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State

State is “a community of persons permanently occupying a definite portion of territory, independent of external control, and possessing an organized government”

On the basis of this definition, we can say that there are four elements of the State, which are given as below:

Elements of the State-

A State stands identified with its four essential elements:

1. **Population or community of person:** Population is the first and most essential element for the existence of any state. Whether the state is ancient or modern its physical existence depends on the groups of people.
2. **Territory:** Territory is next major element for the existence of state. Population within undefined or unspecified area cannot be called a state. For instance, until twentieth century no one was ready to recognize the physical existence of Jews because they did not have any defined geographical area but now their geographical area is specified or defined therefore, they are recognized as a nation with physical existence.
3. **Government:** The government is the most important instrument of the State through which the latter realizes its objectives. Through its three organs i.e.; the Legislature, the Executive and the Judiciary, it makes laws and rules, implements them, maintains peace and order in the Individual and the State country and resolves clashes of interests. It also tries to ensure territorial integrity or unity of the country.
4. **Sovereignty:** Sovereignty is one of the foremost elements of any independent State. It means absolute Independence, i.e., a government which is not controlled by any other power: internal or External. A country cannot have its own constitution without being sovereign like India.

Nation

A nation is a community of people formed on the basis of

a common language, territory, ethnicity etc.

Difference between Nation and Country

Parameters of Comparison	Nation	Country
Etymology	It means a 'nacion' – an old French word meaning “place of origin”.	It means a “contree” – an old French word meaning “a remote area”.
Identity	It is commonly recognized as a cluster of individuals who share the same cultures and traditions.	It is commonly recognized as a 'state' governed by an authority.
State	Not every nation has a state.	In the concept of Nation-State, every state has one nation.
Example	The Kurds	The Russian Federation
Alternative	It can alternatively be used in reference to sovereign state and country.	In an unsubstantial way, it can alternatively be used in reference to any particular region or area with no governmental status.

Constitution

Constitution means a document having a special legal sanctity, which sets out the framework and principal functions of the Government.

Need and importance of the Constitution

- ❑ To establish Rule of Law.
- ❑ To provide a set of basic rules that allow for minimal coordination amongst members of society.
- ❑ To specify who has the power to make decisions in a society. It decides how the government will be constituted.
- ❑ 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 on them.
- ❑ To enable the government to fulfil the aspirations of a society and create conditions for a just society.

Types of the constitution	
Unwritten Constitution	Written Constitution
Unwritten constitution refers to the constitution not codified in a structured manner	Written Constitution refers to the constitution codified and compiled in a structured and cohesive manner
Unwritten Constitution evolves over a long period with a new set of laws and guidelines being added as time progresses	Written constitutions have been properly framed and compiled in a step-by-step manner with any subsequent changes being added almost instantaneously
Rigid, Flexible or Both	Majorly Flexible, however, there can be instances where even the written Constitution is rigid
The Parliament is supreme in a country where there is an unwritten constitution	The Constitution is supreme
The judiciary has limited powers	The Judiciary has more power in order to ensure constitutional supremacy
The Magna Carta can be considered the earliest form of the unwritten constitution. It was a charter of rights signed by King John of England on 15th June 1215. The charter promised to protect the rights of the nobility from the interference of the crown. The Magna Carter would eventually evolve into the unwritten constitution of the United Kingdom	The Constitution of the United States of America is considered as the oldest written constitution, which is still in force. It was drafted on September 17th, 1787, ratified on June 21st, 1788 and, came into effect on March 4th, 1789. James Madison, one of the founding fathers of the United States wrote the document that formed the model for the Constitution
Example – Britain	Example – India, USA etc.

Are Constitutions Static in Nature?

No, Change is the rule of nature and Constitutions also develop through amendments. The Constitution is the basic document of any nation. There is a need to bring in timely changes in it because of the social, political, economic, cultural and technological changes that take place with the passage of time. The architects of the Constitution have made provisions to make amendments in the Constitution.

Indian Constitution

Historical Background –

- Many regulations and legislation passed before India's independence can be traced back to the Constitution. The Indian Constitution's evolution

can be divided into two categories:

- The Company Rule (1773–1858) is a set of rules that governs how businesses were run during the East India Company Rule.
- The Crown Rule (1858–1947) was a period of British rule that lasted from 1858 until 1947.
- Colonial authorities adopted and devised techniques for dealing with Indian concerns, and India's constitution bears some of the British administration system's legacy.

Historical Evolution of the Indian Constitution

There are various layers in the background of the Indian Constitution:

- Regulating Act 1773
- Act of Settlement 1781
- Pitt's India Act 1784
- Charter Act of 1813
- Charter Act of 1833
- Charter Act of 1853
- Government of India Act 1858
- Indian Councils Act 1861
- India Councils Act 1892
- Morley-Minto Reforms 1909
- Montague-Chelmsford Reforms 1919
- Government of India Act 1935
- Indian Independence Act 1947

Regulating Act, 1773-

- First time the British Parliament resorted to regulating the affairs of the East India Company.
- The Governor of Bengal was made the Governor-General of Bengal.
- An Executive Council of the Governor-General was created with 4 members.
- Centralised the administration with the Presidencies of Madras and Bombay being made subordinate to the Bengal Presidency.
- Supreme Court was established at Calcutta as the Apex Court in 1774.
- Prohibited company officials from engaging in private trade and from accepting gifts from Indians.

Act of Settlement 1781-

- It exempted the Governor-General and the Council from the jurisdiction of the Supreme Court for the acts done by them in their official capacity. Similarly,

it also exempted the servants of the company from the jurisdiction of the Supreme Court for their official actions.

- ❑ It excluded the revenue matters and the matters arising in the collection of revenue from the jurisdiction of the Supreme Court.
- ❑ It provided that the Supreme Court was to have jurisdiction over all the inhabitants of Calcutta. It also required the court to administer the personal law of the defendants i.e., Hindus were to be tried according to the Hindu law and Muslims were to be tried according to the Mohammedan law.
- ❑ It laid down that the appeals from the Provincial Courts could be taken to the Governor-General-in-Council and not to the Supreme Court.
- ❑ It empowered the Governor-General-in-Council to frame regulations for the Provincial Courts and Councils.

Pitt's India Act 1784

- ❑ Commercial and political functions of the company separated. The Court of Directors managed the commercial activities while the Board of Control managed political affairs.
- ❑ The company territories in India were called 'British possession in India'.
- ❑ Governor's Councils were set up in Madras and Bombay as well.

Charter Act 1813

- ❑ It abolished the trade monopoly of the company in India i.e., the Indian trade was thrown open to all British merchants. However, it continued the monopoly of the company over trade in tea and trade with China.
- ❑ It asserted the sovereignty of the British Crown over the Company's territories in India.
- ❑ It allowed the Christian missionaries to come to India for the purpose of enlightening the people.
- ❑ It provided for the spread of western education among the inhabitants of the British territories in India.

Charter Act 1833

- ❑ It made the Governor-General of Bengal as the Governor-General of India and vested in him all civil and military powers. Thus, Lord William Bentick (the then Governor-General of Bengal) became the first Governor-General of India.

- ❑ It deprived the Governor of Bombay and Madras of their legislative powers. The Governor-General of India was given exclusive legislative powers for the entire British India.

- ❑ This act ended the commercial activities of the company and it was transformed into an administrative body.

Charter Act 1853

- ❑ The legislative and executive powers of the Governor-General's Council were separated.
- ❑ A Central Legislative Council was created of 6 members out of which 4 were appointed by the provisional governments of Madras, Bombay, Agra and Bengal.
- ❑ The Indian civil service was opened as a means to recruit officers for administration through open competition.
- ❑ It extended the Company's rule and allowed it to retain the possession of Indian territories on trust for the British Crown. But it did not specify any particular period, unlike the previous Charters. This was a clear indication that the Company's rule could be terminated at any time by the British Parliament.

Government of India Act 1858

- ❑ After the revolt of 1857, the rule of the company was ended and the British possessions in India came directly under the British Crown.
- ❑ The office of the Secretary of State for India was created. He was assisted by a 15-member Council of India.
- ❑ It changed the designation of the Governor-General of India to that of Viceroy of India. Viceroy was the direct representative of the British Crown in India. Lord Canning, thus, became the first Viceroy of India.
- ❑ It ended the system of dual Government by abolishing the Board of Control and Court of Directors.

Indian Council Act 1861

- ❑ Indians were given representation in the Viceroy's Councils. Three Indians entered the Legislative Council.
- ❑ Provisions were made for the entry of Indians in the Viceroy's Executive council also as non-official members.

- ❑ Portfolio system was recognised.
- ❑ Decentralisation initiated with the presidencies of Madras and Bombay being restored their legislative powers.

Indian Council Act 1892

- ❑ It raised the number of (non-official) members in the Central and Provincial Legislative Councils while keeping the official majority.
 - Bombay – 8
 - Madras – 20
 - Bengal – 20
 - North-Western province -15
 - Oudh – 15
 - Central Legislative Council minimum - 10, maximum 16
- ❑ Members could now debate the budget without having the ability to vote on it. They were also barred from asking follow-up questions.
- ❑ The Governor-General in Council was given the authority to set rules for member nomination, subject to the approval of the Secretary of State for India.
- ❑ To elect members of the councils, an indirect election system was implemented. Members of provincial councils could be recommended by universities, district boards, municipalities, zamindars, and chambers of commerce.
- ❑ Provincial legislative councils were given more powers, including the ability to propose new laws or repeal old ones with the Governor General's assent.
- ❑ In the event of the Central legislature, the Governor was given the authority to fill the seat, while in the case of the provincial legislature, the Governor was given the authority.

Indian Council Act 1909 (Morley-Minto Reforms)

- ❑ It considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central Legislative Council was raised from 16 to 60. The number of members in the provincial legislative councils was not uniform.
- ❑ It retained official majority in the Central Legislative Council but allowed the provincial legislative councils to have non-official majority.
- ❑ The elected members were to be indirectly elected.

The local bodies were to elect an electoral college, which in turn would elect members of provincial legislatures, who in turn would elect members of the central legislature.

- ❑ It enlarged the deliberative functions of the legislative councils at both the levels. For example, members were allowed to ask supplementary questions, move resolutions on the budget, and so on.
- ❑ It provided (for the first time) for the association of Indians with the executive Councils of the Viceroy and Governors. Satyendra Prasad Sinha became the first Indian to join the Viceroy's Executive Council. He was appointed as the law member. Two Indians were nominated to the Council of the Secretary of State for Indian Affairs.
- ❑ It introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'. Under this, the Muslim members were to be elected only by Muslim voters. Thus, the Act 'legalised communalism' and Lord Minto came to be known as the Father of Communal Electorate.
- ❑ It also provided for the separate representation of presidency corporations, chambers of commerce, universities and zamindars.

Government of India Act 1919 (Montague-Chelmsford Reforms)

Dyarchy

- ❑ Introduction of dyarchy at the provincial level. Dyarchy means a dual set of governments where one set of government was accountable while the other was not.
- ❑ Control over provinces was relaxed by demarcating subjects as 'central subjects' and 'provincial subjects'

Division of Subjects

- ❑ The provincial government's subjects were separated into two divisions.
- ❑ The reserved subjects were under the supervision of the province's British governor, while the transferred subjects were assigned to the province's Indian ministers.
- ❑ Local self-government, public works, sanitation, industrial research, and the establishment of new companies were all on the Transferred List.
- ❑ Justice Administration, Press, Revenue, Forests, Labour Dispute Settlements, Water, Agricultural

Loans, Police, and Prisons were among the items on the Reserved List.

- ❑ The Secretary of State and the Governor-General had the authority to intervene in things covered by the reserved list, but only to a limited extent in matters covered by the transferred list.

Legislative Changes

- ❑ Legislature had no power to pass any bill without the assent of the Viceroy while on the contrary Viceroy could enact a bill without the legislature assent
- ❑ Bicameralism was introduced in the Central Legislature by this act. The lower house was the Legislative Assembly, with 145 members serving three-year terms and the upper house was the Council of States with 60 members serving five-year terms.
- ❑ The legislators, under the new reforms, could now ask questions, pass adjournment motions and vote a part of the budget, but 75% of the budget was still not votable.
- ❑ Composition of Lower House: The Lower House would consist of 145 members, who were either nominated or indirectly elected from the provinces. It had a tenure of 3 years.

Electoral provision

- ❑ The communal representation was extended to include Sikhs, Europeans and Anglo-Indians. The franchise (Right of voting) was also granted but only to a limited number of people.
- ❑ There was a provision to provide reservation to the non-Brahmins in Madras and the depressed classes were also offered nominated seats in the legislatures.

Other Provisions

- ❑ The Act provided for the establishment of a Public Service Commission in India.
- ❑ The number of Indians in the Executive Council was three out of eight.
- ❑ It established an office of the High Commissioner for India in London.

Government of India Act 1935

- ❑ It provided for the establishment of an All-India federation consisting of provinces and princely states as units.
- ❑ It divided the powers between the centre and units

in terms of three lists- Federal list, provincial list and the concurrent list. Residuary powers were given to the Viceroy. However, this federation never fructified since princely states did not join it.

- ❑ It abolished dyarchy in the provinces and introduced 'provincial autonomy' in its place
- ❑ The act introduced responsible government in provinces, that is, the governor was required to act with the advice of ministers responsible to the provincial legislature
- ❑ It provided for the adoption of dyarchy at the centre. However, this provision did not come into effect at all
- ❑ Bicameralism was introduced in six provinces- Bengal, Bombay Madras, Bihar, Assam and the United Provinces
- ❑ Separate electorates were further extended to depressed classes, women and labour
- ❑ Council of India which was established as per the 1858 act was abolished the Secretary of state was instead provided with a team of advisors.
- ❑ The act provided for setting up- Federal Public Service Commission, Provincial Public Service Commission, Joint Public Service Commission, Federal Court, Reserve Bank of India.

Indian Independence Act 1947

- ❑ The British authorities left India on Fifteenth August, 1947.
- ❑ India will be divided into two sovereign provinces of India and Pakistan and each of those states turns sovereign on this very day.
- ❑ The powers formerly exercised through the British authorities in India could be transferred to each of those states.
- ❑ Punjab and Bengal will be divided and its boundary will be separated by a boundary commission headed by Mr. Radcliffe.
- ❑ The Office of the Secretary of State for India will be abrogated.
- ❑ Provision was made for the Governor-General for every territory, who was to be named by the Queen of England on the exhortation of the Dominion government. He was not to act in his individual judgment or circumspection however will act just as the constitutional head of the state.

- ❑ Each domain must have a sovereign legislature to set the rules. No legislation passed by the British Parliament will automatically apply to India.
- ❑ Both countries will have their own Constituent Assembly, which will also act as a legislative body.
- ❑ Until a constitution is formulated by a Constituent Assembly in any dominion, it will work as closely as possible with the 1935 Act.
- ❑ Provincial governors will act as constitutional heads of the provinces.
- ❑ Reserving the posts of Secretary of State should be discontinued. Government personnel wishing to resign after the transfer of power to both dominions must do so.
- ❑ British domination of the states and tribal territories of India will end on August 15, 1947. In this case, power will be transferred not to dominions but left to the states to decide whether they want to participate in India or Pakistan.
- ❑ From now on, the relationship of the UK government with India will be managed through the Office of Commonwealth Affairs.
- ❑ The King of England renounced the title of King and Emperor of India.
- ❑ Pakistani territories include East Bengal, West Pakistan, Sindh and British Baluchistan. In the event that the NWFP decides to join Pakistan in a referendum, this territory will also join Pakistan.

Constituent Assembly

It was the Cabinet Mission that had put forth the idea of a Constituent Assembly and, therefore the composition of the Assembly was made in line with the Cabinet Mission scheme.

This came up with certain traits from which it could be inferred that the Constituent Assembly was supposed to be a body partly elected, and partly nominated members. The elections to the Assembly that took place in 1946 resulted in the Indian National Congress winning a total of 208 seats, and the Muslim League securing 73 seats leaving behind 15 seats that were occupied by independents. The decision of the Princely States to not be involved in the Constituent Assembly left 93 seats vacated.

It is noteworthy that although members of the Constituent Assembly were not elected directly by the

Indian people, it comprised of representatives of all sections of the society namely the Hindus, Muslims, Sikhs, Parsi, Anglo-Indian, Indian Christians, SCs/ STS, Backward Classes, and women belonging to all of these sections.

The structure of the Constituent Assembly was:

- ❑ 292 members elected through the Provincial Legislative Assemblies;
- ❑ The Indian Princely States was represented by 93 members; and
- ❑ The Chief Commissioners' Provinces were represented by 4 members.

Thus, the total membership of the Constituent Assembly was to be 389. But the Mountbatten Plan of 3rd June 1947 led to the partition of India thereby leading to a formation of a separate Constituent Assembly for the newly made Pakistan. This ceased some of the representatives of certain Provinces to be members of the Assembly, resulting in a reduction of the membership to 299 members.

The total strength of the new Constituent Assembly was fixed at 299 which was inclusive of the strength of the

- ❑ Indian provinces (229), and
- ❑ Princely States (70)

The Assembly became a fully functioning sovereign body, and by the means of the Act of 1947, any law made under the umbrella of the British Parliament with regards to India could be scrapped, altered, or modified. The Assembly was majorly vested with two functions;

- ❑ Make a constitution for the free nation; and
- ❑ Enacting laws for the country and its people to be governed by.

The Assembly functioned in many other ways beyond enacting laws and framing the Indian Constitution such as;

- ❑ Adoption of the national flag, national song, and national anthem on 22nd July 1947, and 24th January 1950 respectively.
- ❑ In May 1949, the Assembly had ratified India's membership of the Commonwealth.
- ❑ The Assembly on 24th January 1950, elected Dr. Rajendra Prasad as its first President.

Committees of the Constituent Assembly

To avoid any kind of mismanagement, and taking into

account the load of work to be dusted off, the Constituent Assembly had formulated different committees working in specific areas of constitution-making. There were eight major committees namely;

- ❑ The Union Powers Committee presided over Pandit Jawaharlal Nehru.
- ❑ The Union Constitution Committee presided over Pandit Jawaharlal Nehru.
- ❑ The Provincial Constitution Committee presided over Sardar Patel.
- ❑ Drafting Committee presided by Dr. B.R. Ambedkar.
- ❑ Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas presided by Sardar Patel. This committee had the following five sub-committees:
- ❑ Fundamental Rights Sub-Committee with J.B. Kripalani as the Chairman.
- ❑ Minorities Sub-Committee with H.C. Mukherjee as the Chairman.
- ❑ North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee with Gopinath Bardoloi as the Chairman.
- ❑ Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee with A.V. Thakkar as the Chairman.
- ❑ North-West Frontier Tribal Areas Sub-Committee.
- ❑ Rules of Procedure Committee presided over by Dr. Rajendra Prasad.
- ❑ States Committee (Committee for Negotiating with States) presided over Pandit Jawaharlal Nehru.
- ❑ The Steering Committee was presided over by Dr. Rajendra Prasad.

The remaining 13 committees were considered minor committees.

The Drafting Committee of the Constituent Assembly

Among all the committees mentioned above, a special mention of the Drafting Committee headed by Dr. B.R. Ambedkar is required. Set up on 29th August 1947, the Drafting Committee was vested with the main task of drafting the Constitution of India after taking into account proposals from different committees. He was the first person to introduce a new draft of the Indian Constitution. This Committee comprised of seven members of the Assembly namely;

- ❑ Dr. B. R Ambedkar as the Chairman of the Committee;
- ❑ Dr. K M Munshi;

- ❑ Syed Mohammad Saadullah;
- ❑ N Madhava Rau (He replaced B L Mitter who resigned due to ill-health);
- ❑ N Gopaldaswamy Ayyangar;
- ❑ Alladi Krishnaswamy Ayyar;
- ❑ T T Krishnamachari (He replaced D P Khaitan who died in 1948).

B.N. Rau was also appointed as the constitutional adviser to the constitution. The Committee took a period of not beyond six months to prepare its first draft which was subjected to changes by suggestions, public comments, and various criticism thereafter the second draft was released in October 1948.

The supreme law of democratic India was drafted by the Assembly from 1946 to 1950 and was finally adopted on 26th November 1949 with effect from 26th January 1950 which has been celebrated as the Republic Day of India.

The Constituent Assembly had precisely taken two years, eleven months, and seventeen days to complete the historic duty of drafting the Indian Constitution. During this period, the Assembly held eleven sessions spread over 165 days, among which 114 days were spent solely on consideration of the Draft Constitution.

Timeline of Formation of 'The Constitution of India'

- ❑ 9 December 1946: Formation of the Constituent Assembly (demanding a separate state, the Muslim League boycotted the meeting.)
- ❑ 11 December 1946: President Appointed – Rajendra Prasad, vice-chairman H.C. Mukherjee and constitutional legal adviser B.N. Rau (initially 389 members in total, which declined to 299 after partition of India). Out of 389, 292 were from government provinces, 4 from chief commissioner provinces and 93 from princely states)
- ❑ 13 December 1946: An 'Objective Resolution' was presented by Jawaharlal Nehru laying down the underlying principles of the constitution, which later became the Preamble of the constitution.
- ❑ 22 January 1947: Objective resolution unanimously adopted.
- ❑ 22 July 1947: National Flag adopted.
- ❑ 15 August 1947: Achieved independence. India split into Dominion of India and Dominion of Pakistan.
- ❑ 29 August 1947: Drafting Committee appointed, with B. R. Ambedkar as the Chairman.

- ❑ 16 July 1948: Along with H.C. Mukherjee, V. T. Krishnamachari was elected as the second vice-president of the Constituent Assembly.
- ❑ 26 November 1949: 'Constitution of India' passed and adopted by the assembly.
- ❑ 24 January 1950: Last meeting of the Constituent Assembly. 'Constitution of India' (with 395 articles, 8 schedules, 22 parts) was signed and accepted by all.
- ❑ 26 January 1950: The 'Constitution of India' came in to force after 2 years, 11 months and 18 Days, at a total expenditure of ₹6.4 million to finish.
- ❑ Ganesh Vasudev Mavalankar was the first speaker when meeting the assembly of Lok Sabha, after turning republic.

Indian Constitution

Indian constitution consists of a Preamble, 470 articles

which are group into 25 parts with 12 Schedules.

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SCHEDULES OF THE CONSTITUTION

Numbers	Subject Matter
First Schedule	<ul style="list-style-type: none"> <input type="checkbox"/> Names of the States and their territorial jurisdictions. <input type="checkbox"/> Name of the Union Territories and their extent.
Second Schedule	<ul style="list-style-type: none"> <input type="checkbox"/> Provisions relating to the emoluments, allowances, privileges, and so on of: <ul style="list-style-type: none"> <input type="checkbox"/> The President and the Governors of the States <input type="checkbox"/> The Speaker and the Deputy Speaker of the Lok Sabha <input type="checkbox"/> The Chairman and the Deputy Chairman of the Rajya Sabha <input type="checkbox"/> The Speaker and the Deputy Speaker of the Legislative Assemblies in the States <input type="checkbox"/> The Chairman and the Deputy Chairman of the Legislative Councils in the States <input type="checkbox"/> The Judges of the Supreme Court and of the High Courts <input type="checkbox"/> The Comptroller and Auditor-General of India
Third Schedule	<p>Forms of the Oaths or Affirmations for:</p> <ol style="list-style-type: none"> 1. The Union Ministers 2. The candidates for election to the Parliament 3. The Members of the Parliament 4. The Judges of the Supreme Court 5. The Comptroller and Auditor General of India 6. The State Ministers 7. The candidates for election to the State Legislature 8. The members of the State Legislature 9. The Judges of the High Courts
Fourth Schedule	Allocation of the seats in the Rajya Sabha to the States and the Union Territories.
Fifth Schedule	Provisions relating to the administration and the control of the Scheduled Areas and the Scheduled Tribes.
Sixth Schedule	Provisions relating to the administration of the Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.
Seventh Schedule	Division of the powers between the Union and the States in terms of List 1 (the Union List), List II (the States List) and List III (the Concurrent List).
Eighth Schedule	Includes the languages recognised by the Constitution. Originally, it had 14 but presently there are 22 languages. They are: Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21st Amendment Act of 1967, while Konkani, Manipuri and Nepali were added by the 71st Amendment Act of 1992. The 92nd Amendment Act, 2003 added Bodo, Dogri, Maithili and Santhali.
Ninth Schedule	Validation of certain Acts and regulations, mostly relating to the land reforms. There are 284 such Acts. This Schedule was added to the Constitution by the First Amendment Act of 1951 which provided, that by incorporating any law into it, the State would make it immune from judicial scrutiny.
Tenth Schedule	Provisions relating to the disqualification of the legislators on grounds of defection. This Schedule was added by the 52nd Amendment Act of 1985. It is also known as the Anti-defection Law.
Eleventh Schedule	Specifies the powers, authority and the responsibilities of the Panchayats. It has 29 matters. This schedule was added by the 73rd Amendment Act of 1992.
Twelfth Schedule	Specifies the power, authority and the responsibilities of the Municipalities. It has 18 matters. This Schedule was added by the 74th Amendment Act of 1992.

KHAN SIR

Introduction

The Constitution of India is one of the finest-crafted Constitutions in the World. The Constitution of India is a very dynamic creation of our lawmakers. The Constitution of India is a supreme law of the country and every citizen of our country has to abide by the constitution. According to Granville Austin, "Indian Constitution is the first and foremost social document".

Following are the salient features our Constitution:

1. **Longest written Constitution in the World:**

The Constitution of India is the longest written Constitution in the World. It is because not only the essential rights are given under it but detailed administrative instructions are also given under it. Our constitution has given the place to various organizations like Civil services (under Article 308-323). One of the other reasons why this Constitution is so huge is because there is a single Constitution for entire India. India is a huge country and it needed detailed rules to be applied to various parts of the States. Due to this a massive constitution is made.

2. **Adopted from many different sources:** Different parts of our Constitution are adopted from various countries. The maker of our Constitution took the structural part of the Constitution from the Government of India Act, 1935.

Following are the various sources of Indian Constitution:

- a. United States of America
 - Fundamental Rights,
 - Independence of Judiciary,
 - Judicial Review,
 - Impeachment of President and Supreme Court Judges.
- b. United Kingdom
 - Single Citizenship,

- Parliamentary system of Government,
- Rule of Law,
- Prerogative writs
- c. Canada Constitution
 - Quasi Federal Government system,
 - Appointment of Governors.
- d. Australia Constitution
 - Concurrent List,
 - Joint sitting of 2 houses of the Parliament,
 - Freedom of Trade.
- e. USSR
 - Fundamental duties,
 - Social, Economic and Political Justice.
- f. Ireland
 - Directive Principles of State Policy,
 - Election of President.
- g. Germany
 - Emergency provisions like Suspension of Fundamental Rights during an emergency.
- h. France:
 - Republic
- i. South Africa
 - Amendment of Constitution
 - Election of members of Rajya Sabha.
- j. Japan
 - Procedure established by law.

3. **Federal System with a Unitary Bias:** Indian Constitution is that it is a federation with a strong centralizing tendency. The constitution of India is neither federal nor unitary but is a mix of both.

4. **Blend of Rigidity and Flexibility:** The Indian Constitution is neither completely rigid nor completely flexible, but a mix of both. Article 368 provides for two types of amendments –

- Amendment through a special majority, i.e. two-

thirds majority of the members of each House present and voting, and a majority (50%) of the total membership of each House.

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

5. Parliamentary Form of Government: The framers of our Constitution preferred a Parliamentary system of government. Our newly christened democracy could not afford any confrontations between the executive and the legislature. This could happen only when they were separate and independent of each other. The Council of Ministers is collectively responsible to the Lok Sabha. The same is true of the relationship between the Governors and the Council of Ministers in the States.

6. Integrated and Independent Judiciary: The Judiciary ensures the proper functioning of the constitution and the enforcement of various provisions of the Constitution. The Constitution makers ensured that the Judiciary had to be independent and hence unbiased. There are various provisions in the Constitution that ensure the independence of the judiciary:

- The appointment of Judges is independent and there is no involvement of any executive authorities.
- The tenure of Judges is secured.
- The removal of judges from their tenures must be also based on the constitutional provisions.

7. Fundamental Rights: The Indian Constitution guarantees 6 Fundamental Rights:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation (Article 23-24)
4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

8. Directive Principles: Directive Principles of State Policy

- Part IV of the Indian Constitution deals with the Directive Principles of State Policy.
- It is the duty of every State to apply these

principles while making any new legislation.

- The Directive Principles of State Policy is similar to the 'Instrument of Instructions' that is in the Government of India Act 1935.
- They are basically instructions to the legislature and executive that have to be followed while framing new legislation by the State.

9. Fundamental Duties

- The Swaran Singh Committee of 1976 added a list of 11 Fundamental Duties in the constitution by adding a new Part-IVA and Article-51A in the constitution.
- Swaran Singh Committee was formed in 1976 after the internal emergency of 1975 which recommended adding a list of Fundamental Duties which every citizen of India should abide by.
- The 11 Fundamental Duties act as a moral obligation on every citizen of India and these Fundamental Duties are non-justiciable in nature i.e., one cannot move to court if someone is not obliging its duty as a citizen of India.
- The new Part IVA with Article 51A was added in the Constitution of India and it was inspired by the Constitution of the USSR.

10. Secularism

- The Constitution of India stands for a secular state, i.e. it gives equal importance to all religions.
- It also does not uphold any particular religion as the official state religion. The Western concept of secularism connotes a complete separation between religion and the State.
- This concept is inapplicable in the Indian situation where the society is multireligious.
- Hence, the Indian Constitution embodies the positive concept of secularism, i.e. giving equal respect to all religions and protecting all religions equally.

11. Universal Adult Franchise

- The concept of Universal Adult Franchise/ Adult suffrage allows every citizen of India who is above eighteen years the right to vote in

democratic elections.

- ❑ Any adult who is eligible to vote should not be discriminated against on the basis of gender, caste and religion.
- ❑ This provision was added in the 61st amendment which is also known as the Constitution Act, 1988, which changed the voting age from 21 to 18.

- ❑ Article 326 of the Indian Constitution guarantees this right.
- ❑ The Constitution of India is a very dynamic creation of our lawmakers. The Constitution of India as we all know is a supreme law of the country and every citizen of our country has to abide by the constitution.



Introduction

Constitutions are either unitary or federal. In the unitary government, the powers of the government are centralised in the central government & the states are subordinate to the centre. In the federal constitution, there is a division of power between the states & the central government & both are independent in their own spheres.

There is a huge difference of opinion when it comes to the nature of the Indian Constitution. Some jurist like Kenneth C. Wheare, said that India is quasi-federal i.e. "similar to a federal system" because it has some features of federal and some of the unitary Constitution. However, according to the makers of the Constitution, it is federal in nature. Even Dr. B. R. Ambedkar defined it as a federal Constitution, although the centre has certain powers to override the provinces.

What is a Federation?

A Federation is always characterised by the following essential features:

1. Division of Powers: Division of powers between the central government on the one hand and the state/unit governments on the other is an absolutely essential condition of a federation. In it one part of the authority and power of the state is vested with the central government and the rest is vested with the state governments. Each works within a definite and defined sphere of functions.

There can be different ways in which the division of powers between the centre and states is affected by different federal constitutions. As for example, the US Constitution specifies the powers of the federal government and vests the rest with the state governments, while the Constitution of India defines separately the powers of the union (federal government), powers of the states and concurrent powers which are available in common to both the

union and the states, and vests the residuary powers with the union. As such the mode of division of powers can be different but it has to be essentially affected in every federal state. It is the sign post of a federation.

- 2. Written Constitution:** Since in a federal constitution there is to be affected a division of powers, it becomes essential to effect it in writing in order to make it definite and binding upon both the centre and the states. As such a written constitution is a must for a federation. The constitution is the deliberate and conscious act of political construction. It must be a written and enacted constitution only then can it affect the division of powers in a clear and efficient way.
- 3. Rigid Constitution:** A federal constitution has also to be a rigid constitution because it is to be kept immune from unilateral amendment efforts on part of The Centre Government or states. Only the central government and the state governments together can have the power to amend the constitution. Further, in order to maintain stability of the federal organisation, there is prescribed a special method of making the amendments in the constitution.
- 4. Supremacy of the Constitution:** In a federation the constitution is the supreme law of land. Both the central government and the state governments derive their powers from the constitution. They always work within their own spheres as demarcated by the constitution. No one can violate the provisions of the constitution.
- 5. Special Role of the Judiciary:** For protecting the supremacy of the constitution. Such a judiciary is also essential for performing the role of an arbiter of disputes between the centre and states or among the state governments in respect of their areas of action and power.

The working of a federation always involves the

possibility of rise of disputes of jurisdiction between the centre and state governments and here there must be present an umpire, a superior organisation capable of settling these disputes. An independent judiciary armed with the power of interpreting the constitution and of regular such central and state laws as are found to be against the letter and spirit of the constitution, is an essential condition of a federation.

6. **Dual Administration:** A federation is characterised by dual administration— one, uniform administration of the central government for all the people of the federation and the other state administrations which are run by the governments of federating units and which differ from state to state or region to region. Each citizen has to obey two sets of law—the central laws and the laws of the state of which he is the resident.

7. **Dual Citizenship:** In an ideal federation, each individual gets a double citizenship—one common uniform citizenship of the whole state (Federation) and the second of the province or state of which he is the resident. In the United States, each individual enjoys both the citizenship of the United States as well as of the state of which he is the native resident. India do not follow the feature of dual citizenship.

8. **Bicameral Legislature:** In a federation, the legislature of the federal government is made a bicameral legislature. In one house the people of the federation are given representation while in the other house the units of the federation are given representation on the basis of equality.

In the United States, the people of the country have been given representation in the House of Representatives and the fifty states of the US federation have been given equal representation, two seats to each state, whether big or small, in the upper house i.e. the Senate. The same is the case in India where representation in second house or Upper house is on the basis of population of the state.

9. **Equality of all Federating States:** One of the key underlying principles of the federation is to treat all states/units of the federation equal, without any consideration for the differences in their size,

population and resources. It is because of this requirement that all states have been given seats in one of the two houses of the central legislature and each enjoys equal rights and autonomy.

These are the essential features of a federation. Any state which has all these features can be legitimately described as a federation.

What is a Confederation?

A confederation is a system of governance, in which the constituents (states or provinces) come together for political, economic, security or administrative reasons. Entering a confederation is entirely voluntary and depends on the government of every individual states – or on the local authority in the case of provinces. Once entered the confederation, the constituents maintain their sovereignty and their powers (almost entirely), and there is no superior, unified, central government. Depending on the structure of the confederation, there might be a weak central body, appointed by all constituents, created to speed up bureaucratic processes and facilitate communication. In a confederation there is,

- i. Unitary budget;
- ii. Common military;
- iii. Common foreign policy strategy;
- iv. Common diplomatic representatives; and
- v. Common legal system.

The United States started as confederation and later turned into a federation once the constitution was created, signed and ratified by all members. The concept of confederation is similar to the principles on which international organizations stand. For instance, the European Union has similar structure, even though it is not officially defined as such, in particular because there are legally binding documents that prevent states to enter and exit the union as they please.

Similarities between Federation and Confederation

Despite their natural differences, federation and confederation have some aspects in common:

- In both cases, various states, countries or provinces come together to create a new entity for matters of political, economic and security convenience. Federations and confederations only exist if there is a common agreement among constituents. Indeed, members need to adopt a common constitution

to become part of the federation, while entering a confederation is not binding; and

- In both cases, being part of the federation or the confederation should benefit member states. In the first case, constituents give up part of their sovereignty in order to receive protection, security and economic or political advantages. In the second case, states and provinces enter the confederation to create a stronger entity and enjoy administrative and economic advantages without losing power or authority.

Difference between Federation and Confederation

- Federation and confederation are political and strategical agreements among countries or provinces, created in order to enable the constituents to enjoy political and economic benefits. In spite of some similarities, the two concepts are quite different:
- Confederations were very popular in ancient Greece and during the Middle Age, but there are not many examples of existing confederations. International organizations have a similar structure, but have legal treaties and enforcement mechanisms, while confederations were loose agreements with no written constitution. Conversely, federations are more common today, and many confederations formed centuries ago evolved into federations;
- The powers and responsibilities of the central authority vary greatly between the two. First of all, there is no central government as such in a confederation, but rather a weak body elected by member states, while the federal government has great power and influence over the constituents. In a confederation, the central government has no power de facto, and it is only in place to facilitate the decision-making process and speed up communication. Conversely, when states come together to create a federation, they create a new nation state, with a functioning and powerful central government. The constituents lose part of their autonomy and authority, and the central government acquires the ability of making decisions regarding national security, military, foreign policy and diplomacy; and
- The ties among states and provinces are much

stronger in the case of the federation. Indeed, in a confederation, states agree to come together for various purposes, but they are not legally tied together and can technically back up or exit the confederation whenever they want (depending on the type of confederation). Conversely, in a federation, there are binding legal agreements that prevent states from leaving the union. Relations among states within a federation are stronger as the different entities come together to create a new nation state.

Main Federal Features of the Indian Constitution

- 1. Written Constitution:** The Indian Constitution is a written document containing 395 Articles and 12 schedules, and therefore, fulfils this basic requirement of a federal government. In fact, the Indian Constitution is the most elaborate Constitution of the world.
- 2. Supremacy of the Constitution:** India's Constitution is also supreme and not the hand-made of either the Centre or of the States. If for any reason any organ of the State dares to violate any provision of the Constitution, the courts of laws are there to ensure that dignity of the Constitution is upheld at all costs.
- 3. Rigid Constitution:** The Indian Constitution is largely a rigid Constitution. All the provisions of the Constitution concerning Union-State relations can be amended only by the joint actions of the State Legislatures and the Union Parliament. Such provisions can be amended only if the amendment is passed by a two-thirds majority of the members present and voting in the Parliament (which must also constitute the absolute majority of the total membership) and ratified by at least one-half of the States.
- 4. Division of Powers:** In a federation, there should be clear division of powers so that the units and the centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of others. This requisite is evident in the Indian Constitution. The Seventh Schedule contains three Legislative Lists which enumerate subjects of administration, viz., Union, State and Concurrent Legislative Lists. The Union List consisted of 97 subjects, the more

important of which are defence, foreign affairs, railways, posts and telegraphs, currency, etc.

The State List consisted of 66 subjects, including, inter-alia public order, police, administration of justice, public health, education, agriculture etc. The Concurrent List embraced 47 subjects including criminal law, marriage, divorce, bankruptcy, trade unions, electricity, economic and social planning, etc.

The Union Government enjoys exclusive power to legislate on the subjects mentioned in the Union List. The State Governments have full authority to legislate on the subjects of the State List under normal circumstances. And both the Centre and the State can't legislate on the subjects mentioned in the Concurrent List, the residuary powers have been vested in the Central Government.

5. **Independent Judiciary:** In India, the Constitution has provided for a Supreme Court and every effort has been made to see that the judiciary in India is independent and supreme. The Supreme Court of India can declare a law as unconstitutional or ultra vires, if it contravenes any provisions of the Constitution. In order to ensure the impartiality of the judiciary, our judges are not removable by the Executive and their salaries cannot be curtailed by Parliament.
6. **Bicameral Legislature:** A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation. The Constitution of India also provides for a bicameral Legislature at the Centre consisting of Lok Sabha and Rajya Sabha. While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by the State Legislative Assemblies. However, all the States have not been given equal representation in the Rajya Sabha.
7. **Dual Government Polity:** In a federal State, there are two governments—the national or federal government and the government of each component unit. But in a unitary State there is only one government, namely the national government.

So, India, as a federal system, has a Central and State Government.

Unitary Features of the Indian Constitution

1. **Strong Centre:** The division of powers is in favour of the Centre and highly inequitable from the federal angle. Firstly, the Union List contains more subjects than the State List. Secondly, the more important subjects have been included in the Union List. Thirdly, the Centre has overriding authority over the Concurrent List. Finally, the residuary powers have also been left with the Centre, while in the USA, they are vested in the states. Thus, the Constitution has made the Centre very strong.
2. **States Not Indestructible:** Unlike in other federations, the states in India have no right to territorial integrity. The Parliament can by unilateral action change the area, boundaries or name of any state. Moreover, it requires only a simple majority and not a special majority. Hence, the Indian Federation is “an indestructible Union of destructible states”. The American Federation, on the other hand, is described as “an indestructible Union of indestructible states”.
3. **Single Constitution:** Usually, in a federation, the states have the right to frame their own Constitution separate from that of the Centre. In India, on the contrary, no such power is given to the states. The Constitution of India embodies not only the Constitution of the Centre but also those of the states. Both the Centre and the states must operate within this single-frame. The only exception in this regard was the case of Jammu and Kashmir which has its own (state) Constitution till 2019.
4. **Flexibility of the Constitution:** The process of constitutional amendment is less rigid than what is found in other federations. The bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority. Further, the power to initiate an amendment to the Constitution lies only with the Centre. In US, the states can also propose an amendment to the Constitution.
5. **No Equality of State Representation:** The states are given representation in the Rajya Sabha on the

basis of population. Hence, the membership varies from 1 to 31. In US, on the other hand, the principle of equality of representation of states in the Upper House is fully recognised. Thus, the American Senate has 100 members, two from each state. This principle is regarded as a safeguard for smaller states.

6. **Emergency Provisions:** The Constitution stipulates three types of emergencies—national, state and financial. During an emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation is not found in any other federation.
7. **Single Citizenship:** In spite of a dual polity, the Constitution of India, like that of Canada, adopted the system of single citizenship. There is only Indian Citizenship and no separate state citizenship. All citizens irrespective of the state in which they are born or reside enjoy the same rights all over the country. The other federal states like US, Switzerland and Australia have dual citizenship, that is, national citizenship as well as state citizenship.
8. **Integrated Judiciary:** The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. In US, on the other hand, there is a double system of courts whereby the federal laws are enforced by the federal judiciary and the state laws by the state judiciary.
9. **All-India Services:** In US, the Federal government and the state governments have their separate public services. In India also, the Centre and the states have their separate public services. But, in addition, there are all-India services (IAS, IPS, and IFS) which are common to both the Centre and the states. The members of these services are recruited and trained by the Centre which also possess ultimate control over them. Thus, these services violate the principle of federalism under the Constitution.
10. **Integrated Audit Machinery:** The Comptroller and Auditor-General of India audit the accounts of not only the Central government but also those of the states. But his appointment and removal are done by the President without consulting the states. Hence, this office restricts the financial autonomy of the states. The American Comptroller-General, on the contrary, has no role with respect to the accounts of the states.
11. **Parliament's Authority over State List:** Even in the limited sphere of authority allotted to them, the states do not have exclusive control. The Parliament is empowered to legislate on any subject of the State List if Rajya Sabha passes a resolution to that effect in the national interest. This means that the legislative competence of the Parliament can be extended without amending the Constitution. Notably, this can be done when there is no emergency of any kind.
12. **Appointment of Governor:** The governor, who is the head of the state, is appointed by the President. He holds office during the pleasure of the President. He also acts as an agent of the Centre. Through him, the Centre exercises control over the states. The American Constitution, on the contrary, provided for an elected head in the states. In this respect, India adopted the Canadian system.
13. **Integrated Election Machinery:** The Election Commission conducts elections not only to the Central legislature but also to the state legislatures. But this body is constituted by the President and the states have no say in this matter. The position is same with regard to the removal of its members as well. On the other hand, US has separate machineries for the conduct of elections at the federal and state levels.
14. **Veto Over State Bills:** The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the President. The President can withhold his assent to such bills not only in the first instance but also in the second instance. Thus, the President enjoys absolute veto (and not suspensive veto) over state bills. But in US and Australia, the states are autonomous within their fields and there is no provision for any such reservation.

Introduction

The term Preamble means an introductory statement that sets out the guiding purpose, principles and philosophy of the Indian Constitution. A preamble gives a brief introduction of documents by highlighting the principles and fundamental values of the document. It shows the source of the authority of the document. The American Constitution was the first Constitution in the world to begin with Preamble. The Preamble of the Indian constitution is based on the 'Objective Resolution' moved by Jawaharlal Nehru in the Constituent Assembly which was adopted by the Constituent Assembly.

The Constitution of India begins with a Preamble. It is interesting to know that the Preamble, though the Constitution starts with it, was not the first to come into existence. It was the last piece of Drafting adopted by the Constituent Assembly at the end of the first reading of the Constitution and then placed at the beginning of the Constitution. Several amendments were suggested in the Preamble but they all were rejected. At the end, the President of the Constituent Assembly moved the motion—"That the Preamble stands part of the Constitution." Thus, Preamble was added to the Constitution.

The 42nd Amendment of 1976, changed the description of India from a "sovereign democratic republic" to a "sovereign, socialist secular democratic republic", and also added the word 'integrity' to change, "unity of the nation" to "unity and integrity of the nation".

Preamble embodies the basic philosophy and fundamental values-political, moral and religious on which it is based.

Text of The Preamble

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.

Components of The Preamble

- ❑ SOURCE OF AUTHORITY: Preamble specifies that Constitution of India derives its authority from the people of India
- ❑ NATURE OF INDIAN STATE: Preamble declares India as a Sovereign, Socialist, Secular, Democratic and Republican state.
- ❑ OBJECTIVES OF THE CONSTITUTION: Preamble specifies justice, liberty, equality and fraternity as its objectives.
- ❑ DATE OF ADOPTION: Preamble mentions 26-November-1946 as its adoption date.

Nature of Preamble

- ❑ In Keshavananda Bharti case (1972), the Supreme Court held that, Preamble is not the supreme power or source of any restriction or prohibition but it plays an important role in the interpretation of statutes and provisions of the Constitution.
- ❑ In LIC case (1995), the Supreme Court held that, Preamble is non-justiciable, its provisions are not enforceable in the courts of law, but it helps in the legal interpretation of the Constitution of India.

Ideals Mentioned in the Preamble

Sovereign:

Sovereignty is one of the principle elements of any independent State. It means absolute independence, i.e., a government is not controlled by any other power, be it internal or external. A country cannot have its own constitution without being sovereign. India is a sovereign country. The term 'Sovereign' mentioned in

the Preamble means that India has its own independent authority and it is not a dominion of any other external power. In India, the legislature has the power to make laws which is subjected to certain limitations. As a sovereign country, India can acquire foreign territory or cede a part of it in favour of any country. It is free from any external control. It can frame state policies on its own. India is also free to formulate its own foreign policy

Socialist:

Initially, the word socialist was not there in the Preamble. It was added by the 42nd Amendment act 1976 in the Preamble. The word ‘Socialism’ had been used in the context of economic planning. It means commitment to attain ideals like removal of inequalities, provision to ensure minimum basic necessities to all, equal pay for equal work. In the Directive Principles of the State Policy, these ideals have been incorporated. It is basically a ‘Democratic Socialism’- the term means the achievement of socialist ends through democratic means, that is followed in the mixed economy like India where both private and public sectors co-exist side by side.

Secular:

The term ‘secular’ was also added by the 42nd Constitutional Amendment Act of 1976. In the context of secularism in India, ‘India is neither religious, nor irreligious nor anti- religious.’ It implies that in India there will be no ‘State’ religion – the ‘State’ will not favour any particular religion out of public fund. This has two implications,

- i. every individual is free to believe in, and practice, any religion he/ she belongs to, and,
- ii. State will not discriminate against any individual or group on the basis of religion.

The concept of secularism was already implicit in the Indian Constitution. Articles 25 to 28 of the Constitution guarantees every person the freedom of conscience and the right to profess, practice and propagate religion. Indian Constitution encompasses positive concept of secularism that all religion in India have the same status and support from the state.

Comparison with Western Secularism:	
Western Secularism	Indian Secularism
In western society, secularism refers to the complete separation between the state and religion and freedom of religion for all people.	There's no clear demarcation between state and religion in India, positive intervention of the state in religious affairs is not prohibited.
The Western concept of Secularism does not believe in an open display of religion except for places of worship. In a country like France, the hijab is banned because the external manifestation of religion is not appreciated in that society.	In India, secularism manifests itself by the creation of an environment where every religion is represented and its followers can freely practice the religion. All expression of Religion is manifested equally with support from the state.
In western society, laws are made in isolation from religious principles.	In India, the law seeks to incorporate the multiple religious principles that followers of different religions comply to.
The state cannot give any financial support to educational institutions run by religious communities.	The state provides all religious minorities with the right to establish and maintain their own educational institutions which may receive assistance from the state.
The State does not intervene in the affairs of religion until the time religion is working within the limits of the law.	In Indian secularism, the state shall interfere in religion so as to remove evils in it.
A single uniform code of law is used to dispense justice regardless of religious background.	In matters of law in modern India, however, the applicable code of law is unequal, and India's personal laws– on matters such as marriage, divorce, inheritance, alimony– varies with an individual's religion. Muslim Indians have Sharia-based Muslim Personal Law, while Hindu, Christian and Sikh Indians live under common law.
Focus is more on intrareligious domination than interreligious due to religiously homogeneous nature of the State.	Focusing both on interreligious and intra religious dominations because Indian society is not homogenous rather it is multi-religious that has numerous religious denominations and caste under each.
It is concerned with liberty and equality among the individuals of the particular religion and often neglected the equality of other religious minorities.	It not only ensures the religious freedom of individuals but also provides for the religious freedom of minorities.

Democratic:

As said by Abraham Lincoln, 'Democracy is government of the people, by the people and for the people'. The term 'Democratic' implies that the Constitution of India has an established form of Constitution which gets its authority from the possession of supreme power by the people expressed in an election. This means that the Government is elected by the people, it is responsible and accountable to the people. The democratic principles are highlighted with the provisions of universal adult franchise, elections, fundamental rights, and responsible government. The term Democracy used in Preamble embraces not only political democracy but also social and economic democracy.

In views of Dr. Ambedkar, Political democracy cannot succeed without social and economic democracy. For him, the best mode of achieving socio-economic democracy is to achieve political democracy at the first instance. The importance of ideas of political social and economic democracy lies in the fact that, rights cannot be enjoyed by the citizens of any nation in the absence of them. The coexistence of all three democracies is imperative to achieve the goals of equality and fraternity as enshrined in our Constitution in Preamble.

Republic:

India has a republic form of government as the head of state is elected and not a hereditary monarch like a king or queen. It means the power to elect the head of the state for a fixed term lies within the people. So, in conclusion, the word 'republic' shows a government where the head of state is elected by the people rather than any birth-right.

Justice:

Justice stands for rule of law, absence of arbitrariness and a system of equal rights, freedom and opportunities for all in a society. Justice is to give people what they are entitled for in terms of basic rights to food, clothing, housing, participation in the decision-making and living with dignity as Human Beings. The Preamble covers all these dimensions of justice – social, economic and political secured through various provisions of the Fundamental and Directive Principles.

- Social justice in the Preamble means equal treatment of all citizens without any discrimination on the grounds of race, religion, caste, sex or place

of birth. It also means absence of any privileges to any section of the society and also take necessary steps to improve the conditions of SC/ ST, OBC's and women.

- Economic Justice means no discrimination can be caused by people on the basis of their wealth, income, and economic status. It means wealth must be distributed on the basis of their work, not with any other reason. Every person must be paid equally for an equal position and all people must get opportunities to earn for their living. A blend of social and economic justice is also known as distributive justice.
- Political Justice means that all citizens have equal rights in political participation. Indian Constitution provides for universal adult suffrage and equal value for each vote, without any sort of qualification, e.g. education, property, social status.

The ideals of justice are taken from Russian Revolution.

Liberty:

The idea of Liberty refers to the freedom on the activities of citizens. This establishes that there are no unreasonable restrictions on Indian citizens in term of what they think, their manner of expressions and the way they wish to follow up their thoughts in action. However, liberty does not mean freedom to do anything, and it must be exercised within the constitutional limits.

The Preamble provides for the liberty of thought, expression, belief, faith, and worship. The Indian Constitution guarantees six democratic freedoms to the individuals under Art. 19 and right to freedom of religion under Arts. 25-28.

The ideals of Liberty, Equality and Fraternity are taken from French Revolution.

Equality:

The term 'equality' means the absence of special privilege to any section of society, and the provision of adequate opportunity of all the individuals without any discrimination. Preamble ensures equality at- social, political and economic front.

- Constitution mentions few articles in Fundamental rights to ensure equality in society:
 - Prohibition of discrimination by the State only

on the basis of religion, caste, sex, or place of birth (Art. 15).

- Equality of opportunity in terms of public employment (Art. 16)
- Abolishing untouchability (Art. 17)
- Abolishing titles of honour (Art. 18).
- However, to bring the neglected/ backward sections of the society into the national mainstream, the Parliament has passed certain laws for the SCs, STs, OBCs and also, women (Protective Discrimination).
- Article 39 of Directive principle of State policy ensures economic equality which states for equitable distribution of wealth, equal pay for both men and women for equal work.
- Article 325 and article 326 of the Constitution enables political equality amongst the citizens by providing universal adult suffrage.

Fraternity:

- Fraternity as enshrined in the Constitution means a sense of brotherhood prevailing amongst all the sections of the people. However, fraternity is an evolving process and by the 42nd amendment, the word 'integrity' was added, thus giving it a broader meaning.
- Fundamental duties implicitly describe about fraternity as it talks about upholding and protecting the sovereignty, unity and integrity of India.
- To ensure sense of brotherhood Indian Constitution have provision of single citizenship.

Significance of the Preamble:

- The Preamble to the Constitution embodies the essence of the entire Constitution.
- It sets out the main objectives, which the Constituent Assembly intended to achieve.
- As the Supreme Court has observed, the Preamble is a key to unravel the minds of the makers of the Constitution. It also embodies the ideals and aspirations of the people of India.
- It can neither provide substantive power (definite and real power) to the three organs of the State, nor limit their powers under the provisions of the Constitution.

- As observed by the Supreme Court, the Preamble plays a limited and yet vital role in removing the ambiguity surrounding the provisions of the Constitution.

- The ideals are the means to achieve aspirations

Whether the Preamble is a part of the Constitution?

- In the Berubari Union case (1960), Supreme Court held that Preamble is not a part of the Constitution. However, it is a key to the mind of framers of the Constitution and it reveals their intentions. Preamble is in itself neither a source of any powers, nor a source of any restrictions. The preamble is an important tool for interpretation of the Constitution.
- The Supreme Court in the Kesavananda Bharati vs. State of Kerala (1971) case overruled its earlier decision (Berubari case) of 1960 and made it clear that it is a part of the Constitution and is subject to the amending power of the Parliament as any other provisions of the Constitution, provided the basic structure of the Constitution as mentioned in the Preamble is not destroyed. However, it is not an essential part of the Constitution.
- Minerva Mills V Union of India (1980), Supreme Court held that any positive amendment in the Preamble can certainly be made. Preamble can be amended by procedure held in Article 368 of the Constitution.
- In the latest S.R. Bommai case, 1993 regarding the dismissal of three Governments in MP, Rajasthan and Himachal Pradesh, Justice Ramaswamy said, "the Preamble of the Constitution is an integral part of the Constitution. Democratic form of government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review are basic features of the Constitution".

Why the two words were left out of original Preamble?

- As per the Constituent Assembly debate over word secular, Dr. B.R. Ambedkar refuted its inclusion with a reason that there was no need to include the term 'secular' as the entire Constitution embodied the concept of secular state, which meant non-discrimination on grounds of religion and equal rights and status to all citizens.
- On the inclusion of the term 'socialist,' he said it is

against the very grain of democracy to decide in the Constitution what kind of society the people of India should live in. Dr Ambedkar said “It is perfectly possible today, for the majority people to hold that the socialist organisation of society is better than the capitalist organisation of society. But it would be perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist organisation of today or of tomorrow. I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide it for themselves”. His words had influenced the final decision to omit the two words.

The question arises as to why Preamble was amended?

By the 42nd amendment, the Preamble was amended to include 'socialist', 'secular', 'integrity,' as it was assumed that this amendment is clarificatory in nature.

The structure of the Constitution has been built

upon the concepts crystallized in the Preamble. The 42nd amendment adds liveliness to the philosophy of the Constitution. It makes explicit what was implicit in the Constitution i.e., Positive Amendment.

Prime Minister Indira Gandhi re-introduced the two words for political reasons in the 42nd Constitution Amendment of 1976. In the opinion of Constitutional expert Subhash Kashyap, “The word ‘socialist’ was added to send a message politically that she stood for the poor. The word ‘secular’ was obviously meant for the minorities in the context of the birth control programmes of the emergency period. It was not as if the Constitution was not secular or socialist before the words were added. India has been secular before the 42nd Amendment and continues to be secular after it.

Part (I) of the constitution comprises of 4 Articles concerned with the territory of India.

Article 1: Name and Territory of the Union.

Article 1(1) States that India, that is Bharat, shall be a Union of States.

Why 'union' not 'federation'?

- ❑ India has opted for the Federal form of Government due to its large size and socio-cultural diversities, but the word 'Federation' does not find mention in the Constitution.
- ❑ The term 'Union' was suggested by Dr B.R. Ambedkar, which indicates two things— first, Indian Union is not a result of agreement of independent and sovereign states, and second, the Units/States do not have right to secede from the Union.
- ❑ The expression 'Union of India' needs to be distinguished from the expression 'Territory of India'.
- ❑ While the Union of India includes only the States which share federal powers with the Centre, Territory of India includes the entire territory over which the sovereignty of the country is exercised.

Article 1(2) says that the States and the territories will be specified in the First Schedule.

Article 1(3) says that the territory of India will comprise the following –

- a) The territories of the States.
- b) The Union territories mentioned in the First Schedule; and
- c) Such other territories as may be acquired.

Article 2 - Admission or establishment of new States

According to the Article Parliament may by law admit new States into the Union India or establish new States on such terms and conditions as it think.

Article 2 gives Parliament two powers

1. The power to admit into the Union new States which are established and are already in existence. i.e., The French Settlements of Pondicherry, etc.
2. The power to establish new States which were not in existence before.

Article 2-A. Sikkim to be associated with the Union. (repealed)

- ❑ The 35th Amendment laid down a set of conditions that made Sikkim an "Associate State", a special designation not used by any other state
- ❑ The 36th Amendment made Sikkim a full-fledged State of the Indian Union and omitted the tenth schedule.
- ❑ The 36th Amendment Act was passed on 16th May 1975.
- ❑ 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.

Article 3: Formation of New States and Alteration of Areas, Boundaries or Names of Existing States.

- ❑ 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 federation of indestructible states.

Formation of new states

Parliament may create new States in a number of ways, namely by

- ☞ Separating territory from any State,
- ☞ Uniting two or more States,
- ☞ Uniting parts of States and
- ☞ Uniting any territory to a part of any State.

Parliamentary procedure

- ☞ Firstly, a bill calling for formation of new States or alteration of the boundaries or names of the existing State shall be introduced in either House of Parliament only on the recommendation of the President.
- ☞ Parliament can form new States, and can alter the area, boundaries or names of the existing States by a law passed by a simple majority.
- ☞ Such a bill must be referred by the President to the concerned State Legislature for expressing its views to Parliament if it contains provisions which affect the areas, boundaries or name of that State. Also, its opinion within a specified time limit
- ☞ If the State Legislature does not give its opinion within the specified time limit, the time limit may be extended.
- ☞ The Bill may be introduced even if the opinion has not come
- ☞ The Parliament is not bound to accept or act upon the views of the State Legislature.
- ☞ It is not necessary to make fresh reference to the State Legislature every time when an amendment to the Bill is proposed and accepted.
- Recent change has been in the status of Jammu and Kashmir in the year 2019 by Jammu and Kashmir reorganization act 2019. Through this act state of Jammu and Kashmir was demolished into the union territory of Jammu and Kashmir and the union

territory of Ladakh.

- It was the first time in the history of India that a state was demolished into a union territory. Also, the Parliament passes a bill in Dec 2019 which changes the status of union territory of Daman and Diu and Dadra and Nagar haveli into one unit.

The Berubari Union and Exchange of Enclaves case 1960

- In the case of the Berubari Union, the President had consulted the Supreme Court of India regarding the Nehru-Noon Agreement signed between the Prime Minister of India and Pakistan.
- The dispute was that the State Government of West Bengal did not want to give any territory of Berubari to Pakistan. The Central Government signed the Nehru-Noon Agreement, which clearly states that the territory of Berubari will be equally distributed between India and Pakistan. Therefore, this matter was finally taken to the Supreme Court of India.
- Supreme Court in 1969 ruled that, settlement of boundary dispute between India and any other country doesn't require constitutional amendment, it can be done by an executive action (govt action), if it doesn't involve cession of a territory.
- The 100th Amendment in Indian Constitution provides acquisition of territories by India and transfer of certain territories to Bangladesh. The Constitution Act 2015 (100th amendment) ratified the land boundary agreement between India and Bangladesh. The act amended the first schedule of the Constitution in order to exchange the disputed territories occupied by both the nations in accordance with 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.

Article 4 - Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and Supplemental, Incidental and Consequential matters

Article 4(1) Any law referred to in Article 2 or Article

3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

Article 4(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368-part II citizenship.

Explanation: -

- This Article explains that changes which are made by Article 2 & 3 will not be termed as the amendment but will be termed as law for changes in First and Fourth schedule.
- To understand Article 4, one must have knowledge of Article 368 that deals with amendment to Constitution.
- Remember if Parliament wants to change any provision or Article or schedules mentioned Constitution, it has to propose amendment bill under Article 368. Second point is as mentioned in Article 4, there is no necessity for Parliament to initiate amendment bill under Article 368 in order to pursue any bill propose under Article 2 or Article 3.
- Remember Article 2 deals admission of any newly acquired territory and its admission to Union of India (such as Sikkim 1975 or recent addition of some villages in Bangladesh to India)
- Also, Article 3 deals with re mapping or creation of states or territories in existing in Union of India (such creation of State of Telangana).
- This is because after independence from British in 1947, there were approx. 357 princely states which also got independence and they had right to join either India or Pakistan or remain separate. So, process of amalgamation of these territories to India was going on continuously from 1947 to till date also there were many complex problems created due to partition of India.
- Changes to Indian Union were inevitable and continuous, due to which our founding fathers

thought that if every such legislation is came under preview of Article 368 i.e. Amendment of constitution then it will be very tedious and complex work to acquire territories or rename states or create new state or merge any state to existing states.

Also it will become time consuming and difficult for Parliament to function or proceed with foreign relations of country, So to minimize and simplify this problem, they made provision of Article 4.

- So just because of Article 4 it is very handy for Parliament to make laws regarding the alteration local or international boundaries without interference.

REORGANISATION OF STATES

- At the time of independence in 1947, India consisted of 571 disjointed princely states that were merged together to form 27 states. The grouping of states at the time was done on the basis of political and historical considerations rather than on linguistic or cultural divisions, but this was a temporary arrangement. On account of the multilingual nature and differences that existed between various states, there was a need for the states to be reorganized on a permanent basis
- Initially as per constitution States are divided into 4 parts- **PART-A, B, C, D**
- After 7th Constitutional amendment it was changed to States and Union territories. The Constitution of 1950 categorized states in Four Parts.
- Part A had 9 states and these were the former Governor Provinces of British India ruled by elected Governor.
- Part B had 8 states and these were former princely states, governed by Rajpramukh (ruler of the state).
- Part C had 10 states and these were former Chief Commissioner's provinces in British India governed by Chief Commissioner appointed by the President of India.
- Part D had only 1 State administered by Lieutenant Governor appointed by Central Government.
- This scheme was reorganized by States Reorganisation Act, 1956.

- ❑ In 1948, SK Dhar - a judge of the Allahabad High Court - was appointed by the government to head a commission that would look into the need for the reorganization of states on a linguistic basis. However, the Commission preferred reorganization of states on the basis of administrative convenience including historical and geographical considerations instead of on linguistic lines.
- ❑ In December 1948, the JVP committee comprising Jawaharlal Nehru, Vallabh bhai Patel and Pattabhi Sitaramayya was formed to study the issue. The Committee, in its report submitted in April 1949, rejected the idea of reorganization of states on a linguistic basis but said that the issue could be looked at afresh in the light of public demand.
- ❑ In 1953, the first linguistic state of Andhra for Telugu-speaking people was born. The government was forced to separate the Telugu speaking areas from the state of Madras, in the face of a prolonged agitation and the death of Potti Sriramulu after a 56-day hunger strike. Consequently, there were similar demands for creation of states on linguistic basis from other parts of the country.
- ❑ On December 22, 1953, Jawaharlal Nehru appointed a commission under Fazal Ali to consider these new demands. The commission submitted report in 1955 and it suggested that the whole country be divided into 16 states and 3 centrally administered areas. The government, while not agreeing with the recommendations entirely, divided the country into 14 states and 6 union territories under the State's 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. States Reorganization Act, 1956
- ❑ The States Reorganization Act, 1956 was a major reform of the boundaries of India's states and territories and remains the single most extensive change in state boundaries since the independence of India in 1947. The act abolished distinction

among Part A, B, and C states categorization. States were reorganized largely on linguistic lines.

- ❑ Demand of states on linguistic basis was developed even before independence of India under British rule. Though that time Indian administrative regions were identified as different provinces. Orissa was the first Indian state formed on linguistic basis in the year 1936 due to the efforts of Madhusudan Das and became Orissa Province. In Odisha linguistic movement started in the year 1895 and intensified later years with the demand of separate province from Bihar and Orissa Province.

Why language was used as the criteria for the division of states?

- ❑ It would lead to the local people participating in the administration in larger numbers because of being able to communicate in a common language.
- ❑ Governance would be made easier in areas, which shared linguistic and geographical features.
- ❑ This would lead to the development of vernacular languages, which had long been ignored by the British.
- ❑ This would help replace the caste and religion-based identities with less controversial linguistic identities.
- ❑ Andhra State was the first state to be formed after independence on linguistic basis in India on 1 October 1953. On 1 November 1956, Andhra State was merged with the Telugu-speaking areas of the Hyderabad State to form Andhra Pradesh.
- ❑ In 1960, the state of Bombay was bifurcated to create the states of Gujarat and Maharashtra following violence and agitation. In 1963, the state of Nagaland was created for the sake of the Nagas and total number of states stood at 16.
- ❑ The areas of Chandernagore, Mahe, Yamen and Karaikal from France, and the territories of Goa, Daman and Diu from the Portuguese, were either made union territories or were joined with the neighbouring states, after their acquisition.
- ❑ Based on the Shah Commission report in April 1966, the Punjab Reorganization Act was passed by