

CONSTITUTIONAL GOVERNMENT AND DEMOCRACY IN INDIA

**School of Social Sciences
Indira Gandhi National Open University**

EXPERT COMMITTEE

Prof. D. Gopal (Chairman)
Faculty of Political Science,
School of Social Sciences,
IGNOU, Maidan Garhi, New Delhi

Prof. A. K. Singh
Centre for Federal Studies
Jamia Hamdard University
New Delhi.

Prof. Anurag Joshi,
Faculty of Political Science,
School of Social Sciences,
IGNOU, Maidan Garhi, New Delhi

Prof. Jagpal Singh
Faculty of Political Science,
School of Social Sciences,
IGNOU Maidan Garhi,
New Delhi

Prof. Amit Prakash
Centre for the Study of Law
and Governance,
Jawaharlal Nehru University,
New Delhi

Prof. SartikBagh
Department of Political Science,
Babasaheb Bhimrao
Ambedkar University,
Rae Bareli Road, Lucknow.

Prof. S. V. Reddy
Faculty of Political Science,
School of Social Sciences,
IGNOU Maidan Garhi,
New Delhi

COURSE PREPARATION TEAM

Block /Units	Unit Writer
Block 1 Constituent Assembly and Constitution	
Unit 1 The Making of the Constitution	Prof. Jagpal Singh, Faculty Political Science, IGNOU, New Delhi
Unit 2 Philosophical Premises	Pratip Chattopadhyay, Assistant Professor, Dept. of Political Science, University of Kalyani, Nadia, West Bengal
Unit 3 Preamble	Prof. Jagpal Singh, Faculty Political Science, IGNOU, New Delhi
Unit 4 Fundamental Rights	Dr. Divya Rani, Academic Associate, Faculty of Political Science, IGNOU
Unit 5 Directive Principles of State Policy	Dr. Divya Rani, Academic Associate, Faculty of Political Science, IGNOU
Unit 6 Fundamental Duties	Jayanta Debnath, Assistant Professor, Dept. of Political Science, Mrinalini Datta Mahavidyapith, Kolkata
Block 2 Organs of the Government	
Unit 7 Legislature	Prof. Pralaya Kanungo, Centre for Political Studies, JNU, New Delhi
Unit 8 Executive	Prof. Vijaysekhar Reddy, Faculty of Political Science, IGNOU, New Delhi
Unit 9 Judiciary	Prof. Vijaysekhar Reddy, Faculty of Political Science, IGNOU, New Delhi
Block 3 Federalism and Decentralization	
Unit 10 Division of Powers	Pratip Chattopadhyay, Assistant Professor, Dept. of Political Science, University of Kalyani, Nadia, West Bengal
Unit 11 Emergency Provisions	Jayanta Debnath, Assistant Professor, Dept. of Political Science, Mrinalini Datta, Mahavidyapith, Kolkata
Unit 12 Fifth and Sixth Schedules	Dr. Nongmaithem Kishorchand Singh, Academic Associate, Faculty of Political Science, IGNOU, New Delhi
Unit 13 Local-Self Governments	Dr. Vinayak Narayan Srivastav, Formerly, Fellow Nehru Memorial, Museum and Library, New Delhi, and Dr. Gurupada Saren, Assistant Professor, SOCE, IGNOU, New Delhi

COURSE COORDINATOR: Prof. Jagpal Singh

GENERAL EDITOR: Prof. Jagpal Singh, Faculty of Political Science, SOSS, IGNOU

UNIT FORMATING, VETTING AND CONTENT EDITING: Dr. Divya Rani, Academic Associate, Faculty of Political Science, SOSS, IGNOU

Print Production

Mr. Manjit Singh
Section Officer (Pub.), SOSS, IGNOU, New Delhi

April, 2019

© Indira Gandhi National Open University, 2019

ISBN:

All rights reserved. No part of this work may be reproduced in any form, by mimeography or any other means, without permission in writing from the Indira Gandhi National Open University.

Further information on the Indira Gandhi National Open University courses may be

obtained from the University's Office at Maidan Garhi, New Delhi-110 068 or visit our website: <http://www.ignou.ac.in>

Printed and published on behalf of the Indira Gandhi National Open University, New Delhi, by Director, School of Social Sciences.

Laser Typeset by : Tessa Media & Computers, C-206, A.F.E.-II, Okhla, New Delhi

Printed at :

Course Contents

BLOCK 1	CONSTITUENT ASSEMBLY AND CONSTITUTION	Page No.
Unit 1	The Making of the Indian Constitution	7
Unit 2	Philosophical Premises	20
Unit 3	Preamble	27
Unit 4	Fundamental Rights	34
Unit 5	Directive Principles of State Policy	43
Unit 6	Fundamental Duties	51
BLOCK 2	ORGANS OF THE GOVERNMENT	61
Unit 7	Legislature	63
Unit 8	Executive	74
Unit 9	Judiciary	85
BLOCK 3	FEDERALISM AND DECENTRALIZATION	99
Unit 10	Division of Powers	101
Unit 11	Emergency Provisions	110
Unit 12	Fifth and Sixth Schedules	117
Unit 13	Local- Self Governments	129
Suggested Readings		143

COURSE INTRODUCTION

This course attempts to acquaint you with certain aspects of the Constitutional government and democracy in India. It introduces you to the democratic values enshrined in the Constitution and to the provisions which explain relationships among citizens, between the citizens and the state, and among different units of the state – the Union government, the state governments and the local governments, and among the organs of the state – the executive, the legislature and the judiciary. As you will read in different units of this course, the Constitution of India provides for the governance of the people, in which their rights, dignity and sovereignty are protected. The provisions of the Constitution also protect social, cultural and linguistic pluralism. The constitution even has provisions for restrictions which can be imposed on the right of people through different kinds of emergencies.

The issues in the course have been discussed in thirteen units. Based on thematic unity, these units have been divided into three blocks. Block 1 is about the Constituent Assembly and Constitution. The Block 2 deals with Organs of Government. And Block 3 discusses Federalism and Decentralisation. Introductions to the blocks are given in the beginning of each block.

Each unit has inbuilt *Check Your Progress Exercises*. After having read the units, you can try to answer the questions given in these exercises. At the end of each unit, there are answers to the questions mentioned in the *Check Your Progress Exercises*. You can match your answers with the answers given in the units. But be careful to write answers in your own words. The course ends with a list of *Suggested Readings*. You are advised to go through them.

THE PEOPLE'S
UNIVERSITY



Block 1

Constituent Assembly and Constitution

Pignou
THE PEOPLE'S
UNIVERSITY

BLOCK 1 INTRODUCTION

India is sovereign democratic republic. It means that people of India rule themselves through democratic institutions and participating in political processes. There is no power above them. They govern themselves according to the provisions which are given in the Constitution of India. This constitution guarantees that citizens and individuals are given basic rights, dignity, and maintain fraternal relations. The constitution also ensures that unity and integrity of the nation is also ensured. It has provisions which explain certain duties of citizens and instruct the state to protect the rights of people and provide social welfare to all, especially the backward classes and minorities.

The Constitution of India was prepared by an elected body of people known as the Constituent Assembly of India. The making of India was a long process in which members of the Constituent Assembly debated as to what the Constitution was expected to include. This block aims to introduce you to the provisions dealing with rights and duties of the people, relationships among them, and about the directives which the Constitution gives to the state (government) to device policies for their welfare. This block has six units. Unit 1 provides background to the making of the Constitution and discusses the factors that shaped the making of the Constitution. Units 2,3 and 4 are inter-related. They deal respectively with the philosophical premises, Preamble to the Constitution and Fundamental Rights. Unit 5 discusses Directive Principles of State Policies. These principles provide instructions to the state to introduce policies. Unit 6 is about the duties which the citizens are expected to perform.

THE PEOPLE'S
UNIVERSITY

UNIT 1 THE MAKING OF THE INDIAN CONSTITUTION*

Structure

- 1.0 Objectives
- 1.1 Introduction
- 1.2 Evolution of the Indian Constitution 1858-1935
 - 1.2.1 Government of India Act, 1935 and Other Acts
 - 1.2.2 The Nehru Report (1928): First Indian Initiative to Draft Constitution
- 1.3 Formation of the Constituent Assembly
 - 1.3.1 The Cripps Mission
 - 1.3.2 The Cabinet Mission
 - 1.3.3 Election to the Constituent Assembly
- 1.4 The Nature of Constituent Assembly's Representation
- 1.5 The Role of the Constituent Assembly 1946-1949
- 1.6 Salient Features of the Constitution
 - 1.6.1 Universal Suffrage and Abolition of Separate Electorate
- 1.7 Let Us Sum Up
- 1.8 References
- 1.9 Answers to Check Your Progress Exercises

1.0 OBJECTIVES

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

- Explain stages of constitution making prior to the formation of Constituent Assembly;
- Understand the nature of representation of the Constituent Assembly; and
- Debate within the Constituent Assembly on some of the salient features of the Indian Constitution.

1.1 INTRODUCTION

The Constitution of India was adopted on 26 November 1949, which means it was finalised by the Constituent Assembly on that day. But it became operative two months after its adoption, i.e., on 26 January 1950, which is also known as the date of its “commencement”. However, some provisions of it, i.e., those relating to citizenship, elections, provisional Parliament, temporary and transitional provisions had become operative on 26 November 1949 itself. The reason for its commencement after two months of its adoption was to signify the January 26 as the original date of achievement of Independence. It was this day, i.e. 26th January, in 1930 which the Indian National Congress (INC) had first celebrated as the Independence Day of India. It is important to note that the Constitution of India is product of a longdrawn process and deliberations. This unit deals with some issues relating to the making of the Indian Constitution.

1.2 EVOLUTION OF THE INDIAN CONSTITUTION 1858-1935

The Constitution of India embodies provisions providing basic democratic rights of human beings including the persons who are not Indian citizens. It also embodies provisions for the availability of institutions for legislation, execution and jurisdiction for the fulfilment these rights. It presents a vision for social transformation and deepening of democracy in India. The process of evolution of democratic institutions and rights had started much before the Constituent Assembly really made the Constitution of India. It, however, must be underlined that the features of democratic institutions and values which were introduced during the colonial period were meant to serve the colonial interests in contrast to the purpose of the provisions of the Constitution made by the Constituent Assembly of India. Although the Indian Constitution was result of the deliberations (from December 9, 1947 to November 26, 1949) of the Constituent Assembly, some of its features had evolved over three quarters of a century through various Acts, i.e., from 1858 to 1935. You will read about them in sub-sections 1.2.1 below.

1.2.1 The Government of India Act, 1935, and Other Acts

With the transfer of power from the East India Company to the British Crown, the British Parliament got involved in managing affairs of India. For achieving this purpose, from 1858 till 1935, the colonial government introduced certain features of constitution or rules of governance through different Acts. The Government of India Act, 1935 was the most important among these Acts. In this subsection of the unit, you will read about other Acts before reading about the Government of India Act, 1935. First of these other Acts was Government of India Act, 1858. It provided for a combination of centralised and decentralised power structure to govern India. The centralised structure was introduced in the areas which were under the direct control of the Crown. These areas were known as British India provinces or provinces. The decentralized structure was introduced in the areas which were not under the direct control of the Crown. These areas were ruled by the Indian princes, and were known as princely states or states. Under this system, the princes had freedom to govern in all internal matters of their princely states, but they were subject to the British control. In the centralized structure of power which was introduced in the provinces, all powers to govern India vested in the Secretary of State for India (and through him in the Crown). He acted on behalf of the Crown. He was assisted by a fifteen-member council of ministers. There did not exist separation of executive, legislative and judicial functions of government; these all were concentrated in the hands of the Secretary of State for India. In British India, the Secretary of State of India was assisted by the Viceroy, who was assisted by an executive council. At the district level, the viceroy was assisted by a small number of British administrators. The provincial government did not have financial autonomy. In 1870 viceroy Lord Mayo ensured that all parts of provincial administration received due share of revenue to meet their needs. The scope of political institutions in the provinces was expanded a little further following the introduction of Council of India Act, 1909. This Act introduced for the first time a “representative element” in British India, which included elected non-official members. This Act also introduced separate representation to Muslim community. The Government of India Act 1919

devolved some authority to the provincial governments, retaining the control of the central government (unitary government) on them. It relaxed the control of the central government in a limited way. It divided the subjects for jurisdiction of administration and sources of revenue between centre and provinces. Under this arrangement, the provincial government was given control on resources of revenue such as land, irrigation and judicial stamps. The provincial subjects were divided into “transferred” and “reserved” categories. The “transferred” subjects were governed by the governor, and “reserved” subjects were governed by the legislature. The governor (executive head) was not accountable to the legislature.

The Government of India Act, 1935 was different from the earlier Government of India Acts. As you have read above, under those Acts the government in the British India provinces was unitary. It means that the same government operated at different vertical levels. Unlike the earlier Acts, the Government of India Act, 1935 also provided for provincial government enjoying provincial autonomy. It provided “safeguards” for minorities. Such “safeguards” included provisions for separate representations to Muslims, Sikhs, the Europeans, Indian Christians and Anglo-Indians.

This Act also provided for three lists of divisions of power between the federation (central government) and provinces: federal (central), concurrent and provincial. The Act also provided for establishment of a federal court to adjudicate disputes between federation and provinces. The executive head of the provincial government was Governor, who enjoyed special power. Under the special power the Governor could veto the decisions of the provincial legislature. He acted on behalf of the Crown, and was not a subordinate of the Governor-General (the changed designation of Viceroy). He enjoyed discretionary powers to exercise his “individual judgments” in certain matters. In such matters, he did not need to work under the advice of ministers: he was to act under the control of the Governor-General, and indeed the Secretary of the State. He was also not accountable to the legislature but he was required to act on the advice of ministers, who were accountable to the legislature.

Government of India Act, 1935 also had provisions for setting up a central government consisting of representatives from the provinces (areas ruled by the British India government) and the states (the areas covered under princely states). Such government was supposed to be known as federal government because of composition with members both from provinces and the states. However, the federal government could not be formed because there was no unanimity among the princes to join the federation; consent of all princes was essential for the formation of federation. Thus, only the provincial governments could be formed as per this Act. And election to the provincial legislature as per the Government of India Act, 1935 was held in 1937. Following the election of 1937, provincial governments headed by the Indian National Congress were formed in eight provinces. The Indian National Congress government resigned in 1937. Nevertheless, according to M. Govinda Rao and Nirvikar Singh (2005), the Government of India Act, 1935 provided a basis to the Constituent Assembly to make the Constitution.

1.2.2 The Nehru Report(1928): First Indian Initiative to Draft Constitution

As you have read above, attempts to introduce elements of constitution in British India through different Act since 1858 were made by the British rulers. Indians

had no role in it. The first attempt by Indians themselves to prepare a Constitution of India was made in the Nehru Report(1928).Earlier, effort by Indians was made in the name of the swaraj (self-rule) by leaders of Indian national movement during the non-cooperation movement in 1921-22. The Nehru Report was known as such because it was named after the chairman of its drafting committee, Motilal Nehru. The decision to constitute the drafting committee was taken in the conference of the established All India parties. The principal among these parties included Indian National Congress, Swaraj Party and Muslim League. The Justice Party of Madras and Unionist Party of Punjab did not participate in this meeting. The Nehru Report demanded universal suffrage for adults and responsible government both in the centre and in the provinces. It, however, supported the Dominion Status, not complete independence for India. It meant that Indians would have freedom to legislate on certain limited matters under the control of the British India government. For this, the Nehru Report prepared list of central and provincial subjects, and fundamental rights. It also raised demands for universal suffrage for men and women adults.Indeed, it was in 1934, a few years after the preparation of the Nehru report, that the Indian National Congress officially demanded a constitution of Indian people, without the interference of outsiders.

Check Your Progress Exercise 1

Note: 1) Use the space below for your answers

2) Check your answers with the model answers given at the end of this unit.

1) What is the difference between adoption and commencement of the Constitution of India?

.....
.....
.....
.....
.....
.....
.....
.....

2) When was the Constitution of India adopted, and when did it commence?

.....
.....
.....
.....
.....
.....
.....

3) How was the Government of India Act, 1935 different from the earlier Acts?

.....

.....

.....

.....

.....

.....

4) What did the Nehru Report recommend?

.....

.....

.....

.....

.....

.....

1.3 FORMATION OF THE CONSTITUENT ASSEMBLY

1.3.1 The Cripps Mission

Initially, the colonial authorities resisted the demand for creation of a Constitution of India. But with the change in the circumstances - the outbreak of the World War II and formation of the new Coalition (Labour-led) government in Britain, the British government was forced to acknowledge the urgency to solve the problem related to Constitution of Indians. In 1942, the British government sent its cabinet member – Sir Stafford Cripps with the draft declaration on proposals (regarding formation of constitution for Indians) to be implemented at the end of the WW II provided both the Muslim League and the Indian National Congress had agreed to accept them. The draft proposals of the Cripps Mission recommended the following: providing Dominion Status to India, i.e., equal partnership of the British Commonwealth of Nations; all Provinces (ruled by the British India government) and Indian States (ruled by Indian princes) should constitute one Indian Union by the British Constitution; the Constitution of India should be framed by an elected Constituent Assembly of Indian people but if any province (or Indian State) which was not prepared to accept the Constitution was to be free to retain its constitutional position which had existed at that time. Such provinces were to be free to enter separate constitutional arrangements.

Both the Indian National Congress and the Muslim League did not accept the proposals of the Cripps Mission. The Muslim League demanded that India should be divided on the communal lines and some provinces should form an independent state of Pakistan; and, there should be two Constituent Assemblies, one for Pakistan and another for India.

1.3.2 The Cabinet Mission

The British Indian government made several attempts to bridge the differences between the Indian National Congress and the Muslim League. But it was unsuccessful. The British government sent another delegation of the Cabinet members, known as the Cabinet Delegation, which came to be known as the Cabinet Mission Plan. It consisted of three cabinet members – Lord Pathic-Lawrence, Sir Stafford Cripps and Mr. A.V. Alexander. The Cabinet Delegation also failed to bring the Indian National Congress and the Muslim League to an agreement. It, however, made its own proposal which was announced simultaneously on 16 May, 1946 in England as well as in India. The Cabinet delegation made the following recommendations: there should a Union of India consisting of British India and the States, which would have jurisdiction over subjects of Foreign Affairs, Defense and Communication; all residuary powers would belong to the Provinces and the States; the Union would have Executive and Legislature consisting of the representatives from the Provinces and the States but for decision relating to a major communal issue in the legislature a majority of representatives of two major communities would be present, and voting along with the majority of all members present and voting would be required; the provinces would be free to form Groups with executives and legislatures; and each group would be free to determine the Provincial Subjects which would be taken up by the Group organisation.

1.3.3 Election to the Constituent Assembly

Meanwhile, according to the proposals of the Cabinet Mission, the election to the Constituent Assembly was held in which members of both the Indian National Congress and the Muslim League were returned. The members of the Constituent Assembly were elected by the Provincial Legislative Assemblies. However, differences between the Indian National Congress and the Muslim League arose on interpretation of “Group Clauses” of the Cabinet Mission. The British government intervened at this stage and explained to the leaders in London that the contention of the Muslim League was correct. And on December 6, 1946, the British Government published a statement, which for the first time acknowledged the possibility of two Constituent Assemblies and two States. As a result, when the Constituent Assembly first met on December 9, 1946, it was boycotted by the Muslim League, and it functioned without the participation of the Muslim League.

Check Your Progress Exercise 2

Note: 1) Use the space below for your answers

2) Check your answers with the model answers given at the end of this unit.

1) What were the recommendations of the Cripps Mission?

.....

.....

.....

.....

.....

2) What were the recommendations of the Cabinet Mission?

.....

.....

.....

.....

.....

.....

1.4 NATURE OF THE CONSTITUENT ASSEMBLY'S REPRESENTATION

It is often argued that the Constituent Assembly of India did not represent the masses of India because its representatives were not elected through the universal adult franchise. Rather they were indirectly elected by the restricted adult franchise confined to the elite sections of society – the educated and tax payers. According to Granville Austin the reasons for the restricted franchise and indirect election to the Constituent Assembly members were spelled by the Cabinet Mission Plan. These were to avoid the cumbersome and slow progress in the process of Constitution making. The Cabinet Mission provided for the indirect election to the Constituent Assembly by the elected members of the provincial legislature. The Indian National Congress agreed to this proposal of the Cabinet Mission forsaking the claim of adult franchise to hold election to the Constituent Assembly. Despite having been elected through the restricted adult franchise, the Constituent Assembly represented different shades of opinions and religious communities of India. Austin observed that though there was a majority of the Indian National Congress in the Constituent Assembly, it had an “unwritten and unquestioned belief” that the Indian National Congress should represent social and ideological diversity. There was also its “deliberate policy” that the representatives of various minority communities and viewpoints should be represented in the Constituent Assembly. The Constituent Assembly consisted of members with different ideological orientations, and three religious communities -Sikhs, Muslims and General (Hindus and all other communities like the Anglo-Indians, Parsis, etc). In words of K. Santaram “There was hardly any shade of opinion not represented in the Assembly” (see Austin, 2012, p.13, fn.48). Majority of the Constituent Assembly members belonged to the Indian National Congress. It also included more than a dozen non-Indian National Congress members. Some of these were A.K. Ayyer, H.N. Kunjru, N.G. Ayyanger, S.P. Mukherjee and Dr. B.R. Ambedkar. S.P. Mookerji represented the Hindu Mahasabha. The Constituent Assembly included representatives from the Princely States as well. It needs to be underscored that Dr. Ambedkar was initially elected to the Constituent Assembly from Bengal as member of the Scheduled Caste Federation. But he lost this seat due to the partition of Bengal and was re-elected by the Bombay Indian National Congress (as a non-Indian National Congress candidate) at the request of the Indian National Congress High Command. The Constituent Assembly sought to address concerns of every person irrespective of their social and cultural orientations. Before incorporating a provision in the constitution, it held elaborate deliberations. Thus, the members of the Constituent Assembly could overcome the limitations of having been elected by the restricted franchise. As you will

read in unit 3 *Preamble*, the Constituent Assembly sought to accommodate universal values of democracy. The Constituent Assembly adopted several provisions from different constitutions of world and adapted them to the needs of India. In fact, Austin argues that while incorporating different provisions in the Constitution including those which were borrowed from other countries the Constituent Assembly adopted “two wholly Indian concepts” of resolving differences among its members, i.e., consensus and accommodation.

Most members of the Constituent Assembly participated in its proceedings. But these were twenty individuals who played the most influential role in the Assembly. Some of them were Rajendra Prasad, Maulan Azad, Vallabhbhai Patel, Jawaharlal Nehru, Govind Ballabh Pant, P. Sitaramayya, A.K. Ayyar, N.G. Ayyangar, K.M. Munshi, Dr. B.R. Ambedkar and Satyanarayan Sinha. Though the Constituent Assembly was the sole forum where deliberations took place, yet the deliberations took place in coordination of three bodies – the Constituent Assembly, the Indian National Congress Party, and the interim government. Some members of the Constituent Assembly were also members of other bodies at the same time. Austin said that “an oligarchy” of four – Nehru, Patel, Prasad and Azad had enjoyed unquestioned honour and prestige in the Assembly. They dominated the proceedings of the Constituent Assembly. Some of these were simultaneously in the government, Indian National Congress Party and the Constituent Assembly. Prasad was President of Indian National Congress before becoming the President of the Constituent Assembly. Patel and Nehru were Prime Minister and Deputy Prime Minister respectively at the same time. They were part of the inner circles of the committees of the Constituent Assembly. The Constitution Drafting Committee meticulously incorporated in the draft constitution the decisions of the Constituent Assembly. Dr. B.R. Ambedkar, chairman of the Drafting Committee played the leading role in drafting of the Constitution. Acknowledging the pivotal role of Dr. Ambedkar, T.T. Krishnamachari, a member of the Drafting Committee, said in one of his speeches:

“The House is perhaps aware that out of the seven members nominated by you, one had resigned from the house and was replaced. One had died and was not replaced. One was away in America and his place was not filled up, and another person was engaged in State Affairs, and there was a void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So it happened ultimately that the burden of drafting this constitution fell upon Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable.”(Ambedkar, *Writings and Speeches*, Vol.13, p.v, 1994).

Dr. Ambedkar on his part “gave much of credit” to S.N. Mukerjee - B.N. Rau’s and Ambedkar’s assistant, the Drafting Officer of the Assembly, “for the careful wording of the Constitution” (Austin 2012, p.20, fn.70).

1.5 THE ROLE OF THE CONSTITUENT ASSEMBLY IN THE MAKING OF INDIAN CONSTITUTION 1946-1949

The inaugural session of the Constituent Assembly was held on 9 December 1946. It was supposed to be attended by all 296 members but only 207 members could attend it because the Muslim League members absented from it. As stated

earlier, they had boycotted the Constituent Assembly. In this meeting, Acharya J.B. Kripalani requested Dr. Sachchidananda Sinha to be the temporary chairman of the House. The members passed a resolution on 10 December 1946 for election of a permanent chairman, and on 11 December 1946, Dr. Rajendra Prasad was elected as the permanent Chairman of the Constituent Assembly. On 13 December 1946, Jawaharlal Nehru moved resolution regarding the Objectives of the constituent Assembly as discussed in unit 3.

The Constituent Assembly divided its work among different committees for its smooth functioning. Some of the important committees were: (a) Union Power Committee. It was chaired by Jawaharlal Nehru and had nine members; (b) Committee on Fundamental Rights and Minorities. It had 54 members and Sardar Ballabh bhai Patel was its chairman; (c) Steering Committee and its 3 members which included Dr. K.M. Munshi (chairman), Gopalaswami Iyengar and Bhagwan Das; (d) Provincial Constitution Committee. It had 25 members with Sardar Patel as its chairman; (e) Committee on Union Constitution. It had 15 members with Jawaharlal Nehru as its chairman.

After discussing the reports of these committees, the Constituent Assembly appointed a Drafting Committee on 29 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, who was Law Minister as well as chairman of the Drafting Committee piloted the draft in the Assembly. Dr. Ambedkar presented "Draft Constitution of India". The "Draft Constitution" was published in February, 1948. It was discussed by the Constituent Assembly clause by clause in its several sessions and was completed by October 17, 1949. This discussion was known as the second reading. The Constituent Assembly again met on 14 November 1949 to discuss the draft further or to give it a third reading. It was finalised on 26 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.

1.6 SALIENT FEATURES OF THE CONSTITUTION

The Indian Constitution has some salient features. These features give Indian Constitution a distinct identity. It is based on the features of different constitutions of the world. In the words of Dr. Ambedkar, The Indian constitution was prepared "after ransacking all the known Constitutions of the world". The chapter on Fundamental Rights (unit 4) is based on the American Constitution; the Parliamentary System has been adopted from the British Constitution; the Directive Principles of State Policy (unit 5) have been adopted from the constitution of Ireland; the Emergency provisions (unit 11) are based on the Constitution of Weimar (Germany) and Government of India Act, 1935. The features which have been borrowed from other Constitutions have been modified in the light of the needs of our country. It is the longest written constitution. At the time of its formation, the constitution of India had 395 Articles and 8 Schedules. It ensures both Justiciable and Non-Justiciable Rights: Fundamental Rights and the Directive Principles of the State Policy. The constituent makers preferred universal adult franchise over the separate electorates. You will read about it below.

1.6.1 Universal Adult Suffrage and Abolition of the Separate Electorate

After debating its draft list of Fundamental rights the Sub-Committee on Fundamental Rights did not recommend inclusion of all of them in the section III of the Constitution as the Fundamental Rights. Instead, it suggested that these should be incorporated in other places in the Constitution. One such example is that of the Universal suffrage, and Secrete and periodic elections. The sub-Committee agreed unanimously in favour of the Universal suffrage but suggested that it should not be part of the Fundamental Rights. Accordingly, it was placed in the Article 326 of the Part XV on election. The word “universal”, however, is missing from the Article 326. But the fact that every adult citizen of the country is entitled to vote makes it practically a universal adult franchise. In fact, before Indians really got the right to universal adult franchise, the prominent leaders of the Indian National movement strove for the abolition of the separate electorate in favour of the joint electorate. The British had sought to continue separate electorate in India since the Morley-Minto reforms, 1909 till the Communal Award of 1932 in the Constitution. The Communal Award aimed to accord separate electorate for Muslims, Europeans, Sikhs, Indian Christians and Anglo-Indians. It also provided for seats for the Depressed Classes which were to be filled in elections from special constituencies. In such constituencies only the depressed classes could vote. In addition, the depressed classes were also entitled to vote in general constituencies. Gandhi opposed the recommendation of the notion of separate electorate for the depressed classes. In opposition to the proposal for separate electorate, he set on fast unto death in September 1932. Gandhi’s fast evoked opposition from Ambedkar. However, both Gandhi and Ambedkar reached compromise in Poona Pact. According to the Poona Pact, seats were reserved for the depressed classes in the general constituencies. This resulted in the abolition of the separate electorate. The abolition of separate electorate got reflected in the reservation of seats in the legislative bodies Constitution.

Check Your Progress Exercise 3

Note: 1) Use the space below for your answers

2) Check your answers with the model answers given at the end of this unit.

1) How was the social diversity reflected in the composition of the Constituent Assembly?

.....
.....
.....
.....

2) Who did Austin call as “an oligarchy” of four within the Constituent Assembly?

.....
.....
.....
.....

- 3) What were the committees within the Constituent Assembly? Mention some of them.

.....
.....
.....
.....
.....

1.7 LET US SUM UP

The making of Indian Constitution largely consisted of two phases – 1858 to 1935 and 1946 to 1949. With the transfer of power from the East India Company to the British Crown, the British government introduced different elements of governance through different Acts. These also included the elements of representation of Indians in the institutions of governance. The motive of the British to introduce them was to serve their colonial interests rather than to provide democratic rights to them. The provision for communal representation introduced through the Morley-Minto Reforms in 1909 and through the Communal Award in 1932 was opposed by the leaders of the Indian National Movement. Gandhi's fast resulted in the Poona Pact abolishing the separate electorate and in giving the reservation to the depressed classes in the provincial legislature. After the Indian National Congress emphasized the need for making of a Constitution of India by their own Constituent Assembly, the changed political situation following the Second World War and change of government in Britain, the British reluctantly realized the urgency for establishment of the Constituent Assembly of India for Indians. The Constituent Assembly which was set up following the recommendations of the Cabinet Mission Plan was elected through the restricted adult franchise by the provincial assemblies. Despite having elected by the privileged sections of the society, the Constituent Assembly represented different shades of opinions and ideologies. It also represented different social groups of India. The Constituent Assembly discussed all issues thoroughly before reaching decision on them. The decision and suggestions of different sub-Committees of the Constituent Assembly were finally incorporated in the Constitution of India. The Constitution of India is a document which provides a vision for social change. The Constitution is an embodiment of principles of liberal democracy and secularism, with some elements of social democracy. It ensures protection of cultural, linguistic and religious rights of individuals and communities.

1.8 REFERENCES

Ambedkar, Dr. Babasaheb (1994). *Writings and Speeches*. Vol. 13, Education Department, Government of Maharashtra.

Basu, D.D. (2011). *Introduction to the Constitution of India*, (20thed.). New Delhi, India: Wadhwa and Company Law Publishers.

Chaube, S.K. (2009). *The Making and Working of the Indian Constitution*. New Delhi, India: National Book Trust.

Granville, Austin (2012). *The Indian Constitution: Cornerstone of a Nation* (17thed.). New Delhi, India: Oxford University Press.

Misra, Salil (2001). *A Narrative of Communal Politics: Uttar Pradesh, 1937-39*. New Delhi, India: Sage Publications.

Rao, Govinda M. and Nirvikar Singh (2005). *Political Economy of Federalism in India*. New Delhi, India: Oxford University Press.

Sarkar, Sumit (1983). *Modern India 1885-1947*. New Delhi, India: Macmillan.

Shankar, B.L. and Rodrigues Valerian (2011). *The Indian Parliament: A Democracy at Work*. New Delhi, India: Oxford University Press.

1.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Adoption of the constitution denotes an act of its acceptance by the Constituent Assembly after completion of its formation. Commencement of the Constitution means the incident of its implementation for the first time.
- 2) It was adopted on 26 November, 1949 and it commenced on 26 January, 1950.
- 3) Unlike the earlier Acts, the Government of India Act, 1935 provided for provincial autonomy. It also provided for three lists of divisions of power between the federation (central government) and provinces: federal (central), concurrent and provincial. The Act also provided for establishment of a federal court to adjudicate disputes between federation and provinces.
- 4) The Nehru Report was first attempt by Indians to form their own constitution. It demanded universal suffrage for adults and responsible governments both in the centre and in the provinces. It prepared list of central and provincial subjects, and fundamental rights. It also raised demands for universal suffrage for men and women adults. It, however, supported Dominion Status, not complete independence for India.

Check Your Progress Exercise 2

- 1) Its recommendations included: draft proposal to form a constitution of India after the end of World War II if both the Muslim League and the Indian National Congress accepted it; providing Dominion Status to India, formation of Indian union consisting of all provinces and Indian states under the British Constitution, making of Constitution of India by a constituent assembly to be elected by Indians with the proviso that provinces or Indian states were free to retain the existing position.
- 2) Its recommendations included: formation of Union of India consisting of British India provinces and the States having jurisdiction over subjects of foreign affairs, defense and communication; giving residuary powers to the provinces and the states, and freedom to the provinces to form groups with executives and legislatures.

Check your Progress Exercise 3

- 1) Although the members of the constituent assembly were indirectly elected by the provincial legislatures which consisted of the elite sections of the society, because of an “unwritten and unquestioned belief” and “deliberate policy” of the Congress it represented diverse opinions. Constituent Assembly represented three religious communities, various ideological viewpoints and members from different social backgrounds.
- 2) The four members whom Austin called “an oligarchy” in the Constituent Assembly were Jawaharlal Nehru, Sardar Vallabhbhai Patel, Maulana Azad and Dr. Rajendra Prasad.
- 3) These were the devices formed by Constituent Assembly to help it in its smooth functioning. Some of the important committees were: Union Power Committee chaired by Jawaharlal, Committee on Fundamental Rights and Minorities chaired by Sardar Ballabhbhai Patel, Provincial Constitution Committee, and Committee on Union Constitution.



ignou
THE PEOPLE'S
UNIVERSITY

UNIT 2 PHILOSOPHICAL PREMISES*

Structure

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Ideological and Philosophical Background
- 2.3 The Philosophy of Constituent Assembly of India
- 2.4 Constituent Assembly of India and Academic Debates
- 2.5 Let Us Sum Up
- 2.6 References
- 2.7 Answers to Check Your Progress

2.0 OBJECTIVES

Constitution of India is vision document for overall welfare of people. It has provisions for achieving this goal. The vision is based on certain philosophical promises. As you will read in units 3, 4 and 5, the constitution of India is a resolution of people of India to establish India a democratic republic, where all rights of the people irrespective of differences of class, race, sex, caste or place of birth are protected. These principles provide autonomy and dignity to each individual. Individuals are supreme authority to take decisions about themselves through democratic process. This unit discusses the philosophical premises of Indian constitution. After going through this unit, you should be able to:

- Trace philosophical orientation of Indian constitution;
- Describe ideological composition of the Constituent Assembly; and
- Explain the factors that shaped the ideological orientation of the Constituent Assembly.

2.1 INTRODUCTION

As you have read in unit 1, the Constitution of India was result of serious debates within the Constituent Assembly. It was adopted on 26 November 1949, and it commenced on 26 January 1950. The basic philosophical premises of the constitution provide a vision for a social transformation in which basic rights of the citizens are protected and sovereignty and integrity of the nation are assured. As you will read in units 3 and 4, evolution of these premises can be traced backed to the efforts of the leaders of Indian national movement. During the national movement, the Commonwealth Bill of India, 1925, the Nehru Report, 1928 and Sapru Report, 1945 pleaded for democratic rights of people: individual liberty, freedom of conscience, free expression of opinion, free assembly, equality before law, protection of minority rights, making the Fundamental Rights as justiciable rights. These were further recommended the Committee on Fundamental Rights, Minority rights and Tribal and Excluded Areas. The Aims and Objectives Resolution prepared by Jawaharlal Nehru became the source of

* Pratip Chattopadhyay, Assistant Professor, Dept. of Political Science, University of Kalyani, Nadia, West Bengal

the Preamble of the Constitution. These became philosophical premises of the Constitution identified with the main objectives of the future constitution of the country. Even the evolution of institutions of executive, judiciary and legislature which ensure that the philosophical premises of the constitution followed can also be traced back to the colonial period. The basic philosophical premises of the constitution are reflected not only in relations to the relationships between individuals, communities and the state but also in relation to different administrative units of governance and branches of government. Separation of powers among executive, legislature and judiciary, and division of power between the Union, the states and institutions of local self-governance are examples of this. Special Provisions in the Constitution for the protection of interests of some backward regions and backward classes are also shaped by the philosophical premises. Leaders of the Constituent Assembly believed that philosophical premises of the Indian Constitution blended with Indian traditions. Because of these premises, the Indian Constitution has been the guide to the functioning of India's democracy.

2.2 IDEOLOGICAL AND PHILOSOPHICAL BACKGROUND

The members of the Constituent Assembly were drawn from all walks of life and represented almost every section of the Indian people. The representative character of the Assembly was proved by the fact that it included all the prominent leaders of major political parties. Philosophical premises of Indian Constitution are reflection of ideological and philosophical background of the members of the Constituent Assembly. The Constituent Assembly consisted of members with diverse ideological and social backgrounds. Granville Austin, in the appendices to the book *The Indian Constitution: Cornerstone of a Nation*, provides biographical sketch, their party affiliations, their caste and community affiliations and the regions they belonged to. Although there were differences among them, the provisions of constitutions are a synthesis of their ideas. These emerged from serious debate with the Constituent Assembly. Madhav Khosla in the book *The Indian Constitution* (2012) observes that the Constituent Assembly represented “a remarkable intellectual diversity”. Despite their disagreements over the premises, the members of the Constituent Assembly reached certain consensus after discussions. Indeed, the Constituent Assembly did not exclude any significant group. In Granville Austin's words four members, Maulana Azad, Jawaharlal Nehru, Vallabhbhai Patel and Rajendra Prasad, In Granville Austin's words formed “an oligarchy within the Assembly”. They played key role in the Constituent Assembly. B.N. Rau was not the member of the Constituent Assembly but he played an important role as an advisor to the Constituent Assembly. He had experience of engaging with western constitutional traditions. Assembly rejected the Gandhian Constitutional Vision. Gandhi had sought to remodel the Congress and make Panchayats nucleus of Indian political life. Gandhian and Hindu nationalist wanted the Constitution to embody Hindu spiritual values (which were rejected). The constitution is responsive to the change. But the except the basic structure of the Constitution. On the whole, the ideological premises of the Constitution mirror core democratic values – republicanism (which would give more power to the people), individual and group rights, constitutional enumeration

of rights, universal suffrage, parliamentary democracy, sharing power between different arms of government (separation of power), sharing of power between Union and states (division of power), guaranteeing constitutional rights like equality.

As you will read in unit 3, the Constituent Assembly had a total of more than fifteen committees with a membership of greater than eighty individuals. These committees submitted their reports between April-August 1947 which were considered by the Constituent Assembly. On the basis of these decisions, the final shape and form were given to the Constitution by Dr. B.R. Ambedkar and his colleagues in the Drafting Committee. The draft Constitution was presented to the Constituent Assembly and was taken up for discussion on 4 November 1948. The Constituent Assembly completed the second reading of the draft Constitution on 17 October 1949. As many as 7635 amendments were tabled of which 2473 were moved and discussed. The Constituent Assembly finally approved the Constitution on 26 November 1949 as the President of the Assembly signed on that day and it was declared as passed. On 24 January 1950, the Constituent Assembly held its final session and elected Dr. Rajendra Prasad as the first President of India. The Constitution came into force on 26 January 1950. The Indian Constitution which was finally passed by the Constituent Assembly had 395 Articles and 8 Schedules.

The makers of Indian Constitution conceived of a Constituent Assembly as a visionary body, not merely a body of the contemporary representatives but of the people who kept the future situations in mind. It was not only to produce a constitution for the country but to throw away the spell of its past political and possibly social structure and fashioning for itself a new government of its own making. Jawaharlal Nehru spoke of the 'psychological revolution' that the idea of Constituent Assembly created in the mind of the Indian people. It was both a slogan and a creed to concretise the fundamental issue in a struggle for freedom, and a method and a procedure for the framing of a constitution.

Check Your Progress Exercise 1

- Note:** 1) Use the space below for your answers
2) Check your answers with the model answers given at the end of this unit.

- 1) What was the background to Philosophical premises of Indian Constitution?
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

2.3 THE PHILOSOPHY OF CONSTITUENT ASSEMBLY OF INDIA

Philosophy means essentially the outlook that is reflected in the functioning. The making of Indian Constitution was entrusted with the Constituent Assembly of India. The Constituent Assembly was an ensemble of some of the best political and legal minds at that time in India. All these important members had their own individual philosophy and tried to accommodate them in the framing of Constitution of India. Therefore, the principled position of democracy, secularism, socialism, equality, justice and freedom were woven into the fabric of Indian Constitution as formulated in the Constituent Assembly of India. As you will notice, in units 3 to 5 the salient principles of Indian constitutions are given in the preamble, fundamental rights, directive principle of state policy. In forming the philosophical base of the constitution along with other members of the constituent Assembly, Jawaharlal Nehru, Dr. B.R. Ambedkars, Vallabh bhai Patel played important roles.

Both Nehru and Patel are credited with sketching the fundamentals of the Constitution. Granville Austin in the book *The Indian Constitution: Cornerstone of a Nation* (1976) commented that “Patel was more interested in the Princely States, the public services and the working of the Home Ministry, and Nehru in Fundamental Rights, protection of minority rights, and social reform aspect of the Constitution.” The following are the philosophical underpinnings of the Constituent Assembly of India:

- a) Sovereignty: When the framers of the Constitution visualized the future polity for India, they attached highest importance and primacy to India being fully sovereign with the supreme power of the State vesting in the people and all the organs and functionaries of the Union and the States draw their power only from the people of India.
- b) Democratic Value: The philosophy that attracted most to the framers of Indian Constitution in the Constituent Assembly was that of democracy and democratic value which inter alia meant giving equal importance to the voice of all.
- c) Decision-making by Consensus: According to Granville Austin, the principle of consensus had a general appeal in the Assembly; to the leadership an ethical and effective way of reaching a lasting agreement and to the rank and file an indigenous institution that suited the framing of an Indian Constitution. The primary examples of decision making by consensus were perhaps the federal and language provisions.
- d) Principle of Accommodation: India’s original contribution to constitution making, according to Austin, was the principle of Accommodation – the ability to reconcile apparently incompatible concepts. It has reconciled the federal and unitary system, membership of Commonwealth and republic status of the Government, provisions for Panchayat Raj with the need for a strong Central Government.
- e) Art of Selection and Modification: The Constituent Assembly was not merely imitative, the borrowing from different political systems did not relieve the

Assembly of choice and that the borrowed provisions had to be adapted to suit Indian conditions. One example of selection and modification, according to Austin, is the method of a constitutional amendment which made the Constitution flexible while at the same time protecting the rights of the States. They have worked better than the amending process in any other country where federalism and the British Parliamentary System jointly form the bases of the Constitution.

- f) **Fundamental Rights:** Particularly because of Vallabhbhai Patel, the fundamental rights were made justiciable in Indian Constitution and became the modicum of the modern democratic system of rights of citizens to express themselves freely.
- g) **Secular State:** The principle of secularism seconded the principle of creating conditions for the fullest exercise of rights by the citizens of India. This principle of a secular state was mainly architected by the predominantly Congress section of the Constituent Assembly which firmly believed that India should be a secular state.
- h) **Socialism:** It was principally Vallabhbhai Patel’s conservative influence that kept the Constitution from having a greater socialist content than it has. (i) **Reservation for the Minorities:** Related to the principle of accommodation, the Constituent Assembly also had a philosophical orientation to have a reservation for the minorities of the society. Two women members of the Constituent Assembly played a key role in formulating this principle. Amrit Kaur and Begum Aizaz Rasul promoted the view that all minorities are an integral part of India and needed safeguards in the form of reservation.
- j) **Adult Franchise:** The Constituent Assembly plumbed for the adult franchise as a matter of faith. Rajendra Prasad and Jawaharlal Nehru were the key members guaranteeing adult franchise for every citizen giving voting rights to elect their representatives.

Check Your Progress Exercise 2

- Note:** 1) Use the space below for your answers
2) Check your answers with the model answers given at the end of this unit.

- 1) What are the philosophical underpinnings of the Constitution?

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

2.4 CONSTITUENT ASSEMBLY OF INDIA AND ACADEMIC DEBATES

The Constituent Assembly of India consisted of people who were not elected by the universal adult franchise. They were elected by restricted adult franchise on the basis of educational qualification and property. The critics of the Constituent Assembly said that it was an elite body and did not represent the general people. Jaya Prakash Narayan referred to it as “a restricted and curbed Constituent Assembly”, a creation of the British imperialism and so unable to bring freedom to the country. Churchill said that the Assembly represented “only one major community in India” and for Vincent Simon, it was a “body of Hindus”.

The working procedure, composition and status of the Constituent Assembly have been criticised on the grounds of it being dominated by the Congress party as the Congress had a built-in majority in the Assembly after partition. Prof. Shibban Lal Saxena observed that “the Congress Party meetings became meetings of the real Constituent Assembly and this real Assembly became the mock Assembly where discussions arrived at by the Congress party meetings were registered.”

Although the Constituent Assembly enjoyed the confidence of a vast majority of people of India, yet some uncharitable critics pointed out that it was an Assembly dominated by only politicians and lawyers. The net result was that this domination gave the country a very bulky document. Hence the Constitution of India is often criticized as being a lawyers’ paradise. Amid its criticism, S.K. Chaube categorically asserted that the Constituent Assembly of India was a unique assembly which was the first sovereign body of the Dominion of India doing a balancing act between the claims of stability and adaptability. Austin commented that the value of a well-written constitution for a society establishing fresh norms for itself had been proven by the experience of Constitution of India as framed by the Constituent Assembly. Kashyap argued that “Constitution of India is not merely a political or legal document, it is a charter of citizenship values.” Highlighting the importance of the historic Objectives Resolution moved in the Constituent Assembly, by Nehru on 13 December 1946, Subhash C. Kashyap remarked that “the Objectives Resolution sought to lay down the fundamentals and delineate the basic values and direction of the Constitution.” It was something much more than a resolution. It was a declaration, a firm resolve, an understanding and a dedication. The resolution gave the Constituent Assembly its guiding principles and the philosophy that was to permeate its task of Constitution making.

2.5 LET US SUM UP

The Constitution of India is a vision document about welfare of all irrespective of class, race, caste or place of birth. This vision is present in the Preamble and several other parts of the Constitution. This reflects certain premises about democracy, sovereignty, accommodation, consensus, socialism and safeguarding the minorities and backward sections of the society. These premises are combination of Indian and western philosophical tradition. The philosophy of the Constituent Assembly was initially enshrined in the Objectives Resolution propagated by Jawaharlal Nehru in 1946, which became basis for discussion in the Constituent Assembly. The philosophical premises guided the moral and political commitment of the Constitution makers. They represented diverse social

and political backgrounds. Despite the divergences in their views and backgrounds they had agreed on common goal for the Constitution – to make India a sovereign, socialist and secular republic in which welfare of everybody and unity and integrity of the nation would be protected. This vision could be possible because it is based on philosophical premises on which the Constitution is based.

2.6 REFERENCES

Basu, Das Durga (2011): *Introduction to the Constitution of India*, (20thed). New Delhi Nagpur, Agra, India: Wardha and Company Law Publishers.

Chaube, K. S. (1976). *Constituent Assembly of India: The Springboard of Revolution*. New Delhi, India: Manohar Publishers.

Granville, Austin (2002). *Working of a Democratic Constitution: The Experience of India*. New Delhi, India: Oxford University Press.

Kashyap, Subhas C. (1997). *Citizens and the Constitution*, Ministry of Information and Broadcasting, New Delhi.

Khosla, Madhav (2012). *The Indian Constitution*. New Delhi, India: Oxford University Press.

2.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) The philosophical background to Indian Constitution was shaped by the nature of Composition of the Constituent Assembly. Though it was dominated by the Congress, it had diverse representation of castes, communities and political parties. They were advocated of democratic premises – republicanism, separation of power, division of power, universal adult franchise, respect for the disadvantaged groups, minorities.

Check Your Progress Exercise 2

- 1) The philosophical underpinnings of the Constitution are: sovereignty, democratic values, decision-making by consensus, principles of accommodation, fundamental rights, secularism, socialism and adult franchise.

UNIT 3 PREAMBLE*

Structure

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Background
 - 3.2.1 Objectives Resolution
 - 3.2.2 Significance of Objectives Resolution
- 3.3 Preamble: The Text
 - 3.3.1 “Socialism”, “Secularism”, and “and Integrity” in Preamble
- 3.4 Let Us Sum Up
- 3.5 References
- 3.6 Answers to Check Your Progress Exercises

3.0 OBJECTIVES

After reading this unit, you will be able to:

- Explain the meaning and significance of Preamble;
- Get a glimpse into the goals and philosophy of Constitution of India;
- Analyse the meaning of Objectives Resolution and its evolution into the Preamble;
- Discuss relationship between the Preamble and the Constitution; and
- Analyse the factors for entry of Secularism and Socialism into the Preamble.

3.1 INTRODUCTION

Preamble to a constitution is the window to what is there inside the constitution. The Constitution of India has also got a preamble. It is mentioned in the beginning of the Constitution, before the main part, i.e., the part I. If you read the Preamble, it gives you a glimpse about the philosophy and goals of Indian Constitution. It is a resolution which people of India have passed themselves for their overall development. It is not given to them by any other source than the people themselves. It was written on behalf of the people of India by the members of the Constituent Assembly. As you have read in unit 1, the Constitution of India was written by the Constituent Assembly, which consisted of the people's representatives.

You will find it interesting to note that Preamble to Indian Constitution was written towards the end of the session of Constituent Assembly debate – i.e. in October 1949. The first meeting of the Constituent Assembly took place on 6 December 1946 and ended on 26 November 1949 with the adoption of the Constitution of India which commenced on 26 January 1950.

3.2 BACKGROUND

3.2.1 Objectives Resolution

The text of aims and objectives which were to be discussed in the Constituent Assembly first were prepared by Jawaharlal Nehru in the form of Objectives Resolution. In the Constituent Assembly, it was presented by Jawaharlal Nehru and seconded by Purushottam Das Tandon. After the discussion in the Constituent Assembly, most of provisions of Objectives Resolution were accepted as Preamble. You will find it interesting to know the Objectives Resolution was accepted in the beginning of Constituent Assembly debates, but it was adapted into Preamble towards the end of the debates. The purpose of the Objectives Resolution was to give some indications to the Constituent Assembly as to what its members were supposed to do, what they sought to achieve, and where they were going.

Objectives Resolution meant to lay certain ground on which structure of the Constitution could be built after the debates and deliberations in the Constituent Assembly. Objective Resolutions were “in the nature of pledge” which the people of India through Constituent Assembly took for their fulfilment in future. The Resolution laid down certain “Fundamentals” for future constitution of India. And the most important was that Indians would have “Sovereign Indian Republic”. Indeed, it was the first time that as a “Fundamental” for Indian political structure the concept “republic” was used in the Constituent Assembly in Objectives Resolution. When Objectives Resolution was laid in the Constituent Assembly, the representatives of the States were not present, and those of the Muslim League had boycotted it. But Nehru emphasized that despite their absence, the “republic” shall include all of India.

3.2.2 Significance of Objectives Resolution

In Jawaharlal Nehru's words the purpose of the Resolution was to “send out a message to show what we have resolved to attempt to do”. Following the discussion in the Constituent Assembly, a constitution could be formed “in whatever words we please we shall see later” (Constituent Assembly Debates, Vol.I, December 13, 1946). And after deliberations for around three years the Constituent Assembly succeeded in forming a Constitution, as you have read in unit 1, which commenced on January 26, 1950. After having designed the Constitution, the Constituent Assembly drafted Preamble. This preamble as you will notice had similarities with Objectives Resolution. Just on the fifth day of inaugural session the Constituent Assembly on 9 December 1946 the Objectives Resolution was laid in the Assembly on 13 December. 1946.

The Objectives Resolution identified “Fundamentals” which were to guide lines for the structure of Constitutions which the Constituent Assembly has gathered to meet. These “Fundamentals” laid foundations about nature of political system, its territorial boundaries, division of power between union and its constituent units, supremacy of the people as source of all power and authority, social justice to all, and safeguarding interests of minorities. These “Foundations” as given in the Objectives Resolution(Vol. I, Constituent Assembly debates) are given below:

- “1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
- 2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
- 3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and
- 4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
- 5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality; and
- 6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
- 7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to Justice and the law of civilised nations, and
- 8) This ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.”

Objectives Resolution did not mention the word “democratic”. About this, Jawaharlal Nehru opined that the word “republic” mentioned in Objectives Resolution implies democracy. He also clarified that the Objectives Resolution had not only “content of democracy” but also “content of economic democracy”. Nehru also felt that there may be objection that the Resolution did not mention attainment of “a Socialist State” among the objectives of the Resolution. To this, he responded that India would move towards “Socialist State”, and what form of Socialism would develop would depend on the nature of deliberations.

The Objectives Resolution was going to be the part of the Constitution that the Assembly was expected to make. This was not binding on the members of the Constituent Assembly. They had “perfect freedom” to draw up the Constitution. The Resolution only laid down “certain fundamentals”.

Check Your Progress Exercise 1

- Note:** 1) Use the space below for your answers
2) Check your answers with the model answers given at the end of this unit.

1) What was the Objectives Resolution?

.....
.....
.....
.....
.....

3.3 PREAMBLE: THE TEXT

The text of the Preamble to Indian Constitution is given below.

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 26th day of November, 1949, do

HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The members who prominently participated in the debate on Preamble were: Maulana Hasrat Mohani, K.M. Munshi, H.V. Kamath, Purnima Banerj, Rohini Kumar Chaudhuri and Prof. Shibban Lal Saksena. The Constituent Assembly discussed various aspect of the Preamble. Vol. X of the Constituent Assembly debates provides argument of different members of the Assembly. Among the points which were more prominently debated were about substitution of certain words in the draft of the Preamble. For instance, Maulana Hasrat Mohani wanted the words “We, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic” with “We, the people of India, having solemnly resolved to constitute India into a sovereign federal republic” or “We, the people of India, having solemnly resalved to constitute India into a sovereign independent republic” or “We, the people of India, having solemnly resolved to constitute India into a Union of Indian Socialist Republic (U.I.S.R)”. H.V. Kamath wanted “having solemnly resoled” to be replaced with “in the name of God”, while Rohini Kumar Chaudhury wanted these words to be replaced with “in the name of Goddess”. These amendments/suggestions were rejected in the Constituent Assembly. The preamble was added to the Constitution

after discussion on its various aspects. Towards the end of the debate with “the question” of President Rajendra Prasad “That the Preamble stand Part of the Constitution” placed Preamble for vote.

The question was often raised if the Preamble is part of the Constitution or not. Two cases gave contradictory reply to this question: One, Berubari case (1966), it ruled that the Preamble to Constitution is not part of the Constitution. Two, Kesavananda Bharati case (1973), reversing the verdict of the Berubari case, the Kesavananda Bharati case ruled that the Preamble is Part of the Constitution. The Kesavananda Bharati case (1973) held that Preamble is part of the Constitution. It reversed the decision of Berubari case (1966), according to which Preamble was not part of the Constitution. It also suggested that Parliament can amend any part of the Constitution provided it did not violate the basic structure of the Constitution. According to Article 368, the Parliament amended the Constitution (42nd Constitutional Amendment) and inserted “Secular”, “Socialist”, and “and Integrity” in the Preamble of the Constitution. The Supreme Court in Bommai case (1994) which was specifically about the President’s power to dismiss government and dissolve legislature (according to Article 356) also dealt with secularism. It held that *inter alia* Preamble along with the Articles about religious freedom (25-30) are part of the basic structure of the Constitution. The verdict mentioned: “We do not know how the Constitution can be amended so as to remove secularism from the basic structure of the Constitution. Nor do we know that the Constitution does not provide such a course – that it does not provide for its own demise” (All India Reporter 1994, para 243 quoted in Raj (2015)). In the debate on Objectives Resolution (Constituent Assembly Debates Vol.1), the original source of Preamble, Nehru had said that it was not going to be part of Constitution. But, as mentioned earlier, before placing the draft Preamble for voting in the Constituent Assembly, President of the constituent Assembly, Dr. Rajendra Prasad, raised question “That the Preamble stand Part of the Constitution”. The Kesavananda Bharati settled this question, and since then the Preamble is part of the Constitution. In 1995, in the LIC of India case also the Supreme Court confirmed that Preamble is part of the Constitution.

3.3.1 “Socialism”, “Secularism” and “and Integrity” in Preamble

Initial version of the Preamble did not have “Secularism”, “Socialism” and “and Integrity”. The constitution makers did not feel the need to include “Secularism” and “Socialism” in the Constitution because various provisions of the Constitution imply that Indian Constitution was secular document and can attain socialism. These concepts were inserted in the Constitution in accordance with the 42nd Constitutional Amendment in 1976.

Check Your Progress Exercise 2

Note: i) Use the space below for your answers.

ii) Check your answers with the model answers given at the end of this unit.

1) What was the relationship between the Objectives Resolution and the Preamble?

.....

.....
.....
.....
.....

2) Is the Preamble part of the Constitution?

.....
.....
.....
.....

3) When were the concepts of “Secularism”, “Socialism” and “and Integrity” inserted in the Preamble?

.....
.....
.....
.....

3.4 LET US SUM UP

Preamble of Indian Constitution provides a glimpse into the philosophy and goals of the Constitution. It is a resolution of Indian people to establish a sovereign, socialist, secular and democratic republic. In this republic, people will have justice – social, economic and political; liberty of thought, expression, belief, faith and worship; and equality of status and opportunity; this will promote fraternity among them and assure the dignity of the individual and the unity and integrity of the Nation. The preamble was written after the Constituent Assembly had written the whole constitution. It emerged from the Objectives Resolution which was introduced by Jawaharlal Nehru on the fifth day of the inaugural session of the Constituent Assembly debates. It was seconded by Purushottam Das Tandon. The Objectives Resolution was a pledge of the people which they had taken through their representatives in the Constituent Assembly to give themselves a Constitution. And they had fulfilled the pledge by having written the Constitution of India. The Objectives Resolution was not part of the Constitution, but the Preamble is. It became part of the Constitution after the Kesavanand Bharati judgement of 1973. Before that Berubari judgement in 1966 stated that Preamble was not part of the Constitution. The Kesavanand Bharati judgement reversed the Berubari judgement and established that the Preamble is part of the Constitution. The original Preamble did not mention “Secularism”, “Socialism”, and “and Integrity”. They were inserted in it through the 42nd Constitutional Amendment. The Bhommai case (1994) ruled that secularism in the Preamble was part of basic structure of the Constitution.

3.5 REFERENCES

Bakshi, P.M. (2003). *The Constitution of India*. Delhi, India: Universal Law Publishing Company.

Basu, D.D. (2011). *Introduction to the Constitution of India*. Nagpur, India: Lexis Nexis Butterworths Wardha.

Constituent Assembly of India Debates (Debates) Vol.I (See for Objectives Resolutions, 13th December 1946).

Constituent Assembly of India Debates (Debates) Vol. X (See for Preamble 17th October 1949).

Granville, Austin (2012). *The Indian Constitution: Cornerstone of a Nation*. New Delhi, India: Oxford University Press.

Khosla, Madhav (2012). *The Indian Constitution*. New Delhi, India: Oxford University Press.

Raj, Kaleeswaram (2015), *Rethinking the Preamble*, Dec, <http://www.livelaw.in/rethinking-the-preamble/> (accessed on December 17, 2018).

3.6 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Answers to Check Your Progress Exercise 1

- 1) Objectives Resolution was presented in the Constituent Assembly on the fifth day of its debates, i.e., December 13, 1946 by Jawaharlal Nehru. It prescribed “Fundamentals” of the Constitution and its Preamble which were to be made ready by the Constituent Assembly. It suggested that India would become a sovereign republic where the justice would be delivered to all.

Answers to Check Your Progress Exercise 2

- 1) Objectives Resolution was presented in the beginning of the Constituent Assembly debates and the Preamble was written after the Constitution had been drafted. The former provided the grounds for discussion in the Constitution, and the latter contains the contents which provide a window to the contents of the Constitution. The Preamble is, in fact, the form of Objectives Resolution which re-emerged after the discussion in the Constituent Assembly.
- 2) According to the Kesavanand Bharati case, 1973, verdict, the Preamble is part of the Constitution.
- 3) The concepts of “Secularism”, “Socialism” and “and Integrity” were incorporated in the Preamble after the 42nd Constitutional Amendment 1976.

UNIT 4 FUNDAMENTAL RIGHTS*

Structure

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Historical Background
 - 4.2.1 The Commonwealth of India Bill, 1925
 - 4.2.2 The Nehru Report, 1928
 - 4.2.3 The Sapru Report, 1945
 - 4.2.4 The Sub-committee on Fundamental Rights
- 4.3 Salient Features of the Fundamental Rights
- 4.4 The Six Fundamental Rights
 - 4.4.1 Right to Equality
 - 4.4.2 Right to Freedom
 - 4.4.3 Right against Exploitation
 - 4.4.4 Right to Freedom of Religion
 - 4.4.5 Cultural and Educational Rights
 - 4.4.6 Right to Constitutional Remedies
- 4.5 The Basic Structure Doctrine
- 4.6 Reasonable Restrictions on Fundamental Rights
- 4.7 Let Us Sum Up
- 4.8 References
- 4.9 Answers to Check Your Progress Exercise

4.0 OBJECTIVES

After reading this unit, you will be able to:

- Trace historical background of Fundamental Rights;
- Explain their salient features;
- Describe Six Important Fundamental Rights; and
- Discuss reasonable restrictions on Fundamental Rights.

4.1 INTRODUCTION

In Unit 3, you have read that the preamble to Indian constitution is about the resolution of Indians (“We, the People of India”) for securing freedom, equality, justice, security, dignity to all citizens. These commitments have been incorporated as Fundamental Rights and Directive Principles of the State Policy in the Part III and Part IV of the constitution respectively. You will read about Directive Policy of State Policy (DPSPs) in Unit 5. The Fundamental Rights are justiciable. It means that if Fundamental Rights of citizen or persons are violated, she/he can approach the court for their protection. But as you will read in Unit 5, Directive Principles of State Policy are non-justiciable. It means that if the state does not follow the provisions of Directive Principles of State Policy, a citizen can not approach court claiming them.

4.2 HISTORICAL BACKGROUND

The notion of rights which finally came to be known as Fundamental Rights in Indian constitution evolved from the nineteenth century. Granville Austin opines that the concept of Fundamental Rights was implicit in the formation of the Indian National Congress in 1885, in which Indians wanted the same rights and privileges that the British enjoyed in India and in England. Some of these rights were included in the documents such as the Constitution of India Bill, 1895. This bill sought to provide rights to Indians such as free speech, imprisonment only by competent authority, and free State education. In the following period, demands were made from several quarters asking the British government to grant rights to Indians. These demands were made in resolutions by the Indian National Congress between 1917 and 1919, in several bills and in committee reports. The Commonwealth of India Bill, 1925 drafted by Annie Basent, the Nehru Report 1928, the Sapru Report of 1945, and Sub-Committee of the Constituent Assembly on Fundamental Rights had provisions about rights of the people.

4.2.1 The Commonwealth of India Bill, 1925

The Commonwealth of India Bill demanded seven Fundamental Rights for Indians. Among these rights included: individual liberty, freedom of conscience, free expression of opinion, free assembly, and equality before law. The Bill also had provisions for right to free elementary education, equal right to use roads, court of justice and all other places of business or resort dedicated to public.

4.2.2 The Nehru Report, 1928

The printing of the Commonwealth Bill was followed by the visit of Simon Commission in 1927, which aimed to study the possibility of introducing constitutional reforms in India. In response to the Simon Commission, the Congress passed a resolution to set up committee in its forty-third annual session held at Madras for the purpose of drafting of “a Swaraj Constitution for India”. A declaration of rights was to be the basis of this draft constitution. The task to draft the constitution was assigned to a committee. This committee came to be known as Nehru committee after its chairman, Motilal Nehru. The Nehru report underlined the need for securing Fundamental Rights that had been denied to them by the colonial government. Indeed, the Fundamental Rights in the Nehru report were reiteration of the rights mentioned in the Commonwealth of India Bill, about which you have read above. This report underlined prominently the need to protect minority rights. The Congress party in its session in 1931 held at Karachi passed a Resolution which came to be known as the Karachi Resolution. The Karachi Resolution highlighted the need to end exploitation of masses and to make economic freedom intertwined with the political freedom. It suggested that suitable legislations should be made to safeguard the interests of working classes.

4.2.3 The Sapru Report, 1945

The Sapru Committee was assigned the task of doing spadework for making constitution for future India. The Committee consisted of thirty members. It was known as Sapru Committee after the name of its chairman, Tej Bahadur Sapru, an eminent lawyer. The report was published in 1945. The Sapru Committee is

distinguished for making two suggestions about rights. One, it made distinction between justiciable rights and non-justiciable rights. Two, it suggested that rights of the minorities must be protected.

4.2.4 The Sub-Committee on Fundamental Rights

You have read in unit 1, the Constituent Assembly had constituted various committees to give suggestions for inclusion in the constitution. One such committee was to give suggestions about Fundamental Rights, minority Rights and Tribal and Excluded Areas. It was headed by Sardar Ballabhbhai Patel. This Committee was divided into sub-committees. One such sub-committee was also on Fundamental Rights. The Fundamental Right sub-committee or the Rights sub-committee as it was known was headed by J.B. Kripalani. This committee had representation of diverse sections of society, including women – Amrit Kaur and Hansa Mehta. An important decision which the Right sub-committee took was to include the Fundamental Rights as justiciable right. The suggestions of the Rights sub-committee were incorporated as Fundamental Rights in Part III of the Constitution after they were discussed in the Constituent Assembly.

4.3 SALIENT FEATURES OF FUNDAMENTAL RIGHTS

The important features of Fundamental Rights are:

- i) ‘All are equal before the law’. It means that all citizens are equal under law. They have equal right to freedom of religion, assembly, association, and movement. No person is to be deprived of his life, liberty or property, except in accordance with the law.
- ii) Minorities are allowed to protect and conserve their language, script, and culture. Fundamental Rights primarily protect individuals and minority groups from arbitrary, prejudicial, state action, three of the articles have been designed to protect an individual against the action of other private citizens. Article 17 abolishes untouchability; Article 15(2) lays down that no citizen shall suffer any disability in the use of shops, restaurants, wells, roads, and other public places on account of his religion, race, caste, sex, or place of birth; Article 23 prohibits forced labour.
- iii) Various means are provided whereby the citizens can move the Supreme Court and other courts for the enforcement of the Fundamental Rights. There are two different mechanisms for the enforcement of Fundamental Rights: first judicial review and second writs against a public authority violating a person’s rights. Both the remedies operate through Article 32.
- iv) The Fundamental Rights are both natural as well as legal.

Check Your Progress Exercise 1

Note: i) Use the space below for your answers

- ii) Check your answers with the model answers given at the end of this unit.

- 1) What was Commonwealth Bill of 1925?

.....
.....
.....
.....
.....
.....

2) What were the important features of Nehru Report and Sapru Report?

.....
.....
.....
.....
.....

4.4 THE SIX FUNDAMENTAL RIGHTS

The original Constitution (1950) had seven Fundamental Rights. But after the passage of the 44th Amendment in 1978, there are now six Fundamental Rights. This Amendment deleted the seventh fundamental right, viz., right to property (Art. 31) from the list of Fundamental Rights. In sub-sections below, you will read about the six Fundamental Rights:

4.4.1 Right to Equality

Articles 14 to 18 deal with different aspects of right to equality. Article 14 states that the state shall not deny to any person equality before the law and equal protection of law within the territory of India. It, thus, provides equality before the law to every person without discriminating on grounds of religion, race, caste, sex or place of birth. Articles 15, 16, 17 and 18 relate to socio-economic equality. Article 15 prohibits state from discriminating against any person on grounds of religion, race, caste, sex, place of birth or any of them. However, the state can make special policies of protective discrimination for welfare of women, children, socially and educationally backward classes, and SCs and STs. It also prohibits discrimination in terms of restriction to any person from access to shops, public restaurant, hotels and places of public entertainment, or use of wells, tanks, bathing ghats, roads and places of public restaurant which are maintained wholly or partly out of state funds or which are dedicated to the use of general public.

Article 16 guarantees equality of opportunity for all citizens in public employment and prohibits ineligibility of or discrimination against, a citizen in respect of employment or office under the state on grounds of religion, race, caste, descent, place of birth, residence or any of them. Article 17 abolishes untouchability and prohibits its practice in any form. The enforcement of any disability arising out of untouchability is punishable by law. According to Article 18, no title other than military and academic distinction shall be conferred by the state. No citizen

of India shall accept any title from a foreign state. No person holding an office of profit or trust under the state shall accept a gift or present or emolument or office of any kind from or under a foreign state.

4.4.2 Right to Freedom

Right to freedom are given in Articles 19 to 22. The right to freedom is not an absolute right. It is subject to 'reasonable restrictions' that may be imposed by the law. The Article 19 the guarantees the following rights:

- i) Freedom of speech and expression: its main concern is the interests of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality or in the relation of contempt of court, defamation or incitement to an offence;
- ii) to assemble peacefully and without arms: it is qualified by the interests of security and integrity of India or public order;
- iii) to form associations and unions: it is qualified by the interests of sovereignty and integrity of India, or public or morality. It also includes "cooperative societies" that was added by 97th Amendment in 2012;
- iv) to move freely throughout the territory of India: general interests of the public or the protection of interests of the scheduled tribes;
- v) to reside and settle in any part of the territory of India; and
- vi) to practise any profession, or to carry on any occupation, trade or business: it is qualified by professionals' qualification needed for practising them and the power of the state or a corporation owned or controlled by the state to the total or partial exclusion of citizen.

The Articles 20, 21 and 22 assure personal freedom of persons. Central to them, indeed central to all the Fundamental Rights, is the right to life and personal liberty. In 2002, judiciary interpreted this right in a creative way. Right to life is now seen as a right to life of dignity and fulfilment. Moreover, the 86th Amendment in 2002 further added Article 21 A to the constitution that guarantees the state to provide free and compulsory education to children between the ages of six and fourteen in such manner that the state may determine. Earlier it was present in the Article 45 of Directive Principles of State Policy. Article 20 provides a fair trial and freedom from arbitrary conviction by the state. No person can be convicted except for the violation of an offence under the law prevalent at the time of the commission of the act charged as an offence. Article 22 and its different clauses provide protection against Arrest and Detention in certain cases.

4.4.3 Right against Exploitation

The Indian constitution guaranteed right against exploitation. Article 23 prohibits traffic in human beings and beggar (unpaid labour) and other similar forms of forced labour. According to Article 24, no child below the age of fourteen shall be employed in the factory, mine or hazardous occupations.

4.4.4 Right to Freedom of Religion

Article 25 entitles all persons equally to freedom of conscience and right to freely profess, practice and propagate religion. But the freedoms are subject to public

order, morality and health, and to other provisions of part III of the constitution. Nothing in this article shall affect the operation of any existing law or prevent the state from making a law-

- a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- b) providing for social welfare and reform or throwing of Hindu religious institutions of a public character to all classes and sections of the Hindus.

Freedom of conscience is strengthened by two articles, i.e., Articles 27 and 28. Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious domination. Article 28 prohibits religious instructions in any educational institution wholly maintained by state funds unless such an institution, even though administered by state, has been set up under an endowment or trust which requires that religious instructions be imparted in them.

4.4.5 Cultural and Educational Rights

Articles 29 and 30 are about cultural and educational rights. Article 29 grants any section of the citizens residing in the territory of India or any part of it, possessing a distinct language, script or culture of its own, right to conserve it. No citizen shall be denied admission into an educational institution maintained by the state or receiving aid out of state funds on the basis of religion, race, caste, language or any of them. According to Article 30, all minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice.

4.4.6 Right to Constitutional Remedies

According to Article 32, the Indian Constitution has certain provisions which give powers to the courts to enforce Fundamental Rights. The devices through which the courts protect Fundamental Rights are known as writs or judicial processes. These writs or judicial processes are: *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*. The Supreme Court may issue directions, orders or writs to enforce Fundamental Rights. The meanings of the writs are mentioned below:

Habeas corpus: It means “to have the body”. This writ protects the right to life and personal liberty (Article 21). It can be issued by the courts to any authority which has detained a person without trial to produce him to the court for trial. It challenges the executive if it has detained anyone against the authority of law. It can also challenge a law under which the detention has been made if that law is unconstitutional. The court can free a person if she/he is detained illegally. Disobedience to this writ is met with punishment for contempt of court.

Mandamus: *Mandamus* means a command. It is an order issued to an authority or a person to do the duty mandated to it by law which it has refused to perform. *Mandamus* is not granted against the President, Governor of the state, the high court or supreme court judges. It is not issued against a private individual or body.

Prohibition: It is a writ issued by a higher court – the Supreme Court or a high court to an inferior court. It prohibits the latter from continuing proceedings to hear a case which is beyond the jurisdiction.

Certiorari: By this writ the Supreme Court, and the High Courts may call for the record of a case from a lower court or semi-judicial body on an allegation of an excess of jurisdiction.

Quo Warranto: by this writ the court asks a person or body of persons under which authority it is in a public office created by the constitution or a statute.

4.5 THE BASIC STRUCTRE DOCTRINE

According to the Basic Structure Doctrine, the Parliament can not change through amendments the basic features of the constitution, which include Fundamental Rights along with judicial review, secularism and parliamentary democracy. This doctrine emerged from the Supreme Court judgement in March 1973 about *Kesavanad Bharati vs. State of Kerala* case. In this case, His Holiness Kesavanand Bharati Spripadagalvanu, leader of a *math* in Kerala challenged in the Supreme Court the decision of Kerala government about taking over the private land as part of land reforms programme. In its judgement about this case, the Supreme Court pronounced that basic structure of the constitution, i.e., Fundamental Rights can not be changed. However, the court also held that right to property did not constitute basic structure of the Constitution. The 44th Amendment, 1978 removed the right to property as Fundamental Rights. As Fundamental Rights are enforceable, the courts have a special responsibility to protect them. The courts protect Fundamental Rights by issuing writs. Prior to *KesavanadBharati* case, the Supreme Court protected Fundamental Rights in *Golakhnath vs. State of Punjab* case (1967). In this case, the court restricted Parliament from curtailing any Fundamental Right. In *Indira Gandh vs. Raj Narayan* case in 1975, the Supreme Court used Basic Structure doctrine to strike down the 39th Constitutional Amendment, which sought to place elections of President, Vice-President, Prime Minister and Speaker of Lok Sabha beyond the purview of judicial review.

Check Your Progress Exercise 2

Note: 1) Use the space below for your answers

2) Check your answers with the model answers given at the end of this unit.

1) What are the six Fundamental Rights?

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

4.6 REASONABLE RESTRICTIONS ON FUNDAMENTAL RIGHTS

Indian constitution has provided a safety net to all sections and groups through various articles especially regarding Fundamental Rights of the citizens and the persons. However, the Fundamental Rights are not absolute. There are subject to reasonable restrictions. The state can put restrictions on right to freedom for protection of sovereignty and security of the country; for maintenance of public order by imposing curfew and morality; and for maintaining friendly relations with other countries. The state can also put reasonable restrictions on right to equality by devising welfare policies for the marginalised sections of society such as women, children, socially and educationally backward classes, Scheduled Castes and Scheduled Tribes.

Article 33 empowers Parliament to restrict or abrogate the application of Fundamental rights in relation to armed forces or the forces, police, etc. This article is meant to instil discipline among the forces whose duties are related to maintenance of public order and sensitive subjects. According to Article 32, a person has fundamental right to approach the Supreme court but not the high court to seek constitutional remedies for enforcement of the Fundamental Rights. The High Court may decline to hear a petition seeking constitutional remedies.

4.7 LET US SUM UP

Fundamental Rights are given in Part III of the Constitution. They are essential conditions for development of human beings. They provide freedom, equality, security and dignity to all persons and citizens without discriminating on grounds of religion, race, caste, gender, place of origin, descent. They are justiciable. Their violation can be challenged in the court of law. In India, realization to have Fundamental Rights which finally were included in the Constitution grew from the nineteenth century. As per the Basic Structure Doctrine, the Fundamental Rights represent basic structure of the constitution. They cannot be amended. The courts can enforce the Fundamental Rights with the devices known as writs. This right is very important because it provides freedom and security to the citizen.

4.8 REFERENCES

Basu, D. D. (2004). *Introduction to the Constitution of India*. Nagpur, India: Lexis Nexis Butterworths Wardha.

Chaube, S.K. (2009). *The Making and Working of the Indian Constitution*. New Delhi, India: National Book Trust.

Granville, Austin(2012). *The Indian Constitution: Cornerstone of a Nation*, New Delhi, India: Oxford University Press.

Khosla, Madhav (2012). *Oxford India Short Introductions: The Indian Constitution*, New Delhi, India: Oxford University Press.

Sarkar, Sumit (1983). *Modern India 1885-1947*, New Delhi, India: MacMillan.

4.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) The Commonwealth Bill 1925 laid down that individual liberty, freedom of conscience, free expression of opinion, free assembly, and equality before the law were to be ensured. The Bill also sought to ensure right to free elementary education, equal right to use roads, court of justice and all other places of business or resort dedicated to public.
- 2) The Nehru Report was a report prepared by a committee headed by Motilal Nehru in 1928. It was assigned the task of preparing draft of a constitution of India. The committee emphasized the need for securing Fundamental Rights to Indians including the minority rights. The Sapru Report made two important suggestions: to make distinction between justiciable rights and non-justiciable rights, and to protect the rights of minorities.

Check Your Progress Exercise 2

- 1) The six Fundamental Rights are: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and rights to constitutional remedies.
- 2) The Basic Structure Doctrine

The Basic Structure Doctrine denotes that the basic structure of the constitution, which includes among some other provisions, the Fundamental Rights. It was propounded in Keshavanand Bharati case in 1973.

UNIT 5 DIRECTIVE PRINCIPLES OF STATE POLICY*

Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Genesis of Directive Principles of State Policy
- 5.3 Amendments to Directive Principles of State Policy
- 5.4 Execution of Directive Principles of State Policy
- 5.5 Limitations of Directive Principles of State Policy
- 5.6 Directive Principles of State Policy & Fundamental Rights: A Comparison
- 5.7 Let Us Sum Up
- 5.8 References
- 5.9 Answers to Check Your Progress Exercises

5.0 OBJECTIVES

This Unit deals with Directive Principles of State Policy. It explains the genesis, characteristics, and limitations of the Directive Principles of State Policy outlined in the Constitution. After reading this unit, you should be able to:

- Describe evolution of Directive Principles of State Policy;
- To categorise Directive Principles of State Policy;
- Discuss amendments to Directive Principles of State Policy;
- Compare Directive Principles of State Policy and Fundamental Rights; and
- Describe limitation of Directive Principles of State Policy.

5.1 INTRODUCTION

In unit 4, you have read about justiciable rights, i.e. Fundamental Rights. In this unit, you will read about non-justiciable rights, i.e. Directive Principles of State Policies. As you will read in this unit, there is a difference between justiciable and non-justiciable rights. The former can be restored by the court in case of their violation. The latter can not be claimed in the court, if the state does not implement the provisions of Directive Principles of State Policy. Fundamental Rights envisage a liberal democratic State, and the Directive Principles of State Policy embody principles of a welfare state. The Directive Principles of State Policy are mentioned in Articles 36-51, Part IV of the Constitution. Their main purpose is to achieve social and economic development of all sections of the society, aiming to set up an egalitarian society. In Granville Austin's views, Directive Principles of State Policy have been helpful in achieving the constitutional goals of social, economic and political justice to all.

5.2 GENESIS OF DIRECTIVE PRINCIPLES OF STATE POLICY

As you have read in unit 4, the Fundamental Rights were incorporated in the Constitution according to the suggestions of Rights Sub-committee of the Constituent Assembly. Apart from giving suggestions on the Fundamental Rights, this Sub-committee gave suggestions on Directive Principles of State Policy. Indeed, there has been a debate in the Constituent Assembly whether the rights should be divided into two parts – justiciable and non-justiciable or Fundamental Rights and Directive Principles of State Policy. They provide directives or instructions to the state to introduce the policies about the welfare of different sections of the society. Granville states that four members of the Constituent Agency played decisive role in framing Directive Principles of State Policy – B.N. Rau, A.K. Ayyar, B.R. Ambedkar and K.T. Shah. Among them B.N. Rau was “the most influential”.

The origin of Directive Principles of State Policy can be traced to Karachi Resolution, and socialist and nationalist ideas which were prevalent from the 1920s in India. As you have read in unit 4, the Sapru Committee suggested that rights should be divided between two parts – justiciable and non-justiciable. Even the Rights Sub-Committee made these suggestions. At the time of discussion on Directive Principles of State Policy in India, the inclusion of provisions about state’s role in social and economic development of society was not an exception to India. For instance, provisions of Directive Principles of State Policy were borrowed from the Irish constituent. In opinion of Granville Austin, they attracted the attention of “a wide range of Assembly members”. Hindu outlook and Gandhian ideas also influenced the decision to include provisions of social, economic and political development of people. After serious deliberations, the Constituent Assembly included in Part IV of the Constitution. A list of Directive Principles of State Policy is given below.

Directive Principles of State Policy – Part IV

Articles No.	Subject-Matter
36.	Definition of the State
37.	Application of the principles contained in this part
38.	State to secure a social order for the promotion of welfare of the people
39.	Certain principles of policy to be followed by the State
39 A.	Equal Justice and free legal aid
40.	Organization of village panchayats
41.	Right to work, to education and to public assistance in certain cases
42.	Provisions for just and humane conditions of work and maternity relief
43.	Living wages, etc., for workers
43 A.	Participation of workers in the management of industries
43 B.	Promotion of co-operative societies

44.	Uniform civil code for the citizens
45.	Promotion for early childhood care and education to children below the age of six years
46.	Promotion of educational and economic interests of Scheduled Castes, Schedules Tribes and other weaker sections
47.	Duty of the State to raise the level of nutrition and the standard of living and to improve public health
48.	Organization of agricultural and animal husbandry
48 A.	Protection and improvement of environment and safeguarding of forests and wildlife
49.	Protection of monuments and places and objects of national importance
50.	Separation of Judiciary from Executive
51.	Promotion of international peace and security

Durga Das Basu classifies the Directive Principles of State Policy into three groups. First, certain ideals, which the members of the Constituent Assembly expected the state to achieve. These ideals especially, were economic. Second, certain directions to the Legislatures and the Executive which they were expected to follow for exercising their legislative and executive powers. Third, certain rights of the citizens were not be enforceable by the Courts like the Fundamental Rights, but which could be implemented by the state through it legislative and administrative policies.

Apart from the articles mentioned in Part IV of the constitution, there are some other articles in the constitution which enjoin on the state the task to make certain policies for people and non-justiciable in nature. Such articles are Articles 335, 350A and 351. According to Article 335, the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of the Union of a State. Article 350 A suggests that every state and every local authority within state will provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups. Article 351 enjoins the Union to promote the spread of Hindi language and to develop it so that it may serve as a medium of expression of all elements of the composite culture of India.

5.3 AMENDMENTS TO DIRECTIVE PRINCIPLES OF STATE POLICY

Some new clauses were added through constitutional amendments to the articles about the Directive Policy. These amendments made the list of articles about Directive Principles of State Policy more inclusive of social welfare. The 42nd Amendment Act of 1976 added four new subjects that required the State to secure healthy development of children (Article 39), to promote equal justice and to provide free legal aid to the poor (Article 39 A), to secure participation of workers in the management of industries (Article 43 A), to protect the environment, forests

and wildlife (Article 48 A). The 44th Amendment Act of 1978 added the Article 38 that required the State to minimize inequalities in income, status, facilities and opportunities. The 86th Amendment Act of 2002 modified the content of Article 45 which required the State to provide early childhood care and education for all children until they complete the age of 6 years and was directed in making education a fundamental right under Article 21 A. The 97th Amendment Act of 2011 added Article 43 B which required the State to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

Check your Progress Exercises 1

Note: 1) Use the space below for your answers

2) Check your answers with the model answers given at the end of this unit.

1) What was the Rights Sub-Committee?

.....
.....
.....
.....
.....

2) Trace the origin of Directive Principles of State Policy.

.....
.....
.....
.....
.....

5.4 EXECUTION OF DIRECTIVE PRINCIPLES OF STATE POLICY

Since Independence, various central state and governments in India have enacted several acts, launched schemes and programmes, and set up commissions according to Directive Principles of State Policy. The Planning Commission (which has been abolished and replaced by Niti Ayog) through its Five-Year Plans aimed to bring about social and economic equity and justice. Introduction of land reforms in several states which included as Zamindari Abolition, tenancy reforms, ceilings on land holdings, cooperative farming reduced inequalities in rural society. The governments introduced several measures to help the underprivileged sections. Such measures included acts to protect the interests of the poor: ensuring minimum wages to workers, protecting contract workers, providing free legal aid to the poor, abolition of child labour, abolition of bonded labour, resolution of industrial disputes, etc. For helping women these measures included: acts about maternity benefits and equal remuneration act was passed to protect the interests of women. The government passed acts for protection of wildlife and

conservation of forest and set up central and state pollution boards to protect environment. The government set up Khadi and Village Industries Board, Handlooms and Handicrafts Boards to develop cottage industries. It enacted laws for protection of ancient and historical monument and archaeological sites and remains, and places of national importance. To protect the interests of the SCs, STs and OBCs reservations have been given to them in government jobs and political institutions. And laws have been enacted for protection of civil rights and prevention social exploitation. Establishment of village panchayats and reservations for weaker sections in them has empowered them. Programmes such as Community Development Programme, Hill Area Development Programme, Minimum Needs Programme, IRDP (Integrated Rural Development Programmes), MNREGA (Mahatma Gandhi National Rural Employment Guarantee Act) and NRHM (National Rural Health Mission), etc. have resulted in social and economic inclusion of people.

5.5 LIMITATIONS OF DIRECTIVE PRINCIPLES OF STATE POLICY

The main limitation of Directive Principles of State Policy is that the state is not legally bound to implement them. This is despite the fact that the state has moral duty to implement them and they are accommodated in the constitution. Exemption of Directive Principles from being justiciable may make the state vulnerable to the pressure of politically and economically influential groups in the society. Some members of the Constituent Assembly underlined their limitations, especially regarding their being non-justiciable. K.T. Shah commented that the limitation would make Directive Principles of State Policy ‘pious wishes’. T.T. Krishnamachari described them as “a veritable dustbin of sentiment”. K.Santhanam, asserted that the Directives could lead to conflicts between Centre and States, Prime Minister and President, Governor and Chief Minister in terms of direction, guidance, legislation, assent, enforcement with regard to the problem of non-compliance and discretion.

5.6 DIRECTIVE PRINCIPLES OF STATE POLICY & FUNDAMENTAL RIGHTS: A COMPARISON

After having read about Fundamental Rights in unit 4 and about Directive Principles of State Policy in this unit, it will be interesting to compare them. Both have some similarities and differences. They share some goals: protection of rights and welfare of people or social revolution. Granville Austin terms both – Fundamental Rights and Directive Principles of State Policy, as the conscience of the constitution. Both emerged in the similar situations. Both are rooted in freedom struggle. Timings and circumstances of origin of the both were same: from the 1920s when ideas of socialism became popular, and the Congress frequently raised demands for granting of rights to Indians leading to formation of the Rights sub-committee in the Constituent Assembly. As you have read, suggestions to include Fundamental Rights and Directive Principles of State Policy in the constitution were made by the same Right Sub-committee. Indeed, in the Constituent Assembly, there was little disagreement on principles of Fundamental Rights and Directive Principles. The differences were more on techniques. However, despite the similarities between them, there is a basic difference between Fundamental Rights and Directive Principles of State Policy. The Fundamental

rights are negative, and Directive Principles of State Policy are positive. It means that Fundamental Rights deny (something negative) the state the authority to encroach upon these rights. It also means that Directive Principles of State Policy are not about denial but about providing (something positive) benefits from the state to the people. As you have read, Fundamental Rights are justiciable, and Directive Principles of State Policy are non-justiciable. But Austin argues that despite being non-justiciable, the Directive Principles of State Policy are “fundamental in governance of the country”. The fundamental rights promote welfare of the individuals and groups, and provide personal and political rights. Directive Principles of State Policy is concerned about the welfare of the community. The fundamental rights do not need any legislative act to enforce them legally, while the Directive Principles of State Policy come into effect only when it is legally implemented.

The justiciability and enforceability of the fundamental rights have given it an upper hand, and thus in cases involving an apparent conflict between Fundamental Rights and Directive Principles, it is the former that will prevail. However, the provision on Directive Principles of State Policy terms them as fundamental and imposes a moral obligation on the State for its application and this at times has created a legal and political dilemma. This conflict on whether the Fundamental Rights were superior to Directive Principles of State Policy manifested in the Champakam Dorairajan case in 1951. In this case, the Supreme Court ruled that in cases involving a conflict between Fundamental Rights and Directive Principles of State Policy, it is the former that will prevail. The Golaknath case of 1967 and Kesavanand Bharati case of 1973 further established the superior positions of the Fundamental Rights in comparison to Directive Principles of State Policy. According to Kesavanand Bharati case, the former can not be amended. The question as to Fundamental Rights were superior to Directive Principles of State Policy was settled in the Minerva Mills case of 1980. In this case, the Supreme Court made an important observation regarding the relationship between the Fundamental Rights and Directive Principles of State Policy. The court observed “the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and Directive Principles. They together constitute the core of commitment to social revolution. They are like two wheels of a chariot, one no less than the other. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between the two is an essential feature of the basic structure of the Constitution. The goals set out by the Directive Principles have to be achieved without the abrogation of the means provided by the Fundamental Rights”.

Check Your Progress Exercises 2

Note: 1) Use the space below for your answers

2) Check your answers with the model answers given at the end of this unit.

1) Compare Fundamental Rights and Directive Principles of the State Policy.

.....

.....

.....

.....

.....
.....
.....
.....
2) What are the limitations of Directive Principle of the State Policy?

.....
.....
.....
.....
.....
.....
.....
.....

5.7 LET US SUM UP

Directive Principles of State Policy are provisions which give direction or instructions to the state to enact policies for social, economic and political empowerment of people. They seek to establish an egalitarian society. They are different from Fundamental Rights in the sense they are non-justiciable while the Fundamental Rights are justiciable. The idea about Directive Principles of State Policy can be traced to Karachi resolution to the ideals of socialism and nationalism from the 1920s. Irish constitution, Hindu ideals and Gandhian philosophy influenced Directive Principles to a considerable extent. The Sapru Committee made suggestions to distinguish rights as justiciable and non-justiciable rights. The Right sub-Committee of the Constituent Assembly also suggested making a distinction between Fundamental Rights as justiciable rights Directive Principles of State Policy as non-justiciable right. The Constituent Assembly included the suggestions of Right Sub-committee as Directive Principles of State Policy in the Constitution after debating them. They are included in the Part IV, the Articles 36-51. The 42nd, 43rd, 86th and 97th Constitutional amendments expanded their scope. Exclusion of the Directive Principles of State Policy from being justiciable limits the scope of social welfare.

5.8 REFERENCES

Basu, D.D. (2011). *Introduction to the Constitution of India*, (20thed.). Nagpur, India: Lexis Nexis Butterworths Wardha.

Chaube, S. K. (2009). *The Making and Working of the Indian Constitution*. New Delhi, India: National Book Trust.

Granville, Austine (2012). *The Indian Constitution: Cornerstone of a Nation*, (17thed.). New Delhi: Oxford University Press.

Laxmikanth, M (2013). *Indian Polity*. New Delhi, India: McGraw Hill Education.

5.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check your Exercise 1

- 1) The Rights sub-committee was a sub-committee of the Constituent Assembly which advised the latter to give suggestions on Fundamental Rights and Directive Principles of State Policy. It was on its suggestions that the Fundamental Rights and the Directive Principles of State Policy were made justiciable and non-justiciable rights.
- 2) The trace of Directive Principles of State Policy first appeared in Karachi resolution of the Congress in 1931 and can be linked to general atmosphere prevailing since the 1920s where ideas of socialism became popular, and to Hindu outlook and Gandhain principles. The Sapru Report also made suggestions to distinguish justiciable and non-justiciable rights. These suggestions were also made by the Rights sub-committee of the Constituent Assembly. They were finally accepted by the Constituent Assembly and incorporated in the Part IV of the Constitution.

Check Your Exercise 2

- 1) There are similarities and differences between Fundamental Rights and Directive Principles of State Policy. The similarities include their goals which are protection of rights and welfare of people or social revolution, timings and circumstances of origin from the 1920s when ideas of socialism became popular, being recommended by the same Rights sub-committee of the Constituent Assembly. The differences are: The Directive Principles of State Policy are non-justiciable, the Fundamental Right are justiciable.
- 2) Directive Principles of State Policy are not legally binding on the state, though it is moral duty of the state to implement them. The state can be vulnerable to public pressure to implement or to not implement them. According K.T. Shah were Directive Principles of State Policy 'pious wishes', and in T.T. Krishnamachari's opinion, they were "a veritable dustbin of sentiment".

UNIT 6 FUNDAMENTAL DUTIES*

Structure

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Entry of Fundamental Duties in the Constitution
- 6.3 Non-Justifiability of the Fundamental Duties
- 6.4 Significance of Fundamental Duties
- 6.5 Let Us Sum Up
- 6.6 References
- 6.7 Answers to Check Your Progress Exercises

6.0 OBJECTIVES

After reading this unit, you should be able to:

- Describe the nature and meaning of Fundamental Duties;
- Discuss the inclusion of Fundamental Duties in the Constitution; and
- Explain the significance of Fundamental Duties.

6.1 INTRODUCTION

Fundamental Duty is a notion which conveys a sense of moral obligation and commitment to someone or to something. People must perform different kind of duties in daily life namely duties towards their family, work place and ultimately modern state. Ancient Roman philosopher Cicero also discusses duty in his work 'De Officiis' (On Duties) where he opines that duties may come from four different sources viz. wisdom, justice, courage and temperance. In unit 4, you have read about the fundamental rights. They can be properly realized, if the citizens perform their fundamental duties. Thus, the fundamental rights and the fundamental duties are inter-related. If someone performs his or her duties properly, it signifies that the basic rights of others are safeguarded and vice-versa. Indeed, no one can enjoy rights without performing his or her due duties. In other words, if a person fulfils of his or her duties then he or she must be in a moral position to get his/her basic rights. Several countries included Fundamental Duties in their constitutions. Examples of such countries are erstwhile Soviet Union, People's Republic of China, India, Poland, Albania, Czechoslovakia, the Netherlands, Yugoslavia, the Democratic Republic of Vietnam, Japan and Italian Republic. In fact, the USSR was the first country of the world to adopt fundamental duties in its constitution.

6.2 ENTRY OF THE FUNDAMENTAL DUTIES IN THE CONSTITUTION

Initially, the Indian Constitution did not have provisions of Fundamental Duties. But as an exception, Article 33 provided for some Fundamental Duties. According to this Article, the armed forces and police were supposed to maintain discipline

* Jayanta Debnath, Assistant Professor, Dept. of Political Science, Mrinalini Datta Mahavidyapith, Kolkata

and perform duties even when Fundamental Duties were not part of Indian Constitution. However, the 42nd and the 86th Constitutional Amendments provided for inclusion of Fundamental Duties in the Constitution. The 42nd Constitutional Amendment in 1976 added a new section to Article on Fundamental Duties. The 42nd Amendment was passed during the period of Emergency (1975-1977). According to this Amendment, the people including those not belonging to armed forces and police were expected to perform certain Fundamental Duties. The 86th Constitutional Amendment in 2002 made it Fundamental Duty of parents of children from 6-14 years of age to provide them education. This Amendment also made the education of the children as Fundamental Right. Following these Amendments, Fundamental Duties are mentioned in Article 51 A, Part IVA of the Constitution mentions certain Fundamental Duties of the people. The Fundamental Duties enshrined in Article-51A have similarity with Article 29(1) of the Universal Declaration of Human Rights which states “everyone has duties to the community in which alone the free and full development of his personality is possible”. After the passage of the 42nd and 86th Constitutional Amendments, there are 11 Fundamental Duties of the citizens of India. These are as follows:

- 1) To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem.
- 2) To cherish and follow the noble ideals which inspired our national struggle for freedom.
- 3) To uphold and protect the sovereignty, unity and integrity of India.
- 4) To defend the country and render national service when called upon to do so.
- 5) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women.
- 6) To value and preserve the rich heritage of our composite culture.
- 7) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.
- 8) To develop the scientific temper, humanism and the spirit of inquiry and reform.
- 9) To safeguard public property and to abjure violence.
- 10) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- 11) Who is a parent or guardian, to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years?

The Fundamental Duties have some salient features as given below:

- a) Fundamental Duties are both civic and moral in nature.
- b) It emphasized on the Indian way of life especially respecting and preserving Indian culture.
- c) This provision is not applicable upon the foreigners, only citizens of India will obey these constitutional duties.

- d) There are clear differences between Fundamental Rights and Fundamental Duties.
- e) It is non-justiciable and non-enforceable.

The 42nd Constitutional Amendment was made in the light of the recommendations of the Swaran Singh Committee Report. The Swaran Singh Committee was set up in 1976 by Indira Gandhi Government. Swaran Singh was the Chairman of the Committee. The Committee had recommended to include a new part in the Constitution of India on the Fundamental Duties of the Indian citizen. Based on the recommendations of the committee government brought some changes to the constitution through 42nd amendment of the constitution and that came into effect on 3 January, 1977. The Swaran Singh Committee suggested eight items to be incorporated in the constitution as duties of the citizen. These are mentioned below:

- i) To respect and abide by the constitution and the laws.
- ii) To uphold the sovereignty of the nation and to function in such a way as to sustain and strengthen its unity and integrity.
- iii) To respect the democratic institutions enshrined in the constitution, and not to do anything which may impair their dignity or authority.
- iv) To defend the country and to render national service including military service when called upon to do so.
- v) To abjure communalism in any form.
- vi) To render assistance and cooperation to the State in the implementation of Directive Principles of State Policy, and to promote the common good of the people so as to sub serve the interests of social and economic justice.
- vii) To abjure violence; to protect and safeguard public property and not to do anything which may cause damage or destruction to such property.
- viii) To pay taxes according to the law.

However, then Congress government led by Prime Minister Indira Gandhi did not accept all suggestions or recommendations made by the Swaran Singh Committee.

Check Your Progress Exercise 1

- Note:** 1) Use the space below for your answers
 2) Check your answers with the model answers given at the end of this unit.

1) Which Constitutional Amendment introduced Fundamental Duties in the Constitution?

.....

.....

.....

.....

.....

- 2) Write a few lines about the Fundamental Duties for protection of environment.

.....

.....

.....

.....

.....

.....

.....

6.3 NON-JUSTIFIABILITY OF THE FUNDAMENTAL DUTIES

The Fundamental Duties are non-enforceable and non-justiciable. There is no provision in the constitution for direct enforcement of these duties. It means that no citizen can be punished by a court for violation of a Fundamental Duty. In this regards, Fundamental Duties are like Directive Principles of State Policy of Part-IV. Fundamental Duties were not placed at the end of Part-III of Indian Constitution which is justiciable but included in Part-IVA that is non-justiciable and non-enforceable. India's case is different from some other examples regarding the enforceability of the Fundamental Duties. These examples included erstwhile USSR, Yugoslavia and Albania. Unlike India, constitutions of these countries made Duties legally enforceable. You have read in the preceding section of this unit that most of Fundamental Duties have been included in Indian Constitution on according to the recommendations of Swaran Singh Committee Report. VKRV Rao (Rao and Singh 1976) criticized the recommendations of Swaran Singh Committee Report on the ground that Fundamental Duties cannot be followed if there is no legal action for their violation. He argued that people lack courage and willingness to obey duties. Therefore, duties can not be properly obeyed if they are not legally binding. Right do not have ethical basis, they can be properly enjoyed with enforceable duties. On the need to obey Fundamental Duties, the Supreme Court of India issued a notice in 1998 to the Government of India enquiring about its plan to teach Fundamental Duties to the citizens of the country. In response to this notice, Government of India established a committee under the chairmanship of Justice J S Verma Committee, known as Verma Committee on *Fundamental Duties of the Citizens* (1999) to examine operational aspects of Fundamental Duties and recommend steps which can teach and educate people about the need to obey Fundamental Duties. The Verma Committee made the following recommendations:

- a) Fundamental Duties will raise standards of the citizen in public life. Therefore, every individual should obey and promote these duties.
- b) Public office holders should avoid selfishness or nepotism. Their foremost priority must be to serve public interests rather than individual interests.
- c) Integrity should be the main principle in the functioning of public office.

- d) Holders of public office must be accountable for their decisions and actions to the public.
- e) They should be as open as possible about all the decisions and actions which were taken by them.
- f) Public officials should maintain honesty while in office.
- g) Leadership is very important in the sense that holders of public office should promote these principles by leadership skill and set an example.

Fundamental Duties can strengthen the foundation of society and nation. But mere legislation is not enough to fulfill them. An effective implementation of the rules is essential for an effective fulfillment of duties. That is possible if favourable attitudes and commitment to obey duties are created among the citizens of India. To increase the awareness among the people of India concerning Fundamental Duties, Verma Committee had identified few existing acts by which a proper implementation of such duties can be accomplished. These are discussed below:

- a) The Representation of People Act, 1951: According to this act, membership of any member of the Indian Parliament or State Legislatures can be rejected if he or she found involved with corrupt activities.
- b) The Unlawful Activities Protection Act, 1967: Sectarian organizations within the national boundaries of the country must be banned in view of making a peaceful and stable society.
- c) The Protection of Civil Rights Act, 1955: Offenders who preach and practice untouchability must be punished in accordance with the act.
- d) The Wildlife Protection Act, 1972: It aims at protecting and preserving rare and the perishing animals, birds and plants. For this reason, this act strongly prohibits the illegal trading of animals.
- e) The Prevention of Insults to National Honour Act, 1971: By this act insults and disrespects of the national anthem, flag, the constitution of the land have been firmly prohibited.
- f) The Forest Conservation Act, 1980: The act strongly prohibits the destruction of natural forest keeping in mind its increasing degradation. It also prohibits the usage of forest for other human activities.

The Supreme Court of India has issued directions to governments to create a conducive environment for effective fulfillment of duties. In this regard, the Supreme Court, directed the Central Government in August 2003 to implement the recommendations of the National Commission to Review the Working of the Constitution (2000) and Verma Committee (1999). Anupama Rao criticized the recommendations of Justice Verma Committee Report in an article published in *Economic and Political Weekly* (2003). She argues that Justice Verma's report puts disproportionate emphasis on duties of citizens in relation to the state and nation. Such emphasis on duties undermines citizens as equals, and duty as a precondition for citizenship.

Check Your Progress Exercise 2

Note: 1) Use the space below for your answers

2) Check your answers with the model answers given at the end of this unit.

1) What is the relationship between Fundamental Rights and Fundamental Duties?

.....

.....

.....

.....

.....

.....

2) What are the main features of Fundamental Duties?

.....

.....

.....

.....

.....

.....

6.4 SIGNIFICANCE OF FUNDAMENTAL DUTIES

Fundamental Duties have ethical, social and economic significance. If a citizen performs his/her duties, he/she has moral claims on his/her rights. Fulfillment of duties can help in sustenance of environment and economic development. This in turn can help in achieving human development of society. The consciousness and realization to fulfill Fundamental duties have increased in India during past some decades. The court and civil society organizations, political parties and governments have also underlined the significance of Fundamentals Duties for overall development of society. As you have read earlier in this unit, the Fundamental Duties were included in the Constitution through 42nd Amendment passed by Indira Gandhi government during Emergency. The Morarji Desai government which was formed by the opponent of Indira Gandhi did not change the provisions about the Fundamental Duties. This indicated the importance given to Fundamental Duties across political parties. Acknowledging the significance of Fundamental Duties Supreme Court said that it was intended to regulate behaviour and to inspire fellow citizens to strive towards excellence. For instance, some vested interests were harming bio-diversity and environment in Mussoorie-Dehradun belt (which was part of UP before formation of Uttarakhand state). They were violating Fundamental Duty to protect the environment and bio-diversity. Regarding this, in *Rural Litigation & Entitlement Kendra vs. State of Uttar Pradesh*, 1988, the Supreme Court banned illegal mining in Mussoorie-

Dehradun belt suggested several regulatory directions for protection of bio-diversity and environment. Thus, the court underlined the significance to protecting the biodiversity and environment a Fundamental Duty and made direction for its protection.

Constitution Review Commission chaired by M.N. Venkatachaliah too recommended some initiatives to be taken by the government for the successful implementation of Fundamental Duties. Some of his recommendations included as follows:

- a) The Union and State governments should sensitize the people and create general awareness about Fundamental Duties amongst the citizens.
- b) Right to freedom of religion and other freedoms must be jealously guarded and rights of minorities and fellow citizens respected.
- c) People should be sensitized about their duty to vote in elections, pay taxes and actively participate in the democratic process of governance.
- d) Recommendations of Justice Verma Committee on operationalisation of Fundamental Duties of Citizens should be implemented at the earliest.
- e) The industrial organizations should provide education to children of their employees.

Check Your Progress Exercise 3

Note: 1) Use the space below for your answers

2) Check your answers with the model answers given at the end of this unit.

1) How are Fundamental Duties linked with ethical values?

.....

.....

.....

.....

.....

.....

.....

6.5 LET US SUM UP

Fundamental Duties lead to national integration, unity and cultural harmony among the members of different castes and creeds within Indian society. Though erstwhile USSR was the first country in the world to adopt Fundamental Duties in its Constitution, now both communist and non-communist countries of the world have provisions for Fundamental Duties. Initially, except for the armed forces and police, Fundamental Duties were not mentioned in the Indian Constitution. They were first included in the constitution only through 42nd Constitutional Amendment Act (1976). These were introduced following the recommendations of the Swaran Singh Committee’s recommendations. Later,

the 86th Constitutional Amendment provided for giving education to children in age group (6-14 years) a Fundamental Duty of parents. There are differences between Fundamental Duties and Fundamental Rights. Fundamental Rights are enforceable and justiciable by the court while Fundamental Duties can not be legally enforced. P V. K. R. V. Rao opined that for effective implementation of the Article-51A, there should provisions for punishing those who violated their Fundamental Duties. Fundamental Duties have greater relevance in the 21st century.

6.6 REFERENCES

Bakshi, P.M. (2012). *The Constitution of India*. New Delhi, India: Universal Law Publishing.

Basu, D.D. (1960). *Introduction to the Constitution of India*. Calcutta, India: S.C. Sarkar & Sons Pvt. Ltd.

Bhagwan, Vishnoo, Vidya Bhushan & Vandana Mohla. (1984). *World Constitutions: A Comparative Study*, (reprint 2014). New Delhi, India: Sterling Publishers Pvt. Ltd.

Chagla, M. C. P.B. Mukharji & Others (1977). *Constitutional Amendments- A Study*. Calcutta, India: Rupak Publishers.

Granville, Austin (1966). *The Indian Constitution: Cornerstone of a Nation*. Bombay, India: Oxford University Press.

Kashyap, C. Subhash (2011). *Our Constitution*, (5thed.). New Delhi, India: National Book Trust.

Pylee, M.V. (2014). *India's Constitution*, (reprint). New Delhi, India: S. Chand & Company Pvt. Ltd.

Rajaram, Kalpana. (2005). *Indian Polity*, (revised). New Delhi, India: Spectrum Books Pvt. Ltd.

Raman, Sunder. (1977). *Fundamental Rights and the 42nd Constitutional Amendment*. Calcutta, India: Minerava Associates Publications Pvt. Ltd.

Rao, Anupama (2003). "Making Good Citizens: Teaching Fundamental Duties in Schools". *Economic and Political Weekly*, July 21, pp. 2470-2743.

Rao, V. K. R. V. & Sardar Swaran Singh. (1976). Fundamental Duties and Directive Principles Under the Proposed Amendments to the Constitution. *India International Centre Quarterly*, 3(4): 266-284.

Websites:

www.advocatekhaj.com/library/judgements/index.php?go=1988/august/59.php, retrieved on November 15, 2018.

6.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) The 42nd Constitutional Amendment in 1976 and 86th Constitutional Amendment in 2002.

- 2) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living beings.

Check Your Progress Exercise 2

- 1) Fundamental Duties and Fundamental Rights are different. Fundamental Duties are not justiciable, while Fundamental Rights are justiciable.
- 2) Main features of Fundamental Duties are:
 - a) Fundamental Duties are both civic and moral in nature.
 - b) This provision is not applicable to the foreigners, only citizens of India will obey these constitutional duties.
 - c) There are clear differences between Fundamental Rights and Fundamental Duties.
 - d) Fundamental Duties are non-justiciable and non-enforceable.

Check Your Progress Exercise 3

- 1) Fundamental duties can not be implemented through legal means only. For them to be successful, the people have to be morally concerned.



ignou
THE PEOPLE'S
UNIVERSITY

SUGGESTED READINGS

Abdulrahim P. Vijapur (ed.) (1998). *Dimensions of Federal Nation Building: Essays in Memory of Rasheeduddin Khan*, New Delhi, India: Centre for Federal Studies and Manak Publication.

Ambedkar, Dr. Babasaheb (1994). *Writings and Speeches*. Vol. 13, Education Department, Government of Maharashtra.

Austine, Granville (2012). *The Indian Constitution: Cornerstone of a Nation*, (17thed.). New Delhi: Oxford University Press.

————— (1966). *The Indian Constitution: Cornerstone of a Nation*. Bombay, India: Oxford University Press.

————— (2002). *Working of a Democratic Constitution: The Experience of India*. New Delhi, India: Oxford University Press.

Bakshi, M. P. (1999). *The Constitution of India* (with selective comments by the author). New Delhi, India: Universal Law Publishing Company.

————— (2003). *The Constitution of India*, New Delhi, India: Universal Law Publishing.

————— (2012). *The Constitution of India*, New Delhi, India: Universal Law Publishing.

Basu, D.D. (2011). *Introduction to the Constitution of India*, (20thed.). Nagpur, India: Lexis Nexis Butterworths, Wardha.

————— (1960). *Introduction to the Constitution of India*. Calcutta, India: S.C. Sarkar & Sons Pvt. Ltd.

————— (1983). *Commentary on the Constitution of India*. New Delhi, India: Prentice Hall.

Bhagwan, Vishnoo, Vidya Bhushan & Vandana Mohla. (1984). *World Constitutions: A Comparative Study*, (reprint 2014). New Delhi, India: Sterling Publishers Pvt. Ltd.

Chakraborty, Amalendu Kishore (2004). *The Quest for Identity: Tribal Solidarity Movements in North-East India, 1947-69*, Kolkata, India: The Asiatic Society.

Chaube, K. S. (1976). *Constituent Assembly of India: The Springboard of Revolution*. New Delhi, India: Manohar Publishers.

————— (1999). *Hill Politics in North-East India*, New Delhi, India: Orient Longmen.

————— (2009). *The Making and Working of Indian Constitution*. New Delhi, India: National Book Trust.

Das, C. B. (1977). *The President of India*. New Delhi, India: RR Printers.

Jennings, Ivor Sir (1969). *Cabinet Government*. Cambridge: Cambridge University Press.

Jha, N. S. and P. C. Mathur (eds.) (1999). *Decentralisation and Local Politics*. New Delhi, India: Sage Publication.

Kashyap, C. Subhash (2011). *Our Constitution*, (5thed.). New Delhi, India: National Book Trust.

————— (1995). *History of the Parliament of India*, Vol. 2, New Delhi, India: Shipra Publications.

————— (1997). *Citizens and the Constitution*, Ministry of Information and Broadcasting, New Delhi.

Khosla, Madhav (2012). *Oxford India Short Introductions: The Indian Constitution*, New Delhi, India: Oxford University Press.

Lieten. G.K. and Ravi Srivastava (1999). *Unequal Partners: Power Relations, Devolution and Development in Uttar Pradesh*. New Delhi, India: Sage Publications. New Delhi. 1999.

Misra, Salil (2001). *A Narrative of Communal Politics: Uttar Pradesh, 1937-39*. New Delhi, India: Sage Publications.

Mukherjee, Hiren (1978). *Portrait of Parliament: Reflections and Recollections*, New Delhi, India: Vikas.

Narang, S. A. (2000). *Indian Government and Politics*. New Delhi, India: Gitanjali.

Patnaik, Raghunath (1996). *Powers of the President and Governors of India*, New Delhi, India: Deep and Deep.

Pinto, Marina (2000). *Metropolitan City Governance in India*. New Delhi, India: Sage Publications

Raman, Sunder. (1977). *Fundamental Rights and the 42nd Constitutional Amendment*. Calcutta, India: Minerava Associates Publications Pvt. Ltd.

Rao, Govinda M. and Nirvikar Singh (2005). *Political Economy of Federalism in India*. New Delhi, India: Oxford University Press.

Sarkar, Sumit (1983), *Modern India 1885-1947*, New Delhi, India: MacMillan.

Shankar, B.L. and Rodrigues Valerian (2011). *The Indian Parliament: A Democracy at Work*. New Delhi, India: Oxford University Press.