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**INDIAN
POLITY**

for **Civil Servies Examination**

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1.

CONSTITUTION OF INDIA: AN INTRODUCTION

Meaning of Constitution

A constitution is essentially a formal representation of the basic ideas and organization of a government in one document. The constitution of any country is the most important piece of legislation. This is particularly important because the polity of any country is the spinal cord of law of that country. It is a legal document having a special legal sanctity, which sets out the framework and the principal functions of the organs of the government of a state, and declares the principles governing the operation of those organs. It determines law and rules, and describes the form of the government, the relationship between the citizens and the various structures of the government.

Need of a Constitutions

The Modern State is considered to be a state for the welfare of the people. It is therefore, suggested that it should have a government of a particular form with appropriate powers and functions.

The document containing laws and rules which determine and describe the form of the government, the relationship between the citizens and the government, is called a Constitution.

As such, a constitution is concerned with two main aspects: the relation between the different levels of government, and between the government and the citizens. A constitution is the basic fundamental law of a state. It lays down the objectives of the state which it has to achieve. It also provides for the constitutional framework that is, various structures and organs of the government at different levels. In addition, it describes the rights and duties of the citizens. It is, therefore, considered to be the basis for the governance of the country both in terms of goals and objectives as well as their structures and functions:

- Constitution allows coordination and assurance
- Specification of decision making powers
- Limitations on the powers of government
- Aspirations and goals of a society
- Fundamental identity of a people

Constitution allows coordination and assurance:

- The first function of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society. Imagine someone to be a member of a reasonably large group. Further

Imagine that this group has the following characteristics. The members of this group are diverse in various ways. They have different religious allegiances: some are Hindus, some are Muslims, some Christians and some perhaps profess no religion at all. They are also varied in many different respects: they pursue different professions, have different abilities, have different hobbies, different tastes in everything from films to books. Some are rich and some are poor. Some are old, some young. Imagine further that members of this group are likely to have disputes over various aspects of life: How much property should one be allowed to own? Should it be compulsory that every child be sent to school or should the parents be allowed to decide? How much should this group spend on its safety and security? Or should it build more parks instead? Should the group be allowed to discriminate against some of its members? Every question will elicit a variety of answers from different people. But, for all their diversity, this group has to live together. They are dependent upon each other in various ways. They require the cooperation of each other. What will enable the group to live together peacefully?

One may say that perhaps members of this group can live together if they can agree on some basic rules. Why will the group need certain basic rules? Think of what would happen in the absence of some basic rules. Every individual would be insecure simply because they would not know what members of this group could do to each other, who could claim rights over what. Any group will need some basic rules that are publicly promulgated and known to all members of that group to achieve a minimal degree of coordination. But these rules must not only be known, they must also be enforceable. If citizens have no assurance that others will follow these rules, they will themselves have no reason to follow these rules. Saying that the rules are legally enforceable gives an assurance to everybody that others will follow these, for if they do not do so, they will be punished.

Specification of decision making powers:

The second function of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted. A constitution is a body of fundamental principles according to which a state is constituted or governed. But what should these fundamental rules be? And what makes them fundamental? The first question is that who gets to decide what the laws governing the society should be? One may want rule X, but others may want rule Y. How to decide whose rules or preferences should govern us? You may think the rules one wants everyone to live by are the best; but others think that their rules are the best. How to resolve this dispute?

The constitution has to provide an answer to this question. It specifies the basic allocation of power in a society. It decides who gets to decide what the laws will be. In principle, this question, who gets to decide, can be answered in many ways: in a monarchical constitution, a monarch decides; in some constitutions like the old Soviet Union, one single party was given the power to decide. But in democratic constitutions, broadly speaking, the people get to decide. But this matter is not so simple. Because even if you answer that the people should decide, it will not answer the question: how should the people decide? For something to be law, should everyone agree to it? Should the people directly vote on each matter as the ancient Greeks did? Or should the people express their preferences by electing representatives? But if the people act through their representatives, how should these representatives be elected? How many should there be?

In the Indian Constitution for example, it is specified that in most instances, Parliament gets to decide laws and policies, and that Parliament itself be organised in a particular manner. Before identifying what the law in any given society is, one has to identify who has the authority to enact it. If Parliament has the authority to enact laws, there must be a law that bestows this authority on Parliament in the first place. This is the function of the constitution. It is an authority that constitutes government in the first place.

Limitations on the powers of government:

The third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass them. Constitutions limit the power of government in many ways. The most common way of limiting the power of government is to specify certain fundamental rights that all of us possess as citizens and which no government can ever be allowed to violate. The exact content and interpretation of these rights varies from constitution to constitution. But most constitutions will protect a basic cluster of rights. Citizens will be protected from being arrested arbitrarily and for no reason. This is one basic limitation upon the power of government. Citizens will normally have the right to some basic

liberties: to freedom of speech, freedom of conscience, freedom of association, freedom to conduct a trade or business etc. In practice, these rights can be limited during times of national emergency and the constitution specifies the circumstances under which these rights may be withdrawn.

Aspirations and goals of a society: A constitution may enshrine the aspirations of a society.

The fourth function of a constitution is to enable the government to fulfill the aspirations of a society and create conditions for a just society. For example, India aspires to be a society that is free of caste discrimination. If this is society's aspiration, the government will have to be enabled or empowered to take all the necessary steps to achieve this goal. In a country like South Africa, which had a deep history of racial discrimination, its new constitution had to enable the government to end racial discrimination. The framers of the Indian Constitution thought that each individual in society should have all that is necessary for them to lead a life of minimal dignity and social self-respect — minimum material well-being, education etc. The Indian Constitution enables the government to take positive welfare measures some of which are legally enforceable.

Fundamental identity of a people:

Finally, and perhaps even most importantly, a constitution expresses the fundamental identity of a people. This means the people as a collective entity come into being only through the basic constitution. It is by agreeing to a basic set of norms about how one should be governed, and who should be governed that one forms a collective identity. One has many sets of identities that exist prior to a constitution. But by agreeing to certain basic norms and principles one constitutes one's basic political identity. Second, constitutional norms are the overarching framework within which one pursues individual aspirations, goals and freedoms. The constitution sets authoritative constraints upon what one may or may not do. It defines the fundamental values that we may not trespass. So the constitution also gives one a moral identity. Third and finally, it may be the case that many basic political and moral values are now shared across different constitutional traditions

Classification of Constitutions

Constitutions are broadly classified on the basis of two features:

- Nature of polity whether unitary or federal.
- Nature of the document whether written or unwritten.
- **Unitary Constitution:** This type of constitution establishes a single, central organ of government without dividing powers between two separate entities. For example, the British Constitution is a unitary constitution which recognizes only one central organ i.e., the British Parliament and the central government. In England we have no state type legislatures or governments. There may be other legislative and executive authorities under a unitary constitution but they enjoy only delegated powers and not constitutionally granted powers.
- **Federal Constitution:** This type of constitution is based on power sharing between two distinct entities namely, the federal or the union government and the state governments. These two levels of government enjoy coordinate authority and none is inferior to each other as both derive their respective authorities directly from the constitution. Countries with large population, geographical size, social, cultural and linguistic diversities generally adopt federal form of constitution to allow autonomy of governance to the constituent states. For example, the US, Canadian, Australian Constitutions are federal constitutions.
- **Written Constitution:** A written constitution is one which is subjected to systematic presentation in black & white. Written constitution is contained in one document, such as of Soviet Union or Constitution of India or Swiss Constitution. Some constitutions are found in several documents, such as Canadian Constitution which include a 'Constitution Act', as well as several pieces of the legislation and historical documents. Thus a written constitution has to be prepared by a body called the Constituent Assembly which is elected by the

people for whom the constitution is being written. The federal constitutions are generally written ones because they involve two partner's viz., the union and the states. A written constitution is thus, quite clear and above doubt and dispute.

- **Unwritten Constitution:** A constitution not embodied in a single document but based chiefly on custom and precedent as expressed in statutes and judicial decisions.

Indian Constitution

The constitution of independent India was framed in the background of about 200 years of colonial rule, a mass-based freedom struggle, and partition of the country amid widespread communal violence. Therefore, the framers of the constitution were concerned about the aspirations of the people, integrity and unity of the country and establishment of a democratic society. Amongst the members there were some who held different ideological views. There were others who were inclined to socialist principles; still others holding Gandhian thinking but nothing could act as any kind of impediment in the progress of the Assembly's work because all these members were of liberal ideas. Their main aim was to give India a 'Constitution' which will fulfill the cherished ideas and ideals of the people of this country.

Conscious efforts were made to have consensus on different issues and principles and thereby avoid disagreement. The consensus came in the form of the 'Objectives Resolution' moved by Jawahar Lal Nehru in the Constituent Assembly on December 17, 1946 which was almost unanimously adopted on January 22, 1947. In the light of these 'Objectives' the Assembly completed its task by November 26, 1949. The constitution was enforced with effect from January 26, 1950. From that day India became a Republic. Exactly twenty years before the first Independence Day was celebrated on January 26, 1930 as decided by the Lahore session of the Congress on Dec. 31, 1929. Hence, January 26, 1950 was decided as the day to enforce the constitution.

Salient Features of Indian Constitution

- **Parliamentary Form of government:** India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The Cabinet is responsible to the latter. In fact the Cabinet holds office so long as it enjoys the confidence of the legislature. In this form of democracy, the Head of the State is nominal. In India, the President is the Head of the State. Constitutionally the President enjoys numerous powers but in practice the Council of Ministers headed by the Prime Minister, which really exercises these powers. The President acts on the advice of the Prime Minister and the Council of Ministers.
- **A combination of Federal and Unitary Government:** The Constitution of India, unlike the Constitution of the USA and Australia, embodies provisions relating to both union and state governments. Though it did not mention 'federal state' anywhere but it adopted a federal structure with a union government. Hence, it is an indestructible union with destructible states.
- **Special Provisions for Certain Sections:** Special provisions are made for certain backward classes of people like SCs, STs, OBCs and minorities. Many provisions had to be included in the nature of transitional provisions like provisions for the state of J & K.
- **Fundamental Rights, Fundamental Duties and Directive Principles of State Policy:** The constitution embodies a list of fundamental rights, and a number of directive principles of state policy. The fundamental duties were incorporated in the constitution by the 42nd Amendment. The fundamental rights incorporated in the constitution are not absolute in nature, but are subject to the limitations which are expressly defined by the constitution itself. The DPSPs are the guidelines provided by the constitution to the states regarding various issues of governance. However, it is non-justifiable in nature.
- **Rigid and flexible at the same time:** The Indian Constitution is a unique example of combination of rigidity and flexibility. A constitution may be called rigid or flexible on the basis of its amending procedure. In a rigid constitution, amendment of the constitution is not easy. The Constitutions of USA, Switzerland and Australia are considered rigid constitutions. While the British Constitution is considered flexible because amendment procedure is easy and simple, the Constitution of India provides for three categories of amendments. In

the first category, amendment can be done by the two houses of Parliament by simple majority of the members present and voting before sending it for the President's assent. In the second category, amendments require a special majority. Such an amendment can be passed by each House of Parliament by a majority of the total members of that House as well as by the 2/3rd majority of the members present and voting in each house of Parliament and send to the President for his assent which cannot be denied. In the third category, besides the special majority mentioned in the second category, the same has to be approved also by at least 50% of the State legislatures. Thus, the Indian Constitution provides for the type of amendments ranging from simple to most difficult procedure depending on the nature of the amendment.

- **One of the longest written Constitutions:** Detailed provisions, relating to the working of various institutions set up under the constitution, have been included mainly with a view to avoid difficulties which a newly born democratic republic might have experienced in working the constitution efficiently.
- **Detailed provisions on distribution of Power:** Among the various parts of the government, detailed provisions with respect to the exercise of executive and administrative powers are laid down because the constitution makers were not sure about the strength of democracy then and its capacity to effectively regulate those powers.
- **Independent and Integrated Judicial System:** The judiciary system is kept free from the influence of the executive and the legislature. As an integrated system, India has the Supreme Court as the apex court below which High Courts come. The High Courts in turn supervise the lower courts.
- **Single Citizenship:** In a federal state, usually the citizens enjoy double citizenship as is the case in the USA. In India, there is only single citizenship. It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chhattisgarh to which he/she may belong to but remains a citizen of India. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of India.
- **Universal Adult Franchise:** Indian democracy functions on the basis of 'one person one vote'. Every citizen of India who is 18 years of age or above is entitled to vote in the elections; irrespective of caste, sex, race, religion or status. The Indian Constitution establishes political equality in India through the method of universal adult franchise.

Salient Features of Indian Constitution

- Longest Written Constitution
- Drawn From Various Sources
- Blend of Rigidity and Flexibility
- Federal System with Unitary Bias
- Parliamentary Form of Government
- Synthesis of Parliamentary Sovereignty and Judicial Supremacy
- Integrated and Independent Judiciary
- Fundamental Rights
- Directive Principles of State Policy
- Fundamental Duties
- A Secular State
- Universal Adult Franchise
- Single Citizenship
- Emergency Provisions
- Three-tier Government

Criticism of Indian Constitution

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

A Borrowed Constitution

The critics opined that the Indian Constitution contains nothing new and original. They described it as a 'borrowed Constitution' or a 'bag of borrowings' or a 'hotch-potch Constitution' or a 'patchwork' of several documents

of the world constitutions. However, this criticism is unfair and illogical. This is because, the framers of the Constitution made necessary modifications in the features borrowed from other constitutions for their suitability to the Indian conditions, at the same time avoiding their faults.

While answering the above criticism in the Constituent Assembly, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, said: "One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world.

More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly, what are the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based; I am sure, on an inadequate study of the Constitution".

A Carbon Copy of the 1935 Act

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

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

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

Un-Indian or Anti-Indian

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

A Un-Gandhian Constitution

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

Elephantine Size

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

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

Paradise of the Lawyers

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

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

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

Sources of the Constitution

Sources	Features Borrowed
Government of India Act of 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commission, Emergency provisions and administrative details.
British Constitution	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism
US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.
Irish Constitution	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
Canadian Constitution	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
Australian Constitution	Concurrent List, freedom of trade, commerce and intercourse, and joint sitting of the two Houses of Parliament.
Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency.

Soviet Constitution	Fundamental duties and the ideal of justice.
French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha.
Japanese Constitution	Procedure established by Law.

Some important Provisions in the Constitution

Parts	Subject Matter	Articles Covered
	The Union and its territory	1 to 4
	Citizenship	5 to 11
	Fundamental Rights	12 to 35
	Directive Principles of State Policy	36 to 51
1VA	Fundamental Duties	51 A
	The Union Government	52 to 151
	The State Governments	152 to 237
IX.	The Panchayats	243 to 243-0
IX-A	The Municipalities	243-P to 243-ZG
X	The Scheduled and Tribal Areas	244 to 244-A
XI	Relations between the Union and the States	245 to 263
XV	Elections	324 to 329-A

The Evolution Of Indian Constitution

The Constitution of India is the modern sacred text of the contemporary India. It reflects the new aspirations and values of the people of India and testifies how the people of India are the supreme masters in all matters concerning the welfare of Indians. A galaxy of learned wise men interested in the longevity of the emerging nation of India framed the constitution in its present form after a thorough debate and discussion of each proposal. The nationalists consciously, popularized the concepts of parliamentary democracy, republic, civil liberties, social and economic justice which happen to be the most basic tenets of the constitution.

The Indian Constitution is a marathon effort to translate philosophical rule of law into practical set up divided into three significant estates checking each other exercising parallel sovereignty and non-egoistic supremacy in their own way. Apart from excellent separation of powers to avoid the absolute concentration, the Constitution of India envisages a distinct distribution of powers between two major levels of Governments- central and provincial with a fair scope for a third tier - the local bodies. However, the operation of the system came in contrast with men and their manipulations leading to different opinions and indifferent options. Whatever may be the consequential aberrations, the system of rule of law is perfectly reflected in framing of the Constitutional norms codifying the best governing mechanisms tested and trusted in various democratic societies world over. The development of such an elaborate code of law was not just a result of Constituent assembly debates and sessions only, rather it was process that begun centuries ago before India became independent in 1947.

A brief History of Evolution of the Constitution of India

A reference to the history of British rule and Indian Independence struggle provide basic idea of self-governance that emerged into a people's participative democracy. The merchants who came for tea and other such things were granted not only the business rights but the revenue power to collect their dues from the clients. After some years the Company also got power of administering justice within its colony and started applying the law to establish sovereignty over India. This means the power of governance and the civil administration. Then imperialistic interests improved making it a sovereign with active support of the British Crown.

When the officers of the company looted the innocent people and cheated the company too, the British administrators realized that it was no longer good to leave the Indian nation in the hands of company and conveniently took over the reins of governance. It encouraged the independent princely states if the princes subjugate to British, and if not, they won them over in battles fought by Indian born Crown soldiers backed by English captains.

The first introduction of modern constitutional law in India was made by British through The Regulating Act in 1773. It went through many developments and changes over the time as British empire expanded in India. The final constitutional law passed by British in India was Government of India Act, 1935.

Till 1947 they tried to create several states within India and gave them all courage to opt out of acceding to Indian Union apart from inciting communal dissensions. Unification of scattered Indian states within the sub-continent was Herculean task, which made the present Indian Union possible after a violent partition into three pieces. The framers of the Constitution intended to secure the hard-won freedom with integrity and preferred a strong union within a federation, which otherwise appear contradictory. Mahatma Gandhi wrote in January 1922 under the caption 'Independence' in his weekly, 'Young India,' 'Swaraj therefore will not be a free gift of the British Parliament. It will be expressed through an Act of Parliament is true. But it will be merely a courteous ratification of the declared wish of the people of India.' This statement clarifies the doubts about 'independent' origin of independence of India, if any.

Phase - 1: 1773-1813

- The Regulating Act, 1773
- Amending Act of 1781
- Pitt's India Act of 1784
- Act of 1786
- Charter Act of 1793
- Charter Act of 1813

Phase - 2: 1833-1853

- Charter Act of 1833
- Charter Act of 1853

Phase - 3: 1858-1909

- The Government of India Act, 1858
- Indian Councils Act, 1861
- Indian Councils Act, 1892

Phase - 4: 1909-1935

- Indian Councils Act, 1909 (Morley-Minto Reforms)
- Indian Councils Act, 1919 (Montagu-Chelmsford Reforms)
- Government of India Act, 1935

Phase - 5: 1940- 1950

- August Offer (1940)
- Cabinet Mission Plan (1946)
- Drafting of Constitution (1946-1950)

Phase I: (1773 - 1813)

The phase one marked the rise in power of Governor of Bengal and the exclusive monopoly of East India Company over trade and administration in India. This period was marked by massive corruption and increased marginalization of Indian population. Also, there was a general absence of rule of law to begin with.

The Regulating Act of 1773

The Regulating Act was the first landmark of the British legislation in India. The following circumstances led to the enactment of Regulating Act:

- Massive corruption among company officials.
- Payment of ever increasing dividends to the share-holders of the company.
- The financial imprudence of the company, which compelled it to apply to the British government for a loan to get out of its difficulties.

Major Provisions of the Act

- The members of the Court of Directors were to be elected for four years with one-fourth of their number being elected every year. The objective of this provision was to strengthen: (A) the authority of the court of Directors and (B) to prevent instability in the councils and measures of the company.
- The Act forbade any conclusive transfer of any stock of the company for the purpose of voting at any election.
- Provision for the establishment of the Governor-General's council which consisted of four counsellors and the Governor-General. The Governor-General was given a casting vote in case of a tie. They were to hold their offices for five years.
- Mandate of Governor of Bengal was increased, and he became Governor-General of British territories of India.
- The Act provided for the establishment of Supreme Court at Fort William, Calcutta. This Supreme Court was to consist of a Chief Justice and three other judges with specific qualifications.
- The act directed the company to pay annual salaries to the Governor-General and council, the Chief Justice of the Supreme Court and other judges.

Amending Act of 1781

Major Provisions of the Act

- Actions of public servants of the Company in their official capacity were exempted from the jurisdiction of Supreme Court.
- Jurisdiction of Supreme Court was defined. Supreme Court had to take into consideration and respect the religious and social customs and usages of the Indian while enforcing its decrees and processes.
- The rules and regulations made by Governor-General-in-Council were not to be registered with Supreme Court.
- The act provided that the Governor-General and council of Bengal were not to be subject to the jurisdiction of the Supreme Court.
- The Supreme Court was not to have or exercise any jurisdiction in matters concerning the revenue or the regulations formed by the Governor-General and council.
- The act empowered the Governor-General and council to frame, from time to time, regulations for the provincial courts and councils.

Pitt's India Act of 1784

British Prime Minister Pitt moved his India Bill in January 1784 which became law in August 1784 and was known as Pitt's India Act. It was a response to the defects in the Regulating Act of 1773, as Britain wanted to tighten its grip around colonies, in wake of on-going American struggle for Independence.

Major Provisions of the Act

- The act established a Board of six commissioners called Commissioners for the affairs of India, popularly known as the Board of Control. This consisted of the Chancellor of the Exchequer, a secretary of state and four privy counselors.
- The court of directors was required to appoint, from amongst its own members, a secret committee, consisting of not more than three members.
- The Board of control was not to have any power of nominating or appointing any of the servants of the company. The power of filling a vacancy was vested through the act in the court of directors.
- The members of the Governor-General's council were reduced to three, one of whom was to be the commander-in-chief. Only covenanted civil servants were appointed as members of the council.
- The act prohibited the company to pursue 'Schemes of conquest and extension of dominion in India without the consent of the court or the secret committee.
- It made elaborate provisions for the prevention and punishment of corruption, misgovernment or disobedience on the part of the company's servant in India.

Implications of the Act

Except in respect of the power of appointment to offices in India and the management of the company's trade, the act virtually made the Board of control the supreme authority in regard to the affairs of the company in India and placed the company in direct and permanent subordination to a body representing the British Government.

A unity of system' in the Indian part of the company's administration went a long way towards producing a unified and a centralized system of Government in this country.

Act of 1786

Major Provisions of the Act

The act of 1786 was brought in response to American Independence. The act empowered the Governor-General with the discretionary power to override his council in certain circumstances and act on his own responsibility. It enabled the offices of Governor-General and commander in chief to be united in the same person if this was considered necessary.

Charter Act of 1793

Major Provisions of the Charter Act of 1793

- The company's charter and exclusive trading privileges (Monopoly over Indian Trade) were renewed for twenty years.
- A 'Legal code' was mandated for the government functions, which was to be interpreted by the court. All laws were printed in the Indian language so that the people should become familiar with the rights, privileges and immunities.

The most important feature of the act of 1793 was that it laid the foundation of government by written laws and regulations in British India.

Charter Act of 1813

The long continuance of the Napoleonic war had caused a marked decline in British Trade. The British merchant's persistent demand that the company's trade should be opened to all private traders led to the passing of the charter Act of 1813. The important features of the act included:

- The company's monopoly rights over Indian Trade were renewed for twenty years.
- The act retained to the company its monopoly of trade with China and also into trade in tea, but threw open for all British subjects the rest of the trade with India, subject to some conditions.
- The act also declared that the Government's duty was to promote the interest and happiness of the native inhabitants of India.

- Lastly, the Governor-General was authorized to spend not less than a lakh of rupees a year on promotion of education. The provision represents the first attempt on the part of the British Government at imposing an obligation on the company of fostering education in this country. A committee of Public Instruction was formed in 1823 to give effect to this provision.

Phase II: (1833 - 1853)

This phase was marked with decline in power of East India Company and its officials. The administration came into hands of trained bureaucrats, which were to be selected through an open examination. The company lost its monopoly over trading rights and became just an administrative body during the period. There was also an attempt to provide a responsible government, though in a limited sense only.

Charter Act of 1833

- It redesignated the Governor-General of Bengal as the Governor-General of India. Under this provision Lord William Bentinck became the first Governor-General of India.
- It ended the activities of the British East India Company as a commercial body and became a purely administrative body. In particular, the Company lost its monopoly on trade with China and other parts of the Far East.
- It attempted to introduce a system of open competitions for the selection of civil servants. However this provision was negated after opposition from the Court of Directors who continued to hold the privilege of appointing Company officials.
- The territorial possessions of the company were left in its possessions for a further period of twenty years.
- The act provided for the 'Codification of law' in India. It empowered the Government to appoint a Law commission which had to codify the 'Indian penal code' and 'Codes of civil and criminal laws' from the prevalent English laws, presidency regulations, Hindu law, Muslim law, customary law, etc.

Charter Act of 1853

- It was provided that the East India Company would manage the British Indian territories for an indefinite period, till the pleasure of British Parliament.
- The number of Directors was reduced from 24 to 18 of whom six were to be nominated by the crown.
- Separation of the executive and legislative functions was further carried out.
- The Act appointed a law commission in London for the codification of Indian laws. The commission drafted the Code of Civil Procedure (1859) and the Code of Criminal Procedure (1861).
- All vacancies in India were to be filled in by competitive examination (barring the Indians). Lord Macaulay was appointed the president of the committee.
- The legislation, for the first time was treated by the government as a special function requiring special machinery and special procedure.
- Laid foundation of Parliamentary system of Government, and the executive and legislative were separated. Legislative Assembly functioned in the model of British Parliament.

Phase III: (1858 - 1892)

The Government of India Act, 1858

While the provisions in charter act of 1853, clearly mentioned that administrative powers with the company was not fixed, and the crown could step in anytime and take over the administration. The First Freedom Struggle made sure that a trading company will not be allowed to continue as a political power.

Major Provisions of the Act

- The Act transferred the administrative control over India from the company to the crown. The Act laid down that henceforth 'India shall be governed by and in the name of the Queen, and all the territorial and other revenues of (or arising in) India shall be received for and in the name of 'Her Majesty'.

- ▶ Additional designation of Viceroy was conferred to the Governor-General of India.
- ▶ It also provided for the transfer of all military and naval forces of the company to the crown.
- The Crown was empowered to appoint a Governor-General and the Governors of the Presidencies.
- The Court of Directors and the Board of Control were abolished and their place was taken over by the Secretary of State for Indian Affairs and the India Council.
- Secretary of State for India was to be a member of the British Cabinet and was responsible to the British Parliament.
- Extensive powers were given to the Secretary of State for Indian Affairs and the Indian Council consisted of 15 members. The Council was made to assist him but only had an advisory role.
- Doctrine of Lapse was discarded under this Act.
- The system of 'Dual Government' introduced by the Pitt's India act of 1784 was finally abolished.

Drawbacks

- The changes brought about by the act of 1858 were formal rather than substantial. Infact all the real powers had long been passed to the President of the Board of control appointed by the British Government and the directors of the company had been reduced to the position of an advisory council.
- Indians were not benefited from the transfer of the Government and revenues of India from the company to the crown.
- The act did not bring about any fundamental change and the administrative system was made highly centralized.

Implications

- The act meant that nearly two and half decade old British East India Company lost its possessions and powers. The Company remained in existence in vestigial form, continuing to manage the tea trade on behalf of the British Government until the East India Stock Dividend Redemption Act 1873 came into effect, on 1 January, 1874.
- The abolition of Dual Government has some good effects.
- The office of secretary of state for India became more responsible and dignified.

Queen Victoria's Proclamation (1858)

- It assured the people of India that no discrimination will be made on the basis of caste, colour, race and creed.
- It assured the Princes that their rights, dignity and honour will be respected and there shall be no encroachment in their territorial possessions.
- It declared unconditional pardon and general amnesty.

Indian Councils Act, 1861

Why the need was felt for a new law, when last act was passed, barely 3 years ago.

- **Inclusion of native population:** The 1857 freedom struggle alarmed the British government and made it amply clear that no government can be secure in its seat by antagonizing the native population.
- **Problems regarding legislation:** The legislative council of the Governor-General could not work satisfactorily. It lacked native representation and consist only foreign bureaucrats who had no sympathies with the people.
- **Need for Decentralization:** Charter act of 1833 had brought about the centralization of legislative powers with a view of securing uniformity of laws in the whole country but it proved defective due to complex diversity of India.

Major Provisions of the Act

- The act for the first time associated Indians with the law-making process. It provided that the Viceroy should nominate some Indians as non-official members of his expanded council.

- The 1861 Act restored the legislative power taken away by the Charter Act of 1833. The legislative council at Calcutta was given extensive authority to pass laws for British India as a whole.
- The Viceroy got the right to allocate one or more portfolios to every member of his executive council.
- The Viceroy was empowered to change the boundaries of the provinces or create a new province for administrative ease and appoint lieutenant governors and legislative councils for small provinces.
- The Viceroy was empowered to issue ordinances during an emergency. The life of such ordinance was six months.
- It provided that the Governments of Bombay and Madras be given power of nominating the Advocate-General and not less than 4 and not more than 8 additional members were to hold office for two years.

Indian Councils Act 1892

Increased demand by Indians, particularly by, Indian National congress for more representative institutions acted as an important precursor to the Act. The Indian Council Act of 1892 was an amending act to the Indian Council Act of 1861. It did not introduce any significant changes in the existing set up.

Major Provisions of the Act

- It increased the number of additional members in the Legislative Councils and enlarged their functions. The number of additional members of the Central Legislative Council was increased to minimum 10 and maximum 16.
- The powers of the Legislative councils was increased which included.
 - ▶ The members could ask questions on domestic matters with the prior permission of Governor-General.
 - ▶ The members were authorized to discuss the Budget but without a right to vote on it.
 - ▶ The members were allowed to ask questions on public interest.
- The additional members in the central as well as the provincial legislative councils were increased but the official members still formed the majority.
- To elect the members of the councils the system of indirect elections was introduced. The universities, district board, municipalities, zamindars, and chambers of commerce were empowered to recommend members to provincial councils.

Phase IV: (1909 - 1935)

Indian Councils Act, 1909 (Morley-Minto Reforms)

Major Provisions of the Act

- The member of the Legislative Councils, both at the Center and in the provinces, were to be of four categories, i.e., Ex-Officio Members (Governor General and the members of their Executive Councils), Nominated Official Members (those nominated by the Governor General and were government officials), Nominated Non-Official Members (nominated by the Governor General but were not government officials) and Elected Members (elected by different categories of Indian people).
- The maximum number of nominated and elected members of the Legislative Council at the Center was increased from 16 to 60. The number did not include ex-officio members.
- The maximum number of nominated and elected members of the provincial legislative councils under a governor or lieutenant-governor was also increased. It was fixed as 50 in Bengal, Bombay, Madras, United Provinces, and Eastern Bengal and Assam, and 30 in Punjab, Burma, and any lieutenant-governor province created thereafter.
- The right of separate electorate was given to the Muslims, Chamber of Commerce, Universities, Presidency Corporations and the Land holders.
- Official members were to form the majority but in provinces non-official members would be in majority.

- The members of the Legislative Councils were permitted to discuss the budgets, suggest the amendments and even to vote on them; excluding those items that were included as non-vote items. They were also entitled to ask supplementary questions during the legislative proceedings.
- Two Indians were nominated to the Council of the Secretary of State for Indian Affairs. The Governor-General was empowered to nominate one Indian member to his Executive Council.

Evaluation of the Act

The Act of 1909 was important for the following reasons:

It effectively allowed the election of Indians to the various legislative councils in India for the first time. Previously some Indians had been appointed to legislative councils. Leaders like Gokhale had utilised the discussions in the councils demanding universal primary education, attacking the repressive policies of government and drawing the plight of Indian workers in South Africa.

The introduction of the electoral principle laid the groundwork for a Parliamentary system even though this was contrary to the intent of Morley.

However, the reforms of 1909 afforded no answer to the Indian political problem. They were basically aimed at to placate the moderates and Muslims against the rising tide of nationalism and to sabotage the genuine aspirations of the Indians for self-government. The system of election is too indirect that no meaningful representation could be made. Further, they too had very limited role to play in the councils.

Muslims had expressed serious concern that a British type of electoral system would leave them permanently subject to Hindu majority rule. The Act of 1909 stipulated, as demanded by the Muslim leadership:

- That Indian Muslims be allotted reserved seats in the Municipal and District Boards, in the Provincial Councils and in the Imperial Legislature;
- That the number of reserved seats be in excess of their relative population (25 percent of the Indian population); and,
- That only Muslims should vote for candidates for the Muslim seats ('separate electorates').

These concessions were a constant source of strife (1909-47) and finally led to the partition of India and bloodbath that succeeded. British statesmen generally considered reserved seats as regrettable in that they encouraged communal extremism as Muslim candidates did not have to appeal for Hindu votes and vice versa. As further power was shifted from the British to Indian politicians in 1919, 1935 and after, Muslims were ever more determined to hold on to, and if possible expand, reserved seats and their weightage. However, Hindu politicians repeatedly tried to eliminate reserved seats as they considered them to be undemocratic and to hinder the development of a shared Hindu-Muslim Indian national feeling.

The reforms gave a shadow than the substance to the people of India and failed to satisfy the Indian National Congress which was demanding for "the system of government obtaining in Self-Governing British Colonies.

Government of India Act, 1919 (Montagu-Chelmsford Reforms)

On August 20, 1917, the British Government declared, for the first time, that its objective was: increasing association of Indians in every branch of administration; the gradual introduction of responsible government in India. The Government of India Act of 1919 came into force in 1921. The Act is also known as Montagu-Chelmsford Reforms (Montagu was the Secretary of State for India and Lord Chelmsford was the Viceroy of India).

Montague Declaration

- Montague's Declaration of 1917 promised that the Indians would be increasingly associated with the administration and self-governing institutions would be gradually developed.
- It stated that responsible government in India as an integral part of British Empire was the final goal of the government and this would be achieved in stages and the British Governments and the Government of India would be, the sole authority to judge the time and measure of each advancement and in this, they would be guided by the responsible Indian leaders and their capability to handle responsibility.
- The famous declaration closed one chapter in the constitutional history of India and opened another.

- With this declaration benevolent despotism was dead and India's right to Swaraj was admitted and despotism was to give place to constitutional government.
- So all its ifs-and-buts were ignored and the announcement was welcomed by almost all political parties.
- The greatest importance of the declaration perhaps lay in the fact that every Indian was feeling convinced that self-government for India was within the domain of possibility.

Major Provisions of the Act

The Government of India Act of 1919, made many far reaching changes in the administration of India.

- The Act provided for a bicameral legislature consisting of two houses, viz., the Central Legislative Assembly and the Council of State (instead of Imperial Council in the Centre consisting of one House that existed formerly).
- The Central Legislative Assembly consisted of 145 members. Among them 105 were elected and the rest were nominated. Of the nominated members 25 were officials and the rest non-officials. Out of the 105 elected members 53 were elected by the general constituencies and 52 by communal constituencies.
- The Council of State consisted of 60 members. Among them 34 were elected and 25 were nominated by the Governor-General.
- The term of the Central Legislative Assembly was 3 years and that of the Council of State was 5 years.
- Indirect election was recommended to the Central Assembly. But later it was changed to direct elections for both Houses of the Central Legislature, while the franchise was restricted.

Who was entitled to Vote?

- People having property (rental value), taxable income and paid land revenue of Rs. 3000.
- Past experience in a legislative council of India.
- Membership of university senate.
- Holding of certain offices in local bodies.
- Holding of some specified titles.
- Members were given the right of putting questions and supplementary questions. As regarding the Central Budget, the Government submitted proposals for the appropriation in the form of Demands for Grant to be vote in the Indian Legislative Assembly.
- Further, the Act of 1919, provided for two Lists of subjects. They were Central List and Provincial List.
- Dyarchy was introduced in the Provinces. There were two kinds of Subjects in the provinces. They were Transferred and Reserved Subjects. The Transferred subjects were administered by the Governor with the help of his ministers. They were Local Self-Government, Public Health, Education of Indians, Public Works, etc. The Reserved subjects were administered by the Governor with the help of the Executive. These include Administration of Justice, Police, Irrigation and Canals, Drainage and Embankments, Water Storage and Water Power, Land Revenue Administration, etc.
- Apart from this the Act provided that in future the Secretary of State was to be paid out of the British revenues. A High Commissioner for India was to be appointed by the Government of India. He acted as the agent of the Governor-General in Council. Some of the functions of the Secretary of State for India were taken away from him and given to the Commissioner.

Evaluation of the Act

These reforms represented the maximum concessions the British were prepared to make at that time. The franchise was extended, but still very limited. Though increased representation and authority was given to central and provincial legislative councils, but the Viceroy remained responsible only to London. In other words, at the Centre, the legislature had no control over the Governor Generals Executive Council. The allocations of seats in Central Legislature were not based on population, but on the importance of the provinces- for example Bombay's commercial importance and Punjab's military importance.

In the provinces, the two parallel governments administering different subjects defied logic and was unworkable. The provincial ministers had no real powers as main subjects were reserved and their good work could be negated by the Governor. They were not consulted on important matters also.

The communal and class based electorate was consolidated.

The Indian National Congress has declared that the reforms are disappointing and unsatisfactory and demanded effective self-government in India.

Simon Commission (1928-1930)

In Government of India Act, 1919 there was a provision, that to examine the constitutional reforms and to know the reaction of Montague-Chelmsford reforms after ten years a government will appoint a commission who will make recommendations for adequate amendment.

In, 1927 Lord Irwin appointed a commission under instruction of British government which was consist of seven members under Sir John Simon. All the members of commission were British; even they did not include a single Indian member. Thus, there were widespread protests against it.

There were following recommendations on Commissions report:

- The Diarchy system in the provinces should be abolished and all the portfolios should be handed over to the provincial ministers.
- The power of the central government and the provincial governors should be reduced.
- Federal system of government should be introduced in India.
- The right to vote should be extended to more people.
- An expert committee should be constituted regarding the separation of Sindh from Bombay. The separation of Sindh was not granted in principal. First there would have to be a close and detailed enquiry into the financial consequences which would follow such a step.

The outcome of the Simon Commission and the subsequent round table conferences was the Government of India Act 1935, which established representative government at the provincial level in India and is the basis of many parts of the Indian Constitution.

Government of India Act, 1935

Following the release of Simon Commission Report, the Indian leaders rejected it. Subsequently the British Government declared, that the Report was not final and in order to resolve the constitutional deadlock, the matter would finally considered after consulting representatives of all the Indian communities.

Thus, a Round Table Conference was organized in London. After holding three sessions of Round Table Conference in 1930, 1931 and 1932 respectively, their recommendations were embodied in a White Paper published in 1933, which was considered by a Joint Select Committee of the British Parliament. The government also constituted a committee of 20 representatives from British India and 7 from Indian States including 5 Muslims. The committee went in session from April 1933 to December 1934 for deliberation and submitted its report to Parliament in the end of 1934. The Parliament debated the report and passed a bill in February 1935, which got royal assent on July 24th, 1935, and it was enforced on April 1, 1937 with the name of Government of India Act 1935.

The Government of India Act 1935 contained 32 Sections 14 Parts and 10 Schedules and consisted of 2 Major Parts.

Major Provisions of the Act

- **Introduction of Federalism:** The India Act 1935 proposed to set up All Indian Federation comprising of the British Indian Provinces and Princely States. The States were absolutely free to join or not to join the proposed Federation.
- **Division of Federal Subjects:** The scheme of federation and the provincial autonomy necessitated proper division of subjects between the centre and the provinces. The division under 1919 Act was revised and the 1935 Act contained three lists, i.e., Federal, Provincial and Concurrent Legislative Lists.
- **Introduction of Dyarchy at the Centre:** The India Act 1935 introduced Dyarchy at the centre. The Federal Subjects were divided into two categories, the Reserved and the Transferred. The former included defence, ecclesiastical affairs, external affairs and administration of Tribal Areas. These were to be administered by the Governor General with the help of executive councilors not exceeding three in number. The rest of the subjects were Transferred ones. These were to be administered by the Governor General with the help of a Council of Ministers, the number of which was not to exceed 10. The ministers were responsible to Governor

General and the legislature. The Governor General by his special powers and responsibilities could dominate the ministers.

- **Minority Appeasement:** A very significant provision was the safeguards for the minorities. It was argued that the minorities needed protection from the dominance of the majority community. But the so-called provisions in the Act relating to safeguards were merely a trick to empower the Governor General and the Governors to override the ministers and the legislators.
- **Introduction of Bicameral Legislature:** The proposed federal legislature was bicameral body consisting of the Council of States (Upper House) and the Federal Assembly (Lower House). The strength of the Upper House was 260 out of which 104 nominated by the rulers were to represent the Indian States, 6 by the Governor General and 150 were to be elected. The lower House was to consist of 375 members, out of which 250 were to be the representatives of the British India and 125 of the Indian States. The members from the British India were to be indirectly elected as the members of the Lower Houses of the Provincial Legislatures but were to be nominated by the rulers in case of the Indian States. Its life was 5 years unless dissolved earlier by the Governor General. 6 out of 11 provinces were given bicameral system of legislature. The Act not only enlarged the size of legislature, it also extended the franchise, i.e., the number of voters was increased and special seats were allocated to women in legislature.
- **Establishment of a Federal Court:** The India Act 1935 also provided for the establishment of a Federal Court to adjudicate inter-states disputes and matters concerning the interpretation of the constitution. It was however, not the final court of appeal. In certain cases the appeals could be made to the Privy Council in England.
- **Communal and Separate Electorate:** The Act not only retained the separate electorate but also enlarged its scope. The Anglo-Indians and the Indo-Christians were also given separate electorate.
Separation of Bombay and Bengal: The Act provided for the creation of two new provinces of Sindh from erstwhile Bombay and Orissa from Bengal.
- **Abolition of Dyarchy in Provinces:** In the provinces Diarchy was abolished. There was no Reserve Subjects and no Executive Council in the provinces.
- **Reserved Amendment Powers:** No Indian legislature whether federal or provincial was authorized to modify or amend the constitution. The British Parliament alone was given the authority to amend it.
- **Separation of Myanmar (Burma) and Aden from India:** Another important feature of the Act was that Burma was separated from India with effect from April 1937. Aden was also transferred from the administrative control of the Government of India to that of the colonial offices.
- **Abolition of the Indian Council of the Secretary of State:** The Government of India Act 1935 abolished the Council of the Secretary of State for India, which was created in 1858. The Secretary of State was to have advisers on its place. With the introduction of the provincial autonomy the control of the Secretary of State over Transferred Subjects was greatly diminished. His control, however, remained intact over the powers of Governor General and Governors.

Evaluation of the Act

- It didn't contain a Preamble, unlike the Act of 1919. This was done to avoid the mentioning of Dominion Status as demanded by Indian Nationalist leaders.
- No provisions of Basic Rights on the line of Bill of Rights, as demanded by INC.
- Numerous 'safeguards' and special responsibilities of the Governor-General worked as brakes in proper functioning of the Act and the provinces too, the Governor still had extensive powers.
- Only 14 per cent of British Indian population was eligible to vote.
- The extension of the system of communal electorates and representation of various interests promoted separatist tendencies which culminated in partition of India.
- The Act provided a rigid Constitution with no possibility of internal growth. Right of amendment was reserved with the British Parliament.
- The diarchy system with two governments is illogical and difficult to work with.
- The indirect election for Lower House and direct election to the Council of states sans meaning and logic. It was alien to the known constitutions at that point of time.

- The 1935 Act was condemned by nearly all sections and unanimously rejected by the Congress. The Congress demanded convening of Constituent assembly elected on the basis of adult franchise to frame a constitution for independent India.

Phase V: 1940-1950

The idea of a Constituent Assembly for India was put forward for the first time in 1934 by M. N. Roy. It became an official demand of the Indian National Congress in 1935. The demand was later accepted by the British in August 1940.

Provisions of August Offer, 1940

- After the war, a representative Indian body to be set up to frame a constitution for India.
- Viceroy's Executive Council would be expanded without delay.
- The minorities were assured that the government will not transfer power 'to any system of government whose authority is directly denied by large and powerful elements in Indian national life'.
- Later under the Cabinet Mission Plan of 1946, elections were held for the first time for the Constituent Assembly. The Constitution of India was drafted by the Constituent Assembly, and it was set up under the Cabinet Mission Plan on 16 May, 1946. The members of the Constituent Assembly were elected by the Provincial assemblies by means of a single transferable vote system of proportional representation.

The Cabinet Mission, 1946

The Mission suggested that:

- There should be a Union of India embodying both British India and the States and with exception of certain reserved subjects, all subjects were to be retained by the States.
- The paramountcy of Crown was to lapse.
- For the purpose of framing a new Constitution, a Constituent Assembly was to be elected.
- An interim Government was to be set up having the support of major political parties.
- The proposals were accepted and in July 1946 elections to Constituent Assembly took place.

The Indian Independence Act, 1947

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

Features of the Act

- It ended the British rule in India and declared India as an independent and sovereign state from August 15, 1947.
- It provided for the partition of India and creation of two independent dominions of India and Pakistan with the right to secede from the British Commonwealth.
- It abolished the office of viceroy and provided, for each dominion, a governor-general, who was to be appointed by the British King on the advice of the dominion cabinet. His Majesty's Government in Britain was to have no responsibility with respect to the Government of India or Pakistan.
- It empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution for their respective nations and to repeal any act of the British Parliament, including the Independence act itself.

- It empowered the Constituent Assemblies of both the dominions to legislate for their respective territories till the new constitutions were drafted and enforced. No Act of the British Parliament passed after August 15, 1947 was to extend to either of the new dominions unless it was extended thereto by a law of the legislature of the dominion.
- It abolished the office of the secretary of state for India and transferred his functions to the secretary of state for Commonwealth Affairs.
- It proclaimed the lapse of British paramountcy over the Indian princely states and treaty relations with tribal areas from August 15, 1947.
- It granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.
- It provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, till the new Constitutions were framed. The dominions were however authorised to make modifications in the Act.
- It deprived the British Monarch of his right to veto bills or ask for reservation of certain bills for his approval. But, this right was reserved for the Governor-General. The Governor-General would have full power to assent to any bill in the name of His Majesty.
- It designated the Governor-General of India and the provincial governors as constitutional (nominal) heads of the states. They were made to act on the advice of the respective council of ministers in all matters.
- It dropped the title of Emperor of India from the royal titles of the king of England.
- It discontinued the appointment to civil services and reservation of posts by the secretary of state for India. The members of the civil services appointed before August 15, 1947 would continue to enjoy all benefits that they were entitled to till that time.

At the stroke of midnight of 14–15 August, 1947, the British rule came to an end and power was transferred to the two new independent Dominions of India and Pakistan¹⁰. Lord Mountbatten became the first governor-general of the new Dominion of India. He swore in Jawaharlal Nehru as the first prime minister of independent India. The Constituent Assembly of India formed in 1946 became the Parliament of the Indian Dominion.

Making of the Constitution

Demand for a Constituent Assembly

It was in 1934 that the idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy, a pioneer of communist movement in India. In 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India. In 1938, Jawaharlal Nehru, on behalf the INC declared that ‘the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise’. The demand was finally accepted in principle by the British Government in what is known as the ‘August Offer’ of 1940. In 1942, Sir Stafford Cripps, a member of the cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the World War II. The Cripps Proposals were rejected by the Muslim League which wanted India to be divided into two autonomous states with two separate Constituent Assemblies. Finally, a Cabinet Mission¹ was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

Composition of the Constituent Assembly

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

- The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States. Out of 296 seats allotted to the British India, 292 members were to

be drawn from the eleven governors' provinces and four from the four chief commissioners' provinces, one from each.

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

Thus the Constituent Assembly was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise

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

Role of the Constituent Assembly 1946-1949

The inaugural session of the Constituent Assembly was held on the 9th December 1946. It was supposed to be attended by all 296 members but only 207 members could attend it because the Muslim League members were absent from it as they had boycotted the Constituent Assembly. In this meeting, J.B. Kripalani requested Dr. Sachchidanand to take the chair as temporary chairman of the House.

The members passed a resolution on the 10th December 1946 for election of a permanent member, and on the 11th December 1946, Dr. Rajendra Prasad was elected as the permanent Chairman of the Constituent Assembly. On 13th December 1946, Jawaharlal Nehru moved resolution regarding Aims and Objectives. The Constituent Assembly divided its work among different committees for its smooth functioning.

Committees of the Constituent Assembly

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

After discussing the reports of these committees, the Assembly appointed a Drafting Committee on 29th August 1947 under the chairmanship of Dr. B.R. Ambedkar. The draft was prepared by Sir B.N. Rau, Advisor to the Constituent Assembly. A 7-member Committee was constituted to examine the draft. Dr. B.R. Ambedkar, Law Minister as well as chairman of the Drafting, Committee piloted the draft in the Assembly. Dr. Ambedkar presented "**Draft Constitution of India**" which was an alternative to the proposals given in the reports of the committees; besides it also contained additional resolutions. The "Draft Constitution" was published in February, 1948. It was discussed by the Constituent Assembly clause by clause (this was known as the second reading) in its several sessions and was completed by October 17, 1949. The Constituent Assembly again met on 14th November to discuss the draft further or to give it a third reading. It was finalised on 26th November, 1949 after receiving the signature of the President of the Constituent Assembly. But it was January 26, 1950 which became the date of commencement of the Constitution.

Major Committees of Constituent Assembly

- Drafting Committee – B. R. Ambedkar
- Union Power Committee – Jawaharlal Nehru
- Union Constitution Committee – Jawaharlal Nehru
- Provincial Constitution Committee – Vallabhbhai Patel

Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Vallabhbai Patel. This committee had the following subcommittees:

- Fundamental Rights Sub-Committee – J. B. Kripalani
- Minorities Sub-Committee – Harendra Coomar Mookerjee,
- North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – Gopinath Bordoloi
- Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee – A V Thakkar
- Rules of Procedure Committee – Rajendra Prasad
- States Committee (Committee for Negotiating with States) – Sardar Vallabhbai Patel
- States Committee - Jawaharlal Nehru
- Steering Committee – Rajendra Prasad
- National Flag and HOC Committee – Rajendra Prasad
- Committee for the function of the Constitution Assembly - G V Mavlankar
- House Committee - B Pattabhi Sitaramayya
- Language Committee – Moturi Satyanarayana
- Order of Business Committee - K M Munshi

Objective Resolution

As mentioned earlier, on the 13th December 1946, the fourth day of the meeting of the Constituent Assembly, Jawaharlal Nehru moved the resolution regarding the Aims and Objectives of the Constituent Assembly. This resolution came to be known as the objective resolution. The Resolution laid down eight points or paragraphs of the Resolution as they were alluded to, as aims and objective. These aims and objectives included:

- To proclaim India as an Independent Sovereign Republic and to draw up for its future governance a constitution;
- India would be a Union of the territories consisting of the British India, those covered by the Indian States, and territories which were willing to be constituted into the Independent Sovereign India;
- The territories in the Union would possess and retain status of autonomous Units, shall have residuary powers, and exercise all powers of government and administration, except those powers and functions as were assigned to or vested in the Union;
- All powers and Authority of the Sovereign Independent India and its constituent parts and organs were derived from the people;
- It will guarantee and secure to all people of India Justice, Social, Economic and Political Equality of status, of opportunity and before law; Freedom of thought, expression belief, faith, worship, vocation, association and action, subject to law and public morality;
- It will provide adequate safeguards for minorities, backward and tribal areas, and depressed and other backward classes;
- It shall maintain integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of the civilized nations; and
- To ensure the rightful and honoured place of this ancient land in the world and make its full and willing contribution to the promotion of world peace and the welfare of the mankind.

Functions Performed by the Assembly:

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

- It ratified the India's membership of the Commonwealth in May 1949.
- It adopted the national flag on July 22, 1947.
- It adopted the national anthem on January 24, 1950.

- It adopted the national song on January 24, 1950.
- It elected Dr Rajendra Prasad as the first President of India on January 24, 1950.

In all, the Constituent Assembly had 11 sessions over two years, 11 months and 18 days. The Constitution-makers had gone through the constitutions of about 60 countries, and the Draft Constitution was considered for 114 days.

Drafting Committee

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

- Dr B R Ambedkar (Chairman)
- N Gopalaswamy Ayyangar
- Alladi Krishna swamy Ayyar
- Dr K M Munshi
- Syed Mohammad Saadullah
- N Madhava Rau (He replaced B L Mitter who resigned due to ill-health)
- Krishnamachari (He replaced D P Khaitan who died in 1948)

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

Enactment of the Constitution

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

The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules. The Preamble was enacted after the entire Constitution was already enacted. Dr B R Ambedkar, the then Law Minister, piloted the Draft Constitution in the Assembly. He took a very prominent part in the deliberations of the Assembly. He was known for his logical, forceful and persuasive arguments on the floor of the Assembly. He is recognized as the 'Father of the Constitution of India'.

Criticism of Constituent Assembly

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

- **Not a Representative Body:** The critics have argued that the Constituent Assembly was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise.
- **Not a Sovereign Body:** The critics maintained that the Constituent Assembly was not a sovereign body as it was created by the proposals of the British Government. Further, they said that the Assembly held its sessions with the permission of the British Government.
- **Time Consuming:** According to the critics, the Constituent Assembly took unduly long time to make the Constitution. They stated that the framers of the American Constitution took only four months to complete their work. In this Context, Naziruddin Ahmed, a member of the Constituent Assembly, coined a new name for the Drafting Committee to show his contempt for it. He called it a Drifting Committee.
- **Dominated by Congress:** The critics charged that the Constituent Assembly was dominated by the Congress party. Granville Austin, an American Constitutional expert, remarked: 'The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was the Congress and the Congress was India'.
- **Lawyer-Politician Domination:** It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.

- **Dominated by Hindus:** According to some critics, the Constituent Assembly was a Hindu dominated body. Lord Viscount Simon called it 'a body of Hindus'. Similarly, Winston Churchill commented that the Constituent Assembly represented 'only one major community in India'.

The Preamble

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

We, the People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens:

Justice, social, economic and political;

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

Equality of status and of opportunity;

and to promote among them all

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

in our Constituent Assembly this twenty-sixth day of November, 1949, do Hereby Adopt, Enact and Give To Ourselves This Constitution.

The preamble is a storehouse of the core values and the underlying philosophy on the basis of which the constitution makers of modern India envisaged to create the India of the future. It reflects the hopes and aspirations of the citizens of India and serves as the beacon light for lawmakers in times of dilemmas by helping them to interpret the constitution in a more liberal and democratic way. The constitutional values are reflected in the entire Constitution of India, but its Preamble embodies 'the fundamental values and the philosophy on which the Constitution is based'. The Preamble to any Constitution is a brief introductory statement that conveys the guiding principles of the document. The Preamble to the Indian Constitution also does so. The values expressed in the Preamble are expressed as objectives of the Constitution. These are: sovereignty, socialism, secularism, democracy, republican character of Indian State, justice, liberty, equality, fraternity, human dignity and the unity and integrity of the nation.

Meaning of the Preamble

Preamble means a preliminary or introductory statement, especially attached to a statute or constitution setting forth its purpose. Preamble is introductory part of the constitution. The Constitution of India opens with Preamble. The Preamble to a Constitution is expected to embody the fundamental value and the philosophy on which the Constitution is based and the aims and objectives which the founding fathers enjoined the polity to strive to achieve. Therefore, it is also regarded as the key to open the mind of the makers of the Constitution which may show the general purposes for which they made several provisions in the Constitution. For these reasons the Preamble is also a legitimate aid in the interpretation of the provisions of the Constitution. It expresses "what we thought or dreamt for so long". It can be said that the Constitution embodies a solemn form of all the ideas and aspirations for which the country had struggled during the British regime. In simple words the Preamble serves as an introduction to the Constitution and highlights in brief the basic ideas for which the constitution stands and what the frames of the Constitution sought out to achieve for the citizens of India.

Interpretation of the Preamble

We the People

The Constitution, as its Preamble states, is a creation of the will of 'the People of India' who have, as the Preamble enunciates, solemnly resolved to constitute India into a 'Sovereign Democratic Republic.' The idea of

sovereignty involves freedom from all foreign control or domination. The idea of democracy involves freedom from all internal control or domination. Both ideas combined together reassert the sovereignty and paramountcy of the people's will over everything else; the same has been taken up from the Constitution of the United States of America and the United Nations Charter.

The words 'we the people' indicate that the people of India are the source of authority behind the Constitution. The opening words of the Preamble ('We the people of India') emphasize the ultimate authority of the people from whose will the constitution emerges. Since the Constituent Assembly enacted and adopted the Constitution in the name of the people of India, the question has been asked whether the assembly was really representative of the people of India. This question was raised both within and outside the assembly. The circumstances under which the Constituent Assembly came into being shows that it was impracticable to constitute such a body in 1946 with adult suffrage as its basis. No part of the country had the experience of adult suffrage. Dr. Ambedkar said on the floor of the Constituent Assembly in 1949, 'I say that the Preamble embodies what is the desire of every member of the House, that the Constitution should have its root, its authority, its sovereignty from the people that it has'.

Sovereign

The Preamble establishes the ultimate sovereignty of the people of India on whose authority the Constitution rests. In the present times, the term 'sovereignty' may be losing rigid connotations of "supreme and absolute power acknowledging no superior" No modern state can be considered sovereign in that sense. However, through the words of the Preamble, what is sought to be established is the oneness of the people of India (not the people of different states but of one nation), that the sovereignty vests in the collectivity, and that the people of India are not subordinate to any external authority.

Republic

With the enactment of the Constitution, India was no longer a 'dominion' it was a 'republic'. A republic derives its powers directly or indirectly from the people and "is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour" (Madison). India is a republic in that sense. India has a President as head of the Union, elected indirectly for a fixed term by the people's representatives. All citizens are equal in law, there are no privileged classes, every citizen has the right to try for any public office irrespective of caste, race, sex or religion.

Democracy

India has adopted the representative parliamentary democracy. The people of India exercise their sovereignty through a Parliament at the Centre and a legislature in each state elected on the basis of universal adult franchise. The executive is responsible to the popular house of the legislature.

Beyond political democracy, the Preamble also envisages social and economic democracy. Equality in the political sphere gives each adult citizen the power to vote freely. Equality must also pervade society and economic conditions, as far as possible. Dr. Ambedkar considered social and economic democracy to be the real goals to strive for. A vote, after all, does not mean much to a starving person. It is in this context that the Preamble speaks of justice, equality, liberty and fraternity.

Socialism

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

Secularism

The term 'secular' was inserted in the Preamble only in 1976, but the state envisaged by the Constitution was always a secular state. The term 'secular', has not been defined in the Constitution but its operative meaning may

be drawn from the different provisions of the Constitution. Discrimination on the basis of religion is forbidden by the state. Equality is assured to all irrespective of religion. Freedom of faith, belief and worship is allowed to all. The State is to be impartial towards all religions. Furthermore, the state does not uphold any particular religion as the state religion, but protects all religions equally. Thus the state in India is neither irreligious nor non-religious but simply a-religious.

Justice

The Preamble speaks of social, economic and political justice. The concept of justice goes beyond its narrow legal connotation. Significantly the words 'social' and 'economic' occur before the word 'political'. Social justice implies that discrimination on the basis of birth, caste, race, sex or religion should cease. To that end all citizens should enjoy equal opportunities in the matter of public appointment. It is the good of all people that the Government must strive to achieve. The concept of a welfare state as envisaged in the Directive Principles is an embodiment of guidelines for ensuring the social justice expected in the Preamble. Economic justice implies that the gap between the rich and the poor is bridged, and the exploitation ceases. Removal of poverty is to be achieved not by taking away assets from those who have but by ensuring a more equitable distribution of national wealth and resources among those who contribute to its creation. Thus the Directive Principles call upon the state to try and secure ownership and control over resources to serve common good, reduce concentration of wealth, ensure equal pay for equal work, and see that people, especially women and children, are not abused or forced by economic want into work unsuitable for their age or strength. Political justice implies that all citizens should have equal opportunity to participate in the political system. One person-one vote is ensured irrespective not only of caste, sex or religion, but also of proprietary or educational qualifications. It is the basis of the political democracy envisaged in the Constitution.

Liberty

Democracy is closely connected with the idea of liberty; certain minimal rights must be enjoyed by every person in a community for a free and civilised existence. These basic rights are spelt out by the Preamble as freedom of thought, expression, belief, faith and worship. The chapter on Fundamental Rights guarantees these freedoms explicitly, subject to certain regulations.

Equality

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

Fraternity

A democratic system would function in a healthy manner only if there is a spirit of brotherhood of oneness, among the people of the land. India being a land of immense diversity is all the more in need of this spirit of unity - the sense of belonging to one nation. The principle of common citizenship is directed towards strengthening this sense of 'unity and integrity' of the nation. Fraternity is also sought to be promoted by ensuring equal rights to all. Fraternity, said B.R. Ambedkar, "is the principle which gives unity and solidarity to social life". It is the feeling that will protect the unity of India against external attack or disintegration through internal unrest born of social, political and economic causes. Fraternity, however is not possible unless the dignity of each individual is preserved and respected. Maintaining this dignity requires the guarantee of certain minimal justiciable rights to each individual. This ensures that an individual is free from want and misery - without which freedom, ideas of self-respect and dignity are meaningless. The directive principles have been framed calling upon the State to form its policies to benefit all citizens equally in the matter of providing adequate means of livelihood.

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

Dignity of the Individual

The constitution ensures through the preamble dignity of the individual. The directive principles enjoin on the state to make policies to ensure the dignity of the individual.

Unity and Integrity

The word unity was originally present in the preamble whereas the term integrity was added by 42nd Amendment, 1976. Unity basically implies political unity of the country whereas integrity implies territorial integrity of India. The fundamental duties require that every citizen must uphold and protect the sovereignty, unity and integrity of India.

Preamble as a Guiding Source of Desired State

The Preamble proclaims the solemn resolution of the people of India to constitute India into a '**Sovereign socialist, secular democratic republic**'. The Preamble was adopted with the constitution in the Constituent Assembly. It came into effect in 1950 along with the Constitution. The original draft of the Constitution opened with the words 'Sovereign Democratic Republic' in the first line. The words 'Socialist and Secular' were inserted by the 42nd amendment in 1976. The same amendment contributed to the changes of the words unity of the nation into unity and integrity of the nation. The significance of the Preamble of Indian Constitution lies in 'We the People'. These words emphasize that ultimately the powers are vested in the hands of the people of India. The expression states that the constitution is made by and for the people of India. In addition to that the Preamble also lays down the essential national goals for every citizen that are justice, liberty, equality and fraternity.

According to the preamble of the Constitution of India, the word Sovereign occupies a vital role in the country. It means supreme or independent and embodies that India is internally and externally sovereign and is free from the control of any foreign power. Furthermore, the country has a free government which is directly elected by the people and makes laws that govern the people.

The word Socialist also has enormous significance as it implies economic and social equality. The word was added by the 42nd amendment act, 1976 during the emergency. In addition to that Social equality identifies the absence of discrimination on the grounds only of caste, colour, creed, sex, religion or language. Besides, social equality has equal status and opportunities. The preamble also guarantees secularism. The word Secularism was also inserted into the preamble by the 42nd amendment act 1976. Secularism implies equality of all religions and religious tolerance and does not identify any state religion.

The Preamble of Indian Constitution also puts forth the words Democratic and Republic. India follows a Democratic form of government. The people of India elect their government at all levels such as Union, State and local by a system of universal adult franchise. India is also a Republic, in a country where the head of the state is elected directly or indirectly, for a fixed tenure. The President of India is the titular head of the state. Thus, the Preamble plays a pivotal role and serves two important purposes and indicates to the source from which the Constitution derives its authority and stating the objects, which the Constitution seeks to establish and promote.

Preamble as Part of the Constitution

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

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

Like any other part of the Constitution, the Preamble was also enacted by the Constituent Assembly, but, after the rest of the Constitution was already enacted. The reason for inserting the Preamble at the end was to ensure that it was in conformity with the Constitution as adopted by the Constituent Assembly. While forwarding the Preamble for votes, the president of the Constituent Assembly said, 'The question is that Preamble stands part

of the Constitution'. The motion was then adopted. Hence, the current opinion held by the Supreme Court that the Preamble is a part of the Constitution, is in consonance with the opinion of the founding fathers of the Constitution.

However, two things should be noted:

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

Amendability of the Preamble

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

The Supreme Court, however, held that the Preamble is a part of the Constitution. The Court stated that the opinion tendered by it in the *Berubari Union* (1960) in this regard was wrong, and held that the Preamble can be amended, subject to the condition that no amendment is done to the 'basic features'. In other words, the Court held that the basic elements or the fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 368.

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

Union and its Territory

Part-I of the constitution deals with the union and its territories from Article-1 to 4.

Union Of States

Article 1 describes India, that is, Bharat as a 'Union of States' rather than a 'Federation of States'. This provision deals with two things: one, name of the country, and two, type of polity. There was no unanimity in the Constituent Assembly with regard to the name of the country. Some members suggested the traditional name (Bharat) while other advocated the modern name (India). Hence, the Constituent Assembly had to adopt a mix of both ('India, that is, Bharat').

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

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

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

The names of states and union territories and their territorial extent are mentioned in the first schedule of the Constitution. At present, there are 29 states and 7 union territories. The provisions of the Constitution pertaining to the states are applicable to all the states (except Jammu and Kashmir) in the same manner. However, the special provisions (under Part XXI) applicable to the States of Maharashtra, Gujarat, Nagaland, Assam, Manipur,

Andhra Pradesh, Telangana, Sikkim, Mizoram, Arunachal Pradesh, Goa and Karnataka override the general provisions relating to the states as a class.

Further, the Fifth and Sixth Schedules contain separate provisions with respect to the administration of scheduled areas and tribal areas within the states.

Article 2 empowers the Parliament to ‘admit into the Union of India, or establish, new states on such terms and conditions as it thinks fit’. Thus, Article 2 grants two powers to the Parliament:

- The power to admit into the Union of India new states;
- The power to establish new states.

The first refers to the admission of states which are already in existence while the second refers to the establishment of states which were not in existence before. Notably, Article 2 relates to the admission or establishment of new states that are not part of the Union of India. Article 3, on the other hand relates to the formation of or changes in the existing states of the Union of India. In other words, Article 3 deals with the internal re-adjustment inter se of the territories of the constituent states of the Union of India

Territory of India: The expression ‘Union of India’ should be distinguished from the expression ‘territory of India’. While the ‘Union includes only the States which enjoy the status of being members of the federal system and share a distribution of powers with the Union, the “territory of India” includes the entire territory over which the sovereignty of India, for the time being, extends.

Thus, besides the States, there are two other classes of territories, which are included in the ‘territory of India, viz: Union Territories, and Such other territories as may be acquired’ by India. For the Union territory of Pondicherry, the Parliament has by enacting a law, viz. Pondicherry (Administration) Act, 1962 under Article 239A made provision for a legislature etc. By an amendment to the Constitution two new articles, viz 239AA and 239AB were inserted in 1992 providing for a legislature and a ministry for Delhi which has been named as National Capital Territory of Delhi by Article 239AA.”

Rest of the Union territories is centrally administered areas, to be governed by the President, acting through an “Administrator appointed by him, and issuing Regulations for their good government (Articles 239-240)

Any territory which may, at any time, be acquired by India by purchase treaty, cession or conquest, will obviously form part of the territory. These will be administered by the Government of India subject to legislation by Parliament [Article 246(4)].

Thus, the French Settlement of Pondicherry (together with Karaikal, Yanam), which was ceded to India by the French Government in 1954, was being administered as an acquired territory until 1962, inasmuch as the Treaty of cession had not yet been ratified by the French Parliament. After such ratification, the territory of these French settlements was constituted a Union Territory in December, 1962.

Parliament’s Power to Reorganise the States

Article 3 authorises the Parliament to:

- Form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state,
- Increase the area of any state,
- Diminish the area of any state,
- Alter the boundaries of any state, and
- Alter the name of any state.

Article 3 lays down two conditions in this regard:

- A bill contemplating the above changes can be introduced in the Parliament only with the prior recommendation of the President;

- Before recommending the bill, the President has to refer the same to the state legislature concerned for expressing its views within a specified period.

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

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

In USA, on the other hand, the territorial integrity or continued existence of a state is guaranteed by the Constitution. The American Federal government cannot form new states or alter the borders of existing states without the consent of the states concerned. That is why the USA is described as 'an indestructible union of indestructible states. Moreover, the Constitution (Article 4) itself declares that laws made for admission or establishment of new states (under Article 2) and formation of new states and alteration of areas, boundaries or names of existing states (under Articles 3) are not to be considered as amendments of the Constitution under Article 368. This means that such laws can be passed by a simple majority and by the ordinary legislative process.

The power of Parliament to diminish the areas of a state (under Article 3) include does not the power to cede Indian Territory to a foreign country.

This question came up for examination before the Supreme Court in a reference made by the President in 1960. The decision of the Central government to cede part of a territory known as Berubari Union (west Bengal) to Pakistan led to political agitation and controversy and thereby necessitated the Presidential reference. The Supreme Court held that the power of Parliament to diminish the area of a state (under Article 3) does not cover cession of Indian territory to a foreign country. **Hence, Indian Territory can be ceded to a foreign state only by amending the Constitution under Article 368. Consequently, the 9th Constitutional Amendment Act (1960) was enacted to transfer the said territory to Pakistan.** On the other hand, the Supreme Court in 1969 ruled that, settlement of a boundary dispute between India and another country does not require a constitutional amendment. It can be done by executive action as it does not involve cession of Indian territory to a foreign country.

The 100th Constitutional Amendment Act (2015) was enacted to give effect to the acquiring of certain territories by India and transfer of certain other territories to Bangladesh in pursuance of the agreement and its protocol entered into between the Governments of India and Bangladesh. Under this deal, India transferred III enclaves to Bangladesh, while Bangladesh transferred 51 enclaves to India. In addition, the deal also involved the transfer of adverse possessions and the demarcation of a 6.1-km undemarcated border stretch.

Evolution of States and Union Territories

Formation of States

State	Formation Year	Status prior to formation
Andhra	1953	Part of the state of Madras
Gujarat	1960	Part of the state of Bombay
Maharashtra	1960	Part of the State of Bombay

Kerala	1956	State of Travancore and Cochin
Nagaland	1963	Union territory
Haryana	1966	Part of Punjab
Karnataka	1956	State of Mysore was formed in 1953, enlarged Mysore in 1956 which was renamed in 1973.
Himachal Pradesh	1971	Union Territory
Manipur, Tripura	1972	Union Territories
Meghalaya	1972	Autonomous state within state of Assam
Sikkim	1975	Associate state since 1974 and a protectorate of India before that.
Mizoram	1987	District of Assam till 1972 and Union Territory from 1972 to 1987
Arunachal Pradesh	1987	Union Territory
Goa	1987	Union Territory
Uttarakhand	2000	Part of Uttar Pradesh
Chhattisgarh	2000	Part of Madhya Pradesh
Jharkhand	2000	Part of Bihar
Telangana	2014	Part of Andhra Pradesh

Integration of Princely States

At the time of independence, India comprised two categories of political units, namely, the British provinces (under the direct rule of British government) and the princely states (under the rule of native princes but subject to the paramountcy of the British Crown). The Indian Independence Act (1947) created two independent and separate dominions of India and Pakistan and gave three options to the princely states viz., joining India, joining Pakistan or remaining independent. Of the 552 princely states situated within the geographical boundaries of India, 549 joined India and the remaining (Hyderabad, Junagarh and Kashmir) refused to join India.

However, in course of time, they were also integrated with India—Hyderabad by means of police action, Junagarh by means of referendum and Kashmir by the Instrument of Accession.

In 1950, the Constitution contained a four-fold classification of the states of the Indian Union—Part A, Part B, Part C and Part D State⁵. In all, they numbered 29. Part-A states comprised nine erstwhile governor's provinces of British India. Part-B states consisted of nine erstwhile princely states with legislatures. Part-C states consisted of erstwhile chief commissioner's provinces of British India and some of the erstwhile princely states. These Part-C states (in all 10 in number) were centrally administered. The Andaman and Nicobar Islands were kept as the solitary Part-D state.

Territory of India in 1950

States in Part-A	States in Part-B	States in Part- C	States in Part-D
Assam	Hyderabad	Ajmer	Andaman and Nicobar Islands
Bihar	Jammu and Kashmir	Bhopal	

Bombay	Madhya Bharat	Bilaspur	
Madhya Pradesh	Mysore	Cooch- Behar	
Orissa	Patiala and East Punjab	Coorg	
Punjab	Rajasthan	Delhi	
United Provinces	Saurashtra	Himachal Pradesh	
West Bengal	Travancore- Cochin	Kutch	
Madras	Vindhya Pradesh	Manipur	
		Tripura	

Committees and Chronology of formation of States in India

Dhar Commission, 1948

The integration and merger of princely states was purely ad hoc arrangement and there was need for reorganization of states on a permanent basis on account of the haphazard growth of provinces, disparity between various states and multilingual nature of the states.

In 1948, the government appointed commission under S K Dhar, a judge of the Allahabad High Court, to examine the case for the reorganization of states on the linguistic basis. Admitting the importance of the reorganization of states on a linguistic basis, the commission, however, attached more importance to historical, geographical and economic considerations. It favoured reorganization on the basis of administrative convenience rather than linguistic considerations.

JVP Committee, 1948

In December, 1948, Congress appointed a committee under Jawaharlal Nehru, Vallabhbhai Patel and Pattabhi Sitaramayya (known as the JVP Committee) to examine the issue afresh. The committee, in a report submitted in April, 1949, dismissed the idea of reorganization on linguistic basis. However the committee stated that the problem may be re-examined in the light of public demand.

First Linguistic State (Andhra Pradesh)

In 1953, the government was forced to create a separate state of Andhra Pradesh for Telugu-speaking people following the long-drawn agitation and death of Potti Sriramulu after a hunger strike for 56 days. Thus, the first linguistic state of Andhra Pradesh was created under pressure.

Fazl Commission

This led to the demand for creation of states on linguistic basis from other parts of country and on December 22, 1953, Jawaharlal Nehru announced the appointment of a commission under Fazl Ali to consider this demand. The other two members of the commission were K M Panikkar and HN Kunzru. The commission submitted its report after taking into account the wishes and claims of people in different regions.

It recommended the reorganization of the whole country into sixteen states and three centrally administered areas. However, the government did not accept these recommendations in full.

While accepting Commission's recommendation to do away with the four-fold distribution of states as provided under the original constitution, it divided the country into 14 states and 6 union territories under the States Reorganization Act, 1956.

The states were Andhra Pradesh, Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal. The six union territories were Andaman and Nicobar Islands, Delhi, Himachal Pradesh, Laccadive, Minicoy and Amindivi Islands, Manipur and Tripura. The Act was implemented in November, 1956.

Formation of Zonal Council

With a view to promote cooperation among various states, the act provided for five zonal councils--for the northern, central, eastern, western and southern zone states, respectively. Each zonal council consisted of a union minister appointed by the President; the chief ministers of states in the zones, two ministers of each state in the zone, one member from each union territory nominated by the President (if such a territory was included in the zone), and the advisor to the Governor of Assam in the case of the eastern zone. In addition, the zonal council was to have certain advisors.

Diversion of the State of Bombay

In 1960, as a result of agitation and violence, the states of Maharashtra and Gujarat were created by bifurcating the state of Bombay. With this the strength of the Indian states rose to 15.

Formation of Nagaland

In 1963, the state of Nagaland was formed to placate the Nagas. However, before providing it the status of a full-fledged state, it was placed under the control of the Governor of Assam in 1961. With this the strength of the Indian states rose to 16.

Territories from France and Portugal

After the acquisition of Chandernagore, Mahe, Yaman and Karekal from France, and the territories of Goa, Daman and Diu from the Portuguese were either merged with the neighbouring states or given the status of union territories.

Shah Commission

In 1966, the Parliament passed the Punjab Reorganization Act after an agitation for the formation of Punjabi Subha. This step was taken on the recommendation of the Shah Commission appointed in April, 1966.

As a result of this act, the Punjabi-speaking areas were constituted into the state of Haryana and the hilly areas were merged with the adjoining union territory of Himachal Pradesh. Chandigarh was made a union territory and was to serve as a common capital of Punjab and Haryana. The two states were also to have a common High Court, common university and joint arrangement for the management of the major components of the existing irrigation and power system. With the division of Punjab, the strength of states rose to 17.

Formation of new States since 1969

- In 1969, the state of Meghalaya was created out of the state of Assam. Initially, the state was given autonomous status within Assam, but subsequently it was made a full-fledged state. This raised the strength of Indian states to 18.
- In 1971, with the elevation of the union territory of Himachal Pradesh to the status of a state, the strength of Indian states rose to 19 and then to 21 with the conversion of the union territories of Tripura and Manipur into states.
- In 1975, Sikkim was admitted as a state of the Indian Union. Initially, Sikkim was given the status of an associate state but was subsequently made a full-fledged state.
- In 1986 it was decided to give Mizoram, a union territory of India, the status of a full-fledged state. However, it actually acquired the status of a state in February 1987 and became the 23rd state of the Indian Union.
- In February, 1987 Arunachal Pradesh, another Union Territory of India, was also given the status of a state and became the twenty-fourth state of the Indian Union.
- In May, 1987 the state of Goa was created by separating the territory of Goa from the union territory of Goa, Daman and Diu. While Daman and Diu continued to be a union territory, Goa became the 25th state of the Indian Union. Three new states of Chhattisgarh, Jharkhand and Uttarakhand were created in November, 2000.
- On 2 June, 2014, Telangana was separated from Andhra Pradesh as 29th state of India, with the city of Hyderabad as its capital. Hyderabad will continue to serve as the joint capital city for Andhra Pradesh and Telangana for a period of not more than ten years.

- In February, 1987 Arunachal Pradesh, another Union Territory of India, was also given the status of a state and became the twenty-fourth state of the Indian Union.
- One Hundredth Amendment Act, 2014 gave effect to the acquiring of certain territories by India and transfer of certain other territories to Bangladesh (through the exchange of enclaves and retention of adverse possessions) in pursuance of the Land Boundary Agreement of 1974 and its Protocol of 2011. For this purpose, this amendment act amended the provisions relating to the territories of four states (Assam, West Bengal, Meghalaya and Tripura) in the First Schedule of the Constitution.
- The Jammu and Kashmir Reorganisation Act, 2019 divides the Jammu and Kashmir into two UTs i.e. the Union Territory of Ladakh and the Union Territory of Jammu and Kashmir with legislature.

Creation of New States in India

Reorganisation of states has been one of the most contentious issues since the Independence of India. Besides political bargains, creation of new states has attracted the attention of policy makers and intellectuals who hold divergent views regarding the formation of smaller states. The best way to analyse whether the new states have ushered in economic growth and development of the country would be through underscoring the performance of recently created states of Jharkhand, Uttarakhand and Chhattisgarh carved out of Bihar, UP and Madhya Pradesh respectively on the basis of economic development and good governance.

Arguments in favour of newer states as boon for economic development:

- The Economic Survey 2016-17 stated that smaller states in India trade more than the rest. New states offered better and efficient administration which leads to creation of infrastructure strengthening the connectivity in the area, expand its access to market and boost trade for the overall economy of the country.
- People of the region gain control over its resources and an organic model of growth can emerge to address their economic aspirations.
- Political stability that arises from better representation of people creates conducive environment for investment in the region. Thereby encouraging regional economic development.
- After the creation of new states- there is marked increase in economic activity immediately across the border in the new states as per their findings. School enrolment also increased suggesting greater investment in human capital.
- Durable goods remained comparable across the two sides of the state border, suggesting that free movement of labour and capital can mitigate differences in economic opportunities across proximate geographies. The results provide new evidence that institutions matter for development, and local control of institutions can have large economic impacts.
- The findings underlined that the new states are growing faster than the old states; by 2008 the difference between economic activity in old and new states is no longer statistically significant, and the gap continues to close until the end of the data in 2013. The findings suggest that new state borders have 25% more economic activity than the parent state.

Some issues and concerns:

- While analysing the socio-economic development of the new states of Jharkhand, Chhattisgarh and Uttarakhand, there is a contrary opinion as well. Uttarakhand continues to be at the end in the Human Development Index. The recent floods showed the inability of the state to deal with rehabilitation of the displaced residents.
- Chhattisgarh has witnessed largest tribal displacement in the recent times. The inclusive economic development is far from the reach of the state giving the increased miserable conditions of the tribal and their forceful displacement.
- Jharkhand has failed from the governance and administrative perspective and became state of coal scams and corrupt practices.
- Telangana recently carved out from the state of Andhra Pradesh is heavily relying on the central grants to pay for its newly created administrative and institutional machineries.

- To catch up with the growth trajectory of the other states, the above mentioned states started unmindful exploitation of resources such as mining of the minerals, converting agricultural land into real-estate which is not sustainable as far the economy of the country is concerned in the long run.
- Small states do not generate enough revenue for the state, thus are heavily dependent on the central assistance. Creation of new states means establishing new administrative machineries and new institutions which leads to increased revenue expenditure in turn puts pressure on fiscal pressures for the government.

Conclusion:

Evidence shows that both large and small states have fared well and that poor performance is not necessarily linked to size. In fact, today, technology can help make governing larger territories easier and bring even far-flung areas closer. Recently formed state Telangana has continuously been among the top ranks in the list of ease of doing business in the country, since its formation. Creation of new states offer possibilities of having better governance structure, greater participation for people, administrative convenience for the State and equitable distribution of resources. Regional development strengthens the equitable and symmetric growth of India.
