



**B. A. PART - II
(Semester-III)**

POLITICAL SCIENCE

Indian Polity

UNIT NO. 1

**Department of Distance Education
Punjabi University, Patiala**

(All Copyrights are Reserved)

SECTION A

LESSON No.

- 1.1 : Constituent Assembly and Framing of Indian Constitution
- 1.2 : Constitution of India - Its Salient Features
- 1.3 : The Preamble and Its Importance
- 1.4 : Union-State Relations in India
- 1.5 : Nature of Indian Federal System
- 1.6 : Fundamental Rights and Fundamental Duties

**CONSTITUENT ASSEMBLY : FRAMING OF INDIAN
CONSTITUTION****Structure of Lesson****1.1.1 Objectives****1.1.2 Introduction****1.1.3 Historical Background**

1.1.3.1 Emergence of liberation Movement in India and Birth of Indian National Congress.

1.1.3.2 Demand for constituent Assembly in India.

1.1.4 Establishment of Constituent Assembly and its composition under Cabinet Mission Plan.**1.1.5 Election and formation of Constituent Assembly.****1.1.6 Self Check Exercise.****1.1.7 Partition of India and its effect on Constituent Assembly of India.****1.1.8 Composition of Constituent Assembly.**

1.1.8.1 Party wise composition and role of opposition.

1.1.8.2 Predominance of Congress.

1.1.8.3 Representation of Communities and other Interests

1.1.9 Functioning of Constituent Assembly.

1.1.9.1 Decision making by consensus

1.1.9.2 Principle of Accommodation

1.1.9.3 Act of Selection and Modification

1.1.10 Evaluation of the Constituent Assembly.**1.1.11 Self Check Exercise****Objectives**

Dear Student, till now you were reading about various Constitutional developments which took place in India during the British rule. But India got independence and the Cabinet Mission Plan was passed in 1946, a year before independence. It was under this plan that legally a Constituent Assembly was constituted. In the present lesson you will know about the developments leading to the formation of Constituent Assembly, its composition and the procedure followed by it to make the Great Constitution of free India.

1.1.2 Introduction

The constitution of India is a unique contribution made by the founding fathers of the Constitution. Though it is not a novel document but it has many unique features which were the results of past experiences as well as the borrowings from some foreign constitutions. But everything included in the constitution was completely Indian. It is very important to know the various factors contributing to the framing of this great constitution. The historical background and the vision of our national leaders bore fruit and a Constituent Assembly working on behalf of the people of India framed a constitution which was implemented on January 26, 1950.

1.1.3 Historical Background

Political institution of a country can rightly be understood in the context of its historical background. It is historical fact that political institutions are the product of people's genius and they grow with the growth of the nation. People no doubt live under a system of government of its people. Prof. Jennings has aptly remarked that all Constitutions are heirs of the past as well as testators of the future. A country under the clutches of an imperial power, had very limited role in the running of political institutions and much less to raise any demand for change or replacement of such an autocratic system as it is obviously established to cater to the need of imperial masters. This was true of the Britishers who came as traders in 1600 and became the rulers of India. The British Imperial rule extending over two centuries had two major objectives:

- (i) Exploitation of Indian resources.
- (ii) Divide and rule policy to resist the demand of independence by the Indians.

It is a fascinating story of how a Private Trading Company (known as The East India Company) became the sovereign masters of India and its rule lasted from the last day of Mughal rule till mutiny of 1857. The British consolidated their position for economic plunder and territorial annexation. A few Indians were in subordinate position in the civil services and in the armed forces but the Company rulers never bothered to consult the people of India. The administration was carried on by the Governor General of India on behalf of the East India Company. It was highly centralized system and the government of each Province was to carry out the orders and the commands of the Central Government. However the British Government tried to extend its control over the affairs of the Company by enacting Regulating Act of 1773, Pitt's India Act of 1784 and Charter Acts of 1793, 1813, 1833 and 1854. The British Crown took over the rule and administration of India from the East India Company in the wake of the mutiny in 1857. This first war of independence shocked the colonial system of its foundations and it made imperative on the British

masters to shed their colonial policy of exploitation. Queen Victoria in her Proclamation promised the blessings of good government, freedom of belief and worship, right to public services, impartial protection of law etc., to people of India. The Indian Councils Act of 1861 marked the beginning of the associations of India people with the administration as some Indians were nominated in the Central and Provincial Legislatures. This principle was further extended through the Indian Council Act of 1892. But failed to meet the growing demands of the Indian people for effective participation in the administration of the country. These bodies were obviously dubbed as 'Darbars' as well as their members were nominated by the Governor General or by the Governor of a State respectively and these bodies had enjoyed very limited powers.

1.3.1 Emergence of Liberation Movement in India and Birth of Indian National Congress

Like other liberation movements in the world, the movement in India was the result of cumulative forces and factors that operated during the 17th and 18th, centuries. All these forces aroused the necessary national consciousness and political awareness amongst the Indian and obviously they wanted to regain their old grandeur and past glory. It may therefore be noted that the emergence of Indian National Movement was the off-spring of Anti-British reaction amongst the Indians. Although the British rule was responsible for providing political and administrative unity, a system of education, roads and communication, yet one could not overlook the dark side of their rule, which was intended to exploit the Indian resources to build up their motherland.

The Indian National Congress was formed on December 25, 1885 as a 'safety valve' to safeguard the British rule in India as was evident from its original objectives. However, with the passage of time, its goals and methods underwent change. Since its inception, Congress attracted people of all communities and acquired the character of national liberation force. The early phase of our liberation movement (1885-90) was led by moderate leaders (Dadabhai Naorojee, Ferozshah Mehta, S. N. Banerjee and Gopal Krishna Gokhale), who demanded concessions from the British and avoided any confrontation with the imperial rulers.

However, the British response to the demands of Liberal Nationalists caused dismay and frustration amongst the nation leaders. The control of Congress thus passed on to the hands of the Extremists in 1905 and they imparted a new dimension of militancy to the national movement as were reflected in the Swadeshi and Boycott movement of 1906 and the Home Rule Movement of 1916. They were not satisfied with reforms and proclaimed 'Swaraj' as their goal.

After the death of Tilak in 1920, Mahatma Gandhi became the undisputed leader of

the Indian National Congress and the freedom struggle was waged and carried on under his banner till India attained her independence on August 15, 1947. It does not mean that the British left at their own rather they were compelled by the rising movement of the protest. The British tried their best to create division amongst the Indian people. This sinister design became evident in the Reforms of Act 1909 when they introduced communal electorate-a venom which was ultimately responsible for the partition of India. When the Britishers were involved in First World War, they made a declaration (Declaration of August 20, 1917) promising “increasing association of Indians in every branch of administration and gradual development of self-governing institutions with a view to the progressive realization of responsible government India, as an integral part of the British Empire, for seeking the co-operation of Indians towards war effort.” The Act of 1919 introduced a ‘Dyarchical System’ at the provincial level but it failed to pacify the Indians. ‘Non Co-operation’ movement and Civil Disobedience Movements were launched to compel the British Government to convene and it appointed a sub-committee under the Chairmanship of Moti Lal Nehru to draft the Constitution for India. This committee recommended the establishment of fully responsible government and dominion status for India. However, on 26th, January 1930 the Indian National Congress declared its goal for the achievement of ‘Puran Swaraj’ i.e. complete independence. The British Government on its part passed the Government of India Act, 1935 which established Dyarchical System at the Centre and introduced provincial autonomy at the provincial level. The Muslim League at its 1940 session adopted a resolution for the creation of Pakistan. The Congress Party adopted the ‘Quit India’ resolution on August 8, 1942, as the Cripps Proposals failed to hand over the reins of administration of India. The Congress on its part assured that India would continue to extend her support toward war effort of the British. After the termination of war new Labour Government assumed office in England and they lost no time in sending the Cabinet Mission to resolve the India tangle. India ultimately attained independence on August 15, 1947. It may therefore be noted that there has been a constant interaction between the national movement and the Constitutional changes that were introduced by the British Government. In this long struggle, parliamentary institutions came to acquire respect and response of the people and it is on this account that India based her new Constitutional system on the basis of Parliamentary system. The Constitution of India, like other Constitutions, is essentially a human document as it has been framed by the Constituent Assembly of India which was established under the provisions of the Cabinet Mission Plan of 1946. The theory of creating a special representative body to frame the Constitution is the product of 17th and 18th centuries. Inspired by the writings of John Locke and Rousseau, the American

people framed their Constitution by creating a representative body which met at Philadelphia in 1776. It later on influenced the French people and the French National Assembly was created for this purpose in 1789. The precedent set by these two countries became very popular among the people of the world and consequently all the liberated countries adopted this procedure in framing their constitution.

Prof. Doad has defined Constituent Assembly as a representative body chosen for the purpose of considering and either adopting or proposing a new Constitution or changes in the existing Constitution. According to Abbe Seiyes it is an assembly of extraordinary representatives to which the nation shall have entrusted the authority to make a Constitution or at any point to define its content.² However, the Fathers of the Indian Constitution looked upon the Constituent Assembly of India as something dynamic, not merely as a body of representatives but “a nation on the move”.³

1.3.2 Demand for Constituent Assembly in India

In India, the idea of the establishment of the Constituent Assembly for the framing of the Constitution in accordance with the Indian conception was mooted by Mahatma Gandhi in early 1922 when he said: “Swaraj will be a declaration of India’s full self expression.” After the failure of the Round Table Conferences, the Congress Party demanded the formation of a Constituent Assembly to solve the Constitutional problem of India. It rejected the White Paper (1933) published by the British Government for Constitutional reforms and stated in its resolution. “The only satisfactory alternative of White Paper is a Constituent Assembly elected on the basis of adult franchise or as near it as possible.”

The Indian National Congress at its Faizpur session (1936) demanded “a Constituent Assembly elected by adult suffrage and having the power to determine finally the Constitution of the Country.” Again in 1939 the Congress affirmed its faith in the Constituent Assembly as the only method of the determining the Constitution of a free country. Even Jawahar Lal Nehru, in 1938, had categorically demanded, “The Indian National Congress stands for independence and democratic state. It has proposed that the Constitution of free India must be framed without outside interference by a Constituent Assembly elected on the basis of adult franchise.”

It may therefore, be noted that the Indian National Congress had proposed that the Constitution of free India must be framed without outside interference by a Constituent Assembly elected on the basis of adult franchise. Though opposed in the beginning to the idea of a Constitution making body composed of the representatives of Indian people, the British government realized it to necessary during the Second World War when it felt that the support of the Indian people

towards the War efforts was very essential. In August Offer of 1940, the British expressed their sympathy for the Constitutional aspiration of the Indian people. The Cripps Mission of 1942 therefore clearly accepted the Indian demand for the creation of an elected Constitution-making body for framing a new Constitution after the termination of war.

It may be recalled here that the British Government hitherto had maintained that the right to formulate the Constitutional scheme for India exclusively rested with the British parliament. Immediately after the termination of war, the new Labour Government announced the appointment of three member Cabinet Mission (consisting of Secretary of State for India, President of Board of Trade and First Lord of Admiralty) for talks with Indian leaders on the question of Constitutional reforms. The Cabinet Mission arrived in India on March 26 and left on June 29, 1946. The crucial issue for settlement was the stand taken by two leading forces represented by Congress and Muslim League. The Congress strongly adhered to the concept of United India and the Muslim League, insisted for the creation of Pakistan. Due to this disagreement, the Cabinet Mission announced its own scheme. It rejected the Muslim League's demand for division of India and recommended the establishment of Union of India consisting of provinces and princely states. The Union government was due to deal with four subjects i.e. Defence, Foreign Affairs, Communication and Finance. All the residuary powers were to be left for the provinces. The provinces were to be divided into three groups (Two blocks of Muslim Majority provinces and one block of Hindu Majority provinces). The provinces were to be given the power of opt out of any group by a majority vote of its Legislative Assembly and a specific provision to this effect was to be included in the Constitution of the Union Government and of the groups.

1.1.4 Establishment of Constituent Assembly and its composition under Cabinet Mission Plan.

In order to frame the Constitution on the lines suggested above, the Cabinet Mission proposed the establishment of Constituent Assembly. The Constituent Assembly was to consist of 389 members, 292 of whom were to come from provinces and 93 from the native princely states. The Chief Commissioner's provinces were to elect only four members. The provincial representatives from the British India were to be sent in the proportion of one member for one million population. The seats allocated to each provinces were to be divided between different communities in proportion to their population i.e., General, Muslims and Sikhs. The members of each community in the provincial legislative assemblies were to elect own representatives by the method of proportional representation with single transferable vote system. The mode of choosing the representatives of the Princely states (fixed on the basis of population) was to be determined by a Negotiative committee.

Composition of the Constituent Assembly under the Cabinet Mission Plan

Section A	SEATS			
	General	Muslims	Sikhs	Total
Madras	45	4	—	49
Bombay	19	2	—	21
U. P.	47	8	—	55
Bihar	31	5	—	36
C. P.	16	1	—	17
Orissa	9	—	—	9
	167	20	—	187
Section B				
Punjab	8	16	4	28
NWFP	0	3	—	3
Sind	1	3	—	4
	9	22	4	35
Section C				
Bengal	27	33	—	60
Assam	7	3	—	10
		34	36	70

Total Strength for Indian Provinces	:	292
Total Strength for Indian States	:	93
Total Strength for Chief Commissioner's Provinces	:	4
Grand Total	:	389

After the Preliminary meeting the Constituent Assembly, the provincial representatives were to be divided into three groups :

- (a) Non Muslim majority provinces of Bombay, Orissa, Bihar, U. P. and C. P.
- (b) Punjab, Sind, N. W.F.P and Baluchistan (Muslim Majority Provinces).
- (c) North East Muslim Majority provinces of Assam & Bengal.

Each group was to settle its own Constitution as they were also to decide if any group Constitution could be framed for the provinces and, if so, with what provincial subjects would it deal. After the group Constitutions were settled, the representatives of all the three groups were to assemble to finalise the Union Constitution, The British Government was to implement the Constitution as drawn by the Constituent Assembly of India. Finally the British Government was to negotiate a treaty with representatives of India, for the transfer of power.

1.1.5 Election and Formation of Constituent Assembly

The Cabinet Mission proposals, or Plan, was accepted by the Congress. The Muslim League also accepted it but later on it retracted from it. Elections to the Constituent

Assembly were held during July, 1946. The Congress captured 199 seats out of 210 general seats. The remaining 11 seats were captured in this way: Unionist Party of Punjab (2), Communist Party (1), Anti Congress Schedule Caste Federation (2), and six Independents. Out of 78 Muslim seats, the League captured 73 seats. The remaining five seats were won by Congress (3), The Unionist Party of Punjab (1), and Krishak Parja Party Bengal (1). In a House of 296, the Congress could count upon the allegiance of 212 members and the Muslim League had a slender group of 73 members. Unfortunately the Muslim League withdrew its acceptance of Cabinet Plan on July 29, 1946 and called for a Direct Action to achieve Pakistan. All efforts on the part of Congress and British Government to persuade the League to participate in the Indian constituent Assembly proved futile. The British Government in accordance with their own plan proceeded with the formation of interim Government comprising the leaders representing all shades of public opinion in India. The Viceroy. invited Jawahar Lal Nehru on August 14, 1946 to form the Interim Government at the Centre. On the contrary the Muslim League decided to observe 'Direct Action Day' on August 14, 1946. Hundreds of people were killed and property worth lacs of rupees was destroyed in Calcutta. Anyway, the League joined the Interim Government and five. nominees of Muslim League joined the Union Government. In the meanwhile the Constituent Assembly held its first session on December 9, 1946 but the Muslim League boycotted the Assembly. To resolve the deadlock, several meetings were arranged by the British Government but all proved abortive. Ultimately the partition plan (also known as Mount Batten plan) was accepted by the Congress and the Muslim League. In terms of this plan, the British Parliament passed the Indian Independence Act, 1947 and two States or India and Pakistan came into existence.

1.1.6 Self Check Exercise

- Q. 1 When was the idea for constituent Assembly mooted for the first time?
- Q. 2 Write briefly about Cabinet Mission Plan.
- Q. 3 What composition of the Constituent Assembly was proposed in the Cabinet Mission Plan?
- Q. 4 What was the composition of the Constituent Assembly party wise before the Partition?

1.1.7 Partition of India and Its effect on the Constituent Assembly of India

It may be noted that the Indian Independence Act of 1947 changed the nature and character of the Constituent Assembly and it truly became a sovereign body. It acquired a dual status. As a Constituent Assembly, it was to frame the Constitution representing the sovereign people of India. It was also to function as a Provisional parliament (Law making body) till the elections to the first Parliament under the new

Constitutions were held. As a result of the partition of India, not only its strength was reduced but representation to various communities also underwent marginal transformation. The seats for the provinces or Punjab, Bengal and Assam were redefined keeping in view the figures of population. The relative strength of members representing Indian Provinces and the Princely states stood at 299 on December 31, 1947. The detailed figures were as follows:

Assam	8
Ajmer-Mewar	1
Bombay	21
Bihar	36
C. P. & Beror	17
Coorg	1
Delhi	1
East Punjab	12
Madras	49
Orissa	9
U. P.	55
W. Bengal	19
Total	229
Representatives of princely states:	70
Total	229

1.1.8 Composition of Constituent Assembly

The Constituent Assembly appointed a seven members Drafting Committee on August 29, 1947 with Dr. B. R. Ambedkar as its Chairman. The other members of this committee were :

1. G. Gopalswami Ayyangar
2. Sir Alladi Krishnaswami Ayyar
3. Shri K. M. Munshi
4. Shri Saiyed Mohd Saadula
5. Sh. N. Madhva Rao
6. Sh. D. P. Khaitan who died in 1947 and was then replaced by T. Krishnamachari

The Constituent Assembly also appointed a number of Sub-Committees on January 22, 1947 to report their recommendations on different aspects of the new Constitution. Of the various Committee, the Advisory Committee on Minorities, Committee on Fundamental Rights and the Committee for Negotiating with the Princes. The reports of these Committees were considered by the Assembly and their recommendations were adopted after amendments, wherever it was felt

necessary. The Drafting Committee submitted the Draft Constitution consisting of 397 Articles with eight Schedules and it was published on February 21, 1948 for eliciting public reaction to it and was finally adopted after third reading on 26th November, 1949/ Some of the provisions were immediately enforced but the new constitution of India came into force on 26 January 1950. On the same day, Dr. Rajendra Prasad Assumed the office as President of the Indian Republic. From that date, the Constituent Assembly assumed the status of Provisional Parliament of India.

It may be noted that the task of framing Constitution was very arduous and the Assembly had to face a very difficult situation. To strengthen the unity and integrity of the country, in the wake of the partition of India, was a challenging task, it had to overcome many hurdles for reconciling the demands of regional autonomy vis-a-vis the unity of the country. For this very reason they could not ignore the need of creating a strong center. Again it was for the Assembly to work out a Constitution so that 562 Princely states should fall in line with the democratic provinces. The Assembly adequately accommodated the valid claims to backward classes for special concessions so that spirit of equality could prevail in the society.

It may also be recalled that the decision making process was thoroughly democratic and at all levels, due opportunity was provided to all sections of Assembly so that they could place their point of view without any hindrance. Decisions were arrived at through consensus. Such a Consensus was achieved on the basic postulates of the Constitution namely on federalism, secularism, democratic socialism, Parliamentary government and power of judicial, review etc.

1.1.1.8.1 Partywise Composition of the Constituent Assembly and the Role of the Opposition

It is a fact that Congress was in an overwhelming majority in the Constituent Assembly and therefore, it had a greater say in taking important decisions. The Partywise position as on July, August 1946, covering the representatives of Indian provinces, was as follows:

Congress	:	208
Muslim League	:	73
Unionist Party	:	1
Unionist Muslim	:	1
Unionist SC	:	1
Krishak Praja Party	:	1
SC Federation	:	1
Communist party	:	1

Akali Dal	:	1
Independents	:	8
Total	:	296

After the partition of the Country, the membership of the Constituent Assembly fell into four categories :

- (i) The representatives of the Congress;
- (ii) A few independence elected on the Congress ticket;
- (iii) Independents representing non-Congress Provincial legislators including the representatives of small parties;
- (iv) The Muslim Leaguers who had chosen to stay in India.

It is significant to note that the opposition in the Constituent Assembly had an insignificant representation. In the words of Chaube “the opposition there certainly was vocal but ineffective. The most important single reason of their ineffectiveness was indeed the lack of a common perspective.” The opposition consisted of the Muslim Leaguers, the Akalis, the two or three Congress Socialists and the two Forward Blockists.

It was mainly from the non-Congress opposition that the demand for greater provincial autonomy and statutory provisions for minorities was advanced (the Muslim league and the Akali Party were the vanguards of this move). It was mainly from the Congress opposition that the demand for great socialistic bias of the Constitution was raised. But for the presence of that the demand for great socialistic bias of the Constitution was raised. But for the presence of the opposition members the proceedings of the Assembly would have been very dull. The presence of such members as H. V. Math, P. D. Deshmukh, R. K. Sidhwa, Professor Shibani Lal Sexena, Pt. Thakurdas, Pt. H. N. Kanturu, not only gave suggestions but also helped in the making of the Constitution. Nonetheless, the opposition members in the Assembly suffered from the lack of any disciplined organization. There was nothing like an opposition party in the Constituent Assembly but there were only ginger groups. At the most they could raise their view points but due to their numerical weak position they had to accept the verdict of the majority which was controlled by the Congress party.

1.1.8.2 Pre-dominance of Congress in the Constitution Assembly and its Class Character

It is significant to note that the Congress not merely acted as a national political organisation and won majority in the Constituent Assembly but it also acted as the parliament for the Interim Government. As a matter of fact the Congress was all-the party, the government, the Constituent Assembly and even the country. The Congress organisation won majority of seats in the Constituent Assembly and its strength rose to 82 per cent after the partition of India. In the words of Austin the

Constituent. Assembly was a one party body in an essentially one party country. The Assembly was the Congress and the Congress was India. On account of the dominance of the Congress. Some scholars are of the opinion that the Constitution of India is virtually the gift of the Congress party. Rather, it was a small section of the top leaders who played a vital role in the framing of the Constitution. Austin believes that the top leaders included Nehru, Patel, Prasad, and Azad whom he calls the Congress oligarchy. These leaders took, all-important decisions and then prompted the Drafting Committee to shape the language of the draft Constitution accordingly. Simultaneously the top leadership played an equally effective role in the debates of the assembly. The result was that either the House came under the influence of these leaders or sometimes issued whips to keep the possible opponents under control. Within the Congress two main groups were operating. The Liberal Idealistic leadership of the Conservative group was in the hands of Sardar Vallabh Bhai Patel. Because of the organisational peculiarity the Congress could not have an agreed approach in the drafting of the Constitution. The shadow of Oligarchy, according to Austin, covered the Assembly party, but did not dominate it. The discussions were held mostly in the afternoon in the Constitutional House of Curzon Road. When the Assembly was in session, the discussions were full and frank, at times heated and acrimonious. On issues such as the public services, due process in relation to property and personal liberty, the federal provisions and languages, diversity of views within the Congress itself was apparent.

Nevertheless, we must note that the four heroes of the independence movement (Nehru, Patel, Prasad and Azad) continued to hold sway in the Congress during the framing period, as they had in the days before the independence. According to Austin there were about twenty individuals (including the above four leaders) with diverse backgrounds, personalities and qualifications who dominated in the formulation of the Constitution. All were University Graduates; four had university training or its equivalent degree outside India—Nehru, Patel, Ambedkar and Azad. Twelve were lawyers or had taken Law degrees; one was a Medical Doctor; two had been teachers; three had been high earning officials in the Civil government : one was a businessman; Two were Muslims, one Christian and the remainder Hindus. Of Hindus Ambedkar was a Scheduled caste, and three were Brahmins, the other seven were not of high caste. Five out of the group of twenty, had never been members of the Congress.

It is also pertinent to note that there was an important group of Lawyers who played a significant role in the framing of India's Constitution. Nehru, Patel, Rajendra Prasad, K. M. Munshi were all lawyers including A. K. Ayyer, N. G. Ayyangar, B. L. Ambedkar and B. L. Mitter and they all played a vital role in evolving formulas acceptable

to the groups controlled by Nehru and Patel.

As a matter of fact, the Constituent Assembly of India was mainly dominated by the leaders of the Congress party who belonged to the upper strata of society. There were few representatives of small farmers, landless labour, the artisan class and the wage earning class. It is true that Congress party believed in the philosophy of promotion the interests of these people, yet the fact remains that the weaker sections of the society were not represented in the Constituent Assembly.

1.1.8.3 Representation of Communities and other Interests

One of the outstanding features of the Constituent Assembly was that it was dominated by Hindus. This was obviously so due to the demographic changes after the partition of India. Although Hindus had a dominant position in the Constituent Assembly, yet all other communities of India were represented adequately.

Hindus	163
Scheduled Castes	31
Sikhs	4
Indian Christian	6
Backward Tribes	6
Anglo-Indians	3
Parsis	3
Muslims	80
Total	296

It may, therefore, be noted that every community in India, whatever the party affiliation of the persons representing that community, was represented in the assembly and therefore, to describe the Assembly as representing :only one major community in India or as a body of Hindus or as a meeting of caste Hindu is a complete travesty of facts.¹ The membership of the Constituent Assembly, therefore, represented a cross section of the population. As a matter of fact, the minorities had 88 members, which formed 37 percent Of the provincial membership of the Constituent Assembly. However, we should not forget that most of these representatives were returned on the Congress tickets and obviously, therefore, were bound by the discipline of the party. They could not afford to take a stand which was opposed to the professed ideals of the Congress party.

1.1.9 Functioning of the Constituent Assembly and Method of arriving at Decisions

As mentioned earlier the Constituent Assembly was dominated by Congress Party and had the overall influence of leaders like Nehru, Patel, Azad and Prasad. But still the assembly debated the issues in detail. There were two methods, which were adopted by the assembly to arrive at decisions. One by decision making by consensus

mid the other was by accommodation.

According to Granville Austin the success of the Constitution lies principally in its having been framed by Indians and in the excellence of the framing process itself. The members of the Assembly drafted a Constitution that expressed the aspirations of the Nation. They skillfully selected and modified the provisions that they borrowed, helped by the 'experts' among their number and the advice given by the ministries of the Union and provincial Governments. The Assembly members also applied to their task with great effectiveness two wholly Indian concepts consensus and accommodation. Accommodation was applied to the principles to be embodied in the Constitution. Consensus was the aim of decision-making process the single most important source of the Constituent Assembly's effectiveness.

1.1.9.1 Decision-Making by Consensus

Consensus is a manner of making decisions by unanimity. It is a recognition that majority rule may not be a successful way to decide political conflicts. Assembly leaders understood this well and bent their towards this goal in the hope and expectation that the Constitution framed by Consensus would work effectively and thus prove durable. According to Austin, "Consensus thus had a general appeal in the Assembly; to the leadership all ethical and effective way to reaching lasting agreement and to the rank and file as an indigenous institution that suited the framing of an Indian Constitution.

Consensus approach was adopted in a variety of ways. Most among them were the Congress Assembly Party meetings where each provision of the Constitution was subjected to frank and searching debates and whose approval was in fact as important as that of the Assembly itself. Everyone elected to the Assembly on the Congress ticket could attend meetings, from party stalwarts to non-Congressmen like Ayyar, Ambedkar, and N. G. Ayyangar, who were brought into the Assembly because the leadership believed that their talents should not be wasted. Also a part of this process were Assembly's Committee System, the dialogue between provincial and Union Government leaders in the Assembly, the many inter-government communications and the off the record discussions between assembly leaders dissidents among the members.

The primary examples of decision making by consensus were perhaps the federal and language provisions. The language question strained the Assembly's decision making machinery to the utmost. For nearly three years the members searched for a generally acceptable solution. The Munshi Ayyangar formula was drafted almost in desperation. Opening the Final Assembly debate on language, Prasad announced that he would not put the issue to a vote. If an agreement was not acceptable to the whole country it would be most difficult to implement.

1.1.9.2 The Principle of Accommodation

According to Austin, the second of India's original Constitution-making was the Principle of Accommodation—the ability to reconcile apparently incompatible concepts. India's Constitutional structure is a good example of the Principle of Accommodation on matters of substance. It has reconciled the federal and unitary system, membership of commonwealth and Republican status of Government. provisions for Panchayati Raj with the need for a strong central government.

1.1.9.3 The Act of Selection and Modification

According to Austin, the Constituent Assembly had discovered a new principle the art of selection and modification. Assembly was not merely imitative, the borrowing from different political system did not relieve the Assembly of choice and that the borrowed provisions had to be adopted to suit Indian conditions. One example of selection and modification is the method of Constitutional Amendment. The three mechanisms of the method devised by the Assembly have made the Constituent flexible while at the same time protecting the rights of the States. They have worked better than has the amending process in any other country where federalism and British parliamentary System jointly formed the basis of the Constitution. In brief, the Assembly selected and modified the provisions from other Constitutions with a great deal of professional help.

1.1.10 Evaluation of the Constituent Assembly

There is no doubt that the constituent Assembly did a commendable work and produced a Constitution, which went a long way in welding the Indian society into an organic whole. The Assembly comprised of the valiant freedom fighters who had played a magnificent role in the liberation of our motherland. Nobody can doubt the integrity and the hard work which they had put in producing a historic document for initiating new era for the Indian people for the fulfillment of their ideas as a free society.

The critics, however, have expressed their own misgivings in regard to the composition of the Constituent Assembly. Since Congress Party had an over whelming majority, the Constitution had been dubbed as a 'Congress Document.'¹ As a matter of fact the small oligarchy of the Congress members used to meet in camera and its decisions were carried out or ratified under the threat of its whip.

There is no doubt that other sections of the society were represented but their representation was so small that their views and opinions did not matter much. In other words, one could see that the Assembly was without an effective opposition and as such the Congress had not difficulty in incorporating measures of its own choice in the Constitution. One can recall here that no representative of the

Communist Party, the Socialist Party, the Hindu Maha Sabha were there in the Constituent Assembly.

Another serious flaw with regard to the Constituent Assembly related to its representative character. The members were elected indirectly by the members of the Provincial Legislative Assemblies (who were elected in 1945 on the basis of a very restricted franchise). It obviously implies that such a body elected by small number of elected members can hardly be said to represent the people. It meant that the Constituent Assembly had no mandate of the people. In a democratic system the Constitution making body should be elected by the people on the basis of universal adult franchise so that it could reflect the aspirations of the people. This was missing so far as the Constituent Assembly of India was concerned.

The other serious direct pertained to the mode of representation which was extended to the princely states. The people of India, who happened to form 40% of the total population of India, living in those princely states, were denied any representation in the Constituent Assembly. As a matter of fact, seats allocated to the princely states, were filled through nomination by the Princes of those states.

It is also argued that there were not representatives of the poorer section of Indian society and that the grand Assembly was dominated by lawyers and politicians. These people had no clear vision for the upliftment of the vast majority of people and as such the Constitution failed to pave way for ushering in the socio-economic revolution in our country.

Despite these drawbacks, we cannot overlook the fact that India was then passing through critical times. The wounds of partition had not yet healed. Pakistani raiders had attacked Kashmir to grab it by force. The crucial problem of 562 princely States was posing serious threat to the unity of India. Keeping in mind these threatening developments, it was though desirable to produce the Constitution at the earliest to herald the birth of a new nation. Constitution of India has been produced after giving due thought and by a democratic process. The Founding Fathers had rendered their best services by producing a document, which has been solemnly bequeathed to the people of India. It is now for the people of India to use it as instrument to fulfil their dreams.

1.1.11 Self Check Exercise

- Q. 1 Name the members of the Drafting Committee of the Constituent Assembly.
- Q. 2 Give Party wise composition of the Constituent Assembly after partition.
- Q. 3 What was meant by the Principle of Consensus and Accomodation.
- Q. 4 Which important Congress leaders influenced the decision making in the Constituent Assembly?

CONSTITUTION OF INDIA-ITS SALIENT FEATURES**STRUCTURE OF LESSON :**

- 1.2.1 Objectives of the Lesson
- 1.2.2 Introduction
- 1.2.3 Salient Features of the Constitution
 - 1.2.3.1 Drawn from different sources
 - 1.2.3.2 Written and Lengthy Constitutions
 - 1.2.3.3 Parliamentary form of government
 - 1.2.3.4 Secularism
 - 1.2.3.5 Federalism
 - 1.2.3.6 Rigidity
 - 1.2.3.7 Preamble
 - 1.2.3.8 Fundamental Rights and Duties
 - 1.2.3.9 Directive principles of state policy
 - 1.2.3.10. Independent Judiciary
 - 1.2.3.11. Nature of Indian Parliament
 - 1.2.3.12 Party System
 - 1.2.3.13 Suggested Readings

1.2.1 Objectives of the Lesson : The main objectives of the lesson is to make you answer of the main characteristic features of the Indian Constitution.

1.2.2 Introduction :-

Indian Constitution is a unique document and it has many remarkable features which distinguish it from other constitutions. Constitution is not regarded only as a legal document but it is looked upon as a political document to serve the needs and aspiration of its people. The makers of the Constitution were fully aware of the problems of Indian people who were the victims of the colonial rule and obviously, therefore, they desired to frame an ideal constitution so that it could meet the growing needs of our people. The constitution of India has many peculiar features.

1.2.3.1 Drawn from Different Sources

It is sometimes alleged that our constitution has no originality and it has been framed after “ransacking all the foreign constitutions of the world” Even the critics have dubbed it as “a bag of borrowings”. Professor M.P. Sharma has rightly maintained that the object of the makers of the constitution was not to frame an

original constitution. What they wanted was a good and workable constitution.² Dr. Ambedkar has aptly highlighted credit of the founding fathers who gathered the best features of the existing constitution and needs of the country. So, it is a patch work but it is a beautiful patch work. The makers of our Constitution, therefore, had no hesitation to borrow or to draw upon the experience of other people in preparing a constitution which was to suit the needs of a multi-religious, multi-lingual, multi-racial society.

Our association with Great Britain made it natural for us to draw upon their political institutions. The adoption of parliamentary system of government and the Rule of Law in our system are obviously the British gifts to us. The influence of American Constitution is very much evident in the Chapter on fundamental rights and in provisions relating to the establishment of an independent judicial system. Our federal system is modelled on the constitutional system of Canada, Australia and South Africa. The Directive Principles of State Policy show the influence of the Constitutions of Ireland. The Amending procedure of our Constitutions is a unique feature which is mixture of such procedures which find place in the constitutions of America and South Africa. The largest source of borrowing of course, has been government of India Act of 1935. In the words of Jennings, "The Constitution derives directly from the Government of India Act, 1935 and many of its provisions are copied almost textually.

Some constitutional experts, of course, criticised our Constitution for being "slavish imitation" or not suited to the genius of the people and even some went to the extent to saying that it would be un-workable. However, the history has proved otherwise and our constitution has survived while many constitution around us have withered away.

1.2.3.2 Written and Lengthy Constitution

In the words of Prof. Jennings, the Indian Constitution is the longest and most detailed constitution in the world.⁴ The original constitution (as enforced on 26th January, 1950) contained as many as 395 articles and 8 schedules. Ninth schedule was adopted as a result of First Constitution Amendment Act. (1950) for validating abolition of Zamindari. The constitution has been amended 98 times, so far and it continues to be the lengthiest Constitution in the world. After the repeal and addition of several provisions, it has at present 395 articles and 12 schedules. The additions are made in the Article by adding A,B,C, etc. and hence. the no. of Articles remains same. The extraordinary bulk of the constitution is due to several reasons.

- (a) Our constitution unlike the constitution of USA, sketches not only the detailed provisions relating to governmental system at the Union level but also describes in equal detail the structure and mechanism of state governments: In a federal policy, freedom is given to states to prepare their constitution.

But this was denied in our constitution.

- (b) Apart from it, detailed provisions have been made regarding distribution of power and functions between the Union and the states in all respects of their administration and other activities. Provisions have also been inserted regarding matters connected with Inter-State relations, coordination and adjudication of disputes amongst the states.
- (c) Indian Constitution contains an elaborate provision for fundamental rights which specifies the basic liberties and freedoms for the people. It also enumerates limitation, and restrictions which have been placed on our fundamental rights. Besides a special chapter IV dealing with Directive Principles of State policy has been inserted in our Constitution and they have been declared as fundamental in the governance of our country to complete the task of social revolution.
- (d) The makers of the constitution also included in detail the provisions relating to the organisation, structure, and functions of Supreme Court of India and also of the High Courts in the states including salaries allowances, etc. of the judges.
- (e) Keeping in view the peculiar problems of the Indian people, adequate provisions relating to official language, safeguards for the minorities like Anglo-Indians, Scheduled Castes and Scheduled Tribes etc; have included.
- (f) Effective provisions to ensure independent and impartial functioning of the Union Public Service Commission and Election Commission have been included.
- (g) Part XVIII of the constitution contains emergency provisions which were considered essential to save the infant democracy which was passing through critical times in the wake of the partition of the country.

It is, therefore, not difficult to understand the circumstances and reasons which prompted the Founding Fathers to incorporate so many provisions in our constitution, the Framers wanted to frame an ideal constitution so that it could meet the growing needs of the Indian people. They also took adequate safeguards to avoid all loopholes and defects, which they noticed in the working of all the known constitutions of the world.

1.2.3.3 Form of Government of India : (Parliamentary System)

The Constitution of India establishes a Parliamentary form of Government both at the Centre and in the States on the British model. The essence of the Parliamentary form of government is its responsibility to the legislature (Lok Sabha). The President is the head of the state. The real executive power is vested in Council of Ministers whose head is the Prime Minister. The Council of Ministers is collectively responsible to Lower House, i.e. Lok Sabha. Lok Sabha is directly elected on the basis of adult franchise normally for five years. The

position is the same in that States. Such a government is therefore, called a responsible government. This form of government is different from the Presidential form of government as in U.S.A. which is based on the theory of separation of powers and the President is the real executive. There the executive powers are vested in him. He is not responsible to the Lower House of Congress, i.e. the House of Representatives. The members of Legislature are appointed by the President and are responsible to him alone.

The Indian Constitution provides for a Council of Ministers with the Prime Minister as its head to aid and advise of President(Art 64). Under Article 65 (1), the Prime Minister shall be appointed by the President and other minister shall be appointed by the President on his recommendations. Every minister has to be a member of either, House of Parliament. If he is not a member, he must become the member of Parliament within the period of six months. If however, not elected in this period, he is bound to resign from the Cabinet. Before a minister enters his office the President shall administer to him the oath of office and secrecy. The minister hold office during the pleasure of the president.

According to Art. 65(2), the Prime Minister is the head of Council of Minister and is appointed by the President. But in appointing the Prime Minister the President can hardly exercise his discretion since we have adopted the English cabinet which works on the well accepted conventions. One of the well-established conventions in England is that the leader of the majority party of the Lower House is appointed Prime Minister. Hence, the provisions relating to the Council of Minister should be interpreted in the light of British experience. The President's choice to select of Prime Minister is restricted to the leader of the party commanding majority in the Lok Sabha or to a person who is in a position to win the confidence of the majority in the House. Thus when a single political party has gained absolute majority in the Lok Sabha and has an accepted leader, the President's choice of selecting Prime Minister is a mere formality.

In the case of multiple party system as it prevails in India presently, if no party gains absolute majority and a coalition government is to be formed, the President can exercise a little discretion and select the leader of party, who in his opinion can form a stable ministry. For example, since no party had clear majority in the 1996 general elections, the President S.D. Sharma invited the BJP, the single largest party in the House to form the government ignoring the claim of the National Front, an alliance of 13 parties 9 with support of the Congress from outside. Only when B.J.P. was defeated on the floor of the House i.e. when it could not prove its majority, National Front was given the chance to form the Government. This act, of the President was in conformity with the traditions of. parliamentary democracy because the foremost right to form the

government belongs to single largest party in the House. A few other examples can also be cited, President Sanjiva Reddy selected Ch. Charan Singh, leader of Lok Dal, as Prime Minister in 1969 after the resignation of Mr. Morarji Desai. Similarly the fall of V.P. Singh Government in Nov. 1989. the President appointed Mr. Chandra Shekhar, the leader of break-away Janata (S) with the support of Congress (I) as the Prime Minister. The other ministers are appointed by the President on the advice of the Prime Minister who has the final word in choosing the members of his team (Cabinet). This power of Prime Minister is also essential for the smooth functioning of principle of collective responsibility which is the basic principle of every parliamentary form of government. In England, this principle works on the well established convention, but in India this principle is ensured under Article 65(3) of the Constitution. Along with this principle of collective responsibility to Lok Sabha, the principle, of individual responsibility of each minister to the Parliament also works. If the Minister takes action without the Cabinet's approval, the cabinet may not retain him and at the same time contend that the responsibility is all his. According to Act 64 (1), the Prime Minister is constitutionally bound to communicate the decisions of the Cabinet and not merely render advice to the President. The President is in fact bound to accept the decision taken by the Cabinet, because, it is the Prime Minister and his cabinet which is responsible to the House of People. There is no provision in the constitution which makes the President responsible to the Parliament.

In the dismissal of ministers, the President accepts the recommendations of the Prime Minister. If the Prime Minister feels that the presence of any minister is detrimental to the efficiency, integrity of policy of government, he may advise the President to dismiss him from the Cabinet.

Again the Cabinet has to resign if it loses the confidence of the Lok Sabha in keeping with an established convention of parliamentary type of Government. Prof. V.N. Shukla has rightly observed that if the President dismisses a ministry when he is satisfied on reasonable ground that it has lost the support of the people. It is no violation of the Constitution. The will of people must in the end prevail.⁵

1.2.3.4 Secularism

A secular state means that in matters of religion it is neutral. It is the ancient doctrine in India that the state protects all religions but interferes in none. The state can have no religion of its own. It should treat all religions equally. The state must extend similar treatment to the Church, the Mosque, Gurudwara and the Temple. In a secular state, the state is only concerned with the relation between man and man. It is not concerned with the relation of man with God. It is left to individual's conscience.

Article 25(1) guarantees to all citizens the freedom of conscience and the

right to profess, practice and propagate any religion. This right is, however subject to public morality and health and to the other provisions of part III of the Constitution, under sub-clause (a) and (b) of clause (2) of Article 25 the state has the power (a) to regulate or restrict any economic financial or other secular activity which may be associated with religious practices, (b) to provide for (i) social welfare and reform and (ii) to throw open Hindu religious institutions of a public character to all classes and section of Hindus.

Religious liberty is subject to public order, morality and health. Thus, section 34 of the Police Act prohibits the slaughter of cattle or indecent exposure of One's person in public place. These acts cannot be justified on the plea of practice of religious rites. Further the state can regulate economic, financial and political activities associated with religious practices vide article 25(2). The freedom to practice extends only to those activities which form part top the essence of religion.

The state under Article 25, clause (2) (b) is authorised to make laws for social welfare and reform. Under this, the state can eradicate social practices and dogmas which stand in the path of the country's onward progress. They do not affect the essence of any religion. Article 26 concedes freedom to manage religious affairs . subject to public order, morality and health. However, it is significant to note that the right guaranteed by Article 25 is an individual religious denomination or any section thereof. Under the Article 26 it may be added that a religion denomination or organisation is free to manage its. own affairs in matters of religion. The state cannot interfere with exercise of this right unless it runs counter to public order, health or morality. The Court, however, has the right to determine whether a particular right or ceremony is regarded as essential by tenets of a particular religion.

Article 26 provides freedom from: the taxes for the promotion of the particular religion. This article emphasises the secular, character of the state. The public money collected by way to tax cannot be spent .by the state for the promotion of any particular religion. The reason underlying this provision is the India being a secular state and there being freedom of .religion guaranteed by the Constitutions both to individual and groups, it is against the policy of the Constitution, to payout of public funds any money for the promotion or maintenance of the particular religious denomination.

Article 28 prohibits religious instructions in the state aided institutions. The institutions are of four kinds: (a) Institutions wholly maintained by the State, (b) Institutions recognised by the State, (c) institutions that are receiving aid out of the state fund, (d) Institutions that are administered by the state but are established under any trust or endowment. In the institution of type (a) no religious instruction

can be imparted, (b) and (c) type of institutions religious instruction may be imparted only with the consent to the individuals. In the type (d) institutions, there is no restriction on religious instructions.

1.2.3.5 Federalism

The most remarkable feature of the Indian Constitution is its being a federal constitution but it acquires a unitary character during the time of emergency. During the proclamation of emergency, the normal distribution of powers between the Centre and the States undergoes a vital change. The Union parliament is empowered to legislate not only on the subjects mentioned in the State List, but also the. Central Government is empowered to give directions to State as to the manner in which it should execute its executive power. The financial arrangement between the Centre and the State can also be controlled by the Union Government. Thus, during the proclamation of emergency all power are centralised in .the Union Government and the Constitution acquires a unitary character.

The combination of federal and unitary system is a unique feature of the. Indian Constitution. It is not only in times of war but also in times of peace that our Constitution functions as unitary. This feature of the Constitution can be better understood in the context historical. background upon which the federalism has been introduced in India and also in the light of experiences in other federal countries.

Further, the State Reorganization Act of 1956 introduced the novel feature of regional coordination and cooperation through the formation of zonal Councils to act in an advisory capacity. The meeting of zonal Council is held periodically under the Home Minister of the Central Government. It constitutes a novel experiment in federalism.

In the light of the aforesaid observations, Indian federal system may be characterised as a unique model of a unitary system with certain subsidiary federal features. Certain features provided in the constitution to go to support this contention.

The Union Government is so powerful that the autonomy of the states seems all illusory. From the federal point of view the division of powers between the Centre and States is wholly unfair. The Union List includes all the major item of national importance External Affairs, Defence and the Defence Force. Arms and Ammunition, Atomic Energy, in all 96 items. The Centre exercises its overriding control over even the 46 items in the Concurrent list. The states have their control over 66 items of the State List. Further the residuary power have also been given to the Centre. In special circumstance, Parliament can breach into the State List and pass laws concerning matters included in that list. The 24th Amendment further curtailed the authority of the state to control law and order problems. The centre has the power

to deal with any grave situation of law (Art. 256 A).

In matters of finance, states are terribly weak. The Planning Commission is a central agency and the States have to approach it for all kinds of assistance. It is true that it has all been specially laid down in the Constitution as to what taxes shall be assigned to or shared with the states, but the proportion of states has been left to be determined by the President, on the advice of the Finance Commission. Article 250 provides that during the enforcement of a proclamation of Emergency, Parliament may make laws concerning any of the matters in the State List and this will remain in force until six months after the emergency.

The Central Parliament has such overriding Power that it can get political map of the Country changed. The Centre is empowered to modify the boundaries of the State. Thus the Centre in pursuance of these provisions, can change the boundary line of a state to its disadvantage. Thus the very existence of the state depends upon the sweet will of the Central Government.

Further the power of initiating a bill of amendment in the Constitution lies with the Centre alone. The State have limited say in matters of Constitutional amendments. Matters concerning the federal framework of the constitution have to be ratified by half of the state legislatures by simple majority.

The states in India do not share equality of representation in the Rajya Sabha. as is the case in the United States of America 'where equal representation is given to all the fifty states in the Senate, the upper house of Congress. Even the nominated element finds place in the Rajya Sabha. Further, states have to carry out central directions in addition to the delegation of some of its (the centre's) functions in relation to any matter co-extensive with its executive and authority.

Certain types of bills (those dealing with the compulsory acquisition of private property imposing taxes on a declared essential items etc.) passed by the state legislature reserved by the Governor for the President's consideration.

Single citizenship, uniform penal code, organisation of All India Services also add to the-powers of the Central Government. Prof. K.C. Wheare has rightly summed up the nature of Indian Federalism, as "India is a unitary state with the subsidiary federal rather than a federal state with subsidiary features of unitary state." He called it a "Quasi federal state."

1.2.3.6 Rigidity

The nature of amending process in a Constitution makes it either a rigid or flexible document. A rigid constitution is one which requires a special method of amendment for any of its provisions while in a flexible constitution any of its provisions can be amended by an ordinary legislative process. A written constitution is generally rigid. The Indian Constitution though written is sufficiently flexible. There are only a few provisions of the Constitution which require the consent of

the state legislatures. The rest of the provisions may be amended by a special majority of the Union Parliament. The fact that the Indian Constitution has been amended during the 63 years of working 98 times, disapproves the view taken by Sir Ivor Jennings who has characterised our Constitution as rigid for reasons (a) that process of amendment is complicated and difficult, (b) that matters which should have been left to legislation having been incorporated into the Constitution, no change in these matters is possible without going the process of amendment.

The unwritten nature of the British Constitution makes it extraordinarily flexible. It is adaptable to changing circumstances capable of evolution which no other system can match. The Constitution of the United States is written and rigid. It remains a problem of prime political national importance to maintain, in the Constitution of India, a degree of flexibility to keep with the nation's social and economic progress and purpose. The British Constitution continues to evolve according to time and circumstances. Under a written constitution in India the necessary evolution can only be brought about by constitutional amendments and by the growth of conventions and practices within the limits set by the constitutional provisions from time to time. The makers of the Indian Constitution appear to have provided in the Constitution provision for amendment and the requisite degree of flexibility in the constitution combined with restraint upon undue tinkering with it. The process of amendment of our Constitution has indeed taken away the initiative of the states. It violates the sanctity of our federal scheme which leaves no initiative to the states. The position of the states becomes all the more weak, when the same party acquires majority at the centre as well as in the states. In respect of the procedure of its amendment, Article 368 leaves a big scope for taking the matters to the courts for adjudication. Thus, the way is opened for the lawyer's paradise. The makers of our Constitution were guided by the interests of the people, which alone could restore confidence among the people and that no part of it should prove a stumbling block, to entail its own destruction under very compelling circumstances. For these considerations the constitution has been given a flexible nature with subsidiary touches of a rigid, constitution so far as the formal federal structure is concerned.

1.2.3.7 Preamble

The Preamble to constitution sets out the main objectives which the government intended to achieve. It is short introduction to the statute and is many a times very helpful to understand the policy and the legislative intent. Though in an ordinary statute not much importance is attached to the Preamble. All importance has to be attached to the Preamble in Constitutional statute. The Constitution makers have given to the Preamble the a prime place. Dealing with the Preamble in the Berubari

case. The Supreme Court said. "The Preamble to the Constitution is key to open the mind of the makers, and shows the general purpose for" which they made the several provisions in the Constitution. "In a nutshell the Preamble contains the goals and aspiration of the people of India.

The Preamble serves several purpose:

- (a) It indicates the sources from which the constitution comes viz., the people of India.
- (b) It contains the enacting clause which brings into force the constitution.
- (c) It declares the great right and freedom which the Constitution of India Intended to secure to all citizen and basic type of government and policy which was to be established as it has been explained in the preceding paragraphs.

It is ordained by the people of India through their representatives assembled in a sovereign Constituent Assembly. The Preamble declares in unambiguous terms that it is the people of India who have adopted, enacted and given to themselves this Constitution. It declares, therefore, that the source of authority under the constitution is the people of India and there is no subordination to any external authority.

The Preamble of the Constitution declares India to be a "Sovereign, Democratic, Republic." Sovereign power is that which is, absolute and uncontrolled. In the words of Cooley. "A State is sovereign where there resides within itself a supreme and absolute power acknowledging no superior." The word "sovereign" emphasizes that India is no more dependent upon any outside authority. However, India is still a member of the Commonwealth of Nations. But her membership 'of the Commonwealth of Nations is not inconsistent with her independent sovereign status.

Following are the objectives which the Preamble secures to every citizen:

Justice: Social, economic and political

Liberty: Of thought, expression, faith, worship.

Equality : Of status and opportunity to promote among the people of India.

Fraternity: Assuring the dignity of the individual and the unity of the Nation.

The Preamble enshrines the justifiable and non-justifiable part of our basic framework in the form of the Fundamental Rights and the Directive principle. In fact these well speak of democratic socialism to which the Government is supposed to (though in the present liberalised economic policies, it may sound paradoxical) wedded. Dr. Radakrishnan significantly said, the Preamble through these Rights and Principles aims at the elimination of the best nature of despotism and every hair loom of inorganic traditions. The Preamble sets out plan of aims and objectives which the government is expected to carry out in practice to justify the great moral significance attached to these by the Founding Fathers of a constitution.

However, one should not ignore that fact that the Preamble by itself is neither a source of power, nor a source of the deprivation of power.

The 42nd Constitution Amendment has amended the Preamble in following way:

- (a) In the Preamble to the Constitution for the words “Sovereign Democratic Republic” have been substituted, and
- (b) For the words “Unity of the Nation” the words ‘Unity and integrity of Nation has been substituted. ¹² The Chairman of the Amendment Committee of the Congress party’. Sardar Swaran Singh rejected the contention that the Preamble to the Constitution could not be amended. It could be altered or changed because the preamble was a part of the Constitution.

1.2.3.8 Fundamental Rights and Duties

The 42nd Constitution Amendment Act (1966) has introduced a list of ten duties which are enumerated in Article 51-A. Though these duties are not themselves enforceable in the courts nor their violation as such punishable, nevertheless, if a court, before which a fundamental right is sought to be enforced, has to read all part of the constitution, it may refuse to enforce a fundamental right at the instance of an individual who has patently violated any of the duties specifies in Art. 51-A. If so, the emphasis of the original constitution on fundamental right has been minimised.

1.2.3.9 Directive Principles of State Policy

The inclusion of Directive Principles of State policy, as observed by Dr. B.R. Ambedkar is a novel feature of the Indian constitution and they embody the basic objectives and ideals which the state must keep in mind while formulating policy and enacting new laws which have been declared as fundamental in the governance of the country. In reality they portray model of the Society which the Founding Fathers wanted to establish in India. The Directive Principles of State Policy are contained in part IV of the Indian constitution. If fundamental rights need to guarantee democratic order, the Directive Principles spell out a charter of social and economic democracy in our country.

Through 42nd Constitution Amendment Act, 1966 the state acquired a right to implement all Directives and so such laws could be declared void even though it abridges fundamental rights contained in Arts 14, 19 and 31. But in a later judgement the Supreme Court has struck down Section 4 of the 42nd constitution Amendment Act which gave primacy to the Directive Principle over Fundamental Rights. The Court held that the Section 4 of Article 31-C was beyond the amending power of the parliament and was void since it damaged the basic or essential features of the constitution by total exclusion of challenge in a court of law on the grounds that it took away or abridged rights for implementing Directive Principles.

1.2.3.10. Independent Judiciary

A democratic policy can survive if it has an independent judicial system to ensure Rule of law in place of “Rule of men”. The makers of Indian Constitution were fully aware of the need for such a judicial system as the judiciary was to act not only as guardian of the constitution but also as protector of the basic liberties of the Indian People. The Constitution provides sufficient safeguards to enable the judges of Supreme Court and High Court to work independently without any fear. Judges of these courts can be removed through an extremely difficult process. They are paid handsome salaries which are paid out of the Consolidated Fund of India. After retirement they are entitled to pensions.

1.2.3.11. Nature of Indian Parliament

Indian Parliament is the creature of the Constitution of India. Its powers, rights, privileges and obligations are found in the relevant articles of the Constitution of India. The British Parliament on the other hand, is a sovereign law-making body and is not the creation of the Constitution which is unwritten. It is not only sovereign but uncontrolled and possesses unlimited powers. The Constitution of India has conferred on the Indian Parliament powers to make laws in respect of matters specified in the appropriate place and schedules and curtailed its right and powers under certain other articles and particularly by the articles relevant of fundamental rights.

The Parliament in India consists of President, Lower House (Lok Sabha) and Upper House (Rajya Sabha). “The President, though an integral part of the Parliament, is not a member of the Parliament (either house). The general pattern of our parliament is like “that of the English Parliament. It is a non-sovereign law-making body like the American Congress as the legislative authority is conditioned by the Written constitution. It is interesting to note that though the system of Parliamentary Government has been adopted according to the British model; the American doctrine of judicial review has been engrafted upon it to a limited extent, so our Parliament is the supreme law making body but not the sovereign law making body. The 42nd Constitution Amendment Act strengthened the position of the Indian Parliament and conferred on it power to amend any part of Constitution, But in a judgement issued on May 9, 1980 the Supreme Court struck down section 55 of Constitution (42nd) Amendment Act 1966 which has placed unlimited powers on Parliament to amend the constitution. This removed the fears that the amending power may be used for political purpose as was done by the Congress Government in its 19 month period Emergency

There exists identical relationship between Executive and the Parliament in India and between the Executive and the Parliament in Britain. The difference between the two systems consists of the fact that Britain has a hereditary sovereign while

India has a President elected by an electoral College representing the Union and State Legislatures. India has a written constitution which may be amended only in accordance with the provision and produces set out in the Constitution itself and requiring more than a simple majority in Parliament while Britain has an unwritten Constitution and its constitution can be changed by the Parliament through a simple majority which in effect is the majority in the House of Commons, only.

The Indian system, like the British, is based on the principle of a unitary concept. There is division of functions between the Executive and Parliament but there is no separation of powers such as the one prevails in a Presidential system like that of the United States of America.. Parliament. controls the Executive, in every aspect of the latter's working. The Executive must at all times have the confidence of the parliament in the lower House (Lok Sabha) Lacking the confidence-it must resign. In a very real sense and unlike again a presidential system, both Parliament and Executive are different aspects of one integrated whole. In India all the members of the Council of Minister, alongwith the Prime Minister as its head are members of Parliament itself In this system there is an established convention that the Prime Minister should normally be a member of the elected chamber. Our constitution has adopted this model. The Parliament may censure the Government depends or upon which it stakes its position. In that situation the Executive Government must fall immediately. Conversely however, the Prime Minister may advise the President to dissolve the Lok Sabha and call for a fresh general election thus ending the life of the Parliament (Lok Sabha only). The power to dissolve is a very strong weapon in the hand of a Prime Minister, and is not uncommon in the use. A Prime Minister, with a slim majority in Parliament (as was the situation in 1969 when the Prime Minister Smt. Indira Gandhi was left with minority support in a House of 525 members consequent on the Congress party split in 1969) may decide upon a fresh election in the hope and expectation of increasing majority, so as to reduce dependence upon other party or the pressure of a strong opposition. This happened in India in 1961 and in Britain in 1960. The Indian Prime Minister returned with a greatly. increased majority. The British one lost the election altogether and resigned, thereby making way for the opposition to form the government. It may be noted that the President under the 42nd Constitution Amendment has been made a symbolic head of the nation by inserting changes in Article 64 of the Constitution and has been deprived of his discretionary powers. He appears to be in fact a dummy figure. In certain circumstances, however, he can exercise tremendous power as demonstrated by President. Sh. Sanjiva Reddy at the time of split in Janata Party in 1969.

1.2.3.12. Party System

The nature and arrangement of the political parties is the key in the relation between society and politics. The party system is- shaped and coloured by interests and ideas of groups in society and in turn contributes significantly to the character of the whole political system. Political parties are said to receive and express the nations and wishes of their supporters both active and passive. The tendency in any political party of similar body will be for the leadership to be somewhat removed from the rank and file, to be confronted therefore, with continuous problems of communication and units within the organisation. In the case of a federal policy like India's where the units are not simply a consequence of size but also correspond to regional languages and cultures, nation-wide organisation has to rely on loose reins. The notable advantage of this is that quite diverse groups can be held together in the party's confederation providing support as well as tension. The politician are the agent for bringing out a single political culture in their expanded political activity.

In India, the 30 years supremacy of Congress Party continued up to March 1966. With a strange development on political scene, the Congress was replaced by the Janata Party in March 1966 poll at the centre and later on in nine northern states. The Janata Party could remain in power for nearly two years and four months only and due to clash of personalities it cracked. A midterm poll took place in January, 1980 in which Congress (I) regained majority at the centre. It also came in power in majority of states once again. But in 1989 elections, again Congress party was defeated National Front formed its government.

The National Front was the result of the efforts at opposition unity. It constituted of Janata Dal, DMK, AGP and TDP. The Front fought the 1989 election on one manifesto. However after elections it had to take the support of Left parties as well as BJP. The issue of L. K. Advani's *Rath Yatra* led to withdrawal of support by BJP. V.P. Singh government fell giving place to Janata (S) Chandra Shekhar's minority government. The 10th Lok Sabha election brought the Cong.(I) back to power, though not having majority as its own. But interestingly Cong (I) managed to survive two vote of no confidence motions and acquired majority by using the ultimate weapon of splits and mergers.

The retentive capacity of the Congress has been very great. Though the split of Congress during Janta Rule and its support having been confined to south only yet it could retain its national character. It has also held together many regional interests within its fold. This had not only ensured the stability of the Government but had also led to the total exclusion of any party or the national community from the channels of power. Almost all the segments of India's population the Sikhs and the Tamilians, the industrial workers and the Harijan had been able to

find as much place inside the Congress as anywhere. The March 1966 and the 1989 polls certainly led to the debacle of the Congress but the later political developments proved that this setback was only a temporary phase. It returned to power once again in 1991, though not with clear majority, but later on it secured that as well through mergers and alliance with other parties and remained in power for a full term of five years. BJP was the main opposition party in 10th Lok Sabha with 124 seats. The next elections held in May, 1996 to elect 11th Lok Sabha brought forth the BJP as single largest party with 160 seats (195 for the BJP & allies) while the Congress emerged as the second largest party with 140 seats. The third front called United Front secured 169 seats. The BJP being the single largest party was given the first chance to form government, but it remained in office for 13 days with Atal Bihari Vajpayee as its leader and Prime Minister, but it had to go because it could not win the motion of confidence. The United Front consisting of 13 parties remained at the helm of affairs with the outside support of the Congress party. Some of the partners in this 13 party coalition were Janata Dal, Samajvadi party, DMK, Telgu Desam Party, Trinmul Congress CPI (M), RSP, Forward Block, Assam Gana Parishad. Some other small parties were also supported the government without participating in it.

One novel feature that has emerged during 1996 elections is that now regional parties are playing a crucial role at the national level politics and the partners in the government at the centre. Another important feature worth taking note of the fact that for first time in the history of free India, CPI joined the National Front Government. The BJP Govt. in 1998 and Oct. 1999 is also made with help of regional parties (NDA). In 2004 election, United Progressive Alliance (UPA) formed the Government. It was having regional parties with Congress (UPA). After 15th General Election in 2009, the UPA again formed its government.

The days of one party's absolute majority are over. The opposition parties in India seem to have acquired boldness and are now quite aware of the fact that Congress had never, at the centre of within states as a whole had a majority country's votes behind it.

The Indian party system has its own peculiarities. The phenomenon fragmentation and polarization in particular since 1966 general election has been quite prominent. Non-Congress parties have not only fragmented themselves have." also sought polarization to face the dominant congress party at the polls. Even the, powerful party which emerged as a result of emergency and captured power the centre i.e. Janata Party, could not continue for a long time and became a prey to internal bickering. Some of the parties later merged themselves in Congress to share the dividends of power possessed by the dominant Congress party. The tendency had also strengthened the position and power contents of the Congress

Party as Rajni Kothari puts it. "There is plurality within the dominant party which makes it more representative, provides flexibility and sustains internal competitors. At the same time, it is prepared to absorb group and movement from outside party and, thus, prevents other parties from gaining strength."

At present, the party system of India has, apart from the Congress (I) a number of other parties. Quite a few of them have already been mentioned above. Some other important parties at national and regional scene are BJP, Shiv Sena, Shiromani Akali Dal, Bahujan Samaj Party, Muslim League, Samata Party, Haryana Vikas Party, Jharkhand Mukti Morcha. The list, however, is inexhaustive.

1.2.13 SUGGESTED READINGS

1. Constitution Assembly Debates Vols VII, VIII, IX, X, XI.
2. Granville Austin: The Indian Constitution-Cornerstone of a Nation. ,
3. K.V. Rao : Parliamentary Democracy of India - A Critical Commentary.
4. S.C. Gangal : Prime Minister and the Cabinet in India.
5. The Constitution of India. (Original Text)
6. Ivor Jennings: Some Characteristics of the Indian Constitution.
7. V.P. Luthra : The Concept of Secular State of India.
8. D.D. Basu : Commentary on the Constitution of India, Vol., 1, 5 (ed.)
9. M.V. Paylee : Constitutional government in India.
10. Gajendragadkar: The Constitution of India: Its Philosophy and Postulates.

THE PREAMBLE AND ITS IMPORTANCE

The Preamble is an introduction to the Constitution, which states the aims and objectives for the achievement of which the Constitution is enacted and adopted. Generally, every important enactment is prefaced by a preamble which serves the same purpose as is served by a preface in a book. It briefs us as to why it has become necessary to pass the Act and what are the purpose and objects which the act aims at achieving. There was a preamble to the Government of India Act, 1919 and the same preamble was retained for the Government of India Act, 1935. The new constitution of India also has a preamble.

The Preamble to our Constitution is based upon the Resolution of Objectives which Pt. J.L. Nehru had moved in the Constitution Assembly of India in January 1947. The preamble is a part of the constitution and its constitutional significance is utmost important. It explains the aims and ideology behind the document enacted. It tells us the sources from which the Indian constitution springs.

The Preamble subscribes to the nation of popular sovereignty in: as much as the sovereign power is said to belong to the people themselves It contains the essence' of Objective Resolution and proclaims the grand ideals of justice, liberty, equality and fraternity, secularism and socialism. These are the objectives to be realised through the constitution. The preamble to the constitution indicates the sources sanction, pattern, object and contents of the constitution. The Preamble to the Indian Constitution reads "We the people, of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic and to secure to all its citizens;"

Justice, social, economic and political;

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

Equality of status and 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, the 26th day of November, 1949 do hereby adopt enact and give to ourselves this constitution.

The words socialist, secular and integrity were inserted by the Constitution 42nd Amendment Act. 1976.

This clearly shows that the framers of the Constitution claimed to have drafted the Constitution on behalf of and in accordance with the wishes of the people of India, acting as their representatives. A study of the Preamble clearly points out the objects and purposes underlying our constitution.

The Preamble to the Constitution begins with the words, "We, the people of India." These words clearly indicate that all authority for the framing giving and adopting this constitution emanates from the people of India themselves and the constitution itself is founded on the authority of the people. 'Although, there is no independent Article in the Constitution, as it is in the Constitution of Eire (Ireland) (Article 6), declaring that all powers are derived from the people, or vesting the sovereignty of the reserved powers in the people as in the United States of America (Tenth Amendment), yet the preamble emphasises the ultimate sovereignty of the people. The preamble emphasises that the constitution is enacted by the people of India and given by them to themselves and does not come from the British Parliament. Unlike the previous Government of India Acts. This means, it is neither an imposition, nor a grant by some outside authority. It is also emphasised that the Constitution of India is created by the people of India as a whole and not by several units, therefore, no state or group of states can either put an end to the constitution or secede from the Union created by it. The sovereignty of the people is, therefore, complete in all its aspects.

Sovereign Democratic Republic

The Preamble proclaims India to be a Sovereign Democratic Republic. It means Indian is a sovereign state subject to no other authority either in, her internal affairs or external relations and transactions. Its power is absolute in its own sphere. The Objective Resolution of the Constituent Assembly contained the words "Independent and Sovereign". It was finally decided to delete the word "Independent" since independence is a part of sovereignty.

India has declared herself to be a member of Commonwealth of Nations at the Prime Minister's Conference which met in London in 1949. But this association is purely voluntary and does not restrict the external sovereignty of India. The Commonwealth Agreement is extra-constitutional, "It is an agreement by free will, as Nehru said, "to be terminated by free will."

The Indian Independence Act 1947, had continued the constitutional relationship of the Crown of Britain and the Dominion of India by providing that the Governor General or India would be appointed by the king and he represented his Majesty for the purposes of the Government of the Dominion. The Constitution of India has brought to an end this constitutional relationship and with its inauguration India became completely independent and sovereign.

Democratic

India is a democracy. The Government established under this Constitution is the Government of people and responsible to the people, the highest offices of which are open to all whatever caste, colour, creed or faith one may belong to provided one is a citizen of India has the capability to hold the office. In India ultimate power resides in the electorate comprising the entire adult population while the government of India is carried on through their representative elected on the basis of universal adult franchise. Secondary, democracy implies the maintenance and preservation of the rights of man. The Indian Constitution contains an elaborate list of individual rights as also provision for their adequate protection by means of constitutional remedies.

In its broad sense, however, democracy embraces, in addition to political democracy social and economic democracy as well. It is in this sense of the term 'democratic' is used in the Preamble.

Republic

India is a Republic in as much as it is headed by a President who is to be indirectly elected under Articles 54 and 55 by an electoral College consisting of all the elected members of Parliament and the State Legislative Assemblies, for a period of five years. The term republic implies an elected head of this state and does not come to occupy the office by virtue of heredity as in a monarchy. He cannot hold power as a proprietary right and must exercise all power for the common good.

The expression "democratic republic", therefore, does not only emphasise the elective principle governing the Head of the State, but also provides the means for the realisation for all citizens of India justice, liberty, equality and fraternity, the four pillars of democracy.

Socialist

The Constitution Amendment Act of 1976 has made explicit what was hitherto implicit in the constitutions. By inserting the word socialist it is intended to give a positive direction to the government in formulating its policies. The objectives of social and economic justice and its fulfillment are basic to bringing about far-reaching economic changes to which we stand committed.

Secular

In terms of their attitude towards religion, the states are generally classified as theocratic, atheistic or secular. The Constitution of India did not specifically commit India to any of these three positions. But the 42nd Constitution Amendment has now clearly spelt out the concept of secularism in the Preamble as to give constitutional sanctity to a long cherished value of our national life. By incorporation it in the preamble, we have only inscribed into our fundamental law an accepted fact. It only signifies that we have respect for all religions and equal respect for all. The state shall guarantee to all

citizens liberty of faith, belief and worship. Further more, all persons shall have the right freely to profess propagate and. practice any religion. They are also entitled to establish and maintain the religious institutions of their choice. The state has been prohibited from imposing religious tax or forcing religious instructions on any person in any educational institution wholly maintained out of state-funds. The state has been directed not to discriminate among citizens on the basis of religion as such.

Thus, all religions in this country, however, small their strength may be, have the same status and same prestige and same support from the state. The state, being secular, will protect every religion equally, but the state will not have any foundation on religion.

Justice

The Preamble assures the people of India, Justice, Justice implies a 'harmonious reconciliation of individual conduct with the general welfare of the society.' The essence of justice is the attainment of the common good as distinguished from the good of the individuals or even of the majority of them. Our constitution professes to secure to all its citizens social, economic and political justice. The justice mentioned here is different from the justice to be administered by a court of law, which has necessarily to deal with the interpretation of mute law, with regard to a case before it without caring for the social, economic and political status Or a person who is standing trial. The justice mentioned here refers actually to an administrative act.

Social justice is the sine qua non of a welfare state in as much as it prohibits discrimination of any artificial grounds; it also prohibits forces creating artificial social barriers like those the untouchability. It has been laid down that untouchability has been abolished for ever; no one will be treated as a low-caste or untouchable. In a back Ward country like ours it is also required that the state must make concerted efforts to improve the lot of the downtrodden and weaker sections of the people. Thus Government of India, while doing social justice to the people, does not have to apply the same norms to all the sections of the society as the courts have to do. For example, a special education, free or at a nominal cost will have to be given to the backward people or this country to improve their social lot, Which would not be necessary for those who are already advanced.

Economic Justice

It is virtually a corollary to the social justice. It means non-discrimination between man and man on the basis of economic values. It is envisaged that equal wages will be paid for equal work. Conditions of service of the workers and their wages would be such that they can lead a good life. The constitution prohibits forced labour or beggar. It is further demanded that the state of national economy be reshaped in such a way that its benefits are equitably or justly available to a common man. Thus, the very concept of economic justice involves the idea of a socialist pattern of society.

Again, an economic justice would not be done if the Government of India were levy the

same rates of taxation on all the strata of society. The low-income groups will have to be made to suffer less under a heavy burden of taxation than the high income groups in order to do economic justice between them.

Political Justice

It ensures free and fair participation of the people in their political life. As such, universal adult franchise has been guaranteed. Every adult has been given the right to cast vote irrespective of caste, colour, creed or sex and religion. Thus political justice would require a special consideration to be given to the politically backward people, so as outstanding feature of political justice may be discovered in the fact that our Constitution shows no commitment to a particular variety or political order. It establishes, what is called, liberal democratic order.

Liberty

The term 'liberty' signifies the creation of conditions which provide the essential ingredient necessary for the complete development of human personality. The progress of society depends on the society. It is a utmost necessity that the individual should give maximum to the society. Moreover, democracy cannot be established unless certain minimum rights, which are essential for a free and civilised existence, are assured to every member of the community. The liberty of thought, expression and belief are necessary attributes of a truly democratic government, while that of belief and faith are necessary for the establishment of a secular state. The Preamble mentions, these essential individual rights as freedom of thought, expression, belief, faith and worship and these have been guaranteed against all the authorities of the state under part III of the constitution.

Equality

Liberty and equality are complementary. Equality does not mean that all human beings are equal in physical and mental faculties. It connotes equality of status, the status of free individuals and equality of opportunity. "Equality of status and opportunity" means that all the people of India, belonging to whatever creed or caste, would enjoy an equal status of a citizen before law. While administering justice, no distinction would be made whether a person is rich or poor, a Minister or a pauper. All will stand as equals in a court of law and each will receive his due according to his deeds. Equality of opportunity means equal chances for every person to develop potential capacity. Thus the people of India will be given among them; equal opportunity for employment and other such matters.

Thus, it is pertinent to note that guaranteeing of certain rights to each individual would be meaningless unless all inequality is banished from the social structure and each individual is assured of equality of status and opportunity for the development of the best in him and the means for the enforcement of the rights guaranteed to him. This

object is secured in the body of the constitution, by making illegal all the discriminations by the state between merely on the grounds of religion, race, caste, sex or place of birth (Art. 15); by throwing open 'public places' to all citizens (Art 15 (2)) by abolishing untouchability (Art 17); by abolishing titles of honour (Art. 18); by providing equality of opportunity in matters related to employment under the state (Art 16) by guaranteeing equality before law and equal protection of the laws, as justiciable rights (Art 14).

In, addition to the above provision to ensure civic equality the constitution seeks to achieve political equality by providing of universal adult franchise (Art 326) **Fraternity** Then the Government of India is called upon by the preamble to promote fraternity or brotherly love. among the people in order to ensure the dignity of the individual and the unity and integrity of the nation. This ideal of fraternity is also upheld by the U.N. Charter. It seems to have incorporated Art. 1 of the Universal Declaration of Human Rights of 1948, that says, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood.

The ideal of Fraternity has two salient parts - unity plus integrity of the nation and the dignity of the individual, Both are not only integral, rather the latter depends upon the former. The Preamble of the Indian Constitution assures the unity of the nation by emphasising "fraternity" or the spirit of the brotherhood amongst all the Indian irrespective of the differences of caste, creed language and culture. To achieve the ideal of brotherhood and unity, the Indian constitution has abolished untouchability and communal electorates.

The phrase 'dignity of the individual' signifies that the constitution, as K.M. Munshi, said is an instrument not only ensuring material betterment and maintaining a democratic set-up, but that it recognises that the personality of every individual is sacred. The addition of the phrase relating to the Integrity of the nation; in 1976 has been done to strengthen the concept of national integration.

Importance of the Preamble

Though by itself not enforceable in a court of law, the Preamble states the objects which the Constitution seeks to establish and promote and also aids the legal. interpretation of the Constitution where there is any vagueness or controversy. Its significance lies in the fact that it established certain facts and declares certain principles which clearly pronounce certain features of our constitution which would deserve more than a passing reference.

The main function of a preamble is to explain certain facts which are necessary to be explained before the enactment contained in the Act can be understood.

Whether it is a part of the Constitution or not, is still an issue of debate, but the generally

held view is that it is an introduction to and not a part of the constitution. The importance and utility of the preamble has been pointed out in a number of judgements pronounced by the Supreme Court. Interestingly, the court has come to the view point that the preamble cannot be set aside unless it comes in direct conflict with a clear and unambiguous enacted part of the constitution. By itself, the preamble does not either restrict or expand any law of the Constitution, It is only when there is a lack of clarity about a particular clause of the constitution that we can look into the Preamble to ascertain the intentions of the framers of the constitution.

The Supreme Court of India has now inclined to take a larger cognizance of the Preamble as setting forth the goal of our political set up, so that it may be invoked, to determine the ambit of Fundamental Rights and the Directive Principles of the State Policy, because it is the ideals of socialism, secularism, and democracy which are elaborated by the enacting provisions.

As far as amendment of the constitution is concerned, the preamble presumably subject to amendment, as by the 42nd Amendment three words- socialist, secular and integrity' were inserted.

Conclusion

Thus the Preamble embodies the spirit of the Constitution and the ideal of the Indian people to promote national unity and integrity, and common welfare. It is evident from the preamble that republicanism, secularism, democracy, national sovereignty, justice, liberty, equality, fraternity, nation unity and integrity are the main pillars on which the constitutional structure of India is built, Pandit Thakur Dass Bhargava, member of the Constituent Assembly, while appreciating the Preamble said." The Preamble is the most precious part of the constitution. It is the soul of the constitution. It is a key to the constitution. It is a jewel set in the constitution. It is a superb prosepoem, may it is perfection in itself."

As a result we can say that the source of authority in every sphere and at all levels in the people themselves. It is a sacred document which must be honored and respected by all, under all circumstances so that we may show our reverence to the framers of the constitution.

LESSON NO. 1.4

UNION-STATE RELATIONS IN INDIA

In this lesson, we shall discuss legislative, financial and administrative relations between Union and the states.

Legislative Relations

In a Federation, legislative relations between the federating units are wholly dependent on the division of powers made by the Constitution itself. Two practices are generally adopted and one is that of United States of America. There, the constitution clearly specified the powers of the federal government and all the remaining powers are given to the federating units. This method results into federation with weak centre. And then there is Canadian model, according to which the powers of the units are clearly demarcated and all the residuary powers. The result is a highly centralised federation.

India has not adopted any of these practices, though, Indian federation is also a centralised one like that of Canada, in fact Indian federation has got certain peculiar characteristics of its own, which we had to adopt taking instance from our past history.

When the British rule was firmly established in India and central government was given too many powers, but soon the policy of decentralisation was adopted, which culminated into the Government of India Act, 1935.

The Act attempted to solve two major problems of India i.e. that of princely states and that of communalism by creating federation. Though the federation as provided for in this Act, could not be established; yet the division of subject as provided in the Act served as an ideal for the constitution provides for three legislative lists in the constitution i.e. Union list, State list and Concurrent list. As all the residuary powers have been vested in the centre, some people are of the opinion that only State list and Concurrent list should have been specified and the residuary powers should have been left with the centre. But the Drafting Committee was of the opinion that the three detailed lists would prevent the possibility of all these disputes between the federating units which were likely to arise to due vague statement of their legislative powers in the constitution itself. This is a general defect of federal governments, specially that of Canadian federation. One thing must be kept in mind that the question as to how the division of powers should be made and whether the residuary powers should be vested in the centre of the states,

can be solved only after keeping in view the particular political background of a country. For example, in the United States of America, though small States aspired for federation, they never liked complete subordination to the centre. They were of the opinion that those matters which concerned them all, should be entrusted to the centre and all others should be left to them. For this very reason, only, the list of the legislative powers of the federal government is included in the American constitution and the residuary power are left to the units. Our Constitution makers were well aware of the defects of a weak centre, as there are so many instances of disintegration in our history due to a weak government at the centre. So a strong centre was preferred.

Division of Powers under the Indian Constitution

Indian federation is characterised by a high degree of centralisation. This is made unmistakably clear by three lists contained in the seventh schedule and other provisions of the constitution.

Union List: This list contains 97 items and is thus the longest of the three. The Union Parliament has the exclusive authority to frame laws on subjects enumerated in this list. Among these subjects are Foreign Affairs, Defence and Armed forces, War and Peace, atomic energy and natural resources necessary for its production. Posts and Telegraph, Foreign, Trade, Interstate Commerce, Banking, Insurance and Interstate rivers etc.

State List: The State list, consisting of 66 items contains subjects out of which, ordinarily, the states alone can make laws. In other words these subjects are, outside the legislative jurisdiction of the parliament under normal circumstances. Included among these subjects are, Public order, Police, Administration of Justice, Local Government, Public Health and Sanitation, Education etc. The subjects enumerated in State list indicate a substantial field of local action. What makes the state autonomy less real than it appears at a first glance, is the fact that under certain conditions the constitution authorises the Union Government to extend its jurisdiction over matters formally included in the State list. Article 249 empowers the Rajya Sabha (Council of States) to transfer for a year at a time, any matter in the State list to the legislative jurisdiction over matters formally included in the State list. Article 249 empowers the Rajya Sabha (Council of States) to transfer for a year at a time, any matter in the state list to the legislative jurisdiction of Parliament by a resolution passed by a two third majority: Article 250 empowers Parliament to legislate with respect to any matter in the State list during the operation of the proclamation of Emergency: Such a law is in valid during the emergency and even six months after that.

According to Article 252 Parliament acquired the right to legislate on any subject in the state list, if the legislature of two or more states resolve to make a request to Parliament

to that effect., The laws so made by the Parliament can also apply to other states which may adopt them after expressing their request in the same matter.

Article 253 empowers Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention any other country or countries or any decision made at any international conference, association or body.

Concurrent List

This list consists of 47 subjects. Both the Union Parliament and state legislatures can make laws on subjects given in the concurrent list. The concurrent list is, infact, a device to avoid the rigidity to two lists, distribution of which tends to place the power of the centre and the units in watertight compartments.

This possibility of interference into each other's sphere increases due to concurrent list because it consists of such subjects on which both can frame laws and due to this there can be conflicts regarding jurisdiction. The concurrent list consisted of such subjects which are to some extent related to -the local or national interest such as criminal laws procedure, civil procedure, marriage and divorce, economic and social planning, trade unions, labour welfare and so on. Though both Parliament and states Legislatures have concurrent powers as regards this list, yet in case of a conflict, the central law must to the extent of repugnancy, prevail over the state law. If however, 'the state law has been reserved for or has received President's assent, it will prevail over the central law. Thus in case of conflict over concurrent subjects, the position of the centre is again far more stronger than States.

Residuary Powers: All residuary powers i.e. the powers not specially included in the three lists have been placed under the legislative jurisdiction of the Union Parliament. This is yet another departure from the normal pattern of federalism. In U.S.A. Switzerland and Australia, residuary powers have been vested in the component units. Under the Government of India Act-1935, these powers were not given to any of the federating units and Governor General had the power to entrust them to any of the two according to the requirements of the time.

The above given plan for the division of the legislative powers, clearly indicates the high degree of centralisation. The reason for adopting such a plan seems to, be the ever increasing trend of the world federation towards centralisation. This division of powers has also been criticised for being a departure from the true federal principle. Upto Fourth General Elections there were almost .no problems in its actual working because of the same ruling party at the centre and state level. But after the fourth General Elections, controversy over Centre's over-lordship was raised as non-congress governments came into power in number of States of Indian Union. Some of the state governments were

strongly opposed to the policies of central governments. The result was an open conflict on many issues between Centre and the State. These Governments specially those of Communist and D.M.K. Parties raised the issues of redistribution of powers and demanded more powers for the states.

After the Fifth General Elections, the Congress regained majority at the Centre as well as in the most of the States of the Indian Union. So the controversy regarding the readjustment of the relations seemed to have subsided some the centre once again became as powerful as it was before the Fourth General Election and the states most of them having Congress governments, now depended on the guidance of the Centre even in matters of State administration. However the monopoly of the Congress was broken first in 1977 and then in 1989, Though Congress remained in power from 1991-1996 it was a weak govt. The NDA and UPA (I) and UPA (II) governments have been coalition governments in which regional parties have been playing important role. Still the state govts have remained weak.

Keeping In view the above situation, some of the critics compared the state Governments to 'glorified municipalities'. This charge as levelled due to the provision of Article 249-53. These articles confer power on Parliament to enact laws on state subject and therefore can interfere, obviously in the sphere of State Administration. It is therefore, 'obvious that Indian Parliament can legislate on the subjects falling within the State List. With regard to concurrent List, the Centre and State both have the right to frame laws. In case of conflict over the jurisdiction of Union law and State law the Union laws shall prevail.

Although provision made under Article 249-53 are not a regular feature of the Federation, yet India has laid down a new tradition by including them in the constitution. Our constitution was framed at such a time when the trend was for making the central government strong. The Constitution makers, therefore, preferred to include the provision to this effect. Despite all this, to call the states as "Glorified Municipalities" is to underestimate their real position. We should not forget that it is through the constitution only that Parliament has acquired the right to legislate on the subjects enjoined in the State List, and it cannot interfere in any such way as may be against the constitution. So, it is more correct to call the state as units of federal states rather than that of unitary one.

Financial Relations

Introduction

As you know, India is a federal state and in a federation the sources of income

are redivided between the Union and the States. Article 268 to 291 of the Indian Constitution divide the sources of income between the Union and the states, but the division is done in such a manner that the State have to depend on the Centre i.e. Union Government. Those heads of Income which have been allotted to the States, the revenue collected from them goes to the states concerned, but most of the money coming out of the sources given in the Union List is also distributed among the states though the constitution contains clear cut bifurcation of taxes so believed by the centre and the states. As the source of income of the states were not sufficient, they have to depend the Union.

Main Sources of Revenue of the Union

The distribution of the power of revenue is laid down in a the lists given in the seventh scheduled of the constitution and the general pattern is based largely on the scheme embodied in the Government of India Act 1935. The Union Government has exclusive jurisdiction over taxes emanated in the Union List and State Government depend upon the sources contained in the State List. The concurrent list, however includes no taxes. One important point to note here is that while the State retain the entire proceeds of taxes placed directly under their jurisdiction the proceeds of source of the taxes in the union list to wholly or in part of the States.

Taxes imposed by the Centre

The Union list specifically mentions income tax (excluding agricultural income tax but including super tax, capital gain-tax, excess profit tax); custom duties etc., excise duties excluding those which are put in the State list, estate duty and succession duty on non- agricultural land and other properties; terminal taxes on goods and passengers carried by the railways or airways; inter-state ,sales taxes (only after the. sixth amendment). and sales tax on sale or purchase of newspapers etc. Parliament has also been given power to levy a surcharge over and above these extensive powers. Parliament has jurisdiction to impose a tax in exercise of the residuary power. The scope of taxing powers of the Union is further widened under the provisions of Article 252. Under this Articles, a state may empower the centre to levy and tax coming under the state list.

Taxes Imposed by the States

The state list includes land revenue; taxes on agricultural land and income taxes and duties to exercise on alcoholic liquor for human consumption opium, hamp etc. excluding medicinal and toilet preparation; control; sales tax in respect of interstate sales and purchases of goods other than newspapers etc. Besides these, the states can earn additional revenue from business and factories. In some states, the Bus services are run either solely or to some extent jointly with other states and the revenue coming out of these is appropriated according to the shares of each states.

Distribution of Taxes between the Centre and the State

The Source of income tax for the states from taxes and other business are too meagre to pay proper attention to the development of education, health agriculture social welfare etc. Which need more finances, to give the states sufficient money to run their administration smoothly, the Union Government gives some part of its income to the States. The constitution mentions four different categories of such taxes.

1. Firstly, there are some taxes which are levied by the centre but are collected and appropriated by states. These taxes are stamp duties, excise on toilet preparation and medicines containing alcohol etc. These items are included in the Union list but duties on these items are collected by the State and form part of revenue of the state which collected them.
2. In the second place, certain taxes such as duties in respect of succession to property other than agricultural land, estates duties in respect of property other than agriculture land, taxes on railways fares are levied by the central government and are collected by it. However, the proceeds of these taxes assigned to the states.
3. In the third place, income-tax is levied and collected by the Union but shares between the Union Government and the states.
4. In the fourth place, Parliament may provide that certain taxes such as excise duties other than those on medicinal and toilet preparations, which are levied and collected by the Union and also share between the centre and the states.

Financial Emergency

During the period when the proclamation relation to Financial Emergency is in operation, the executive authority of the Union. extends to the giving of directions to any state to observe such canons of financial property as may be specified in the directions it is deemed necessary by the President to maintain financial stability and credit of India Such direction in the constitution any (a) ask a state to reduce salaries and allowances of all or any class of public services connected with the affairs of state. (b) Reserve all money Bill for the consideration of the President after they have been passed by the state legislature.

2. While the proclamation of Financial Emergency is in operation, the President is competent to issue directions for the reduction of salaries and allowances.of all or any class of persons including the judges of the Supreme Court and High Court. So far this power has not been used in India.

Grants-in-aid

In addition to the above schemes of distribution of taxes between the Union and the

States the constitution provides that Parliament may by law give grant-in-aid to the needy states out of the revenue of the central government. The amount of the grant is to be determined by Parliament and therefore no uniform policy may be adopted in giving these grants to the states and the quantum would depend upon the peculiar needs of the state.

- (i) Besides, the constitution also lays down the expenditure (or cost) incurred by a state on the schemes for the welfare of the scheduled tribes is to be met by the central government provided such schemes have been undertaken with the approval of the government of India.
- (ii) The Assam government gets economic grants-in-aid for the development of the Tribal Areas in the state.
- (iii) The states of Bihar, Orissa and West Bengal get economic grant from the Union Government as a share on the export duty on Jute and Jute products.

It may be appropriate to know that the union Government can take loan against of the loan to be determined by the respective Legislatures.

Central Control over States

As sources of income for the states are limited, therefore they have to look towards Centre for getting necessary funds to undertake schemes of development etc. K. Santhanam has rightly compared states as beggars at the foot-doors of the Central Government. For enabling the states to undertake schemes of public welfare, the states need more funds so that they may carry out their responsibilities in/ out country and the states need more funds so that they may carry out their responsibilities to their people. The planning commission has come to occupy unique importance in/ out country and the states are asked to carry out plans even though the states may be expressing their unwillingness. Although education, agriculture, medicine, cooperatives and social welfare subjects fall within the State List, yet these subjects are being controlled by the Union Government through the policies of the Planning Commission. After every five years it makes suitable recommendations for adjustment of resources and lays down procedure for giving grants to the States. It may be noted that the Planning Commission has encroached upon the autonomy of the States. The ex-comptroller and Auditor General in India (Shri Ashok Chandra) given his own reason for this type of situation. He is of the view that states depend upon the centre for everything. They seek the help of the centre for every project. States do not levy and special taxes nor do they control the expenditure. He feels that unless the states are made financially independent, they will not feel their

responsibility properly: 'He further suggested that the Planning Commission should not make plans according to' their own needs and necessities and correspondingly should raise revenue within their states to finance such' schemes. The states will then examine the sources of their revenue. The Central Government should come forward to help the states only when emergency arises.

Finance Commission

Having in mind, the far reaching importance of the working of the Indian Federal system there is a provision for Finance Commission in Constitution. The President of India is required under Article 280 of the constitution to set up, within two years from the commencement of the constitution and thereafter every five years or earlier a Finance Commission consisting of a Chairman and four members. The Finance Commission is a unique feature in the Indian federal structure which is not found elsewhere. It is some thing like the State Grants Commission in Australia.

Composition of Finance Commission

Although the sources of income of the Union and the States are given specifically , in the constitution, yet the makers of the constitution desired to make a room for changes in them to suit for the changing times. According to B.N. Rao, 'Primary duty of the Finance Commission is to do justice in the allocation of resource between the Union and the State.

The qualifications for the Chairman and other members are laid down in the Finance Commission Act of 1951. The Chairman of the Finance Commission . has to be a person who has experience of public affairs. The other members must be persons (a) who are, or have been, or are qualified to be appointed as judges of a High Court or .(b) have specified knowledge of the finance matters and administration of (d) have special knowledge of economics. The Commission is an advisory body but its recommendations have been almost invariably accepted by the Union Government. The Finance Commission has the status of civil court and it determines its own procedure.

Functions of the Finance Commission

Article 280(3) of the constitution lays down the function of the Finance Commission. The Primary duty of the Commission is to make recommendations to the president mainly on the following matters :

- 1 . The distribution between the Union and States of the net proceeds of taxes which are to be, or may be divided between them and allocation between the States of the respective shares of such proceeds.
2. The Principles which should govern grants-in-aid of the revenue of the States out of the Consolidated fund of India.
3. Any other matters referred to the Commission by the President in the interest of sound finance.

The 11th Finance Commissions, so far, submitted their reports to the president. As a result of the recommendations of these Commissions, the Status shares of the proceeds of income tax have been steadily increasing. The First Finance Commission 'broke new ground' by recommending .that 40% of the net proceeds of union Excise duties on three commodities' (tobacco, matches and vegetables) should be distributed among the states. The second Finance Commission added five more Commodities viz. sugar, tea, coffee, paper and vegetables, non-essential oil and reduced the shares of the. States in the net proceeds of the duty on all the eight commodities to 25%. The third Finance Commission further increased the share of the states and the fourth commission recommended that all Union excise duties currently levied should be shared between the centre and the states. The fifth Finance Commission was appointed under the Chairmanship of Mr. Thagi and the purpose of its appointment was to consider the sources of income under the Fourth Five Year Plan.

Finance Commission recommends to the Centre for Grant-in-aid to be given to the state. Before 1952 only nominal grant was used to be given to the states, but now every Finance Commission has been making recommendation for grantings as much aid as is possible. First Finance Commission recommended the grant of five crores to the states, the second made it 37 crores, the third 58 crores and the fourth 63.75 crores. The fifth Commission recommended grant for each year during the plan period as a steady scale in diminishing quantum from about rupees 153 crores in 1969-70 to 102 crores in 1973-74.

The Finance Commission have felt the need for more resources of income for the States. That is why every commission has recommended for such grant and share of the production duty as possible. But they have also pointed out that the States are not trying to better the condition for raising additional reassurances Besides they are not controlling their expenditure. Because of these short-comings state depend upon the centre. This dependence upon the centre is responsible for making the position of the states very weak vis-a-vis the central government.

The function of the Finance Commission is to systematise the source of income of the Centre and the states: With the emergence of planning commission the role of the Finance Commission has been undermined. The Planning Commission not only draws plans and policies for the states but also decides the extent of grants to be given to the states. As a result of this, function of Finance Commission have been automatically delegated to the planning Commission. The Finance Commission now a-days keeps in mind the needs of the Planning Commission and as such works on the lines as laid down by the Planning Commission.

Some writers describe the Finance Commission as the servant of planning Commission.

Though it is a bit exaggerated observation, yet the sphere of work of the two Commission should be demarcated clearly. The third Finance Commission even recommended either to increase the scope of its function or to change planning Commission into Finance Commission itself.

III. Administrative Relations Between the Centre and the States

India is a vast country and her people differ in respect of language, "religion, culture and creed. Consequently framers of the Constitution decided to set up a federal form of government. In any federal scheme of government certain forces visible or invisible are always at work, which if unchecked by law encourage disruptive tendencies and jeopardise the solidarity of the country. Provision has to be made for meeting emergencies, which either may emerge from the actual working of the federal scheme or to meet the new condition and circumstances which may result from differences arising between the independent functioning of the two sets of government. Finally the National Government is charged with the duty to ensure peace, order, good government and security of the country as a whole. All these factors necessitate coordination in the administrative sphere of the centre and the states. In fact, the success and strength of the federal policy depends upon maximum of co-operation and co-ordination between the federal government and its competent units. To fulfil this aim of having around between the federal policy depends upon maximum of co-operation and co-ordination between the federal government and its competent units. To fulfil this aim of having peace and security, the co-ordination between the Union and the States is very essential. It is not explained explicitly in the constitution but fulfillment of these duties is very difficult. To solve this problem the India Constitution has given a detailed account regarding the administrative relations between the Union and the States.

The administrative relations between the Union and the States, as envisaged under the constitution, largely follow the pattern laid down by the Government of India Act of 1935. This may be examined under two headings:

1. Techniques of Union control over States

During emergencies, the control of the Central Government over the States in India is complete in all respects and the Constitution will work as if it were a unitary government. During normal times, the Central Government exercises control over the states through different methods and agencies. We will discuss them under the following headings:

(a) Directions to the State Governments

The Constitution of India though clearly bifurcated the legislative spheres of function of the Union and the States, yet there is no such division in administrative machinery. To implement its laws the centre does not have any agency of its own, but it function through states who work as its administrative agencies.

A Constitutional obligation is placed on the State Governments (1) to ensure compliance with the laws made by Parliament and (2) not to impede or prejudice the exercise of executive power of the Union within their respective spheres. In either case the Union Government. may give such directions to a State as may appear to it to be necessary. When both these provisions are put together they naturally widen the authority of the Government of India, for they restrict both positively and negatively the executive authority of the States and given lot of opportunities to the government of India for. exercising its executive functions unrestricted in any way. If a state has failed to comply with the direction of the union, the President may under Article 356 declares that there has taken place break down of the constitution in the state and he may assume to himself all or any of the functions of the Government of that state.

The Union may give directions to a state as to the (I) construction and maintenance of the means of Communications declared to be of national or military importance; (2) measures to be taken for the protection of the railways in the states, provided that in either case compensation shall be paid to the states in respect to the extra cost incurred for the purpose. The compensation is fixed with the help of the agreement both the governments i.e. Union and the State. And if there can be no agreement then it will be decided through a mediator appointed by the Chief Justice of India. It should be borne in mind that the subject of communication is included in the State list. The Union Government apart from giving direction, can take the supervision and administration of the means of communications as part of its functions with respect to naval, military and air force works. Similarly railways are within the jurisdiction of the Union, but police comes under the jurisdiction of the States. The executive power of the Union to give directions to a state for the protection of the railway includes the power of the Government of India to give directions to a state Government to employ its police force for the proper protection of the railway and their property and if necessary to employ additional police subjects to contributions by the Union as provided for in Article 257 (4).

Delegation of Functions

Articles 258 provides that the President may with the consent of the Government of a state entrust either conditionally or unconditionally to the Government or its officers, functions in relation to any matter to which the executive power of the Union extends. Parliament may also by law entrust functions to the State Government or its officers in relation to any matter over which the state legislature has no jurisdiction. In such a case there shall be paid to the State compensation for the extra cost of administration incurred by the state in connection with the exercise of those powers and functions.

All India Services

As under a dual policy there are two sets of government, it follow that there, shall be

two separate civil services, one for the States and other for the Union, to administer their respective laws. The Constitution of India provides for separate public services to administer their respective affairs, but the constitution also provides for Common India Administrative Services for the Union and State & I.A.S. & I.P.S. are the common services. Parliament is further empowered under Article 312, to create more to such. All India Services whenever it is expedient in the national interest to create them. At present apart from I.A.S. and Indian Police Services even Indian Forest Services are also included in it. Steps have also been taken to create Indian Engineering Services, Indian Medical and Health Services. This is an extraordinary feature of the Indian Engineering Services, India Medical and Health Services. This is an extraordinary feature of the Indian Constitution. Dr. Ambedkar, explained the reasons for creating 'All India Services' and also explained the extent of control which the Union Government was to exercise over the administration of the States.-' Dr. Ambedkar said, "The dual policy, which is inherent in a federal system is followed in all federation by a dual services. The India Federation, through a dual policy, will have dual services, but with one exception. It is recognised in every country there are certain posts in its administrative set-up which might called strategic from the point of view of maintaining the standard of Administration. There can be no doubt, that the standard of administration depends upon the calibre of the civil servants who are appointed to these strategic posts. The Constitution provides that without depriving the States of their right to form their own civil services. There shall be an all India services recruited on all India basis with common qualification, with uniform scale of pay and member of which could be appointed to these strategic post throughout the Union." It is clear that the main aim of this Article is apart from strengthening. the centre; to curb the local and narrow outlook, to raise the status of All India Medical Services to national level and narrow outlook, to raise the status of All India Medical Services to national level is under consideration. Criticism against the creation of All India Services, coming from the side of the State natural, as it adds to the state budget. The friction between All India and State Services is also likely to jeopardise the interest of the state. The states are opposed to the creation of additional All India Services as they felt that this will affect their independence and autonomy.

Financial Assistance

The General principle of federal finance is that both the union Government and the State Government should .be independent of each other. But such a rigid application of this principle is not possible and every federal constitution provides for the division of the proceeds of certain taxes between the federal government and the federating governments. Even such an arrangement is not found adequate to meet the ever expanding needs of the federating governments and they have to rely on the grants-in-aid from the

Central Government. Article 275 of the constitution authorises Parliament to make such grants as it may deem necessary to be charged on the consolidated fund of India. Apart from the general power of making grants by Parliament to states in need of financial assistance, the constitution itself provides for specific grants on two matters (I) grant-in-aid charged on the consolidated fund of India for schemes of development, for the welfare of the scheduled tribes and for raising the level of administration of scheduled areas as may have been undertaken by a state with the approval of the Government of India, (2) grants-in-aid to use state of Assam for the development of the Tribal Areas in that state. Financial assistance, in the shape of grants-in-aid, is a main source of central control over the states.

Inter-State Cooperation

Though the federation units are autonomous within their own territorial limits, no units can lead an unconnected and isolated life from rest. In fact, the very exercise of its autonomy requires recognition of certain principles of mutual cooperation. All federal constitutions accordingly lay down certain rules of comity which the units must observe in their relation to one another. The Constitution of India empowers Parliament to provide for adjudication of any dispute or complaint with respect to use, distribution or control of the waters of, any inter-state river or river valley. Parliament may by law also provide that neither the Supreme Court nor any other court shall exercise any jurisdiction in respect of any such dispute or complaint. The importance of these rules can be seen from the disputes arising out of Damodar Valley and Bhakra Nangal Projects.

If at any time it appears to the President that public interest would be served by establishing an Inter-State Council charged with the duty of

- (a) Inquiring into and advising upon disputes which may have arisen between the states or
- (b) Investigation and discussion subjects in which some or all the states have common interest or
- (c) Making recommendations upon any such subjects, and in particular, recommendations for the better coordination of policy and action with respect to that subjects, it shall be lawful for the President to establish such a council and define its duties, its organisation and the procedure to be followed therein.

The Constitution prescribed that trade, commerce and intercourse throughout the territory of the Union shall be free. Parliament however is, empowered to impose restrictions as it deems necessary in public interest. The word 'public interest' is such a vast word the Parliament can enjoy any amount of power under it though Article 203 prohibits Parliament and State Legislature from enacting legislation giving preference

to one state over another or making discrimination between one state and another by virtue of any matter relating to trade and commerce in any of the lists in the seventh Schedule. But the same Article, also authorises the Parliament to. make any law giving preference to one state over the other or making. discrimination between states, if it is declared by such law that it is necessary to do so to meet a situation arising from scarcity of goods. No bill or amendment for the purpose of imposing reasonable restrictions over the freedom of the trade can be introduced or moved in the state legislature unless it is approved by the President. Article 307 also empowers the Parliament to establish such authority as it consider appropriate for enforcing the provision the Constitution with regard to inter-state trade and commerce and confers on it such duties. as its thinks fit.

Another provision that facilitates the smooth transaction of administrative business in embodied in Article 261 of the Constitution. According to this, full faith and credit shall be given to public acts, records, judicial proceedings of the Union and the States, in all part of Indian territory. Provision is also made for the execution of final judgement or orders delivered or passed by civil courts in any part of India.

Criticism

From above discussions, it is clear that in India, centre enjoys more powers as compared to the States. In other federations of the world, there has been a little hesitation to strengthen the hands of the federal Government vis-a-vis the states. In the U.S.A. the Centre does not have any power to give instructions to the states. In Australia there is no such provision. The framers of India Constitution had the aim of 'unity in diversity' in their minds. They were conscious of the fact that federalism given rise to legal disputes and weakens the unity of the country. Keeping in view the circumstances, in which India got her independence, it became' necessary that such special provision should be made to strengthen the unity. To keep this unity intact, the Union was given special power through which the states were kept under its control. Prof. Paul Appleby, after studying the India administrative System, called the control of centre as 'influence' as it is used through plans, conferences and declarations.

After going through the administrative relations between the centre and the states', we notice that Indian constitution has given many administrative powers to the centre. Article 256 and 257 mention the provision to exercise administrative over the states. These provisions have been criticised on the ground that they vest vast administrative powers with the centre. Article 356 gives direct power to the centre to curb the 'independence' of the States.

Another cause of this criticism is the existence of all India Services and their role. Some States criticise the very existence of All India Services on the basis that in the federal

states the division of power and jurisdiction already determined by the constitution: Hence there is 'no need to have All India Services as the States Services can serve the purpose. The states are also sceptical about the role of All India Services have given ample proof of their impartiality.. They are & have been faithfully servicing the state Governments.

Constitution of India itself is a cause of friction if it is there between the Centre and the States. Its unitary bias is at the root of misunderstandings. There has been a demand especially from the South for change in the constitution and more powers for the states. Another cause of friction between the Centre and State has been the problem of maintenance of peace and order in the states. During -the days of United Front Ministry in West Bengal, the Union Government against the wishes of the state government, sent its own reserve police force for the protection of its property. In 1968, the Communist, Government of Kerala did not carry out the instructions from the Central Government concerning the suppression of strike by the Centre Government.

There is no doubt the Constitutional provision giving right of direction and control over the states to the Union Government, contains an element of possibility of mischief as this power may be abused, unmindful of the autonomy of the State. There are instances where the Centre Government interfered in the States to advance party interests. But we may have to put up with this considering it as a 'necessary evil'. When we find that a strong centre is needed in India to combat the disruptive and division forces and to maintain the unity and integrity of the country which is above, everything else.

Conclusion: In this lesson we have discussed the legislative, financial and administrative relations between the Union and the State. We have found that centre had been vested with much more powers than the states. Besides the fact, that the Union Government has been given more subjects than the States and also that the residuary powers have been placed under the legislative jurisdiction of the centre, the centre has been empowered under certain conditions to frame laws on subjects given in the State List. In the Financial field the states have meagre resources and depend upon Centre for financial help.

This gives the Union Government an authority to direct and keep a check over the states. In the administrative field there is a constitutional obligation in the state governments to ensure compliance with the laws made by the Parliament and not to impede or prejudice the exercises of executive power of the Union within their respective sphere. When both these provision are put together they naturally widen the authority of the Union Government and restrict the executive authority of the States. The All India Services who run the show in the states as well tend to further strengthen the power of the Union Government. There has been a lot criticism against the over-awing authority of the centre in a federal set up. Some of the states in India are demanding

more power and decrying the interference of the centre in the state affairs. Moreover coalition Governments at the centre with regional parties as their constituents are leading towards greater hold of state and weakening of the centre.

The Sarkaria Commission was appointed by the central Govt. in March 1983, to review the entire gamut of Centre-State relations and make appropriate' recommendations. It submitted its report in 1987. It, however, did not make any. radical recommendations. It broadly endorsed the existing set-up, while suggesting some changes.

The main conclusions of the Commission were :

- (i) No change is needed in the Constitution to meet the growing demands of the states but the centre has been severely criticised for the faulty working of the constitution.
- (ii) A strong centre is necessary for national unity. However, concentration of powers is undemocratic and there should be decentralisation to enable the states to develop their resources.
- (iii) Co-operative federalism should be ensured in order to facilitate co-operation and consultations instead of unilateral decision-making the confrontation.
- (iv) There should be generous use of Art 258 which gives the centre the power to confer executive authority on the states in certain cases.
- (v) Art 356 should be retained but the extra ordinary power it confers should be used on rare occasion. To this end, the Commission suggested some steps to prevent misuse of the power to impose Emergency.
- (vi) There is a strong case for establishing an Inter-State council under Art 263. It is not worthy that Inter-State Council was established during V.P.Singh's government It remained nonfunctional during five years term of Narsimha Rao. But the UF government, under Devegowda and I.K. Gujral held regularly meetings of Inter-State Council.
- (vii) A rapport in necessary between the centre and the states on the question.
- (viii) Reasonable decentralisation is advisable in operation of AIR and TV to redress the complaints of the states.

Though many governments have come and gone, but even after 15 years the recommendations of the Sarkaria Commission have not been implemented. However, as far as the use of Art. 356 there have been some positive developments. The Supreme Court judgement in 1994 (S.R. Bommai Case) has resulted In the precautions use of

Article 356 because the Court strictly directed that mere report of Governor is not a sufficient ground for imposing the President's rule. And, the only testing ground for the majority of the Chief Minister is the floor of the legislative Assembly.

The govt. of BJP and its allies desisted from the use of Article 356, inspite of the constant arms twisting tactics of Ms. Jayalaliths and DMK govt. in Tamil Nadu was dissolved. Elections were held in Tamil Nadu, were held on schedule which resulted in the formation of AIADMK government. The Prime Minister and the Home Minister have at many times declared that Article 356 will not be used against any govt. But the central government sent teams to investigate law and order situation in states like West Bengal, Bihar and Tamil Nadu'. The CPM government in West Bengal protested vehemently because law and order is a state subject. The stand taken by Home Minister had been that though law and order is a States subject yet the over all responsibility is of the Centre. How even the BJP led of did burn its fingers by dismissing Bihar govt: which have to be restored after the resolution was not able to get approval from Parliament.

The increasing role of the relation parties at the centre is another- factor which has brought a change for the better in the overall dynamics of the Centre-State relations.

Thus it could be concluded that inspite of the many areas of possible conflicts the federal set up in India fore sees a harmonious relationship between the Centre and States.

SUGGESTED BOOKS

1. Union State Relations in India by Institute of constitutional and Parliamentary Studies. pp. 175-194.
2. Union State Relations in India in S.A.H. Haqqi :.pp. 58-60 and 177-185:
3. Inter Government Relations in India by Amal Ray, pp. 45-59.
4. Tension Area in India's Federal system-Amal Ray.
5. Twilight or Dawn-Political Change in India-Iqbal Narain.
6. The Union and State-Jain and Others.
7. Union-State Relations India- Edited by S.A.H. Haqqi.
8. Conflicts in Indian Policy-Subo Rao.
9. Administrative Reforms Commission Report in Union-State Relation.
10. Rajamannar Committee Report.

NATURE OF THE INDIAN FEDERATION**Contents of the Lesson**

- 1.5.1 Aim of the Lesson
- 1.5.2 Introduction
- 1.5.3 What is a Federation
- 1.5.4 Features of Indian Federation
- 1.5.5 Unitary Features
- 1.5.6 Why Centre was made strong?
- 1.5.7 Effects on the working of Indian Federation
- 1.5.8 Conclusion
- 1.5.9 Self-Check Exercise
- 1.5.10 Suggested Questions

1.5.1 Aim of the lesson

The aim of this lesson is to see whether the Constitution of India is really federal. Why is there a bias towards centralism?

1.5.2 Introduction

Although British rule had resulted in the establishment of a highly centralised, unitary system of government in India, it was all along felt that excessive centralisation did not suit a country possessing India's vast size and diversity of races, religious and languages. As early as in 1918, the Montagu-Chelmsford Report had envisaged India as a 'sisterhood of States' at some future date. The idea of constituting India into a federation was clearly mooted in the Simon Commission Report. The Government of India Act of 1935 proposed an All-India Federation which, however, did not come into existence. The framers of free India's Constitution accepted federalism as the basis of the country's new constitutional set up.

1.5.3 What is a Federation?

Federation is a system of government in which the totality of governmental power is divided by the Constitution between Central government and the government of the federating states or units. In other words, federalism implies a dual polity in which the power are distributed between the centre and the State governments, and both are

autonomous within their respective allotted spheres. Both the Central and State governments draw their authority from the same source i.e. the Constitution, so none of them is subordinate to the other.

Dr. Herman Finer has defined: "A federation is that in which part of authority is vested in the local areas and the other part is vested in the central institution deliberately constituted by an association of previously independent local areas."

1.5.4. Features of Indian Federation

The following features of the Indian Constitution bring out its federal Character:

(i) Division of Powers: The true essence of a federation is a constitutional division of powers between the federal government and the governments of the federating states. The Constitution of India fulfils this essential condition of a federation. The constitution distributed all the powers into three lists-the Union List, the State List and the Concurrent List.

The Union List consists of 97 items which are of national importance. The Union list includes subjects like foreign affairs, defence, posts and telegraphs, coinage and currency, etc. The Union Parliament enjoys the exclusive right to legislate on the subjects given in the Union List.

The State List consists of 66 items Forty-second Amendment Act, 1976 took 5 subjects from the State list and placed in the concurrent list of local or provincial importance. The State List includes subjects like public order, police, administration of justice, prisons, public health, education etc. The state legislatures enjoy the right to legislate on the subjects enumerated in the State List.

The Concurrent List consists of 47 items. This list contains items like marriage and divorce, social insurance, economic and social planning etc. These items are placed under the jurisdiction of both the Union and the State Legislatures. But if a law made by a state legislature comes in conflict with the Union law on the same subject, the law of the Union will prevail and the law of the state will be considered inoperative to the extent it violates the law of the Union.

(ii) Dual Polity: The Constitution of India establishes a dual polity with a double set of governments, i.e., Central government and State governments. The sphere of authority of Central government as well as state governments is clearly defined in the constitution. Thus, the Indian Constitution satisfies another essential condition of federalism.

(iii) Written Constitution: Another essential feature of a federal system is a written constitution. An unwritten constitution cannot exactly define the structure, organisation and powers of the Central as well as State governments. Without a written constitution the clear-cut division of powers between the Centre and the States cannot be laid down. The Indian, constitution is a written document containing 395 Articles and 12

Schedules. Thus, the written character of the Indian Constitution fulfils another essential condition of a federation.

(iv) Rigid Constitution: The existence of a rigid constitution is considered as an essential condition of a federation. The constitution of India satisfies this condition as well. For a rigid constitution it is necessary that a special amending procedure should be provided therein. If the constitution can be amended by the same procedure by which ordinary laws are enacted that Constitution cannot be termed as a rigid constitution. To be a rigid constitution It must contain a special and separate procedure for amending the constitution. The Indian Constitution provides for a special procedure with regard to its amendment. The Union Parliament cannot amend it in the manner in which ordinary laws are passed, amended or repealed. Article 368 contains a special procedure for making amendments in the Constitution. Hence, the Indian Constitution is considered a rigid constitution which is an essential condition of a federation. Till today the Constitution has been amended 98 times.

(v) Supremacy of the Constitution: The supremacy of the Constitution is another feature of federalism and it is also present in India. Though, no Article of the constitution specifically declares it to be the supreme law of the land, but the supremacy of the constitution is definitely implied in its very nature. It is the constitution which has demarcated the spheres of the Central and State Governments. It is the constitution which is the source of the powers of all the government functionaries and the different organs of government. The Central as well as the State Governments have to operate within the limits prescribed by the constitution. If any government passes a legislative measure or takes an executive action beyond its defined powers, the same can be declared invalid by the higher judiciary of India.

(vi) Independent Judiciary: The existence of an independent judiciary is another important feature of federalism. The constitution of India satisfies this condition as well. The Supreme Court of India is at the apex of the judicial hierarchy in India. The constitution contains a number of provisions which ensure the independence of judiciary from the control of the other two organs of government.

(vii) Supreme Judiciary: In India judiciary is not only independent but supreme also. The Supreme Court and the State High Courts enjoy the power of judicial review. They are the protector of the constitution. They can declare any law or order *ultra vires* if it goes against any provision of the constitution. The Supreme Court is the final interpreter of the constitution. The law declared by the Supreme Court is binding on all courts and other authorities within the territory of India. The Supreme Court also ensures that the Union and State Governments operate within the spheres assigned to them by the constitution.

(viii) Bicameral Parliament: Bicameralism is an important feature of a federation. All federal states must have a bicameral legislature, one House representing the people and the other representing the federating states. The constitution of India also establishes a bicameral parliament consisting of the Lok Sabha and the Rajya Sabha. The Lok Sabha is composed of directly elected representatives of the people. They are elected by the people on the basis of universal adult franchise. On the other hand, the Rajya Sabha represents the States of the Indian Union. The members of Rajya Sabha are elected by the members of the State Legislative Assemblies.

1.5.5. Unitary Features

The above account of the federal aspects of the Indian Constitution proves beyond doubt that India has got a federal form of Government. But the Indian federation also has certain points which constitute a departure from the federal principle and have a pronounced unitary bias. These are:

(i) Single Citizenship: In a typical federation like the United States of America, every individual enjoys dual citizenship. He is the citizen of the State in which he is domiciled, as well as citizen of the United States. But the Republican Constitution of India establishes a dual polity with a single citizenship. The idea of single citizenship is clearly a departure from the accepted principles of federalism. The Constitution Fathers deliberately refrained from introducing the idea of dual citizenship to check the separatist tendencies and to ensure a strong feeling of nationalism.

(ii) Flexibility of the Constitution : Unlike other federations, the Indian Constitution is not so rigid. The method of amending the Constitution is comparatively simple. Major part of the Constitution can be amended by the Parliament of India without the help of the State Legislatures. Moreover, the States have not been given the power to initiate amendments to the Constitution, as in other federations.

(iii) Inequality of Representation in the Upper House: The well-accepted principle of a federal polity is to make the Upper Chamber representative of the constituent units. In the U. S. A. and Switzerland, the Upper Chamber secures an equality of representation to federating units irrespective of their size and population. In India, on the other hand, the States are represented in the Rajya Sabha not on the principle of equal representation but on the basis of population of every State. Again the President can nominate 12 members of Rajya Sabha from amongst persons who have specialised in science, arts, culture, public co-operation etc. This is a fundamental departure from the federal principle.

(iv) Position of Union Territories: The constituent states enjoy some power but the Union Territories enjoy no such position. They are directly administered by the Union Government. These are merely administrative units governed by the Centre. This is a

clear departure from the established principles of federalism and at the same time this fact indicates the unitary character of the Indian Constitution.

(v) Strong Centre: The Constitution of India sets up a highly centralised structure of government like a unitary system. On the other hand a weak Central Government is the very essence of federalism. The powers have been distributed between the Union and the States in such a manner as to make the Central Government very strong. The Union Government can legislate even on subject in the State List if Rajya Sabha passes a resolution by two-thirds majority. The division of powers in the Indian Constitution is definitely in favour of the Central Government.

(vi) Provision regarding the State Constitutions: In a typical federation like the United States, the units have the right to draw up their separate constitutions within the federal framework. The Indian Constitution, however, makes a clear departure from this basic federal principle by prescribing the Constitution of the States also in addition to the Constitution of the Union. It is binding on the States and they must work within this framework. The only exception is the State of Jammu and Kashmir which has framed its own Constitution. A single Constitution for the whole of the country, and the denial of the right to the States to frame their own Constitution signify the unitary tendency of the Indian Constitution.

(vii) Redistribution of State Boundaries: The Constitution empowers the Parliament to change the boundaries of the existing States, or create new States or change the name of the State on the recommendation of the President. The President is, of course, required to ascertain the views of the States concerned. The Parliament may pass such a law in contradiction to the views expressed by the States. The U. S. Constitution has no such provision and no such change can be made without the express wish of the State or States concerned.

(viii) Common All-India Services: Another characteristic of the Constitution which points towards a unitary rather than a federal polity is the provision for common All India Services. The members of the services are appointed by the Central Government and are responsible to it. They are posted at key positions in the State Governments. The U. S. Constitution, which is a typical federal constitution, does not envisage such a system of common services. There the different States have their own administrative services which are appointed by the State Governments.

(ix) Emergency Provisions: The federal structure of the Indian polity can be completely switched over to the unitary form, in times of war or any other emergency. During the Proclamation of Emergency Parliament gets the power to legislate for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List and the executive power of the Union extends to the giving of directions to any

State as to the manner in which the executive authority is to be exercised. The federal structure of the country can thus be changed into unitary one without amending the constitution. A similar effect will follow if the President is satisfied that government cannot be carried on in accordance with the provisions of the Constitution in a particular State and declares emergency (Art. 356). These provisions make the Union Government complete master of the situation.

(x) Single Judiciary: The Constitution of India provides for a single integrated judicial system for the whole of India. The Supreme Court and the High Courts are links in the same chain. There are no two sets of laws but single civil and criminal codes for the entire country. This again, is a clear violation of the federal principle and points towards the unitary character of the Constitution.

(xi) Centralised Electoral Machinery: Article 324 provides for an Election Commission. It is centralised electoral machinery which superintends, directs and controls the elections of the Members of Parliament and the Members of the State Legislatures. The members of the Election Commission are appointed by the President. This is yet another characteristics of a unitary polity.

(xii) Appointment of Governors by the President: Another factor which enables the central government to control the administration of the States is the appointment of the Governors of the State. They are to be appointed by the President of India and hold office during his pleasure.

1.5.6 Why Centre was made Strong?

The makers of the Indian constitution made the centre strong because of the prevailing circumstances and because it was easier to do so. The following factors were mainly responsible for this :

(i) Need of preserving national unity: India had remained divided into several states for centuries but it became united under British rule. The people of India came on a common platform because of their common hatred of foreign rule. With the end of British rule in India disruptive forces again raised their heads, and there was a great danger of India breaking up into several states again. A number of ideologies were also leading the country in that direction. Our constitution-makers were aware of this danger and they wanted to preserve Indian unity at all costs. That is why they created a strong centre which could keep the country united under all circumstances.

(ii) Need of economic planning and development: In order to go ahead in the economic field and to make economic planning and successful development on a country-wide scale possible a strong centre was a necessity. India was also faced with food shortage and inflation and the great and serious problem of rehabilitation of millions of refugees coming from Pakistan. India needed a strong centre for protection against foreign aggression and internal disorder. It needed a strong centre for the resettlement 'of

refugees from the West Punjab, Sind, Frontier Province, Baluchistan and East Bengal. The various development schemes such as the construction of canals and dams and the installation of electric plants and the development of new industries needed huge amounts of money which no province or unit could afford.

(iii) Partition of India: The British had propped up the Muslim League to be used against a strong centre as it gave a chance to certain Muslim elements to rule over provinces where they were in a majority such as in the Punjab, Sind, Frontier Province and Bengal. With the partition of India and the disappearance of the Muslim League, a very serious obstacle in the way of a powerful centre was eliminated.

(iv) Liquidation of native states: The existence of more than five hundred princely states was yet another obstacle in the way of a strong centre. After the British withdrawal these states were integrated with the rest of India and brought under a single polity. This also facilitated the formation of a federation with a powerful centre.

(v) Previous experience and traditions: Throughout the British period India had been governed from a powerful centre. As in Britain here also the British had formed a unitary state. Even the Government of India Act, 1935 which gave some powers to the provinces in India had retained a strong and centralised administration. The provinces in India had not enjoyed much autonomy for long and there was on that account no resistance to the plan for a strong centre.

(vi) Centralised character of Congress Organisation: The Congress was in power in most of the provinces when British left India. Its own organisation was highly centralised. It had even developed a High Command. That is also the reason why the provincial Congress parties and ministries could not put up a bold resistance to the plan. The Indian princes alone could have stood in the way but they were too weak to fight on two fronts-the states people and the powerful and well-entrenched Congress High Command.

During the period of the working of Indian Federalism many factors have emerged in the Indian polity. Some of them are as under:

(i) Centralisation : The working of federal system in India has resulted in the development of centralising tendencies in the Indian polity. The financial dependence of the States on the Centre has contributed towards making the States subordinate to the Centre. The allotted resources of revenue to the states are so inadequate that no State can do without enough financial assistance from the Centre. The system of grants-in-aid to be given by the Centre to the States is also responsible for centralising the Indian political system. It has been alleged by a critic that "the Centre is becoming a

steam roller and the States appear to be in a pitiable condition.” To make the Centre more powerful Forty-Second Constitution Amendment Act, 1976 took out 5 subjects from the State List and placed them in the Concurrent List. The tendency of making the Centre all the more strong is the negation of the basic requisites of a genuine federalism.

(ii) Emergence of disputes between the States: India is one country, but the increasing disputes between the various states threaten the national unity of India. The states of the Indian union were organised on linguistic basis, but the territorial Organisation of India is very defective. Because of it, territorial disputes between various states have arisen and there does not seem a viable solution of the problem. Disputes relating to the waters of Inter-State Rivers or river-valleys are also there which have so far defied all solutions. Though the Constitution implemented in January 1950 provided for an Inter-State Council for inquiring into Inter-State disputes of various nature, but the Council was not set up till 20th May, 1990. On the said date a Presidential order was issued for the establishment of the council. The time will tell whether the Council would be able or not to contribute something in solving the Inter-State disputes of different kinds.

(iii) A demand for thorough review of Centre-State Relations: The working of Indian federalism has resulted in a vigorous and a thorough review of centre-state relations. This demand is being voiced by a number of regional parties such as Shiromani Akali Dal, D.M.K. AIADMK, National Conference, Telugu Desham, Assam Gana Parishad etc. The emergence of a good number of regional political parties is in fact the reaction of over-centralisation in our country. The leaders of various regional parties were successful in convincing their people that they would not get justice from the highly centralised governmental machinery or centralised parties, but only a regional party confined to their own areas could solve their and state problems. There is no denying the fact that the grip of regional political parties in Indian politics is on the increase and this has resulted in the decentralising trends of our polity.

(iv) Demand for Financial Autonomy to the States: The resources of revenue allocated to the states are too inadequate to cater to the developmental needs of the states. The states, therefore, have to depend upon the financial doles of the centre. The financial supremacy of the Centre has enabled it to exercise its control over the policies and administration of the states. All this seems to be unfederal and biased towards unitarianism. India is a land of vast diversities of religion, caste, language, region etc. In such a country financial or administrative or legislative centralisation is sure to harm the national unity. The demand for more powers in general and for financial autonomy to the states in particular has been made by almost all political quarters. The acceptance of this demand will go a long way in relieving the Indian federalism of the charge of being heavily biased towards unitary system.

(v) Demand for new States: The working of Indian federalism has brought forward the

demand for more states. The people of various regions have come to feel that the states of bigger size comprising within them a number of regions could not do justice to the people of all regions. The propaganda of some regional parties that the problems of a particular region can be better solved by their own government than the government of larger areas had its own effect on the people of various regions. Thus the people of different parts of the country started demanding separate states within the Indian union. The demand for Telengana, Bodoland, Bundelkhand, Greater Mizoram, Gorkhaland, Vidharba etc. are some of the demands which may be attributed to be the defective working of Indian Federalism. Recently the demand for a separate Telangana state has been accepted by the UPA and the main party in the coalition i.e. the Congress Party. The Union govt is contemplating of preparing a bill for the creation of Telangana State within Andhra Pradesh. In case the Parliament passes the Act, Telangana will become the 29th state of India.

(vi) Demand for Abrogation of Article 356 : The framers of the constitution provided for the imposition of the President's Rule in the states in case of serious exigency only. But the ruling party at the centre has, to a considerable extent, utilised this Article for its political purposes. The misuse of Article 356 has created an impression in the minds of certain political parties that it is just like a sword of damocles hanging over the head of their governments in the states. The ruling party at the centre can make use of this Article on one or the other pretext and dismiss the government run by an opposing political party. That is why a number of parties are demanding either for the deletion of or for amending the provision of this Article so that the Centre may not be able to act arbitrarily under the garb of this Article.

(vii) Office of the Governor: The role of Governors is another point of controversy in the framework of Indian Federalism. A good number of political parties are of the view that the office of Governor is superfluous and it should be abolished. Their argument is that the Governors are appointed by and responsible to the President of India which means the Central government of India. State governments have no hand nor any say in the appointment, transfer or removal of a Governor, It is alleged that the governors play the role of die agents of the centre and as such they cannot be fitted well in federal framework. There are numerous instance when the governors acted either in a partisan manner or to please the government at the centre.

1.5.8 Conclusion

The Indian federalism is at work for more than five decades. Its working is not free from defects. It is not even up to the mark if it is examined by the yardstick of the principles of genuine federalism. The fact of the matter is that it needs complete overhauling so as to make it completely in tune with the emerging forces and trends in Indian polity. It goes without saying that the trend towards centralisation has to be checked and the

process of decentralisation has to be resorted to. The sooner it is done the better it would be for India as a nation.

1.5.9 Self Check Exercise

1. The Union List, State List and concurrent list respectively consists of....., and.....items.
2.and.....of the Constitution, are considered essential conditions of a federation.
3.is another important feature of federation.
4. In India.....citizenship has been granted to its citizens.
5. Article.....of the constitution declares India to be.....
6. By which amendment five subjects were taken out out State List and added in the current list.

Answers : (1) 96, 66 and 47 (2) Supremacy and Rigidity (3) Independent Judiciary (4) Single (5) 1, Union of States (6) Forty-Second

1.5.10 Suggested Questions

1. "Indian Constitution is federal in structure but unitary in spirit" Comment.
2. Describe the unitary features of the Indian Constitution.
3. Discuss the prominent features of the Indian constitution.
4. Write a detailed essay of the preamble to the Indian Constitution.
5. Examine in detail the Legislative, Administrative and Financial Relations between the Union and States. Are you in favour of granting more powers to the state?
6. There is a federal structure in India. Discuss.
7. How many Articles and Schedules there are in the Indian Constitution?
8. What is the Union list and State list?
9. On which subjects can the Central Parliament Legislate?
10. Describe the Federal features of Indian Constitution?
11. Why India is called quasi-federal State?

Short answer questions

1. Define federalism
2. What are the basic features of a federation ?
3. What are All India Services ?
4. Dual Citizenship.
5. Rigid Constitution
6. Define Bicameralism.

FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES**Contents of the Lesson**

- 1.6.1 Aim of the lesson
- 1.6.2 Introduction
- 1.6.3 Salient Features of Fundamental Rights
- 1.6.4 Fundamental Rights as enumerated in the Constitution
- 1.6.5 Enforcement of Fundamental Rights Through Writs
- 1.6.6 Parliament and Fundamental Rights
- 1.6.7 Criticism of Fundamental Rights
- 1.6.8 Conclusion
- 1.6.9 Self-check exercise

1.6.1 Aim of the lesson

The aim of the lesson is to acquaint the students with the Fundamental Rights contained in the Constitution of India. .

1.6.2 Introduction

The fundamental rights give us the best fruits of democracy. These rights are natural and essential for good life. They are absolutely necessary for the development of human personality and making the life complete. Individual's growth will be stunted without these rights. Prof. Laski goes to the extent of saying that a State is known by the rights it maintains. The grant of fundamental rights facilitates the successful working of the democracy. There are certain duties attached to the rights, because rights cannot be absolute. Everyone must recognise that one's good can be achieved in common with the good of others. No good in isolation is possible.

Part III of the Indian Constitution deals with the Fundamental Rights of the Indian citizens. These rights given by the Indian Constitution are justiciable i.e., the judiciary has been given a duty to see that these rights are not violated. This means that normally these rights are assured to the people. There is nothing new about: the inclusion of these rights in the Indian Constitution. One finds a list of such rights in the Irish and American Constitutions too. In fact, the rights given by the American Constitution are many more, than those given by the Indian Constitution. Even at the time when the Government of India Act, 1935 was being drafted, people in India demanded the inclusion

of a list of these rights. And there was nothing unnatural about it because every democratic country gives such rights to the people. In England, where there is no written Constitution, these rights are given on the sanction of practice and past traditions.

1.6.3 Salient Features of Fundamental Rights

Some of the distinctive features of our fundamental rights are as under:

1. The Indian Constitution contains the most elaborate list of fundamental rights (Art. 11-35) alongwith various implied provisions.
2. Fundamental rights are enforceable against all kinds of public authorities.
3. They are not absolute. The State can impose certain restrictions on these fundamental rights. However, these restrictions must be reasonable.
4. Fundamental rights guaranteed by the Constitution differentiate between citizens and persons. There are certain rights which are available only to the citizens (for example, freedom of thought and expression, freedom of association, freedom of movement and the like), while there are others which are available to all (right to the protection of life and personal liberty is guaranteed to every person, native or alien).
5. Fundamental rights are enforceable through court of Law.
6. Fundamental rights can be suspended during an emergency. However, it has been provided by the 44th Constitutional Amendment that the Right to Life and Personal Liberty (Art 20 & Art 21) cannot be suspended even during an emergency.
7. Fundamental rights are enforceable not only against the executive but also against the legislature.
8. They are not immutable. Like other provisions of the Constitution, they can also be amended by following a specific procedure of amendment.
9. These can be categorised as negative and positive rights. For example, Article 17 prohibits untouchability and forbids its practice in any form or Article 18 prohibits the State from conferring any special Title on any of its citizens. These rights are categorised as negative rights. While the right to liberty, right to religious freedom etc. come under the category of positive rights.
10. The 42nd Amendment has also added a list of Fundamental Duties (Part IV A) in addition to the Fundamental Rights.

1.6.4 Fundamental Rights as Enumerated in the Constitution

The six types of Fundamental Rights guaranteed by the Constitution of India are :

(i) Right to Equality. Articles 14 to 18 of the Indian Constitution have been devoted to the right to equality. This right ensures social and legal equality to the people of India. However, without economic equality about which no mention has been made in the

Constitution all equality granted remains only on paper. A poor man or his children cannot avail of all the privileges that have been granted by the Constitution. For instance; the right of redress of grievances, has been given to all, but the poor people cannot afford the luxury of going to courts.

The right of equality means the following things:

- (a) Everyone is equal in the eyes of the law. All the people will be protected by law within the territorial limits of India. (Art. 14)
- (b) There will be no discrimination against any citizen on the basis of caste, creed, race, religion or sex or place of birth. There will be no social segregation i.e., there will be no restrictions in matters of access to restaurants, shops, hotels, places of entertainment, or in the use of tanks, bathing places or wells (Art. 15)
- (c) In matters of appointment to public offices the State will meet out equal treatment to all. This will apply in general employment under the State also. (Art. 16) Only there are three exceptions to this, namely the State may reserve certain seats in public services for those SCs and STs and backward classes which do not have sufficient representation for them; residential qualifications may be laid down for some posts under a State and the office or a post of a religious institution may be open only to a person who believes in the same religion.
- (d) Article 17 of the Constitution abolishes untouchability. Its practice in any form is forbidden. The enforcement of disability on the basis of untouchability shall be an offence punishable in accordance with the law. Parliament has fixed by law the punishment for practising untouchability. Thus social inequality has been made illegal and the ambition of Mahatma Gandhi has been fulfilled.
- (e) The Constitution abolishes all titles except the academic and military distinctions. (Art. 18) The State will not confer any title on anyone. The foreigners under the employment of Indian State cannot accept any title even from foreign States without the prior consent of the Indian President. Similarly, the citizens of India cannot accept titles, presents and emoluments from a foreign State without the consent of the President. This has been done to ensure equality for all.
- (f) Universal adult franchise has been introduced in India. Every adult citizen, male or female, has a right to vote.

(ii) Right to Freedom. Articles 19 to 22 of the Constitution explain the right

to freedom given to the Indian people. The citizens get the following freedoms:

(a) freedom of speech and expression, (b) peaceful assembly without arms, (c) freedom of forming unions or associations. (d) freedom of movement throughout the territory of India, (e) freedom to reside and settle in any part of India. (f) freedom of professing, practising or propagating any religion or carrying on any trade, business or occupation, (Art. 19) The original Constitution provided for freedom to acquire, hold and dispose of property. But since 44th Constitution Amendment, the Right to Property has ceased to exist to be a fundamental right.

These liberties are not absolute. They are subject to certain limitations. For the freedom of speech and expression the Union Parliament may impose restrictions on the basis of interest of the public and State, decency, morality, friendly relations with foreign countries. The right of assembly can be limited on grounds of public order. The right to free movement can also be curbed on the basis of interests of the general public. The State can fix any technical or professional qualifications for practising any profession. The right to carry on trade or business is controlled by the State.

Besides, Articles 20 to 21 of the Constitution ensure personal liberty of the individual. It is guaranteed that no person will be convicted for an offence except for violating an existing law Nobody will be punished or prosecuted for the same offence more than once. (Art. 20) No one will be deprived of his life or personal liberty except by the procedure established by law. (Art. 21) Art.

21 A inserted by the 86th Amendment of 2002 says that the state shall provide free and compulsory education to all children from 6 to 14 years of age in such a manner as determined by its law. Accordingly the Parliament passed Right to Education Act in August 2009 which came into force on 1 April, 2010. As a safeguard against arbitrary arrest and detention the Constitution provides that no arrested person will be kept in custody without being informed of the grounds of arrest, as soon as possible. The arrested person will have a right to consult a legal practitioner of his choice and will be produced before the nearest magistrate within twenty four hours of arrest. (Art. 22) Here in the form of limitations on rights under Art. 22, the constitution makes provision of Preventive Detention Acts, which can be passed by the state from time to time. A person arrested under PDA will not have the rights given in Art. 20.

(iii) Right against Exploitation: This right is explained in the Constitution by Articles 23 and 24. This implies two things:

(a) Traffic King in human beings and "beggar" is prohibited. (Art. 23). Nobody can compel anybody for involuntary work or labour without making any payment. Forced labour or begar does not exist now. If anyone violates this provision .he will be guilty of an offence punishable by law. However, there is an exception. The State can impose com-

pulsory service for public purposes This may be compulsory military training or to serve on the jury and other such things. But in this connection the State will make no distinction on the basis of caste, creed, race, religion or sex. Trafficking in human beings means selling and purchase of human beings, including women and children, which has prohibited in this Article.

(b) Article 24 forbids the employment of a child under fourteen years of age in a factory or mine or, for that purpose in any risky and hazardous occupation. If this provision is contravened, it will be an offence punishable according to law.

(iv) Right to Freedom of Religion : Articles 25,26,27 and 28 of the Constitution have been devoted to this right. According to it:

(a) All the people in India have a right to freedom of conscience and also a right to profess, practise or propagate any religion of their choice freely. This is subject to morality, public order and health. The State has the privilege to restrict any economic, financial, political or other secular activity which may be associated with religious practice. Also, the State can provide for social welfare and reform or throw open the Hindu religious institutions of a public character to all Classes and sections of the Hindus including the Sikhs, Jains or Buddhists. The followers of Sikh religion can carry kirpans as a matter of their religious profession. (Art. 25)

(b) Every religious denomination or its section has a right to establish and maintain institutions for religious and charitable purposes. It can manage its own affairs in matters of religion. It can also own and acquire movable and immovable property and administer it according to law. (Art. 26)

(c) No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. (Art. 27)

(d) No religious instructions shall be provided in any educational institution wholly or partially maintained out of State funds. But this will not apply to the educational institutions which are administered by the State but have been established under any endowment or trust which requires that religious instruction shall be imparted there. No student of any educational institution recognised by the State or receiving aid out of State funds, shall be required to participate in any religious instruction or worship conducted in such institutions as a matter of compulsion. (Art. 28)

This is how the Constitution protects the secular texture of the State, which is the sign of a progressive country. In India secularism is necessary because there are so many religions and religious denominations. The minority groups would feel very unsafe and insecure if the State were not to follow a policy of religious neutrality as elsewhere. The State does not profess any religion but guarantees full and unhampered growth of

culture and language for all the religions and religious denominations.

(v) Cultural and Educational Rights: Articles 29 and 30 of the Constitution are devoted towards explaining these rights. The object of these cultural and educational rights was to ensure a composite culture for India. No other culture or language would be imposed on any religious group, which is against its own cultural profession. Every cultural group, particularly the minority groups, would be given full scope and opportunity to preserve and develop their culture and language. The right in question says

(a) Any section of the citizens residing in the territory of India which has a distinct language, script or culture of its own will have a right to conserve the same. (Art. 29)

(b) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste or language. After the first amendment of the Constitution the State can make special provisions for the Scheduled Castes and the Scheduled Tribes and for the development of the backward classes of people.

(c) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (Art. 30)

(d) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

(vi) Right to Property (Art. 31): This provision has been removed from the chapter of Fundamental Rights in June 1979, by 44th Amendment. However, it is still a right but now it is a simple legal right given under Art. 300-A, and not a fundamental right.

(vii) Right to Constitutional Remedies: Article 32 of the Constitution gives this right in case any fundamental right is infringed. These rights are in the real sense the heart and soul of the Constitution. Right has no meaning, unless their enjoyment is secured. If there is any violation of these rights it should be promptly prevented. Every citizen has the right to move the Supreme Court which will issue certain WRITS which are explained in 13.5 for the enforcement of these fundamental rights. All the Acts and laws which are against or in violation of these rights will be declared unconstitutional, and therefore, null and void, by the Supreme Court. Thus the doctrine of Judicial Review is prevalent in India also. The Supreme Court has been empowered to issue directions, orders or writs for the enforcement of any or all the fundamental rights. In the case of *Golak Nath vs. The State of Punjab*, the Supreme Court debarred the Parliament from making amendments for curtailing the fundamental rights of Indian citizens.

1.6.5 Enforcement of Fundamental Rights Through Writs

The Supreme Court has the power to enforce the fundamental rights of the citizens by the issuance of directions, orders and writs. Besides the Supreme Court, other lower courts are also authorised to issue these writs to ensure the enjoyment of the funda-

mental rights within the local limits of their jurisdiction. These writs are :

(a) Writ of Habeas Corpus. This means '*Let us have the body*'. This writ, has been regarded as the- most valuable one and as the corner-stone of personal liberty. The writ means that no person will be detained by another person or in jail without his guilt being established in a law court or he being supplied with the grounds of his detention. When the arrested person moves the court the court issues a writ to the person or authority who has detained that person to produce him before the court. Then the court hears both the sides to decide about the justifiability or otherwise of the detention. If the court is not convinced about the legality of the detention the detenu must be set free.

(b) Writ of Mandamus. The Writ of Mandamus means '*We Command*'. This writ also has a remedial nature like the writ of Habeas Corpus. This writ is issued by the Supreme Court, High Courts or other courts authorised by the Parliament. This writ is issued to a court, corporation or a person to perform one's public duty, Such a writ is utilised for public purposes only. The writ cannot be claimed from a court as a matter of right because the issue of this writ depends on the discretion of the court. The writ is in, the nature of a command from a superior court to an inferior court or a person or an institution to do that parts of its or his duty which is mentioned in the writ issued. Writ of Mandamus is also provided for in the Specific Relief Act. Thus it is a prerogative writ meant for remedial purposes.

(c) Writ of Prohibition. The writ of Prohibition means to forbid or to stop: This is also known as '*Stay Order*'. This writ is issued by a High Court to a lower court or a non-judicial public institution or body which exercises semi-judicial or quasi-judicial functions to stop proceedings. The writ is issued when a lower Court or body tries to transgress the limits of powers vested in it. After the issuance of such a writ the proceedings in the lower court come to an end. The writ of Prohibition is issued even when an appeal is lying in a higher court against the order of the lower court. The idea is that immediate redress should be meted out to the sufferer.

(d) Writ of Certiorari. The writ of Certiorari means '*to be more fully informed of*'. It is a preventive instrument. It comes or is issued at a later stage of proceedings in the lower courts than the writ of Prohibition. The writ is meant to ensure speedy justice and with efficiency too. Such a writ is issued by a higher court to lower court to send the record in particular case to be considered in the higher court. The order for removing a case to a higher court, is intended to meet out justice because the lower court, at times, may not be competent to decide on it. This writ is also issued to institutions and bodies that exercise semi-judicial functions like corporations or district boards.

(e) Writ of Quo Warranto. The Writ of Quo Warranto means '*By what warrant*' or '*By what order*'. This writ has the nature of an injunction. If a person acts in a capacity to

which he is not entitled, he can be prevented from continuing in that office through the writ of Quo Warranto. When a person claims franchise or office in an unauthorised manner the court asks such a person to furnish the authority on the basis of which he puts forward his claim. This helps the court to decide whether the claim was right or wrong. If it was wrong, the person may be ordered not to do it.

1.6.6 Parliament and Fundamental Rights

The decision of the Supreme Court in the Golaknath case in 1967 caused a doubt whether the Parliament possessed the power to amend the constitution. The question had been raised earlier in the Supreme Court, but the Golaknath case laid emphasis on this point. In this case three different views were expressed. One view was that article 368 prescribes not only procedure but also confers substantive constituent power to Parliament. This power cannot be had from the other Article like 246 or 248 under residuary powers. The second view was that Article 368 or any other Article does not grant power to amend the Constitution more particularly the fundamental rights. Article

368 prescribes the procedure only, but does not give any power of amendment. The third view was that Article 368 deals with the procedure only, but the constituent power can be so modified as to enable Parliament to enjoy the power to amend the Constitution. After the decision in this case it appeared that no amendment in the Constitution (particularly the fundamental rights) would be possible by the Parliament, but the 24th amendment removed this difficulty. This amendment specifically conferred the Constituent power on Parliament. Its constitutional validity was challenged in Keshavnand Bharti's case in 1973. But the Supreme Court upheld it this time. Consequently, Parliament enjoyed the power to amend the Constitution including the fundamental rights. But the Supreme Court also said that by way of modification, the basic features of the Constitution cannot be changed or destroyed. The court has yet to define these basic features of Constitution. In a judgement (9th May 1980) the Supreme Court has struck down section 51 of the 42nd Constitution Amendment Act, 1976, which placed unlimited power on the Parliament to amend the Constitution. It also struck down section 4 of the same Constitution Amendment Act which had given primacy to Directive principles of the State policy over fundamental rights on the plea that it damaged basic or essential features of the Constitution. So the present position is that the Parliament possess the right to amend the fundamental rights.

It may also be made clear that majority opinion of the Supreme Court in the Golaknath case based on the view that Article 13 clearly prohibited State against making a law which took away or abridged fundamental rights. The Supreme Court has interpreted the expression Law in two ways. 'The first view was expressed in, Shankari Prasad Singh Vs Union of India and Sajjan Singh Vs State of Rajasthan.' In these two cases the expression 'law' was interpreted to mean only the ordinary law made by Parliament,

and thus excluded the Constitutional law. Therefore, the Constitutional law is outside the prohibition-imposed by Article 13, A contrary view was expressed by majority of the judges in *Golaknath Vs the State of Punjab*. This view included the Constitutional law, within the ambit of law and, therefore Parliament could not amend fundamental rights for which a new constituent assembly was to convened. One of the majority judges expressed the opinion that by way of amendment, Parliament could-not curtail or abridge fundamental rights, but could certainly enlarge their scope and liberalize them. The 24th amendment put an end to this controversy and expressly provided that Article 13 does not apply to the Constitutional law under Article 368.

The 42nd Amendment set aside sanctity of our fundamental rights. The Parliament was given the power to restrict, curtail or modify these rights to any extent either to prevent anti-national activities or for prohibiting the formation of anti-national associations. The Parliament could take or abridge any of the fundamental rights stipulated in Articles 14, 19, 30 of the Constitution. The citizen were thus left to suffer the unjust and arbitrary rule of the majority party. In case of clash between the fundamental rights and Directive Principles, the Directive Principles were to prevail. Further the jurisdiction of Court (both the Supreme Court and High Courts) was curtailed drastically and many matters concerning the daily lives of the citizens were taken out of the purview of the courts by incorporating the new Part XIV A (Article 323 A and 323 B) in the Constitution. Obviously the judicial check in the form of judicial review to control the arbitrary use the powers by the executive or legislature to a greater extent was eroded. The fundamental rights ceased to be fundamental rights as the same could be deformed to any extent by the Parliament. This Constitutional Amendment was termed as Black Act, which deprived the people of their genuine freedoms. Further a number of duties were imposed over the people.

To restore back and rights, (Janata Party Government at the Centre got the 43rd Constitution (Amendment) Bill passed on 23rd December, 1977; The 10 clause Bill restored to High Courts and the Supreme Court their jurisdiction to consider the Constitutional validity of any central and state law. It restored civil liberties by deleting Art, 31D which gave powers to Parliament to curtail even legitimate trade union activity under the guise of legislation for the prevention of anti-national activities)

It is gratifying to note that the 44th Constitution Amendment Act not only removed restrictions and limitations that were imposed on fundamental rights by the 42nd Constitution Amendment Act but restored rule of law in our country by bestowing back the powers on judiciary to act as guardian of fundamental rights. It also provided that the right of the life and liberty as guaranteed by Art 20 and Art. 21 cannot be suspended by the President even during emergency. This has been obviously; provided as a sufficient

safeguard to check the emergency provisions. The people cannot be harassed by the Government during emergency as had been the case during national emergency which lasted for 19 months (June 25, 1975 to March 1977) and people had suffered miserably during this dark era.

The provision of 42nd Constitution Amendment in relation to curtailment of the Jurisdiction of High Court has also been done away with. The High Court can now issue Writ for the enforcement of fundamental rights and for any other purpose. It may also be noted that the High Court's power to issue writ to Habeas Corpus cannot be suspended during national emergency.

The 44th Constitution Amendment made special safeguards to uphold the interests of minorities and state shall ensure the while acquiring property it will not restrict or curtail the rights guaranteed to minorities. Right to property has been deleted from the chapter of fundamental rights to accelerate the achievements of desired socialist goal for the establishment of a progressive society.

As has been pointed out earlier also, the Supreme Court struck down section 55 of the Constitution (42nd) Amendment Act which placed unlimited power on the Parliament to amend the Constitution alongwith Section-4 of the same amendment through which Directive Principles were granted primacy over fundamental rights. Thus, the rights and liberties of people are safe from the encroachment of the Parliament and the supremacy or judiciary as the guardian of the Constitution has been restored.

1.6.7 Criticism of Fundamental Rights

Let us enumerate some points of Criticism as under:

1. A number of key terms without offering their precise and standard definition have been used in Part-III of the Constitution. Such as, weaker sections of the community, Socially and backward classes of citizens.. minorities, public purposes, hazardous jobs etc. as a result of which scope for litigation is widened. Even the courts have made the situation more perplexed by giving different meanings to these terms from time to time.

2. A series of Amendment have vitiated the fundamental rights as contained in the original Constitution.

For example, the First Amendment inserted clause (4) into Article 15 and thereby introduced the system of reservation in favour of Scheduled Castes and Scheduled Tribes and other socially and educationally backward classes of citizens, thus violating the principle of equality. The Fourth Amendment Act of 1955 deleted the requirement of compensation being just or adequate or reasonable. The Twenty-Fifth Amendment Act of 1971 put the word 'amount' in place of Compensation in Art. 31 (2). The Forty-fourth Amendment of 1978 deleted the Right to Property from Part-III and inserted it into Part XII in the form of Art. 300 A.

3. The enforcement of our fundamental rights may be suspended during emergency declared by the President. In such a situation the President would have the power to suspend the right to move the courts for the enforcement of fundamental rights. The Forty-fourth Amendment of 1978 has made a little change that Art. 20 and Art. 21 can not be suspended.

1.6.8 Conclusion

Fundamental Rights, as enshrined in Part III of the Constitution have been lauded as the 'bedrock of Indian Democracy'. They constitute the Magna Carta of the essential rights of the Indian people. There is a very comprehensive list of the rights that have a justiciable character inspite of the fact that the State may impose reasonable restrictions on certain grounds on their use and enjoyment.

1.6.9 Self Check-Exercise

1. Fundamental Rights form Part.....of the Indian Constitution and are contained in Articles.....to.....
2. Article.....provides protection of.....and.....liberty.
3. Under Art.....untouchability is an.....punishable in accordance with.....
4. Right to Property has ceased to exist a Fundamental Right since..... Amendment.
5. The writs for Constitutional remedies are.....,.....,.....,....., and

Answers: (1) III, 12, 35 (2) 21, life personal (3) 17, offence, law, (4) 44th (5) Habeas Corpus, Mandamus. Prohibition, Certiorari and Quo-Warranto.

Suggested Questions

1. Explain in brief the Fundamental Rights as enumerated in the Indian Constitution.
2. Discuss the Fundamental Rights and the Constitutional remedies given in the Indian Constitution.

Short Answer Questions

1. What are Fundamental Rights?
2. Explain the right to equality.
3. Give any four fundamental freedoms.
4. Explain the right to Religion.
5. Writ of mandamus.
6. Habeas Corpus