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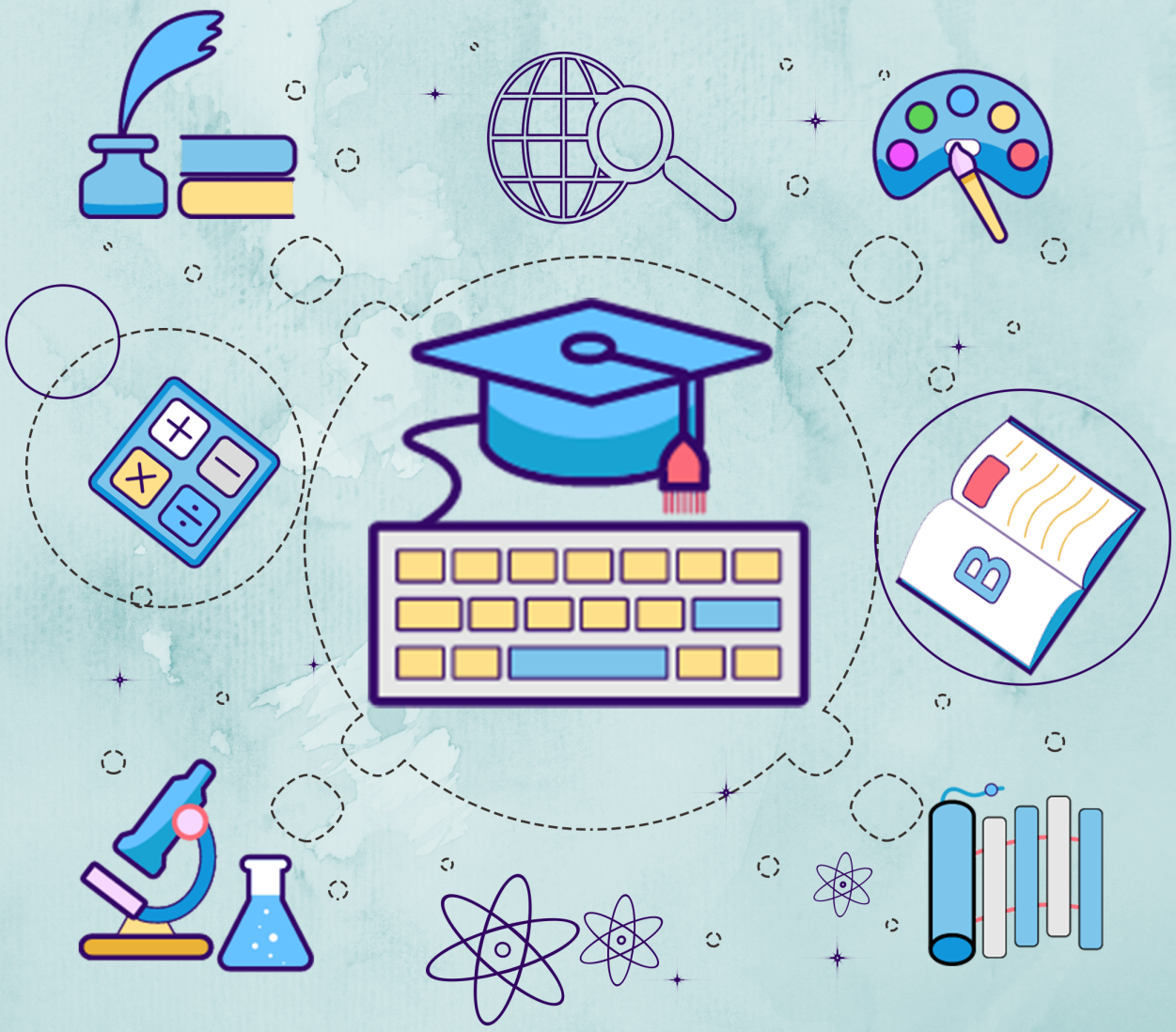

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CONSTITUTION OF INDIA

MODULE I

Syllabus: Definition of constitution

Historical background of the constitution

Salient features of constitution

Preamble to the constitution of India

Union and its territories

Meaning of citizenship, types and termination of citizenship

DEFINITION OF CONSTITUTION

- It is the fundamental law of the country.
- It is a body of rules and regulations written as well as unwritten whereby the government is organised and is functioning.
- It is a collection of fundamental principles according to which **the powers of the government, the rights of the governed and the relations between the two are adjusted**.

TYPOLOGY OF CONSTITUTION

- **Classification based on codification status**
  - Written (codified) constitution – Eg: Constitution of India, Pakistan, USA
  - Unwritten (uncodified) constitution – Eg: Constitution of UK, Canada etc
- **Classification based on evolution status**
  - Evolved constitution – No specific date of origin. Eg: constitution of UK
  - Enacted constitution – There is a date of implementation. Eg: American , Indian
- **Classification based on rigidity**
  - Rigid constitution – Eg: American constitution
  - Flexible constitution – Eg: British constitution

  Indian constitution is a blend of rigid as well as flexible constitution.

HISTORICAL BACKGROUND OF THE CONSTITUTION

The idea of the constitution was first proposed by MN Roy in the year 1934 and later on in 1935, in the Indian National Congress, Jawaharlal Nehru officially demanded this. This demand for the creation of constituent assembly was accepted by British government in the **Linlithgow's August offer** of 1940.

Cripp's Mission came in 1942 and recognized the demand of framing a constitution by an elected constituent assembly and give Indians a dominion status. But Cripp's proposal was rejected.

Later, the Labour Party came into power in England with Clement Atlee as its Prime Minister. His government was more sympathetic towards India and wanted to solve the problems of Indians. Hence the Cabinet Mission was sent to India.

The cabinet Mission came into India on 4th March 1946. It consisted of 3 British members – Lord Pethic Lawrence, Sir Stafford Cripps, Mr. Alexander. The cabinet mission discussed the framework of the constitution and laid down in some details the procedure to be followed by the Constitution Drafting Body.

As per the suggestion of **Cabinet Mission**, a constituent assembly will be formed of the representatives of the Provincial assemblies and the Princely states. Each Provinces and each Princely state or group of states were allotted seats in proportion to their respective population. The total members of the constituent assembly were 389 – out of which 296 members represented British Provinces and 93 members represented the Princely States.

The constituent assembly was first met on **9th December 1946** with Dr. Sachidananda Sinha as its temporary chairman.

On **11th December 1946**, Dr. Rajendra Prasad was elected as the permanent chairman and HC Mukherjee became the vice chairman.

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Dr. Bhimrao Ambedkar became the Chairman of its drafting committee on **December 11, 1946** .

The first sitting ended on 23rd December 1946.

The All India Muslim League demanded a separate assembly for Pakistan.

On **26th July 1947**, Governor General Lord Mountbatten announced the setting of a separate constituent assembly for Pakistan.

The constituent assembly meant for India constituted of 299 members.

On **29th August 1947,** Drafting committee was formed with 7 members, under the chairmanship of **Dr. B.R. Ambedkar**. The committee studied the constitutions of various countries and took the good features from every constitution and included them in the Indian Constitution. The draft was prepared by February 1948.

In **26 November 1949**, the constitution of India was passed and adopted by the Constituent Assembly.

In **24 January 1950**, the constituent assembly had its last meeting.

The new constitution came into effect **on 26 January 1950** (The process took 2 years, 11 months and 18 days - at a total expenditure of ₹6.4 million to finish).

C. Rajagopalachari took over from Lord Mountbatten and became the first Governor General of India.

India thus became a **Republic** and **Dr. Rajendra Prasad** became the first President.

SALIENT FEATURES OF CONSTITUTION

- **The Lengthiest Constitution of the World:**

  The Indian Constitution is one of the lengthiest constitutions in the world and it is also very detailed. At present, the Constitution of India contains 448 Articles, 25 Parts, and 12 Schedules. The parent document for drafting the Indian Constitution was the Government of India Act 1935.

- **Drawn From Various Source:**

  The Indian Constitution was framed from multiple sources including the Government of India Act 1935 and Other Countries Constitutions. For Eg:

  - Basic structure (Federal scheme, Judiciary, Governors, Emergency powers, Public Service Commissions, Administrative details etc.) was borrowed from the Government of India Act 1935.
  - Fundamental Rights from American Constitution.
  - Directive Principles from Irish Constitution etc.

- **Blend Of Rigidity And Flexibility:**

  Indian Constitution has gone through 103 amendments so far but there are certain steps to be satisfied before bringing in the amendment. Thus the Indian Constitution is a unique blend of rigidity and flexibility.

- **Universal Adult Suffrage:**

  The concept of Adult suffrage allows every citizen of our country who is above eighteen years has the right to vote in the elections. Any adult who is eligible to vote should not be discriminated on any basis like gender, caste and religion.

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- **Federal System:**

  The Indian Constitution includes all the federal characteristics of governance such as dual government system (centre and state), division of powers between the three state organs (executive, judiciary and legislature), constitutional supremacy, independent judiciary and bicameralism (lower and upper house).

- **Parliamentary Form Of Government:**

  The Constitution of India provides for a parliamentary system of government at the Centre as well as in every state of the Union. The President of India is the constitutional head with nominal powers. The Union Council of Ministers headed by the Prime Minister is the real executive. Ministers are essentially the members of the Union Parliament.

  On similar lines, a parliamentary government is also at work in each state with Governor as its executive head. All the members of Legislative Assembly is headed by Chief Minister of the state.

- **Establishment Of Sovereign, Socialist, Secular, Democratic, Republic:**

  The term **Sovereignty** is the backbone of our Indian Constitution that protects the authority of the people. The system of **Socialism** promotes equality among people and ensures the welfare of people. **Secularism** promotes the development and unity of various religions. **Democracy** provides people with the power to govern. The term **Republic** provides the people power to elect their own representatives.

- **Fundamental Rights:**

  Fundamental rights are those rights which are essential for intellectual, moral and spiritual development of citizens of India. Fundamental rights apply universally to all citizens, irrespective of religion, caste, or gender. These include Right to equality, Right to freedom, Right against exploitation, Right to freedom of religion, cultural and education rights, Right to constitutional remedies.

- **Directive Principles of State Policy:**

  In Part IV of the Constitution, the Directive Principles of State Policies (DPSPs) aims to make India a welfare state. Therefore, Dr. B.R. Ambedkar calls the Directive Principles as the Indian Constitution's novel feature.

- **Independent Judiciary:**

  The Judiciary ensures the proper functioning of the constitution and the enforcement of various provisions of the Constitution. The Constitution makers ensured that Judiciary has to be independent so that it will not be biased. The Supreme court is considered as the watchdog of democracy.

PREAMBLE TO THE CONSTITUTION OF INDIA

A **Preamble** states the objectives of the constitution. It is the soul of the constitution and contains the summary or essence of the constitution. The supreme court stated that it is an integral part of the constitution.

An 'Objective Resolution' was presented by Jawaharlal Nehru, laying down the underlying principles of the constitution, which later became the Preamble of the constitution on 22 January 1947.

The Preamble is amended only once through the 42nd Amendment Act, 1976. 'Socialist' and 'Secular' were added between 'Sovereign' and 'Democratic'. 'Unity of the Nation' was changed to 'Unity and Integrity' of the Nation.

The concept of Liberty, Equality, and Fraternity in our Preamble was adopted from the French Motto of the French Revolution.

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THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [1]**[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 [2][unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for "Sovereign Democratic Republic" (w.e.f. 3.1.1977)
2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, Sec.2, for "Unity of the Nation" (w.e.f. 3.1.1977)

Summary of the Preamble

Source of authority of the Constitution: The Preamble states that the Constitution derives its authority **from the people of India**.

Nature of Indian State: Preamble declares India to be of a Sovereign, Socialist, Secular, Democratic and Republican polity.

Objective of the Constitution: Preamble specifies **justice, liberty, equality and fraternity** as the objectives.

Date of adoption of the Constitution: 26th November 1949

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Key Words In Preamble

- **We, the people of India:** It indicates the **ultimate sovereignty of the people of India**. Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.
- **Sovereign:** The term means that India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.
- **Socialist:** The term means the **achievement of socialist ends through democratic means**. It holds faith in a mixed economy where both private and public sectors co-exist side by side.

  It was added in the Preamble by 42 Amendment, 1976.
- **Secular:** The term means that **all the religions in India get equal respect, protection and support from the state**.

  It was incorporated in the Preamble by 42 Constitutional Amendment, 1976.
- **Democratic:** The term implies that the Constitution of India has an established form of Constitution which gets **its authority from the will of the people expressed in an election**.
- **Republic:** The term indicates that **the head of the state is elected by the people**. In India, the President of India is the elected head of the state.

THE UNION AND ITS TERRITORY

Part I of Indian Constitution is titled **The Union and its Territory**. It includes **Articles from 1 to 4**.

ARTICLE 1: Name And Territory Of The Union

(i) **India, that is Bharat** shall be a **'Union of States'** rather than a 'Federation of States'.

Dr. B.R Ambedkar says that the phrase 'Union of States' has been preferred to 'Federation of States' for two reasons

- First reason is that Indian federation is not the result of an agreement among the states like the American Federation.
- Second is the state have no right to secede from the federation.

(ii) The States and the territories thereof shall be as specified in the First Schedule. (First schedule – The list of states and union territories and their territories).

(iii) The territories of India shall comprise of

(a) Territories of states
(b) Union territories
(c) Territories that may be acquired by the Government of India at any time.

ARTICLE 2: Admission or establishment of new states.

It empowers the Parliament to 'admit into the Union of India, or establish, new states on such terms and conditions as it thinks it fit'.

ARTICLE 3: Formation of new states, alteration of areas, boundaries or names of existing states.

The Parliament may by law –

(a) **Form** a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
(b) **Increase** the area of any State
(c) **Diminish** the area of any State
(d) **Alter** the boundaries of any State
(e) **Alter** the name of any State

ARTICLE 4: It declares the law made for admission and establishment of new states(under article2)

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and formation of new states and alteration of areas, boundaries and names of existing states (under Article 3) are not to be considered as amendments of the constitution. Such laws can be passed by a **simple majority and by ordinary legislative process.**

State Reorganisation Act 1956, provided for 14 States and 6 Union Territories to be established.

At present, there are 28 states and 9 union territories.

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List of States with their capitals and the year of formation

No	State	Capital	Year of establishment
1	Andhra Pradesh	Amaravati (Proposed)	1956
2	Arunachal Pradesh	Ittanagar	1987
3	Assam	Dispur	1972
4	Bihar	Patna	1950
5	Chhattisgarh	Raipur	2000
6	Goa	Panaji	1987
7	Gujarat	Gandhinagar	1960
8	Haryana	Chandigarh	1966
9	Himachal Pradesh	Shimla	1971
1 0	Jharkhand	Ranchi	2000
11	Karnataka	Bengaluru	1956
12	Kerala	Thiruvananthapuram	1956
13	Madhya Pradesh	Bhopal	1956
14	Maharashtra	Mumbai	1960
15	Manipur	Imphal	1972
16	Meghalaya	Shillong	1972
17	Mizoram	Aizawl	1987
18	Nagaland	Kohima	1963
19	Odisha	Bhubaneswar	1950
20	Punjab	Chandigarh	1966
21	Rajasthan	Jaipur	1950
22	Sikkim	Gangtok	1975
23	Tamil Nadu	Chennai	1956
24	Telangana	Hyderabad	2014
25	Tripura	Agartala	1972
26	Uttar Pradesh	Lucknow	1950
27	Uttarakhand	Gairsain (Summer) Dehradun (Winter)	2000
28	West Bengal	Kolkata	1950

List of Union Territories, capitals and year of formation

No	Union Territory	Capital	Year of establishment
1	Andaman and Nicobar Islands	Port Blair	1956
2	Chandigarh	Chandigarh	1966
3	Dadra & Nagar Haveli and Daman & Diu	Daman	2020
4	Delhi	Delhi	1956
5	Jammu & Kashmir	Srinagar (Summer) Jammu (Winter)	2019
6	Ladakh	Leh (Summer) Kargil (Winter)	2019
7	Lakshadweep	Kavaratti	1956
8	Puducherry	Pondicherry	1954

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****The accession of Indian States to the dominion of India****

Before the Indian partition of 1947, 584 Princely States existed in India, often known as the Native States, which were not fully and formally the part of British India, areas of the Indian subcontinent which had not been invaded or occupied by the British, but under partial control, subject to subordinate alliances.

The era of the princely states effectively ended in 1947 with Indian independence. Around 1950, almost all princely states had either acceded to India or Pakistan. The process of accession was largely peaceful, with the exception of Jammu and Kashmir (whose ruler opted for independence but decided to join India after invasion by Pakistani forces), Hyderabad (whose ruler opted for independence in 1947, followed a year later by Indian police action and annexation of the state), Junagarh (whose ruler joined Pakistan but was annexed by India). While India officially gained independence, there was a desire for state reorganization in different parts of India. While the demand for new states was mainly based on language, constitutional makers held a variety of views. But since the Constituent Assembly did not have enough time to examine such a huge issue and administrative difficulty, they formed a Commission to investigate the matter.

****Dhar Commission****

Accordingly, in June 1948, the Constituent Assembly announced the establishment of the Commission of the Linguistic Provinces, chaired by S.K. Dhar, to examine the feasibility of this. In this report (December 1948), the Commission recommended that the reorganization of the Member States be based on administrative convenience rather than on a linguistic basis.

****JVP Committee (Jawaharlal Nehru and Vallabhbhai Patel and Pattabhi Sitaramayya)****

The Dhar Commission report produced general disappointment and led to the appointment by the Congress in December 1948 of another Linguistic Provinces Committee, made up of three members, namely Jawahar Lal Nehru, Vallabhbhai Patel, and Pattabhi Sitaramayya, and thus popularly known as the JVP Committee. In its report (1949), the Committee reaffirmed the position of the Dhar Commission. The Committee also recommended that the creation of new provinces should be postponed for a few years so that they could concentrate on other matters of vital issues and not allow ourselves to be distracted by this issue. The study also stated that if public opinion is insistent and overwhelming, they have to submit to it as Democrats subject to certain restrictions on India's good as a whole.

****Arrangement of States as on 26th January, 1950****

In the meantime, the Republic of India came into existence on 26 January 1950. The constituent units of the Indian Union have found themselves classified into Part A, Part B, Part C, and Part D. This was only a temporary arrangement, as a satisfactory solution could not yet be found.

- Part A States included the provinces of the former governors. The nine States of Part A were Assam, Bihar, Maharashtra, Madhya Pradesh (formerly Central Provinces and Berar), Madras, Orissa, Punjab (formerly East Punjab), Uttar Pradesh (formerly United Provinces), and West Bengal.
- Part B States included the former Princely States. Part B States were Hyderabad, Jammu, and Kashmir, Madhya Bharat, Mysore, Patiala, and the Eastern Punjab States Union (PEPSU), Rajasthan, Saurashtra, Travancore-Cochin and Vindhya Pradesh.

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- Part C States comprised both the provinces of the former Chief Commissioners and some of the Princely States. Part C States were Ajmer, Bhopal, Bilaspur, Cooch-Behar, Coorg, Delhi, Himachal Pradesh, Kutch, Manipur, and Tripura.
- The Andaman and Nicobar Islands were the only State in Part D.

****Continuation of demands for linguistic States****

Demands for the formation of States on a linguistic basis have increased further. In October 1953, after the long-drawn agitation and death of Potti Sriramulu after a 56-day hunger strike for the cause, the Government of India was forced to create the first linguistic state, Andhra Pradesh, by separating the Telugu-speaking parts of the Madras State.

****Fazal Ali Commission****

The creation of the Andhra State increased the demand from other regions for the formation of States on a linguistic basis. In December 1953, the Government announced the creation of a Reorganization Commission of three-member States, chaired by Fazal Ali, to examine the whole problem. The two other members of the Commission were H.N. Kunzru and K.M. Pannikar. In its report, the Commission sought a balanced approach between regional feelings and national interests. The Commission proposed abolishing the four-fold division of states in keeping with the original Constitution and recommended the establishment of 16 states and 3 central territories.

The Commission also established the following four main principles as the basis for reorganization-

1. Preserving and enhancing the security and unity of the country;
2. Financial, economic and administrative viability;
3. Linguistic and cultural homogeneity;
4. And the scope for the successful implementation of a development plan.

****The States Reorganization Act,1956****

It entered into force in November 1956. This Act and the Seventh Constitutional Amendment Act of 1956 abolished the distinction between Part A and the Part B States and the Part C States. Instead, they were classified into two categories: states and territories of the Union. This Act provided for 14 States and 6 Union Territories to be established as follows:

States

Assam, Andhra Pradesh, Bihar, Bombay, J&K(by the instrument of accession), Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh, and West Bengal.

Union Territories

Andaman & Nicobar Islands, Delhi, Himachal Pradesh, Laccadive, Minicoy & Amindivi Islands, Manipur, and Tripura.

****The New States and Union Territories created after 1956****

- The Bombay Reorganization Act, 1960, divided the State of Bombay into two States, Gujarat and Maharashtra.
- The Nagaland State Act 0f 1962 established Nagaland as a separate State.
- The Punjab Reorganization Act,1966, split Punjab into Punjab and Haryana.
- The new State of Himachal Pradesh, consisting of the existing Union Territory of Himachal Pradesh, was established by the State of Himachal Pradesh Act, 1970.
- The New States of Manipur, Tripura, Meghalaya and Union Territories of Mizoram and Arunachal Pradesh have been established by the North Pastern Areas (Reorganization

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Act, 1971). Later Mizoram and Arunachal Pradesh were granted statehood by the State of Mizoram Act, 1986 and the State of Arunachal Pradesh Act, 1986.

- The new State of Sikkim was established by the Constitution Act (36th amendment) of 1975.
- Goa was incorporated as a separate State of the Union by the State of Goa Act, 1987.
- Chattisgarh was formed as a result of the Madhya Pradesh Reorganization Act, 2000, which came into force on 1 November 2000.
- Uttranchal came into existence on 8 November 2000 under the Uttar Pradesh Reorganization Act, comprising the northern districts of Kumaon and the Garhwal hills of Uttar Pradesh.
- The State of Jharkhand was established by the Bihar Reorganization Act 2000 of 15 November, consisting of 18 southern districts of Chhota Nagpur and Santhal Pargana of Biha.
- The State of Telangana was established by the Andhra Pradesh Reorganization Act 2014 and came into force on 2 June 2014.
- On 31 October 2019, the act reconstituted the former state of Jammu and Kashmir into two union territories, Jammu and Kashmir and Ladakh.

MEANING OF CITIZENSHIP

Citizenship signifies the relationship between individual and state.

Like any other modern state, India has two kinds of people – Citizens and Aliens.

Citizens are full members of the Indian state and have certain duties towards the state. They enjoy all civil and political rights. To be the citizen of India, is the primary qualification for holding the office of President, Prime of Minister or Member of Parliament, etc.

Aliens are citizens of some other state and hence they do not enjoy all the civil and political rights. There are two types of aliens – friendly aliens and enemy aliens.

Part II of the Constitution of India (Articles 5 to Article 11) deals with the Citizenship of India.

The Constitution of India only identifies the person who became the citizens of India at its commencement (26 Jan 1950). It does not deal with the problem of acquisition or loss of citizenship after its commencement. It empowers the Parliament to enact the law to provide for such matters or any other matters relating to citizenship.

This provision resulted in the enactment of the Citizenship Act of 1955.

ARTICLE 5: It provided for **citizenship on commencement of the Constitution.**

- All those **domiciled and born in India** were given citizenship.
- Even those who were domiciled but not born in India, but **either of whose parents was born in India,** were considered citizens.
- Anyone who had been an **ordinary resident for more than five years,** too, were considered citizens of India.

ARTICLE 6: It provided rights of citizenship of certain persons who have **migrated to India from Pakistan.**

- Since Independence was preceded by partition and migration, Article 6 laid down that anyone who migrated to India **before July 19, 1949,** would automatically become an Indian citizen if either of his parents or grandparents were born in India.

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- But those who entered India after this date needed to register themselves. For this, the person should be a resident in the territory of India for a minimum of six months, preceding the date of his application.

ARTICLE 7: It provided rights of citizenship of **certain migrants to Pakistan.**

- Those who had migrated to Pakistan after March 1, 1947 but returned subsequently.

ARTICLE 8: It provided rights of citizenship to certain **persons of Indian origin residing outside India.**

- Any Person of Indian Origin residing outside India who, or either of whose parents or grandparents, was born in India could register himself or herself as an Indian citizen.

ARTICLE 9: It provided that if any person **voluntarily acquired the citizenship of a foreign state** will no longer be a citizen of India.

ARTICLE 10: Every person, to continue its citizenship shall, **subject to the provisions of any law that may be made by Parliament**.

ARTICLE 11: It empowers **Parliament** to make any provision with respect to the acquisition and termination of citizenship and all matters relating to it.

Types of Citizenship

There are **four ways** in which Indian citizenship can be acquired: **birth, descent, registration and naturalisation.** These provisions are listed under the **Citizenship Act, 1955.** The Act does **not provide for dual citizenship or dual nationality.** It only allows citizenship for a person listed under the provisions above ie: by birth, descent, registration or naturalisation.

By Birth : A person born in India by birth on or after **Jan 26, 1950** and before **July 1, 1987** is a citizen of India by birth irrespective of the nationality of the parents.

Those born on or after **July1, 1987** and before **Dec 3, 2004** are considered to be citizens if either of their parents is Indian.

Those born on or after **Dec 3, 2004**, are citizens provided both parents are Indians (or one is Indian, and the other is not the illegal migrant.

By Descent : Anyone born outside India on/after **January 26, 1950**, is a citizen by descent if their father was Indian.

Those born on/after **December 10, 1992**, are considered Indian citizens, if either of his parent is Indian.

Those born on/after **December 3, 2004**, are considered Indian citizens, if their parents registered their birth at Indian-consulates within one year and declared that the minors don't hold other countries' passport.

By Registration: Citizenship by registration can be availed by persons of Indian-origin who have been residing in India for seven years before applying for registration.

It also applies to those who are married to Indians and have been residing in India for seven years and minors whose parents are Indians.

Persons of Indian-origin, who are residents of any country outside undivided India are also eligible.

By Naturalisation: Individuals (who are not illegal immigrants) can acquire Indian citizenship by naturalization, if they have been residing in India for 12 years, provided they fulfil other requirements mentioned in the Third Schedule of Citizenship Act. Under the recently passed Citizenship (Amendment) Act, 2019, however, the duration of residency for naturalization for non-Muslim immigrants(Hindu/Sikh/Buddhist/Jain/Zoroastrian/Christian)facing

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religious persecution in Pakistan, Afghanistan, and Bangladesh has been reduced to five years.

MODES OF TERMINATION OF CITIZENSHIP

Renunciation: Any citizen of India can **voluntarily renounce** the Indian citizenship. In case, a male citizen of India renounces his Indian citizenship, all his minor children will also lose their Indian citizenship.

Termination: If a citizen of India voluntarily acquires the citizenship of another country, he shall cease to be a citizen of India.

Deprivation: Deprivation is compulsory termination of citizenship. It is applicable only in cases of citizenship acquired by descent, registration or naturalisation.

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