

Module-1

Evolution of Indian Constitution

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1.1 Introduction:

Man is basically a social animal. Many of his wants will not be satisfied if he lives in isolation. Hence, living in society or groups is necessary. Man, living in society is quarrelsome by nature i.e., even though he lives in society, he cannot give up his own way of feeling, thinking etc., This always results in conflicts. Hence, to ensure peace and order in the society we require certain rules and regulations. But these rules and regulations did not come into existence by themselves. There must be an agency for making necessary rules and regulations, another for enforcing those rules and regulation and one more organization to punish the offenders. These three agencies together in a form of an organisation is known as **Government**. Such rules and regulations are known as **Laws**.

1.2 Learning Objectives:

This Module deals with

- Evolution of the Indian Constitution.
- Objective Resolution as a Blue Print of Indian Constitution
- Preamble – which is foreword to our Constitution
- Fundamental Rights of the Indian Citizens
- Fundamental duties of Citizens
- Directive Principles of State Policy
- Amendment and Review of constitution
- Constitution Review Commission.

1.3 The Government functions through three of its agencies. They are:

- Legislature : Law-making body
- Executive : Law implementation
- Judiciary: Punishing those, who disobeys them.

Hence “A society, which is territorially organised and which is governed by laws is known as State”

State has four important elements. They are:

Population	}	Physical Element
Territory		
Government	}	Non - Physical Element
Sovereignty		

Population: There can be no state in the world without population. Hence population is a necessary condition for the existence of the state.

Territory: Like population, there can be no state without territory. Small or Large, a state must have some territorial boundaries.

Government: The objective of any state is to establish peace and order in the society. Through government, the state achieves this objective. It is an agency through which the will of the state is expressed and realized. ***It acts as an agent of the state.***

Sovereignty: This means the supreme power of the state to make any laws and to enforce them. This is the unquestionable power of the state. Sovereignty has two aspects:

Internal Sovereignty: It refers to the supreme power of the state to make any laws and to enforce them on the people and association living within the territory.

External Sovereignty: It refers to the freedom of the state from any foreign control. This means the political independence of the state.

If a state has the first three elements mentioned and the internal sovereignty, it cannot be called as the state, because the external sovereignty is very much important.

Example: Before 1947, India was not a state because it lacked external sovereignty.

The objective of the state is to achieve the welfare of the people. Hence, it has to function within certain framework to achieve individual and social welfare. There are

few guidelines which must be followed to accomplish this target. As earlier discussed, Government is an agent of the State. Constitution has been designed to frame those guidelines, within which the government has to function. **Hence, constitution may be defined as the fundamental law of the government.**

1.4 Evolution of Constitution

Before 1947, Britishers were ruling India. All the rules and regulations were being made by them and enforced on us. These Britishers, for their administrative convenience, divided India into three provinces. They were: West Bengal, Madras and Mumbai. With the help of a vast network of officials, 'Secretary for State' looked after the entire country's administration. Under him Governor General, Viceroy, Governors, Lieutenant Governors, Chief Commissioners functioned. This resulted to a 'Bureaucratic Government' - where the lower officer is responsible for the higher official has evolved. This further led to a highly centralized form of government.

But after 'Sepoy Mutiny' in the year 1857 – the decentralization process slowly started. Hence the evolution of decentralization (where the local provinces will be given the right to look after the local affairs) also started. But this was not enough for us. We wanted complete political freedom, a better system of governance and more and more institutions, which represented the will of the people. Added to this, our eminent freedom struggle leaders like Mahatma Gandhi, Jawaharlal Nehru, Surendra Nath Banerji who have studied in England and they were largely impressed by the freedom enjoyed by the British people. They wanted our people to enjoy the same amount of freedom, what British people enjoyed. These eminent leaders have joined the freedom struggle. Hence the demand for freedom or the freedom struggle was slowly picking up its pace.

The British Government, in the year 1927, sent the '*Simon Commission*' to please Indians and suggest reforms to the Indian Government. But the Indians boycotted and opposed to its recommendation. This annoyed the British Government. Lord Birkenhead, the then Secretary of State for India, asked leaders of the freedom struggle to prepare a constitution, which is acceptable to all the parties. An all party meeting (29 parties participated in it) was held under the leadership of **Pandit Motilal Nehru**. This was popularly known as '*Nehru Committee*' met 25 times and prepared an excellent draft of the constitution for India. This report submitted by '*Nehru Committee*' came to be known as "Nehru Report". This report was accepted by all but was rejected by the British Government.

Some of the recommendations were;

1. A federal system, in which powers were divided between the centre and the provinces.
2. A Bi-cameral legislature at the Centre and a Uni-Cameral Legislature at the Provinces level.
3. A list of fundamental rights to be given to the citizens.
4. A supreme court to sort out the disputes between the centre and the provinces.

5. Provinces government to be run by the representatives, who are directly elected by the people.

Though 'Nehru Report' was rejected by the British Government it was accepted by the 'Constituent Assembly' at the later stage. Hence 'Nehru Report' is rightly termed as the **'Blue Print of our Present Constitution'**

When British Government rejected the 'Nehru Report', the situation had moved from bad to worse. British Government sent 'Cripps' to India to find a solution to this problem. But 'Cripps' proposal was also rejected.

After the three round table conferences held in London and due to the increasing demands for the fundamental rights and for a responsible government – the British Government enacted the 'Government of India act 1935', which gave provincial autonomy. This resulted in several provincial governments. These provincial governments use to function with the representatives and the ministers nominated by the British Empire and were responsible for all provincial development.

During this juncture the II World War broke out. The British Government declared India as its supporter and made it a party in the II World War even without consulting the provincial government. The British Government faced severe criticisms and opposition from the local provincial government. As a result, the Prime Minister of Britain, Sir Winston Churchill promised to find a solution to this problem and to transfer the powers completely to Indians after the war, This sought Indian's support and work wholeheartedly for the prosecution of the war.

After the II world war in the year 1945, '**Labour Party**' came to power in UK, under the leadership of Clement Atlee. Now to keep up with their promise, Clement Atlee constituted a three member committee known as '**Cabinet Mission**' in the year 1946. The member of this '**Cabinet Mission**' were:

- ✍ V. Alexander
- ✍ Lord Pethic Lawrence
- ✍ Sir Stafford Cripps

This '**Cabinet Mission**' visited India in the year 1946. After the prolonged discussions with the national leaders 'Cabinet Mission' made two recommendations. They were:

- (a) To constitute an 'Interim Government'
- (b) To form 'Constituent Assembly'

The Cabinet Mission suggested the British Government, that India must be given independence. For this it suggested Indian National Leaders to form an *Interim Government* to look after the administration until the permanent arrangements were made. Accordingly, an *Interim Government was constituted under the leadership of Pandit Jawahar Lal Nehru on 2nd September 1946*. The function of this Interim Government was to manage the administration of the country.

To prepare its own set of rules and regulation, the 'Cabinet Mission' suggested for the establishment of a '*Constituent Assembly*'. Accordingly the '*Constituent Assembly*' was formulated on 8th December 1946. The constituent assembly originally had 389 members,

out of this 292 members were elected from British India provinces and 93 members were nominated by the native states. But after the partition, the representatives of areas that become Pakistan withdrew and hence finally the 'Constituent Assembly' was left with 289 representatives.

The 'Constituent Assembly' met for the 1st time on December 9th 1946 and elected **Dr. Rajendra prasad was the President and T. T. Krishnamachari and H. C. Mukherjee as its vice Presidents.**

The other important members of this constituent assembly were: Nehru, Patel, Acharya Krupalani, Dr. Sarvapalli Radha Krishnan, Maulana Abdul Kalam Azad, Pattabi Sitaramaih, K. M. Munshi, K. T. Sha, Smt. Amrit Kaur, Smt. Vijay Lakshmi Pandit, Sarohini Naidu, Sucheta Krupalani etc.

The first thing that the 'Constituent Assembly' did was to adopt the 'Objectives resolution'. This was about the goals and objectives of India as an independent nation. Pandit Jawahar Lal Nehru presented this 'Objectives resolution' on 18th December 1946. After the discussion it was adopted on 22nd January 1947.

1.5 Objectives Resolution

The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent, Sovereign, Republic and to draw for her future Government a Constitution:

"WHEREIN in 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

"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

"WHEREIN all powers and authority of the sovereign, independent India, its constituent parts and organs of government are derived from the people; and

"WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes; and

"WHEREIN shall be maintained the integrity of the territory of the Republic and its Sovereign rights on land, sea and air and according to justice and the law of civilized nations; and this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of the world peace and the welfare of mankind."

As we can observe from the 'Objectives Resolution' that initially, it had planned for a weak centre and powerful and autonomous provinces, who would also enjoy the

residual powers. But after the partition of India and Pakistan, the situation changed and we were bound to have a powerful centre which enjoys the residuary powers.

The Constituent Assembly after adopting the 'Objectives Resolution' had enormous task of framing the constitution of a newly liberated country. Hence, the Constituent Assembly decided to work through various committees. Some of the Committees, created by the assembly were: • Finance and Staff Committee • Press Gallery Committee • Rules of Procedure committee • Unions Powers committee • Negotiation Committee • Advisory Committee etc.,

The reports of all the other committees were submitted to the 'Drafting Committee'. This committee was formed on 29th August 1947. This Committee was chaired by an outstanding lawyer Dr. B. R. Ambedkar. Other members of the Drafting Committee were: - N. Gopala Swamy Iyengar, Alladi Krishna Swamy, K. M. Munshi, B. L. Mitter, B. N. Rau, S. N. Mukharjee.

With the help of all these eminent personalities the 'Drafting Committee' *submitted the 1st draft of the constitution to the 'Constituent Assembly' on 21st February 1948*. Then this draft was published and was sent to various Judges, Legislatures, Political Scientists for comments and suggestions. After many discussions and amendments, the final form of the constitution was passed and adopted by the assembly on 26th November 1949. However, the constitution was inaugurated only on 26th January 1950, This day was chosen to commemorate the pledge taken by the country twenty years earlier in the name of 'Poorna Swaraj' (Complete independence) at Lahore conference.

With the enforcement of the constitution, India ceased to be a dominion and became a republic. When the constitution was adopted it had 395 articles, 8 schedules and 22 parts. Now there are 12 schedules and till date 94 amendments have taken place.

1.6 THE PREAMBLE

The Constitution of India begins with a Preamble which specified the nature of the Indian State and the objectives it is committed to secure. K. M. Munshi describes the Preamble as the political horoscope of the constitution which lists the basic features of the constitution, its basic philosophy and the nature of the Indian states.

The Preamble of Constitution of India reads as follows:

Preamble of Indian Constitution

"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 & Political

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

Equality: of status & of opportunity and to promote among them all;

Fraternity: assuring the dignity of the individual and the unity and integrity of nation

IN OUR CONSTITUENT ASSEMBLY, this 26th day of November 1949, do HEREBY ADOPT, ENACT and GIVE TO OURSELVES THIS CONSTITUTION.

Preamble is a declaration of objectives and the purposes of a state. It is a sort of preface/foreword to a book. It is only an introduction, not the body of the constitution.

If we read the first and the last parts of the Preamble together, we find that – We, the people of India have adopted, enacted and given to ourselves this constitution. This says that the Constitution was not prepared just by a set of people/group of people. Even though it was prepared by a group of people they represented the will of the entire country. Hence every citizen of the country has indirectly participated in making this constitution. It testifies that the people are the ultimate source of all authority. The government derives its power from the people. After preparing it ourselves, we adopted this out of our own will i.e., no external force was involved in this. This implies that the ultimate sovereignty vests with the people & the constitution is created by the entire nation.

Sovereign: India is a sovereign state both in terms of Internal and External. India is free to take any decisions and to formulate any policy without the interference from any country. Such a proclamation was essential to denote the end of British rule over India and also the dominion status.

Socialistic: India wants to develop a society on the basis of economic justice, where distinction between the rich and the poor would be minimised. It signifies the commitment to socio-economic justice.

Secular: All religions are equal. The state recognizes no official religion.

Democratic: The ultimate sovereignty lies with the people. Where the government will be by, of and for the people. Using 'Voting Power', the people themselves select their representatives. For all its act, government is responsible to the people. People can change Government through elections. People enjoy fundamental rights and freedom which are granted and guaranteed by the constitution. The Supreme Court of India acts as the guardian and protector of both the Constitution of India and as well as fundamental rights mentioned in the constitution.

Republic: We have President as the head of the state and this system doesn't provide

place for the king or the Monarch and the government powers are not hierarchy. It means India has an elected head, who enjoys powers only for a limited period of time.

Justice: Social, Economic & Political

The term justice refers to the co-ordination between general interest and individual interest.

Social Justice: No discrimination of citizens on the grounds of caste, creed, sex, religion, place of birth, colour. It stands for eliminating social exploitation. Abolition of untouchability and privileges for SC & ST are provided to grant special protection to the weaker sections of society for securing their equality with others.

Economic Justice: Equitable distribution of wealth, avoidance of concentration of property, abolition of forced labour and ensuring adequate opportunities to all for earning their livelihood and a welfare state.

Political Justice: It means equal, free and fair opportunities for all the people for participation in the political process. The Constitution of India provides for a liberal democratic political system in which we follow, Universal Adult Franchise, people have the right to elect their representatives and the right to hold government jobs.

Liberty: of thought, expression, belief, faith & Worship.

Constitution aims at the all round development of the individual. Hence for this freedom of thought and expression, belief, faith and worship has been given.

Equality: of status and of opportunity

Equality of Status: abolition of untouchability, removal of Titles, No discrimination based on sex, caste, colour, age etc is permitted.

Equality of Opportunity: non-discrimination in the matters of public appointments. All are equal in the eyes of law.

Fraternity:

In a vast country like India, where people have different faith, customs and traditions and speak different languages the ideal of fraternity is all the more important. The country has suffered a lot in the past as a result of communal clashes. Therefore the feeling of brotherhood should be developed.

No individual should feel that he is in any way inferior to others. All individuals should live with dignity. It is designed to secure dignity of the individual and unity and integrity of the nation. The Universal Declaration of Human Rights declares that "All human beings are born free and equal in dignity and rights".

When all the above said objectives are achieved the integrity of the country will be achieved.

The terms 'Socialist', 'Secular' & 'integrity of the nation' were added to the preamble in the year 1976 through 42nd amendment as per Swaran Singh Committee report.

The objectives outlined in the preamble were first set out by Nehru in the 'Objectives Resolution'.

1.7 FEATURES OF INDIAN CONSTITUTION

Speaking in the Constituent Assembly, Dr. Ambedkar observed: "I feel Indian Constitution is workable, it is flexible and it is strong to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the constitution, the reason will not be that we had a bad constitution, what we will have to say is that man was vile". The Constitution of India is a unique combination of both flexibility and rigidity. It advocates a mixture of both federalism-unitarianism. It is known as Quasi-federal. Let us try to understand, some of the salient features of the Indian Constitution.

1.7.a. LENGTHY AND A DETAILED DOCUMENT:

The constitution of India is the lengthiest and the most detailed constitution in the world. It was drafted, debated and enacted by the Constituent Assembly of India. It took 2 years 11 months and 18 days for the constituent assembly to write and enact the constitution. It comprises of 395 articles, 12 schedules and 22 parts and till date 94 amendments have taken place.

The constitution of United State of American has 7 articles. Australia has only 106 articles in its constitution and Japanese Constitution has only 103 articles.

The conditions that prevailed at the time of partition have compelled the authors of the constitution to be cautious about the future. They wanted to avoid any conflicts in the future between union, state government. Therefore every minute detail has been clearly explained.

The Indian constitution deals not only with the structure and the functions of the union and the state governments but also with the citizenship, fundamental rights, fundamental duties, directive principles, President, Emergency provisions, Language provisions, Provisions regarding protection of interest of Scheduled castes and tribes and other backward classes, provisions regarding special constitutional bodies like the Election Commission, UPSC, State Public Service Commission, etc.

Even the drafting committee chairman Dr. B. R. Ambedkar has justified the detailed constitution on a ground that democracy was a new experiment for India and it was necessary to spell out details in clear language.

1.7.b. A WRITTEN DOCUMENT:

The constitutions of the world is usually divided into two parts. Namely: -

- (A) **Written constitution:** It is always enacted, framed, adopted by a definite constituent assembly or convention at a particular time. It is available in the form of a written document. Eg. USA constitution, which is written, enacted and adopted by a convention held at Philadelphia in 1787. India's constitution was enacted and adopted by the Constituent Assembly 26th November 1949.
- (B) **Unwritten constitution:** It is a result of evolution. The customs and traditions that were followed from centuries have been converted into rules and regulation and British constitution is an example for unwritten constitution.

1.7.c. COMBINATION OF FLEXIBILITY AND RIGIDITY:

On the basis of the **procedure of amendment** – constitutions are divided as rigid and flexible. If amendment procedure is simple and through an ordinary law if changes could be made, it is flexible. On the other hand if it requires a special procedure for amendment – it is termed as rigid. Indian Constitution is a unique combination of both rigidity and flexibility.

Some changes like changing the name of the state, creation or abolition of legislative council of a state, rules regarding citizenship, could be done by the parliament by simple majority. However, under article 368 of the Indian constitution mentions about two types of amendments. (a) Most of the provisions of the constitution can be amended by the Union Parliament by passing the Amendment bill by a majority of total membership and the 2/3rd majority of members present and voting in each of its two houses. (b) The Union parliament passes the amendment bill by a majority of total membership and 2/3rd majority of members present and voting in each house individually. Then this bill will be sent to state legislatures. If it is approved by half of the states, then the amendment will be accepted. The provisions covered under this method includes election of President, Executive powers of the Union and states, Union Judiciary, distribution of legislative powers etc.,

1.7.d. INDIAN CONSTITUTION HAS A DETAILED PREAMBLE:

Indian constitution is one among those constitutions in the world, which has detailed preamble. The aims, objectives of the state have been clearly expressed through preamble. It is like an introduction/preface to the book. It explains the objective behind drafting the constitution.

To this preamble 3 terms, namely, socialist, secular and integrity of nation were added through 42nd amendment in 1976. The nature of Indian state and the objectives of commitment to secure the unity and integrity of the nation, is clearly stated in the Preamble in a nutshell. Now Preamble is considered as a part of the Constitution.

1.7.e. INDIAN CONSTITUTION DECLARES INDIA AS SOVEREIGN, DEMOCRATIC, REPUBLIC COUNTRY:

From the date we have adopted the constitution - India ceases to be dominion of British Empire. We enjoy complete sovereignty both internal and external. We are not ruled by anybody's guidelines. We are free to declare war against any country and also we may enter into peace agreement with any country. India as a country, now may enter into foreign trade with any country.

Democracy is a form of government for the people, by the people and of the people. In which people will be given an opportunity to elect their representatives. The power of the government rests in the sovereignty of the people. People enjoy equal political rights. Elections are held at regular intervals of time or when it is considered to be essential. Elections will be free, fair and impartial and are based on the principles

of universal adult franchise, secret ballot, single member constituencies and simple majority vote victory system. These elections are held under the supervision of election commission of India. People change government through elections.

India is a republic country in which we do not have single person as the head of the state and moreover administration powers will not be transferred on the basis of hereditary. President of India is the sovereign head of the state who is indirectly elected by the people for a fixed term of five years.

1.7.f. INDIAN CONSTITUTION DECLARES INDIA AS A SECULAR STATE:

The term 'Secular' was included in the preamble through 42nd Amendment. India is a secular state, which means all religion will be treated alike and no discrimination will be made between people on the basis of religion. People are free to have faith in any religion and the state will not force the people to follow any particular religion. The state will not interfere with the religious freedom of the citizens. It prohibits levying taxes for religious purposes. Equal respect for all religions is the guiding principle of secularism.

1.7.g. UNIVERSAL ADULT FRANCHISE:

According to this any person (both male and female) who has attained 18 years or more than that will be given an opportunity to take part in the political affairs of the state like voting, contesting in the elections, obtaining a government job etc. They may select their representatives by casting their votes in the elections.

But this voting power will not be given to mentally retarded, criminals, insolvents, foreigners, militarily abandoned.

1.7.h. SINGLE CITIZENSHIP:

Indian constitution makes provision for single citizenship that is irrespective of place of residence he or she will be considered as a citizen of India. We do not separate citizenship on the basis of state. Hence a citizen of India can secure job anywhere in the country and he may contest in elections to Lok Sabha from any constituency of the state. Moreover single citizenship refers to "One man, one vote". It represents the integration of the Indian states with the rest of India.

1.7.i. INDIAN CONSTITUTION HAS BORROWED SEVERAL CONCEPTS FROM SEVERAL SOURCES:

Indian Constitution is considered as a Bag of borrowings because we have borrowed several concepts from different countries constitution: For example: -

- ✎ Parliamentary system and Bi-cameral system of legislature from England
- ✎ The concept of Directive Principles from Irish constitution
- ✎ Fundamental Rights from USA
- ✎ Socialistic concept from USSR.

Apart from this, the values and ideals of the national movement influenced us to adopt secularism.

1.7.j. INDIAN CONSTITUTION HAS A SPECIAL PROVISION CALLED DIRECTIVE PRINCIPLES:

This feature has been borrowed from Irish constitution. Directive Principles are the instruments of instructions given by the constitution to all future governments of Central and State. It is a guide to the future policies of the state. Part IV of the Indian Constitution deals with Directive Principles of the State Policy. In order to check the possibility of dictatorship, the constitution has laid down certain guidelines, which are needed to be followed by all future government. These are the national objectives which every government is supposed to secure.

1.7.k. FUNDAMENTAL RIGHTS:

Indian constitution gives certain privileges, opportunities to all the people in the form of fundamental rights. These fundamental rights are the pillars of the Indian Constitution. Part III of the constitution deals with this. These rights will be conferred on to the people without any discrimination. At present 6 fundamental rights are given:

- i) Right to equality (article 14 -18)
- ii) Right to freedom (article 19 - 22)
- iii) Right against exploitation (article 23 & 24)
- iv) Right to freedom of religion (article 25-28)
- v) Cultural and educational rights (article 29 & 30)
- vi) Constitutional remedies (article 32)

Initially there were seven fundamental rights. The 7th fundamental right was right to Property (article 31) but this fundamental right was deleted from the list through 44th amendment. They are justifiable in nature i.e. if any fundamental rights is hampered, justice could be sought from the court of law. In order to protect them "writ" power has been developed. There are five writ powers.

- i) Habeas corpus
- ii) Mandamus
- iii) Prohibition
- iv) Certiorari
- v) Quo warranto

If the legislature makes any law against fundamental rights, then the judiciary will declare them "ultra vires". This ultimate power of the Judiciary is called as Judicial Review. These concepts are explained in detail in the later chapter.

1.7.l. INDIAN CONSTITUTION INCLUDES DETAILED LIST OF FUNDAMENTAL DUTIES:

Duties are the obligations that have to be performed by every citizen of the

country. There are 11 non-justifiable fundamental duties. They are: -

It shall be the duty of every citizen of India:

- 1) To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- 2) To cherish and to 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 environments including forests, lakes, river and wildlife and to have compassions for living creatures.
- 8) To develop the Scientific Temper, Humanism and the spirit of enquiry 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 endeavor and achievement; and
- 11) The Who is a parent or guardian to provide opportunities for education to his child or as the case may be between the age of six to fourteen years. This was included as per the 86th Amendment 2002.

1.7.m. PARLIAMENTARY FORM OF GOVERNMENT:

This form of government borrowed from British pattern of parliamentary government. President is the constitutional head of the state with nominal powers and union council of ministers headed by Prime Minister constitutes the real executive. In this form of government there will be close co-ordination between the legislature, executive and judiciary of a country. The cabinet ministers who are entrusted with the responsibility of making rules and regulations are even responsible for implementing them. Whatever rules they make should be within the frame work of our constitution. Judiciary has a special power called JUDICIAL REVIEW.

1.7.n. INDIAN CONSTITUTION HAS MADE A PROVISION FOR AN INDEPENDENT JUDICIARY:

In order to make justice impartial the Indian constitution has clearly explained the selection and the appointment of judges of various courts. President will appoint the Chief Justice of India and Cabinet ministers will not play any role. The salaries of judges will be paid out of consolidated fund of India. Under any kind of circumstances, the salary cannot be reduced.

1.7.6. INDIAN CONSTITUTION ESTABLISHES A FEDERAL FORM OF GOVERNMENT:

In this form of government the administrative powers of state will be divided between the central and state government. Accordingly in India we have 3 lists of power which divides the administration between the center and the state government.

UNION LIST- It consists of 97 items on which the parliament has exclusive power to legislate. which includes: Defence, Armed forces, Arms and ammunition, Atomic energy, Foreign affairs, War and peace, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, Audit of Government accounts, constitution and organisation of the Supreme Court, High Courts and union public service commission, income tax, custom duties and export duties, excise duties

STATE LIST- It consists of 66 items and individual states have exclusive authority to legislate on items included in this list. Some of the items are Public order, police, administration of justice, prisons, local government, public health and sanitation, agriculture, animal husbandry, water supplies and irrigation, land rights, forests, fisheries, money lending, state public services and state Public Service Commission, land revenue, taxes on agricultural income, taxes on lands on buildings, estate duty, taxes on electricity, taxes on vehicles, taxes on luxuries.

CONCURRENT LIST - Concurrent list consists of 47 items. Both Union and State Government may make laws of these items. Uniformity is desirable but not essential on items in this list. Some of items are Marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labour welfare, electricity, newspapers, books and printing press, stamp duties.

These are some of the important features of Indian Constitution.

1.8. Fundamental Rights

Fundamental Rights have been included in the IIIrd part of our constitution. They are known as Fundamental because, they are guaranteed by the constitution. For the development of individual personalities, we require certain privileges & opportunities. Fundamental rights ensure effective enjoyment of those privileges and Judiciary is the guardian of these fundamental rights.

There are six fundamental rights given to the citizen of India. They are:

1. Right to equality.
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion

5. Cultural and Educational rights
6. Right to constitutional remedies.

Earlier there were seven fundamental rights. The 7th fundamental right was “Right to Property”. But through the 44th amendment adopted in 1978, the Right to Property was deleted from Fundamental rights category.

A brief summary of fundamental rights is as follows:

1.8.1. Right to Equality:

Article 14 – 18 of the constitution deals with the Right to Equality. It includes Five rights:

Equality before the Law (Article 14): This implies that laws are to be applied without any discrimination. “Equality before the law” means “All will be treated alike, No special privileges will be given to anybody – equal protection & equal punishment for equal crime, will be given to one and all without any discrimination”.

Exception: *Equality before law doesnot mean absolute equality or equality among the unequals. It means equality among the people similarly situated. It doesnot prohibit the classification of persons into different groups. It also admits the right of the state to establish special courts for trying cases involving specific offences by certain persons.*

Prohibition of Discrimination (Article 15): No individual will be discriminated on grounds of religion, sex, caste, colour, race, place of birth etc. with regard to access to shops, restaurants, place of public entertainment or in the use of wells tanks, roads etc.

Exception: *The state can make special provisions for women and children and for the advancement of socially and educationally backward classes or for SC's and ST's. This implies protective discrimination in respect of weaker sections of the society.*

Equality of Opportunity (Article 16): Merits and qualifications will be considered as parameters in giving government jobs and no discrimination will be made. Article 16 clearly states that no citizen shall on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of any employment or office under the state.

Exception: *The state can make provision for reservation of appointments or posts in favour of any backward class of citizens. The state can also fix residential qualification as an essential condition for a public employment.*

Abolition of untouchability (Article 17): According to this, the practice of untouchability in any form or shape is prohibited.

Abolition of Titles (Article 18): Except military or academic titles, no citizen will be given any title by the state. Titles such as Rai Bahadur, Rai Saheb, Khan Bahadur, Sir (Knighthood) create artificial distinction. Hence titles are not allowed. But inspite of this President can award national honours like: Bharata

Ratna, Pama Bhushan, Padma Shri... etc. for their immense contribution. This article does not prevent the grant of military decorations such as Param vir chakra, Ashok Chakra, Vishista Seva Medal etc.,

1.8.2. Right to Freedom: Articles 19 – 22 of the constitution deals with the right to freedom.

Article 19 is the 'Key Article' because it guarantees certain freedom to the citizens. Originally there were seven freedoms given to the citizens. But now it has been reduced to Six. They are: • Freedom of speech and expression • Freedom to assemble peacefully without arms • Freedom to form associations and unions • Freedom to move freely throughout India • Freedom to settle and reside in any part of India • Freedom to practice any profession, occupation or business which are legal. Earlier Freedom to acquire, hold and dispose property was given, but in 1978 with the 44th amendment it has been taken back.

Article 20 grants protection against arbitrary arrest. It also further says no person can be arrested and punished for the same offence more than once. No person accused of any offence can be forced to be a witness against himself. It also prohibits against forcible securing of statements or confessions from an accused.

Article 21 deals with the right to Life and Liberty of citizens and as well as non-citizens. In the year 2002 article 21 A was added to the constitution through 86th Amendment. This article provides Free and Compulsory education to all children of the age of 6 to 14 years.

Article 22 says that no person could be arbitrarily arrested and detained. This article says that a person who is arrested and detained should be informed of the ground of his arrest and shall have the right to consult and be defended by a legal practitioner of his choice. The person who is detained must be presented before the court within 24 hours of his arrest.

1.8.3. Right against Exploitation: Article 23 and 24 of the constitution deals with the Right against Exploitation.

Article 23 prohibits all kind of bondage labour and all forms of forced labour (Work without Payment). In other words this article makes selling and buying of men and women and exploitation of people by forcing them to work as bonded labourers or work without remuneration, an offence. For this purpose in 1956, SITA (Suppression of Immoral Traffic in Women and Girls Act) was introduced.

Article 24 prohibits the employment of children below the age of 14 years. No child labour.

1.8.4. Right to Freedom of Religion: Article 25 to 28 of the Indian Constitution deals with the freedom of religion.

Article 25 states freedom of conscience and free profession, practice and

propagation of religion. Forcible conversions stands prohibited in India. There is no state religion in India. All religions are equal. People enjoy religious freedom and they can adopt any religion.

Article 26 permits the establishment and maintenance of institutions for religious and charitable purposes. Own and acquire movable and immovable property and manage its own affairs in matters of religion.

Article 27 states no person shall be compelled to pay any taxes for the promotion of any religion.

Articles 28 of the Indian Constitution strive towards fulfilling the declared objective of Secularism in India. It says that no religious instruction can be provided in any educational institution, which is wholly maintained by the state fund. No person attending any educational institution can be forced to participate in a religious worship that may be conducted in the institution.

1.8.5. Cultural and Educational Rights:

Article 29 & 30 of the Indian Constitution deal with this. India is a country of different languages and cultures. So the minorities are assured of the protection of their culture, language and script. Article 30 states that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. They have the right to admit students to their institution, have their own governing bodies and adopt their respective system of instructions. Further, the state while providing grant-in-aid to educational institutions cannot discriminate against such minority institutions. Minority institutions enjoy autonomy of operations.

1.8.6. Right to Constitutional Remedies: Article 32 of the Indian Constitution deal with this.

For the effective implementation of fundamental rights – there should be a mechanism, which protects these Fundamental Rights. Hence the constitution has guaranteed in Article 32, the right to the people to appeal to the High court or to the Supreme Court for the enforcement of the Fundamental Rights.

The Fundamental Rights will become meaningless, if there is no effective mechanism to check the enforcement of the rights.

Hence for the effective enforcement of Fundamental Rights, the Supreme and the High courts are allowed to issue 'Writs'. Basically 'Writ' is a legal instrument, designed to protect the fundamental rights. There are 5 types of Writs. They are:

1.8.6.a. Habeas Corpus: It is a Latin term, which means 'You may have the body'. It is a direction of the court to person who has been detaining another person. It directs the detaining person to bring the detained person in the court for explaining the grounds of

his detention. It means that the detained person should be produced before the court, so that the court may examine whether the detention is lawful or unlawful. In case, if the detention is proved unlawful, the court may set him free. However it is not admissible in cases of persons who stand detained under any preventive detention law like MISA, TADA, POTAetc.,

1.8.6.b. Mandamus: It is a Latin term, which means 'We Order'. It is an order issued by the court, to a person or to a body to do that, which is his duty to do. If an official or a person fails to perform his allotted duty, then the court will command him to perform a duty. This writ is issued mostly when some public servant has failed to perform his duty.

1.8.6.c. Prohibition: The Writ of Prohibition is issued, to stop an inferior court to function beyond its jurisdiction. The Superior court issues Prohibition to stop the lower court to Proceed with the case. Example: Prohibiting a Judge from hearing a case in which he is personally interested.

1.8.6.d. Quo Warranto: If a person is performing a function, which he is not lawfully entitled to, then the court may stop that person through the writ of 'Quo Warranto' from exercising that function. For example: a Police Sub Inspector solving a case himself and judging the situation.

1.8.6.e. Certiorari: This writ is issued by the Upper Court, if it wants some additional information or records from a Lower Court. It may be issued asking the lower court to send to the higher court the records and the proceedings in some case, so that the superior court may be able to deal with the case more effectively.

The difference between Prohibition and Certiorari is that – under Prohibition, the lower court is asked to stop dealing with a case, where as under Certiorari the superior court asks the lower court to supply it with some information, records and proceedings about a particular trail.

1.9. Fundamental Duties

Rights without duties are meaningless. If a person doesnot perform his duties, others cannot enjoy their rights. If a person has no awareness of his duties then he is also not entitled to enjoy his rights. It is as simple as saying, if we donot pay our taxes promptly, we do not have any moral rights of expecting state to discharge its duties. Hence duties and rights are the two faces of the same coin.

The 'Swaran Singh Committee', which was appointed in the year 1976, suggested several changes to the constitution. As per the suggestions made by the committee 42nd Amendment was made to the constitution in the year 1976 and three terms: 'Socialist',

'Secular' and 'Integrity of Nation' were added to the Preamble.

Out of the suggestions the significant one was to include 'Fundamental Duties' into our constitution. Accordingly part IV A was added to our constitution, which deals with the fundamental duties. Duties are nothing but the obligations that each individual has to perform. Again this is non-justiciable in nature as it is not backed up by the Judiciary. Article 51 A of the constitution deals with the Fundamental Duties. At present, there are 11 non-justiciable fundamental duties. They are:

A brief description of these fundamental duties are as follows:

- i) To abide by the constitution and respect its ideals and institutions, the National Flag and National Anthem. It is the duty of the citizen to obey the supreme law of the land as enshrined in the constitution, to respect the national ideals and institutions and the symbols of national sovereignty and unity – The National flag and National Anthem.
- ii) To cherish and follow the noble ideals which inspired our national struggle for freedom. In our struggle for attaining freedom from the clutches of British imperialism, we were guided by a lot of ideals of liberty, equality, unity, justice, fraternity, brotherhood, peace and non-violence. It is the constitutional duty of all citizens to respect and follow these and other such values of our freedom struggle.
- iii) To uphold and protect the sovereignty, Unity and Integrity of India. State protects and enforces the rights and freedom of the people. Consequently, it becomes the supreme duty of the people to preserve, protect and defend the sovereignty, unity and integrity of the people.
- iv) To defend the country and render national service when called upon to do so. Defending the motherland and rendering national service is a sacred thing and duty of every citizen of India.
- v) 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. Indian society is a society characterized by religious, cultural, linguistic and regional diversities, with of course, an inner emotional and psychological unity. The greatest need of the society is to preserve and strengthen the unity in diversity. The constitution lays down that, it is the fundamental duty of all the people to preserve and strengthen the unity and integrity of the nation. To give a due and just place to the Indian women, who in the past have suffered because of several unhealthy and evil social practices.
- vi) To value and preserve the rich heritage of our composite culture. India has a very rich cultural heritage. However, in the era of European imperialism, the people got drawn towards the materialistic glamour of the Western Culture. In order to make the new generation of Indians conscious of India's past glory and

- rich heritage the constitution lays down the fundamental duty of all citizens to value, preserve and protect our composite culture.
- vii) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Realising fully the need for protect our natural environment from pollution and undesirable exploitation, the constitution makes it a fundamental duty of the citizens to protect and improve the natural environment. The interdependence of the natural environment and the social environment is an eternal truth. The preservation of a healthy and progressive social environment makes it essential for us to realize the importance of natural environment.
 - viii) To develop scientific temper, humanism and the spirit of inquiry and reform. For eradicating the prevailing evil practices, customs and traditions it is essential that people should develop a scientific temper. They must develop a rational attitude, a love for learning, and use their talents and resources for reforming and developing the society. To realize, respect and follow human values is the supreme human duty.
 - ix) To safeguard public property and to abjure violence. The increasing recourse to violent means, involving the destruction of public property in the post independence era, has made it essential for us to realize the utility of it and to safeguard it.
 - x) To strive towards excellence in all spheres of individual and collective activity so that the national constantly rises to higher level of endeavor and achievement. No society, no country and no state can progress without the willing, dedicated and devoted efforts of the people. The people must be motivated to develop their faculties and achieve excellence in all spheres of human activity.
 - xi) Duty of the parents to provide education to their children. Article 51A was amended by 86th constitutional amendment act 2002, which incorporated right to education as fundamental right. By this amendment it was made a fundamental duties of parents to send their children to schools.

1.10. The Directive Principles of State Policy

Part IV of the Indian Constitution deals with the Directive Principles. The idea of including Directive Principles into the constitution has been borrowed from Irish Constitution.

The Directive Principles are the '**Instruments of Instructions**' to both central and state governments.

Man, living in society is quarrelsome by nature i.e., eventhough he lives in society, he can't giveup his own way of feeling, thinking etc., This always results in conflicts. Hence to ensure peace and order in the society we require certain rules and regulations. But these rules and regulations don't come by themselves. There must be an agency for making necessary rules and regulations, another for enforcing those rules and regulation and one more organization to punish the offenders. These three agencies together in a

form of an organisation will be known as Government. This Government functions as an '*Agent of the State*'. **So Directive principles are an instruction to the Government to follow certain principles while framing and implementing policies and laws.**

Whenever some Government comes into power – they will not be free to do whatever they like. They have to follow certain instructions. Those instructions are known as 'Directive Principles'. Hence Directive Principles are the set of instructions to all the future Government and the Government agencies to follow certain principles, while ruling and while making law. This is only a 'Code of Conduct' and place an 'ideal' before the Government. They are not enforceable by Courts. People cannot move to court to get these enforced. Part IV of the Constitution manifests the aims and objectives of the constitution. It details the objectives contained in the Preamble of the Constitution. These are the national objectives which every government is supposed to secure and functions as a leading light and gives proper direction to the task of the government. There are 16 articles (From Articles 36 to Article 51) in the Indian Constitution, which deals with the Directive Principles.

For the convenience of the study, the Directive Principles are divided into 3 categories. They are:

- ✎ The Gandhian Principles
- ✎ The Socialist Principles
- ✎ The Liberal or General Principles

1.10.a. The Gandhian Principles: The Gandhian Principles include the following.

The State should take steps to:

- To organise Village Panchayat as Units of Self-government
- To promote Cottage Industries on an individual and co-operative basis in rural areas.
- To promote educational and economic interests of the weaker sections of the people especially SC & STs and protect them from social injustice and all forms of exploitation.
- Prohibition of intoxication drinks and of drugs that are injurious to health.
- To organize agriculture and animal husbandry on scientific basis and prohibiting the cow slaughter.

These principles aim at achievement of a welfare society on the lines suggested by Mahatma Gandhi.

1.10.b. The Socialist Principles: Article 38, 39, 41, 42 and 43 deals with this. These Socialist Principles aim at Economic Justice. Some of the Principles are:

State shall try to provide:

- ❖ The state policy should aim at providing adequate means of livelihood to all citizens.
- ❖ To secure the welfare of the people by securing a social order characterized by socio,

economic and political justice.

- ❖ To secure equitable distribution of material resources to the community with a view to ensure common good.
- ❖ The Economic system should avoid concentration of wealth by few people.
- ❖ The Natural resources should be utilised to serve the common goal.
- ❖ There shall be equal pay for equal work for both men and women.
- ❖ The protection of the strength and health of workers and avoiding circumstances which forces the citizens to take up occupations unsuitable to their age and strength.
- ❖ To protect children and youth from exploitation and moral and material abandonment
- ❖ To secure participation of workers in the management of industries.

1.10.c. The Liberal or the General Principles: The Directive principles mentioned in this category are:

- To protect all monuments of historic interest and national importance.
- To provide, within 10 years from the commencement of the constitution, a free and compulsory education to all children upto the age of 14.
- To have a uniform civil code, which is applicable to the entire country.
- To raise the standard of nutrition and also the health.
- Strive to promote international peace and security.
- To separate Judiciary from the clutches of executive.
- To provide free legal aid to the poor, so that justice is not denied to any citizen because of poverty.
- To protect and improve the environment and to safeguard the forests and wild life of the country.
- To maintain just and honourable relations between nations.

These are the principles laid down by the constitution to every form of the future government.

Through 42nd and 44th amendments five more directive principles are added in part IV.

Through 42nd amendment 4 directive principles were added. Namely:

- (a) The state shall direct its policy towards securing for the children opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and for protecting children and youth from exploitation and against material abandonment.
- (b) The state shall secure that the operation of the legal system promotes justice and provide free legal aid to poor and other disabled citizens.
- (c) The state shall secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.
- (d) The state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Through 44th amendment one more directive principle was added. It reads “the state shall strive to minimize the inequalities in income and try to eliminate inequalities in status, facilities and opportunities , not only amongst individuals but also amongst groups of people, residing in different areas or engaged in different vocations”.

Implementation of Directive Principles:

Even though directive principles are non-justifiable in nature and no person could approach the court for implementing these directive principles, the government has not neglected them. Instead, several initiatives are taken by the government to implement and incorporate them in its day to day working. Some of them are:

- To prevent the concentration of land holdings in the hands of few, Zamindari system was abolished.
- A three tier local self government system namely Zilla Panchayat, Taluk Panchayat and Village Panchayats have been organized and given adequate powers and authority.
- Special legislations are passed to protect the life and opportunities of women and children.
- Various reservation schemes are introduced to protect the interests of SC's and ST's and other economically backward classes.
- Various labour welfare legislation schemes are introduced to protect the life, job opportunities of the workers and ensuring them a better social security measures and working conditions.
- To develop small scale industries, cottage industries and promotion of agriculture and animal husbandry, various schemes are introduced.
- Several steps have been initiated to achieve free and compulsory education to all children between 6 to 14.
- Various rural development schemes and self –employment schemes aim at promoting the quality of life of the people.
- For keeping control over industries and making them service oriented, state has nationalized several banks, life insurance and major industries.

1.11. THE NEED TO BALANCE BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The fundamental rights and the Directive Principles, together, form the core of the constitution. Both aims at the 'Welfare State'.

But two major differences between Fundamental Rights and the Directive Principles are:

1. Fundamental Rights are Justiciable – In any case Fundamental Rights are violated, we can move the courts of law for the restoration of the rights but Directive Principles are non-justiciable – If the states takes no steps to implement Directive Principles, no individual can force the state to implement the Directive Principles.

2. Fundamental Rights are the guarantees to the individuals. It prohibits the state from interfering in the opportunities given to the individuals from the constitution itself. But Directive Principles are the positive instructions to the government to promote certain social and economic objectives. These objectives includes – providing better standard of living, education, equal pay for equal work, equitable distribution of wealth, etc..

In spite of the above said differences both constitute the ‘true conscience’ of the constitution. There is some close co-ordination between two in achieving the common goal. As quoted by the Justices Hegde and Mukherjee: “The Fundamental Rights and the Directive principles constitute the ‘Conscience’ of our constitution. The purpose of the fundamental rights is to create an egalitarian society, to free all citizens from coercion or restrictions by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution the constitution seeks to fulfill the basic needs of the common man and to change the structure of our society. It aims at making the Indian masses free in the positive sense. Without faithfully implementing the Directive Principles, it is not possible to achieve the ‘Welfare State’ contemplated by the Constitution”

Hence to conclude- Directive Principles cannot be ignored on non-justiciable basis saying it is only a ‘Pious Wishes’. While making an evaluation of the implementation of Directive Principles, we should remember that our governments have to function under several limitations. They have to function under a circumstance which makes it difficult, to implement all the Directive Principles. Some of such limitations are: Scarcity of funds is a major hindrance. A vast majority of our people are illiterate. While cottage industries have to be encouraged, we cannot ignore the large scale and heavy industries. We definitely need them to find employment for the every growing population and for the rapid economic development of the country. To have a ‘Uniform civil Code’ for the whole country is impossible because it is very difficult to carry different communities and different sections of the people with the uniform law. With this the religious and the communal sentiments will be hurt and finally the ‘corruption’ at various levels also becomes a major obstacle.

Hence, the constitution aims at socio-economic democracy, through Directive Principles. ‘Goals’ have been set. It now depends on the government as to how far it will be successful in achieving these goals.

1.12. Amendment and Review of the Constitution

Amendment of the Constitution of India is the process of making changes to the Indian constitution. Such changes are made by the Parliament of India. They must be approved by a super-majority in each house of Parliament, and certain amendments must also be ratified by the states. The procedure of amendment is laid out in Part XX, Article 368 of the constitution. Till date 94 amendments have taken place.

Modes of Amending Constitution

For the purpose of amendment, the various Articles of the Constitution are divided into three categories. The first category is out of the purview of Article 368 whereas the other two are a part and parcel of the said Article. The various categories of amendment to the Constitution can be summarized as follows:

1.12.a. Amendment by Simple Majority

As the name suggests, an article can be amended in the same way by the Parliament as an ordinary law is passed which requires simple majority. The amendment contemplated under Articles 5-11 (Citizenship), 169 (Abolition or creation of Legislative Councils in States) and 239-A (Creation of local Legislatures or Council of Ministers or both from certain Union Territories) of the Indian Constitution can be made by simple majority. For amending these, a bill can be introduced in either house of parliament, which becomes a law when passed by both houses individually by simple majorities of their members present and voting and signed by the President of India. These Articles are specifically excluded from the purview of the procedure prescribed under Article 368.

1.12.b. Amendment by Special Majority

Articles which can be amended by special majority are laid down in Article 368. This article states that “an amendment of the Constitution may be initiated only by the introduction of a bill for the purpose of either House of Parliament and when the bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with terms of Bill”. All amendments, except those referred to above come within this category and must be affected by a majority of total membership of each House of Parliament as well as 2/3rd of the members present and voting.

1.12.c. Amendment by Special Majority and Ratification by States

Amendment to certain Articles requires special majority as well as ratification by states. Provision to Article 368 lays down the said rule. Ratification by states means that there has to be a resolution to that effect by one-half of the state legislatures. These articles include Article 54 (Election of President), 55 (Manner of election of President), 73 (Extent of executive power of the Union), 162 (Extent of executive power of State), 124-147 (The Union Judiciary), 214-231 (The High Courts in the States), 241 (High Courts for Union Territories), 245-255 (Distribution of Legislative powers) and Article 368 (power of the Parliament to amend the Constitution and procedure) itself.

1.13. Constitution Review Commission

In February 2000, the Government of India set up the National Commission to Review

the working of the constitution (NCRWC) of India. It was headed by the former Chief Justice of India, Justice Venkatachaliah. It had 11 members, which includes prominent judges, legal experts, constitutional and parliamentary experts, politicians, diplomats and media representatives and one bureaucrat-turned politician. This commission is also popularly known as Constitution Review Commission.

This commission reviews, analyze and suggest amendments in the Constitution of India in the light of the past experience with the working of its provisions. Its objective was to ensure that the principles of democracy is truly practiced and also to suggest the ways and means for improving the quality of our institutions and for eliminating certain features of the constitution.

This Commission submitted a detailed report of 31st March 2002. Some of the important recommendations are as follows:

- To include the freedom of press, right to information, right to elementary education, the right to privacy and the right against torture, in the list of Fundamental rights.
- Preventive detention of any person should not be more than 6 months under any circumstances.
- Greater decentralization in centre-state relations.
- Creation of National Judicial Commission for overseeing the conduct of the Judges of the Supreme Court and High Courts.
- Prime Minister should be elected by the Lok Sabha, and the Chief Minister of a State by the concerned State Vidhana Sabha.
- A person with criminal charges framed against him by a court should be disqualified from contesting an election.
- Setting up of autonomous personnel boards for assisting the high level political authorities in making key decisions.
- Not to allow a candidate from contesting elections from more than one constituency.

These are some of the recommendations of the Constitution Review Commission.

1.14. Summary:

Nehru report is regarded as the Blue Print of Indian Constitution. The Constituent Assembly, formulated on 8th December 1946, was headed by Dr. Rajendra Prasad. Pandit Jawahar Lal Nehru presented the 'Objective Resolution' on 18th December 1946 in this Constituent Assembly. The Drafting Committee was formed on 29th August 1947 was headed by Dr. B. R. Ambedkar. The Constitution of India, begins with the Preamble. The Core, the objectives and purpose of India as an independent state are proclaimed in Preamble. Through which, India declares itself to be a sovereign, socialist, secular and democratic republic country and equal opportunities for all. The constitution of India was adopted on 26th November 1949. Every citizen of India enjoys 6 fundamental rights and provision of writs are designed to protect fundamental rights. Along with

fundamental rights, every citizen is obliged to follow certain duties as a citizen of India – known as Fundamental Duties. There are 11 non-justifiable fundamental duties. Directive principles of the state policies are included in the Constitution, which guides government with guidelines to run the government. The Constitution of India is a unique combination of both flexibility and rigidity. National Review Commission was established in February 2000, to check the working of Constitution of India.

1.15. Self Assessment Questions:

1. Populations, _____, Government and _____ are the elements of State.
2. _____ is 'an agent of the State'.
3. _____ is known as 'Blue Print of the Indian Constitution'
4. The Interim Government was formulated on _____.
5. Who was elected as president of Constituent Assembly?
6. _____ propounds the objectives and the purpose of the State.
7. _____, _____ and _____ terms were added to our Preamble through 42nd amendment.
8. The Constitution of India comprises of _____ Articles, _____ Schedules and _____ Parts.
9. A state founded on the basis of religious freedom is known as _____.
10. Right to Property was removed from the fundamental rights list through _____ amendment.
11. Which article ensures equality before law?
12. Which article abolishes untouchability?
13. Name the article which says right to education?
14. How many fundamental duties are included in the Constitution of India?
15. _____ are the instruments of instruction for the Government.

1.16. Terminal Questions:**Answer the following in a word or sentence each. Each question carries 1 mark.**

1. Define Society.
2. Name the elements of state.
3. What do you mean by secular state?
4. Who was the chairman of drafting committee of Indian constitution?
5. How many articles, schedules and parts are there in Indian Constitution?
6. What is Universal Adult Franchise?
7. What is democratic state?
8. What are Writs?
9. Which part of the Indian Constitution deals with Fundamental Rights?
10. Which article of Indian Constitution abolishes untouchability?
11. Which fundamental duty was included in the list in the year 2002.
12. Define Directive Principles.
13. How many amendments have taken place to Constitution of India so far?
14. When was Constitution Review Committee established?
15. Name the terms included in the Preamble through 42nd amendment.

Answer the following in a paragraph each. Each question carries 5 marks

1. Write a note on the objective resolutions
2. State the Preamble of Constitution of India.
3. Briefly explain about the 'Writ' powers?
4. Mention any five fundamental duties?
5. State the Gandhian Principles of directive principles?
6. Critically examine the amendment procedure of Constitution?
7. State the recommendations of Constitution Review Commission?

Answer the following descriptively. Each question carries 14 marks.

1. Explain the salient features of the Indian constitution.
2. Examine the characteristics of the constituent assembly of India.
3. The preamble is 'soul of the Indian constitution'. Examine.
4. Explain the various fundamental rights as enjoyed by the citizens of India.
5. Describe the fundamental duties as enumerated in the constitution of India.
6. What is the nature of Directive Principles of state policy?

1.17 Answers**Answer for 1 mark questions**

1. Refer sub section 1.3
2. Refer sub section 1.3
3. Refer sub section 1.7.f.
4. Refer sub section 1.5
5. Refer sub section 1.5
6. Refer sub section 1.7.g.

7. Refer sub section 1.7.e.
8. Refer sub section 1.7.k.
9. Refer sub section 1.7.k.
10. Refer sub section 1.8.1
11. Refer sub section 1.9.
12. Refer sub section 1.10.
13. Refer sub section 1.7.a.
14. Refer sub section 1.13
15. Refer sub section 1.7.d.

Answer for 5 marks questions

1. Refer sub section 1.5
2. Refer sub section 1.6
3. Refer sub section 1.8.6.
4. Refer sub section 1.9
5. Refer sub section 1.10.a.
6. Refer sub section 1.12.a,b,c.
7. Refer sub section 1.13.

Answer for 14 marks questions

1. Refer section 1.7
2. Refer section 1.4
3. Refer section 1.6
4. Refer section 1.8
5. Refer section 1.9
6. Refer section 1.10 and 1.11