the assembly must be peaceful and without arms in the interest of public order. Freedom of press which is included in the wider freedom of expression is also subject to reasonable limitations and the State can impose restrictions upon freedom of press in the larger interests of the state or for the prevention of contempt of court, defamation or incitement to an offence.



CHECK YOUR PROGRESS

Q 1: Fundamental Rights are mentioned in which part of Indian Constitution?

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Q 2: Fundamental Rights are justiciable. (True/False)

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Q 3: Fundamental Rights are amendable. (True/False)

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Q 4: Fundamental Rights are absolute. (True/False)

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Q 5: In which Article of the Indian Constitution, the Right to life and personal liberty is mentioned ?

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Q 6: Describe the Right to Constitutional Remedies. (within 50 words)

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5.4 FUNDAMENTAL DUTIES

When the Constitution came into force in 1950, no Fundamental Duties were enshrined in the Constitution of India. By the 42nd Amendment

to the Constitution of India in 1976, ten Fundamental Duties were added to our Constitution. With the passage of the 86th Amendment Act, 2002, there are presently eleven Fundamental Duties.These duties are important and necessary for the vital interests of our country. These Fundamental Duties are covered by Article 51 A incorporated in a new chapter, Part IV-A of the Constitution. Under this Article, it shall be the duty of every citizen of India –

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India ;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India ;

(f) to value and preserve the rich heritage of our composite culture ;

(g) to protect and improve the natural environment ;

(h) to develop the scientific temper and spirit of inquiry ;

(i) to safeguard public property and abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

k) to provide opportunities for education to children between 6-14 years of age, and duty as parents to ensure that such opportunities are being awarded to their child or ward.

Fundamental Duties are like some noble advice of which some are civic duties and others are moral duties. They are not legally binding upon the citizens and even the courts can not enforce them. So, Fundamental Duties are not enforceable by the courts of our country. Fundamental Duties are not enforceable by the courts of our country. No one can be punished if he or she does not perform his or her duties. Though there is no legal force behind these duties, yet they are an integral part of the Constitution of

India. The Fundamental Duties are of great educative value and have a moral impact upon the citizens. Allegiance to the Fundamental Duties enshrined in the Constitution is considered necessary for the progress, peace and prosperity of the country.

Though there is no provision in the Constitution for direct enforcement of any of these duties nor for any sanction to prevent their violation, yet some Fundamental Duties are enforceable by the courts of the country. Duties like abide by the Constitution, respect the National Flag and the National Anthem, to defend the country and render National service when called upon to do so and safeguard public property etc. fall in this category and the courts can enforce them if it find reasonable relation with laws of the country. But there are some inherent draw backs of these Fundamental Duties. Actually Fundamental Duties are not binding upon the citizen. Duties inscribed in the Constitution are not exhaustive, while some duties are ambiguous. So, common people could not understand them. Yet these duties are important for National interest of our country. These duties have sanctity of its own. Besides these duties have moral and educative value upon citizen of our country. People fells that for proper enjoyment of rights, duties must be performed in a well manner. Because rights and duties are related to each other. Every right implies a corresponding duty towards individual and social welfare. Rights can not be separated from duties and vice-versa . Therefore, both rights and duties are important for the prosperity of the country in a similar manner.

CHECK YOUR PROGRESS



Q 7: Fundamental Duties are inscribed in:

(a) Part III (b) Part IV-A (c) Part V of the Constitution

.....

Q 8: By which Constitutional amendment, Fundamental Duties are incorporated in the Indian Constitution.

(a) 42nd amendment (b) 44th amendment (c) 73rd amendment

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Q 9: How many Fundamental Duties are incorporated in the Indian Constitution?

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Q 10: Mention any two Fundamental Duties?

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5.5 LET US SUM UP

- Fundamental Rights fulfil some basic and essential conditions of good life for human progress. These are fundamental in the sense that in the absence of these rights citizens cannot develop their personality and their own self.
- The Constitution of India has embodied a number of Fundamental Rights in Part III. There are six types of Fundamental Rights in our Constitution including the Right to Equality (Article 14 – Article 18), the Right to Freedom (Articles 19 – Article 22), the Right against Exploitation (Articles 23 – Article 24), the Right to Freedom of Religion (Articles 25 – Article 28), Cultural and Educational Rights (Articles 29 – Article 30) and the Right to Constitutional Remedies (Article 32)

- Fundamental Rights are not absolute. Therefore within some reasonable restrictions citizens can enjoy them.
- Fundamental Rights are justifiable also. A citizen can go to the court for enforcement of his Fundamental Rights if some one violates them. Under Article 32 and Article 226 of the Indian Constitution, a citizen can approach the Supreme Court and High Court respectively in this regard.
- The 42nd Amendment to the Constitution of India in 1976, added ten Fundamental Duties to the Constitution of India. Presently, with the passage of the 86th Amendment Act, 2002, there are eleven Fundamental Duties. Fundamental Duties are covered by Article 51 A incorporated in a new chapter, Part IV-A of the Constitution.
- Fundamental Duties are not enforceable by the courts of our country. Though there is no legal force behind these duties, yet they are an integral part of the Constitution of India. Allegiance to the Fundamental Duties enshrined in the Constitution is considered necessary for the progress, peace and prosperity of the country.



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2) Ghai, K. K.(2007). *Indian Government and Politics*. New Delhi: Kalyani Publishers.

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4) Pylee, M, V. (2006). *Constitutional Government in India.* New Delhi:S. Chand and Company.



5.7 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Part-III, Art. 12-35

Ans to Q No 2: True

Ans to Q No 3: True

Ans to Q No 4: False

Ans to Q No 5: Article 21

Ans to Q No 6: Right to Constitutional Remedies (Article 32): Article 32 guarantees to every citizen the right to move the Supreme court or High court for enforcement of Fundamental Rights by Constitutional means. Both the Supreme Court under Article 32 and the High Courts under Article 226 can issue necessary writs for the purpose in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari. These are some instruments and means to make Fundamental Rights more effective. This Constitutional right is the "heart and soul" of the Constitution as it can only make Fundamental Rights effective. However the right to move the court for protection of Fundamental Rights may be suspended during an emergency except those rights provided by Article 20 and Article 21.

Ans to Q No 7: Part-IV.A

Ans to Q No 8: 42nd amendment

Ans to Q No 9: ten

Ans to Q No 10: (i) to abide by the Constitution and respect the National Flag and the National Anthem,

(ii) to cherish and follow the noble ideals which inspired our national struggle for freedom.



5.8 MODEL QUESTIONS

A) Very Short Questions

Q 1: Under which Article of the Indian Constitution, a citizen can move the Supreme Court or High Courts for enforcement of Fundamental Rights by constitutional means?

Q 2: Mention any two grounds on which the Freedom of speech and expression (Art.19-1-A) is subject to reasonable restrictions.

Q 3: Fundamental Duties are covered by which Article of the Indian Constitution?

Q 4: By which constitutional amendment has Fundamental Duties been added to our Constitution?

B) Short Questions (Answer each question in about 150 words)

Q 1: Write briefly about the Right to Equality.

Q 2: Explain any six features of Fundamental Rights.

Q 3: Discuss the restrictions on Fundmental Rights.

Q 4: Write a short note on the necessity of Fundamental Duties.

C) Long Questions (Answer each question in about 300-500 words)

Q 1: Explain the meaning of Fundamental Rights.Discuss the various features of Fundamental Rights and the restrictions imposed on them.

UNIT 6: DIRECTIVE PRINCIPLES OF STATE POLICY

UNIT STRUCTURE

6.1 Learning Objectives

6.2 Introduction

6.3 Meaning of the Directive Principles of State Policy

6.4 Features of the Directive Principles of State Policy

6.5 Classification of the Directive Principles of State Policy

6.6 Implementation of the Directive Principles of State Policy

6.7 Constitutional Significance of the Directive Principles of State Policy

6.8 Let Us Sum Up

6.9 Further Reading

6.10 Answers to Check Your Progress

6.11 Model Questions

6.1 LEARNING OBJECTIVES

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

- expalin the meaning, features and various types of Directive Principles
- describe the significance and importance of Directive Principles
- explain implementation of Directive Principles in our country.

6.2 INTRODUCTION

This unit introduces you to the Directive Principles of State Policy which are mentioned in Part IV of the Indian Constitution covering Article 36 to Article 51. These principles are meant for the State to follow them in matters of administration and in making of laws. Because the basic aim behind these principles is establish a welfare State. These principle are differ from fundamental rights which is discussed in earlier chapter. While fundamental rights are enforceable, Directive Principles are not enforceable by the courts. The courts can not compel the govt. to follow these principles. But it is the duty of every responsible government to translate these principles

in to action to promote social and economic justice among citizens. These principles are fundamental in the governance of the country.

6.3 MEANING OF DIRECTIVE PRINCIPLES OF STATE POLICY

One of the distinctive features of Indian Constitution is the inclusion of the Directive Principles of State Policy or DPSPs. Borrowed from the Irish Constitution, the makers of our Indian Constitution incorporated these principles in Part IV of the Constitution from Article 36 to Article 51. These principles were deemed fundamental in the governance of the country which epitomized the hopes and aspirations of the Indian people. The Irish Constitution had greatly impressed the members of the Constituent Assembly. The members of the Constituent Assembly observed that most of the new constitutions that came into being after World War I, particularly those of Germany and East European countries, had recognized that one of the chief functions of the State must be to foster and secure the social well-being of the citizens and the economic prosperity of the nation. Such an attitude impressed our Constitution makers to incorporate these principles in our Constitution.

The Directive Principles are some affirmative instructions to the State authorities to secure to all citizens justice– social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation. These principles underline the philosophy of Democratic Socialism to secure the high ideals set forth in the Preamble to the Constitution. It is the duty of the State to follow these principles both in the matter of administration as well as in the making of laws of the Directive Principles is to establish a welfare state where economic and social democracy might flourish.

The Directive Principles of State Policy may be classified under several groups, covering socio-economic rights to statements of international policy of the country. Significantly, these principles are not justiciable in character. They cannot be enforced by the courts of law if the State does

not follow these principles in matters of administration as well as in making of laws. But it is the duty of the State to follow them to promote fraternity and equality and to guarantee justice to the people of the country. Nevertheless, the Directive Principles are regarded as the basic foundation of democracy and welfare State. They are incorporated in the Constitution to meet economic and social aspirations of the people of our country. Political democracy requires for its success economic security. Therefore the makers of our Constitution incorporated the Directive Principles as supplement to the Fundamental Rights. The Directive Principles provide some economic principles to secure economic justice and security.

6.4 FEATURES OF DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy incorporated under Part IV from Article 36-Article 51 possess the following features:

- Directive Principles of State Policy are some instructions to the State for achieving socio-economic development.
- Directive Principles of State Policy are not enforceable in the courts and no one can go to the court for its proper implementation.
- Directive Principles of State Policy are positive in nature. These principles increase the powers and functions of the State.
- Directive Principles of State Policy aims at establishment of a welfare state by securing social and economic justice. These principles are based on socialist thinking.
- These principles are indispensable for socio-economic development of our country. Because welfare and justice are the twin objectives of our Constitution.
- These principles have great moral value also. It constitutes the conscience of our Constitution. No responsible government can dare to go against these principles.
- Directive Principles of State Policy constitute the mirror of public opinion. These principles always reflect the will of the people. These are embodied in the Constitution to the meet the aspirations of the people.

- These are fundamental in the governance of the country. The State should follow these principles for progress of the country.

6.5 CLASSIFICATION OF DIRECTIVE PRINCIPLES

i) **Socialistic and Economic Principles:** The socialist and economic principles always aim at shaping our country into a welfare state. Art. 38(1) provides that the State shall promote the welfare of the people by securing and protecting as it may a social order in which justice– social, economic, and political shall inform all the institutions of national life. The State shall strive to minimize the inequalities in income and try to eliminate inequalities in status, facilities and opportunities among individuals and groups engaged in different vocations within the country– Art. 38(2). Thus promotion of welfare of people by securing a social order where justice shall prevail is the objective of our Constitution. To ensure such objectives, the State shall direct its policy in securing–

- adequate means of livelihood for all citizens irrespective of men and women equally;
- equal distribution of wealth and resources among all classes;
- equal pay for equal work for both men and women;
- just and humane conditions of work, a decent standard of living, full employment, leisure and social and cultural opportunities;
- participation of workers in the management of undertakings and establishments;
- protection of children, youth against exploitation and against moral and material abandonment. The Forty-Second Amendment altered this provision and provides that “children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against moral and material abandonment”;
- provision of work and compulsory education for all people, relief in case of unemployment, old age, sickness and disability and other cases of undeserved want;

- equality of opportunity and status for all individuals;
- level of nutrition and standard of living of the people;
- public health and enforce prohibition of consumption of intoxicating drinks and drugs;
- environment safeguarding forest and wild life of the country;
- a uniform civil code throughout the country;
- protection of adult and child labour.

ii) **Gandhian Principles:** Principles enjoined under Gandhian principles in Article 40, Article 43, Article 47 and Article 48 are some ideals of Mahatma Gandhi followed during his life time. Our constitution framers wanted to implement these ideals to fulfill his dream. The State shall take steps–

- to organize village panchayats and endow them power and authority to enable them to function as unit of self-government;
- to promote cottage industries and village industries on an individual or co-operative basis in rural areas;
- to prohibit consumption of intoxicating and injurious drinks and drugs;
- to promote educational and economic interests of the weaker sections of the people particularly SCs, STs to establish social justice and equity;
- to organize agricultural and animal husbandry on modern and scientific lines;
- to prohibit the slaughter of cows and other useful cattle;
- to protect and improve environment and safeguard the forests and wild life of the country;
- to protect, preserve and maintain places of national historical importance;
- to separate the judiciary from the executive.

iii) **International Principles:** Principles enjoined in Art. 51 under international principles are some provisions to the State relating to ensure international peace and security. The State shall attempt–

- to promote international peace and security;

- to maintain just and honorable relations between nations;
- to foster respect for international law and treaty obligation;
- to encourage settlement of international disputes by arbitration.

6.6 IMPLEMENTATION OF DIRECTIVE PRINCIPLES

The Constitution framers enshrined many principles in order to establish a new social order in which justice– social, economic and political shall prevail. The Constitution framers adopted the Directive Principles of State Policy as a peaceful and evolutionary method of constitutional reform aimed at ensuring minimum basic necessities of the citizens in a civilized society and to establish a democratic setup based on social justice. To implement and translate the directives into action, the government has taken many steps from time to time. The government has enacted social, labour and economic legislations and has framed industrial, agricultural and taxation policies. For example, the Taxation Inquiry Commission, 1953-54 was asked to examine the tax structure and to suggest measures to reduce the inequalities of income and wealth and some other related subjects. The Industrial Development and Regulation Act 1951 and the establishment of the Monopolies Inquiry Commission in 1965 were aimed at achieving the objectives outlined by the Taxation Inquiry Commission. The Monopolies Commission made inquiries into the causes and extent of concentration of economic power in private hands, the factors responsible for monopolies tendencies in the national economy and their social consequences. Similarly in the early years of the 1950s land reform legislation was enacted to abolish intermediaries and zamindari system and now land, both rural and urban, is subject to ***ceilings*** and the surplus land has gone to the weaker sections of the community. In compliance with such laws, many States have enacted separate State Acts to prevent concentration of land holdings and fixed a ceiling for an individual owner. A large number of laws have been enacted to implement organization of village panchayats as units of self-government all over the country in purusance of Art.40. Especially, the government has enacted the historic Seventy-Third and Seventy-Fourth Constitution Amendment Acts, 1992 to build Panchayati Raj Institutions as administrative



Ceiling: Ceiling means a limit of maximum land holdings that an individual owner can own.

units. Now panchayats have been accorded constitutional status and assigned 29 departments with full powers so that people of the village can fulfill their long standing needs and aspirations through their own support and participation. Most of the States have enacted their own State Panchyat Acts keeing intact the spirit of the main Act and devolved funds, functions and functionaries to make panchyats into institutions of self-government. For the promotion of cottage industries (Art.43), steps have been taken to encourage the masses. Besides the government has established the All India Handicrafts Board, All India Handloom Board, Small Scale Industries Board, Central Silk Board, Coir Board etc., for promotion of cottage industries. The National Small Industries Corporation, the Khadi and Village Industries Commission, have been set up for the development of the Khadi and Village Industries. Various measures including employment generation schemes have been undertaken for the uplift of SCs, STs and Other Backward Classes. Legislation for compulsory primary education (Art. 45) has been enacted. For raising the standard of living (Art.47) the Government of India adopted the first ever large scale programme called Community Development Project in 1952 for rural re-construction in the fields of communication, transport, housing facilities, sanitation, agriculture, education etc. Regarding prohibition of intoxicating drinks and drugs (Art. 47) most of the States has enacted legislations and imposes some restrictions on such items. Necessary legislations have been enacted to protect places and monuments of national importance. As to the separation of the executive from the judiciary (Art. 50) most of the States have adopted legislative measures. Steps have been taken to assist and give free legal aid to the needy. More recently, the Government of India has enacted the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) to ensure hundred days' work assistance to rural people which is in conformity to the Right to Work as enshrined in the Directive Principles of State Policy of the Indian Constitution.

The principle of International Peace and Security enshrined in Art.51 finds its full expression in the external policy of India. After Independence, the Government of India under the leading role of Pandit Jawaharlal Nehru advocated many ideals of peace and mutual tolerance.



CHECK YOUR PROGRESS

Q.1: Directive Principles are non-justifiable? (True/False) .....

Q.2: What is the main aim of Directive Principles?

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Q.3: Directive principles are meant for– (a) the people (b) the State.

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Q.4: Describe any two features of the Directive Principles. (within 50 words)

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Q.5: Mention any two Socialist and Economic Directive Principles.

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6.7 CONSTITUTIONAL SIGNIFICANCE OF DIRECTIVE PRINCIPLES

The Directive Principles have great constitutional significance. They have been declared to be fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws (Art-37). Though these principles are not enforceable in the courts, yet no government would dare to ignore them. Every government should take steps for implementing Directive Principles of State Policy as far as possible or else it would be criticized on the ground of non-fulfillment of the directives. These principles represent the deliberate wisdom of the nation and act as a constant reminder to the State for the implementation of the same. Inclusion of Directive Principles in the constitution always gives a constitutional

recognition of the responsibility of the State to promote the social and economic welfare of the people. The 42nd and 44th amendments emphasized the socialistic goal of the Indian polity that every State has a positive duty to ensure to its citizens social and economic justice and dignity of the individual.



CHECK YOUR PROGRESS

Q.6: Explain the constitutional significance of the Directive Principles. (within 50 words)

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6.8 LET US SUM UP

- The Directive Principles of State Policy are incorporated under Part IV from Article 36-Article 51are some instructions to the State for achieving socio-economic development and establishment of a welfare state. These principles have been largely borrowed from the Irish Constitution.
- The Directive Principles of State Policy may be classified under several groups, covering socio-economic rights to statements of international policy of the country.
- The Directive Principles of State Policy are classified into Socialist and Economic Principles, Gandhian Principles and International Principles.
- The government has enacted social, labour and economic legislations besides industrial, agricultural and taxation policies.

- The Directive Principles of State Policy, though not enforceable in the court of law, are an indispensable part of our Constitution and no responsible government can deny these principles as it is answerable before the electorate. The implementation of these principles is the key to the socio-economic development of the country as a whole.



6.9 FURTHER READING

1) Chander, Prakash (2000). *Indian Government and Politics*. New Delhi: Cosmos Bookhive Pvt. Ltd.
2) Ghai, K. K. (2007). *Indian Government and Politics*. New Delhi: Kalyani Publishers.
3) Kapur, Anup Chand and Misra, K. K. (2006). *Select Constitutions.* New Delhi: S. Chand and Company.
4) Pylee, M. V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.



6.10 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: True

Ans. to Q. No. 2: Establishment of a welfare state

Ans. to Q. No. 3: State

Ans. to Q. No. 4: True

i) Directive Principles of State Policy are positive in nature. These principles increase power and functions of the State.

ii) Directive Principles of State Policy aims at establishment of a welfare state by securing social and economic justice. These principles are based on socialist thinking.

Ans. to Q. No. 5: i) adequate means of livelihood for all citizen irrespective of men and women equally;

ii) equal distribution of wealth and resources among all classes;

Ans. to Q. No. 6: The Directive Principles have great constitutional significance. They have been declared to be fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws (Art-37). Though these principles are not enforceable in the courts, yet no government would dare to ignore them. Every government should take steps for implementing Directive Principles of State Policy as far as possible or else it would be criticized on the ground of non-fulfillment of the directives.



6.11 MODEL QUESTIONS

A) Very Short Questions

Q.1: The Directive Principles of State Policy or DPSPs have been borrowed from which Constitution?

Q.2: The Directive Principles of State Policy are incorporated in which part of the Constitution?

Q.3: Mention the Artcles incorporating the Gandhian Principles under Directive Principles of State Policy.

Q.4: The International Principles under Directive Principles of State Policy are incorporated in which Article?

B) Short Questions (Answer each question in about 150 words)

Q.1: Write the main features of the Directive Principles of State Policy?

Q.2: Mention any four Gandhian Principles enumerated under Directive Principles of State Policy?

Q.3: What do you mean by the Directive Principles of State Policy? What are the international principles mentioned under the Directive Principles of State Policy?

Long Questions (Answer each question in about 300-500 words) :

Q.1: Discuss the various types of Directive Principles of State Policy.

Q.2: Discuss the implementation of the Directive Principles of State Policy.

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UNIT 7: RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

UNIT STRUCTURE

7.1 Learning Objectives

7.2 Introduction

7.3 Fundamental Rights in the Indian Constitution

7.4 Directive Principles of State Policy in the Indian Constitution

7.5 Relation between Fundamental Rights and Directive Principles of State Policy

7.6 Let Us Sum Up

7.7 Further Reading

7.8 Answers to Check your Questions

7.9 Model Questions

7.1 LEARNING OBJECTIVES

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

- discuss the Fundamental Rights under the Indian Constitution
- discuss the Directive Principles of State Policy incorporated in Indian Constitution
- explain the relation between Fundamental Rights and Directive Principles of State Policy.

7.2 INTRODUCTION

In the Indian Constitution, we find two important Parts being devoted to two pertinent topics. They are Fundamental Rights in Part III and Directive Principles of State Policy in Part IV of the Constitution. The Fundamental Rights constitute certain basic freedoms guaranteed and protected by the Constitution to the citizens of India and others and the Directive Principles are certain directives given to the State to be followed while making policies

for the welfare of the society. In the following sections, we will discuss the Fundamental Rights and the Directive Principles and the relation between them.

7.3 FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION

The framers of the Indian Constitution incorporated a bill of rights and freedoms taking inspiration from the various constitutions of the different countries of the world and the Charter of the United Nations. However, the Constitution of the United States of America influenced the most in this regard. These rights are also based on our rich cultural heritage and traditions. They are called fundamental because they constitute those basic human rights without which individuals will not be able to live a good life. They are fundamental also because they are guaranteed by the Constitution and protected by it.

The Fundamental Rights are included in Part III of the Indian Constitution. Originally, the Constitution included seven Fundamental Rights. But by the 44th amendment of the Constitution in 1978 the Right to Property was excluded from the list of Fundamental Rights. Now, it has been placed in Article 300A of Part XII of the Constitution and has become a simple legal right. So, we have six Fundamental Rights to enjoy at present. They are– *Right to Equality, Right to Freedom and Personal Liberty, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights* and *Right to Constitutional Remedies*. They are found from Article 12 to Article 35 of the Constitution.

The inclusion of the Fundamental Rights is very important for promoting democracy in the country. They provide not only liberty to its people but also restrict the state from using its power arbitrarily. The state must use its power while respecting the rights of the people. Our Fundamental Rights are justifiable, that means if they are violated by anyone then we can approach the courts of law for their protection. But they are not absolute. They are provided to us with reasonable restrictions. They can even be suspended when the President of India declares emergency except

the rights which are provided under Article 20 and 21. The Fundamental Rights can be amended by the Parliament of India whenever it finds it necessary. However, amendment should not lead to abrogation of these rights. Then it will amount to the violation of the basic structure of the Constitution. Our Fundamental Rights are mainly political and social in character. They provide scope for development of the personality of the individual.



LET US KNOW

- Article 19 of the Indian Constitution has guaranteed *six freedoms* to the citizens. They are right to: a) freedom of speech and expression, b) freedom of peaceable assembly, c) freedom to form associations or unions, d) freedom of free movement throughout the country, e) freedom to reside and settle in any part of India, and f) freedom of profession, occupation, trade or business.
- Article 32 provides for the right to constitutional remedies. It empowers the Supreme Court to protect our Fundamental Rights if they are violated.
- Reasonable restrictions are imposed upon the Fundamental Rights to protect public order, public health, morality, integrity, sovereignty and security of the country.

7.4 DIRECTIVE PRINCIPLES OF STATE POLICY IN THE INDIAN CONSTITUTION

The **Directive Principles of State Policy** are mentioned in Part IV of the Indian Constitution. They are found from Article 36 to Article 51 of the Constitution. These Principles are certain directions given by the Constitution to the State. The Directive Principles are fundamental in the governance of the country. They should be followed by our governments for the welfare of the people. These Principles have been included in the Constitution by taking inspiration from the Irish Constitution of 1937. The Directive Principles also have similarities with the 'Instruments of Instructions' which were meant

for the Governor General and the Governors under the Government of India Act, 1935.

The Directive Principles are not classified in the Constitution. But from the nature of these Principles, we can classify them as socio- economic, international, and Gandhian principles. These principles are included in the Constitution for establishing a welfare state by ensuring the socio-economic well-being of all the people in the country. These principles instruct the government to establish a progressive and egalitarian society by removing all kinds of socio-economic injustice and inequality. These principles provide the governments the guidelines to move towards the establishment of a new society based on liberty, equality, justice and fraternity for all.

The Directive Principles of State Policy are not justiciable. It means that we cannot approach the courts of law even if they are violated or not implemented by the government. Their implementation depends on the willingness of those at the government and the availability of the resources. Unless implemented by the government by making new legislations or by making policies, the Directive Principle of State Policy remain on hold. They are meant for the state and the state should follow them for greater interest of the society. These principles aim at strengthening the social and economic base of democracy in the country.



CHECK YOUR PROGRESS

Q.1: State the meaning of Fundamental Right.

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Q.2: In which Part of the Indian Constitution are Fundamental Rights included?

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Q.3: Where in the India Constitution do we find the Directive Principles of State Policy?

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Q.4: What is the aim of the Directive Principles of State Policy?

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Q.5: Explain the characteristics of the Fundamental Rights.

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7.5 RELATION BETWEEN THE FUNDAMENTAL RIGHTS AND THE DIRECTIVE PRINCIPLES OF STATE POLICY

The Fundamental Rights mentioned in Part III and the Directive Principles of State Policy included in Part IV of the Indian Constitution have relation between them. They are complementary and supplementary to each other. They are regarded as sister parts of the Indian Constitution.

The Fundamental Rights of the Indian Constitution are mainly political and social in character. They aim at establishing political democracy in the country. There are no economic rights in our list of Fundamental Rights. This gap has been filled up by the Directive Principles of State Policy. The economic rights of the people are supposed to be guaranteed by the socio-economic principles mentioned in the Directive Principles. They aim at ensuring social and economic justice to the people. They are important for establishing economic democracy. So, both the Fundamental Rights and the Directive Principles work together for establishing a true democracy in the country.

Though the Directive Principles are not justiciable, yet they have great influence in the working of the governments. A good and popular government can never ignore these principles. They are fundamental in the governance of the country. Their implementation facilitates the welfare of the people. It is very important for the enjoyment of Fundamental Rights by all the people in the society irrespective of caste, creed, religion, language, gender and others. Directive Principles guarantee social and economic security and equality to all and thus pave the way for the enjoyment of Fundamental Rights by the people.

The Fundamental Rights and the Directive Principles are based on the precious ideals which are mentioned in the Preamble to the Constitution. They work together to achieve the ideals which our leaders and the Constitution makers had in their vision. Together they can be said to be the soul of the Indian Constitution. The principles of liberty, equality, justice, fraternity, integrity, democracy, socialism and secularism can be achieved in reality only when people enjoy Fundamental Rights and the government implements the Directive Principles.

Both the Fundamental Rights and the Directive Principles ensure responsible government in the country. The existence of the Fundamental Rights in the Constitution restricts the state from using its power in an arbitrary manner. The governments must show respect to the rights of the people and any violation of these rights by any agency of the government will invite judicial intervention. The Constitution itself has provided for the Fundamental Right to Constitutional Remedies whenever violation of these rights takes place. At the same time, the Directive Principles want the state and its government to be committed to the cause of the people. These principles provide a charter of activities to be performed for the welfare of the people. Any government willing to serve the people well will definitely take steps to implement these principles.

The inclusion of the Fundamental Rights and the Directive Principles in the Constitution is very important for the interest of the society as a whole. The Fundamental Rights are meant for the people. They provide chances and opportunities to the individuals to work for the development of their personality. The Directive Principles are meant for the state. The state should

follow them in order to ensure better conditions of life to the individual as well as to the society. In other words, the Fundamental Rights and the Directive Principles are included in the Constitution to facilitate development and progress in the society.

These Fundamental Rights and Directive Principles are very important features of the Indian Constitution. They have their constitutional validity. Though the Directive Principles are not binding upon the state, yet they cannot be ignored. They provide the yardsticks to the people to evaluate the performance of the government. Any government not following these principles will prove to be unpopular. The governments must follow them in due respect to the Constitution. The case is same with that of the Fundamental Rights. The government must do everything to protect and preserve these rights. Neglect and violation of the Fundamental Rights by the government will invite public criticism and unrest in the country.

Though we find complementary and supplementary relationship between the Fundamental Rights and the Directive Principles as discussed above, yet they have some differences as well. These differences can be mentioned as follows:

- First, we can say that the Fundamental Rights are justifciable while the Directive Principles are not justifiable. One can approach the courts of law when his/her rights are violated. On the other hand, if the Directive Principles are not implemented then no one can approach the courts of law. Legal remedy is available in case of Fundamental Rights but not in case of Directive Principles.
- Again, the Fundamental Rights are meant for the people. They are very important for the development of the personality of the individuals. They provide scope and opportunities to the individuals to work to achieve higher aims in life. However, the Directive Principles are meant for the State. They provide instructions for governance to the State. The State should follow them to ensure the welfare of the people.
- Another difference between the two is that the Fundamental Rights are mainly political in character and the Directive Principles are economic. The Fundamental Rights aim at achieving political

democracy in the country whereas the Directive Principles by assuring economic equality and justice aim to establish economic democracy.

- The Fundamental Rights can be suspended when the President of India declares emergency in the country. Then all our rights get suspended except the right to life and personal liberty mentioned in Articles 20 and 21. But the Directive Principles always remain in a condition of suspended animation unless implemented by the state.
- The Fundamental Rights put restrictions upon the activities of the State. The State should not do anything which can violate the Fundamental Rights of the people. On the other hand, the Directive Principles expand the activities of the State. These principles want the State to act for the well-being of the society.



CHECK YOUR PROGRESS

Q.6: Write any two points that indicate the complementary relation between the Fundamental Rights and the Directive Principles of State policy.

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Q.7: Write any two differences between the Fundamental Rights and the Directive Principles of State Policy.

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7.6 LET US SUM UP

- Both the Fundamental Rights mentioned in Part III and the Directive Principles of State Policy included in Part IV of the India Constitution are very important. They have been given special status and therefore, discussed in detail in two different Parts of the Constitution. They are important for the society.
- Fundamental Rights and the Directive Principles have relation between them. They are complementary and supplementary to each other. Both are working together to establish a true democracy in the country. Together they can be said to be the soul of the Indian Constitution. The principles of liberty, equality, justice, fraternity, integrity, democracy, socialism and secularism can be achieved in reality only when people enjoy Fundamental Rights and the government implements the Directive Principles of State Policy.
- The inclusion of the Fundamental Rights and the Directive Principles in the Indian Constitution is very important for the interest of the society as a whole. The Fundamental Rights are meant for the people. They provide chances and opportunities to the individuals to work for the development of their personality. The Directive

Principles are meant for the state. The state should follow them in order to ensure better conditions of life to the individual as well as to the society. In other words, the Fundamental Rights and the Directive Principles are included in the Constitution to facilitate development and progress in the society.

- Though we find relation between the Fundamental Rights and the Directive Principles, yet they have some differences as well. We can say that the Fundamental Rights are justiciable while the Directive Principles are not. Again, the Fundamental Rights are meant for the people. But, the Directive Principles are meant for the State. Another difference between the two is that the Fundamental Rights are mainly political in character while the Directive Principles are economic. The Fundamental Rights, except the right to life and personal liberty, can be suspended when the President of India declares emergency in the country. But the Directive Principles always remain in a condition of suspended animation unless implemented by the State. The Fundamental Rights put restrictions upon the activities of the state. On the other hand, the Directive Principles expand the activities of the state.



7.7 FURTHER READING

1) Chander, Prakash (2000). *Indian Government and Politics*. New Delhi: Cosmos Bookhive Pvt. Ltd.
2) Ghai, K. K. (2007). *Indian Government and Politics*. New Delhi: Kalyani Publishers.
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4) Pylee, M. V. (2006). *Constitutional Government in India.* New Delhi: S. Chand and Company.

7.8 ANSWERS TO CHECK YOUR PROGRESS

Ans. to Q. No. 1: The Fundamental Rights are basic human rights. They are called fundamental because they are guaranteed by the Constitution and protected by it.

Ans. to Q. No. 2: Part III of the Indian Constitution.

Ans. to Q. No. 3: Part IV of the Indian Constitution

Ans. to Q. No. 4: The aim of the Directive Principles of State Policy is the establishment of a welfare state in India.

Ans. to Q. No. 5: a) Fundamental Rights are justifiable, that means if they are violated by anyone then we can approach the courts of law for their protection.

b) The Fundamental Rights are not absolute. They are provided to us with reasonable restrictions. They can even be suspended when the President of India declares emergency except the rights which are provided under Articles 20 and 21.

c) The Fundamental Rights can be amended by the Parliament of India whenever it is found necessary. However, amendment should not lead to abrogation of these rights. Then it will amount to violation of the basic structure of the Constitution.

d) Fundamental Rights are mainly political and social in character.

e) The Fundamental Rights are important as they provide scope for development of personality of the individual.

Ans. to Q. No. 6: a) The Fundamental Rights of the Indian Constitution are mainly political and social in character. They aim at establishing political democracy in the country. There are no economic rights in our list of Fundamental Rights. This gap has been filled up by the Directive Principles of State Policy. The economic rights of the people are supposed to be guaranteed by the socio-economic principles mentioned in the Directive Principles. Both the Fundamental Rights and the Directive Principles work together for establishing a true democracy in the country.

b) Both the Fundamental Rights and the Directive Principles ensure responsible government in the country. The existence of the Fundamental Rights in the Constitution restricts the state from using its power in an arbitrary manner. The governments must show respect to the rights of the people and any violation of these rights by any agency of the government will invite judicial intervention. At the same time, the Directive Principles want the state and its government to be committed to the cause of the people. These principles provide a charter of activities to be performed for the welfare of the people. Any government, willing to serve the people well, will definitely take steps to implement these principles.

Ans. to Q. No. 7: a) Fundamental Rights are justiciable while the Directive Principles of State Policy are not justiciable. One can approach the courts of law when his/her rights are violated. On the other hand, if the Directive Principles are violated then no one can approach the courts of law.

b) The Fundamental Rights are meant for the people. They provide scope and opportunities to the individuals to work to achieve higher aims in life. However, the Directive Principles are meant for the state. The state should follow them to ensure welfare of the people.



7.9 MODEL QUESTIONS

A) Very Short Questions

Q.1: Which constitution influenced the most in the inclusion of Fundamental Rights in the Indian Constitution?

Q.2: From which country's constitution did India borrow the Directive Principles of State Policy to include in the Constitution?

Q.3: How many Fundamental Rights are included in the Constitution of India?

Q.4: Through which Amendment the Right to Property has been removed from the List of Fundamental Right in India and when?

B) Short Questions (Answer each question in about 150 words)

Q.1: Write briefly about the meaning of Fundamental Rights.

Q.2: How do the Fundamental Rights and the Directive Principles ensure responsible government in the country?

Q.3: Write how Fundamental Rights and Directive Principles help in establishing democracy in the country.

C) Long Questions (Answer each question in about 300-500 words)

Q.1: Explain the differences between Fundamental Rights and the Directive Principles of State Policy.

Q.2: Discuss the relationship between Fundamental Rights and Directive Principles of State Policy.

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