

Textbook for Class XI Political Theory 2022-23 First Edition September 2006 Asvina 1928 Reprinted February 2007 Pausa 1928 January 2008 Pausa 1929 January 2009 Pausa 1930 January 2010 Pausa 1931 January 2011 Pausa 1932 March 2012 Phalguna 1933 April 2013 Chaitra 1935 October 2013 Asvina 1935 December 2014 Pausa 1936 January 2016 Pausa 1937 January 2017 Pausa 1938 December 2017 Pausa 1939 February 2019 Magha 1940 December 2019 Agrahayana 1941 July 2021 Shravana 1943 November 2021 Agrahayana 1943 PD 100T RSP © National Council of Educational Research and Training, 2006 ` 80.00 Cartoon on the cover page is by Mr. Fish ALL RIGHTS RESERVED q No part of this publication may be reproduced, stored in a retrieval system or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publisher. q This book is sold subject to the condition that it shall not, by way of trade, be lent, re-sold, hired out or otherwise disposed of without the publisher's consent, in any form of binding or cover other than that in which it is published. q The correct price of this publication is the price printed on this page, Any revised price indicated by a rubber stamp or by a sticker or by any other means is incorrect and should be unacceptable. Publication Team Head, Publication : Anup Kumar Rajput Chief Editor : Shveta Uppal Chief Production Officer : Arun Chitkara Chief Business Manager : Vipin Dewan Assistant Editor : Shashi Chaddha Production Assistant : Om Prakash Cover and Layout Shweta Rao Illustrations Rajeev Kumar Cartoons Irfaan Khan Printed on 80 GSM paper with NCERT watermark Published at the Publication Division by the Secretary, National Council of Educational Research and Training, Sri Aurobindo Marg, New Delhi 110 016 and printed at Educational Stores, S-5, Bulandshahar Road, Industrial Area Site-I (Near R TO Office) Ghaziabad (U.P.) 11117 – Political Theory Textbook for Class XI ISBN 81-7450-613-6 OFFICES OF THE PUBLICATION DIVISION, NCERT NCERT Campus Sri Aurobindo Marg New Delhi 110 016 Phone : 011-26562708 108, 100 Feet Road Hosdakere Halli Extension Banashankari III Stage Bangaluru 560 085 Phone : 080-26725740 Navjivan Trust Building P.O.Navjivan Ahmedabad 380 014 Phone : 079-27541446 CWC Campus Opp. Dhankal Bus Stop Panihati Kolkata 700 114 Phone : 033-25530454 CWC Complex Maligaon Guwahati 781 021 Phone : 0361-2674869 2022-23 The National Curriculum Framework (NCF), 2005, recommends that children's life at school must be linked to their life outside the school. This principle marks a departure from the legacy of bookish learning which continues to shape our system and causes a gap between the school, home and community. The syllabi and textbooks developed on the basis of NCF signify an attempt to implement this basic idea. They also attempt to discourage rote learning and the maintenance of sharp boundaries between different subject areas. We hope these measures will take us significantly further in the direction of a child-centred system of education outlined in the National Policy on Education (1986). The success of this effort depends on the steps that school principals and teachers will take to encourage children to reflect on their own learning and to pursue imaginative activities and questions. We must recognise that given space, time and freedom, children generate new knowledge by engaging with the information passed on to them by adults. Treating the prescribed textbook as the sole basis of examination is one of the key reasons why other resources and sites of learning are ignored. Inculcating creativity and initiative is possible if we perceive and treat children as participants in learning, not as receivers of a fixed body of knowledge. These aims imply considerable change in school routines and mode of functioning. Flexibility in the daily time-table is as necessary as rigour in implementing the annual calendar so that the required number of teaching days is actually devoted to teaching. The methods used for teaching and evaluation will also determine how effective this textbook proves for making children's life at school a happy experience, rather than a source of stress or boredom. Syllabus designers have tried to address the problem of curricular burden by restructuring and reorienting knowledge at different stages with greater consideration for child Foreword 2022-23 psychology and the time available for teaching. The textbook attempts to enhance this endeavour by giving higher priority and space to opportunities for contemplation and wondering, discussion in small groups, and activities

requiring hands-on experience. The National Council of Educational Research and Training (NCERT) appreciates the hard work done by the textbook development committee responsible for this book. We wish to thank the Chairperson of the advisory group in Social Sciences, Professor Hari Vasudevan and the Chief Advisors for this book, Professor Suhas Palshikar and Professor Yogendra Yadav for guiding the work of this committee. Several teachers contributed to the development of this textbook; we are grateful to their principals for making this possible. We are indebted to the institutions and organisations which have generously permitted us to draw upon their resources, material and personnel. We are especially grateful to the members of the National Monitoring Committee, appointed by the Department of Secondary and Higher Education, Ministry of Human Resource Development under the Chairmanship of Professor Mrinal Miri and Professor G.P. Deshpande, for their valuable time and contribution. As an organisation committed to systemic reform and continuous improvement in the quality of its products, NCERT welcomes comments and suggestions which will enable us to undertake further revision and refinement.

Director New Delhi  
National Council of Educational Research and Training  
20 December 2005

Research and Training 2022-23

The NCERT this year has introduced a separate paper on Political Theory for students of Class XI. This change has come as a part of the larger project to revise and redesign the school curricula. Previously students were exposed to political ideas and theories primarily through the study of political ideologies, such as, Liberalism, or Marxism, or Fascism. Concepts like freedom and equality entered the picture only indirectly in terms of their place in a given system of ideas. In the new course the central focus is on concepts rather than ideologies. The objective of the course is to introduce students to some of the important ideas and concepts which form a part of the living tradition of political thought in the world. In the writing of this book the approach which was followed was to try and involve the students in the process of learning, both as recipients and creators of knowledge. The objective was to encourage students to do political theory by training them to scrutinise and reflect upon the ways we make sense of and conceptualise our world, as well as to develop and extend their understanding. Hence, even as each chapter begins with some minimum, and at times commonsensical, understanding of a concept, it tries to introduce students to different dimensions of the concept and give them a feel of the range of ideas that can be marshaled while taking positions and offering reasons. For all of you, the students, who will study political theory and be examined in this subject, we hope will be this approach to the study of political theory more engaging. We wanted you not only to learn about the ideas which have been developed by thinkers over the ages but also to be able to respond to them on the basis of your own experience of the world. As you will see, the concepts included in this book – freedom, equality, rights, nationalism – are used in everyday life not only by politicians and governments but by all of us. We speak frequently of our freedoms and rights, of the fairness and unfairness of things, of our desire to be treated equally, of our sentiments about nationalism or peace, or other such ideals. The concepts that we are going to study in this book are thus already part of our lives. We apply them in our personal life, in the family, in the school, or among our friends, and we also use them when we take positions on public policies or political debates. The starting point of our study is not therefore unfamiliar. But we hope that through the study of political theory you will be able to refine your ideas and express them with greater precision and clarity. If, at the end of the year, you are able to critically reflect on your beliefs and ideas and offer reasoned and compelling arguments in defence of your position, we think that this experiment would have been successful. The side comments, suggestions for activities, and exercises in each chapter were designed to indicate how these concepts could help you interpret the often-confusing world in which we live. As with all such new projects, mistakes might have been made but we look forward to feedback from you. Even though students were the major focus of our thinking when planning the book we recognise the crucial role that teachers play in the learning process. We hope that the book will also

empower teachers to use it not as a repository of truths but as a starting point for generating a creative classroom environment. The different exercises and activities included in each chapter were intended not as directions for what the teachers have to do in their classes. Rather they were meant to be indicators of how the ideas in a chapter and the book as a whole could be appropriated and developed. We might also add that in addition to the main text, boxes have been introduced in each chapter to draw your attention to the political thought and contribution of a particular theorist or of a system of ideas. These too were conceived as ways of enriching and deepening the discussion, without compelling the student to commit to memory who said what, when and why. We do hope that the teachers will assess students in terms of their ability to think for themselves by understanding the different aspects and dimensions of a given concept rather than for their skill in rehearsing and reproducing all the possible arguments and usages of a concept discussed in the text. Such an open-ended approach may present a challenge both for teachers and students but it should become an integral part of our educational system. In this short preface, rather than prescribing what needs to be done, and how, we have tried to share with you how we approached the writing of the book. From teachers also we would appreciate feedback about the book and its design. Writing the book was a collective enterprise of a number of people and it involved a continuous dialogue regarding the meaning of concepts and how they could be taught. We recognised both the need to listen to each other as well as to convince others of our point of view. The end result is before you and we will wait to get your response.

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**Acknowledgements** 2022-23  
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**2022-23 Equality** Equality 1 2022-23  
**Introduction Political Theory 2 Political Theory** Human beings are unique in two respects: they possess reason and the ability to reflect on their actions. They also have the capacity to use language and communicate with each other. Unlike other species, they can express their innermost thoughts and desires; they can share their ideas and discuss what they consider to be good and desirable. Political theory has its roots in the twin aspects of the human self. It analyses certain basic questions such as how should society be organised? Why do we need government? What is the best form of government? Does law limit our freedom? What does the state owe its citizens? What do we owe each other as citizens? Political theory examines questions of this kind and systematically thinks about the values that inform political life — values such as freedom, equality and justice. It explains the meaning and significance of these and other related concepts. It clarifies the existing definitions of these concepts by focusing on some major political thinkers of the past and present. It also examines the extent to which freedom or equality are actually present in the institutions that we participate in, everyday life such as schools, shops, buses or trains or government offices. At an advanced level, it looks at whether existing definitions are adequate and how existing institutions (government, bureaucracy) and policy practices must be modified to become more democratic. The objective of political theory is to train citizens to think rationally about political questions and assess the political events of our time. In this chapter, we will examine what is meant by politics and political theory and why we should study it.

**1.1 WHAT IS POLITICS?** You would have noticed that people have different ideas about what politics is. Political leaders, and persons who contest elections and hold political office, may argue that it is a kind of public service. Some others associate politics with manipulation and intrigue undertaken to pursue ambitions and satisfy wants. A few think of politics as what politicians do. If they see politicians defecting from parties, making false promises and tall

**LET’S DEBATE What is Politics.** “ ” 2022-23  
**Introduction Political Theory Political Theory 3** claims, manipulating different sections, pursuing personal or group interests ruthlessly and in worst cases stooping to crime, they link politics with ‘scams’. So prevalent is this way of thinking that when we see people in different walks of life trying to promote their interests by any means possible, we say they are playing politics. If we see a cricketer manipulating to stay in the team, or a fellow student trying to use his father’s position, or a colleague in office mindlessly agreeing with the boss, we say he or she is playing ‘dirty’ politics. Disillusioned by such pursuits of selfishness we despair of politics. We say, “I am not interested in politics” or “I am going to stay away from politics”. It is not only ordinary people who despair of politics; even businessmen and entrepreneurs routinely blame politics for their woes even as they

benefit from and fund various political parties. Cinema stars also complain of politics though they seem to be adept at the game once they join it. We are thus confronted with conflicting images of politics. Is politics an undesirable activity that we should stay away from and get rid off? Or, is it a worthwhile activity which we must engage with in order to make a better world? It is unfortunate that politics has come to be associated with the pursuit of self-interest by any and every method. We need to realise that politics is an important and integral part of any society. Mahatma Gandhi once observed that politics envelops us like the coils of a snake and there is no other way out but to wrestle with it. No society can exist without some form of political organisation and collective decision making. A society that wants to sustain itself needs to take into account the multiple needs and interests of its members. A number of social institutions such as the family, tribes and economic institutions, have emerged to help people fulfil their needs and aspirations. Such institutions help us find ways of living together acknowledging our obligations to each other. Among such institutions, governments play an important part. How governments You must retire from politics at once! Your activities are having a bad influence on him. He thinks he can get away with lying and cheating. R. K. Laxman in the Times of India 2022-23 Introduction Political Theory 4 Political Theory are formed and how they function is thus an important focus of politics. But politics is not confined to the affairs of government. In fact what governments do is relevant because it affects the lives of the people in many different ways. We see that governments determine our economic policy and foreign policy and educational policy. These policies can help to improve the lives of people but an inefficient or corrupt government can also endanger people's lives and security. If the government in power allows any conflicts to become violent, markets close down and schools are shut. These disrupt our lives; we cannot buy things that we may need urgently; those who are sick cannot reach the hospital; even the school schedule gets affected, syllabi cannot be completed and we may have to take extra coaching for the exams and pay tuition fees. If, on the other hand, the government makes policies to increase literacy and employment, we may get an opportunity to go to a good school and get a decent job. Since the actions of the government affect us deeply, we take a lively interest in what governments do. We form associations and organise campaigns to articulate our demands. We negotiate with others and try to shape the goals that governments pursue. When we disagree with the policies of the government, we protest and organise demonstrations to persuade the government to change the existing laws. We passionately debate the actions of our representatives and discuss whether corruption has increased or decreased. We ask whether corruption can be rooted out; whether reservations for specific groups are just or not. We try to understand why some parties and leaders win elections. In this way we look for the rationale underlying the prevalent chaos and decay, and aspire to create a better world. To sum up, politics arises from the fact that we have different visions of what is just and desirable for us and our How does politics influence our daily life? Analyse a day's events in your life. LET'S DO IT Do Read the newspaper. What are the issues dominating the headlines? Do you think they have any relevance for you? 2022-23 Introduction Political Theory Political Theory 5 society. It involves the multiple negotiations that go on in society through which collective decisions are made. At one level, it involves what governments do and how they relate to the aspirations of the people; at another level, it involves how people struggle and influence decision making. People may be said to engage in political activity whenever they negotiate with each other and take part in collective activities which are designed to promote social development and help to resolve common problems. 1.2 WHAT DO WE STUDY IN POLITICAL THEORY? If we look around us what we see would be movement, development and change. But if we look deeper we would also see certain values and principles that have inspired people and guided policies. Ideals like democracy, freedom or equality for instance. Different countries may try to protect such values by enshrining them in their constitutions as is the case with the American and Indian constitutions. These documents did not just emerge overnight; they are built upon the ideas and principles

debated almost since the time of Kautilya, Aristotle to Jean Jacques Rousseau, Karl Marx, Mahatma Gandhi and Dr. B.R. Ambedkar. As far back as the fifth century B.C., Plato and Aristotle discussed with their students whether monarchy or democracy was better. In modern times, Rousseau first argued for freedom as a fundamental right of humankind. Karl Marx argued that equality was as crucial as freedom. Closer home, Mahatma Gandhi discussed the meaning of genuine freedom or swaraj in his book Hind Swaraj. Dr. Ambedkar vigorously argued that the scheduled castes must be considered a minority, and as such, must receive special protection. These ideas find their place in the Indian Constitution; our Preamble enshrines freedom and equality; the chapter on Rights in the Indian Constitution abolishes untouchability in any form; Gandhian principles find a place in Directive Principles.

**LET'S DEBATE** Should students participate in politics? “ ” Write a short note on any of the political thinkers mentioned in the chapter. [50 words]

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**Political Theory** Political theory deals with the ideas and principles that shape Constitutions, governments and social life in a systematic manner. It clarifies the meaning of concepts such as freedom, equality, justice, democracy, secularism and so on. It probes the significance of principles such as rule of law, separation of powers, judicial review, etc. This is done by examining the arguments advanced by different thinkers in defence of these concepts. Though Rousseau or Marx or Gandhi did not become politicians, their ideas influenced generations of politicians everywhere. There are also contemporary thinkers who draw upon them to defend freedom or democracy in our own time. Besides examining arguments, political theorists also reflect upon our current political experiences and point out trends and possibilities for the future. But is all this relevant for us now? Have we not already achieved freedom and democracy? While India is free and independent, questions regarding freedom and equality have not ceased to crop up. This is because issues concerning freedom, equality, democracy, arise in many areas of social life and they are being implemented in different sectors at different paces. For instance, although equality may exist in the political sphere in the form of equal rights, it may not exist to the same extent in the economic or social spheres. People may enjoy equal political rights but still be discriminated. Can you identify the political principle/value which is in application in each of the following statements/situations?

- I should be able to decide which subjects I want to study in school.
- The practice of untouchability has been abolished.
- All Indians are equal before law.
- Minorities can have their own schools and colleges.
- Foreigners who are visiting India cannot vote in Indian elections.
- There should be no censorship of media or films.
- Students should be consulted while planning the annual day functions.
- Everyone must join the Republic Day celebrations.

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against socially because of their caste or poverty. Some people may have a privileged place in society while others are deprived even of basic necessities. Some are able to achieve whatever goals they set for themselves while many are unable even to go to schools so that they can have decent jobs in the future. For them, freedom is still a distant dream. Secondly, though freedom is guaranteed in our Constitution, we encounter new interpretations all the time. This is a bit like playing a game; as we play chess or cricket, we learn how to interpret the rules. In the process, we discover new and broader meanings of the game itself. Similarly, the fundamental rights guaranteed by our Constitution are continually being reinterpreted in response to new circumstances. For instance, the right to life has been interpreted by the Courts to include the right to livelihood. The right to information has been granted through a new law. Societies frequently encounter new challenges which generate new interpretations. The fundamental rights guaranteed by our Constitution have been amended and expanded over time through judicial interpretations and government policies which are designed to address new problems. Thirdly, as our world changes, we may discover new dimensions of freedom as well as new threats to freedom. For instance, global communications technology is making it easier for activists to network with one another across the world for protecting tribal cultures or forests. But it also enables terrorists and criminals to network.

Moreover, internet commerce is all set to increase in the future. This means that the information we give about ourselves online to buy goods or services must be protected. So even though netizens (citizens of the internet) do not like government control, they recognise that some form of regulation is necessary to safeguard individual security and privacy. As a result, questions are raised regarding how much freedom should be given to people using the net. For instance, should they be allowed to send unsolicited e-mails to strangers? Can you advertise your products in LET'S DO IT Do Collect cartoons from various newspapers and magazines. What are the various issues that they are concerned with? Which political concept do they highlight? 2022-23 Introduction Political Theory 8 Political Theory chat rooms? Should governments be allowed to read private e-mails to track down terrorists? How much regulation is justified and who should regulate – governments or some private regulators? Political theory has a lot to teach us about possible answers to these questions and is therefore very relevant.

### 1.3 PUTTING POLITICAL THEORY TO PRACTICE

In this textbook, we confine ourselves to one aspect of political theory — that which deals with the origins, meaning and significance of political ideas that we are familiar with such as freedom, equality, citizenship, justice, development, nationalism, secularism and so on. When we begin a debate or argument on any topic, we usually ask “what does it mean?” and “how does it matter?” Political theorists have asked what is freedom or equality and provided diverse definitions. Unlike in mathematics where there can be one definition of a triangle or square, we encounter many definitions of equality or freedom or justice. In ancient Greece, in the city of Athens, Socrates was described as the ‘wisest man’. He was known for questioning and challenging popularly held beliefs about society, religion and politics. For this he was condemned to death by the rulers of Athens. His student Plato wrote extensively about the life and ideas of Socrates. In his book ‘The Republic’, he created the character Socrates and through him examined the question – what is justice? The book opens with a dialogue between Socrates and Cephalus. In the course of this dialogue Cephalus and his friends come to recognise that their understanding of justice is inadequate and unacceptable. The important thing in this is that Socrates uses reason to reveal the limitations and inconsistencies in a given point of view. His adversaries eventually admit that the views they had held and lived by could not be sustained. 2022-23 Introduction Political Theory Political Theory 9 This is because terms like equality concern our relationships with other human beings rather than with things. Human beings, unlike things, have opinions on issues like equality. And many opinions need to be understood and harmonised. How do we go about doing this? Let us begin with our common experience of equality in different places. You may have noticed that people often jump the queue in shops or doctor’s waiting rooms or government offices. Sometimes, those who do so are told to get back in line and we feel glad. Sometimes, they get ahead and we feel cheated. We resent this because we all want equal opportunity to get goods and services for which we are paying. So when we reflect on our experience, we understand that equality means equal opportunity for all. At the same time, if there are separate counters for the old and disabled, we understand that such special treatment may be justified. But we also notice everyday that many poor people cannot go to the shop or to a doctor because they have no money to pay. Read and see how Socrates achieved this. Well said, Cephalus, I replied; but as concerning justice, what is it? —to speak the truth and to pay your debts —no more than this? And even to this are there not exceptions? Suppose that a friend when in his right mind has deposited arms with me and he asks for them when he is not in his right mind, ought I to give them back to him? ... You are quite right, he replied. But then, I said, speaking the truth and paying your debts is not a correct definition of justice. ... And instead of saying simply as we did at first, that it is just to do good to our friends and harm to our enemies, we should further say: It is just to do good to our friends when they are good and harm to our enemies when they are evil? Yes, that appears to me to be the truth. 2022-23 Introduction Political Theory 10 Political Theory for goods and services. Some of these people could be day labourers who are cutting stones or lugging bricks

for long hours. If we are sensitive, we feel that it is not fair that in a society some members cannot even have their basic needs satisfied. We come to realise that equality must involve some kind of fairness so that people are not unduly exploited and disadvantaged by economic factors. Consider the fact that there are many children who cannot go to school because they have to work to feed themselves. And most girl students in poor households are pulled out of school to care for their younger siblings while parents go to work. Even though the Indian constitution guarantees the right to primary education for all, this right remains formal. Again, we may feel that the government should do more for such children and their parents so that they are enabled to go to school. Thus you may see that our idea of equality is quite complex; when we are in a queue or playground we want equal opportunity. But ought the just to injure anyone at all? Undoubtedly he ought to injure those who are both wicked and his enemies. When horses are injured, are they improved or deteriorated? The latter. Deteriorated, that is to say, in the good qualities of horses, not of dogs? Yes, of horses. And dogs are deteriorated in the good qualities of dogs, and not of horses? Of course. And will not men who are injured be deteriorated in that which is the proper virtue of man? Certainly. And that human virtue is justice? To be sure. 2022-23 Introduction Political Theory Political Theory 11

If we suffer from some disability we want special provisions made. When we cannot even afford basic needs, equal opportunity is not enough. We must be enabled to go to school or get help through proactive measures such as fair distribution of resources (jobs, decent wages, subsidised hospitals, etc.). This requires that some agency be made responsible to ensure fairness. So the reason we have many definitions is because the meaning of equality is dependent on the context. We started with what it meant for ourselves and then proceeded to consider others (the poor, disadvantaged, senior citizens, etc.). We discovered many layers of meaning. We have been doing political theory without realising it. Political theorists clarify the meaning of political concepts by looking at how they are understood and used in ordinary language. They also debate and examine the diverse meanings and opinions in a systematic manner. When is equality of opportunity enough? When do people need special treatment? How far and how long should such special treatment be given? Should poor children be Then men who are injured are of necessity made unjust? That is the result. But can the musician by his art make men unmusical? Certainly not. Or the horseman by his art make them bad horsemen? Impossible. And can the just by justice make men unjust, or speaking general can the good by virtue make them bad? Assuredly not.... Nor can the good harm anyone? Impossible. And the just is the good? Certainly. 2022-23 Introduction Political Theory 12 Political Theory

given midday meals to encourage them to stay in schools? These are some questions which they address. As you can see, these issues are eminently practical; they provide guidelines for framing public policies on education and employment. As in the case of equality, so also in the case of other concepts, political theorists engage with everyday opinions, debate possible meanings and thrash out policy options. Freedom, Citizenship, Rights, Development, Justice, Equality, Nationalism and Secularism are some of the concepts that we will discuss in the following chapters. 1.4 WHY SHOULD WE STUDY POLITICAL THEORY? We may have political ideas but do we need to study political theory? Is it not more suited for politicians who practise politics? Or for bureaucrats who make policies? Or for those who teach political theory? Or for lawyers and judges who interpret the Constitution and laws? Or for activists and journalists who expose exploitation Then to injure a friend or any one else is not the act of a just man, but of the opposite, who is the unjust? I think that what you say is quite true, Socrates. And he who is most skilful in preventing or escaping from a disease is best able to create one? True. And he is the best guard of a camp who is best able to steal a march upon the enemy? Certainly. Then he who is a good keeper of anything is also a good thief? That, I suppose, is to be inferred. Then if the just man is good at keeping money, he is good at stealing it. That is implied in the argument. 2022-23 Introduction Political Theory Political Theory 13 and demand new rights? What do we (high school students) gain by knowing the meaning of freedom or



equality? First of all, political theory is relevant for all the above target groups. As high school students, we may choose one of the above professions in the future and so indirectly it is relevant for us even now. Do we not learn mathematics although not all of us will become mathematicians or engineers? Is it not because basic arithmetic is useful to life in general? Secondly, we are all going to be citizens entitled to vote and decide other issues. To act responsibly, it is helpful to have a basic knowledge of the political ideas and institutions that shape the world we live in. In the information society, it is crucial that we learn to be reasonable and informed if we are to participate in gram sabhas or offer our views on websites and polls. If we simply express arbitrary preferences, we will not be very effective. But if we are thoughtful and mature we can use the new media to discuss and express our common interests. Then after all the just man has turned out to be a thief. ... You would argue that the good are our friends and the bad our enemies? Yes. And instead of saying simply as we did at first, that it is just to do good to our friends and harm to our enemies, we should further say: It is just to do good to our friends when they are good and harm to our enemies when they are evil? Yes, that appears to me to be the truth. But ought the just to injure any one at all? Undoubtedly he ought to injure those who are both wicked and his enemies. When horses are injured, are they improved or deteriorated? The latter. Deteriorated, that is to say, in the good qualities of horses, not of dogs? Yes, of horses. And dogs are deteriorated in the good qualities of dogs, and not of horses? Of course. 2022-23 Introduction Political Theory 14 Political Theory As citizens, we are a bit like the audience in a music concert; we are not the main performers interpreting the song and melody. But we set the agenda and appreciate the output and put in new requests. Have you noticed that musicians perform better when they know the audience is knowledgeable and appreciative? So also an educated and vigilant citizenry makes those who play politics more public-spirited. Thirdly, freedom, equality and secularism are not abstract issues in our lives. We daily encounter discrimination of various sorts in families, schools, colleges, shopping malls and so on. We ourselves have prejudices against people who are different from us, be they of a different caste or religion or gender or class. If we feel oppressed, we want it redressed and if that is delayed, we feel violent revolution is justified. If we are privileged, we deny that there is any oppression even as our maids and servants struggle for dignity. Sometimes, we even feel that our servants deserve the treatment they get. What political theory encourages us to do is examine our ideas and feelings And will not men who are injured be deteriorated in that which is the proper virtue of man? Certainly. And that human virtue is justice? To be sure. Then men who are injured are of necessity made unjust? That is the result. But can the musician by his art make men unmusical? Certainly not. Or the horseman by his art make them bad horsemen? Impossible. And can the just by justice make men unjust, or speaking general can the good by virtue make them bad? Assuredly not.... 2022-23 Introduction Political Theory Political Theory 15 about political things. Just by looking at them more carefully, we become moderate in our ideas and feelings. Finally, as students we enjoy debates and elocution competitions. We have opinions about what is right or wrong, just or unjust but do not know whether they are reasonable or not. Only when we argue with others, we realise the need to defend them and seek out reasons and arguments. Political theory exposes us to systematic thinking on justice or equality so that we can polish our opinions and argue in an informed manner and for the sake of common interests. Such skills of debating rationally and communicating effectively are likely to be great assets in the global informational order. Nor can the good harm any one? Impossible. And the just is the good? Certainly. Then to injure a friend or any one else is not the act of a just man, but of the opposite, who is the unjust? I think that what you say is quite true, Socrates. Then if a man says that justice consists in the repayment of debts, and that good is the debt which a man owes to his friends, and evil the debt which he owes to his enemies, —to say this is not wise; for it is not true, if, as has been clearly shown, the injuring of another can be in no case just. I agree with you, said Polemarchus. 2022-23 Introduction Political Theory 16 Political Theory 1. Which of the following

statements are true/false about Political Theory? (a) It discusses ideas that form the basis of political institutions. (b) It explains the relationship between different religions. (c) It explains the meanings of concepts like equality and freedom. (d) It predicts the performance of political parties. 2. Politics is more than what politicians do. Do you agree with this statement? Give examples. 3. Vigilant citizens are a must for the successful working of a democracy. Comment. 4. In what ways is the study of political theory useful for us? Identify four ways in which political theory can be useful to us? 5. Do you think that a good/convincing argument can compel others to listen to you? 6. Do you think studying political theory is like studying mathematics? Give reasons for your answer.

**Exercises 2022-23**

**Chapter 2 Freedom** Human history provides many examples of people and communities which have been dominated, or enslaved, or exploited, by more powerful groups. But it also provides us with inspiring examples of heroic struggles against such domination. What is this freedom for which people have been willing to sacrifice and die? In its essence, the struggle for freedom represents the desire of people to be in control of their own lives and destinies and to have the opportunity to express themselves freely through their choices and activities. Not just individuals but societies also value their independence and wish to protect their culture and future. However, given the diverse interests and ambitions of people any form of social living requires some rules and regulation. These rules may require some constraints to be imposed on the freedom of individuals but it is recognised that such constraints may also free us from insecurity and provide us with the conditions in which we can develop ourselves. In political theory much of the discussion regarding freedom has therefore focused on trying to evolve principles by which we can distinguish between socially necessary constraints and other restrictions. There has also been debate about possible limitations on freedom which may result from the social and economic structures of a society. In this chapter we will look at some of these debates. After studying this chapter you should be able to:

- o Understand the importance of freedom for individuals and societies.
- o Explain the difference between the negative and positive dimensions of freedom.
- o Explain what is meant by the term 'harm principle'.

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### 2.1 THE IDEAL OF FREEDOM

Before we set out to answer these questions, let us stop for a moment and consider this. The autobiography of one of the greatest persons of the twentieth century, Nelson Mandela, is titled *Long Walk to Freedom*. In this book he talks about his personal struggle against the apartheid regime in South Africa, about the resistance of his people to the segregationist policies of the white regime, about the humiliations, hardships and police brutalities suffered by the black people of South Africa. These ranged from being bundled into townships and being denied easy movement about the country, to being denied a free choice of whom to marry. Collectively, such measures constituted a body of constraints imposed by the apartheid regime that discriminated between citizens based on their race. For Mandela and his colleagues it was the struggle against such unjust constraints, the struggle to remove the obstacles to the freedom of all the people of South Africa (not just the black or the coloured but also the white people), that was the Long Walk to Freedom. For this freedom, Mandela spent twenty-eight years of his life in jail, often in solitary confinement. Imagine what it meant to give up one's youth for an ideal, to voluntarily give up the pleasure of talking with one's friends, of playing one's favourite game (Mandela loved boxing), of wearing one's favourite clothes, of listening to one's favourite music, of enjoying the many festivals that are part of one's life. Imagine giving all these up and choosing instead to be locked up alone in a room, not knowing when one would be released, only because one campaigned for the freedom of one's people. For freedom Mandela paid a very high personal price. Do only great men and women fight for great principles like freedom? What does this principle mean to me?

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**Freedom Political Theory 19** Now, take another case. Gandhiji's thoughts on non-violence have been a source of inspiration for Aung San Suu Kyi as she remained under house arrest in Myanmar, separated from her children, unable to visit her husband when he was dying of cancer, because she feared that if she left Myanmar to visit him in

England she would not be able to return. Aung San Suu Kyi saw her freedom as connected to the freedom of her people. Her book of essays bears the title *Freedom from Fear*. She says, “for me real freedom is freedom from fear and unless you can live free from fear you cannot live a dignified human life”. These are deep thoughts that lead us to pause and consider their implications. We must not, her words suggest, be afraid of the opinions of other people, or of the attitude of authority, or of the reactions of the members of our community to the things we want to do, of the ridicule of our peers, or of speaking our mind. Yet we find that we often exhibit such fear. For Aung San Suu Kyi living a ‘dignified human life’ requires us to be able to overcome such fear. From these two books of Nelson Mandela and Aung San Suu Kyi, we can see the power of the ideal of freedom, an ideal that was at the centre of our national struggle and the struggles of the peoples of Asia and Africa against British, French and Portuguese colonialism.

## 2.2 WHAT IS FREEDOM?

A simple answer to the question ‘what is freedom’ is absence of constraints. Freedom is said to exist when external constraints on the individual are absent. In terms of this definition an individual could be considered free if he/she is not subject to external controls or coercion and is able to make independent decisions and act in an autonomous way. However, absence of constraints is only one dimension of freedom. Freedom is also about expanding the ability. Can you think of someone in your village, town or district who has struggled for his/her own freedom or the freedom of others? Write a short note about that person and the particular aspect of freedom which he/she struggled to protect.

### LET’S DO IT

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of people to freely express themselves and develop their potential. Freedom in this sense is the condition in which people can develop their creativity and capabilities. Both these aspects of freedom — the absence of external constraints as well as the existence of conditions in which people can develop their talents — are important. A free society would be one which enables all its members to develop their potential with the minimum of social constraints. No individual living in society can hope to enjoy total absence of any kind of constraints or restrictions. It becomes necessary then to determine which social constraints are justified and which are not, which are acceptable and which should be removed. To understand which social constraints are necessary, discussions on freedom need to look at the core relationship between the individual and the society (or group, community, or state) within which she/he is placed. That is, we need to examine the relationship between individual and society. We would need to see which features of the society allow the individual the freedom to choose, decide or act, and which do not. We would need to determine which features are desirable and which are not, which should be removed and which should not. Further we need to see if the SWARAJ A concept analogous to Freedom in Indian political thought is ‘Swaraj’. The term Swaraj incorporates within it two words — Swa (Self) and Raj (Rule). It can be understood to mean both the rule of the self and rule over self. Swaraj, in the context of the freedom struggle in India referred to freedom as a constitutional and political demand, and as a value at the social-collective level. That is why Swaraj was such an important rallying cry in the freedom movement inspiring Tilak’s famous statement — “Swaraj is my birth right and I shall have it.” It is the understanding of Swaraj as Rule over the Self that was highlighted by Mahatma Gandhi in his work *Hind Swaraj* where he states, “It is Swaraj when we learn to rule ourselves”. Swaraj is not just freedom but liberation in redeeming one’s self-respect, self-responsibility, and capacities for self-realisation from institutions of dehumanisation. Understanding the real ‘Self’, and its relation to communities and society, is critical to the project of attaining Swaraj. Gandhiji believed the development that follows would liberate both individual and collective potentialities guided by the principle of justice. Needless to say, such an understanding is as relevant to the twenty first century as it was when Gandhiji wrote the *Hind Swaraj* in 1909.

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principles which we use to differentiate necessary from unnecessary constraints also apply to the relationships between individuals and groups and nations. Thus far we have defined freedom as the absence of constraint. To be free means to reduce or

minimise social constraints that limit our ability to make choices freely. However, this is only one aspect of freedom. To put it in another way, freedom also has a positive dimension. To be free a society must widen the area in which individuals, groups, communities or nations, will be able to charter their own destiny and be what they wish to be. Freedom, in this sense, allows the full development of the individual's creativity, sensibilities and capabilities: be it in sports, science, art, music or exploration. A free society is one that enables one to pursue one's interests with a minimum of constraints. Freedom is considered valuable because it allows us to make choices and to exercise our judgement. It permits the exercise of the individual's powers of reason and judgement.

**Sources of Constraints** Restrictions on the freedom of individuals may come from domination and external controls. Such restrictions may be imposed by force or they may be imposed by a government through laws which embody the power of the rulers over the people and which may have the backing of force. This was the form of constraint represented by colonial rulers over their subjects, or by the system of apartheid in South Africa. Some form of government may be inevitable but if the government is a democratic one, the members of a state could retain some control over their rulers. That is why democratic government is considered to be an important means of protecting the freedom of people. But constraints on freedom can also result from social inequality of the kind implicit in the caste system, or which result from extreme economic inequality in a society. The quotation from Subhas Chandra Bose on freedom draws attention to the need for the country to work to remove such constraints. Girls and boys should be free to decide whom they wish to marry. Parents should have no say in this matter."

**LET'S DEBATE " " 2022-23 Freedom Freedom Political Theory 22**

**2.3 WHY DO WE NEED CONSTRAINTS?** We cannot live in a world where there are no constraints. We need some constraints or else society would descend into chaos. Differences may exist between people regarding their ideas and opinions, they may have conflicting ambitions, they may compete to control scarce resources. There are numerous reasons why disagreements may develop in a society which may express themselves through open conflict. We see people around us ready to fight for all kinds of reasons ranging from the serious to the trivial. Rage while driving on the roads, fighting over parking spaces, quarrels over housing or land, disagreements regarding whether a particular film should be screened, all these, and many other issues, can lead to conflict and violence, perhaps even loss of life. Therefore every society needs some mechanisms to control violence and settle disputes. So long as we are able to respect each other's views and do not attempt to impose our views on others we may be able to live freely and with minimum constraints. Ideally, in a free society we should be able to hold our views, develop our own rules of living, and pursue our choices. But the creation of such a society too requires some constraints. At the very least, it requires that we be willing to respect differences of views, opinions and beliefs. However, sometimes, we think that a

**NETAJI SUBHAS CHANDRA BOSE ON FREEDOM** "If we are to bring about a revolution of ideas we have first to hold up before us an ideal which will galvanise our whole life. That ideal is freedom. But freedom is a word which has varied connotations and, even in our country, the conception of freedom has undergone a process of evolution. By freedom I mean all round freedom, i.e., freedom for the individual as well as for society; freedom for the rich as well as for the poor; freedom for men as well as for women; freedom for all individuals and for all classes. This freedom implies not only emancipation from political bondage but also equal distribution of wealth, abolition of caste barriers and social iniquities and destruction of communalism and religious intolerance. This is an ideal which may appear Utopian to hard-headed men and women, but this ideal alone can appease the hunger in the soul." (Presidential Address to the Student's Conference held at Lahore on 19 October 1929)

**2022-23 Freedom Freedom Political Theory 23** strong commitment to our beliefs requires that we must oppose all those who differ from or reject our views. We see their views or ways of living as unacceptable or even undesirable. Under such circumstances we need some legal and political restraints to ensure that differences may be discussed and debated without one group

coercively imposing its views on the other. Worse still, we may be confronted with attempts to bully or harass us so that we conform to their wishes. If so, we may want stronger support from law to ensure that my freedom is protected. The important question however is to identify which constraints on freedom are necessary and justifiable and which are not? What sort of authority, external to the individual, may justifiably say what can be done and what cannot? Further, are there any areas of our life and action that should be left free of all external constraints?

#### 2.4 HARM PRINCIPLE

To answer these questions satisfactorily we have to address the issue of the limits, competence, and consequences of the imposition. We also have to engage with another issue that John Stuart Mill stated so eloquently in his essay *On Liberty*. In the discussions in *LIBERALISM* When we say that someone's parents are very 'liberal', we usually mean that they are very tolerant. As a political ideology, liberalism has been identified with tolerance as a value. Liberals have often defended the right of a person to hold and express his/her opinions and beliefs even when they disagree with them. But that is not all that there is to liberalism. And liberalism is not the only modern ideology that supports tolerance. What is more distinctive about modern liberalism is its focus on the individual. For liberals entities like family, society, community have no value in themselves, but only if these are valued by individuals. They would say, for example, that the decision to marry someone should be taken by the individual rather than by the family, caste or the community. Liberals tend to give priority to individual liberty over values like equality. They also tend to be suspicious of political authority. Historically, liberalism favoured free market and minimal role to the state. However, present day liberalism acknowledges a role for welfare state and accepts the need for measures to reduce both social and economic inequalities.

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political theory it is called the 'harm principle'. Let us quote his statement and then try to explain it. ...the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. Mill introduces here an important distinction. He distinguishes between 'self-regarding' actions, i.e., those actions that have consequences only for the individual actor and nobody else, and 'other regarding' actions, i.e., those actions that also have consequences for others. He argues that with respect to actions or choices that affect only one's self, self-regarding actions, the state (or any other external authority) has no business to interfere. Or put in simple language it would be: 'That's my business, I'll do what I like', or 'How does it concern you, if it does not affect you?' In contrast, with respect to actions that have consequences for others, actions which may cause harm to them, there is some case for external interference. After all if your actions cause me harm then surely I must be saved from such harm by some external authority? In this case it is the state which can constrain a person from acting in a way that causes harm to someone else. However, as freedom is at the core of human society, is so crucial for a dignified human life, it should only be constrained in special circumstances. The 'harm caused' must be 'serious'. For minor harm, Mill recommends only social disapproval and not the force of law. For example the playing of loud music in an apartment building should bring only social disapproval from the other residents of the building. They should not involve the police. They should indicate their disapproval, of the inconvenience that playing loud music has caused them, by perhaps refusing to greet the person who plays the music disregarding the harm it is causing others. The harm that playing loud music causes is that of preventing those in other apartments from talking, or sleeping, or listening to their own music. Why does he talk about 'mankind'? What about women?

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This is minor harm and should only provoke social disapproval. It is not a fit case for legal punishment. Constraining actions by the force of law should only happen when the other regarding actions cause serious harm to definite individuals. Otherwise society must bear the inconvenience in the spirit of protecting freedom. People should be ready to tolerate different ways

of life, different points of view, and the different interests, so long as they do not cause harm to others. But such tolerance need not be extended to views and actions which may put people in danger or foment hatred

**LET'S THINK The Issue of Dress Code** If choosing what to wear is an expression of one's freedom then how should we look at the following situations where there are restrictions on dress?

- o In China during Mao's regime all the people had to wear 'Mao suits' based on the argument that it was an expression of equality.
- o A fatwa was issued against Sania Mirza for her style of dress that was considered, by one cleric, to be against the dress code prescribed for women.
- o The rules of a test match in cricket require every cricketer to wear white dress.
- o Students are required to wear school uniforms.

Let us debate some questions.

- o Is the restriction on what to wear justified in all cases or only in some? When does it constitute a constraint on freedom?
- o Who has the authority to impose these constraints? Should religious leaders be given the authority to issue decrees on dress? Can the state decide what one should wear? Should the ICC set down rules of what to wear when playing cricket?
- o Is the imposition excessive? Does it diminish the many ways, people have of expressing themselves?
- o What are the consequences of accepting the impositions? Will the society become 'equal' if everyone dresses the same way as in Maoist China? Or are women being denied the participation in sports if they cannot wear clothes that would help them to compete effectively? Will the game be affected if cricketers wear coloured clothes?

**2022-23 Freedom Political Theory 26** against them. Hate campaigns cause serious harm to the freedom of others and actions that cause 'serious harm' are actions on which constraints can be imposed. But we must make sure that the constraints imposed are not so severe that they destroy freedom itself. For example, we must not ask for life imprisonment for those who only conduct hate campaign. Maybe some restriction on their movement, or some curtailment of their right to hold public meetings can be considered especially if they continue to carry on this campaign in spite of warnings by the state to desist from conducting such campaigns. In the constitutional discussions in India, the term used for such justifiable constraints is 'reasonable restrictions'. The restrictions may be there but they must be reasonable, i.e., capable of being defended by reason, not excessive, not out of proportion to the action being restricted, since then it would impinge on the general condition of freedom in society. We must not develop a habit of imposing restrictions since such a habit is detrimental to freedom.

**2.5 NEGATIVE AND POSITIVE LIBERTY** Earlier in the chapter we had mentioned two dimensions of freedom school— freedom as the absence of external constraints, and freedom as the expansion of opportunities to express one's self. In political theory these have been called negative and positive liberty. 'Negative liberty' seeks to define and defend an area in which the individual would be inviolable, in which he or she could 'do, be or become' whatever he or she wished to 'do, be or become'. This is an area in which no external authority can interfere. It is a minimum area that is sacred and in which whatever the individual does, is not to be interfered with. The existence of the 'minimum area of noninterference' is the recognition that human nature and human dignity need an area where the person can act unobstructed by others. How big should this area be, or what should it contain, are matters of discussion, and will continue to be matters of debate since the bigger the area of non-interference the more the freedom. All we need to recognise is that the negative liberty tradition argues for an inviolable area of non-interference in which the individual can express himself or herself. If the area is too small

**2022-23 Freedom Political Theory 27** then human dignity gets compromised. We may here ask the obvious question: Is the choice of what clothes to wear in different situations – school, playing-field, office – a choice that belongs to the minimum area and therefore one that cannot be interfered with by external authority or is it a choice that can be interfered with by state, religious authority, ICC or CBSE. Negative liberty arguments are in response to the question: 'Over what area am I the master?' It is concerned with explaining the idea of 'freedom from'. In contrast, the arguments of positive liberty are concerned with explaining the idea of 'freedom to'. They are in response to the answer 'who governs me?' to

which the ideal answer is 'I govern myself'. Positive liberty discussions have a long tradition that can be traced to Rousseau, Hegel, Marx, Gandhi, Aurobindo, and also to those who draw their inspiration from these thinkers. It is concerned with looking at the conditions and nature of the relationship between the individual and society and of improving these conditions such that there are fewer constraints to the development of the individual personality. The individual is like a flower that blossoms when the soil is fertile, and the sun is gentle, and the water is adequate, and the care is regular. The individual to develop his or her capability must get the benefit of enabling positive conditions in material, political and social domains. That is, the person must not be constrained by poverty or unemployment; they must have adequate material resources to pursue their wants and needs. They must also have the opportunity to participate in the decision making process so that the laws made reflect their choices, or at least take those preferences into account. Above all, to develop their mind and intellect, individuals must have access to education and other associated opportunities necessary to lead a reasonably good life. Positive liberty recognises that one can be free only in society (not outside it) and hence tries to make that society such that it enables the development of the individual whereas negative liberty is only concerned with the inviolable area of non-interference and not with the conditions in society, outside this area, as such. Of course negative liberty would like to expand this minimum area as Do we have the freedom to destroy our environment? 2022-23 Freedom Freedom Political Theory 28 much as is possible keeping in mind, however, the stability of society. Generally they both go together and support each other, but it can happen that tyrants justify their rule by invoking arguments of positive liberty. Freedom of Expression One of the issues that is considered to belong to the minimum area of 'non-interference' is the freedom of expression. J.S.Mill set out good reasons why freedom of expression should not be restricted. This is a good case for discussion. At various times there have been demands to ban books, plays, films, or academic articles in research journals. Let us think about this demand to ban books in the light of our discussion so far which sees freedom as 'the making of choices', where a distinction is made between 'negative and positive liberty', where we recognise the need for 'justifiable constraints' but these have to be supported by proper procedures and important moral arguments. Freedom of expression is a fundamental value and for that society must be willing to bear some inconvenience to protect it from people who want to restrict it. Remember Voltaire's statement — 'I disapprove of what you say but I will defend to death your right to say it'. How deeply are we committed to this freedom of expression? Some years ago Deepa Mehta, film maker, wanted to make a film about widows in Varanasi. It sought to explore the plight of widows but there was a strong protest from a section of the polity who felt that it would show India in a very bad light, who felt it was being made to cater to foreign audiences, who felt it would bring a bad name to the ancient town. They refused to allow it to be made and as a result it could not be made in Varanasi. It was subsequently made elsewhere. Similarly the book Ramayana Retold by Aubrey Menon and The Satanic Verses by Salman Rushdie were banned after protest from some sections of society. The film The Last Temptation of Christ and the play Me Nathuram Boltey were also banned after protests. Banning is an easy solution for the short term since it meets the immediate demand but is very harmful for the long-term prospects of freedom in a society because once one begins to ban then one develops a habit of banning. But does this mean that we should never ban? After all we do have censorship of films. Is it not similar 2022-23 Freedom Freedom Political Theory 29 to banning, where only a portion of a film is banned and not the whole film? The question that is often debated, therefore, is: When should one ban and when should one not? Should one never ban? Just for interest, in England anyone who is employed to work for the Royal household is constrained by contract (a constraint?) from writing about the inner affairs of the household. So if such a person were to leave the employment they would be unable to give an interview or write an article or author a book about the politics of the Royal household. Is this an unjustifiable constraint on the

freedom of expression? Constraints of different kind thus exist and we are subject to them in different situations. While reflecting on such situations we need to realise that when constraints are backed by organised social — religious or cultural — authority or by the might of the state, they restrict our freedom in ways that are difficult to fight against. However, if we willingly, or for the sake of pursuing our goals or ambitions, accept certain restrictions, our freedom is not similarly limited. In any case if we are not coerced into accepting the conditions, then we cannot claim that our freedom has been curtailed.

**FREEDOM OF EXPRESSION** John Stuart Mill, a political thinker and an activist in the nineteenth century Britain, offered a passionate defence of freedom of expression, including freedom of thought and discussion. In his book *On Liberty* he offered four reasons why there should be freedom of expression even for those who espouse ideas that appear 'false' or misleading today. First, no idea is completely false. What appears to us as false has an element of truth. If we ban 'false' ideas, we would lose that element of truth that they contain. This is related to the second point. Truth does not emerge by itself. It is only through a conflict of opposing views that truth emerges. Ideas that seem wrong today may have been very valuable in the emergence of what we consider right kind of ideas. Thirdly, this conflict of ideas is valuable not just in the past but is of continuing value for all times. Truth always runs the risk of being reduced to an unthinking cliché. It is only when we expose it to opposing views that we can be sure that this idea is trustworthy. Finally, we cannot be sure that what we consider true is actually true. Very often ideas that were considered false at one point by the entire society and, therefore, suppressed turned out to be true later on. A society that completely suppresses all ideas that are not acceptable today, runs the danger of losing the benefits of what might turn out to be very valuable knowledge.

**2022-23 Freedom**

**Political Theory 30** We began by saying that freedom is the absence of external constraints. We have now come to realise that freedom embodies our capacity and our ability to make choices. And when we make choices, we have also to accept responsibility for our actions and their consequences. It is for this reason that most advocates of liberty and freedom maintain that children must be placed in the care of parents. Our capacity to make the right choices, to assess in a reasoned manner available options, and shoulder the responsibility of our actions, have to be built through education and cultivation of judgement just as much as it needs to be nurtured by limiting the authority of the state and the society.

**Exercises**

1. What is meant by freedom? Is there a relationship between freedom for the individual and freedom for the nation?
2. What is the difference between the negative and positive conception of liberty?
3. What is meant by social constraints? Are constraints of any kind necessary for enjoying freedom?
4. What is the role of the state in upholding freedom of its citizens?
5. What is meant by freedom of expression? What in your view would be a reasonable restriction on this freedom? Give examples.

Credit: Images on opening page: <http://www.africawithin.com> (Nelson Mandela) and <http://www.ibiblio.org> (Suu Kyi)

**2022-23 Chapter 3 Equality** This chapter is about the concept of equality, a value that is also enshrined in our Constitution. In reflecting on this concept it examines the following questions:

- o What is equality? Why should we be concerned about this moral and political ideal?
- o Does the pursuit of equality involve treating everyone the same way in every condition?
- o How may we pursue equality and minimise inequality in different spheres of life?
- o How do we distinguish between different dimensions of equality — political, economic and social?

In the course of understanding and answering these questions, you would encounter some important ideologies of our time — socialism, marxism, liberalism and feminism. In this chapter you will see facts and figures about the conditions of inequality. These are only for you to appreciate the nature of inequality; the facts and figures need not be memorised.

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**Political Theory 3.1 WHY DOES EQUALITY MATTER?** Equality is a powerful moral and political ideal that has inspired and guided human society for many centuries. It is implicit in all faiths and religions which proclaim all human beings to be the creation of God. As a political ideal the concept of equality invokes the idea that all human beings have an equal worth regardless of their colour,



gender, race, or nationality. It maintains that human beings deserve equal consideration and respect because of their common humanity. It is this notion of a shared humanity that lies behind, for instance, the notions of universal human rights or 'crimes against humanity'. In the modern period the equality of all human beings has been used as a rallying slogan in the struggles against states and social institutions which uphold inequalities of rank, wealth status or privilege, among people. In the eighteenth century, the French revolutionaries used the slogan 'Liberty, Equality and Fraternity' to revolt against the landed feudal aristocracy and the monarchy. The demand for equality was also raised during anti-colonial liberation struggles in Asia and Africa during the twentieth century. It continues to be raised by struggling groups such as Everyone I know believes in a religion. Every religion I know preaches equality. Then why is there inequality in the world? Search for quotations from different religious scriptures that affirm the ideal of equality. Read these in the classroom. LET'S DO IT Do 2022-23 Equality Equality Political Theory 33 women or dalits who feel marginalised in our society. Today, equality is a widely accepted ideal which is embodied in the constitutions and laws of many countries. Yet, it is inequality rather than equality which is most visible around us in the world as well as within our own society. In our country we can see slums existing side by side with luxury housing, schools with world class facilities and airconditioned classrooms along with schools which may lack even drinking water facilities or toilets, waste of food as well as starvation. There are glaring differences between what the law promises and what we see around us. Read the accompanying fact sheet on global inequalities and the table on inequalities within our country. FACT SHEET ON GLOBAL INEQUALITIES 1. The richest 50 individuals in the world have a combined income greater than that of the poorest 40 crore people. 2. The poorest 40 per cent of the world's population receive only 5 per cent of global income, while the richest 10 per cent of the world's population controls 54 per cent of global income. 3. The first world of the advanced industrial countries, mainly North America and Western Europe, with 25 per cent of the world's population, owns 86 per cent of the world's industry, and consumes 80 per cent of the world's energy. 4. On a per capita basis, a resident of the advanced industrial countries consumes at least three times as much water, ten times as much energy, thirteen times as much iron and steel and fourteen times as much paper as someone living in a developing country like India or China. 5. The risk of dying from pregnancy related causes is 1 to 18 in Nigeria but 1 to 8700 in Canada. 6. The industrial countries of the first world account for nearly two-thirds of the global emissions of carbon dioxide from the combustion of fossil fuels. They also account for three-quarters of emissions of sulphur and nitrogen oxide that cause acid rain. Many industries known for their high rate of pollution are being shifted from the developed countries to the less developed countries. Source: Human Development Report, 2005, UNDP. 33 2022-23 Equality Equality 34 Political Theory ECONOMIC INEQUALITIES IN INDIA Here are some findings from the Census of India held in 2011 about household amenities and assets. You don't need to memorise any of these figures. Just read these to understand the extent of urban-rural disparities in the country. Where would your own family fit? Families that have... Rural Urban Put ü or ü for families families your family Electricity connection 55% 93% Tap water in the house 35% 71% Bathroom in the house 45% 87% Television 33% 77% Scooter/Moped/ Motorcycle 14% 35% Car/Jeep/ Van 2% 10% Thus we face a paradox : almost everyone accepts the ideal of equality, yet almost everywhere we encounter inequality. We live in a complex world of unequal wealth, opportunities, work situations, and power. Should we be concerned about these kinds of inequalities? Are they a permanent and inevitable feature of social life which reflects the differences of talent and ability of human beings as well as their different contributions towards social progress and prosperity? Or are these inequalities a consequence of our social position and rules? These are questions that have troubled people all over the world for many years. It is a question of this kind that makes equality one of the central themes of social and political theory. A student of political theory has to address a range of questions, such as, what does equality imply? Since we are different in many obvious ways, what does it mean to say

that we are equal? What are we trying to achieve through the ideal of equality? Are we trying to eliminate all differences of income and status? In other words, what kind of equality are we pursuing, and for whom? Some other questions that have been raised regarding Why talk about global or national inequalities when all around us there are inequalities to which nobody seems to object? Just look at the way my parents favour my brother over me. 2022-23 Equality Equality Political Theory 35

the concept of equality which we will consider here are : to promote equality should we always treat all persons in exactly the same way? How should a society decide which differences of treatment or reward are acceptable and which are not? Also, what kind of policies should we pursue to try and make the society more egalitarian? 3.2 WHAT IS EQUALITY? Take a look at these images. All of them make distinctions between human beings on grounds of race and colour and these appear to most of us as unacceptable. In fact, such distinctions violate our intuitive understanding of equality which tells us that all human beings should be entitled to the same respect and consideration because of their common humanity. However, treating people with equal respect need not mean always treating them in an identical way. No society treats all its members in exactly the same way under all conditions. The smooth functioning of society requires division of work and functions and people often enjoy different status and rewards on account of it. At times these differences of treatment may appear acceptable or even necessary. For instance, we usually do not feel that giving prime ministers, or army generals, a special official rank and status goes against the notion of equality, provided their privileges are not misused. But DRINKING FOUNTAIN WHITE COLOURED COLOURED SERVED IN REAR REST ROOMS WHITE ONLY 2022-23 Equality Equality 36 Political Theory

some other kinds of inequalities may seem unjust. For instance, if a child born in a slum is denied nutritious food or good education through no fault of his/her own, it may appear unfair to us. The question that arises is which distinctions and differences are acceptable and which are not? When people are treated differently just because they are born in a particular religion or race or caste or gender, we regard it as an unacceptable form of inequality. But human beings may pursue different ambitions and goals and not all may be equally successful. So long as they are able to develop the best in themselves we would not feel that equality has been undermined. Some may become good musicians while others may not be equally outstanding, some become famous scientists while others more noted for their hard work and conscientiousness. The commitment to the ideal of equality does not imply the elimination of all forms of differences. It merely suggests that the treatment we receive and the opportunities we enjoy must not be pre-determined by birth or social circumstance.

Equality of Opportunities The concept of equality implies that all people, as human beings, are entitled to the same rights and opportunities to develop their skills and talents, and to pursue their goals and ambitions. This means that in a society people may differ with regard to their choices and preferences. They may also have different talents and skills which results in some being more successful in their chosen careers than others. But just because only some become ace cricketers or successful lawyers, it does not follow that the society should be considered unequal. In other words, it is not the lack of equality of status or wealth or privilege that is significant but the inequalities in people's access to such basic goods, as education, health care, safe housing, that make for an unequal and unjust society.

Natural and Social Inequalities A distinction has sometimes been made in political theory between natural inequalities and socially-produced inequalities. Natural inequalities are those that emerge between people as a result of their different capabilities and talents. These kinds of inequalities 2022-23 Equality Equality Political Theory 37 are different from socially-produced inequalities which emerge as a consequence of inequalities of opportunity or the exploitation of some groups in a society by others. Natural inequalities are considered to be the result of the different characteristics and abilities with which people are born. It is generally assumed that natural differences cannot be altered. Social inequalities on the other hand are those created by society. Certain societies may, for instance, value those who perform intellectual work over those

who do manual work and reward them differently. They may treat differently people of different race, or colour, or gender, or caste. Differences of this kind reflect the values of a society and some of these may certainly appear to us to be unjust. This distinction is sometimes useful in helping us to distinguish between acceptable and unfair inequalities in society but it is not always clear or self-evident. For instance, when certain inequalities in the treatment of people have existed over a long period of time they may appear to us as justifiable because they are based on natural inequalities, that is, characteristics that people are born with and cannot easily change. For example, women were for long described as 'the weaker sex', considered timid and of lesser intelligence than men, needing special protection. Therefore, it was felt that denying women equal rights could be justified. Black people in Africa were considered by their colonial masters to be of lesser intelligence, child-like, and better at manual work, sports and music. This belief was used to justify institutions like slavery. All these assessments are now questioned. They are now seen as Men are superior to women. It is a natural inequality. You can't do anything about it. I get more marks than you in every subject. And I also help my mother in housework. What makes you superior?

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Another problem which arises with the idea of natural differences is that some differences which could be considered natural need no longer be seen as unalterable. For instance, advances in medical science and technologies have helped many disabled people to function effectively in society. Today, computers can help blind people, wheel chairs and artificial limbs can help in cases of physical disability, even a person's looks can be changed with cosmetic surgery. The famous physicist Stephen Hawking can hardly move or speak but he has made major contributions to science. It would seem unjust to most people today if disabled people are denied necessary help to overcome the effects of their disability or a fair reward for their work on the grounds that they are naturally less capable. Given all these complexities, it would be difficult to use the natural/ socially-produced distinction as a standard by which the laws and policies of a society can be assessed. For this reason many theorists today differentiate between inequality arising from our choices and inequalities operating on account of the family or circumstance in which a person is born. It is the latter that is a source of concern to advocates of equality and which they wish to minimise and eliminate.

### 3.3 THREE DIMENSIONS OF EQUALITY

After considering what kind of social differences are unacceptable we need to ask what are the different dimensions of equality that we may pursue or seek to achieve in society. While identifying different kinds of inequalities that exist in society, various thinkers and ideologies have highlighted three main dimensions of equality namely, political, social and economic. It is only by addressing each of these three different dimensions of equality can we move towards a more just and equal society.

#### Political Equality

In democratic societies political equality would normally include granting equal citizenship to all the members of the state. As you distinctions made by society as a result of the differences of power between people and nations rather than based on their inborn characteristics.

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39 will read in the chapter on Citizenship, equal citizenship brings with it certain basic rights such as the right to vote, freedom of expression, movement and association and freedom of belief. These are rights which are considered necessary to enable citizens to develop themselves and participate in the affairs of the state. But they are legal rights, guaranteed by the constitution and laws. We know that considerable inequality can exist even in countries which grant equal rights to all citizens. These inequalities are often the result of differences in the resources and opportunities which are available to citizens in the social and economic spheres. For this reason a demand is often made for equal opportunities, or for 'a level playing field'. But we should remember that although political and legal equality by itself may not be sufficient to build a just and egalitarian society, it is certainly an important component of it.

#### Social Equality

Political equality or equality before the law is an important first step in the pursuit of equality but it often needs to be supplemented by equality of opportunities. While the former is necessary to remove any legal hurdles which might exclude

people from a voice in government and deny them access to available social goods, the pursuit of equality requires that people belonging to different groups and communities also have a fair and equal chance to compete for those goods and opportunities. For this, it is necessary to minimise the effects of social and economic inequalities and guarantee certain minimum conditions of life to all the members of the society — adequate health care, the opportunity for good education, adequate nourishment and a minimum wage, among other things. In the absence of such facilities it is exceedingly difficult for all the members of the society to compete on equal terms. Where equality of opportunity does not exist a huge pool of potential talent tends to be wasted in society. In India, a special problem regarding equal opportunities comes not just from lack of facilities but from some of the customs which may prevail in different parts of country, or among different groups. Women, for instance, may not enjoy equal rights of inheritance in some groups, or there may be social prohibitions regarding their taking part in certain kinds of activities, or they may even be discouraged from obtaining higher education. The state has a significant role in such matters. It should make policies to prevent discrimination or harassment of women in public places or employment, to provide incentives to open up education or certain professions to women, and other such measures. But social groups and individuals also have a role to play in raising awareness and supporting those who want to exercise their rights.

**Economic Inequality** At the simplest level, we would say that economic inequality exists in a society if there are significant differences in wealth, property or income between individuals or classes. One way of measuring the degree of economic inequality in a society would be to measure the relative difference between the richest and poorest groups. Another way could be to estimate the number of people who live below the poverty line. Of course, absolute equality of wealth or income has probably never existed in a society. Most democracies today try to make equal opportunities available to people in the belief that this would at least give those who have talent and determination the chance to improve their condition.

**With equal opportunities, inequalities may continue to exist between individuals but there is the possibility of improving one's position in society with sufficient effort. Inequalities which are entrenched, that is, which remain relatively untouched over generations, are more dangerous for a society. If in a society certain classes of people have enjoyed considerable wealth, and the power which goes with it, over generations, the society would become divided between those classes and others who have remained poor over generations. Over time such class differences can give rise to resentment and violence. Because of the power of the wealthy classes it might prove difficult to reform such a society to make it more open and egalitarian.**

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**41 READ A CARTOON** Racial Inequality in the United States Find out more about racial inequality in the US. Which group or groups in our country suffer from similar inequality? What kind of policies have been adopted in the US to reduce this inequality? Is there something to be learnt from their experience? Can they learn something from our experience?

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**FEMINISM** Feminism is a political doctrine of equal rights for women and men. Feminists are those men and women who believe that many of the inequalities we see in society between men and women are neither natural nor necessary and can be altered so that both women

and men can lead free and equal lives. According to feminists, inequality between men and women in society is the result of patriarchy. This term refers to a social, economic and cultural system that values men more than women and gives men power over women. Patriarchy is based on the assumption that men and women are different by nature and that this difference justifies their unequal positions in society. Feminists question this way of thinking by making a distinction between “sex” i.e. biological difference between men and women, and “gender” which determines the different roles that men and women play in society. For instance, the biological fact that only women can become pregnant and bear children does not require that only women should look after children after they are born. Feminists show us that much of the inequality between men and women is produced by society and not by nature. Patriarchy produces a division of labour by which women are supposed to be responsible for “private” and “domestic” matters while men are responsible for work in the “public” domain. Feminists question this distinction by pointing out that in fact most women are also active in the “public” domain. That is, most women all over the world are employed in some form of work outside the home, but women continue to be solely responsible for housework as well. However, despite this “double burden” as feminists term it, women are given little or no say in decisions taken in the public domain. Feminists contend that this public/ private distinction and all forms of gender inequalities can and should be eliminated.

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**Equality Political Theory 43** Marxism and liberalism are two important political ideologies of our times. Marx was an important nineteenth century thinker who argued that the root cause of entrenched inequality was private ownership of important economic resources such as oil, or land, or forests, as well as other forms of property. He pointed out that such private ownership did not only make the class of owners wealthy, it also gave them political power. Such power enables them to influence state policies and laws and this could prove a threat to democratic government. Marxists and socialists feel that economic inequality provides support to other forms of social inequality such as differences of rank or privilege. Therefore, to tackle inequality in society we need to go beyond providing equal opportunities and try and ensure public control over essential resources and forms of property. Such views may be debatable but they have raised important issues which need to be addressed. An opposing point of view can be found in liberal theories. Liberals uphold the principle of competition as the most efficient and fair way of distributing resources and rewards in society. They believe that while states may have to intervene to try and ensure a minimum standard of living and equal opportunities for all, this cannot by itself bring equality and justice to society. Competition between people in free and fair conditions is the most just and efficient way of distributing rewards in a society. For them, as long as competition is open and free, inequalities are unlikely to become entrenched and people will get due reward for their talents and efforts. For liberals the principle of competition is the most just and efficient way of selecting candidates for jobs or admission to educational institutions. For instance, in our country many students hope for admission to professional courses and entry is highly competitive. From time to time, the government and the courts have stepped in to regulate educational institutions and the entrance tests to ensure that everybody gets a fair and equal chance to compete. Some may still not get admission but it is considered to be a fair way of distributing limited seats.

**Make a list of all the social and economic inequalities that you notice among the students of your own school. LET’S DO IT**

**Do 2022-23 Equality**

**Equality 44 Political Theory** Unlike socialists, liberals do not believe that political, economic and social inequalities are necessarily linked. They maintain that inequalities in each of these spheres should be tackled appropriately. Thus, democracy could help to provide political equality but it might be necessary to also devise different strategies to deal with social differences and economic inequalities. The problem for liberals is not inequality as such, but unjust and entrenched inequalities which prevent individuals from developing their capabilities.

**3.4 HOW CAN WE PROMOTE EQUALITY?** We have already noted some of the basic differences among the socialists and the liberals on the most

desirable way of achieving the goal of equality. While the relative merits and limitations of each of these points of view are being debated the world over, we still need to consider what principles and policies might be SOCIALISM Socialism refers to a set of political ideas that emerged as a response to the inequalities present in, and reproduced by, the industrial capitalist economy. The main concern of Socialism is how to minimise existing inequality and distribute resources justly. Although advocates of socialism are not entirely opposed to the market, they favour some kind of government regulation, planning and control over certain key areas such as education and health care. In India the eminent socialist thinker Rammanohar Lohia, identified five kinds of inequalities that need to be fought against simultaneously: inequality between man and woman, inequality based on skin colour, caste-based inequality, colonial rule of some countries over others, and, of course, economic inequality. This might appear a self-evident idea today. But during Lohia's time it was common for the socialists to argue that class inequality was the only form of inequality worth struggling against. Other inequalities did not matter or would end automatically if economic inequality could be ended. Lohia argued that each of these inequalities had independent roots and had to be fought separately and simultaneously. He did not speak of revolution in the singular. For him struggle against these five inequalities constituted five revolutions. He added two more revolutions to this list : revolution for civil liberties against unjust encroachments on private life and revolution for non-violence, for renunciation of weapons in favour of Satyagraha. These were the seven revolutions or Sapta Kranti which for Lohia was the ideal of socialism. 2022-23 Equality Equality Political Theory 45 considered necessary for pursuing equality. Specifically, we need to consider if the use of affirmative action is justified for purposes of bringing about equality. This issue has raised a lot of controversy in recent years and we will discuss this issue in the following section. Establishing Formal Equality The first step towards bringing about equality is, of course, ending the formal system of inequality and privileges. Social, economic and political inequalities all over the world have been protected by customs and legal systems that prohibited some sections of society from enjoying certain kinds of opportunities and rewards. Poor people were not granted the right to vote in a large number of countries. Women were not allowed to take up many professions and activities. The caste system in India prevented people from the 'lower' castes from doing anything except manual labour. In many countries only people from some families could occupy high positions. Attainment of equality requires that all such restrictions or privileges should be brought to an end. Since many of these systems have the sanction of law, equality requires that the government and the law of the land should stop protecting these systems of inequality. This is what our Constitution does. The Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Our Constitution also abolishes the practice of untouchability. Most modern constitutions and democratic governments have formally accepted the principle of equality and incorporated it as identical treatment by law to all citizens without any regard to their caste, race, religion or gender. Equality Through Differential Treatment However, as we noted earlier, formal equality or equality before law is necessary but not sufficient to realise the principle of equality. Sometimes it is necessary to treat people differently in order to ensure that they can enjoy equal rights. Certain differences between people may have to be taken into account for this purpose. For instance, disabled people may justifiably demand special ramps in public spaces so that they get an equal chance to enter public 2022-23 Equality Equality 46 Political Theory buildings. Or women working in call centres at night may need special protection during the journey to and from the centre so that their equal right to work may be protected. These should not be seen as infringements of equality but as enhancement of equality. What kinds of differences hinder access to equal opportunities and what kinds of policies may be pursued to overcome those hindrances are questions that are being discussed in almost all societies today. Some countries have used policies of affirmative action to enhance equality of opportunity. In our country we have relied on the policy of reservations. In the next section, we will attempt to understand the idea of affirmative action and

understand some of the issues raised by specific policies within that framework. Make a list of all the facilities that students with various kinds of physical handicaps would need to learn as any other student. Which of these facilities are available in your school? LET'S DO IT Do 2022-23 Equality

Equality Political Theory 47 Affirmative Action Affirmative action is based on the idea that it is not sufficient to establish formal equality by law. When we wish to eliminate inequalities that are deeply rooted, it is necessary to take some more positive measures to minimise and eliminate entrenched forms of social inequalities. Most policies of affirmative action are thus designed to correct the cumulative effect of past inequalities. Affirmative action can however take many forms, from preferential spending on facilities for disadvantaged communities, such as, scholarships and hostels to special consideration for admissions to educational institutions and jobs. In our country we have adopted a policy of quotas or reserved seats in education and jobs to provide equality of opportunity to deprived groups, and this has been the subject of considerable debate and disagreement. The policy has been defended on the ground that certain groups have been victims of social prejudice and discrimination in the form of exclusion and segregation. These communities who have suffered in the past and been denied equal opportunities cannot be immediately expected to compete with others on equal terms. Therefore, in the interest of creating an egalitarian and just society they need to be given special protection and help. Special assistance in the form of affirmative action is expected to be a temporary or time-bound measure. The assumption is that special consideration will enable these communities to overcome the existing disadvantages and then compete with others on equal terms. Although policies of affirmative action are supported for making the society more equal, many theorists argue against them. They question whether treating people differently can ever lead to greater equality. Critics of positive discrimination, particularly policies of reservations, thus invoke the principle of equality to argue against such policies. They contend that any provision of reservations or quotas for the deprived in admissions for higher education or jobs is unfair as it arbitrarily denies other sections of society their right to equal treatment. They maintain that reservations are a form of reverse discrimination and they continue with the practices that the principle of equality questions and rejects. Equality requires that all persons 2022-23 Equality

Equality 48 Political Theory be treated alike, and when we make distinctions between individuals on the basis of their caste or colour, we are likely to reinforce caste and racial prejudices. For these theorists, the important thing is to do away with social distinctions that divide our society. In the context of this debate, it is relevant to draw a distinction between equality as a guiding principle of state policy and equal rights of individuals. Individuals have a right to equal consideration for admission to educational institutions and public sector employment. But competition should be fair. Sometimes when competing for limited seats or jobs people from deprived strata may be at a disadvantage. The needs and circumstances of a first generation learner whose parents and ancestors were illiterate are very different from those who are born into educated families. Members of excluded groups, whether they are dalits, women, or any other category, deserve and need some special help. To provide this, the state must devise social policies which would help to make such people equal and give them a fair chance to compete with others. The fact is that in the spheres of education and health care India has done far less for its deprived population than what is their due. Inequalities in school education are glaring. Many poor children in rural areas or urban slums have little chance of attending schools. If they do get the chance, their schools have little to offer that would be comparable to the facilities available in elite schools. The inequalities with which children enter school tend to continue to hamper their chances to improve their qualifications or get good jobs. These students face hurdles in gaining admission to elite professional courses because they lack the means to pay for special coaching. The fees for professional courses also may be prohibitively high. Consequently, they cannot compete on equal terms with the more privileged sections. Social and economic inequalities of this kind hinder the pursuit of equal opportunities. Most theorists

today recognise this. What they contest is not the goal of equal opportunity but the policies. Policies of affirmative action for the Scheduled Castes and Scheduled Tribes should be extended to admission to private educational institutions. LET'S DEBATE " " 2022-23 Equality Equality Political Theory 49 that the state should pursue to achieve that goal. Should the state reserve seats for the deprived communities or should they provide special facilities that can help to develop talents and skills from an early age? How should we define who is deprived? Should we use an economic criterion to identify the deprived, or should we use social inequalities arising from the caste system in our country as the basis of identifying the deprived groups? These are aspects of social policy that are today being debated. Ultimately the policies that we choose would have to be justified in terms of their success in making the society more egalitarian and fair to all. While reflecting on the issue of equality, a distinction must also be made between treating everyone in an identical manner and treating everyone as equal. The latter may on occasions need differential treatment but in all such cases the primary consideration is to promote equality. Differential or special treatment may be considered to realise the goal of equality but it requires justification and careful reflection. Since differential treatment for different communities was part and parcel of the caste system and practices like apartheid, liberals are usually very wary of deviations from the norm of identical treatment. LET'S THINK Consider the following situations. Is special and differential treatment justified in any of the following?

- o Working women should receive maternity leave.
- o A school should spend money to buy special equipment for two visually challenged students.
- o Geeta plays brilliant basketball, so the school should build a basketball court for her so that she can develop her skills further.
- o Jeet's parents want him to wear a turban in school, and Irfan's parents want him to pray on Friday afternoon, so the school should not insist that Jeet should wear a helmet while playing cricket, and Irfan's teacher should not ask him to stay back for extra classes on Friday.

2022-23 Equality Equality 50 Political Theory Many of these issues relating to the pursuit of equality have been raised by the women's movement. In the nineteenth century women struggled for equal rights. They demanded, for instance, the right to vote, the right to receive degrees in colleges and universities and the right to work — that is, the same rights as the men in their society. However, as they entered the job market they realised that women required special facilities in order to exercise these rights. For instance, they required some provision for maternity leave and crèches in the workplace. Without special considerations of this kind, they could not seriously compete for jobs or enjoy a successful professional and personal life. They needed, in other words, sometimes to be treated differently if they are to enjoy the same rights as men. As we deliberate on issues of equality and examine whether different treatment is warranted in a particular case, we need continuously to ask ourselves whether differential treatment is essential to ensure that a set of people can enjoy the same rights as the rest of society. Caution must, however, be exercised to see that differential treatment does not yield new structures of dominance and oppression, or become a means for some dominant groups to reassert special privileges and power in society. Differential treatment is intended and justified only as a means to promoting a just and egalitarian society. 2022-23 Equality Equality Political Theory 51 Exercises 1. Some people argue that inequality is natural while others maintain that it is equality which is natural and the inequalities which we notice around us are created by society. Which view do you support? Give reasons. 2. There is a view that absolute economic equality is neither possible nor desirable. It is argued that the most a society can do is to try and reduce the gaps between the richest and poorest members of society. Do you agree? 3. Match the following concepts with appropriate instances: (a) Affirmative action (i) Every adult citizen has a right to vote (b) Equality of opportunity (ii) Banks offer higher rate of interest to senior citizen (c) Equal Rights. (iii) Every child should get free education 4. A government report on farmers' problems says that small and marginal farmers cannot get good prices from the market. It recommends that the government should intervene to ensure a better price but only for small and



marginal farmers. Is this recommendation consistent with the principle of equality? 5. Which of the following violate the principles of equality? And why? (a) Every child in class will read the text of the play by turn. (b) The Government of Canada encouraged white Europeans to migrate to Canada from the end of the Second World War till 1960. (c) There is a separate railway reservation counter for the senior citizens. 2022-23 Equality Equality 52 Political Theory (d) Access to some forest areas is reserved for certain tribal communities. 6. Here are some arguments in favour of the right to vote for women. Which of these are consistent with the idea of equality? Give reasons. (a) Women are our mothers. We shall not disrespect our mothers by denying them the right to vote. (b) Decisions of the government affect women as well as men, therefore they also should have a say in choosing the rulers. (c) Not granting women the right to vote will cause disharmony in the family. (d) Women constitute half of humanity. You cannot subjugate them for long by denying them the right to vote.

Exercises Credit: Images on opening page: P. Sainath 2022-23 Chapter 4 Social Justice Overview Just as we intuitively understand what love means even if we cannot explain all its different shades of meaning, we also have an intuitive understanding of justice even though we may not be able to define it precisely. In that sense justice is a lot like love. In addition, both love and justice evoke passionate responses from their advocates. And as with love, no one hates justice, everyone wants justice for oneself and to some extent for others also. But unlike love, which is an aspect of our relationships with a few people whom we know well, justice concerns our life in society, the way in which public life is ordered and the principles according to which social goods and social duties are distributed among different members of society. As such, questions of justice are of central importance for politics. After going through this chapter you should be able to:

- o Identify some of the principles of justice which have been put forward in different societies and at different periods of time.
- o Explain what is meant by distributive justice.
- o Discuss John Rawls' argument that a fair and just society would be in the interest of all members and could be defended on rational grounds.

2022-23 Justice Social Justice 54 Political Theory 4.1 WHAT IS JUSTICE? All cultures and traditions have grappled with questions of justice although they may have interpreted the concept in different ways. For instance, in ancient Indian society, justice was associated with dharma and maintaining dharma or a just social order, was considered to be a primary duty of kings. In China, Confucius, the famous philosopher argued that kings should maintain justice by punishing wrong doers and rewarding the virtuous. In fourth century B.C. Athens (Greece), Plato discussed issues of justice in his book The Republic. Through a long dialogue between Socrates and his young friends, Glaucon and Adeimantus, Plato examined why we should be concerned about justice. The young people ask Socrates why we should be just. They observe that people who were unjust seemed to be much better off than those who were just. Those who twisted rules to serve their interests, avoided paying taxes and were willing to lie and be deceitful, were often more successful than those who were truthful and just. If one were smart enough to avoid being caught then it would seem that being unjust is better than being just. You may have heard people expressing similar sentiments even today. Socrates reminds these young people that if everyone were to be unjust, if everyone manipulated rules to suit their own interests, no one could be sure of benefiting from injustice. Nobody would be secure and this was likely to harm all of them. Hence, it is in our own longterm interest to obey the laws and be just. Socrates clarified that we need to understand clearly what justice means in order to figure out why it is important to be just. He explained that justice does not only mean doing good to our friends and harm to our enemies, or pursuing our own interests. Justice involves the well-being of all people. Just as a doctor is "They say that to do injustice is, by nature, good; to suffer injustice, evil; but that the evil is greater than the good. And so when men have both done and suffered injustice and have had experience of both, not being able to avoid the one and obtain the other, they think that they had better agree among themselves to have neither; hence there arise laws and mutual covenants; and that which is ordained by law is termed by them lawful

and just.” (Glaucón to Socrates in *The Republic*). 2022-23 Justice Social Justice Political Theory 55

concerned with the well-being of his/her patients, similarly the just ruler or the just government must be concerned with the well-being of the people. Ensuring the well-being of the people includes giving each person his due. The idea that justice involves giving each person his due continues to be an important part of our present day understanding of justice. However, our understanding of what is due to a person has changed from the time of Plato. Today, our understanding of what is just is closely linked to our understanding of what is due to each person as a human being. According to the German philosopher Immanuel Kant, human beings possess dignity. If all persons are granted dignity then what is due to each of them is that they have the opportunity to develop their talents and pursue their chosen goals. Justice requires that we give due and equal consideration to all individuals.

**Equal Treatment for Equals** Although there might be broad agreement in modern society about the equal importance of all people, it is not a simple matter to decide how to give each person his/her due. A number of different principles have been put forward in this regard. One of the principles is the principle of treating equals equally. It is considered that all individuals share certain characteristics as human beings. Therefore they deserve equal rights and equal treatment. Some of the important rights which are granted in most liberal democracies today include civil rights such as the rights of life, liberty and property, political rights like the right to vote, which enable people to participate in political processes, and certain social rights which would include the right to enjoy equal opportunities with other members of the society. Apart from equal rights, the principle of treating equals equally would require that people should not be discriminated against on grounds of class, caste, race or gender. They should be judged on the basis of their work and actions and not on the basis of the group to which they belong. Therefore, if two persons from different castes perform the same kind of work, whether it be breaking stones or delivering Pizzas, they should receive the same kind of reward. If a person gets one hundred rupees for some work and another receives only seventy five rupees for the same work because they belong to 2022-23 Justice Social Justice 56 Political Theory different castes, then it would be unfair or unjust. Similarly, if a male teacher in a school gets a higher salary than a female teacher, then this difference would also be unjustifiable and wrong.

**Proportionate Justice** However, equal treatment is not the only principle of justice. There could be circumstances in which we might feel that treating everybody equally would be unjust. How, for instance, would you react if it was decided in your school that all those who did an exam should get equal marks because they are all students of the same school and did the same exam? Here you might think it would be more fair if students were awarded marks according to the quality of their answer papers and also, possibly, the degree of effort they had put in. In other words, provided everybody starts from the same base line of equal rights, justice in such cases would mean rewarding people in proportion to the scale and quality of their effort. Most people would agree that although people should get the same reward for the same work, it would be fair and just to reward different kinds of work differently if we take into account factors such as the effort required, the skills required, the possible dangers involved in that work, and so on. If we use these criteria we may find that certain kinds of workers in our society are not paid a wage which takes such factors sufficiently into account. For instance, miners, skilled craftsmen, or people in sometimes dangerous but socially useful professions like policemen, may not always get a reward which is just if we compare it to what some others in society may be earning. For justice in society, the principle of equal treatment needs to be balanced with the principle of proportionality.

**Recognition of Special Needs** A third principle of justice which we recognise is for a society to take into account special needs of people while distributing rewards or duties. This would be considered a way of promoting social justice. In terms of their basic status and rights as members of the society justice may require that people be treated equally. But even nondiscrimination between people and rewarding them proportionately to their efforts might not be enough to ensure that people enjoy equality in other aspects of their lives in

society nor that the society 2022-23 Justice Social Justice Political Theory 57 People with special needs or disabilities could be considered unequal in some particular respect and deserving of special help. But it is not always easy to get agreement regarding which inequalities of people should be recognised for providing them special help. Physical disabilities, age or lack of access to good education or health care, are some of the factors which are considered grounds for special treatment in many countries. It is believed that if people who enjoy very different standard of living and opportunities are treated equally in all respects with those who have been deprived of even the basic minimum needs to live a healthy and productive life, the result is likely to be an unequal society, not an egalitarian and just one. In our country, lack of access to good education or health care and other such facilities is often found combined with LET'S THINK Examine the following situations and discuss whether they are just. In each case discuss the principle of justice that might be used in defence of your argument.

- o Suresh, a visually impaired student, gets three hours and thirty minutes to finish his mathematics paper, while the rest of the class gets only three hours.
- o Geeta walks with a limp. The teacher decided to give her also three hours and thirty minutes to finish her mathematics paper.
- o A teacher gives grace marks to the weaker students in class, to boost their morale.
- o A professor distributes different question papers to different students based on her evaluation of their capabilities.
- o There is a proposal to reserve 33 per cent of the seats in the Parliament for women.

as a whole is just. The principle of taking account of the special needs of people does not necessarily contradict the principle of equal treatment so much as extend it because the principle of treating equals equally could imply that people who are not equal in certain important respects could be treated differently. 2022-23 Justice Social Justice 58 Political Theory social discrimination on grounds of caste. The Constitution therefore allowed for reservations of government jobs and quotas for admissions to educational institutions for people belonging to the Scheduled Castes and Tribes. Our discussion of different principles of justice has indicated that governments might sometimes find it difficult to harmonise the three principles of justice which have been discussed — equal treatment for equals, recognition of different efforts and skills while determining rewards and burdens, and provision of minimum standard of living and equal opportunities to the needy. Pursuing equality of treatment by itself might sometimes work against giving due reward to merit. Emphasising rewarding merit as the main principle of justice might mean that marginalised sections would be at a disadvantage in many areas because they have not had access to facilities such as good nourishment or education. Different groups in the country might favour different policies depending upon which principle of justice they emphasise. It then becomes a function of governments to harmonise the different principles to promote a just society.

#### 4.2 JUST DISTRIBUTION

To achieve social justice in society, governments might have to do more than just ensure that laws and policies treat individuals in a fair manner. Social justice also concerns the just distribution of goods and services, whether it is between nations or between different Why is the statue of justice blindfolded? Of course she needs to be impartial. But I wonder how then does she see the special needs of people? She is blindfolded because she needs to be impartial. 2022-23 Justice Social Justice Political Theory 59 groups and individuals within a society. If there are serious economic or social inequalities in a society, it might become necessary to try and redistribute some of the important resources of the society to provide something like a level playing field for citizens. Therefore, within a country social justice would require not only that people be treated equally in terms of the laws and policies of the society but also that they enjoy some basic equality of life conditions and opportunities. This is seen as necessary for each person to be able to pursue his/her objectives and express himself. In our country for instance, the Constitution abolished the practice of untouchability to promote social equality and ensure that people belonging to 'lower' castes have access to temples, jobs and basic necessities like water. Different state governments have also taken some measures to redistribute important resources like land in a more fair manner by instituting land

reforms. Differences of opinion on matters such whether, and how, to distribute resources and ensure equal access to education and jobs arouse fierce passions in society and even sometimes provoke violence. People believe the future of themselves and their families may be at stake. We have only to remind ourselves about the anger and even violence which has sometimes been roused by proposals to reserve seats in educational institutions or in government employment in our country. As students of political theory however we should be able to calmly examine the issues involved in terms of our understanding of the principles of justice. Can schemes to help the disadvantaged be justified in terms of a theory of justice? In the next section, we will discuss the theory of just distribution put forward by the well-known political philosopher, John Rawls. Rawls has argued that there could indeed be a rational justification for acknowledging the need to provide help to the least privileged members of a society.

#### 4.3 JOHN RAWLS' THEORY OF JUSTICE

If people are asked to choose the kind of society in which they would like to live, they are likely to choose one in which the rules and organisation of society allot them a privileged position. We cannot expect everyone to put aside their personal interests and think of the good of society, especially if they believe that their decision is going to have an impact on the kind of life and opportunities their children will have in the future. Indeed, we often expect parents to think of and support what is best for their children. But such perspectives cannot form the basis of a theory of justice for a society. So how do we reach a decision that would be both fair and just? John Rawls has tried to answer this question. He argues that the only way we can arrive at a fair and just rule is if we imagine ourselves to be in a situation in which we have to make decisions about how society should be organised although we do not know which position we would ourselves occupy in that society. That is, we do not know what kind of family we would be born in, whether we would be born into an 'upper' caste or 'lower' caste family, rich or poor, privileged or disadvantaged. Rawls argues that if we do not know, in this sense, who we will be and what options would be available to us in the future society, we will be likely to support a decision about the rules and organisation of that future society which would be fair for all the members. Rawls describes this as thinking under a 'veil of ignorance'. He expects that in such a situation of complete ignorance about our possible position and status in society, each person would decide in the way they generally do, that is, in terms of their own interests. But since no one knows who he would be, and what is going to benefit him, each will envisage the future society from the point of view of the worst-off. It will be clear to a person who can reason and think for himself, that those who are born privileged will enjoy certain special opportunities. But, what if they have the misfortune of being born in a disadvantaged section of society where few opportunities would be available to them? Hence, it would make sense for each person, acting in his or her own interest, to try to think of rules of organisation that will ensure reasonable opportunities to the weaker sections. The attempt will be to see that important resources, like education, health, shelter, etc., are available to all persons, even if they are not part of the upper class. It is of course not easy to erase our identities and to imagine oneself under a veil of ignorance. But then it is equally difficult for most people to be self-sacrificing and share their good fortune with strangers. That is why we habitually associate self-sacrifice with heroism. Given these human failings and limitations, it is better for us to think of a framework that does not require extraordinary actions. The merit of the 'veil of ignorance' position is that it expects people to just be their usual rational selves: they are expected to think for themselves and choose what they regard to be in their interest. The pertinent thing however is that when they choose under the 'veil of ignorance' they will find that it is in their interest to think from the position of the worst-off. Wearing the imagined veil of ignorance is the first step in arriving at a system of fair laws and policies. It will be evident that rational persons will not only see things from the perspective of the worst-off, they will also try to ensure that the policies they frame benefit the society as a whole. Both things have to go hand-in-hand. Since no one knows what position they will

occupy in the future society, each will seek rules that protect them in case they happen to be born among the worst-off. But it would make sense if they also try to ensure that their chosen policy does not also make those who are better-off weaker because it is also possible that they could be born into a privileged position in the future society. Therefore, it would be in the interests of all that society as a whole should benefit from the rules and policies that are decided and not just any particular section. Such fairness would be the outcome of rational action, not benevolence or generosity.

2022-23 Justice Social Justice 62 Political Theory Rawls therefore argues that rational thinking, not morality, could lead us to be fair and judge impartially regarding how to distribute the benefits and burdens of a society. In his example, there are no goals or norms of morality that are given to us in advance and we remain free to determine what is best for ourselves. It is this belief which makes Rawls' theory an important and compelling way to approach the question of fairness and justice.

#### 4.4 PURSUING SOCIAL JUSTICE

If in a society deep and persistent divisions exist between those who enjoy greater wealth and property, and the power which goes with such ownership, and those who are excluded and deprived, we would say that social justice is lacking there. We are not talking here merely about the different standards of living which may be enjoyed by different individuals in a society. Justice does not require absolute equality and sameness in the way in which people live. But a society would be considered unjust if the differences between rich and poor are so great that they seem to be living in different worlds altogether, and if the relatively deprived have no chance at all to improve their condition however hard they may work. In other words, a just society should provide people with the basic minimum conditions to enable them to live healthy and secure lives and develop their talents as well as equal opportunities to pursue their chosen goals in society. How can we decide what are the basic minimum conditions of life needed by people? Various methods of calculating the basic needs of people have been devised by different governments and by international organisations like the World Health Organisation. But in general it is agreed that the basic amount of nourishment needed to remain healthy, housing, supply of clean drinking water, education and a minimum wage would constitute an important part of these basic conditions. Providing people with their basic needs is considered to be one of the responsibilities of a democratic government. However, providing such basic conditions of life to all citizens may pose a heavy burden on governments, particularly in countries like India which have a large number of poor people.

#### LET'S DO IT

Do Various calculations of the minimum requirements of food, income, water and such facilities have been made by government agencies and U.N. agencies. Search in your school library, or on the internet, for any such calculations.

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Even if we all agree that states should try and help the most disadvantaged members of the society to enjoy some degree of equality with others, disagreements could still arise regarding the best methods of achieving this goal. A debate is currently going on in our society, as well as in other parts of the world, about whether promoting open competition through free markets would be the best way of helping the disadvantaged without harming the betteroff members of a society, or whether the government should take on the responsibility of providing a basic minimum to the poor, if necessary even through a redistribution of resources. In our country these different approaches are being supported by different political groups who debate the relative merits of different schemes for helping marginalised sections of the population such as the rural or urban poor. We will briefly examine this debate.

#### Free Markets versus State Intervention

Supporters of free markets maintain that as far as possible, individuals should be free to own property and enter into contracts and agreements with others regarding prices and wages and profits. They should be free to compete with each other to gain the greatest amount of benefit. This is a simple description of a free market. Supporters of the free market believe that if markets are left free of state interference the sum of market transactions would ensure overall a just distribution of benefits and duties in society. Those with merit and talent would be rewarded accordingly while the

A Just society is that society in which

ascending sense of reverence and descending sense of contempt is dissolved into the creation of a compassionate society – B.R. Ambedkar 2022-23 Justice Social Justice 64 Political Theory

incompetent would get a lesser reward. They would maintain that whatever be the outcome of market distribution it would be just. However, not all free market supporters today would support absolutely unregulated markets. Many would now be willing to accept certain restrictions, for instance, states could step in to ensure a basic minimum standard of living to all people so that they are able to compete on equal terms. But they might argue that even here the most efficient way of providing people with basic services might be to allow markets in health care, education, and such services, to develop. In other words, private agencies should be encouraged to provide such services while state policies should try to empower people to buy those services. It might also be necessary for the state to give special help to the old and the sick who cannot compete. But apart from this, the role of the state should only be to maintain a framework of laws and regulations to ensure that competition between individuals remains free of coercion and other obstacles. They maintain that a free market is the basis of a fair and just society. The market, it is said, does not care about the caste or religion of the person; it does not see whether you are a man or a woman. It is neutral and concerned with the talents and skills that you have. If you have the merit, then nothing else matters. One of the arguments put forward in favour of market distribution is that it gives us more choices. There is no doubt that the market system gives us more choices as consumers. We can choose the rice we eat and the school we go to, provided that we have the means to pay for them. But regarding basic goods and services what is important is the availability of good quality goods and services at a cost people can afford. If private agencies do not find this profitable for them, they may prefer not to enter that particular market, or to provide cheap and substandard services. That is why there may be few private schools in remote rural areas and the few which have been set up may be of low quality. The same would be true of health care or housing. In such situations the government might have to step in. Another argument often heard in defence of free markets and private enterprise is that the quality of services they provide is often 2022-23 Justice Social Justice Political Theory 65 superior to that provided in government institutions. But the cost of such services may put them out of the reach of the poor. Private business tends to go where business would be most profitable and hence free markets eventually tend to work in the interest of the strong, the wealthy and the powerful. The result may be to deny, rather than extend, opportunities for those who are relatively weak and disadvantaged. Arguments can be put forward on both sides of the debate but free markets often exhibit a tendency to work in favour of the already privileged. This is why many argue that to ensure social justice the state should step in to see that basic facilities are made available to all the members of a society. In a democratic society disagreements about issues of distribution and justice are inevitable and even healthy because they force us to examine different points of view and rationally defend our own views. Politics is about the negotiation of such disagreements through debate. In our own country many kinds of social and economic inequalities exist and much remains to be done if they are to be reduced. Studying the different principles of justice should help us to discuss the issues involved and come to an agreement regarding the best way of pursuing justice. Justice implies something which it is not only right to do and wrong not to do; but which some individual person can claim from us as his moral right. – J. S. Mill 2022-23 Justice Social Justice 66 Political Theory Exercises

1. What does it mean to give each person his/her due? How has the meaning of “giving each his due” changed over time?
2. Briefly discuss the three principles of justice outlined in the chapter? Explain each with examples.
3. Does the principle of considering the special needs of people conflict with the principle of equal treatment for all?
4. How does Rawls use the idea of a veil of ignorance to argue that fair and just distribution can be defended on rational grounds?
5. What are generally considered to be the basic minimum requirements of people for living a healthy and productive life? What is the responsibility of governments in trying to ensure this minimum to all?
6. Which of the following

arguments could be used to justify state action to provide basic minimum conditions of life to all citizens? (a) Providing free services to the poor and needy can be justified as an act of charity. (b) Providing all citizens with a basic minimum standard of living is one way of ensuring equality of opportunity. (c) Some people are naturally lazy and we should be kind to them. (d) Ensuring basic facilities and a minimum standard of living to all is a recognition of our shared humanity and a human right. Credit: Image on opening page: Shweta Rao 2022-23

**Chapter 5 Rights**

In everyday life we often talk of our rights. As members of a democratic country we may speak of such rights as the right to vote, the right to form political parties, the right to contest elections and so on. But apart from the generally accepted political and civil rights, people today are also making new demands for rights such as the right to information, right to clean air or the right to safe drinking water. Rights are claimed not only in relation to our political and public lives but also in relation to our social and personal relationships. Moreover, rights may be claimed not only for adult human beings but also for children, unborn foetuses, and even animals. The notion of rights is thus invoked in a variety of different ways by different people. In this chapter we will explore:

- o What do we mean when we speak of rights?
- o What is the basis on which rights are claimed?
- o What purpose do rights serve and, why are they so important?

**Overview 2022-23 Rights**

**Rights 68 Political Theory 5.1 WHAT ARE RIGHTS?**

A right is essentially an entitlement or a justified claim. It denotes what we are entitled to as citizens, as individuals and as human beings. It is something that we consider to be due to us; something that the rest of society must recognise as being a legitimate claim that must be upheld. This does not mean that everything that I regard to be necessary and desirable is a right. I may want to wear the clothes of my choice to school rather than the prescribed uniform. I may want to stay out late at night but this does not mean that I have a right to dress in any way I like at school or to return home when I choose to do so. There is a distinction between what I want and think I am entitled to, and what can be designated as rights. Rights are primarily those claims that I along with others regard to be necessary for leading a life of respect and dignity. In fact, one of the grounds on which rights have been claimed is that they represent conditions that we collectively see as a source of self-respect and dignity. For example, the right to livelihood may be considered necessary for leading a life of dignity. Being gainfully employed gives a person economic independence and thus is central for his/her dignity. Having our basic needs met gives us freedom to pursue our talents and interests. Or, take the right to express ourselves freely. This right gives us the opportunity to be creative and original, whether it be in writing, or dance, or music, or any other creative activity. But freedom of expression is also important for democratic government since it allows for the free expression of beliefs and opinions. Rights such as the right to a livelihood, or freedom of expression, would be important for all human beings who live in society and they are described as universal in nature. Another ground on which rights have been claimed is that they are necessary for our well-being. They help individuals to develop their talents and skills. A right like the right to education, for instance, helps to develop our capacity to reason, gives us useful skills and enables us to make informed choices in life. It is in this sense that education can be designated as a universal right. However, if an activity is injurious to our health and well-being it cannot be 2022-23 Rights

**Rights 69 Political Theory 69**

claimed as a right. For instance, since medical research has shown that prohibited drugs are injurious to one's health and since they affect our relations with others, we cannot insist that we have a right to inhale or inject drugs or smoke tobacco. In the case of smoking it may even be injurious to the health of people who may be around the smoker. Drugs may not only injure our health but they may also sometimes change our behaviour patterns and make us a danger to other people. In terms of our definition of rights, smoking or taking banned drugs cannot be claimed as a right.

**5.2 WHERE DO RIGHTS COME FROM?**

In the seventeenth and eighteenth centuries, political theorists argued that rights are given to us by nature or God. The rights of men were derived from natural law. This meant that rights were not conferred by a ruler or a society, rather we are born with

them. As such these rights are inalienable and no one can take these away from us. They identified three natural rights of man: the right to life, liberty and property. All other rights were said to be derived from these basic rights. The idea that we are born with certain rights, is a very powerful notion because it implies that no state or organisation should take away what has been given by the law of nature. This conception of natural rights has been used widely to oppose the exercise of arbitrary power by states and governments and to safeguard individual freedom. In recent years, the term human rights is being used more than the term natural rights. This is because the idea of there being a natural law, or a set of norms that are laid down for us by nature, or God, appears unacceptable today. Rights are increasingly seen as guarantees that human beings themselves seek or arrive at in order to lead a minimally good life. The assumption behind human rights is that all persons are entitled to certain things simply because they are human beings. As a human being each person is unique and equally valuable. This means that all persons are equal and no one is born to serve others. Go through recent newspapers and make a list of people's movements that have made proposals for new kinds of rights? LET'S DO IT Do 2022-23 Rights Rights 70 Political Theory Each of us possesses an intrinsic value, hence we must have equal opportunities to be free and realise our full potential. This conception of a free and equal self is increasingly being used to challenge existing inequalities based on race, caste, religion and gender. Today, the UN Universal Declaration of Human Rights builds upon this understanding of rights and it attempts to recognise those claims that the world community collectively sees as being important for leading a life of dignity and self-respect. The notion of universal human rights has been used by oppressed people all over the world to challenge laws which segregate them and deny them equal opportunities and rights. In fact, it is through the struggles of groups that have felt excluded that the interpretation of existing rights has sometimes been altered. Slavery has, for instance, been abolished, but there are other struggles that have only had a limited success. Even today there are communities struggling to define humanity in a way which includes them. The list of human rights which people have claimed has expanded over the years as societies face new threats and challenges. For instance, we are very conscious KANT ON HUMAN DIGNITY " ... everything has either a price or a dignity. What has a price is such that something else can also be put in its place as its equivalent; by contrast, that which is elevated above all price, and admits of no equivalent, has a dignity. 'Human beings', unlike all other objects, possess dignity. They are, for this reason valuable in themselves. For the eighteenth century German philosopher, Immanuel Kant, this simple idea had a deep meaning. It meant that every person has dignity and ought to be so treated by virtue of being a human being. A person may be uneducated, poor or powerless. He may even be dishonest or immoral. Yet, he remains a human being and deserves to be given some minimum dignity. For Kant, to treat people with dignity was to treat them morally. This idea became a rallying point for those struggling against social hierarchies and for human rights. Kant's views represent, what is called, the moral conception of rights. This position rests upon two arguments. First, we should be treating others as we would like to be treated ourselves. Second, we should make sure that we don't treat the other person as means to our ends. We should not treat people as we treat a pen, a car, or a horse. That is, we should respect people not because they are useful to us but because they are, after all, human beings. 2022-23 Rights Rights Political Theory 71 today of the need to protect the natural environment and this has generated demands for rights to clean air, water, sustainable development, and the like. A new awareness about the changes which many people, especially women, children or the sick, face in times of war or natural crisis has also led to demands for a right to livelihood, rights of children and the like. Such claims express a sense of moral outrage about infringements of peoples' dignity and they also act as a rallying call to people to try and extend rights to all human beings. We should not understate the extent and power of such claims. They often invoke wide support. You may have heard about the pop star Bob Geldof's recent appeal to western governments to end poverty in Africa and seen T.V.



reports about the scale of support which he received from ordinary people.

### 5.3 LEGAL RIGHTS AND THE STATE

While claims for human rights appeal to our moral self, the degree of success of such appeals depends on a number of factors, most important of which is the support of governments and the law. This is why so much importance is placed on the legal recognition of rights. A Bill of Rights is enshrined in the constitutions of many countries. Constitutions represent the highest law of the land and so constitutional recognition of certain rights gives them a primary importance. In our country we call them Fundamental Rights. Other laws and policies are supposed to respect the rights granted in the Constitution. The rights mentioned in the Constitution would be 2022-23 Rights Rights 72 Political Theory those which are considered to be of basic importance. In some cases these may be supplemented by claims which gain importance because of the particular history and customs of a country. In India, for instance, we have a provision to ban untouchability which draws attention to a traditional social practice in the country. So important is the legal and constitutional recognition of our claims that several theorists define rights as claims that are recognised by the state. The legal endorsement certainly gives our rights a special status in society but it is not the basis on which rights are claimed. As we discussed earlier, rights have steadily been expanded and reinterpreted to include previously excluded groups and to reflect our contemporary understanding of what it means to lead a life of dignity and respect. However, in most cases the claimed rights are directed towards the state. That is, through these rights people make demands upon the state. When I assert my right to education, I call upon the state to make provisions for my basic education. Society may also accept the importance of education and contribute to it on its own. Different groups may open schools and fund scholarships so that children of all classes can get the benefit of education. But the primary responsibility rests upon the state. It is the state that must initiate necessary steps to ensure that my right to education is fulfilled. Thus, rights place an obligation upon the state to act in certain kinds of ways. Each right indicates what the state must do as well as what it must not do. For instance, my right to life obliges the state to make laws that protect me from injury by others. It calls upon the state to punish those who hurt me or harm me. If a society feels that the right to life means a right to a good quality of life, it expects the state to pursue policies that provide for clean environment along with other conditions that may be necessary for a healthy life. In other words, my right here places certain obligations upon the state to act in a certain way. Rights not only indicate what the state must do, they also suggest what the state must refrain from doing. My right to liberty as a person, for instance, suggests that the state cannot simply arrest me at its own will. If it wishes to put me behind bars, it must defend that action; 2022-23 Rights Rights Political Theory 73 it must give reasons for curtailing my liberty before a judicial court. This is why the police are required to produce an arrest warrant before taking me away. My rights thus place certain constraints upon state actions. To put it another way, our rights ensure that the authority of the state is exercised without violating the sanctity of individual life and liberty. The state may be the sovereign authority; the laws it makes may be enforced with force, but the sovereign state exists not for its own sake but for the sake of the individual. It is people who matter more and it is their well-being that must be pursued by the government in power. The rulers are accountable for their actions and must not forget that law exists to ensure the good of the people.

### 5.4 KINDS OF RIGHTS

Most democracies today begin by drawing up a charter of political rights. Political rights give to the citizens the right to equality before law and the right to participate in the political process. They include such rights as the right to vote and elect representatives, the right to contest elections, the right to form political parties or join them. Political rights are supplemented by civil liberties. The latter refers to the right to a free and fair trial, the right to express one's views freely, the right to protest and express dissent. Collectively, civil liberties and political rights form the basis of a democratic system of government. But, as was mentioned before, rights aim to protect the well-being of the individual. Political rights contribute to it by making the government accountable to the people, by giving greater importance to the concerns of the

individual over that of the rulers and by ensuring that all persons have an opportunity to influence the decisions of the government. However, our rights of political participation can only be exercised fully when our basic needs, of food, shelter, clothing, health, are met. For a person living on the pavements and struggling to meet these basic needs, political rights by themselves have little value. They require certain facilities like an adequate wage to meet their Go through the newspapers of the last few days and identify cases of rights violations which have been discussed. What should the government and civil society do to prevent such violations? LET'S DO ITDo 2022-23 Rights Rights 74 Political Theory basic needs and reasonable conditions of work. Hence democratic societies are beginning to recognise these obligations and providing economic rights. In some countries, citizens, particularly those with low incomes, receive housing and medical facilities from the state; in others, unemployed persons receive a certain minimum wage so that they can meet their basic needs. In India the government has recently introduced a rural employment guarantee scheme, among other measures to help the poor. Today, in addition to political and economic rights more and more democracies are recognising the cultural claims of their citizens. The right to have primary education in one's mother tongue, the right to establish institutions for teaching one's language and culture, are today recognised as being necessary for leading a good life. The list of rights has thus steadily increased in democracies. While some rights, primarily the right to life, liberty, equal treatment, and the right to political participation are seen as basic rights that must receive priority, other conditions that are necessary for leading a decent life, are being recognised as justified claims or rights. LET'S THINK Which of the following rights granted to groups/ communities are justifiable? Discuss. o Jain community in a town sets up its own school and enrolls students only from its own community. o Purchase of land or property in Himachal Pradesh is restricted to those who are residents in that state. o The principal of a co-ed college issued a circular that no girl should wear any 'western' dress. o A Panchayat in Haryana decided that the boy and the girl from different castes who married each other will not be allowed to live in the village. The right to culture means that no one should be allowed to make films that offend the religious or cultural beliefs of others. LET'S DEBATE " " 2022-23 Rights Rights Political Theory 75 5.5 RIGHTS AND RESPONSIBILITIES Rights not only place obligations upon the state to act in a certain way — for instance, to ensure sustainable development — but they also place obligations upon each of us. Firstly, they compel us to think not just of our own personal needs and interests but to defend some things as being good for all of us. Protecting the ozone layer, minimising air and water pollution, maintaining the green cover by planting new trees and preventing cutting down of forests, maintaining the ecological balance, are things that are essential for all of us. They represent the 'common-good' that we must act to protect for ourselves as well as for the future generations who are entitled to inherit a safe and clean world without which they cannot lead a reasonably good life. Secondly, they require that I respect the rights of others. If I say that I must be given the right to express my views I must also grant the same right to others. If I do not want others to interfere in the choices I make — the dress I wear or the music I listen to — I must refrain from interfering in the choices that others make. I must leave them free to choose their music and clothes. I cannot use the right to free speech to incite a crowd to kill my neighbour. In exercising my rights, I cannot deprive others of their rights. My rights are, in other words, limited by the principle of equal and same rights for all. Thirdly, we must balance our rights when they come into conflict. For instance, my right to freedom of expression allows me to take pictures; however, if I take pictures of a person bathing in his house without his consent and post them on the internet, that would be a violation of his right to privacy. 2022-23 Rights Rights 76 Political Theory Fourthly, citizens must be vigilant about limitations which may be placed on their rights. A currently debated topic concerns the increased restrictions which many governments are imposing on the civil liberties of citizens on the grounds of national security. Protecting national security may be defended as necessary for safeguarding the rights and well-being of citizens. But at what point could the

restrictions imposed as necessary for security themselves become a threat to the rights of people? Should a country facing the threat of terrorist bombings be allowed to curtail the liberty of citizens? Should it be allowed to arrest people on mere suspicion? Should it be allowed to intercept their mail or tap their phones? Should it be allowed to use torture to extract confession? In such situations the question to ask is whether the person concerned poses an imminent threat to society. Even arrested persons should be allowed legal counsel and the opportunity to present their case before a magistrate or a court of law. We need to be extremely cautious about giving governments powers which could be used to curtail the civil liberties of individuals for such powers can be misused.

Governments can become authoritarian and undermine the very reasons for which governments exist — namely, the well-being of the members of the state. Hence, even though rights can never be absolute, we need to be vigilant in protecting our rights and those of others for they form the basis of a democratic society. LET'S DEBATE One man's rights end where the other man's nose begins. 2022-23 Rights Rights Political Theory 77 On 10 December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Following this historic act the Assembly called upon all Member countries to publicise the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

PREAMBLE Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge, Now, therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. For more details, visit [www.un.org](http://www.un.org) 2022-23 Rights Rights 78 Political Theory Exercises 1. What are rights and why are they important? What are the bases on which claims to rights can be made? 2. On what grounds are some rights considered to be universal in nature? Identify three rights which you consider universal. Give reasons. 3. Discuss briefly some of the new rights claims which are being put forward in our country today — for example the rights of tribal peoples to protect their habitat and way of life, or the rights of children against bonded labour. 4. Differentiate between political, economic and cultural rights. Give examples of each kind of right. 5. Rights place some limits on the authority of the state. Explain with examples. Credit: Image on opening page: The National Archives and Records Administration, United States of America 2022-23 Citizenship Citizenship Political Theory 79 Chapter 6 Citizenship Citizenship implies full and equal membership of a political community. In this chapter we will

explore what exactly this means today. In Sections 6.2 and 6.3 we will look at some debates and struggles which are going on regarding the interpretation of the term 'full and equal membership'. Section 6.4 will discuss the relationship between citizens and the nation and the criteria of citizenship adopted in different countries. Theories of democratic citizenship claim that citizenship should be universal. Does this mean that every person today should be accepted as a member of one or other state? then How can we explain the existence of so many stateless people? This issue will be discussed in Section 6.5. The last section 6.6 will discuss the issue of global citizenship. Does it exist and could it replace national citizenship? After going through this chapter you should be able to explain the meaning of citizenship, and discuss some of the areas in which that meaning is being expanded or challenged today.

Overview 2022-23 Citizenship

### Citizenship 80 Political Theory 6.1 INTRODUCTION

Citizenship has been defined as full and equal membership of a political community. In the contemporary world, states provide a collective political identity to their members as well as certain rights. Therefore we think of ourselves as Indians, or Japanese, or Germans, depending on the state to which we belong. Citizens expect certain rights from their state as well as help and protection wherever they may travel. The importance of full membership of a state can be appreciated if we think of the condition of the thousands of people in the world who have the bad fortune to be forced to live as refugees or illegal migrants because no state is willing to grant them membership. Such people are not guaranteed rights by any state and generally live in precarious conditions. For them full membership of a state of their choice is a goal for which they are willing to struggle, as we see today with Palestinian refugees in the Middle East. The precise nature of the rights granted to citizens may vary from state to state but in most democratic countries today they would include some political rights like the right to vote, civil rights like the freedom of speech or belief, and some socio-economic rights which could include the right to a minimum wage, or the right to education. Equality of rights and status is one of the basic rights of citizenship.

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Each of the rights now enjoyed by citizens has been won after struggle. Some of the earliest struggles were fought by people to assert their independence and rights against powerful monarchies. Many European countries experienced such struggles, some of them violent, like the French Revolution in 1789. In the colonies of Asia and Africa, demands for equal citizenship formed part of their struggle for independence from colonial rulers. In South Africa, the black African population had to undertake a long struggle against the ruling white minority for equal citizenship. This continued until the early 1990s. Struggles to achieve full membership and equal rights continue even now in many parts of the world. You may have read about the women's movement and the dalit movement in our country. Their purpose is to change public opinion by drawing attention to their needs as well as to influence government policy to ensure them equal rights and opportunities.

### LET'S THINK

During seventeenth to twentieth century, white people of Europe established their rule over the black people in South Africa. Read the following description about the policy practices in South Africa till 1994. The whites had the right to vote, contest elections and elect government; they were free to purchase property and go to any place in the country. Blacks did not have such rights. Separate colonies for whites and blacks were established. The blacks had to take 'passes' to work in white neighbourhoods. They were not allowed to keep their families in the white areas. The schools were also separate for the people of different colour.

- o Do you think the Blacks had full and equal membership in South Africa? Give reasons.
- o What does the above description tell us about the relationship of different groups in South Africa?

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However, citizenship is about more than the relationship between states and their members. It is also about citizen-citizen relations and involves certain obligations of citizens to each other and to the society. These would include not just the legal obligations imposed by states but also a moral obligation to participate in, and contribute to, the shared life of the community. Citizens are also considered to be the inheritors and trustees of the

culture and natural resources of the country. A good way to understand a political concept is to look for instances where its accepted meaning is being questioned by groups who feel that it does not take account of their needs and aspirations.

## 6.2 FULL AND EQUAL MEMBERSHIP

If you have ever travelled in a crowded railway compartment or bus you will be familiar with the way in which those who may have earlier fought each other to enter, once inside discover a shared interest in keeping others out! A division soon develops between 'insiders' and 'outsiders' with 'outsiders' being seen as a threat. Similar processes take place from time to time in cities, regions, or even the nation as a whole. If jobs, facilities like medical care or education, and natural resources like land or water, are limited, demands may be made to restrict entry to 'outsiders' even though they may be fellow citizens. You may remember the slogan 'Mumbai for Mumbaikars' which expressed such feelings. Many similar struggles have taken place in different parts of India and the world. This raises questions about what 'full and equal membership' really means? Does it mean that citizens should enjoy equal rights? Think of some examples of activities of citizens in your area intended to help others, or improve the area, or protect the environment. List some of the activities which could be undertaken by young people of your agegroup.

### LET'S DO IT

**Do 2022-23 Citizenship**

**Citizenship Political Theory 83** and opportunities wherever in the country they may decide to live, study, or work? Does it mean that all citizens, rich or poor, should enjoy certain basic rights and facilities? In this section we will explore the meaning of citizenship by focusing on the first of these questions. One of the rights granted to citizens in our country, and in many others, is freedom of movement. This right is of particular importance for workers. Labour tends to migrate in search of jobs when opportunities are not available near their homes. Some people may even travel outside the country in search of jobs. Markets for skilled and unskilled workers have developed in different parts of our country. For instance, I.T. workers may flock to towns like Bangalore. Nurses from Kerala may be found all over the country. The booming building industry in town attracts workers from different parts of the country.

### MARTIN LUTHER KING

The 1950s witnessed the emergence of Civil Rights Movements against inequalities that existed between black and white populations in many of the southern states of the USA. Such inequalities were maintained in these states by a set of laws called Segregation Laws through which the black people were denied many civil and political rights. These laws created separate areas for coloured and white people in various civic amenities like railways, buses, theatres, housing, hotels, restaurants, etc. Martin Luther King Jr. was a black leader of the movement against these laws. King gave many arguments against the prevailing laws of segregation. First, in terms of self-worth and dignity every human person in the world is equal regardless of one's race or colour. Second, King argued that segregation is like 'social leprosy' on the body politic because it inflicts deep psychological wounds on the people who suffer as a result of such laws. King argued that the practice of segregation diminishes the quality of life for the white community also. He illustrates this point by examples. The white community, instead of allowing the black people to enter some community parks as was directed by the court, decided to close them. Similarly, some baseball teams had to be disbanded, as the authorities did not want to accept black players. Thirdly, the segregation laws create artificial boundaries between people and prevent them from cooperating with each other for the overall benefit of the country. For these reasons, King argued that these laws should be abolished. He gave a call for peaceful and non-violent resistance against the segregation laws. He said in one of his speeches: "We must not allow our creative protest to degenerate into physical violence."

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**Citizenship 84 Political Theory** country. So do infrastructure projects like road making. You may have come across workers from different regions near your home or school. However, often resistance builds up among the local people against so many jobs going to people from outside the area, sometimes at lower wages. A demand may develop to restrict certain jobs to those who belong to the state, or those who know the local language. Political parties may take up the issue. Resistance could even take the form of organised violence against 'outsiders'.

Almost every region of India has experienced such movements. Are such movements ever justified? We all become indignant, if Indian workers in other countries are ill-treated by the local population. Some of us may also feel that skilled and educated workers have the right to migrate for work. States may even be proud of their ability to attract such workers. But if jobs are scarce in a region, local residents may resent competition from 'outsiders'. Does the right to freedom of movement include the right to live or work in any part of the country? Another factor that we need to consider is that there may sometimes be a difference between our response to poor migrants and to skilled migrants. We may not always be as welcoming to poor migrants who move into our areas as we may be to skilled and affluent workers. This raises the question of whether poor and unskilled workers should have the same right to live and work anywhere in the country as do skilled workers? These are some of the issues which are being debated in our country today regarding 'full and equal membership' for all citizens of the country. However, disputes may sometimes arise even in democratic societies. How can such disputes be resolved? The right to protest is an aspect of the freedom of expression guaranteed to citizens in our Constitution, provided protest does not harm the life or property of other people or the State. Citizens are free to try and influence public opinion and government policy by forming groups, holding demonstrations, using the media, appealing to political parties, or by approaching the courts. The courts may give a decision on the 2022-23 Citizenship Political Theory 85 2022-23 Citizenship Political Theory matter, or they may urge the government to address the issue. It may be a slow process but varying degrees of success are sometimes possible. If the guiding principle of providing full and equal membership to all citizens is kept in mind, it should be possible to arrive at an acceptable solution to the problems that may arise from time to time in a society. A basic principle of democracy is that such disputes should be settled by negotiation and discussion rather than force. This is one of the obligations of citizenship. LET'S THINK Examine the arguments for and against freedom of movement and occupation throughout the country for citizens. Should the long-term inhabitants of a region enjoy preference for jobs and facilities? Or, should states be allowed to fix quotas for admissions to professional colleges for students who do not belong to that state? 6.3 EQUAL RIGHTS In this section we will examine another aspect of citizenship, that is, the issue of whether full and equal membership means that all citizens, rich or poor, should be guaranteed certain basic rights and a minimum standard of living by the state. To discuss this issue, we will look at one set of people, that is the urban poor. Dealing with the problem of the poor in towns is one of the urgent problems facing the government today. There is a large population of slum-dwellers and squatters in every city in India. Although they may do necessary and useful work, often at low wages, they are often viewed as unwelcome visitors by the rest of the town population. They may be blamed for straining the resources of the city or for spreading crime and disease. The conditions in slums are often shocking. Many people may be crammed into small rooms with no private toilets, running water, or sanitation. Life and property are insecure in a slum. However, 2022-23 Citizenship Political Theory 87 slum dwellers make a significant contribution to the economy through their labour. They may be hawkers, petty traders, scavengers, or domestic workers, plumbers, or mechanics, among other professions. Small businesses such as cane weaving, or textile printing, or tailoring, may also develop in slums. The city probably spends relatively little on providing slum-dwellers with services such as sanitation or water supply. Awareness about the condition of the urban poor is growing among governments, N.G.O's and other agencies, and among the slum-dwellers themselves. For instance, a national policy on urban street vendors was framed in January 2004. There are lakhs of street vendors in big cities and they often face harassment from the police and town authorities. The policy was intended to provide recognition and regulation for vendors to enable them to carry on their profession without harassment so long as they obeyed government regulations. Slum-dwellers also are becoming aware of their rights and are beginning to organise to demand them. They have

sometimes even CITIZENSHIP, EQUALITY AND RIGHTS Citizenship is not merely a legal concept. It is also closely related to larger notions of equality and rights. A widely accepted formulation of this relationship was provided by the British sociologist, T. H. Marshall (1893-1981). In his book *Citizenship and Social Class* (1950), Marshall defined citizenship as “a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed.” The key concept in Marshall’s idea of citizenship is that of ‘equality’. This implies two things: first, that quality of the given rights and duties improves. Second, that the quantity of people upon whom they are bestowed grows. Marshall sees citizenship as involving three kinds of rights: civil, political and social. Civil rights protect the individual’s life, liberty and property. Political rights enable the individual to participate in the process of governance. Social rights give the individual access to education and employment. Together they make it possible for the citizen to lead a life of dignity. Marshall saw social class as a ‘system of inequality’. Citizenship ensures equality by countering the divisive effects of class hierarchy. It thus facilitates the creation of a better-integrated and harmonious community.

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approached the courts. Even a basic political right like the right to vote may be difficult for them to exercise because to be included in the list of voters a fixed address is required and squatters and pavement dwellers may find it difficult to provide this. Among other groups of people who are becoming marginalised in our society are the tribal people and forest dwellers. These people are dependent on access to forests and other natural resources to maintain their way of life. Many of them face threats to their way of life and livelihood because of the pressure of increasing populations and the search for land and resources to maintain them. Pressures from commercial interests wanting to mine the resources which may exist in forests or coasts poses another threat to the way of life and livelihood of forest dwellers and tribal peoples, as does the tourist industry. Governments are struggling with the problem of how to protect these people and their habitat without at the same time endangering development of the country. This is an issue that affects all citizens, not just tribal people. To try and ensure equal rights and opportunities for all citizens cannot be a simple matter for any government. Different groups of people may have different needs and problems and the rights of one group may conflict with the rights of another. Equal rights for citizens need not mean that uniform policies have to be applied to all people since different groups of people may have different needs. If the purpose is not just to make policies which would apply in the same way to all people, but to make people more equal, the different needs and claims of people would have to be taken into account when framing policies.

CITIZENSHIP, EQUALITY AND RIGHTS

The Supreme Court gave an important decision regarding the rights of slum-dwellers in Bombay in response to a Public Interest Litigation filed by a social activist, Olga Tellis against Bombay Municipal Corporation in 1985. The petition claimed the right to live on pavements or in slums because there was no alternative accommodation available close to their place of work. If they were forced to move they would lose their livelihood as well. The Supreme Court said, “Article 21 of the Constitution which guaranteed the right to life included the right to livelihood. Therefore if pavement dwellers were to be evicted they should first be provided alternative accommodation under the right to shelter.”

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What should become clear from this discussion is that changes in the world situation, the economy, and society demand new interpretations of the meaning and rights of citizenship. The formal laws regarding citizenship only form the starting point and the interpretation of laws is constantly evolving. While answers to some the problems which may arise may not be easy to find, the concept of equal citizenship would mean that providing equal rights and protection to all citizens should be one of the guiding principles of government policies.

LET’S DO IT

Do Survey three families of workers working close to, or in, your homes or school. Find out details about their life. Where is their ancestral place? When and why did they come here? Where do they live? How many people share the accommodation? What kinds of

facilities are available to them? Do their children attend school? LET'S THINK According to the official figures published about the land distribution in Zimbabwe, some 4,400 white families owned 32 per cent of agricultural land that is about 10m hectares. About one million black peasant families own just 16m hectares that is the 38 per cent of the land. While the land that is with the white families is fertile and irrigated, the land in the hands of black population is less fertile and unirrigated. While tracing the history of land ownership, it is very obvious that a century ago the whites had taken the fertile land from the native people. Whites have now been in Zimbabwe for generations and consider themselves as Zimbabweans. The total population of whites in Zimbabwe is just 0.06 per cent of the population. In the year 1997, the President of Zimbabwe, Mugabe announced the plans to take over around 1500 farms. What ideas from citizenship would you use to support or oppose the claims of Black and White Citizens of Zimbabwe? LET'S DO IT Do Find out about the street vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. 2022-23 Citizenship

**Citizenship 90 Political Theory 6.4 CITIZEN AND NATION** The concept of nation state evolved in the modern period. One of the earliest assertions regarding the sovereignty of the nation state and democratic rights of citizens was made by the revolutionaries in France in 1789. Nation states claim that their boundaries define not just a territory but also a unique culture and shared history. The national identity may be expressed through symbols like a flag, national anthem, national language, or certain ceremonial practices, among other things. Most modern states include people of different religions, languages, and cultural traditions. But the national identity of a democratic state is supposed to provide citizens with a political identity that can be shared by all the members of the state. Democratic states usually try to define their identity so that it is as inclusive as possible — that is, which allows all citizens to identify themselves as part of the nation. But in practice, most countries tend to define their identity in a way which makes it easier for some citizens to identify with the state than others. It may also make it easier for the state to extend citizenship to some people and not others. This would be as true of the United States, which prides itself on being a country of immigrants, as any other country. France, for instance, is a country which claims to be both secular and inclusive. It includes not only people of European origin but also citizens who originally came from other areas such as North Africa. Culture and language are important features of its national identity and all citizens are expected to assimilate into it in the public aspects of their lives. They may, however, retain their personal beliefs and practices in their private lives. This may seem like a reasonable policy but it is not always simple to define what is public and what is private and this has given rise to some controversies. Religious belief is supposed to belong to the private sphere of citizens but sometimes religious symbols and practices may enter into their public lives. You may have heard about the demand of Sikh school boys in France to wear the turban to school, and of Muslim girls to wear the head scarf with their school uniforms. This was disallowed 2022-23 Citizenship

**Citizenship Political Theory 91** by some schools on the ground that it involved bringing religious symbols into the public sphere of state education. Those whose religions did not demand such practices naturally did not face the same problem. Clearly, assimilation into the national culture would be easier for some groups than for others. The criteria for granting citizenship to new applicants varies from country to country. In countries such as Israel, or Germany, factors like religion, or ethnic origin, may be given priority when granting citizenship. In Germany there has been a persistent demand from Turkish workers, who were at one time encouraged to come and work in Germany, that their children who have been born and brought up in Germany should automatically be granted citizenship. This is still being debated. These are only a few examples of the kinds of restrictions which may be placed on citizenship even in democratic countries which pride themselves on being inclusive. India defines itself as a secular, democratic, nation state. The movement for independence was a broad based one and deliberate attempts were made to bind together people of different religions, regions and cultures. True, Partition of the country did take place in 1947 when differences with the Muslim



League could not be resolved, but this only strengthened the resolve of Indian national leaders to maintain the secular and inclusive character of the Indian nation state they were committed to build. This resolve was embodied in the Constitution. The Indian Constitution attempted to accommodate a very diverse society. To mention just a few of these diversities, it attempted to provide full and equal citizenship to groups as different as the Scheduled Castes and Scheduled Tribes, many women who had not previously enjoyed equal rights, some remote communities in the Andaman and Nicobar islands who had had little contact with modern civilization, and many others. It also attempted to find a place for the different languages, religions and practices found in different parts of the country. It had to provide equal rights to all without at the same time forcing people to give up their personal beliefs, languages or cultural practices. It was therefore a unique experiment which was undertaken through the Constitution. The Republic Day parade in 2022-23 Citizenship

Citizenship 92 Political Theory Delhi symbolises the attempt of the state to include people of different regions, cultures and religions. The provisions about citizenship in the Constitution can be found in Part Two and in subsequent laws passed by Parliament. The Constitution adopted an essentially democratic and inclusive notion of citizenship. In India, citizenship can be acquired by birth, descent, registration, naturalisation, or inclusion of territory. The rights and obligations of citizens are listed in the Constitution. There is also a provision that the state should not discriminate against citizens on grounds only of religion, race, caste, sex, place of birth, or any of them. The rights of religious and linguistic minorities are also protected. However, even such inclusive provisions have given rise to struggles and controversies. The women's movement, the dalit movement, or struggles of people displaced by development projects, represent only a few of the struggles being waged by people who feel that they are being denied full rights of citizenship. The experience of India indicates that democratic citizenship in any country is a project, an ideal to work towards. New issues are constantly being raised as societies change and new demands are made by groups who feel they are being marginalised. In a democratic state these demands have to be negotiated.

### 6.5 UNIVERSAL CITIZENSHIP

When we think of refugees, or illegal migrants, many images may come to mind. One may be of people from Asia or Africa who have paid agents to smuggle them into Europe or America. The risks are high but they seem willing to make the effort. Another image may be of people displaced by war or famine. Such images are often shown on the television. Refugees in the Darfur region of Sudan, Palestinians, Burmese or Bangladeshis, the examples are many. All these are people who have been forced to become refugees in their own, or neighbouring countries. It is not appropriate for schools, or any other public agencies like the army, to insist on a common uniform and to ban the display of religious symbols such as the turban.

### LET'S DEBATE

2022-23 Citizenship Citizenship Political Theory 93 We often assume that full membership of a state should be available to all those who ordinarily live and work in the country as well as to those who apply for citizenship. But although many states may support the idea of universal and inclusive citizenship, each of them also fixes criteria for the grant of citizenship. These would generally be written into the Constitution and laws of the country. States use their power to keep unwanted visitors out. However, in spite of restrictions, even the building of walls or fences, considerable migration of peoples still takes place in the world. People may be displaced by wars, or persecution, famine, or other reasons. If no state is willing to accept them and they cannot return home, they become stateless peoples or refugees. They may be forced to live in camps, or as illegal migrants. Often they cannot legally work, or educate their children, or acquire property. The problem is so great that the U.N. has appointed a High Commissioner for Refugees to try to help them. Decisions regarding how many people can be absorbed as citizens in a country poses a difficult humanitarian and political problem for many states. Many countries have a policy of accepting those fleeing from persecution or war. But they may not want to accept unmanageable number of people or expose the country to security risks. India prides itself on providing refuge to persecuted peoples, as it did with the Dalai Lama and his followers in

1959. Entry of people from neighbouring countries has taken place along all the borders of the Indian state and the process continues. Many of these people remain as stateless peoples for many years or generations, living in camps, or as illegal migrants. Only a relatively few of them are eventually granted citizenship. Such problems pose a challenge to the promise of democratic citizenship which is that the rights and identity of citizen would be available to all people in the contemporary world. Although many people cannot achieve citizenship of a state of their choice, no alternative identity exists for them. The problem of stateless people is an important one confronting the world today. Borders of states are still being redefined by war or political disputes and for the people caught up in such disputes the consequences may be severe. They may lose their homes, political 2022-23 Citizenship

**Citizenship 94 Political Theory identities, and security, and be forced to migrate. Can citizenship provide a solution to the problems of such people? If not, what kind of alternative identity can be provided today? Do we need to try and evolve a more genuinely universal identity than national citizenship? Suggestions for a notion of global citizenship are sometimes put forward. The possibilities will be discussed in the next section.**

### 6.6 GLOBAL CITIZENSHIP

Consider the following statements:

- o There was an outpouring of sympathy and help for the victims of the tsunami which affected a number of countries in South Asia in 2004.
- o International networks link terrorists today.
- o The United Nations is working with different states to try and prevent the spread of bird flu and the possible emergence of a human viral pandemic.

What is common to the statements given above? What do they tell us about the world in which we live today? We live today in an interconnected world. New means of communication such as the internet, and television, and cell phones, have brought a major change in the way in which we understand our world. In the past it might have taken months for news about developments in one part of the world to become known in other parts. But new modes of communication have put us into immediate contact with developments in different parts of the globe. We can watch disasters and wars on our television screens as they are taking place. This has helped to develop sympathies and shared concerns among people in different countries of the world. Supporters of global citizenship argue that although a world community and global society does not yet exist, people already feel

List some of the stateless people living in India today. Write a short note on any of them.

### LET'S DO IT

Do 2022-23 Citizenship

**Citizenship Political Theory 95** linked to each other across national boundaries. They would say that the outpouring of help from all parts of the world for victims of the Asian tsunami and other major calamities is a sign of the emergence of a global society. They feel that we should try to strengthen this feeling and work towards a concept of global citizenship. The concept of national citizenship assumes that our state can provide us with the protection and rights which we need to live with dignity in the world today. But states today are faced with many problems which they cannot tackle by themselves. In this situation are individual rights, guaranteed by the state, sufficient to protect the freedom of people today? Or has the time come to move to a concept of human rights and global citizenship? One of the attractions of the notion of global citizenship is that it might make it easier to deal with problems which extend across national boundaries and which therefore need cooperative action by the people and governments of many states. For instance, it might make it easier to find an acceptable solution to the issue of migrants and stateless peoples, or at least to ensure them basic rights and protection regardless of the country in which they may be living. In the previous section, we saw that equal citizenship within a country can be threatened by the socio-economic inequalities or other problems which might exist. Such problems can ultimately only be solved by the governments and people of that particular society. Therefore, full and equal membership of a state remains important for people today. But the concept of global citizenship reminds us that national citizenship might need to be supplemented by an awareness that we live in an interconnected world and that there is also a need for us to strengthen our links with people in different parts of the world and be ready to work with people and governments across national boundaries. Find out about Global Citizenship Education

(GCED) from [https:// en.unesco.org/themes /gced](https://en.unesco.org/themes/gced) and [https:// www.gcedclearing house.org](https://www.gcedclearinghouse.org) LET'S DO IT Do 2022-23 Citizenship

**Citizenship 96 Political Theory Exercises**

1. Citizenship as full and equal membership of a political community involves both rights and obligations. Which rights could citizens expect to enjoy in most democratic state today? What kind of obligation will they have to their state and fellow citizens?
2. All citizens may be granted equal rights but all may not be able to equally exercise them. Explain.
3. Write a short note on any two struggles for full enjoyment of citizen rights which have taken place in India in recent years. Which rights were being claimed in each case?
4. What are some of the problems faced by refugees? In what ways could the concept of global citizenship benefit them?
5. Migration of people to different regions within the country is often resisted by the local inhabitants. What are some of the contributions that the migrants could make to the local economy?
6. "Democratic citizenship is a project rather than an accomplished fact even in countries like India which grant equal citizenship". Discuss some of the issues regarding citizenship being raised in India today. Credit: Image on opening page: Shweta Rao

**2022-23 Chapter 7 Nationalism Overview**

This chapter will introduce and discuss the ideas of nationalism and nation. Our concern will be not so much to understand why nationalism has arisen, or what functions it serves; rather our concern would be to think carefully about nationalism and assess its claims and aspirations. After studying this chapter you should be able to:

- o understand the concepts of nation and nationalism.
- o acknowledge the strengths and limitations of nationalism.
- o appreciate the need for ensuring a link between democracy and nationalism.

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**7.1 INTRODUCING NATIONALISM**

If we were to take a quick poll of what people commonly understand by the term nationalism we are likely to get responses which talk about patriotism, national flags, sacrificing for the country, and the like. The Republic Day parade in Delhi is a striking symbol of Indian nationalism and it brings out the sense of power, strength, as well as diversity which many associate with the Indian nation. But if we try to go deeper we will find that it is difficult to arrive at a precise and widely accepted definition of the term nationalism. This need not mean that we should abandon the effort. Nationalism needs to be studied because it plays such an important role in world affairs. During the last two centuries or more, nationalism has emerged as one of the most compelling of political creeds which has helped to shape history. It has inspired intense loyalties as well as deep hatreds. It has united people as well as divided them, helped to liberate them from oppressive rule as well as been the cause of conflict and bitterness and wars. It has been a factor in the break up of empires and states. Nationalist struggles have contributed to the drawing and redrawing of the boundaries of states and empires. At present a large part of the world is divided into different nation-states although the process of re-ordering of state boundaries has not come to an end and separatist struggles within existing states are common. Nationalism has passed through many phases. For instance, in the nineteenth century Europe, it led to the unification of a number of small kingdoms into larger nation-states. The present day German and Italian states were formed through such a process of unification and consolidation. A large number of new states were also founded in Latin America. Along with the consolidation of state boundaries, local dialects and local loyalties were also gradually consolidated into state loyalties and common languages. The people of the new states acquired a new political identity which was based on membership of the nation-state. We have seen a similar process of consolidation taking place in our own country in the last century or more. But nationalism also accompanied and contributed to the break up of large empires such as the Austro-Hungarian and Russian

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empires in the early twentieth century in Europe as well as the break-up of the British, French, Dutch and Portuguese empires in Asia and Africa. The struggle for freedom from colonial rule by India and other former colonies were nationalist struggles, inspired by the desire to establish nation-states which would be independent of foreign control. The process of redrawing state boundaries continues to take place. Since 1960, even apparently stable nation-states have been confronted by nationalist

demands put forward by groups or regions and these may include demands for separate statehood. Today, in many parts of the world we witness nationalist struggles that threaten to divide existing states. Such separatist movements have developed among the Quebecois in Canada, the Basques in northern Spain, the Kurds in Turkey and Iraq, and the Tamils in Sri Lanka, among others. The language of nationalism is also used by some groups in India. Arab nationalism today may hope to unite Arab countries in a pan Arab union but separatist movements like the Basques or Kurds struggle to divide existing states. We may all agree that nationalism is a powerful force in the world even today. But it is more difficult to arrive at agreement regarding the definition of terms like nation or nationalism. What is a nation? Why do people form nations and to what do nations aspire? Why are people ready to sacrifice and even die for their nation? Why, and in what way, are claims to nationhood linked to claims to statehood? Do nations have a right to statehood or national self-determination? Or can the claims of nationalism be met without conceding separate statehood? In this chapter we will explore some of these issues. In this age of globalisation, the world is shrinking. We are living in a global village. Nations are irrelevant. That's not the case. Nationalism is still relevant. You can see this when Indian team goes out to play cricket. Or when you discover that Indians living abroad still watch Bollywood films.

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### Nationalism Political Theory 100 7.2 NATIONS AND NATIONALISM

A nation is not any casual collection of people. At the same time it is also different from other groups or communities found in human society. It is different from the family which is based on face-to-face relationships with each member having direct personal knowledge of the identity and character of others. It is also different from tribes and clans and other kinship groups in which ties of marriage and descent link members to each other so that even if we do not personally know all the members we can, if need be, trace the links that bind them to us. But as a member of a nation we may never come face to face with most of our fellow nationals nor need we share ties of descent with them. Yet nations exist, are lived in and valued by their members. It is commonly believed that nations are constituted by a group who share certain features such as descent, or language, or religion or ethnicity. But there is in fact no common set of characteristics which is present in all nations. Many nations do not have a common language, Canada is an example here. Canada includes English speaking as well as French speaking peoples. India also has a large number of languages which are spoken in different regions and by different communities. Nor do many nations have a common religion to unite them. The same could be said of other characteristics such as race or descent. What then constitutes a nation? A nation is to a great extent an 'imagined' community, held together by the collective beliefs, aspirations and imaginations of its members. It is based on certain assumptions which people make about the collective whole with which they identify. Let us identify and understand some of the assumptions which people make about the nation. Identify any patriotic song in your language. How is the nation described in this song? Identify and watch any patriotic films in your language. How has nationalism been portrayed and its complexities worked out in these films?

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### Nationalism Political Theory 101 Shared Beliefs

First, a nation is constituted by belief. Nations are not like mountains, rivers or buildings which we can see and feel. They are not things which exist independent of the beliefs that people have about them. To speak of a people as a nation is not to make a comment about their physical characteristics or behaviour. Rather, it is to refer to the collective identity and vision for the future of a group which aspires to have an independent political existence. To this extent, nations can be compared with a team. When we speak of a team, we mean a set of people who work or play together and, more importantly, conceive of themselves as a collective group. If they did not think of themselves in this way they would cease to be a team and be simply different individuals playing a game or undertaking a task. A nation exists when its members believe that they belong together. Why don't you cheer for our team? Don't you have any nationalist spirit? I am as much a nationalist as anyone else. I cast my vote; I pay my taxes and I respect the laws of our

country. I am also proud to belong to this country. History Second, people who see themselves as a nation also embody a sense of continuing historical identity. That is, nations perceive themselves as stretching back into the past as well as reaching into the future. They articulate for themselves a sense of their own history by drawing on collective memories, legends, historical records, to outline the continuing identity of the nation. Thus nationalists in India invoked its ancient civilisation and cultural heritage and other achievements to claim that India has had a long and continuing history as a civilisation and that this civilisational continuity and unity is the basis of the Indian nation. Jawaharlal Nehru, for instance, wrote in 2022-23 Nationalism Nationalism Political Theory 102 his book *The Discovery of India*, "Though outwardly there was diversity and infinite variety among the people, everywhere there was that tremendous impress of oneness, which held all of us together in ages past, whatever political fate or misfortune had befallen us". Territory Third, nations identify with a particular territory. Sharing a common past and living together on a particular territory over a long period of time gives people a sense of their collective identity. It helps them to imagine themselves as one people. It is therefore not surprising that people who see themselves as a nation speak of a homeland. The territory they occupied and the land on which they have lived has a special significance for them, and they claim it as their own. Nations however characterise the homeland in different ways, for instance as motherland, or fatherland, or holy land. The Jewish people for instance, in spite of being dispersed and scattered in different parts of the world always claimed that their original homeland was in Palestine, the 'promised land'. The Indian nation identifies with the rivers, mountains and regions of the Indian subcontinent. However, since more than one set of people may lay claim to the same territory, the aspiration for a homeland has been a major cause of conflict in the world. Shared Political Ideals Fourth, while territory and shared historical identity play an important role in creating a sense of oneness, it is a shared vision of the future and the collective aspiration to have an independent political existence that distinguishes groups from nations. Members of a nation share a vision of the kind of state they want to build. They affirm among other things a set of values and principles such as democracy, secularism and liberalism. These ideals represent the terms under which they come together and are willing to live together. It represents, in other words, their political identity as a nation. In a democracy, it is shared commitment to a set of political values and ideals that is the most desirable basis of a political community or a nation-state. Within it, members of political community are bound by a set of obligations. These obligations 2022-23 Nationalism Nationalism Political Theory 103 arise from the recognition of the rights of each other as citizens. A nation is strengthened when its people acknowledge and accept their obligations to their fellow members. We might even say that recognition of this framework of obligations is the strongest test of loyalty to the nation. Common Political Identity Many people believe that a shared political vision about the state and society we wish to create is not enough to bind individuals together as a nation. They seek instead a shared cultural identity, such as a common language, or common descent. There is no doubt that speaking the same language makes it easier for us to communicate with each other and sharing the same religion gives us a set of common beliefs and social practices. Observing the same festivals, seeking the same holidays, and holding the same symbols valuable can bring people together, but it can also pose a threat to the values that we cherish in a democracy. There are two reasons for this. One, all major religions in the world are internally diverse. They have survived and evolved through a dialogue within the community. As a result there exists within each religion a number of sects who differ significantly in their interpretation of the religious texts and norms. If we ignore these differences and forge an identity on the basis of a common religion we are likely to create a highly authoritative and oppressive society. Two, most societies are culturally diverse. They have people belonging to different religions and languages living together in the same territory. To impose a single religious or linguistic identity as a condition of belonging to a particular state would necessarily exclude some groups. It might

restrict the religious liberty of the excluded group or disadvantage those who do not speak the national language. Either way, the ideal that we cherish most in democracy – namely, equal treatment and liberty for all – would be severely limited. For both these reasons it is desirable to imagine the nation in political rather than cultural terms. That is, democracies need to emphasise and expect loyalty to a set of values that may be enshrined in the Constitution of the country rather than adherence to a particular religion, race or language.

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We have identified above some of the ways in which nations express their sense of collective identity. We have also seen why democratic states need to forge this identity on the basis of shared political ideals. But we are still left with an important question, namely, why do people imagine themselves as a nation? What are some of the aspirations of different nations? In the next two sections we shall try to address these questions.

### 7.3 NATIONAL SELF-DETERMINATION

Nations, unlike other social groups, seek the right to govern themselves and determine their future development. They seek, in other words, the right to self-determination. In making this claim a nation seeks recognition and acceptance by the international community of its status as a distinct political entity or state. Most often these claims come from people who have lived together on a given land for a long period of time and who have a sense of common identity. In some cases such claims to self-determination are linked also to the desire to form a state in which the culture of the group is protected if not privileged. Claims of the latter kind were frequently made in the nineteenth century in Europe. The notion of one culture - one state began to gain acceptability at the time. Subsequently, the idea of one culture one state was employed while reordering state boundaries after World War I. The Treaty of Versailles established a number of small, newly independent states, but it proved virtually impossible to satisfy all the demands for self determination which were made at the time. Besides, re-organisation of state boundaries to satisfy the demands of one culture - one state, led to mass migration of population across state boundaries. Millions of people as a consequence were displaced from their homes and expelled from the land which had been their home for generations. Many others became victims of communal violence. Humanity paid a heavy price for re-organising boundaries in a way that culturally distinct communities could form separate nation-states. Besides, even in this effort it was not possible to ensure that the newly created states contained only one ethnic community.

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### DEMAND FOR NATIONAL SELF-DETERMINATION IN BASQUE

Demands for national self-determination have been raised in different parts of the World. Let us look at one such case. Basque is a hilly and prosperous region in Spain. This region is recognised by the Spanish government as an 'autonomous' region within the Spanish federation. But the leaders of Basque Nationalist Movement are not satisfied with this autonomy. They want this region to become a separate country. Supporters of this movement have used constitutional and, till recently, violent means to press for this demand. Basque Nationalists say that their culture is very different from the Spanish culture. They have their own language that does not resemble Spanish at all. Only one-third of the people in Basque understand that language today. The hilly terrain makes the Basque region geographically distinct from the rest of the Spain. Ever since the Roman days, the Basque region never surrendered its autonomy to the Spanish rulers. Its systems of justice, administration and finance were governed by its own unique arrangements. The modern Basque Nationalist Movement started when, around the end of nineteenth century, the Spanish rulers tried to abolish this unique politicaladministrative arrangement. In the twentieth century, the Spanish dictator Franco further cut down this autonomy. He went as far as to ban the use of Basque language in public places and even homes. These repressive measures have now been withdrawn. But the leaders of Basque movement continue to be suspicious of the motives of the Spanish government and fearful of the entry of 'outsiders' in their region. Their opponents say that Basque separatists are trying to make political gains out of an issue already resolved. Do you think Basque nationalists are justified in demanding a separate nation? Is

Basque a nation? What more would you like to know before you can answer this question? Can you think of similar examples from different parts of the world? Can you think of regions and groups in our country where such demands have been made? Source: Multiple Resources including [www.en.wikipedia.org](http://www.en.wikipedia.org) 2022-23 Nationalism

Nationalism Political Theory 106 Indeed most states had more than one ethnic and cultural community living within its boundaries. These communities, which were often small in number and constituted a minority within the state were often disadvantaged. Hence, the problem of accommodating minorities as equal citizens remained. The only positive aspect of these developments was that it granted political recognition to various groups who saw themselves as distinct nations and wanted the opportunity to govern themselves and determined their own future. The right to national self-determination has also been asserted by national liberation movements in Asia and Africa when they were struggling against colonial domination. Nationalist movements maintained that political independence would provide dignity and recognition to the colonised people and also help them to protect the collective interests of their people. Most national liberation movements were inspired by the goal of bringing justice and rights and prosperity to the nation. However, here also, it proved almost impossible to ensure that each cultural group, some of whom claimed to be distinct nations, could achieve political independence and statehood. As a result, migration of populations, border wars, and violence have continued to plague many countries in the region. Thus we have the paradoxical situation of nation-states which themselves had achieved independence through struggle now acting against minorities within their own territories who claim the right to national self-determination. Virtually every state in the world today faces the dilemma of how to deal with movements for self-determination and this has raised questions about the right to national self-determination. More and more people are beginning to realise that the solution does not lie in creating new states but in making existing states more democratic and equal. That is, in ensuring that people with different cultural and ethnic identities live and co-exist as partners and equal citizens within the country. This may be essential not only for resolving problems arising from new claims for self-determination but also for building a strong and united state. After all, a nation-state which does not respect the rights

2022-23 Nationalism Nationalism Political Theory 107 and cultural identity of minorities within the state would find it difficult to gain the loyalty of its members.

#### 7.4 NATIONALISM AND PLURALISM

Once we abandon the idea of one-culture-one-state, it becomes necessary to consider ways by which different cultures and communities can survive and flourish within a country. It is in pursuit of this goal that many democratic societies today have introduced measures for recognising and protecting the identity of cultural minority communities living within their territory. The Indian constitution has an elaborate set of provisions for the protection of religious, linguistic and cultural minorities. The kinds of group rights which have been granted in different countries include constitutional protection for the language, cultures and religion, of minority groups and their members. In some cases identified communities also have the right to representation as a group in legislative bodies and other state institutions. Such rights may be justified on the grounds that they provide equal treatment and protection of the law for members of these groups as well as protection for the cultural identity of the group. Different groups need to be granted recognition as a part of the national community. This means that the national identity has to be defined in an inclusive manner which can recognise the importance and unique contribution of all the cultural communities within the state. Although it is hoped that granting groups recognition and protection would satisfy their aspirations, some groups may continue to demand separate statehood. This may seem paradoxical when globalisation is also spreading in the world but nationalist aspirations continue to motivate many groups and communities. Cut out clippings from various newspapers and magazines related to the demands of various groups in India and abroad for the right to self-determination. Form an opinion about the following:

- o What are the reasons behind these demands?
- o What strategies have they employed?
- o

Are their claims justified? o What do you think could be the possible solution? LET'S DO IT Do 2022-23 Nationalism Nationalism Political Theory 108 TAGORE'S CRITIQUE OF NATIONALISM "Patriotism cannot be our final spiritual shelter; my refuge is humanity. I will not buy glass for the price of diamonds, and I will never allow patriotism to triumph over humanity as long as I live." This was said by Rabindranath Tagore. He was against colonial rule and asserted India's right to independence. He felt that in the British administration of the colonies, there was no place for 'upholding of dignity of human relationships,' an idea which was otherwise cherished in the British civilisation. Tagore made a distinction between opposing western imperialism and rejecting western civilisation. While Indians should be rooted in their own culture and heritage, they should not resist learning freely and profitably from abroad. A critique of what he called 'patriotism' is a persistent theme in his writings. He was very critical of the narrow expressions of nationalism that he found at work in parts of our independence movement. In particular, he was afraid that a rejection of the west in favour of what looked like Indian traditions was not only limiting in itself; it could easily turn into hostility to other influences from abroad, including Christianity, Judaism, Zoroastrianism and Islam which have been present in our 108 country. 2022-23 Nationalism Nationalism Political Theory 109 Considerable generosity and skill is needed for countries to be able to deal with such demands in a democratic manner. To sum up, the right to national self-determination was often understood to include the right to independent statehood for nationalities. But not only would it be impossible to grant independent statehood to every group that sees itself as a distinct cultural group, or nation, it would probably also be undesirable. It might lead to the formation of a number of states too small to be economically and politically viable and it could multiply the problems of minorities. The right has now been reinterpreted to mean granting certain democratic rights for a nationality within a state. The world we live in is one that is deeply conscious of the importance of giving recognition to identities. Today we witness many struggles for the recognition of group identities, many of which employ the language of nationalism. While we need to acknowledge the claims of identity, we should be careful not to allow identity claims to lead to divisions and violence in the society. We need to remember that each person has many identities. For instance, a person may have identities based on gender, caste, religion, language, or region, and may be proud of all of them. So long as each person feels that he/she can freely express the different dimensions of his/her personality, they may not feel the need to make claims on the state for political recognition and concessions for any one identity. In a democracy the political identity of citizen should encompass the different identities which people may have. It would be dangerous if intolerant and homogenising forms of identity and nationalism are allowed to develop. 2022-23 Nationalism Nationalism Political Theory 110 1. How is a nation different from other forms of collective belonging? 2. What do you understand by the right to national self-determination? How has this idea resulted in both formation of and challenges to nation-states? 3. "We have seen that nationalism can unite people as well as divide them, liberate them as well as generate bitterness and conflict". Illustrate your answer with examples. 4. Neither descent, nor language, nor religion or ethnicity can claim to be a common factor in nationalisms all over the world. Comment. 5. Illustrate with suitable examples the factors that lead to the emergence of nationalist feelings. 6. How is a democracy more effective than authoritarian governments in dealing with conflicting nationalist aspirations? Exercises 7. What do you think are the limitations of nationalism? Credit: Image on opening page: Shweta Rao 2022-23 Secularism Secularism Political Theory 111 Chapter 8 Secularism When different cultures and communities exist within the same country, how should a democratic state ensure equality for each of them? This is the question that emerged in the previous chapter. In this chapter we will try and see how the concept of secularism may be applied to answer that concern. In India, the idea of secularism is ever present in public debates and discussions, yet there is something very perplexing about the state of secularism in India. On the one hand, almost every politician swears by it. Every political party professes to be



secular. On the other hand, all kinds of anxieties and doubts beset secularism in India. Secularism is challenged not only by clerics and religious nationalists but by some politicians, social activists and even academics. In this chapter we will engage in this ongoing debate by asking the following questions: o What is the meaning of secularism? o Is secularism a western implant on Indian soil? o Is it suitable for societies where religion continues to exercise a strong influence on individual lives? o Does secularism show partiality? Does it 'pamper' minorities? o Is secularism anti-religious? At the end of this chapter you should be able to understand and appreciate the importance of secularism in a democratic society like India, and learn something about the distinctiveness of Indian secularism.

Overview 2022-23 Secularism 112 Political Theory 8.1 WHAT IS SECULARISM? Though Jews faced discrimination for centuries throughout Europe, in the present state of Israel, Arab minorities, both Christian and Muslims, are excluded from social, political and economic benefits available to Jewish citizens. Subtle forms of discrimination also continue to persist against non-Christians in several parts of Europe. The condition of religious minorities in the neighbouring states of Pakistan and Bangladesh has also generated considerable concern. Such examples remind us of the continuing importance of secularism for people and societies in today's world.

Inter-religious Domination In our own country, the Constitution declares that every Indian citizen has a right to live with freedom and dignity in any part of the country. Yet in reality, many forms of exclusion and discrimination continue to persist. Consider three most stark examples: o More than 2,700 Sikhs were massacred in Delhi and many other parts of the country in 1984. The families of the victims feel that the guilty were not punished. o Several thousands of Hindu Kashmiri pandits have been forced to leave their homes in the Kashmir valley; they have not been able to return to their homes for more than two decades. o More than 1,000 persons, mostly Muslims, were massacred during the post-Godhra riots in Gujarat in 2002. The surviving members of many of these families could not go back to the villages in which they lived. What do these examples have in common? They all have to do with discrimination in one form or the other. In each case members of one community are targeted and victimised on account of their religious identity. In other words, basic freedoms of a set of citizens are denied. Some might even say that these incidents are instances of religious persecution and they reflect inter-religious domination. Secularism is first and foremost a doctrine that opposes all such forms of inter-religious domination. This is however only one crucial aspect of the concept of secularism. An equally important dimension 2022-23 Secularism Secularism Political Theory 113 of secularism is its opposition to intra-religious domination. Let us get deeper into this issue.

Intra-religious Domination Some people believe that religion is merely the 'opium of the masses' and that, one day, when the basic needs of all are fulfilled and they lead a happy and contented life, religion will disappear. Such a view comes from an exaggerated sense of human potential. It is unlikely that human beings will ever be able to fully know the world and control it. We may be able to prolong our life but will never become immortal. Disease can never be entirely eliminated, nor can we get rid of an element of accident and luck from our lives. Separation and loss are endemic to the human condition. While a large part of our suffering is man-made and hence eliminable, at least some of our suffering is not made by man. Religion, art and philosophy are responses to such sufferings. Secularism too accepts this and therefore it is not anti-religious. However, religion has its share of some deep-rooted problems. For example, one can hardly think of a religion that treats its male and female members on an equal footing. In religions such as Hinduism, some sections have faced persistent discrimination. For example dalits have been barred from entering Hindu temples. In some parts of the country, Hindu woman cannot enter temples. When religion is organised, it is frequently taken over by its most conservative faction, which does not tolerate any dissent. Religious fundamentalism in parts of the US has become a big problem and endangers peace both within the country and outside. Many religions fragment into sects which leads to frequent sectarian violence and persecution of dissenting minorities. Thus religious

domination cannot be identified only with interreligious domination. It takes another conspicuous form, namely, intra-religious domination. As secularism is opposed to all forms of institutionalised religious domination, it challenges not merely interreligious but also intra-religious domination. We now possess a general idea of secularism. It is a normative doctrine which seeks to realise a secular society, i.e., one devoid of 2022-23 SecularismSecularism 114 Political Theory either inter-religious or intra-religious domination. Put positively, it promotes freedom within religions, and equality between, as well as within, religions. Within this larger framework, let us now consider a narrower and more specific question, namely: What kind of state is necessary to realise these goals? In other words, let us consider how a state committed to the ideal of secularism should relate to religion and religious communities.

## 8.2 SECULAR STATE

Perhaps one way of preventing religious discrimination is to work together for mutual enlightenment. Education is one way of helping to change the mindset of people. Individual examples of sharing and mutual help can also contribute towards reducing prejudice and suspicion between communities. It is always inspiring to read stories of Hindus saving Muslims or Muslims saving Hindus in the midst of a deadly communal riot. But it is unlikely that mere education or the goodness of some persons will eliminate religious discrimination. In modern societies, states have enormous public power. How they function is bound to make a crucial difference to the outcome of any struggle to create a society less ridden with inter-community conflict and religious discrimination. For this reason, we need to see what kind of state is needed to prevent religious conflict and to promote religious harmony. How should a state prevent domination by any religious group? For a start, a state must not be run by the heads of any particular religion. A state governed directly by a priestly order is called theocratic. Theocratic states, such as the Papal states of Europe in medieval times or in recent times the Taliban-controlled state, lacking separation between religious and political institutions, are known for their hierarchies, and oppressions, and reluctance to allow freedom of religion to members of other religious groups. If we value peace, freedom and equality, religious institutions and state institutions must be separated. Some people think that the separation of state and religion is sufficient for the existence of a secular state. This does not appear

### List some of the ways in which you feel communal harmony could be promoted.

### LET'S DO IT

Do 2022-23 Secularism Secularism Political Theory 115 to be so. Many states which are non-theocratic continue to have a close alliance with a particular religion. For example, the state in England in the sixteenth century was not run by a priestly class but clearly favoured the Anglican Church and its members. England had an established Anglican religion, which was the official religion of the state. Today Pakistan has an official state religion, namely Sunni Islam. Such regimes may leave little scope for internal dissent or religious equality. To be truly secular, a state must not only refuse to be theocratic but also have no formal, legal alliance with any religion. The separation of religion-state is, however, a necessary but not a sufficient ingredient of a secular state. A secular state must be committed to principles and goals which are at least partly derived from non-religious sources. These ends should include peace, religious freedom, freedom from religiously grounded oppression, discrimination and exclusion, as also inter-religious and intra-religious equality. To promote these ends the state must be separated from organised religion and its institutions for the sake of some of these values. However, there is no reason to suggest that this separation should take a particular form. In fact the nature and extent of separation may take different forms, depending upon the specific values it is meant to promote and the way in which these values are spelt out. We will now consider two such conceptions: the mainstream western conception best represented by the American state, and an alternative conception best exemplified by the Indian state.

## 8.3 THE WESTERN MODEL OF SECULARISM

All secular states have one thing in common: they are neither theocratic nor do they establish a religion. However, in most commonly prevalent conceptions, inspired mainly by the American model, separation of religion and state is understood as mutual exclusion: the state will not intervene in the affairs of religion and, in the same manner, religion will

not interfere in the affairs of the state. Each Learning more about other religions is the first step towards learning to respect and accept other people and their beliefs. But that need not mean that we should not be able to stand up for what we feel are basic human values. LET'S DEBATE " " 2022-23 has a separate sphere of its own with independent jurisdiction. No policy of the state can have an exclusively religious rationale. No religious classification can be the basis of any public policy. If this happened there is illegitimate intrusion of religion in the state. Similarly, the state cannot aid any religious institution. It cannot give financial support to educational institutions run by religious communities. Nor can it hinder the activities of religious communities, as long as they are within the broad limits set by the law of the land. For example, if a religious institution forbids a woman from becoming a priest, then the state can do little about it. If a religious community excommunicates its dissenters, the state can only be a silent witness. If a particular religion forbids the entry of some of its members in the sanctum of its temple, then the state has no option but to let the matter rest exactly where it is. On this view, religion is a private matter, not a matter of state policy or law. This common conception interprets freedom and equality in an individualist manner. Liberty is the liberty of individuals. Equality Let us look at a very different kind of secularism practised in Turkey in the first half of the twentieth century. This secularism was not about principled distance from organised religion, instead it involved, active intervention in and suppression of, religion. This version of secularism was propounded and practised by Mustafa Kemal Ataturk. He came to power after the First World War. He was determined to put an end to the institution of Khalifa in the public life of Turkey. Ataturk was convinced that only a clear break with traditional thinking and expressions could elevate Turkey from the sorry state it was in. He set out in an aggressive manner to modernise and secularise Turkey. Ataturk changed his own name from Mustafa Kemal Pasha to Kemal Ataturk (Ataturk translates as Father of the Turks). The Fez, a traditional cap worn by Muslims, was banned by the Hat Law. Western clothing was encouraged for men and women. The Western (Gregorian) calendar replaced the traditional Turkish calendar. In 1928, the new Turkish alphabet (in a modified Latin form) was adopted. Can you imagine a secularism that does not give you the freedom to keep the name you are identified with, wear the dress you are used to, change the language you communicate in? In what ways do you think Ataturk's secularism is different from Indian secularism ?

K Secularism EMAL ATATURK'S SECULARISM Secularism 116 Political Theory 2022-23 is equality between individuals. There is no scope for the idea that a community has the liberty to follow practices of its own choosing. There is little scope for community-based rights or minority rights. The history of western societies tells us why this is so. Except for the presence of the Jews, most western societies were marked by a great deal of religious homogeneity. Given this fact, they naturally focused on intrareligious domination. While strict separation of the state from the church is emphasised to realise among other things, individual freedom, issues of inter-religious (and therefore of minority rights) equality are often neglected. Finally, this form of mainstream secularism has no place for the idea of statesupported religious reform. This feature follows directly from its understanding that the separation of state from church/ religion entails a relationship of mutual exclusion.

#### 8.4 THE INDIAN MODEL OF SECULARISM

Sometimes it is said that Indian secularism is an imitation of western secularism. But a careful reading of our Constitution shows that this is not the case. Indian secularism is fundamentally different from Western secularism. NEHRU ON SECULARISM' 'Equal protection by the State to all religions'. This is how Nehru responded when a student asked him to spell out what secularism meant in independent India. He wanted a secular state to be one that "protects all religions, but does not favour one at the expense of others and does not itself adopt any religion as the state religion". Nehru was the philosopher of Indian secularism. Nehru did not practise any religion, nor did he believe in God. But for him secularism did not mean hostility to religion. In that sense Nehru was very different from Ataturk in Turkey. At the same time Nehru was not in favour of a complete separation between religion and state. A secular

state can interfere in matters of religion to bring about social reform. Nehru himself played a key role in enacting laws abolishing caste discrimination, dowry and sati, and extending legal rights and social freedom to Indian women. While Nehru was prepared to be flexible on many counts, there was one thing on which he was always firm and uncompromising. Secularism for him meant a complete opposition to communalism of all kinds. Nehru was particularly severe in his criticism of the communalism of the majority community, which posed a threat to national unity. Secularism for him was not only a matter of principles, it was also the only guarantee of the unity and integrity of India.

Secularism Political Theory 117 2022-23 Secularism Political Theory Indian secularism does not focus only on church-state separation and the idea of inter-religious equality is crucial to the Indian conception. Let us elaborate this further. What makes Indian secularism distinctive? For a start it arose in the context of deep religious diversity that predated the advent of Western modern ideas and nationalism. There was already a culture of inter-religious 'tolerance' in India. However, we must not forget that tolerance is compatible with religious domination. It may allow some space to everyone but such freedom is usually limited. Besides, tolerance allows you to put up with people whom you find deeply repugnant. This is a great virtue if a society is recovering from a major civil war but not in times of peace where people are struggling for equal dignity and respect. Do you remember the heated debate in France over the French government's decision to ban the usage of religious markers like turbans and veils in educational institutions? That is because the ideal of secularism envisaged in India is different from that of France. Yes I remember. Isn't it strange that both India and France are secular, but in India there is no prohibition on wearing or displaying such religious markers in public institutions. The advent of western modernity brought to the fore hitherto neglected and marginalised notions of equality in Indian thought. It sharpened these ideas and helped us to focus on equality within the community. It also ushered ideas of inter-community equality to replace the notion of hierarchy. Thus Indian secularism took on a distinct form as a result of an interaction between what already existed in a society that had religious diversity and the ideas that came from the west. It resulted in equal focus on intra-religious and interreligious domination. Indian secularism equally opposed the 2022-23 Secularism Political Theory 119 oppression of dalits and women within Hinduism, the discrimination against women within Indian Islam or Christianity, and the possible threats that a majority community might pose to the rights of the minority religious communities. This is its first important difference from mainstream western secularism. Connected to it is the second difference. Indian secularism deals not only with religious freedom of individuals but also with religious freedom of minority communities. Within it, an individual has the right to profess the religion of his or her choice. Likewise, religious minorities also have a right to exist and to maintain their own culture and educational institutions. A third difference is this. Since a secular state must be concerned equally with intra-religious domination, Indian secularism has made room for and is compatible with the idea of state-supported religious reform. Thus, the Indian constitution bans untouchability. The Indian state has enacted several laws abolishing child marriage and lifting the taboo on inter-caste marriage sanctioned by Hinduism. The question however that arises is: can a state initiate or even support religious reforms and yet be secular? Can a state claim to be secular and not maintain separation of religion from state? The secular character of the Indian state is established by virtue of the fact that it is neither theocratic nor has it established any one or multiple religions. Beyond that it has adopted a very sophisticated policy in pursuit of religious equality. This allows it either to disengage with religion in American style, or engage with it if required. The Indian state may engage with religion negatively to oppose religious tyranny. This is reflected in such actions as the ban on untouchability. It may also choose a positive mode of engagement. Thus, the Indian Constitution grants all religious minorities the right to establish and maintain their own educational institutions which may receive assistance from the state. All these complex strategies can be adopted by the state to promote the values of peace,

freedom and equality. LET'S DEBATE Religious identities and differences have no significance for the young. 2022-23 SecularismSecularism 120 Political Theory LET'S DO IT Do o Watch films such as Bombay and Garam Hawa? What ideals of secularism do they depict? o Read a short story 'Name' in Forsaking Paradise: Stories from Ladakh by Abdul Ghani Sheikh [Published by Katha] LET'S THINK Is secularism compatible with the following? o Subsidising a pilgrimage for a minority community. o Performing religious rituals in government offices. It should be clear by now why the complexity of Indian secularism cannot be captured by the phrase "equal respect for all religions". If by this phrase is meant peaceful coexistence of all religions or interreligious toleration, then this will not be enough because secularism is much more than mere peaceful coexistence or toleration. If this phrase means equal feeling of respect towards all established religions and their practices, then there is an ambiguity that needs clearing. Indian secularism allows for principled state intervention in all religions. Such intervention betrays disrespect to some aspects of every religion. For example, religiously sanctioned caste-hierarchies are not acceptable within Indian secularism. The secular state does not have to treat every aspect of every religion with equal respect. It allows equal disrespect for some aspects of organised religions. 8.5 CRITICISMS OF INDIAN SECULARISM Indian secularism has been subjected to fierce criticism. What are these criticisms? Can we defend secularism from them? Anti-religious First, it is often argued that secularism is anti-religious. We hope to have shown that secularism is against institutionalised religious domination. This is not the same as being anti-religious. Similarly, it has been argued by some that secularism threatens religious identity. However, as we noted earlier, secularism promotes religious freedom and equality. Hence, it clearly protects religious identity rather than threatens it. Of course, it does undermine 2022-23 Secularism Secularism Political Theory 121 some forms of religious identity: those, which are dogmatic, violent, fanatical, exclusivist and those, which foster hatred of other religions. The real question is not whether something is undermined but whether what is undermined is intrinsically worthy or unworthy. Western Import A second criticism is that secularism is linked to Christianity, that it is western and, therefore, unsuited to Indian conditions. On the surface, this is a strange complaint. For there are millions of things in India today, from trousers to the internet and parliamentary democracy, that have their origins in the west. One response, therefore, could be: so what? Have you heard a European complain that because zero was invented in India, they will not work with it? However, this is a somewhat shallow response. The more important and relevant point is that for a state to be truly secular, it must have ends of its own. Western states became secular when, at an important level, they challenged the control of established religious authority over social and political life. The western model of secularism is not, therefore, a product of the Christian world. What of the claim that it is western? The mutual exclusion of religion and state, which is supposed to be the ideal of western secular societies, is also not the defining feature of all secular states. The idea of separation can be interpreted differently by different societies. A secular state may keep a principled distance from religion to promote peace between communities and it may also intervene to protect the rights of specific communities. This exactly is what has happened in India. India evolved a variant of secularism that is not just an implant from the west on Indian soil. The fact is that the secularism has both western and nonwestern origins. In the west, it was the Church-state separation which was central and in countries such as India, the idea of peaceful coexistence of different religious communities has been important. Minoritism A third accusation against secularism is the charge of minoritism. It is true that Indian secularism advocates minority rights so the question is: Is this justified? Consider four adults in a compartment 2022-23 SecularismSecularism 122 Political Theory of a train travelling at the fastest speed imaginable. In the middle of the journey, one of the four passengers expresses a desire to smoke. The second one complains that he cannot bear cigarette smoke. The other two passengers smoke too but say nothing. Clearly there is a conflict here between two passengers. A suggestion is made that it be resolved by vote. The two mild smokers go

along with the addict and the non-smoker is defeated by a margin of two votes. The person in the minority loses but the result appears fair because a proper democratic procedure adopted by common agreement was followed. Now alter the situation a bit. Suppose that the non-smoker suffers from asthma. Smoking can induce a life-threatening attack in him. His preference that the other person does not smoke expresses now his fundamental and very urgent interest. Would the procedure previously followed, of going with the decision of the majority, be fair in such a context? Do you not think that the addicted smoker should refrain till the train reaches its destination? You will agree that when it comes to fundamental interests, voting as a democratic procedure is inappropriate. A person has a prior right to the satisfaction of his or her significant interests. What holds true of individuals also holds for communities. The most fundamental interest of minorities must not be harmed and must be protected by constitutional law. This is exactly how it is in the Indian Constitution. Minority rights are justified as long as these rights protect their fundamental interests. At this point someone might still say that minority rights are special privileges which come with some costs to others. Why then should such special privilege be given? This question can be best answered by another example. Consider that a film is being shown in an auditorium on the first floor. The auditorium is accessible by a staircase. Everyone is free to buy a ticket, go up the stairs and see the film. Or, are they? Is everyone really free? Suppose that among avid film-goers are some old people, some who have recently broken a leg and others who have long been physically challenged. None of them can really climb up the stairs. Do you I thought treating everyone in exactly the same way is not always fair! 2022-23 Secularism Secularism Political Theory 123 think it would be wrong if a lift or a ramp was provided for people in wheel chairs? Doing so enables them to achieve exactly what others routinely procure through the staircase. Yet, this group in minority needs a different mode of getting to the first floor. If all spaces are structured in such a way that they suit only young, able-bodied persons, then some category of persons will forever be excluded from a simple benefit such as watching a film. To make a separate arrangement for them is not to accord them any special treatment. It is to treat them with the same respect and dignity with which all others are being treated. The lesson is that minority rights need not be nor should be viewed as special privileges.

Interventionist A fourth criticism claims that secularism is coercive and that it interferes excessively with the religious freedom of communities. This misreads Indian secularism. It is true that by rejecting the idea of separation as mutual exclusion, Indian secularism rejects non-interference in religion. But it does not follow that it is excessively interventionist. Indian secularism follows the concept of principled distance which also allows for noninterference. Besides, interference need not automatically mean coercive intervention. It is of course true that Indian secularism permits state-supported religious reform. But this should not be equated with a change imposed from above, with coercive intervention. But it might be argued: does it do this consistently? Why have personal laws of all religious communities not been reformed? This is the big dilemma facing the Indian state. A secularist might see the personal laws (laws concerning marriage, inheritance and other family matters which are governed by different religions) as manifestations of community-specific rights that are protected by the Constitution. Or he might see these laws as an affront to the basic principles of secularism on the ground that they treat women unequally and therefore unjustly. Personal laws can be seen as manifestations of freedom How can a State treat all religions equally? Would granting equal number of holidays to each religion help? Or would banning any religious ceremony on public occasions be a way of doing this? 2022-23 SecularismSecularism 124 Political Theory from inter-religious domination or as instances of intra-religious domination. Such internal conflicts are part and parcel of any complex doctrine but they are not something that we need to live with forever. Personal laws can be reformed in such a way that they continue to exemplify both minority rights and equality between men and women. But such reform should neither be brought about by State or group coercion nor should the state adopt a policy of total distance from it. The state must act as a

facilitator by supporting liberal and democratic voices within every religion. Vote Bank Politics Fifth, there is the argument that secularism encourages the politics of vote banks. As an empirical claim, this is not entirely false. However, we need to put this issue in perspective. First, in a democracy politicians are bound to seek votes. That is part of their job and that is what democratic politics is largely about. To blame a politician for pursuing a group of people or promising to initiate a policy with the motivation to secure their votes is unfair. The real question is what precisely the vote is sought for. Is it to promote solely his self-interest or power or is it also for the welfare of the group in question? If the group which voted for the politician does not get any benefit from this act, then surely the politician must be blamed. If secular politicians who sought the votes of minorities also manage to give them what they want, then this is a success of the secular project which aims, after all, to also protect the interests of the minorities. But what if the welfare of the group in question is sought at the cost of the welfare and rights of other groups? What if the interests of the majority are undermined by these secular politicians? Then a new injustice is born. But can you think of such examples? Not one or two but a whole lot of them such that you can claim that the whole system is skewed in favour of minorities? If you think hard, you might find that there is little evidence that this has happened in India. In short, there is nothing wrong with vote bank politics as such, but only with a form of vote bank politics that generates

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injustice. The mere fact that secular parties utilise vote banks is not troublesome. All parties do so in relation to some social group. Impossible Project A final, cynical criticism might be this: Secularism cannot work because it tries to do too much, to find a solution to an intractable problem. What is this problem? People with deep religious differences will never live together in peace. Now, this is an empirically false claim. The history of Indian civilisation shows that this kind of living together is realisable. It was realised elsewhere too. The Ottoman Empire is a stirring example. But now critics might say that coexistence under conditions of inequality was indeed possible. Everyone could find a place in a hierarchically arranged order. The point, they claim, is that this will not work today when equality is increasingly becoming a dominant cultural value. There is another way of responding to this criticism. Far from pursuing an impossible objective Indian secularism mirrors the future of the world. A great experiment is being carried out in India watched with razor-sharp eyes and with great interest by the whole world. It is doing so because with the migration of people from the former colonies to the west, and the increased movement of people across the globe with the intensification of globalisation, Europe and America and some parts of the Middle-East are beginning to resemble India in the diversity of cultures and religions which are present in their societies. These societies are watching the future of the Indian experiment with keen interest.

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Name of the holiday Date according to Gregorian Calendar (for 2019)

Republic Day January 26 Maha Shivaratri March 4 Holi March 21 Mahavir Jayanti April 17 Good Friday April 19 Buddha Purnima May 18 Id-ul-Fitr June 5 Id-ul-Zuha (Bakrid) August 12 Independence Day August 15 Janmashtami August 24 Muharram September 10 Mahatma Gandhi's Birthday October 2 Dussehra October 8 Diwali (Deepavali) October 27 Milad-un-Nabi/Id-e-Milad (Birthday of Prophet Mohammad) November 10 Guru Nanak's Birthday November 12 Christmas Day December 25

Read out the list of gazetted holidays in India. Does it uphold the case of Secularism in India? Give your arguments.

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1. Which of the following do you feel are compatible with the idea of secularism? Give reasons.

(a) Absence of domination of one religious group by another.

(b) Recognition of a state religion.

(c) Equal state support to all religions.

(d) Mandatory prayers in schools.

(e) Allowing separate educational institutions for any minority community.

(f) Appointment of temple management bodies by the government.

(g) Intervention of state to ensure entry of Dalits in temples.

2. Some of the key characteristics of western and Indian model of secularism have got mixed up. Separate them and make a new table.

Exercises

Western Secularism

Indian Secularism

Strict non-interference of State supported religious religion and state in each

reforms allowed other's affairs Equality between different Equality between different religious groups is a key concern sects of a religion is emphasised Attention to minority rights Less attention to community based rights Individual and his rights at the Rights of both individual and centre religious community protected. 2022-23 Secularism Secularism 128 Political Theory Exercises 3. What do you understand by secularism? Can it be equated with religious tolerance? 4. Do you agree with the following statements? Give reasons for supporting or opposing any of them. (a) Secularism does not allow us to have a religious identity. (b) Secularism is against inequality within a religious group or between different religious groups. (c) Secularism has a western-Christian origin. It is not suitable for India. 5. Indian secularism focuses on more than the religion-state separation. Explain. 6. Explain the concept of principled distance. Credit: Images on opening page: Sanjeev Chetan 2022-23 Chapter 9 Peace Overview The screaming media reports on wars, terrorist attacks and riots constantly remind us that we live in turbulent times. While actual peace remains elusive, the word itself seems to have become quite popular. It springs readily to the lips of politicians, journalists, industrialists, educators and army chiefs. It is also cited as a cherished value in a wide variety of documents including textbooks, constitutions, charters and treaties. As the idea of peace is readily invoked and the desirability of pursuing peace is rarely questioned we may think that the meaning of this concept needs no further clarification. However, this is not the case. As we will see later, the seeming consensus around the idea of peace is a relatively recent phenomenon. Over the years, the meaning and value of peace has been assessed fairly differently. The advocates of peace face many questions:

- o What exactly is peace? And, why is it so fragile in today's world?
- o What can be done to establish peace?
- o Can we use violence to establish peace?
- o What are the main reasons for the growing violence in our society?

These are questions that we will examine in greater detail in this chapter. 2022-23 Peace Peace Political Theory 130 9.1 INTRODUCTION Like 'democracy', 'justice' and 'human rights', 'peace' has become a buzzword. But we must remember that this seeming consensus on the desirability of peace is relatively recent. Many important thinkers of the past wrote about peace in negative terms. The nineteenth century German philosopher Friedrich Nietzsche was one of those who glorified war. Nietzsche did not value peace because he believed that only conflict could facilitate the growth of civilisation. Several other thinkers have similarly condemned peace and commended strife as a vehicle of individual heroism and social vitality. The Italian social theorist, Vilfredo Pareto (1848–1923), argued that people who were able and willing to use force to achieve their goals constituted the governing elites in most societies. He described them as 'lions'. This is not to suggest that the cause of peace had no champions. In fact, it occupied a central place in the original teachings of almost all religions. The modern era too has witnessed ardent advocates of peace, both in the spiritual and secular domains. Mahatma Gandhi would figure prominently among them. However, the contemporary preoccupation with peace can be traced to the atrocities of the twentieth century, which resulted in the death of millions of human beings. You may have read about some of these events in your history textbooks: the rise of Fascism, Nazism and the World Wars. Closer home in India and Pakistan we have experienced the horrors of Partition. Many of the aforesaid calamities involved the use of advanced technology to wreak havoc on an unprecedented scale. Thus, Germany 'carpet-bombed' London during the Second World War and the British responded by sending 1000-bomber raids to attack German cities. The war ended with the USA dropping atom bombs on the Japanese cities, Hiroshima and Nagasaki. At least 1,20,000 people died immediately from the two attacks and many more died later due to the effects of nuclear radiation. Nearly 95 per cent of the casualties were civilians. Friedrich Nietzsche 2022-23 Peace Peace Political Theory 131 The post-war decades were marked by intense rivalry between two superpowers—the capitalist USA and the communist USSR—for world supremacy. Since nuclear weapons had become the new currency of power, both countries began to make and stockpile them on a large scale. The Cuban Missile Crisis of October 1962 was a particularly dark episode in this unfolding military



competition. It began when American spy planes discovered Soviet nuclear missiles in neighbouring Cuba. The USA responded by organising a naval blockade of Cuba and threatening military action against the USSR, if the missiles were not removed. This eyeball-to-eyeball confrontation ended when the Soviet Union withdrew the missiles. During the two weeks it lasted, the crisis had brought humanity perilously close to the brink of total destruction. So, if people praise peace today, that is not merely because they believe it to be a good idea. Humanity has learnt to value peace after paying a huge price for its absence. The spectre of tragic conflict continues to haunt us. Today life is more insecure than ever before as people everywhere face a growing threat from terrorism. Peace continues to be valuable, partly because dangers to it are ever present.

## 9.2 THE MEANING OF PEACE

Peace is often defined as the absence of war. The definition is simple but misleading. This is because war is usually equated with armed conflict between countries. However, what happened in Rwanda or Bosnia was not a war of this kind. Yet, it represented a

Read the novel *The flowers of Hiroshima* written by Edita Morris. Note how the use of the atomic bomb continued to traumatise the people for long.

### LET'S DO IT

Do 131 Must be from a backward nation. He talked about employment, education, health, shelter and not a word about the nuclear bomb! R. K. Laxman in the Times of India 2022-23

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132 violation or cessation of peace. While every war leads to absence of peace, every absence of peace need not take the form of war. The second step in defining peace would be to see it as absence of violent conflict of all kinds including war, riot, massacre, assassination, or simply physical attack. This definition is clearly better than the earlier one. Yet, it does not take us very far. Violence is often rooted in the very structure of society. Social institutions and practices that reinforce entrenched inequalities of caste, class and gender, can also cause injury in subtle and invisible ways. If any challenge is made to these hierarchies by oppressed classes it may also breed conflict and violence. 'Structural violence' of this kind may produce large-scale evil consequences. Let us look at a few concrete instances of such violence arising from caste hierarchy, class disparity, patriarchy, colonialism, and racism/communalism.

### Forms of Structural Violence

The traditional caste system treated certain groups of people as asprishya or untouchable. Till it was outlawed by the Constitution of independent India, the practice of untouchability subjected them to social exclusion and deprivation of the worst sort. The country is still struggling to erase the scars and relics of this ugly custom. While a social order based on class appears to be more flexible, it too generates a great deal of inequality and oppression. In the developing countries a majority of the labouring classes are confined to the informal sector where the wages and conditions of work are abysmal. A sizeable underclass exists even in the developed countries. Patriarchy entails a form of social organisation that results in the systematic subordination of, and discrimination against, women. Its manifestations include selective abortion of female foetuses, denial of adequate nourishment and education to the girl-child, childmarriage, wife battering, dowry-related crimes, sexual harassment at the workplace, rape, and honour killing. The low child sex ratio (0-6 years) — 919 females per 1000 males — in India, as per the 2011 Census, is a poignant index of the ravages of patriarchy. Colonialism in the sense of prolonged and direct subjection of a people to alien rule is now a rare phenomenon. But the ongoing Palestinian struggle against Israeli domination shows that it has not

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### LET'S THINK

Which of the following views do you agree with and why?

- o "All wrong-doing arises because of mind. If mind is transformed can wrong-doing remain?" — Gautam Buddha
- o "I object to violence because when it appears to do good, the good is only temporary; the evil it does is permanent" — Mahatma Gandhi
- o "Ye shall be those whose eyes ever seek for an enemy...ye shall love peace as a means to new wars— and the short peace more than the long. You I advise not to work, but to victory. Let your work be a fight, let your peace be a victory" — Friedrich Nietzsche

disappeared completely. Besides, the former colonies of European imperialist countries are yet to recover completely from the forms of manifold exploitation they suffered during the colonial era. Racism and communalism involve the stigmatisation and oppression

of an entire racial group or community. Though the notion that humanity can be divided into distinct races is scientifically spurious, it has been used to justify insidious practices such as Negro slavery in the United States of America (until 1865), the slaughter of Jews in Hitler's Germany, and apartheid—a policy followed until 1992 by the White-controlled government in South Africa, which treated the majority Black people of the country as second-class citizens. Racial discrimination still continues covertly in the West and is now often directed against immigrants from countries in Asia, Africa and Latin America. Communalism may be seen as the South Asian counterpart of racism where the victims tend to be minority religious groups. The psychological and tangible harm suffered by the victims of violence often creates grievances that persist over generations. Sometimes they may give rise to fresh bouts of conflict when provoked by some incident or even remark. We have examples of long-term 2022-23 Peace Peace Political Theory 134 grievances being harboured by communities against each other in South Asia, such as those stemming from the violence unleashed during the partition of British India in 1947. A just and lasting peace can be attained only by articulating and removing the latent grievances and causes of conflict through a process of dialogue. Hence the ongoing attempts to resolve problems between India and Pakistan also include promoting increased contacts among people in all walks of life. Eliminating Violence The Constitution of the United Nations Educational, Scientific and Cultural Organisation rightly observes: "Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed". Several age-old spiritual principles (e.g., compassion) and practices (e.g., meditation) are geared precisely to the facilitation of such an endeavour. Modern healing techniques and therapies like psychoanalysis can perform a similar function. However, we have noted that violence does not originate merely within the individual psyche; it is also rooted in certain social structures. The elimination of structural violence necessitates the creation of a just and democratic society. Peace, understood as the harmonious coexistence of contented people, would be a product of such a society. It can never be achieved once and for all. Peace is not an end-state, but a process involving an active pursuit of the moral and material resources needed to establish human welfare in the broadest sense of the term.

9.3 CAN VIOLENCE EVER PROMOTE PEACE? It has often been asserted that violence — though it is an evil — can sometimes be a necessary prelude to bringing about peace. It may be List the names of a few Nobel Peace Prize winners. Write a note on any one of them. LET'S DO IT Do Components for the Creation of Terrorism 2022-23 Peace Peace Political Theory 135 The Khmer Rouge regime in Cambodia was a particularly horrific example of the counter-productive nature of revolutionary violence. An outcome of the insurrection led by Pol Pot, the regime sought to institute a communist order geared to the liberation of the oppressed peasantry. During 1975–1979, it let loose a reign of terror that caused the death of approximately 1.7 million people (21 per cent of the country's population). This was one of the bleakest human tragedies of the previous century. The systematic deployment of violence by radical movements to attain apparently desirable objectives may not always have such dramatically appalling consequences. But in the process, it frequently assumes an institutional form, thereby becoming an integral part of the resulting political order. A case in point is the FLN (National Liberation Front), which led the Algerian independence movement by using violent means. While it liberated the country from the yoke of French imperialism in 1962, the FLN regime soon degenerated into authoritarianism and triggered a backlash in the form of Islamic fundamentalism. argued that tyrants and oppressors can be prevented from continuing to harm the populace only by being forcibly removed. Or the liberation struggles of oppressed people can be justified even though they may use some violence. But resort to violence, however well meaning, could turn out to be self-defeating. Once deployed, it tends to spin out of control, leaving behind a trail of death and destruction. It is for this reason that pacifists, who consider peace to be a supreme value, take a moral stand against the use of violence even for attaining just ends. They too recognise the need to fight oppression. However, they advocate the mobilisation of love and truth to win the

hearts and minds of the oppressors. LET'S THINK 135 2022-23 Peace Peace Political Theory 136 This is not to underestimate the potential of militant but non-violent form of resistance. Civil disobedience is a major mode of such struggle and it has been successfully used to make a dent in structures of oppression; a prominent instance being Gandhi's deployment of satyagraha during the Indian Freedom Movement. Gandhi took his stand on justice and appealed to the conscience of the British rulers. If that did not work, he put moral and political pressure on them by launching a mass movement involving open but non-violent breaking of the unjust laws. Drawing You may have heard the phrase 'Majboori Ka Naam Mahatma Gandhi'? The tendency to equate helplessness with non-violence and non-violence with Gandhi has led some people to say this. Underlying this light remark is the widespread view that non-violence is the way of the weak. Gandhi rejected this understanding of non-violence and articulated an altogether different philosophy of non-violence. We usually understand non-violence to mean non-injury. A non-violent act is thought to be one that does not cause physical injury. Gandhi changed this meaning in two fundamental ways. For him non-violence meant not just refraining from causing physical harm, mental harm or loss of livelihood. It also meant giving up even the thought of harming someone. For him 'causing' did not mean doing the harm oneself. For Gandhi, "I would be guilty of violence, if I helped someone in harming someone else or if I benefited from a harmful act." In this sense Gandhi's notion of violence was close to 'structural violence'. The second major change that Gandhi introduced was to give the idea of nonviolence a positive meaning. Not causing harm was not enough. Ahimsa required an element of conscious compassion. Gandhi was opposed to passive spiritualism. For him non-violence meant a positive and active pursuit of well-being and goodness. Therefore those who practise nonviolence must exercise physical and mental restraint under the gravest provocation. Nonviolence is an extremely active force that has no room for cowardice or weakness. Gandhi in fact went to the extent of stating that if non-violence were inadequate to defend oneself, then it would be better to resort to violence than take refuge in passivity in the name of non-violence. Some Gandhians say that the popular saying cited at the outset should be changed to "Mazbooti ka 136 naam Mahatma Gandhi". Do you think recourse to violence may sometimes be necessary? After all, the Nazi regime in Germany had to be overthrown through external military intervention. LET'S DEBATE " " MAHATMA GANDHI ON NON-VIOLENCE 2022-23 Peace Peace Political Theory 137 inspiration from him, Martin Luther King waged a similar battle in the 1960s against anti-Black racial discrimination in the USA. 9.4 PEACE AND THE STATE It is often argued that the division of world into separate sovereign states is an impediment to the pursuit of peace. As each state sees itself as an independent and supreme entity, it tends to protect its own perceived self-interest. While the pursuit of peace requires that we see ourselves as part of the larger humanity, states tend to make distinctions between people. To pursue the interest of their citizens they are willing to inflict injury upon others. Besides, in today's world each state has consolidated instruments of coercion and force. While the state was expected to use its force, its army or its police, to protect its citizens, in practice these forces could be deployed against its own members to suppress dissent. This is most clearly evident in authoritarian regimes and military dictatorships, like the one currently ruling Myanmar. The long-term solution to such problems lies in making the state more accountable through meaningful democratisation and reining it in via an effective system of A poignant dilemma arises from the tendency of many states to use violent means for achieving their objectives in the international arena, especially for capturing territory and natural resources. The resulting contention can escalate into a full-scale war. Thus, in 1990, Iraq invaded its small, oil-rich neighbour Kuwait. It justified the war by asserting that Kuwaiti territory had been an Iraqi province arbitrarily cut off by imperialism, and by accusing Kuwait of slant drilling into Iraq's oil supplies. The invasion was eventually repulsed by a US-led military coalition. Conflict of this kind is an ever-present possibility in a global system devoid of an effective world government. It is also exacerbated by vested interests like the armament industry, which find war a profitable

proposition. Collect material on Gandhi's various methods of Satyagraha used in South Africa, Champaran and in Dandi March. If possible read the book *Pahala Girmatiya* by Giriraj Kishore. Find more about Martin Luther King's Civil Rights Movement. How was he inspired by Gandhi? LET'S DO IT Do 2022-23 Peace Peace Political Theory 138 civil liberties. This is the route taken by the post-apartheid regime in South Africa, which is one of the prominent political success stories of recent years. The struggle for democracy and human rights is thus closely linked to the safeguarding of peace.

9.5 DIFFERENT APPROACHES TO THE PURSUIT OF PEACE Different strategies have been used for the pursuit and maintenance of peace. These have been shaped by three distinct approaches. The first approach accords centrality to states, respects their sovereignty, and treats competition among them as a fact of life. Its main concern is with the proper management of this competition, and with the containment of possible conflict through inter-state arrangements like 'balance of power'. Such a balance is said to have prevailed in the nineteenth century when the major European countries fine-tuned their struggle for power by forming alliances that deterred potential aggressors and prevented the outbreak of a large-scale war. The second approach too grants the deep-rooted nature of interstate rivalry. But it stresses the positive presence and possibilities of interdependence. It underscores the growing social and economic cooperation among nations. Such cooperation is expected to temper state sovereignty and promote international understanding. Consequently global conflict would be reduced, leading to better prospects of peace. An example frequently cited by advocates of this approach is that of post-World War II Europe which secured durable peace by graduating from economic integration to political unification. Unlike the first two approaches, the third considers the state system to be a passing phase of human history. It envisages the emergence of a supra-national order and sees the fostering of a global community as the surest guarantee of peace. The seeds of such a community are found in the expanding interactions and coalitions across state boundaries that involve diverse non-governmental actors like multinational corporations and people's movements. The proponents of this approach argue that the ongoing process of globalisation is further eroding the already diminished primacy and sovereignty of the state, thereby creating conditions conducive to the establishment of world peace.

2022-23 Peace Peace Political Theory 139 The United Nations may be said to embody elements of all the three approaches. The Security Council, which gives permanent membership and veto power (the right to shoot down a proposal even if it is supported by other members) to five dominant states, reflects the prevalent international hierarchy. The Economic and Social Council promotes inter-state cooperation in several spheres. The Commission on Human Rights seeks to shape and apply transnational norms.

9.6 CONTEMPORARY CHALLENGES While the U.N.O. has several noteworthy achievements to its credit, it has not succeeded in preventing and eliminating threats to peace. Instead, dominant states have asserted their sovereignty and sought to shape regional power structures and the international system itself in keeping with their own perceptions and priorities. To this end, they have even resorted to direct military action against and

PACIFISM Pacifism preaches opposition to war or violence as a means of settling disputes. It covers a spectrum of views ranging from a preference for diplomacy in resolving international disputes to absolute opposition to the use of violence, or even force, in any circumstance. Pacifism may be based on principle or pragmatism. Principled pacifism springs from the belief that war, deliberate lethal force, violence or any form of coercion is morally wrong. Pragmatic pacifism does not adhere to such an absolute principle but holds that there are better ways of resolving a dispute than war, or considers the benefits of a war to be outweighed by the costs. 'Dove' or 'dovish' are informal terms used to describe people who seek to avoid war. The terms allude to the placid nature of the dove. Some people termed dovish would not view their position as pacifist, for they would consider war to be justifiable in some circumstances. The opposite of a dove is a 'hawk' or a warmonger. Some pacifists, while opposing war, are not opposed to all use of coercion, physical force against people or destruction of property. Anti-militarists, for

example, are specifically opposed to the modern nation-states' military institutions rather than to 'violence' in general. Other pacifists follow principles of non-violence, believing that only non-violent action is acceptable. Adapted from Wikipedia, the free encyclopedia 2022-23 Peace Peace Political Theory 140 occupation of foreign territories. The recent US intervention in Afghanistan and Iraq is a glaring example of such conduct. Numerous lives have been lost in the ensuing warfare. The rise of terrorism is partly a response to the self-serving and ham-handed conduct of the aggressive states. Terrorists currently pose a great threat to peace through an adroit and ruthless use of modern weapons and advanced technology more generally. The demolition of the World Trade Centre (New York, USA) by Islamic militants on 11 September 2001 was a striking manifestation of this sinister reality. The use of biological/chemical/nuclear weapons of mass destruction by these forces remains a frightening possibility. The global community has failed to curb the rapacity of the domineering powers and the guerrilla tactics of the terrorists. It has also often served as a mute spectator of genocide — the systematic massacre of an entire group of people. This became particularly evident in Rwanda — an African country that witnessed the murder of nearly half a million Tutsis by Hutus during 1994. Despite the availability of intelligence before the killing began and subsequent international media coverage of the genocide as it unfolded, there was no international intervention. The UN refused to authorise its peace-keeping operation in Rwanda to stop the carnage. All this is not to say that peace is a lost cause. After World War II, countries like Japan and Costa Rica decided not to maintain military forces. Several parts of the world have witnessed the creation of nuclear - weapon-free zones where the use, development or deployment of nuclear weapons is banned through an internationally recognised treaty. Today there are six such zones which have been achieved or are in the process of acceptance, covering the Antarctic territory, Latin America and the Caribbean, South-East Asia, Africa, the South Pacific, and Mongolia. The disintegration of the USSR in 1991 put a full stop to the era of military (especially nuclear) rivalry between the Design a peace award with a symbol(s). Which symbol(s) do you think best depicts your understanding of the term 'peace'. Who would you like to award this to and why? LET'S DO IT Do 2022-23 Peace Peace Political Theory 141 super powers and removed a major threat to international security. Besides, the contemporary era has witnessed the rise of numerous popular initiatives aimed at fostering peace. These are often collectively described as the peace movement. The devastation caused by the two World Wars galvanised the movement. It has since gathered momentum and gained a large following across geographical and political barriers. The movement is sustained by people from diverse walks of life and includes workers, writers, scientists, teachers, media persons, priests and statesmen. It has expanded and achieved depth by forging mutually beneficial linkages with other movements such as those championing the empowerment of women and protection of the environment. The movement has also created a body of knowledge called Peace Studies and effectively used new channels of communication such as the internet. In this chapter, we have examined various dimensions of peace: its meaning, the intellectual and practical challenges it faces, as also its prospects. We have seen that the pursuit of peace involves a constant effort to create and sustain harmonious social relations conducive to human well-being and flourishing. The pathway to peace can be blocked by many obstacles ranging from injustice to imperialism. But the temptation to remove them by using indiscriminate violence is both unethical and extremely risky. In an era of genocide, terrorism and total war which blurs the line between civilians and combatants, the quest for peace must inform both the means and ends of political action. The existence of nuclear weapons in today's world contributes towards preventing war LET'S DEBATE " " 2022-23 Peace Peace Political Theory 142 1. Do you think that a change towards a peaceful world, needs a change in the way people think? Can mind promote peace and is it enough to focus only on the human mind? 2. A State must protect the lives and rights of its citizens. However, at times its own actions are a source of violence against some of its citizens. Comment with the help of some examples 3. Peace can be best realised when there is

freedom, equality and justice. Do you agree? 4. Use of violence does not achieve just ends in the long run. What do you think about this statement? 5. Differentiate between the major approaches, discussed in the chapter, to the establishment of peace in the world. Exercises Credit: Image on opening page: Shweta Rao 2022-23 Development Development Political Theory 143 Chapter 10 Development Overview In this chapter, we will start with the common understanding of development and the problems presented by this understanding. In the later sections' we will explore the ways in which these problems can be addressed and discuss some alternative ways of thinking about development. After going through this chapter you should be able to o explain the meaning of the term development. o discuss the achievements and problems of existing models of development. o discuss some of the alternative models of development which have been put forward. 2022-23 Development Development 144 Political Theory 10.1 INTRODUCTION Suppose in a school each class brings out an annual class magazine as one of their extra-curricular activities. In one class, the teacher takes the last year's magazine as a model, makes a plan of what this year's magazine should contain in terms of topics, articles, poetry, etc. and then divides and assigns topics to different students. It is possible that as a result a student interested in cricket may find that she has been allotted a different topic and the one who has been allotted cricket is actually keen to write a play. It is also possible that in this scheme three students may want to get together to work out a series of cartoons but find that they have been placed in different groups. In another class, however, the content of the magazine is debated by the students. There are many disagreements but eventually a plan for a magazine emerges about which all are in agreement. In your opinion, which class will come up with a magazine in which the students get to realise their particular interests in the best possible manner? The first may produce a good-looking magazine but will the content be engrossing? Will the person who wants to write on cricket, write with equal passion on her assigned topic? Which magazine will be seen as unique and which as standard? Which class will feel that working on the magazine was interesting and which class will do it as just routine homework? For a society, deciding about what constitutes development is a bit like students deciding about what kind of school magazine they want and how they should work on it. We could mechanically follow a model which has been previously used in our own, or other countries, or we could plan keeping in mind the good of the society as a whole as well as the rights of those people whose lives may be directly affected by development projects. The leaders can either concentrate on implementing plans regardless of protests or they can proceed democratically, carrying the people with them. In the broadest sense of the term, development conveys the ideas of improvement, progress, well-being and an aspiration for a better life. Through its notion of development a society articulates what constitutes its vision for the society as a whole and how best to achieve 2022-23 Development Development Political Theory 145 it. However, the term development is also often used in a narrower sense to refer to more limited goals such as increasing the rate of economic growth, or modernising the society. Development has unfortunately often come to be identified with achieving pre-set targets, or completing projects like dams, or factories, hospitals, rather than with realising the broader vision of development which the society upholds. In the process some sections of society may have benefited while others may have had to suffer loss of their homes, or lands, or way of life, without any compensatory gains. Issues such as whether the rights of people have been respected in the course of development, whether the benefits and burdens of development have been justly distributed, or whether decisions regarding development priorities have been democratically made, have been raised in many countries. Hence, development has become the subject of considerable controversy today. The models of development which have been adopted in different countries have become the subject of debate and criticism and alternative models have been put forward. In such a situation the broader understanding of development can serve as a standard by which the development experience of a country is examined. 10.2 THE CHALLENGE OF

DEVELOPMENT The concept of development gained importance after the second half of the twentieth century. This was the time when a large number of countries in Asia and Africa gained political independence. Most were impoverished and their populations had a low standard of living. Education, health and other facilities were poor. They were often described as 'underdeveloped' or 'developing'. The comparison was with the richer countries in Western Europe and the United States. In the 1950s and 1960s when most countries of Asia and Africa had achieved independence from colonial rule, the most urgent task in front of them was to solve the pressing problems of poverty, malnourishment, unemployment, illiteracy and the lack of basic amenities that a majority of their populations faced. They argued that the reason why they were backward was because under colonial rule their resources had been used not for their own benefit but for 2022-23 Development Development 146 Political Theory the benefit of their colonial masters. With Independence, they could reorganise their resources in the best possible manner to serve their national interests. Therefore it was now possible for them to formulate such policies which would allow them to overcome their backwardness and move towards achieving the standards of their former colonial masters. This provided the impetus for these countries to undertake development projects. The concept of development has undergone many changes over the years. In the initial years the focus was on catching up with the west in terms of economic growth and modernisation of societies. Developing countries adopted goals like faster economic growth through industrialisation, modernisation of agriculture and extending and modernising education. It was believed at the time that the state was the only agency capable of initiating this kind of social and economic change. Many countries embarked upon ambitious projects of development, often with the help of loans and aid from the developed countries. In India a series of Five Year Plans for development were made starting from the 1950s, and these included a number of mega projects such as the Bhakra Nangal Dam, setting up steel plants in different parts of the country, mining, fertilizer production and improving agricultural techniques. It was hoped that a multipronged strategy would have an impact on the economy and significantly increase the wealth of the country. It was also hoped that the emerging prosperity would gradually 'trickle down' to the poorest sections of society and help to reduce inequality. A great deal of faith was placed in adopting the latest discoveries of science and state of the art technologies. New educational institutions like the Indian Institutes of Technology were set up and collaboration If this project comes up we will be finished! R. K. Laxman in the Times of India 2022-23 Development Development Political Theory 147 with advanced countries in order to have access to their knowledge became a top priority. It was believed that the process of development would make the society more modern and forward looking and set it on the path of growth. However, the model of development adopted by India and other countries has come under a great deal of criticism over the years and this has led to some rethinking about the goals and processes of development today. 10.3 CRITICISMS OF DEVELOPMENT MODELS Critics of development have pointed out that the kind of development models which have been adopted in many countries has proved very costly for the developing countries. The financial costs have been enormous, putting many countries into long-term debt. Africa is still suffering from the enormous debts which it ran up by borrowings from the richer countries. The gains in terms of growth have not been commensurate and poverty and disease continue to plague the continent. The Social Costs of Development This model of development has also had high social costs. A large number of people have been displaced from their homes and localities due to the construction of big dams, industrial activities and mining activities, or other projects. Displacement results in loss of livelihood and increases impoverishment. If rural agricultural communities are displaced from their traditional occupations and regions they end up at the margins of society, swelling the large number of urban and rural poor. Traditional skills acquired over an extended period may be lost. There is also a loss of culture because when people are relocated they lose a whole way of community life. Such

displacement has led to struggles in many countries. Displaced people have not always accepted their fate passively. You may have heard about the 'Narmada Bachao Andolan' which is any major developmental project (e.g. building of dam, road, rail or industry etc.) taking place in your area? Has there been any protest or complaint against that project? What issues have been raised by the protesters? What is the response of the government to these issues? Meet some protesters and government officials to find out their versions.

LET'S DO IT

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148 Political Theory has been leading a movement against the Sardar Sarovar Dam on the river Narmada for many years. The supporters of this big dam claim that it will generate electricity, help irrigate large areas of land and also provide drinking water to the desert areas of Kutch and Saurashtra. The opponents of the dam dispute these claims. They claim that almost one million people have been displaced. They have lost their lands through submergence, or construction, and consequently lost their livelihood. Most of these people belong to the tribal and dalit communities who constitute some of the most underprivileged groups in the country. Some even argue that the dam would greatly upset the ecological balance submerging large tracts of forests. Environmental Costs of Development Development has indeed caused a high degree of environmental degradation in many countries and not just the displaced people but all of the population is beginning to feel the consequences. When the 'tsunami' hit the South and South-East Asian coasts in 2004, it was observed that the destruction of mangroves and the building of commercial enterprises along the shore line was the reason for the greater extent of the damage caused. You must have read about global warming. The ice in the Arctic and Antarctic is melting because of increased emission of greenhouse gases into the atmosphere and this has the potential to cause floods and actually submerge low lying areas like Bangladesh and the Maldives. In the long term, the ecological crisis will adversely affect all of us. Air pollution is already a problem which does not discriminate between the rich and the poor. But in the short term, indiscriminate use of resources tends to adversely affect the under-privileged more sharply. Loss of forests affects the poor who use forest resources for a variety of subsistence needs like firewood, medicinal herbs or food. Drying up of rivers and ponds and falling ground water levels means that women have to walk longer in order to procure water. The model of development we are pursuing is heavily dependent on the increasing use of energy. Most of the energy currently generated in the world is from non-renewable sources like coal or petroleum. Large tracts of the Amazon rainforests are being

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KEN SARO-WIWA Just imagine that a hidden treasure is found in your backyard. How will you feel if the treasure is taken away little by little by authorities in the name of development? This development is not reflected in your standard of living or even in facilities for the colony you stay in. Further, your house as a site for the treasure is constantly vandalised by people who claim to use the treasure for development. Isn't it gross injustice for the people in whose house the treasure has been unearthed? Oil had been found in the region of Ogoni in Nigeria in the 1950s which resulted in crude oil exploration. Soon economic growth and big business created around it an entangled web of political intrigues, environmental problems and corruption. This prevented development of the very region where oil had been found. Ken Saro-Wiwa, an Ogoni by birth, was recognised as an author, journalist and television producer in the 1980s. In his work, he observed and reacted to the exploitation around him as the oil and gas industry took riches from beneath the feet of the poor Ogoni farmers, and in return left the land polluted and the people disenfranchised. Saro-Wiwa led a non-violent struggle with the launch of the Movement for the Survival of the Ogoni People (MOSOP) in 1990 — an open, grassroots community-based political movement. The movement was so effective that by 1993 the oil companies had to pull out of Ogoni. But Saro-Wiwa paid the price for this. The military rulers of Nigeria framed him in a murder case and the military tribunal sentenced him to death. Saro-Wiwa said that the military rulers were doing this at the behest of Shell, the multi-national oil company that had to withdraw from the Ogoni region. Human rights organisations



all over the world protested against this trial and appealed for his release. Ignoring this worldwide protest, the Nigerian rulers executed Ken Saro-Wiwa in 1995.

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Political Theory deforested in order to provide for the increased consumer needs. Are there enough of these nonrenewable resources which can allow not only the advanced countries but all people in the world to enjoy an affluent life style? Given the finite nature of these resources, the answer would be no. What about the future generations? Are we going to hand over a depleted earth and multiple problems to them? Assessing Development It could not of course be said that development has had only negative effects for the world. Some countries have had some success in increasing their rate of economic growth and even in reducing poverty. But overall, inequalities have not been seriously reduced and poverty continues to be a problem in the developing world. As we saw earlier, it was assumed that the benefits of growth would trickle down to the poorest and underprivileged sections of the society and thereby raise the standards of living of all. However, the world over, the gap between the rich and the poor has been widening. A country may have high rates of growth but that doesn't necessarily translate into a fair distribution of its benefits. When economic growth and redistribution do not go together, the benefits are likely to be cornered by those who are already privileged.

ENVIRONMENTALISM You must have often heard terms like pollution, waste management, sustainable development, protection of endangered species and global warming. These are the buzz words of the environmental movement which works to protect natural resources and ecosystems. Environmentalists maintain that human beings should learn to live in harmony with the rhythms of the ecosystem and not manipulate the natural environment to serve their immediate interests. They believe that mankind is using up and destroying natural resources to such an extent that we will bequeath only a barren earth, poisoned rivers and polluted air to future generations. The roots of environmentalism can be traced back to the nineteenth-century revolt against industrialisation. Today, the environmental movement has become a worldwide phenomenon with thousands of non-governmental groups and even some 'green' political parties. Some well-known environmental groups include Green Peace and the World Wildlife Fund and in India we have the Chipko Movement which emerged to protect the Himalayan forests. Such groups try to pressurise governments to modify their industrial and developmental policies in the light of environmental goals.

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It is now increasingly being recognised that there is a need to adopt a broader notion of development. An excessive focus on economic growth has not only given rise to a wide range of problems but even economic growth has not always been satisfactory. Hence, development is now being viewed in broader terms as a process which should improve the quality of life of all the people. If development is understood as a process which aims to improve the quality of life of people, it could be argued that measuring the rate of economic growth alone would be an inadequate and at times misleading indicator of development. There is now a search for alternative ways of measuring development. One such attempt is the Human Development Report which is annually brought out by the United Nations Development Programme (UNDP). This report ranks countries on the basis of their performance in social indicators like literacy and education levels, life expectancy and maternal mortality rates. This measure is called the Human Development Index. According to this conception development should be a process which allows more and more people to make meaningful choices and the pre-condition for this is the fulfilment of basic needs like food, education, health and shelter. This is called the basic needs approach. Popular slogans like 'roti, kapda aur makaan', 'garibi hatao' or 'bijli, sadak, pani' convey the sentiment that without the fulfilment of basic needs, it is impossible for an individual to live a dignified life and pursue her desires. Freedom from want or deprivation is the key to effectively exercising one's choices and pursuing one's desires. In this view, if people die of starvation or cold due to lack of food and shelter, or if children are working instead of being in school, this is indicative of a state of under-development.

LET'S THINK Gather information (news reports, articles, charts,

tables) about the Human Development Index from the latest Human Development Report available to you. Form different groups in the class and have each group make a presentation on the following:

- o India's changing HDI rank.
- o India's rank compared to its neighbours.
- o Different components of the HDI and India's score on each.
- o Compare HDI data for India with figures for economic growth of the country.

151 2022-23 Development Development 152 Political Theory 10.4 ALTERNATIVE CONCEPTIONS OF DEVELOPMENT

In the preceding sections we discussed some of the limitations of the model of development pursued so far. There have been huge costs — both human and environmental — of development policies and the costs and benefits of development have been unequally distributed among people. Further, the strategies of development adopted in most countries have been 'top-down', that is, the selection of development priorities and strategies and the actual implementation of projects were all generally decided by the higher levels of the political leadership and bureaucracy. There was often little consultation with the people whose lives would be most immediately affected by development projects. Neither was their experience and the knowledge acquired over centuries utilized nor were their interests taken into account. This was as true of democratic countries as of dictatorial ones. Development thus became a process designed and implemented by the ruling sections in the country who have also often been the major beneficiaries of development projects. This has underscored the need to think of alternative ways of understanding and pursuing development which are equitable and sustainable. Issues of rights, equality, freedom, justice and democracy have all been raised in the process. In this section, we shall examine how these concepts have taken on newer meanings in the context of the development debate.

**Right Claims** We have noted how the benefits of development have been largely cornered by the powerful and the costs of the development model have been borne by the poorest and vulnerable sections of the population whether due to ecological degradation or due to displacement and loss of livelihood. One of the issues which has been raised is regarding the protections that affected people can claim from the State and the society as a whole. In a democracy do people have a right to be consulted in decisions which directly affect their lives? Do they have a right to livelihood which they can claim when an

**Make a list of the kind of things that we regularly discard. Think about how we could recycle or reuse them to reduce the amount of harmful waste.**

**LET'S DO IT** Do 2022-23 Development Development Political Theory 153 activity sanctioned by the government threatens their source of livelihood? Another issue is regarding rights to natural resources. Can communities claim traditional rights to the use of natural resources? This particularly applies to tribal and aboriginal communities who have a specific way of community life and relationship to the environment. The crucial issue here is to whom do natural resources belong? Is it the local community, the state concerned, or are they a common resource of all humanity? If we understand resources as common to humanity, then humanity would include future generations as well. Negotiating the competing demands of different sections of a population as well as achieving a balance between the claims of the present and future is the task of democracies. Democratic Participation How many times have you been told that you must do something— say, obey your parents or teachers — for your own good? And have you felt like saying, if it is good for me, please let me decide that myself? The distinction between democracy and dictatorship is that in a democracy conflicts over resources, or different visions of the good life, are resolved through debate and a respect for the rights of all and these cannot be imposed from above. Thus, if everyone in a society has a common stake in achieving a better life, then everyone needs to be involved in formulating the plans of development and in devising ways of implementing them. There is a difference between following a plan made by others and sharing in the formulation of the plans. Firstly, even if others make plans with the best intentions, they are likely to be less aware than you about your specific needs. Secondly, being an active part of the decision-making process is empowering. Both democracy and development are concerned with realising the common good. By

what process can the common good be defined? In democratic countries, the right of people to participate in decision-making is emphasised. One of the ways which has been The rivers belong to the people and not to the government; therefore, any decision about river water should not be taken without people's approval. LET'S DEBATE " " 2022-23 Development Development 154 Political Theory LET'S THINK suggested to ensure participation is to allow local decision-making bodies to take decisions about development projects in the local area. Increasing the powers and resources of local bodies is thus being advocated. On the one hand it is argued that people have to be consulted on issues which most affect them and it should be possible to reject projects which can adversely affect the community. On the other it is said that, involvement in planning and formulating policies allows people to direct resources towards their needs. Where a road must be laid, what should be the route of the metro or local buses, where a park or school should be located, whether a village needs a check dam or an internet café should be decisions which must be taken by them. It was argued above that the prevailing model of development is "top-down" and tends to view people as objects of development. It These pictures are of satyagraha in the village of Domkhedi in the Narmada Valley. As a result of the construction of the Sardar Sarovar dam, the waters of the Narmada flooded the valley. The 'Narmada Bachao Andolan' protestors chose to face the rising waters. When the waters rose dangerously up to the shoulders of the activists, the government arrested them. Find out more about this controversy and discuss the merits and demerits of big dams. Is the 'Sardar Sarovar Dam' a good way to solve the problem of water shortage? Were the activists justified in offering resistance to this government scheme? Pictures Credit: Harikrishna and Deepa Jani from [www.narmada.org](http://www.narmada.org)

2022-23 Development Development Political Theory 155 assumes that there is one best way to arrive at solutions for our problems. In the process the accumulated knowledge and experiences of people may be ignored. A decentralised approach to development makes it possible to use various kinds of technologies — traditional and modern — in a creative manner. Development and Life Style An alternative model of development would also try to move away from the high cost, ecologically wasteful, technology driven notion of development. Development should not be measured only by the number of cell phones in the country, or by the sophisticated weapons which are developed, or by the size of the cars which people drive, but by the quality of life enjoyed by people in terms of happiness and harmony and satisfaction of essential needs. At one level, efforts should be made to conserve natural resources and use renewable sources of energy as far as is possible. Efforts such as rain-water harvesting, solar and bio-gas plants, micro-hydel projects, compost pits to generate manure out of organic waste are examples in this direction. Such activities have to take place at a local level and therefore demand higher involvement from people. Big projects are 2022-23 Development Development 156 Political Theory not the only way to effect big improvement. Opponents of big dams have advocated a series of small dams and bunds which require much less investment, cause minimal displacement and can be beneficial to the local population. At another level, there is also a need to scale down our need for non-renewable resources by changing life styles. This is a tricky issue because it may appear as if people are being asked to accept a lower standard of living and this could also be seen as a curtailment of their freedom to choose. But debating the possibility of alternative life styles could also mean increasing avenues for freedom and creativity by opening up alternative visions of the good life. However, any such policy would call for a high degree of co-operation between governments and people across countries. This would mean adopting democratic methods of decision-making on such matters. But if we understand development as a process of enhancing one's freedoms, and think of people not as passive consumers but as active participants in deciding development goals, it should be possible to reach agreement on such issues. In the process, our notions of rights, freedom and justice would be extended. Conclusion The idea of development refers to the desire for a better life. This is a very powerful desire and the hope of improvement is a driving force of human action. In this chapter we

have seen how widely accepted versions of what constitutes improvement have come under critical scrutiny. There is a multi-pronged search for a more equitable, sustainable and democratic model of development. In the process, a number of concepts of political theory such as equality, democracy and rights, have been reinterpreted. The issues that have arisen while pursuing the goal of development reveal that the choices we make have an impact upon others — other human beings and other species in the world. We must therefore see ourselves as part of the larger universe for our fates are linked together. Besides, my actions not only affect others, they also have an impact upon my own future possibilities. We need therefore to choose carefully, keeping in mind not just our present needs but also our long-term interests.

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1. What do you understand by the term development? Would all sections of society benefit from such a definition of development?
2. Discuss some of the social and ecological costs of the kind of development which has been pursued in most countries.
3. What are some of the new claims for rights which the process of development has generated?
4. What would be the advantages of democracy over other forms of government for ensuring that decisions regarding development are made to promote the common good?
5. In your view, how successful have popular struggles been in making the state responsive to the social and environmental costs of development? Discuss with examples.

Exercises Credit: Image on opening page: <http://sardarsarovardam.org> (SARDAR SAROVAR NARMADA NIGAM LTD).

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Chapter 1: Constitution: Why and How?

Chapter One CONSTITUTION: WHY AND HOW? INTRODUCTION This book is about the working of the Indian Constitution. In the chapters that follow, you will read information about various aspects of the working of our Constitution. You will learn about the various institutions of the government in our country and their relationship with each other. But before you begin to read about elections, governments, and presidents and prime ministers, it is necessary to understand that the entire structure of the government and the various principles that bind the institutions of government have their origin in the Constitution of India. After studying this chapter, you will learn:

- ± what a constitution means;
- ± what a constitution does to the society;
- ± how constitutions govern the allocation of power in society; and
- ± what was the way in which the Constitution of India was made.

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Indian Constitution at Work WHY DO WE NEED A CONSTITUTION? What is a constitution? What are its functions? What role does it perform for a society? How does a constitution relate to our daily existence? Answering these questions is not as difficult as you might think. Constitution allows coordination and assurance Imagine yourself to be a member of a reasonably large group. Further imagine that this group has the following characteristics. The members of this group are diverse in various ways. They have different religious allegiances: some are Hindus, some are Muslims, some Christians and some perhaps profess no religion at all. They are also varied in many different respects: they pursue different professions, have different abilities, have different hobbies, different tastes in everything from films to books. Some are rich and some are poor. Some are old, some young. Imagine further that members of this group are likely to have disputes over various aspects of life: How much property should one be allowed to own? Should it be compulsory that every child be sent to school or should the parents be allowed to decide? How much should this group spend on its safety and security? Or should it build more parks instead? Should the group be allowed to discriminate against some of its members? Every question will elicit a variety of answers from different people. But, for all their diversity, this group has to live together. They are dependent upon each other in various ways. They require the cooperation of each other. What will enable the group to live together peacefully? Yes, this could be my colony as well! Does this apply to your village or town or colony too? This group is very much like the people of my village.

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Chapter 1: Constitution: Why and How? One may say that perhaps members of this group can live together if they can agree on some basic rules. Why will the group need certain basic rules? Think of what would happen in the absence of some basic rules. Every

individual would be insecure simply because they would not know what members of this group could do to each other, who could claim rights over what. Any group will need some basic rules that are publicly promulgated and known to all members of that group to achieve a minimal degree of coordination. But these rules must not only be known, they must also be enforceable. If citizens have no assurance that others will follow these rules, they will themselves have no reason to follow these rules. Saying that the rules are legally enforceable gives an assurance to everybody that others will follow these, for if they do not do so, they will be punished. The first function of a constitution is to provide a set of basic rules that allow for minimal coordination amongst members of a society.

Activity Enact the thought experiment of this section in the classroom. The entire class should discuss and arrive at some decisions that would apply to everyone for this entire session. The decision could be about: ± How would the class representatives be chosen? ± Which decisions will the representative be able to take on behalf of the entire class? ± Are there some decisions that the class representative cannot take without consulting the entire class? ± You can add any other items to this list (collection of common kitty for the class, organisation of picnic and trips, sharing of common resources, ...) as long as everyone agrees to it. Make sure that you include those subjects that have led to any differences in the past. ± How to revise these decisions in case you need to?

2022-23 2022-23 4 Indian Constitution at Work ± Write down all these decisions on a paper and put it up on the notice board. Which problems did you encounter in this decision? Were there differences among different students? How did you resolve these differences? Did the entire class gain something from this exercise? Specification of decision making powers A constitution is a body of fundamental principles according to which a state is constituted or governed. But what should these fundamental rules be? And what makes them fundamental? Well, the first question you will have to decide is who gets to decide what the laws governing the society should be? You may want rule X, but others may want rule Y. How do we decide whose rules or preferences should govern us? You may think the rules you want everyone to live by are the best; but others think that their rules are the best. How do we resolve this dispute? So even before you decide what rules should govern this group you have to decide: Who gets to decide? The constitution has to provide an answer to this question. It specifies the basic allocation of power in a society. It decides who gets to decide what the laws will be. In principle, this question, who gets to decide, can be answered in many ways: in a monarchical constitution, a monarch decides; in some constitutions like the old Soviet Union, one single party was given the power to decide. But in democratic constitutions, broadly speaking, the people get to decide. But this matter is not so simple. Because even if you answer that the people should decide, it will not answer the question: how should the people decide? For something to be law, should everyone agree to it? Should the people directly vote on each matter as the ancient Greeks did? Or should the people express their preferences by electing representatives? But if the people act through their representatives, how should these representatives be elected? How many should there be? In the Indian Constitution for example, it is specified that in most instances, Parliament gets to decide laws and policies, and that Parliament itself be organised in a particular manner. Before identifying what the law in any given society is, you have to identify

2022-23 2022-23 5 Chapter 1: Constitution: Why and How? who has the authority to enact it. If Parliament has the authority to enact laws, there must be a law that bestows this authority on Parliament in the first place. This is the function of the constitution. It is an authority that constitutes government in the first place. The second function of a constitution is to specify who has the power to make decisions in a society. It decides how the government will be constituted. Limitations on the powers of government But this is clearly not enough. Suppose you decided who had the authority to make decisions. But then this authority passed laws that you thought were patently unfair. It prohibited you from practising your religion for instance. Or it enjoined that clothes of a certain colour were prohibited, or that you were not free to sing certain songs or that people who belonged to a

particular group (caste or religion) would always have to serve others and would not be allowed to retain any property. Or that government could arbitrarily arrest someone, or that only people of a certain skin colour would be allowed to draw water from wells. You would obviously think these laws were unjust and unfair. And even though they were passed by a government that had come into existence based “European Constitution” by Patrick Chappate, International Herald Tribune, 21SEP04 Copyright Cagle Cartoons. READ A CARTOON Countries of the European Union tried to create a European constitution. The attempt failed. Here is a cartoonist’s impression of this attempt. Does this always happen in any constitution making? 2022-23 2022-23 6 Indian Constitution at Work on certain procedures there would be something obviously unjust about that government enacting these laws. So the third function of a constitution is to set some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass them. Constitutions limit the power of government in many ways. The most common way of limiting the power of government is to specify certain fundamental rights that all of us possess as citizens and which no government can ever be allowed to violate. The exact content and interpretation of these rights varies from constitution to constitution. But most constitutions will protect a basic cluster of rights. Citizens will be protected from being arrested arbitrarily and for no reason. This is one basic limitation upon the power of government. Citizens will normally have the right to some basic liberties: to freedom of speech, freedom of conscience, freedom of association, freedom to conduct a trade or business etc. In practice, these rights can be limited during times of national emergency and the constitution specifies the circumstances under which these rights may be withdrawn. Aspirations and goals of a society Most of the older constitutions limited themselves largely to allocating decision-making power and setting some limits to government power. But many twentieth century constitutions, of which the Indian Constitution is the finest example, also provide an enabling framework for the government to do certain positive things, to express the aspirations and goals of society. The Indian Constitution was particularly innovative in this respect. Societies with deep entrenched inequalities of various kinds, will not only have to set limits on the power of government, they will also have to enable and empower the government to take positive measures to overcome forms of inequality or deprivation. Ah! So you first create a monster and then start worrying about saving yourself from it! I would say, why create this monster called government in the first place? 2022-23 2022-23 7 Chapter 1: Constitution: Why and How? For example, India aspires to be a society that is free of caste discrimination. If this is our society’s aspiration, the government will have to be enabled or empowered to take all the necessary steps to achieve this goal. In a country like South Africa, which had a deep history of racial discrimination, its new constitution had to enable the government to end racial discrimination. More positively, a constitution may enshrine the aspirations of a society. The framers of the Indian Constitution, for example, thought that each individual in society should have all that is necessary for them to lead a life of minimal dignity and social self-respect — minimum material well-being, education etc. The Indian Constitution enables the government to take positive welfare measures some of which are legally enforceable. As we go on studying the Indian Constitution, we shall find that such enabling Shankar. Copyright: Children’s Book T R rust. EAD A CARTOON The constitution makers have to address themselves to very different aspirations. Here is Nehru trying to balance between different visions and ideologies. Can you identify what these different groups stand for? Who do you think prevailed in this balancing act? 4 December 1949 2022-23 2022-23 8 Indian Constitution at Work provisions have the support of the Preamble to our Constitution, and these provisions are found in the section on Fundamental Rights. The Directive Principles of State of Policy also enjoin government to fulfil certain aspirations of the people. The fourth function of a constitution is to enable the government to fulfil the aspirations of a society and create conditions for a just society. Enabling provisions of the Constitution Constitutions are not only rules and regulations controlling the powers of the government. They also give powers

to the government for pursuing collective good of the society. ± Constitution of South Africa assigns many responsibilities to the government: it wants the government to take measures to promote conservation of nature, make efforts to protect persons or groups subjected to unfair discrimination, and provides that the government must progressively ensure adequate housing to all, health care, etc. ± In the case of Indonesia also, the government is enjoined to establish and conduct national education system. The Indonesian Constitution ensures that the poor and destitute children will be looked after by the government. Fundamental identity of a people Finally, and perhaps even most importantly, a constitution expresses the fundamental identity of a people. This means the people as a collective entity come into being only through the basic constitution. It is by agreeing to a basic set of norms about how one should be governed, and who should be governed that one forms a collective identity. One has many sets of identities that exist prior to a constitution. But by What does it take to write nice things in the constitution? What is the point in writing down lofty aspirations and goals if they cannot change the life of the people? 2022-23 2022-23 9 Chapter 1: Constitution: Why and How? agreeing to certain basic norms and principles one constitutes one's basic political identity. Second, constitutional norms are the overarching framework within which one pursues individual aspirations, goals and freedoms. The constitution sets authoritative constraints upon what one may or may not do. It defines the fundamental values that we may not trespass. So the constitution also gives one a moral identity. Third and finally, it may be the case that many basic political and moral values are now shared across different constitutional traditions. If one looks at constitutions around the world, they differ in many respects — in the form of government they enjoin in many procedural details. But they also share a good deal. Most modern constitutions create a form of government that is democratic in some respects, most claim to protect certain basic rights. But constitutions are different in the way they embody conceptions of national identity. Most nations are an amalgamation of a complex set of historical traditions; they weave together the diverse groups that reside within the nation in different ways. For example, German identity was constituted by being ethnically German. The constitution gave expression to this identity. The Indian Constitution, on the other hand, does not make ethnic identity a criterion for citizenship. Different nations embody different conceptions of what the relationship READ A CARTOON The writing of the new Iraqi constitution after the collapse of Saddam Hussain's regime saw a lot of conflict between different ethnic groups in the country. What do these different people stand for? Compare the conflict depicted here with that depicted in earlier cartoons for the European Union and India. "Iraqi Constitution", John Trever, Albuquerque Journal, 18AUG05. Copyright. Cagle Cartoons. 2022-23 2022-23 10 Indian Constitution at Work between the different regions of a nation and the central government should be. This relationship constitutes the national identity of a country. Check your progress Here are some provisions of the Indian and other constitutions. For each of these write the function that this provision performs. The government cannot Limitations on the order any citizen to follow power of the or not to follow any religion government The government must try to reduce inequalities in income and wealth The President has the power to appoint the Prime Minister The Constitution is the supreme law that everyone has to obey Indian citizenship is not limited to people of any race, caste or religion THE AUTHORITY OF A CONSTITUTION We have outlined some of the functions a constitution performs. These functions explain why most societies have a constitution. But there are three further questions we can ask about constitutions: 2022-23 2022-23 11 Chapter 1: Constitution: Why and How? a) What is a constitution? b) How effective is a constitution? c) Is a constitution just? In most countries, 'Constitution' is a compact document that comprises a number of articles about the state, specifying how the state is to be constituted and what norms it should follow. When we ask for the constitution of a country we are usually referring to this document. But some countries, the United Kingdom for instance, do not have one single document that can be called the Constitution. Rather they have a series of documents and decisions that, taken collectively,

are referred to as the constitution. So, we can say that constitution is the document or set of documents that seeks to perform the functions that we mentioned above. But many constitutions around the world exist only on paper; they are mere words existing on a parchment. The crucial question is: how effective is a constitution? What makes it effective? What ensures that it has a real impact on the lives of people? Making a constitution effective depends upon many factors. Mode of promulgation This refers to how a constitution comes into being. Who crafted the constitution and how much authority did they have? In many countries constitutions remain defunct because they are crafted by military leaders or leaders who are not popular and do not have the ability to carry the people with them. The most successful constitutions, like India, South Africa and the United States, are constitutions which were created in the aftermath of popular national movements. Although India's Constitution was formally created by a Constituent Assembly between December 1946 and November 1949, it drew upon a long history of the nationalist movement that had a remarkable ability to take along different sections of Indian society together. The Constitution drew enormous legitimacy from the What do people do if they find out that their constitution is not just? What happens to people when a constitution exists only on paper? 2022-23 2022-23 12 Indian Constitution at Work fact that it was drawn up by people who enjoyed immense public credibility, who had the capacity to negotiate and command the respect of a wide cross-section of society, and who were able to convince the people that the constitution was not an instrument for the aggrandisement of their personal power. The final document reflected the broad national consensus at the time. Some countries have subjected their constitution to a full-fledged referendum, where all the people vote on the desirability of a constitution. The Indian Constitution was never subjected to such a referendum, but nevertheless carried enormous public authority, because it had the consensus and backing of leaders who were themselves popular. Although the Constitution itself was not subjected to a referendum, the people adopted it as their own by abiding by its provisions. Therefore, the authority of people who enact the constitution helps determine in part its prospects for success. The substantive provisions of a constitution It is the hallmark of a successful constitution that it gives everyone in society some reason to go along with its provisions. A constitution Debate over Constitution making in Nepal: Making a constitution is not always an easy and smooth affair. Nepal is an example of the complicated nature of constitution making. Since 1948, Nepal has had five constitutions, in 1948, 1951, 1959, 1962 and 1990. But all these constitutions were 'granted' by the King of Nepal. The 1990 constitution introduced a multiparty competition, though the King continued to hold final powers in many respects. For many years Nepal was faced with militant political agitations for restructuring the government. The main issue was the role of the monarchy in the constitution of Nepal. Some groups in Nepal wanted to abolish the institution of monarchy and establish republican form of government. Others believed that it may be useful to shift to limited monarchy with a reduced role for the King. The King himself was not ready to give up powers. He took over all powers in October 2002. Many political parties and organisations demanded the formation of a new constituent assembly. The Communist Party of Nepal (Maoist) was in the forefront of the struggle for a popularly elected constituent assembly. Finally, under pressure of popular agitation, the King had to install a government acceptable to the agitating parties. This government has stripped the King of almost all powers. In 2008, Nepal emerged as a democratic republic after abolishing the monarchy. Finally, Nepal adopted a new constitution in 2015. 2022-23 2022-23 13 Chapter 1: Constitution: Why and How? that, for instance, allowed permanent majorities to oppress minority groups within society would give minorities no reason to go along with the provision of the constitution. Or a constitution that systematically privileged some members at the expense of others, or that systematically entrenched the power of small groups in society, would cease to command allegiance. If any group feels their identity is being stifled, they will have no reason to abide by the constitution. No constitution by itself achieves perfect justice. But it has to



convince people that it provides the framework for pursuing basic justice. Do this thought experiment. Ask yourself this question: What would be the content of some basic rules in society, such that they gave everyone a reason to go along with them? The more a constitution preserves the freedom and equality of all its members, the more likely it is to succeed. Does the Indian Constitution, broadly speaking, give everyone a reason to go along with its broad outlines? After studying this book, one should be able to answer this question in the affirmative. Balanced institutional design Constitutions are often subverted, not by the people, but by small groups, who wish to enhance their own power. Well crafted constitutions fragment power in society intelligently so that no single group can subvert the constitution. One way of such intelligent designing of a constitution is to ensure that no single institution acquires monopoly of power. This is often done by fragmenting power across different institutions. The Indian Constitution, for example, horizontally fragments power across different institutions like the Legislature, Executive and the Judiciary and even independent statutory bodies like the Election Commission. This ensures that even if one institution wants to subvert the Constitution, others can check its transgressions. An intelligent system of checks and balances has facilitated the success of the Indian Constitution. Another important aspect of intelligent institutional design is: that a constitution must strike the right balance between certain values, norms and procedures as authoritative, and at the same time allow enough flexibility in its operations to adapt to changing needs and circumstances. Too rigid a constitution is likely to break under the weight of change; a constitution that is, on the other hand, too flexible, will give no security, predictability or identity to a people. Successful constitutions strike the right balance between preserving core values and adapting them to new circumstances. You will notice the wisdom of makers of the Indian Constitution in the chapter on the Constitution as a living document (Chapter 9). The Indian Constitution is described as 'a living' document. By striking a balance between the possibility to change the provisions and the limits on such changes, the Constitution has ensured that it will survive as a document respected by people. This arrangement also ensures that no section or group can, on its own, subvert the Constitution. Therefore in determining whether a constitution has authority you can ask yourself three questions: ± Were the people who enacted the constitution credible? This question will be answered in the remaining part of this chapter. ± Secondly, did the constitution ensure that power was intelligently organised so that it was not easy for any group to subvert the constitution? And, most importantly, does the constitution give everyone some reason to go along with it? Most of this book is about this question. ± Also, is the constitution the locus of people's hopes and aspiration? The ability of the constitution to command voluntary allegiance of the people depends to a certain extent upon whether the constitution is just. What are the principles of justice underlying the Indian Constitution? The last chapter of this book will answer this question. How was the Indian Constitution made? Let us find out how the Indian Constitution was made. Formally, the Constitution was made by the Constituent Assembly which had been elected for undivided India. It held its first sitting on 9 December 1946 and reassembled as Constituent Assembly for divided India on 14 August 1947. Its members were chosen by indirect election by the members of the Provincial Legislative Assemblies that had been established under the Government of India Act, 1935. The Constituent Assembly was composed roughly along the lines suggested by the plan proposed by the committee of the British cabinet, known as the Cabinet Mission. According to this plan: ± Each Province and each Princely State or group of States were allotted seats proportional to their respective population roughly in the ratio of 1:10,00,000. As a result the Provinces (that were under direct British rule) were to elect 292 members while the Princely States were allotted a

minimum of 93 seats. ± The seats in each Province were distributed among the three main communities, Muslims, Sikhs and general, in proportion to their respective populations. ± Members of each community in the Provincial Legislative Assembly elected their own representatives by the method of proportional representation with single transferable vote. ± The method of selection in the case of representatives of Princely States was to be determined by consultation. For more details, visit <http://164.100.47.194/loksabha/constituent/facts.html> “We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life, which recognises liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things...” Dr. B.R. Ambedkar, CAD, Vol. XI, p.979, 25 November 1949

Are the principles of liberty, equality and fraternity being practised in your classroom? How can they coexist? Discuss this with your friends.

2022-23 2022-23 16 Indian Constitution at Work The previous section discusses the three factors that make a constitution effective and respectable. How far does the Indian Constitution pass this test? Composition of the Constituent Assembly As a consequence of the Partition under the plan of 3 June 1947 those members who were elected from territories which fell under Pakistan ceased to be members of the Constituent Assembly. The number of members in the Assembly was reduced to 299. The Constitution was adopted on 26 November 1949. 284 members were actually present on 24 January 1950 and appended their signature to the Constitution as finally passed. The Constitution came into force on 26 January 1950. The Constitution was thus framed against the backdrop of the horrendous violence that the Partition unleashed on the subcontinent. But it is a tribute to the fortitude of the framers that they were not only able to draft a constitution under immense pressure, but also learnt the right lessons from the unimaginable violence that accompanied the Partition. The Constitution was committed to a new conception of citizenship, where not only would minorities be secure, but religious identity would have no bearing on citizenship rights. But this account of the composition of the Constituent Assembly that drafted the Constitution touches upon only the surface of how our Constitution was made. Although, the members of the Assembly were not elected by universal suffrage, there was a serious attempt to make the Assembly a representative body. Members of all religions were given representation under the scheme described above; in addition, the Assembly had twentyeight members from the Scheduled Castes. In terms of political parties, the Congress dominated the Assembly occupying as many as eighty-two per cent of the seats in the Assembly after the Partition. The Congress itself was such a diverse party that it managed to accommodate almost all shades of opinion within it. What would have happened if the Constituent Assembly was elected by all the people of India? Could it be very different from what it was? 2022-23 2022-23 17 Chapter 1: Constitution: Why and How? The Principle of Deliberation The authority of the Constituent Assembly does not come only from the fact that it was broadly, though not perfectly, representative. It comes from the procedures it adopted to frame the Constitution and the values its members brought to their deliberations. While in any assembly that claims to be representative, it is desirable that diverse sections of society participate, it is equally important that they participate not only as representatives of their own identity or community. Each member deliberated upon the Constitution with the interests of the whole nation in mind. There were often disagreements amongst members, but few of these disagreements could be traced to members protecting their own interests. There were legitimate differences of principle. And the differences were many: should India adopt a centralised or decentralised system of

government? What should be the relations between the States and the centre? What should be the powers of the judiciary? Should the Constitution protect property rights? Almost every issue that lies at the foundation of a modern state was discussed with great sophistication. Only one provision of the Constitution was passed without virtually any debate: the introduction of universal suffrage (meaning that all citizens reaching a certain age, would be entitled to be voters irrespective of religion, caste, education, gender or income). So, while the members felt no need at all to discuss the issue of who should have the right to vote, every other matter was seriously discussed and debated. Nothing can be a better testament to the democratic commitment of this Assembly. The Constitution drew its authority from the fact that members of the Constituent Assembly engaged in what one might call public reason. The members of the Assembly placed a great emphasis on discussion and reasoned argument. They did not simply advance their own interests, but gave principled reasons to other members for their positions. The very act of giving reasons to others makes you move away from simply a narrow consideration of your own interest because you have to give reasons to others to make them go along with your view point. The voluminous debates in the 2022-23 18 Indian Constitution at Work 18 Constituent Assembly, where each clause of the Constitution was subjected to scrutiny and debate, is a tribute to public reason at its best. These debates deserved to be memorialised as one of the most significant chapters in the history of constitution making, equal in importance to the French and American revolutions. Procedures The importance of public reason was emphasised in the mundane procedures of the Assembly as well. The Constituent Assembly had eight major Committees on different subjects. Usually, Jawaharlal Nehru, Rajendra Prasad, Sardar Patel or B.R. Ambedkar chaired these Committees. These were not men who agreed with each other on many things. Ambedkar had been a bitter critic of the Congress and Gandhi, accusing them of not doing enough for the upliftment of Scheduled Castes. Patel and Nehru disagreed on many issues. Nevertheless, they all worked together. Each Committee usually drafted particular provisions of the Constitution which were then subjected to debate by the entire Assembly. Usually an attempt was made to reach a consensus with the belief that provisions agreed to by all, would not be detrimental to any particular interests. Some provisions were subject to the vote. But in each instance every single argument, query or concern was responded to with great care and

READ A CARTOON The President of the Constituent Assembly, Dr. Rajendra Prasad and the Chairman of the Drafting Committee, Dr. B.R. Ambedkar greeting each other “... I have realised as nobody else could have, with what zeal and devotion the members of the Drafting Committee and especially its Chairman, Dr. Ambedkar in spite of his indifferent health, have worked. We could never make a decision which was or could be ever so right as when we put him on the Drafting Committee and made him its Chairman. He has not only justified his selection but has added lustre to the work which he has done. In this connection, it would be invidious to make any distinction as among the other members of the Committee. I know they have all worked with the same zeal and devotion as its Chairman, and they deserve the thanks of the country.” Dr. Rajendra Prasad CAD, Vol. XI, p.994, 26 November 1949

2022-23 19 Chapter 1: Constitution: Why and How? in writing. The Assembly met for one hundred and sixty six days, spread over two years and eleven months. Its sessions were open to the press and the public alike. Inheritance of the nationalist movement But no constitution is simply a product of the Assembly that produces it. An Assembly as diverse as the Constituent Assembly of India could not have functioned if there was no background consensus on the main principles the Constitution should enshrine. These principles were forged during the long struggle for freedom. In a way, the Constituent Assembly was giving concrete shape and form to the principles it had inherited from the nationalist movement. For decades preceding the promulgation of the Constitution, the nationalist movement had debated many questions that were relevant to the making of the constitution — the shape and form of government India should have, the values it should uphold, the inequalities it should overcome. Answers forged in those debates were given their final form in the Constitution.

Perhaps the best summary of the principles that the nationalist movement brought to the Constituent Assembly is the Objectives Resolution (the resolution that defined the aims of the Assembly) moved by Nehru in 1946. This resolution encapsulated the aspirations and values behind the Constitution. What the previous section terms as substantive provisions of the constitution is inspired by and summed up by the values incorporated in the Objectives Resolution. Based on this resolution, our Constitution gave institutional expression to these fundamental commitments: equality, liberty, democracy, sovereignty and a cosmopolitan identity. Thus, our Constitution is not merely a maze of rules and procedures, but a moral commitment to establish a government that will fulfil the many promises that the nationalist movement held before the people. What would have happened if we got independence in 1937? Or if we had to wait till 1957? Would our Constitution be very different from what it is today?

**2022-23 20 Indian Constitution at Work Main points of the Objectives Resolution**

- ✓ India is an independent, sovereign, republic;
- ✓ India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union;
- ✓ Territories forming the Union shall be autonomous units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union;
- ✓ All powers and authority of sovereign and independent India and its constitution shall flow from the people;
- ✓ All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms - of speech, expression, belief, faith, worship, vocation, association and action - subject to law and public morality;
- ✓ The minorities, backward and tribal areas, depressed and other backward classes shall be provided adequate safeguards;
- ✓ The territorial integrity of the Republic and its sovereign rights on land, sea and air shall be maintained according to justice and law of civilized nations;
- ✓ The land would make full and willing contribution to the promotion of world peace and welfare of mankind.

**Institutional arrangements**

The third factor ensuring effectiveness of a constitution is a balanced arrangement of the institutions of government. The basic principle is that government must be democratic and committed to the welfare of the people. The Constituent Assembly spent a lot of time on evolving the right balance among the various institutions like the executive, the legislature and the judiciary. This led to the adoption of the parliamentary form and the federal arrangement, which would distribute governmental powers between the legislature and the executive on the one hand and between the States and the central government on the other hand. While evolving the most balanced governmental arrangements, the makers of our Constitution did not hesitate to learn from experiments and experiences of other countries. Thus, the framers of the Constitution were not averse to borrowing from other constitutional traditions. Indeed, it is a testament to their wide learning that they could lay their hands upon any intellectual argument, or historical example that was necessary for fulfilling the task at hand. So they borrowed a number of provisions from different countries. But borrowing these ideas was not slavish imitation. Far from it. Each provision of the Constitution had to be defended on grounds that it was suited to Indian problems and aspirations. India was extremely lucky to have an Assembly that instead of being parochial in its outlook could take the best available everywhere in the world and make it their own. Was it a borrowed constitution then? Why could we not have a constitution that does not borrow anything from anywhere else? "One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world... The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country." Dr. B.R. Ambedkar CAD, Vol. VII, p.37, 4 November 1948

Dr. B.R. Ambedkar presiding over a discussion in the Constituent Assembly

**2022-23 22 Indian Constitution at Work Provisions adapted from constitutions of different countries**

**British Constitution**

**First Past the Post**

**Parliamentary Form of Government**

**The idea of the rule of law**

**Institution of the Speaker and her/his**

role Law-making procedure United States Constitution Charter of Fundamental Rights Power of Judicial Review and independence of the judiciary Irish Constitution Directive Principles of State Policy French Constitution Principles of Liberty, Equality and Fraternity Canadian Constitution A quasi-federal form of government (a federal system with a strong central government) The idea of Residual Powers 2022-23 2022-23 23 Chapter 1: Constitution: Why and How? Conclusion It is a tribute to the wisdom and foresight of the makers of the Constitution that they presented to the nation a document that enshrined fundamental values and highest aspirations shared by the people. This is one of the reasons why this most intricately crafted document has not only survived but become a living reality, when so many other constitutions have perished with the paper they were first written on. India's Constitution is a unique document which in turn became an exemplar for many other constitutions, most notably South Africa. The main purpose behind the long search that went on for almost three years was to strike the right balance so that institutions created by the Constitution would not be haphazard or tentative arrangements but would be able to accommodate the aspirations of the people of India for a long time to come. You will know more about these arrangements through the study of the remaining chapters in this book.

Exercises

- Which of these is not a function of the constitution?
  - It gives a guarantee of the rights of the citizen.
  - It marks out different spheres of power for different branches of government.
  - It ensures that good people come to power.
  - It gives expression to some shared values.
- Which of the following is a good reason to conclude that the authority of the constitution is higher than that of the parliament?
  - The constitution was framed before the parliament came into being.
  - The constitution makers were more eminent leaders than the members of the parliament.
  - The constitution specifies how parliament is to be formed and what are its powers.
  - The constitution cannot be amended by the parliament.

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- State whether the following statements about a constitution are True or False.
  - Constitutions are written documents about formation and power of the government.
  - Constitutions exist and are required only in democratic countries.
  - Constitution is a legal document that does not deal with ideals and values.
  - A constitution gives its citizens a new identity.
- State whether the following inferences about the making of the Indian Constitution are Correct or Incorrect. Give reasons to support your answer.
  - The Constituent Assembly did not represent the Indian people since it was not elected by all citizens.
  - Constitution making did not involve any major decision since there was a general consensus among the leaders at that time about its basic framework.
  - There was little originality in the Constitution, for much of it was borrowed from other countries.
- Give two examples each to support the following conclusions about the Indian Constitution:
  - The Constitution was made by credible leaders who commanded peoples' respect.
  - The Constitution has distributed power in such a way as to make it difficult to subvert it.
  - The Constitution is the locus of people's hopes and aspirations.
- Why is it necessary for a country to have a clear demarcation of powers and responsibilities in the constitution? What would happen in the absence of such a demarcation?
- Why is it necessary for a constitution to place limitations on the rulers? Can there be a constitution that gives no power at all to the citizens?
- The Japanese Constitution was made when the US occupation army was still in control of Japan after its defeat in the Second World War. The Japanese constitution could not have had any provision that the US government did not like. Do you see any problem in this way of making the constitution? In which way was the Indian experience different from this?
- Rajat asked his teacher this question: "The constitution is a fifty year old and therefore outdated book. No one took my consent for implementing it. It is written in such tough language that I cannot understand it. Tell me why should I obey this document?" If you were the teacher, how would you answer Rajat?
- In a discussion on the experience of the working of our Constitution, three speakers took three different positions:
  - Harbans: The Indian Constitution has succeeded in giving us a framework of democratic

government. b. Neha: The Constitution made solemn promises of ensuring liberty, equality and fraternity. Since this has not happened, the Constitution has failed. c. Nazima: The Constitution has not failed us. We have failed the Constitution. Do you agree with any of these positions? If yes, why? If not, what is your own position? You may watch and discuss the Rajya Sabha TV Series, Samvidhaan: The Making of the Constitution of India, and films such as Gandhi, Sardar, and Dr. Babasaheb Ambedkar. These audio-visual materials will deepen your understanding of the context in which the Constitution was made. They will also help you to learn about the life and times of our national leaders.

2022-23 2022-2326 Indian Constitution at Work Chapter Two RIGHTS IN THE INDIAN CONSTITUTION INTRODUCTION A constitution is not only about the composition of the various organs of government and the relations among them. As we studied in the last chapter, the constitution is a document that sets limits on the powers of the government and ensures a democratic system in which all persons enjoy certain rights. In this chapter, we shall study the Fundamental Rights contained in the Indian Constitution. Part three of the Constitution of India lists the Fundamental Rights and also mentions the limits on these rights. In the past six decades, the scope of rights has changed and in some respects, expanded. After studying this chapter, you would know ± what are the various Fundamental Rights listed in the Constitution of India; ± how these rights are protected; ± what role the judiciary has played in protecting and interpreting these rights; and ± what is the difference between the Fundamental Rights and the Directive Principles of State Policy.

2022-23 2022-23 27 Chapter 2: Rights in the Indian Constitution THE IMPORTANCE OF RIGHTS In 1982 during the construction work for Asian Games the government engaged a few contractors. These contractors employed a large number of very poor construction workers from different parts of the country to build the flyovers and stadiums. These workers were kept in poor working conditions and were paid less than the minimum wages decided by the government. A team of social scientists studied their poor condition and petitioned the Supreme Court. They argued that employing a person to work for less than the minimum prescribed wage amounts to begar or forced labour, which is a violation of the Fundamental Right against exploitation. The court accepted this plea and directed the government to ensure that thousands of workers get the prescribed wages for their work.

Machal Lalung was 23 when he was arrested. A resident of Chuburi village of Morigaon district of Assam, Machal was charged of causing grievous injuries. He was found mentally too unstable to stand trial and was sent as under trial to Lok Priya Gopinath Bordoloi Mental Hospital in Tejpur for treatment. Machal was treated successfully and doctors wrote twice to jail authorities in 1967 and 1996 that he was fit to stand trial. But no one paid any attention. Machal Lalung remained in “judicial custody.” Machal Lalung was released in July 2005. He was 77 then. He spent 54 years under custody during which his case never came up for hearing. He was freed when a team appointed by the National Human Rights Commission intervened after an inspection of undertrials in the State. Machal’s entire life was wasted because a proper trial against him never took place. Our Constitution gives every citizen the right to ‘life and liberty’: this means that every citizen must also have the right to fair and speedy trial. Machal’s case shows what happens when rights granted by the Constitution are not available in practice.

Ωηατ ιφ Μαχηαλ ωας α ριχη ανδ ποωερφυλ μαν? Ωηατ ιφ τηοσε ωορκινγ ωιτη τηε χονστρυχτιον χοντραχτορ ωερε ενγινεερς? Ωουλδ τηειρ ριγητσ ηαπε βεεν πιολατεδ? 2022-23 2022-23 28 Indian Constitution at Work In the case of the first instance also there was violation of rights provided in the Constitution. But it was challenged in the court. As a result, workers could get what was due to them in the form of their rightful wages. The constitutional guarantee of the right against exploitation ensured justice to these workers. Bill of Rights Both these examples show the importance of having rights and of the actual implementation of these rights. A democracy must ensure that individuals have certain rights and that the government will always recognise these rights. Therefore it is often a practice in most democratic countries to list the rights of the citizens in the constitution itself. Such a list of rights

mentioned and protected by the constitution is called the 'bill of rights'. A bill of rights prohibits government from thus acting against the rights of the individuals and ensures a remedy in case there is violation of these rights. From whom does a constitution protect the rights of the individual? The rights of a person may be threatened by another person or private organisation. In such a situation, the individual would need the protection of the government. So, it is necessary that the government is bound to protect the rights of the individual. On the other hand, the organs of the government (the legislature, executive, bureaucracy or even the judiciary), in the course of their functioning, may violate the rights of the person. **FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION** During our freedom struggle, the leaders of the freedom movement had realised the importance of rights and demanded that the British rulers should respect rights of the people. The Motilal Nehru committee had demanded a bill of rights as far back as in 1928. It was therefore, natural that when India became independent and the Constitution was being prepared, there were no

Ι γετ ιτ! Τηε βιλλ οφ ριγητσ ις λικε α ωαρραντεε χαρδ τηατ ωε γετ

ωην ωε πυρχηασε α Τς ορ α φαν. Ισν□τ ιτ? 2022-23 2022-23 29 Chapter 2: Rights in the Indian

**Constitution Bill of rights in the South African Constitution** The South African Constitution was inaugurated in December 1996. Its creation and promulgation took place at a time when South Africa still faced the threat of a civil war after the dissolution of the Apartheid government. The South African Constitution says that its "Bill of Rights is a cornerstone of democracy in South Africa". It forbids discrimination on the grounds of "race, gender, pregnancy, marital status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth". It grants perhaps the most extensive range of rights to the citizens. A special constitutional court enforces the rights enshrined in the constitution. Some of the Rights included in the constitution of South Africa include: ± Right to Dignity ± Right to Privacy ± Right to fair labour practices ± Right to healthy environment and right to protection of environment ± Right to adequate housing ± Right to health care, food, water and social security ± Children's rights ± Right to basic and higher education ± Right of cultural, religious and linguistic communities ± Right to information two opinions on the inclusion and protection of rights in the Constitution. The Constitution listed the rights that would be specially protected and called them 'fundamental rights'. The word fundamental suggests that these rights are so important that the Constitution has separately listed them and made special provisions for their protection. The Fundamental Rights are so important that the Constitution itself ensures that they are not violated by the government. Fundamental Rights are different from other rights available to us. While ordinary legal rights are protected and enforced by ordinary law, Fundamental Rights are protected and guaranteed by the constitution of the country. Ordinary rights may be changed by the legislature by ordinary process of law making, but a fundamental right may only be changed by amending the Constitution itself. Besides this, no organ of the government can act in a manner that violates them. As we shall study below in this chapter, judiciary has the powers and responsibility to protect the fundamental rights from violations by actions of the 2022-23 2022-23 30 Indian Constitution at Work government. Executive as well as legislative actions can be declared illegal by the judiciary if these violate the fundamental rights or restrict them in an unreasonable manner. However, fundamental rights are not absolute or unlimited rights. Government can put reasonable restrictions on the exercise of our fundamental rights. **RIGHT TO EQUALITY** Consider the following two situations. These are imaginary situations. But similar things do happen and can happen. Do you think they involve violation of fundamental rights? ± Swadesh Kumar is visiting his village. He is accompanied by one of his friends. They decided to have a cup of tea at the village roadside hotel. The shopkeeper knew Swadesh Kumar but asked the name of his friend to know his caste. After this the shopkeeper served tea to Swadesh Kumar in a nice mug while his friend was given tea in an earthen cup because he was dalit. ± An order is served to four newsreaders of a television channel

that they would no longer read the news on screen. They are all women. The reason given is that they are above the age of forty-five. Two male newsreaders above the same age are not barred from presenting the news. Check your progress Compare the Fundamental Rights in the Indian Constitution with the Bill of Rights in the South African Constitution. Make a list of rights that are: ± Common to both the constitutions ± Available in South Africa but not in India ± Clearly granted in South Africa but implicit in the Indian Constitution

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- ✓ Right to Equality
- ✓ Equality before law – equal protection of laws
- ✓ Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth – equal access to shops, hotels, wells, tanks, bathing ghats, roads etc.
- ✓ Equality of opportunity in public employment
- ✓ Abolition of Untouchability
- ✓ Abolition of titles
- Right to Freedom
- ✓ Protection of Right to – freedom of speech and expression; – assemble peacefully; – form associations/unions; – move freely throughout the territory of India; – reside and settle in any part of India; – practise any profession, or to carry on any occupation, trade or business.
- ✓ Protection in respect of conviction for offences
- ✓ Right to life and personal liberty
- ✓ Right to education
- ✓ Protection against arrest and detention in certain cases
- Right against Exploitation
- ✓ Prohibition of traffic in human beings and forced labour
- ✓ Prohibition of employment of children in hazardous jobs
- Right to Freedom of Religion
- ✓ Freedom of conscience and free profession, practice and propagation of religion
- ✓ Freedom to manage religious affairs
- ✓ Freedom to pay taxes for promotion of any particular religion
- ✓ Freedom to attend religious instruction or worship in certain educational institutions
- Cultural and Educational Rights
- ✓ Protection of language, culture of minorities
- ✓ Right of minorities to establish educational institutions
- Right to Constitutional Remedies
- ✓ Right to move the courts to issue directions/orders/writs for enforcement of rights

2022-23 2022-23 32 Indian Constitution at Work Article 16 (4): Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. These are examples of clear discrimination. In one instance the discrimination is based on caste and in another it is based on gender. Do you think that such discrimination is justified? Right to equality tries to do away with such and other discriminations. It provides for equal access to public places like shops, hotels, places of entertainment, wells, bathing ghats and places of worship. There cannot be any discrimination in this access on the grounds only of religion, race, caste, sex, or place of birth. It also prohibits any discrimination in public employment on any of the above mentioned basis. This right is very important because our society did not practice equal access in the past. The practice of untouchability is one of the crudest manifestations of inequality. This has been abolished under the right to equality. The same right also provides that the state shall confer no title on a person except those who excel themselves in military or academic field. Thus right to equality strives to make India a true democracy by ensuring a sense of equality of dignity and status among all its citizens. Have you read the Preamble to our Constitution? How does it describe equality? You will find that the Preamble mentions two things about equality: equality

Δο συχη τηνγς ρεαλλψ ηαπεν ιν ουρ χουντρψ? Ορ αρε τηεσε πυρελψ ιμαγιναρψ? 2022-23 2022-23 33 Chapter 2: Rights in the Indian Constitution of status and equality of opportunity.

Equality of opportunity means that all sections of the society enjoy equal opportunities. But in a society where there are various kinds of social inequalities, what does equal opportunity mean? The Constitution clarifies that the government can implement special schemes and measures for improving the conditions of certain sections of society: children, women, and the socially and educationally backward classes. You may have heard about ‘reservations’ in jobs, and in admissions. You would have wondered why there are reservations if we follow the principle of equality. In fact Article 16(4) of the constitution explicitly clarifies that a policy like reservation will not be seen as a violation of right to equality. If you see the spirit of the Constitution, this is required for the fulfilment



of the right to equality of opportunity. YOU ARE THE JUDGE You have received a postcard from Hadibandhu, who identifies himself as a “member of the dalit community” in Puri district in Odisha. Men from this community refused to follow a custom that required them to wash the feet of the groom and guests of the ‘upper caste’ during marriage ceremonies. In revenge, four women from this community were beaten up and another was paraded naked. The postcard writer says “Our children are educated and they are not willing to do the customary job of washing the feet of upper caste men, clear the left-overs after the marriage feast and wash the utensils.” Assuming that the facts given above are correct, you have to decide: Does this case involve violation of Fundamental Rights? What would you order the government to do in this case? 2022-23 2022-23 34

Indian Constitution at Work Δοες ιτ μεαν τηατ ιν σομε χασεσ σομεονε σ λιφε χαν βε τακεν αωαψ βψ λαω? Τηατ σουνδσ στρανγε. Χαν ψου τηινκ οφ αν εξαμπλε? RIGHT TO FREEDOM Equality and freedom or liberty, are the two rights that are most essential to a democracy. It is not possible to think of the one without thinking of the other. Liberty means freedom of thought, expression and action. However it does not mean freedom to do anything that one desires or likes. If that were to be permitted then a large number of people will not be able to enjoy their freedom. Therefore, freedoms are defined in such a manner that every person will enjoy her freedom without threatening freedom of others and without endangering the law and order situation. Right to life and personal liberty The foremost right among rights to freedom is the right to life and personal liberty. No citizen can be denied his or her life except by procedure as laid down under the law. Similarly no one can be denied his/her personal liberty. That means no one can be arrested without being told the grounds for such an arrest. If arrested, the person has the right to defend himself by a lawyer of his choice. Also, it is mandatory for the police to take that person to the nearest magistrate within 24 hours. The magistrate, who is not part of the police, will decide whether the arrest is justified or not. This right is not just confined to a guarantee against taking away of an individual’s life but has wider application. Various judgments of Supreme Court have expanded the scope of this right. The Supreme Court Article 21: Protection of life and personal liberty—No person shall be deprived of his life or personal liberty except according to procedure established by law. 2022-23 2022-23 35

Chapter 2: Rights in the Indian Constitution has ruled that this right also includes right to live with human dignity, free from exploitation. The court has held that right to shelter and livelihood is also included in the right to life because no person can live without the means of living, that is, the means of livelihood. Preventive detention Ordinarily, a person would be arrested after he or she has reportedly committed some offence. However there are exceptions to this. Sometimes a person can be arrested simply out of an apprehension that he or she is likely to engage in unlawful activity and imprisoned for some time without following the above mentioned procedure. This is known as preventive detention. It means that if the government feels that a person can be a threat to law and order or to the peace and security of the nation, it can detain or arrest that person. This preventive detention can be extended only for three months. After three months such a case is brought before an advisory board for review. On the face of it, preventive detention looks like an effective tool in the hands of the government to deal with anti-social elements or subversives. But this provision has often been misused by the government. Many people think that there must be greater safeguards in this law so that it may not be misused against people for reasons other than that which are really justified. In fact, there is a clear tension between right to life and personal liberty and the provision for preventive detention. Other freedoms You can see that under the right to freedom there are some other rights as well. These rights however are not absolute. Each of these is subject to restrictions imposed by the government. For example right to freedom of speech and expression is subject to restrictions such as public order, peace and morality etc. Freedom to assemble too is to be exercised peacefully and without arms. The government may impose restrictions in certain areas declaring the assembly of five or more persons as unlawful. Such powers can be easily misused by

the administration. The genuine protest against an act or policy of government by the people may be denied 2022-23 2022-23 36 Indian Constitution at Work permission. However, if the people are aware and vigilant in regard to their rights and choose to protest against such acts of administration such misuse becomes rare. In the Constituent Assembly itself, some members had expressed their dissatisfaction about restrictions on rights. Rights of accused Our Constitution ensures that persons accused of various offences would also get sufficient protection. We often tend to believe that anyone who is charged with some offence is guilty. However, no one is guilty unless the court has found that person guilty of an offence. It is also necessary that a person accused of any crime should get adequate opportunity to defend herself or himself. To ensure a fair trial in courts, the Constitution has provided three rights:  $\pm$  no person would be punished for the same offence more than once,  $\pm$  no law shall declare any action as illegal from a backdate, and  $\pm$  no person shall be asked to give evidence against himself or herself. "I feel that many of these fundamental rights have been framed from the point of view of a police constable... you will find that very minimum rights have been conceded and are almost invariably followed by a proviso. Almost every article is followed by a proviso which takes away the right almost completely,... ...What should be our conception of fundamental rights?...We want to incorporate every one of those rights which our people want to get." Somnath Lahiri CAD, Vol. III, p. 404, 29 April 1947 2022-23 2022-23 37 Chapter 2: Rights in the Indian Constitution

### RIGHT AGAINST EXPLOITATION

In our country there are millions of people who are underprivileged and deprived. They may be subjected to exploitation by their fellow human beings. One such form of exploitation in our country has been begar or forced labour without payment. Another closely related form of exploitation is buying and selling of human beings and using them as slaves. Both of these are prohibited under the Constitution. Forced labour was imposed by landlords, moneylenders and other wealthy persons in the past. Some form of bonded labour still continues in the country, specially in brick kiln work. It has now been declared a crime and it is punishable. Check your progress Do you think that the following situations demand restrictions on right to freedom? Give reasons to support your answer.

- People have assembled for a peace march after communal riots in the city.
- Dalits are denied entry in a temple. A march is being organised to forcibly enter the temple.
- Hundreds of Adivasis blocked the road demanding that the land taken away from them for an industry be returned.
- A caste panchayat is meeting to decide the punishment to a young couple for marrying outside their caste.

Name the fundamental rights whose violation is depicted in this photograph. 2022-23 2022-23 38 Indian Constitution at Work

### The Constitution also forbids employment of children below the age of 14 years in dangerous jobs like factories and mines. With child labour being made illegal and right to education becoming a fundamental right for children, this right against exploitation has become more meaningful.

### RIGHT TO FREEDOM OF RELIGION

According to our Constitution, everyone enjoys the right to follow the religion of his or her choice. This freedom is considered as a hallmark of democracy. Historically, there were rulers and emperors in different parts of the world who did not allow residents of their countries to enjoy the right to freedom of religion. Persons following a religion different from that of the ruler were either persecuted or forced to convert to the official religion of the rulers. Therefore, democracy has always incorporated the freedom to follow the religion of one's choice as one of its basic principles. Freedom of faith and worship In India, everyone is free to choose a religion and practice that religion. Freedom of religion also includes the freedom of conscience. This means that a person may choose any religion or may choose not to follow any religion. Freedom of religion includes the freedom to profess, follow and propagate any religion. Freedom of religion is subject to certain limitations. The government can impose restrictions on the practice of freedom of religion in order to protect public order, morality and health. This means that the freedom of religion is not an unlimited right. The government can interfere in religious matters for rooting out certain social evils. For example in the past, the government has taken steps banning practices like sati, bigamy or

human sacrifice. Such restrictions cannot be opposed in the name of interference in right to freedom of religion. The limitations on the right to freedom of religion always produce tensions between followers of various religions and the government. When the government seeks to restrict some activities of any religious group, people of that religion feel that this is interference in their religion. Freedom of religion becomes a matter of political controversy for yet another reason. The Constitution has guaranteed the right to propagate one's religion. This includes persuading people to convert from one religion to another. However, some people resent conversions on the ground that these are based on intimidation or inducement. The Constitution does not allow forcible conversions. It only gives us the right to spread information about our religion and thus attract others to it. Equality of all religions Being a country which is home to several religions, it is necessary that the government must extend equal treatment to different religions. Negatively, it means that government will not favour any particular religion. India does not have any official religion. We don't have to belong to any particular religion in order to be a prime minister or president or judge or any other public official. We have also seen that under the right to equality, there is a guarantee that government will not discriminate on the basis of religion in giving employment. The institutions run by the state will not preach any religion or give religious education nor will they favour persons of any religion. The objective of these provisions is to sustain and nurture the principle of secularism. Activity Make a list of public religious activities that take place in your village or city. Which of these involve an exercise of right to religious freedom? Discuss what could have happened if this right was not available to people in your locality.

**CULTURAL AND EDUCATIONAL RIGHTS** When we talk of the Indian society, the image of diversity comes before our minds. India is not made up of a monolithic society. We are a society that has vast diversity. In such a society that is full of diversity, there would be social sections which are small in numbers compared to some other groups. If a group is in minority, will it have to adopt the culture of the majority? Our Constitution believes that diversity is our strength. Therefore, one of the fundamental rights is the right of the minorities to maintain their culture. This minority status is not dependent only on religion. Linguistic and cultural minorities are also included in this provision. Minorities are groups that have common language or religion and in a particular part of the country or in the country as a whole, they are outnumbered by some other social section. Such communities have a culture, language and a script of their own, and have the right to conserve and develop these. All minorities, religious or linguistic, can set up their own educational institutions. By doing so, they can preserve and develop their own culture. The government will not, while granting aid to educational institutions, discriminate against any educational institution on the basis that it is under the management of minority community.

**RIGHT TO CONSTITUTIONAL REMEDIES** One would agree that our Constitution contains a very impressive list of Fundamental Rights. But merely writing down a list of rights is not enough. There has to be a way through which they could be realised in practice and defended against any attack on these rights. "A heavy responsibility would be cast on the majority to see that in fact the minorities feel secure. ...the only safety for the minorities lies in a secular State. It pays them to be nationalists ...The majority community should not boast of their national outlook. ...They should try to place themselves in the position of the minorities and try to appreciate their fears. All demands for safeguards ...are the products of those fears that the minorities have in their minds, ...as regards their language, their script and also about the services." Sardar Hukam Singh CAD, VIII, p. 322, 26 May 1949

**Chapter 2: Rights in the Indian Constitution** Right to constitutional remedies is the means through which this is to be achieved. Dr. Ambedkar considered the right to constitutional remedies as 'heart and soul of the constitution'. It is so because this right gives a citizen the right to approach a High Court or the Supreme Court to get any of the fundamental rights restored in case of their violation. The Supreme Court and the High Courts can issue orders and give

directives to the government for the enforcement of rights. The courts can issue various special orders known as writs. ± Habeas corpus: A writ of habeas corpus means that the court orders that the arrested person should be presented before it. It can also order to set free an arrested person if the manner or grounds of arrest are not lawful or satisfactory. ± Mandamus: This writ is issued when the court finds that a particular office holder is not doing legal duty and thereby is infringing on the right of an individual. ± Prohibition: This writ is issued by a higher court (High Court or Supreme Court) when a lower court has considered a case going beyond its jurisdiction. ± Quo Warranto: If the court finds that a person is holding office but is not entitled to hold that office, it issues the writ of quo warranto and restricts that person from acting as an office holder. ± Certiorari: Under this writ, the court orders a lower court or another authority to transfer a matter pending before it to the higher authority or court. Apart from the judiciary, many other mechanisms have been created in later years for the protection of rights. You may have heard about the National Commission on Minorities, the National Commission on Women, the National Commission on Scheduled Castes, I αμ ιν μινοριτυ ιν μψ λοχαλιτυ βυτ μαφοριτυ ιν τηε τοων, μινοριτυ ιφ ψου λοοκ ατ μψ λανγυαγε βυτ μαφοριτυ ιφ ψου γο βψ μψ ρελιγιον□ Αρεν□τ ωε αλλ μινοριτιεσ? 2022-23 2022-23 42 Indian Constitution at Work etc. These institutions protect the rights of women, minorities or Dalits. Besides, the National Human Rights Commission has also been established by law to protect the fundamental and other kinds of rights. National Human Rights Commission (NHRC) The real test of the rights given by any constitution is in their actual implementation. The poor, illiterate and the deprived sections of the society must be able to exercise their rights. Independent organisations like the People’s Union for Civil Liberties (PUCL) or People’s Union for Democratic Rights (PUDR) have been working as watchdogs against the violations of rights. In this background, the government has established in 1993 an institution, the National Human Rights Commission. The National Human Rights Commission (NHRC) is composed of a former chief justice of the Supreme Court of India, a former judge of the Supreme Court, a former chief justice of a High Court and two other members who have knowledge and practical experience in matters relating to human rights. The Commission’s functions include inquiry at its own initiative or on a petition presented to it by a victim into complaint of violation of human rights; visit to jails to study the condition of the inmates; undertaking and promoting research in the field of human rights, etc. The Commission receives complaints in thousands every year. These relate to custodial death, custodial rape, disappearances, police excesses, failure in taking action, indignity to women, etc. Its most significant intervention has been on disappeared youth in Punjab and investigation and trial of Gujarat riot cases where its intervention proved effective. The Commission does not have the power of prosecution. It can merely make recommendations to the government or recommend to the courts to initiate proceedings based on the inquiry that it conducts. For more details, visit <http://www.nhrc.nic.in> 2022-23 2022-23 43 Chapter 2: Rights in the Indian Constitution DIRECTIVE PRINCIPLES OF STATE POLICY The makers of our Constitution knew that independent India was going to face many challenges. Foremost among these was the challenge to bring about equality and well-being of all citizens. They also thought that certain policy direction was required for handling these problems. At the same time, the Constitution did not want future governments to be bound by certain policy decisions. Therefore, some guidelines were incorporated in the Constitution but they were not made legally enforceable: this means that if a government did not implement a particular guideline, we cannot go to the court asking the court to instruct the government to implement that policy. Thus, these guidelines are ‘non-justiciable’ i.e., parts of the Constitution that cannot be enforced by the judiciary. Those who framed our Constitution thought that the moral force behind these guidelines would ensure that the government would take them seriously. Besides, they expected that the people would also hold the governments responsible for implementing these directives. So, a

separate list of policy guidelines is included in the Constitution. The list of these guidelines is called the Directive Principles of State Policy. What do the Directive Principles contain? The chapter on Directive Principles lists mainly three things: ± the goals and objectives that we as a society should adopt; ± certain rights that individuals should enjoy apart from the Fundamental Rights; and ± certain policies that the government should adopt. You may get some idea of the vision of makers of our Constitution by looking at some of the Directive Principles shown below. The governments from time to time tried to give effect to some Directive Principles of State Policy. They passed several zamindari abolition bills, nationalised banks, enacted numerous factory laws, fixed minimum wages, cottage and small industries were promoted and provisions for reservation for the uplift of the scheduled castes and scheduled tribes were made. Such efforts to give effect to the 2022-23 2022-23 44 Indian Constitution at Work Directive Principles include the right to education, formation of panchayati raj institutions all over the country, partial right to work under employment guarantee programme and the mid-day meal scheme etc. Check your progress It is estimated that there are about three million urban homeless in India. Night shelters are not available for more than five per cent of this population. Hundreds of these old, sick homeless people are killed by cold wave during winter. They cannot have ration and voting cards in the absence of any 'proof of residence'. Without these documents they also cannot avail government help as needy patients. A large number of these homeless people are casual workers, who earn very low wages. They travel to the city in search of work from different parts of the country. Use these facts to write a petition to the Supreme Court of India under the Right to Constitutional Remedies. Your petition should mention: a. What Fundamental Rights are being denied to the homeless in their everyday life? b. What kind of order would you request the Supreme Court to issue? Fundamental Duties of citizens ± In 1976, the 42nd amendment to the Constitution was passed. Among other things, this amendment inserted a list of Fundamental Duties of Citizens. In all, ten duties were enumerated. However, the Constitution does not say anything about enforcing these duties. ± As citizens, we must abide by the Constitution, defend our country, promote harmony among all citizens, protect the environment. ± However, it must be noted that our Constitution does not make the enjoyment of rights dependent or conditional upon fulfilment of duties. In this sense, the inclusion of fundamental duties has not changed the status of our fundamental rights. 2022-23 2022-23 45 Chapter 2: Rights in the Indian Constitution RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES It is possible to see both Fundamental Rights and Directive Principles as complementary to each other. Fundamental Rights restrain the government from doing certain things while Directive Goals Welfare of the people; Social, economic and political justice; Raising the standard of living; equitable distribution of resources; Promotion of international peace Non-justiciable rights Adequate livelihood; Equal pay for equal work for men and women; Right against economic exploitation; Right to work; Early childhood care and education to children below the age of six years Policies Uniform civil code; Prohibition of consumption of alcoholic liquor; Promotion of cottage industries; Prevention of slaughter of useful cattle; Promotion of village panchayats ΔΙΡΕΧΤΙΕ ΠΙΝΧΙΠΙΕΣ Τελλ με ωηατ ισ της ποιιντ οφ σαπινγ νιχε τηνγσ ιν της Χονστιτυτιον ιφ τηςσε χαννοτ βε ιμπλεμεντεδ βψ ανψ χουρτ? 2022-23 2022-23 46 Indian Constitution at Work Principles exhort the government to do certain things. Fundamental Rights mainly protect the rights of individuals while directive principles ensure the well-being of the entire society. However, at times, when government intends to implement Directive Principles of State Policy, it can come in conflict with the Fundamental Rights of the citizen. This problem arose when the government sought to pass laws to abolish zamindari system. These measures were opposed on the ground that they violated right to property. However, keeping in mind the societal needs that are greater than the individual interests, the government amended the Constitution to give effect to the Directive Principles of State Policy.

This led to a long legal battle. The executive and the judiciary took different positions. The government claimed that rights can be abridged for giving effect to Directive Principles. This argument assumed that rights were a hindrance to welfare of the people. On the other hand, the court held the view that Fundamental Rights were so important and sacred that they cannot be limited even for purposes of implementing Directive Principles.

**Right to Property** Behind the controversy about the relationship between rights and directive principles, there was one important reason: in the Constitution, originally, there was a fundamental right to 'acquire, possess and maintain' property. But the Constitution made it clear that property could be taken away by the government for public welfare. Since 1950, government made many laws that limited this right to property. This right was at the centre of the long debate over the relationship between rights and directive principles. Finally, in 1973, the Supreme Court gave a decision that the right to property was not part of the basic structure of the Constitution and therefore, parliament had power to abridge this right by an amendment. In 1978, the 44th amendment to the Constitution removed the right to property from the list of Fundamental Rights and converted it into a simple legal right under article 300 A. What difference, do you think, this change of status makes to the right to property?

**2022-23 Chapter 2: Rights in the Indian Constitution** This generated another complicated debate. This related to the amendment of the Constitution. The government was saying that Parliament can amend any part of the Constitution. The court was saying that Parliament cannot make an amendment that violated Fundamental Rights. This controversy was settled by an important decision of the Supreme Court in *Kesavananda Bharati* case. In this case, the court said that there are certain basic features of the Constitution and these cannot be changed by Parliament. We shall discuss this in greater detail in Chapter 9 on 'Constitution as a Living Document'.

**2022-23 Indian Constitution at Work Conclusion** In the writings of Jotirao Phuley (1827-1890), a radical social reformer from Maharashtra, we find one of the earliest expressions of the view that rights include both freedom and equality. During the national movement, this idea of rights was further sharpened and expanded to constitutional rights. Our Constitution reflected this long tradition and listed the fundamental rights. Since 1950, the judiciary has functioned as an important protector of rights. Judicial interpretations have expanded the scope of rights in many respects. The government and administration of our country function within this overall framework. Rights enforce limitations on the functioning of the government and ensure democratic governance of the country.

**Check your progress** Read the main points of the Bill of Rights in the South African Constitution and the Directive Principles in India. Which are the common points in the two lists? Why did the South African Constitution put these in the Bill of Rights? If you were writing the constitution for a new country, what would you suggest?

**2022-23 Chapter 2: Rights in the Indian Constitution Exercises**

- Write true or false against each of these statements: a) A Bill of Rights lays down the rights enjoyed by the people of a country. b) A Bill of Rights protects the liberties of an individual. c) Every country of the world has a Bill of Rights. d) The Constitution guarantees remedy against violation of Rights.
- Which of the following is the best description of Fundamental Rights? a) All the rights an individual should have. b) All the rights given to citizens by law. c) The rights given and protected by the Constitution. d) The rights given by the Constitution that cannot ever be restricted.
- Read the following situations. Which Fundamental Right is being used or violated in each case and how? a) Overweight male cabin crew are allowed to get promotion in the national airlines but their women colleagues who gain weight are penalised. b) A director makes a documentary film that criticises the policies of the government. c) People displaced by a big dam take out a rally demanding rehabilitation. d) Andhra society runs Telugu medium schools outside Andhra Pradesh.
- Which of the following is a correct interpretation of the Cultural and Educational Rights? a) Only children belonging to the minority group that has opened educational institution can study there. b) Government schools must ensure that children of the minority group will be introduced to their

belief and culture. c) Linguistic and religious minorities can open schools for their children and keep it reserved for them. d) Linguistic and religious minorities can demand that their children must not study in any educational institution except those managed by their own community.

2022-23 2022-23 50 Indian Constitution at Work 5. Which of the following is a violation of Fundamental Rights and why? a) Not paying minimum wages b) Banning of a book c) Banning of loudspeakers after 9 pm. d) Making a speech

6. An activist working among the poor says that the poor don't need Fundamental Rights. What they need are Directive Principles to be made legally binding. Do you agree with this? Give your reasons.

7. Several reports show that caste groups previously associated with scavenging are forced to continue in this job. Those in positions of authority refuse to give them any other job. Their children are discouraged from pursuing education. Which of their Fundamental Rights are being violated in this instance?

8. A petition by a human rights group drew attention of the court to the condition of starvation and hunger in the country. Over five crore tonnes of food grains was stored in the godowns of the Food Corporation of India. Research shows that a large number of ration cardholders do not know about the quantity of food grains they can purchase from fair price shops. It requested the court to order the government to improve its public distribution system.

a. Which different rights does this case involve? How are these rights interlinked? b. Should these rights form part of the right to life?

9. Read the statement by Somnath Lahiri in the Constituent Assembly quoted in this chapter. Do you agree with him? If yes, give instances to prove it. If not, give arguments against his position.

10. Which of the Fundamental Rights is in your opinion the most important right? Summarise its provisions and give arguments to show why it is most important.

2022-23 2022-23 51 Chapter 3: Election and Representation Chapter Three ELECTION AND REPRESENTATION INTRODUCTION Have you ever played chess? What would happen if the black knight suddenly started moving straight rather than two and a half squares? Or, what would happen if in a game of cricket, there were no umpires? In any sport, we need to follow certain rules. Change the rules and the outcome of the game would be very different. Similarly a game needs an impartial umpire whose decision is accepted by all the players. The rules and the umpire have to be agreed upon before we begin to play a game. What is true of a game is also true of elections. There are different rules or systems of conducting elections. The outcome of the election depends on the rules we have adopted. We need some machinery to conduct the elections in an impartial manner. Since these two decisions need to be taken before the game of electoral politics can begin, these cannot be left to any government. That is why these basic decisions about elections are written down in the constitution of a democratic country. In this chapter we shall study the constitutional provisions regarding elections and representation. We shall focus on the importance of the method of election chosen in our Constitution and the implications of the constitutional provisions regarding impartial machinery for conducting elections. We shall also look at some suggestions for amending the constitutional provisions in this respect. After reading this chapter, you would understand: ± different methods of election; ± the characteristics of the system of election adopted in our country; ± the importance of the provisions for free and fair elections; and ± the debate on electoral reforms.

2022-23 2022-23 52 Indian Constitution at Work ELECTIONS AND DEMOCRACY Let us begin by asking ourselves two simple questions about elections and democracy. ± Can we have democracy without holding elections? ± Can we hold elections without having democracy? Let us have a discussion in the classroom on both these questions by using examples from whatever we have learnt so far in the previous classes. The first question reminds us of the necessity of representation in a large democracy. All citizens cannot take direct part in making every decision. Therefore, representatives are elected by the people. This is how elections become important. Whenever we think of India as a democracy, our mind invariably turns to the last elections. Elections have today become the most visible symbol of the democratic process. We often distinguish between direct and indirect democracy. A direct democracy is one where the citizens directly participate in the day-to-day

decisionmaking and in the running of the government. The ancient city-states in Greece were considered examples of direct democracy. Many would consider local governments, especially gram sabhas, to be the closest examples of direct They say elections are carnival of democracy. But this cartoon depicts chaos instead. Is this true of elections always? Is it good for democracy? READ A CARTOON Shankar. Copyright: Children's Book Trust. 17 February 1957 2022-23 2022-23 53 Chapter 3: Election and Representation democracy. But this kind of direct democracy cannot be practiced when a decision has to be taken by lakhs and crores of people. That is why rule by the people usually means rule by people's representatives. In such an arrangement citizens choose their representatives who, in turn, are actively involved in governing and administering the country. The method followed to choose these representatives is referred to as an election. Thus, the citizens have a limited role in taking major decisions and in running the administration. They are not very actively involved in making of the policies. Citizens are involved only indirectly, through their elected representatives. In this arrangement, where all major decisions are taken by elected representatives, the method by which people elect their representatives becomes very important. The second question reminds us of the fact that not all elections are democratic. A large number of nondemocratic countries also hold elections. In fact nondemocratic rulers are very keen to present themselves as democratic. They do so by holding election in such a way that it does not threaten their rule. Can you think of some examples of such non-democratic elections? What do you think would distinguish a democratic from a nondemocratic election? What can be done to ensure that elections in a country would be conducted in a democratic way? This is where constitution comes in. The constitution of a democratic country lays down some basic rules about elections. The details are usually left to be worked out by laws passed by the legislatures. These basic rules are usually about ± Who is eligible to vote? ± Who is eligible to contest? ± Who is to supervise elections? ± How do the voters choose their representatives? ± How are the votes to be counted and representatives elected? Ωηατ ις τηε νεεδ οφ ωριτινγ τηεσε ρυλεσ ιν τηε χονστιτυτιον? Ωηψ χαν□τ τηεσε βε δεχιδεδ βψ τηε Παρλιαμεντ? Ορ βψ αλλ τηε παρτιεσ βεφορε επερψ ελεχτιον? 2022-23 2022-23 54 Indian Constitution at Work Like most democratic constitutions, the Constitution of India answers all these questions. As you can see, the first three questions are about ensuring that elections are free and fair and can thus be called democratic. The last two questions are about ensuring a fair representation. In this chapter you will consider both these aspects of the Constitutional provisions about elections. ELECTION SYSTEM IN INDIA You may have noted above a reference to different methods or the systems of elections. You may have wondered what these were all about. You may have seen or read about different methods of electioneering or campaigning in the elections. But what are different methods of elections? There is a system of conducting elections. There are authorities and rules about do's and don'ts. Is that what election system is all about? You may have wondered why the constitution needs to write down how the votes are to be counted and representatives elected. Isn't that very obvious? People go and vote. The candidate who gets highest votes gets elected. That is what elections are all over the world. Why do we need to think about it? We need to, because this question is not as simple as it appears to us. We have got so used to our system of elections that we think that there cannot be any other way. In a democratic election, people vote and their preference decides who will win the contest. But there Activity Collect newspaper clippings about elections in India and any other country. Classify the clippings in the following categories: a. System of representation b. Voter eligibility c. Role of the Election Commission. If you have access to internet, visit the websites of the Election Commission of India, <https://eci.gov.in>, and ACE project, The Electoral Knowledge Network, <http://aceproject.org> and collect the information mentioned above for at least four countries. 2022-23 2022-23 55 Chapter 3: Election and Representation can be very different ways in which people make their choices and very different ways in which their preferences can be counted. These different rules of the game can make a difference to who the winner of the



game will be. Some rules can favour bigger parties; some rules can help the smaller players. Some rules can favour the majority community, others can protect the minorities. Let us look at one dramatic instance to see how this happens. First Past the Post System Look at the newspaper clipping. Activity Hold mock elections in your class to elect four class representatives. Hold the election in three different ways: ± Each student can give one vote. The four highest vote getters are elected. ± Each student has four votes and can give them all to one candidate or split the votes among different candidates. The four highest vote getters are elected. ± Each voter gives a preference ranking to candidates and the counting follows the method of election of Rajya Sabha members described below. Did the same four persons win the election in each of these methods? If not, what was the difference? Why?

2022-23 2022-23 56 Indian Constitution at Work It talks of one historic moment in India's democracy. In the Lok Sabha elections of 1984, the Congress party came to power winning 415 of the 543 Lok Sabha seats – more than 80% of the seats. Such a victory was never achieved by any party in the Lok Sabha. What did this election show? The Congress party won four-fifths of the seats. Does it mean that four out of five Indian voters voted for the Congress party? Actually not. Take a look at the enclosed table. The Congress party got 48% of the votes. This means that only 48% of those who voted, voted in favour of the candidates put up by the Congress party, but the party still managed to win more than 80% of the seats in the Lok Sabha. Look at the performance of other parties. The BJP got 7.4 per cent votes but less than one per cent seats. How did that happen? Λεσς τηαν 50 περ χεντ ποτεσ ανδ μορε τηαν 80 περ χεντ σεατσ!

Ισν□τ τηατ υνφαιρ? Ηωω χουλδ ουρ Χονστυτυτιον μακερσ αχχεπτ συχη αν υνφαιρ σψστεμ?

Party	Votes (%)	Seats
Congress	48.0	415
BJP	7.4	2
Janata	6.7	10
Lok Dal	5.7	3
CPI (M)	5.7	22
Telugu Desam	4.1	30
DMK	2.3	2
AIADMK	1.6	12
Akali Dal	1.0	7
AGP	1.0	7

This happened because in our country we follow a special method of elections. Under this system: ± The entire country is divided into 543 constituencies; ± Each constituency elects one representative; and ± The candidate who secures the highest number of votes in that constituency is declared elected. It is important to note that in this system whoever has more votes than all other candidates, is declared elected. The winning candidate need not secure a majority of the votes. This method is called the First Past the Post (FPTP) system. In the electoral race, the candidate who is ahead of others, who crosses the winning post first of all, is the winner. This method is also called the Plurality System. This is the method of election prescribed by the Constitution. Let us now go back to our example. The Congress party won greater share of seats than its share of votes because in many of the constituencies in which its candidates won, they secured less than 50% of the votes. If there are several candidates, the winning candidate often gets much less than 50% of the votes. The votes that go to all the losing candidates go 'waste', for those candidates or parties get no seat from those votes. Suppose a party gets only 25 per cent of the votes in every constituency, but everyone else gets even less votes. In that case, the party could win all the seats with only 25 per cent votes or even less. Proportional Representation Let us compare this to how elections take place in Israel that follows a very different system of elections. In Israel once the votes are counted, each party is allotted the share of seats in the parliament in proportion to its share of votes (see Box). Each party fills its quota of seats by picking those many of its nominees from a preference list that has been declared before the elections. This system of elections is called the Proportional Representation (PR) system. In this system a party gets the same proportion of seats as its proportion of votes. In the PR system there could be two variations. In some countries, like Israel or Netherlands, the entire country is treated as one constituency and seats are allocated to each party according to its share of votes in the national election. The other method is when the country is divided into several multi-member

Τηισ ισ περψ χονφυσινγ! Ηωω δο Ι κνοω ωηο ισ μψ ΜΠ ορ μψ ΜΛΑ ιν τηισ σψστεμ? Ωηο

2022-23 2022-23 58 Indian Constitution at Work  
 constituencies as in Argentina and Portugal. Each party prepares a list of candidates for each constituency, depending on how many have to be elected from that constituency. In both these variations, voters exercise their preference for a party and not a candidate. The seats in a constituency are distributed on the basis of votes polled by a party. Thus, representatives from a constituency, would and do belong to different parties. In India, we have adopted PR system 58 Proportional Representation in Israel Israel follows proportional representation system of election. Elections to the legislature (Knesset) take place every four years. Every party declares a list of its candidates, but voters vote for the party and not for the candidates. A party gets seats in the legislature in proportion to the votes polled by it. This allows even smaller parties with very small support base to get representation in the legislature. (A party must get a minimum of 3.25% votes to be eligible to get seats in the legislature.) This often leads to a multi-party coalition government. The following table shows the result of the 2015 elections to the Knesset. Based on this, you can find out what percentage of seats various parties got in that election. Name of List (Party) % of total Number of % of total votes seats seats Likud 23.40 30 Zionist Camp 18.67 24 Joint List (Hadash, National Democratic Assembly, Arab Movement for Renewal, United Arab List) 10.61 13 Yesh Atid 8.82 11 Kulanu 7.49 10 Habayit Hayehudi 6.74 8 Shas 5.74 7 Yisrael Beiteinu 5.10 6 United Torah Judaism 4.99 6 Israel's Left 3.93 5 Other Parties 4.51 0 Total 100 120 2022-23 2022-23 59 Chapter 3: Election and Representation on a limited scale for indirect elections. The Constitution prescribes a third and complex variation of the PR system for the election of President, Vice President, and for the election to the Rajya Sabha and Vidhan Parishads. Comparison of FPTP and PR system of election FPTP PR The country is divided Large geographical areas into small geographical are demarcated as units called constituencies constituencies. The entire or districts country may be a single constituency Every constituency elects More than one one representative representative may be elected from one constituency Voter votes for a candidate Voter votes for the party A party may get more seats Every party gets seats in the than votes in the legislature legislature in proportion to the percentage of votes that it gets Candidate who wins the Candidate who wins the election may not get elections gets majority of majority (50%+1) votes votes. Examples: U.K., India Examples: Israel, Netherlands 2022-23 2022-23 60 Indian Constitution at Work How does PR work in Rajya Sabha elections A third variant of PR, the Single Transferable Vote system (STV), is followed for Rajya Sabha elections. Every State has a specific quota of seats in the Rajya Sabha. The members are elected by the respective State legislative assemblies. The voters are the MLAs in that State. Every voter is required to rank candidates according to her or his preference. To be declared the winner, a candidate must secure a minimum quota of votes, which is determined by a formula: 
$$\frac{\text{Total votes polled} + 1}{\text{Total number of candidates to be elected} + 1}$$
 For example if 4 Rajya Sabha members have to be elected by the 200 MLAs in Rajasthan, the winner would require  $(200/4+1 = 40+1)$  41 votes. When the votes are counted it is done on the basis of first preference votes secured by each candidate, of which the candidate has secured the first preference votes. If after the counting of all first preference votes, required number of candidates fail to fulfil the quota, the candidate who secured the lowest votes of first preference is eliminated and his/her votes are transferred to those who are mentioned as second preference on those ballot papers. This process continues till the required number of candidates are declared elected. Why did India adopt the FPTP system? The answer is not very difficult to guess. If you have carefully read the box explaining the Rajya Sabha elections, you would have noticed that it is a complicated system which may work in a small country, but would be difficult to work in a sub-continental country like India. The reason for the popularity and success of the FPTP system is its simplicity. The entire election system is extremely simple to understand even for common voters who may have no specialised 2022-23 2022-23 61 Chapter 3: Election and Representation knowledge about politics and elections. There is also a clear choice presented to the

voters at the time of elections. Voters have to simply endorse a candidate or a party while voting. Depending on the nature of actual politics, voters may either give greater importance to the party or to the candidate or balance the two. The FPTP system offers voters a choice not simply between parties but specific candidates. In other electoral systems, especially PR systems, voters are often asked to choose a party and the representatives are elected on the basis of party lists. As a result, there is no one representative who represents and is responsible for one locality. In constituency based system like the FPTP, the voters know who their own representative is and can hold him or her accountable. More importantly, the makers of our Constitution also felt that PR based election may not be suitable for giving a stable government in a parliamentary system. We shall study the nature of parliamentary system of executive in the next chapter. This system requires that the executive has majority in the legislature. You will notice that the PR system may not produce a clear majority because seats in the legislature would be divided on the basis of share of votes. The FPTP READ A CARTOON These members of the ruling party are trying to listen to the 'tiny' opposition! Was this the effect of our electoral system? Shankar. Copyright: Children's Book Trust. 29 May 1949 2022-23 2022-23 62 Indian Constitution at Work system generally gives the largest party or coalition some extra bonus seats, more than their share of votes would allow. Thus this system makes it possible for parliamentary government to function smoothly and effectively by facilitating the formation of a stable government. Finally, the FPTP system encourages voters from different social groups to come together to win an election in a locality. In a diverse country like India, a PR system would encourage each community to form its own nation-wide party. This may also have been at the back of the mind of our constitution makers. The experience of the working of the Constitution has confirmed the expectation of the constitution makers. The FPTP system has proved to be simple and familiar to ordinary voters. It has helped larger parties to win clear majorities at the centre and the State level. The system has also discouraged political parties that get all their Check your progress Here are the results of the Tamil Nadu Assembly Election held in 2016. ± What would be the composition of the Assembly if it was a PR system like in Israel? ± Which party would have a majority? ± Who would form the government? ± What would be the effect of this system on the relationship of political parties? Total Seats: 234 (Election held in 232) Party % of total Number of Seats in PR votes seats AIADMK 40.77 135 DMK 31.64 88 INC 6.42 8 PMK 5.32 0 BJP 2.84 0 DMDK 2.39 0 CPI 0.79 0 IUML 0.73 1 Others Parties 6.37 0 Independents 1.43 0 NOTA 1.30 – 2022-23 2022-23 63 Chapter 3: Election and Representation votes only from one caste or community. Normally, the working of the FPTP system results in a two-party system. This means that there are two major competitors for power and power is often shared by these two parties alternately. It is difficult for new parties or the third party to enter the competition and share power. In this respect, the experience of FPTP in India is slightly different. After independence, though we adopted the FPTP system, there emerged a one party dominance and along with it, there existed many smaller parties. After 1989, India is witnessing the functioning of the multiparty coalitions. At the same time, gradually, in many States, a twoparty competition is emerging. But the distinguishing feature of India's party system is that the rise of coalitions has made it possible for new and smaller parties to enter into electoral competition in spite of the FPTP system. RESERVATION OF CONSTITUENCIES We have noticed that in the FPTP election system, the candidate who secures the highest votes in a particular constituency is declared elected. This often works to the disadvantage of the smaller social groups. This is even more significant in the Indian social context. We have had a history of caste-based discrimination. In such a social system, the FPTP electoral system can mean that the dominant social groups and castes can win everywhere and the oppressed social groups may continue to remain unrepresented. Our Constitution makers were aware of this difficulty and the need to provide a way to ensure fair and just representation to the oppressed social groups. This issue was debated even before independence and the British government had introduced 'separate electorates'. This system meant

Tajamul Husain, CAD, Vol. VIII, p. 333, 26 May 1949 "Separate electorates have been a curse to India, have done incalculable harm to this country... Separate electorates have barred our progress... We (Muslims) want to merge in the nation. ...for God's sake keep your hands off reservation for the Muslim community." 2022-23 2022-23 64 Indian Constitution at Work that for electing a representative from a particular community, only those voters would be eligible who belong to that community. In the Constituent Assembly, many members expressed a fear that this will not suit our purposes. Therefore, it was decided to adopt the system of reserved constituencies. In this system, all voters in a constituency are eligible to vote but the candidates must belong to only a particular community or social section for which the seat is reserved. There are certain social groups which may be spread across the country. In a particular constituency, their numbers may not be sufficient to be able to influence a victory of a candidate. However, taken across the country they are a significantly sizeable group. To ensure their proper representation, a system of reservation becomes necessary. The Constitution provides for reservation of seats in the Lok Sabha and State Legislative Assemblies for the Scheduled Castes and Scheduled Tribes. This provision was made initially for a period of 10 years and as a result of successive constitutional amendments, has been extended up to 2020. The Parliament can take a decision to further extend it, when the period of reservation expires. The number of seats reserved for both of these groups is in proportion to their share in the population of India. Of the 543 elected seats in the Lok Sabha, 84 are reserved for Scheduled Castes and 47 are reserved for Scheduled Tribes (as on 26 January 2019). "...But I have come to say a few words on behalf of the Adivasis of India.... In the past, thanks to the major political parties, thanks to the British Government and thanks to every enlightened Indian citizen, we have been isolated and kept, as it were, in a zoo. ...We are willing to mix with you, and it is for that reason, ..., that we have insisted on a reservation of seats as far as the Legislatures are concerned. We have not asked ...(for) separate electorates; ...Under the 1935 Act, throughout the Legislatures in India, there were altogether only 24 Adivasi MLAs out of a total of 1585, ...and not a single representative at the Centre." Jaipal Singh, CAD, Vol. V, pp. 209-210, 27 August 1947 2022-23 2022-23 65 Chapter 3: Election and Representation Who decides which constituency is to be reserved? On what basis is this decision taken? This decision is taken by an independent body called the Delimitation Commission. The Delimitation Commission is appointed by the President of India and works in collaboration with the Election Commission of India. It is appointed for the purpose of drawing up the boundaries of constituencies all over the country. A quota of constituencies to be reserved in each State is fixed depending on the proportion of SC or ST in that State. After drawing the boundaries, the Delimitation Commission looks at the composition of population in each constituency. Those constituencies that have the highest proportion of Scheduled Tribe population are reserved for ST. In the case of Scheduled Castes, the Delimitation Commission looks at two things. It picks constituencies that have higher proportion of Scheduled Caste population. But it also spreads these constituencies in different regions of the State. This is done because the Scheduled Caste population is generally spread evenly throughout the country. These reserved constituencies can be rotated each time the Delimitation exercise is undertaken. The Constitution does not make similar reservation for other disadvantaged groups. Of late there has been a strong demand seeking reservation of seats in the Lok Sabha and State Assemblies for women. Given the fact that very few women are elected to representative bodies, the demand for reserving one-third seats for women is increasingly being articulated. Reservation of seats for women has been provided for in rural and urban local bodies. We shall discuss this in the chapter on Local Governments. A similar provision for Lok Sabha and Vidhan Sabhas would require an amendment to the Constitution. Such an amendment has been proposed several times in the Parliament but has not yet been passed. FREE AND FAIR ELECTIONS The true test of any election system is its ability to ensure a free and fair electoral process. If we want democracy to be translated into reality on the ground, it is important that the election system is impartial and

transparent. The system of election must also allow the aspirations of the voter to find legitimate expression through the electoral results.

2022-23 2022-23 66 Indian Constitution at Work Universal franchise and right to contest Apart from laying down a method of elections, the Constitution answers two basic questions about elections: Who are the voters? Who can contest elections? In both these respects our Constitution follows the well established democratic practices. You already know that democratic elections require that all adult citizens of the country must be eligible to vote in the elections. This is known as universal adult franchise. In many countries, citizens had to fight long battles with the rulers to get this right. In many countries, women could get this right very late and only after struggle. One of the important decisions of the framers of the Indian Constitution was to guarantee every adult citizen in India, the right to vote. Till 1989, an adult Indian meant an Indian citizen above the age of 21. An amendment to the Constitution in 1989, reduced the eligibility age to 18. Adult franchise ensures that all citizens are able to participate in the

Check your progress The proportion of Muslims in the population of India is about 14.2 per cent. But the number of Muslim MPs in the Lok Sabha has usually been less than 6 per cent, less than half of their share in population. A similar situation prevails in most State Assemblies. Three students drew different conclusions from this fact. Write down whether and why you agree or disagree with each of them.

Hilal: This demonstrates the unfairness of the FPTP system. We should have opted for PR system.

Arif: This shows the wisdom of granting reservations to SC and ST. What is needed is a reservation of seats for Muslims on the same lines as for SC and ST.

Saba: There is no point in talking about Muslims as a whole. Muslim women are not going to get any share in any of these systems. We need a separate quota for Muslim women.

Αμ Ι ορ αμ Ι νοτ αν αδυλτ? Ι αμ ματυρε ενουγη το χηροοσε μψ φυτυρε χαρεερ, ολδ ενουγη το γετ α δριπινγ λιχενσε, βυτ νοτ ολδ ενουγη το ποτε!

Ιφ λαωσ χαν αππλψ το με, ωηψ χαν□τ Ι δεχιδε ον ωηο μακεσ τηοσε λαωσ?

2022-23 2022-23 67 Chapter 3: Election and Representation process of selecting their representative. This is consistent with the principle of equality and non-discrimination that we studied in the chapter on rights. Many people thought and many think so today that giving the right to vote to everyone irrespective of educational qualification was not right. But our Constitution makers had a firm belief in the ability and worth of all adult citizens as equals in the matter of deciding what is good for the society, the country and for their own constituencies. What is true of the right to vote is also true of right to contest election. All citizens have the right to stand for election and become the representative of the people. However, there are different minimum age requirements for contesting elections. For example, in order to stand for Lok Sabha or Assembly election, a candidate must be at least 25 years old. There are some other restrictions also. For instance, there is a legal provision that a person who has undergone imprisonment for two or more years for some offence is disqualified from contesting elections. But there are no restrictions of income, education or class or gender on the right to contest elections. In this sense, our system of election is open to all citizens. Independent Election Commission Several efforts have been made in India to ensure the free and fair election system and process. The most important among these is the

Why is universal adult franchise compared to an elephant? Is it unmanageable? Or is it like the story in which everyone describes the elephant only by its parts? READ A CARTOON Shankar. Copyright: Children's Book Trust. 21 October 1951

2022-23 2022-23 68 Indian Constitution at Work creation of an independent Election Commission to 'supervise and conduct' elections. Do you know that in many countries, there is an absence of an independent mechanism for conducting elections? Article 324 of the Indian Constitution provides for an independent Election Commission for the 'superintendence, direction and control of the electoral roll and the conduct of elections' in India. These words in the Constitution are very important, for they give the Election Commission a decisive role in virtually everything to do with elections. The Supreme Court has agreed with this interpretation of the Constitution. To assist the Election Commission of India there is a Chief Electoral Officer in every state. The Election Commission is not

responsible for the conduct of local body elections. As we shall study in the chapter on Local Government, the State Election Commissioners work independently of the Election Commission of India and each has its own sphere of operation. The Election Commission of India can either be a single member or a multi-member body. Till 1989, the Election Commission was single member. Just before the 1989 general elections, two Election Commissioners were appointed, making the body multi-member. Soon after the elections, the Commission reverted to its single member status. In 1993, two Election Commissioners were once again appointed and the Commission became multi-member and has remained multi-member since then. Initially there were many apprehensions about a multi-member Commission. There was a sharp difference of opinion between the then Chief Election Article 324: (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission). 2022-23 2022-23 69 Chapter 3: Election and Representation Commissioner and the other Commissioners about who had how much power. The matter had to be settled by the Supreme Court. Now there is a general consensus that a multi-member Election Commission is more appropriate as power is shared and there is greater accountability. The Chief Election Commissioner (CEC) presides over the Election Commission, but does not have more powers than the other Election Commissioners. The CEC and the two Election Commissioners have equal powers to take all decisions relating to elections as a collective body. They are appointed by the President of India on the advice of the Council of Ministers. It is therefore possible for a ruling party to appoint a partisan person to the Commission who might favour them in the elections. This fear has led many to suggest that this procedure should be changed. Many persons have suggested that a different method should be followed that makes consultation with the leader of opposition and the Chief Justice of India necessary for the appointment of CEC and Election Commissioners. The Constitution ensures the security of the tenure of the CEC and Election Commissioners. They are appointed for a six year term or continue till the age of 65, whichever is earlier. The CEC can be removed before the expiry of

Ηας της νοω βεεν σεττλεδ? Ορ χαν της γοπερνμεντ γο βαχκ το α σινγλε μεμπερ Ελεχτιον Χομμισσιον? Δοεσ της Χονστιτυτιον αλλω της γαμε? Special majority Special majority means:  $\pm$  Two-thirds majority of those present and voting, and  $\pm$  Simple majority of the total membership of the House. Let us say that you have to pass a resolution in your class with a special majority. Imagine further that your class has a total student strength of 57. But on the day of voting, only 51 students are present and 50 students participated in voting. When would you say that the resolution has been passed with 'special majority' in this situation? In this book you will find mention of 'special majority' in at least three other chapters. One is in the next chapter on Executive, where we discuss the impeachment of the President of India. Find out the other two places where special majority is discussed. 2022-23 2022-23 70 Indian Constitution at Work the term, by the President if both Houses of Parliament make such a recommendation with a special majority. This is done to ensure that a ruling party cannot remove a CEC who refuses to favour it in elections. The Election Commissioners can be removed by the President of India. The Election Commission of India has a wide range of functions.  $\pm$  It supervises the preparation of up-to-date voters' list. It makes every effort to ensure that the voters' list is free of errors like nonexistence of names of registered voters or existence of names of those non-eligible or non-existent.  $\pm$  It also determines the timing of elections and prepares the election schedule. The election schedule includes the notification of elections, date from which nominations can be filed, last date for filing nominations, last date of scrutiny, last date of withdrawal, date of polling and date of counting and declaration of results.  $\pm$  During this entire process, the Election Commission has the power to take decisions to ensure a free and fair poll. It can postpone or cancel the election in the entire country or a specific State or constituency on the

grounds that the atmosphere is vitiated and therefore, a free and fair election may not be possible. The Commission also implements a model code of conduct for parties and candidates. It can order a re-poll in a specific constituency. It can also order a recount of votes when it feels that the counting process has not been fully fair and just. ± The Election Commission accords recognition to political parties and allots symbols to each of them. The Election Commission has very limited staff of its own. It conducts the elections with the help of the administrative machinery. However, once the election process has begun, the commission has control over the administration as far as election related work is concerned. During the election process, the administrative officers of the State and central governments are assigned election related duty and in this respect, the Election Commission has full control over them. The EC can transfer the officers, or stop their transfers; it can take action against them for failing to act in a non-partisan manner. Over the years, the Election Commission of India has emerged as an independent authority which has asserted its powers to ensure fairness in the election process. It has acted in an impartial and unbiased manner in order to protect the sanctity of the electoral process. The record of Election Commission also shows that every 2022-23 2022-23 71 Chapter 3: Election and Representation improvement in the functioning of institutions does not require legal or constitutional change. It is widely agreed that the Election Commission is more independent and assertive now than it was till 25 years ago. This is not because the powers and constitutional protection of the Election Commission have increased. The Election Commission has started using more effectively the powers it always had in the Constitution. Since 1951–52, seventeen Lok Sabha elections have been held. Many more State assembly elections and by-elections have been conducted by the Election Commission. The EC has faced many difficult situations such as holding elections in militancy affected areas like Assam, Punjab or Jammu and Kashmir. It has also faced the difficult situation of having to postpone the election process mid-way in 1991 when the ex-Prime Minister Rajiv Gandhi was assassinated during campaigning. In 2002, the Election Commission faced another critical situation when the Gujarat Assembly was dissolved and elections had to be conducted. But the Election Commission found that unprecedented violence in that State had made it impossible to hold free and fair elections immediately. The Election Commission decided to postpone elections to the State Assembly by a few months. The Supreme Court upheld this decision of the Election Commission. The Netaji is afraid of EC. Why do leaders fear the Election Commission? Is this good for democracy? READ A CARTOON R K Laxman in The Times of India. 2022-23 2022-23 72 Indian Constitution at Work Can we reduce the influence of money and muscle power by changing the law? Does anything change in reality by changing the law? Check your progress Why do you think does the Election Commission have the following powers and privileges? What could have happened if these did not exist? The Commission can issue orders to government employees engaged in any election related duty. The government cannot remove the Chief Election Commissioner. The Commission can cancel an election if it thinks that it was not fair. ELECTORAL REFORMS No system of election can ever be perfect. And in actual election process, there are bound to be many flaws and limitations. Any democratic society has to keep searching for mechanisms to make elections free and fair to the maximum. With the acceptance of adult suffrage, freedom to contest elections, and the establishment of an independent Election Commission, India has tried to make its election process free and fair. However, the experience of the past 66 years has given rise to many suggestions for reforming our election system. The Election Commission, political parties, various independent groups, and many scholars have come up with proposals for electoral reform. Some of these suggestions are about changing the constitutional provisions discussed in this Chapter: ± Our system of elections should be changed from the FPTP to some variant of the PR system. This would 2022-23 2022-23 73 Chapter 3: Election and Representation ensure that parties get seats, as far as possible, in proportion to the votes they get. ± There should be a special provision to ensure that at least onethird women are elected to the parliament and assemblies. ± There should be stricter provisions

to control the role of money in electoral politics. The elections expenses should be paid by the government out of a special fund. ± Candidates with any criminal case should be barred from contesting elections, even if their appeal is pending before a court. ± There should be complete ban on the use of caste and religious appeals in the campaign. ± There should be a law to regulate the functioning of political parties and to ensure that they function in a transparent and democratic manner. These are but a few suggestions. There is no consensus about these suggestions. Even if there was a consensus, there are limits to what the laws and formal provisions can do. Free and fair elections can be held only if the candidates, the parties and those involved in the election process agree to abide by the spirit of democratic competition. Apart from legal reforms, there are two other ways of ensuring that elections reflect the expectations and democratic aspirations of the people. One is, of course, that people themselves have to be more

**READ A CARTOON** Should a person accused of a serious crime be barred from contesting elections? R K Laxman in The Times of India.

2022-23 2022-23 74 Indian Constitution at Work vigilant, more actively involved in political activities. But there are limits to the extent to which ordinary people can engage in politics on a regular basis. Therefore, it is necessary that various political institutions and voluntary organisations are developed and are active in functioning as watchdog for ensuring free and fair elections.

**Conclusion** In countries where representative democracy is practiced, elections and the representative character of those elections are crucial factors in making democracy effective and trustworthy. The success of India's election system can be gauged from a number of factors. ± Our election system has allowed the voters not only to freely choose representatives, but also to change governments peacefully both at the State and national level. ± Secondly, voters have consistently taken a keen interest in the election process and participated in it. The number of candidates and parties that contest elections is on the rise. ± Thirdly, the system of election has proved to be accommodative and inclusive. The social composition of our representatives has changed gradually. Now our representatives come from many different social sections, though the number of women legislators has not increased satisfactorily. ± Fourthly, the election outcome in most parts of the country does not reflect electoral malpractices and rigging. Of course, many attempts at rigging do take place. You must have read about violence, about complaints that voters' names disappear from the voters' list, about intimidation, and so on. Yet, such instances rarely directly affect the outcome of the election. ± Finally and most importantly, elections have become a part and parcel of our democratic life. No one can imagine a situation where a government would disrespect the verdict of an election. Similarly, no one can imagine that a government would be formed without holding elections. In fact, regularity and periodicity of elections has earned fame for India as a great democratic experiment.

2022-23 2022-23 75 Chapter 3: Election and Representation All these factors have earned for our election system a respect within and outside the country. The voter in India has gained confidence. The legitimacy of the Election Commission has increased in the eyes of the people. This vindicates the basic decisions taken by our Constitution makers. If the election process becomes more flawless, we as voters and citizens would be able to share more effectively in this carnival of democracy and make it more meaningful.

**Exercises**

- Which of the following resembles most a direct democracy?
  - Discussions in a family meeting
  - Election of the class monitor
  - Choice of a candidate by a political party
  - Decisions taken by the Gram Sabha
  - Opinion polls conducted by the media
- Which of the following tasks are not performed by the Election Commission?
  - Preparing the Electoral Rolls
  - Nominating the candidates
  - Setting up polling booths
  - Implementing the model code of conduct
  - Supervising the Panchayat elections
- Which of the following is common to the method of election of the members of Rajya Sabha and Lok Sabha?
  - Every citizen above the age of 18 is an eligible voter
  - Voter can give preference order for different candidates
  - Every vote has equal value
  - The winner must get more than half the votes
- In the First Past the Post system, that candidate is declared



winner who a. Secures the largest number of postal ballots 2022-23 2022-23 76 Indian Constitution at Work b. Belongs to the party that has highest number of votes in the country c. Has more votes than any other candidate in the constituency d. Attains first position by securing more than 50% votes 5. What is the difference between the system of reservation of constituencies and the system of separate electorate? Why did the Constitution makers reject the latter? 6. Which of the following statements are incorrect? Identify and correct them by substituting, adding or rearranging only one word or phrase. a. FPTP system is followed for all the elections in India. b. Election Commission does not supervise Panchayat and Municipal elections. c. President of India cannot remove an Election Commissioner. d. Appointment of more than one Election Commissioner in the Election Commission is mandatory. 7. Indian electoral system aims at ensuring representation of socially disadvantaged sections. However we have only 12 per cent women members in our legislatures. What measures would you suggest to improve the situation? 8. Here are some wishes expressed in a conference to discuss a constitution for a new country. Write against each of these whether FPTP or Proportional Representation system is more suited to meet each of these wishes. a. People should clearly know who is their representative so that they can hold him or her personally accountable. b. We have small linguistic minorities who are spread all over the country; we should ensure fair representation to them. c. There should be no discrepancy between votes and seats for different parties. d. People should be able to elect a good candidate even if they do not like his or her political party. 9. A former Chief Election Commissioner joined a political party and contested elections. There are various views on this issue. One view is that a former Election Commissioner is an independent citizen and has a right to join any political party and to contest election. According to the other view, leaving this possibility open 2022-23 2022-23 77 Chapter 3: Election and Representation can affect the impartiality of the Election Commission. So, former Election Commissioners must not be allowed to contest any elections. Which position do you agree with and why? 10. "Indian democracy is now ready to shift from a crude First Past the Post system to a system of Proportional Representation". Do you agree with this statement? Give your reasons for or against this statement. National Voters' Day (NVD) Pledge We, the citizens of India, having abiding faith in democracy, hereby pledge to uphold the democratic traditions of our country and the dignity of free, fair and peaceful elections, and to vote in every election fearlessly and without being influenced by considerations of religion, race, caste, community, language or any inducement. For details about Systematic Voters' Education and Electoral Participation (SVEEP) programme of the Election Commission of India and Electoral Literacy Club (ELC), visit <http://ecisveep.nic.in> 2022-23 2022-23 78 Indian Constitution at Work Chapter Four EXECUTIVE INTRODUCTION Legislature, executive and judiciary are the three organs of government. Together, they perform the functions of the government, maintain law and order and look after the welfare of the people. The Constitution ensures that they work in coordination with each other and maintain a balance among themselves. In a parliamentary system, executive and the legislature are interdependent: the legislature controls the executive, and, in turn, is controlled by the executive. In this chapter we shall discuss the composition, structure and function of the executive organ of the government. This chapter will also tell you about the changes that have occurred in recent times due to political practice. After reading this chapter, you will be able to ± make a distinction between the parliamentary and the presidential executive; ± understand the constitutional position of the President of India; ± know the composition and functioning of the Council of Ministers and the importance of the Prime Minister; and ± understand the importance and functioning of the administrative machinery. 2022-23 2022-23 79 Chapter 4: Executive WHAT IS AN EXECUTIVE? Who is in charge of the administration of your school? Who takes important decisions in a school or a university? In any organisation, some office holder has to take decisions and implement those decisions. We call this activity administration or management. But administration requires a body at the top that will take policy decisions or the big decisions and supervise and coordinate the routine

administrative functioning. You may have heard about the executives of big companies, banks or industrial units. Every formal group has a body of those who function as the chief administrators or the executives of that organisation. Some office holders decide the policies and rules and regulations and then some office holders implement those decisions in actual day-to-day functioning of the organisation. The word executive means a body of persons that looks after the implementation of rules and regulations in actual practice. In the case of government also, one body may take policy decisions and decide about rules and regulations, while the other one would be in charge of implementing those rules. The organ of government that primarily looks after the function of implementation and administration is called the executive. What are the principal functions of the executive? Executive is the branch of government responsible for the implementation of laws and policies adopted by the legislature. The executive is often involved in framing of policy. The official designations of the executive vary from country to country. Some countries have presidents, while others have chancellors. The executive branch is not just about presidents, prime ministers and ministers. It also extends to the administrative machinery (civil servants). While the heads of government and their ministers, saddled with the overall responsibility of government policy, are together known as the political executive, those responsible for day to day administration are called the permanent executive.

Ι ρεμεµβερ σοµεβοδψ σαψινγ τηατ της εξεχυτιψε ιν α δεµοχραχψ ις αχχουνταβλε το πεοπλε. Ις τηατ αλσο τρυε οφ εξεχυτιψες ιν βιγ χοµπανιες? Αρεν□τ τηςψ χαλλεδ ΧΕΟς? Ωηο αρε τηςψ αχχουνταβλε το? 2022-23 2022-23 80 Indian Constitution at Work WHAT ARE THE DIFFERENT TYPES OF EXECUTIVE? Every country may not have the same type of executive. You may have heard about the President of the USA and the Queen of England. But the powers and functions of the President of the USA are very different from the powers of the President of India. Similarly, the powers of the Queen of England are different from the powers of the King of Bhutan. Both India and France have prime ministers, but their roles are different from each other. Why is this so? Activity Procure a photograph of the SAARC summit meeting or the meeting of G-7 countries and list those who attended the meeting. Can you imagine why those people and not some others are attending the meeting? To answer this question we will briefly outline the nature of executive existing in some of these countries. The USA has a presidential system and executive powers are in the hands of the president. Canada has a parliamentary democracy with a constitutional monarchy where Queen Elizabeth II is the formal chief of state and the prime minister is the head of government. In France, both the president and the prime minister are a part of the semipresidential system. The president appoints the prime minister as well as the ministers but cannot dismiss them as they are responsible to the parliament. Japan has a parliamentary system with the Emperor as the head of the state and the prime minister as the head of government. Italy has a parliamentary system with the president as the formal head of state and the prime minister as the head of government. Russia has a semi-presidential system where president is the head of state and prime minister, who is appointed by the president, is the head of government. Germany has a parliamentary system in which president is the ceremonial head of state and the chancellor is the head of government. In a presidential system, the president is the Head of state as well as head of government. In this system the office of president is very powerful, both in theory and practice. Countries with such a system include the United States, Brazil and most nations in Latin America. 2022-23 2022-23 81 Chapter 4: Executive 2022-23 2022-23 82 Indian Constitution at Work Semi-Presidential Executive in Sri Lanka In 1978 the constitution of Sri Lanka was amended and the system of Executive Presidency was introduced. Under the system of Executive Presidency, people directly elect the President. It may happen that both the President and the Prime Minister belong to the same political party or to different political parties. The President has vast powers under the constitution. The President chooses the Prime Minister from the party that has a majority in the Parliament. Though ministers must be members of the Parliament, the President has the

power to remove the Prime Minister, or ministers. Apart from being the elected Head of State and the Commander-in-Chief of the Armed Forces, the President is also the Head of the Government. Elected for a term of six years, the President cannot be removed except by a resolution in the parliament passed by at least two-thirds of the total number of Members of Parliament. If it is passed by not less than one-half of the total number of Members of Parliament and the Speaker is satisfied that such allegations merit inquiry then the Speaker can report the matter to the Supreme Court. How is the position of the President and Prime Minister in Sri Lanka different from India? Compare the role of Supreme Court in the impeachment of the President in India and Sri Lanka. In a parliamentary system, the prime minister is the head of government. Most parliamentary systems have a president or a monarch who is the nominal Head of state. In such a system, the role of president or monarch is primarily ceremonial and prime minister along with the cabinet wields effective power. Countries with such system include Germany, Italy, Japan, United Kingdom as well as Portugal. A semi-presidential system has both a president and a prime minister but unlike the parliamentary system the president may possess significant day-to-day powers. In this system, it is possible that sometimes the president and the prime minister may belong to the same party and at times they may belong to two different parties and thus, would be opposed to each other. Countries with such a system include France, Russia, Sri Lanka, etc.

2022-23 Chapter 4: Executive

### PARLIAMENTARY EXECUTIVE IN INDIA

When the Constitution of India was written, India already had some experience of running the parliamentary system under the Acts of 1919 and 1935. This experience had shown that in the parliamentary system, the executive can be effectively controlled by the representatives of the people. The makers of the Indian Constitution wanted to ensure that the government would be sensitive to public expectations and would be responsible and accountable. The other alternative to the parliamentary executive was the presidential form of government. But the presidential executive puts much emphasis on the president as the chief executive and as source of all executive power. There is always the danger of personality cult in presidential executive. The makers of the Indian Constitution wanted a government that would have a strong executive branch, but at the same time, enough safeguards should be there to check against the personality cult. In the parliamentary form there are many mechanisms that ensure that the executive will be answerable to and controlled by the legislature or people's representatives. So the Constitution adopted the parliamentary system of executive for the governments both at the national and State levels. According to this system, there is a President who is the formal Head of the state of India and the Prime Minister.

Check your progress Neha: It is really very simple. A country having a president has a presidential executive and one with a prime minister has parliamentary executive. How would you explain to Neha that this is not always the case?

Η απάντηση θα δ  
 περιγράφει τον Πρίμο Μινιστέρο; Δοξασί μεν τηατ επεν της παρλιαμενταρψ  
 σψστεμ ισ νοτ φοολ προοφ αγαινστ περσοναλιτψ χυλτ? Τηατ μεανσ  
 πεοπλε ανδ της λεγισλατυρεσ ηαπε το βε χονσταντλψ πιγιλαντ!

2022-23 Chapter 4: Indian Constitution at Work and the Council of Ministers, which run the government at the national level. At the State level, the executive comprises the Governor and the Chief Minister and Council of Ministers. The Constitution of India vests the executive power of the Union formally in the President. In reality, the President exercises these powers through the Council of Ministers headed by the Prime Minister. The President is elected for a period of five years. But there is no direct election by the people for the office of President. The President is elected indirectly. This means that the president is elected not by the ordinary citizens but by the elected MLAs and MPs. This election takes place in accordance with the principle of proportional representation with single transferable vote. The President can be removed from office only by Parliament by following the procedure for impeachment. This procedure requires a special majority as explained in the last chapter. The only ground for impeachment is violation of the Constitution. Power and position of President Article 74

(1): There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall in the exercise of his functions, act in accordance with such advice. Provided that the President may require the Council of Ministers to reconsider such advice....., and the President shall act in accordance with the advice tendered after such reconsideration. Do you know what the word shall means here? It indicates that the advice is binding on the President. In view of the controversy about the scope of the President's powers, a specific mention was made in the Constitution by an amendment that the advice of the Council of Ministers will be binding on the President. By another amendment made later, it was decided that the President can ask the Council of Ministers to reconsider its advice but, has to accept the reconsidered advice of the Council of Ministers. 2022-23 2022-23 85 Chapter 4: Executive We have already seen that President is the formal head of the government. In this formal sense, the President has wide ranging executive, legislative, judicial and emergency powers. In a parliamentary system, these powers are in reality used by the President only on the advice of the Council of Ministers. The Prime Minister and the Council of Ministers have support of the majority in the Lok Sabha and they are the real executive. In most of the cases, the President has to follow the advice of the Council of Ministers. "We did not give him any real power but we have made his position one of authority and dignity. The constitution wants to create neither a real executive nor a mere figurehead, but a head that neither reigns nor governs; it wants to create a great figurehead..." Αμ Ι φουστ α φιγυρηεαδ ορ αμ Ι ασκινγ ρεαλ θυεστιονσ? Διδ της τεξτβουκ ωριτερσ γιπε με ποωερ το ασκ θυεστιονσ Ι ωιση το ασκ ορ αμ Ι ασκινγ θυεστιονσ τηεψ ηαπε ιν τηειρ μινδ? Jawaharlal Nehru CAD, Vol. VI, p. 734 Discretionary Powers of the President On the basis of the above discussion can we infer that the President has no discretionary power under any circumstances? This will be an incorrect assessment. Constitutionally, the President has a right to be informed of all important matters and deliberations of the Council of Ministers. The Prime Minister is obliged to furnish all the information that the President may call for. The President often writes to the Prime Minister and expresses his views on matters confronting the country. 2022-23 2022-23 86 Indian Constitution at Work Besides this, there are at least three situations where the President can exercise the powers using his or her own discretion. In the first place, we have already noted that the President can send back the advice given by the Council of Ministers and ask the Council to reconsider the decision. In doing this, the President acts on his (or her) own discretion. When the President thinks that the advice has certain flaws or legal lacunae, or that it is not in the best interests of the country, the President can ask the Council to reconsider the decision. Although, the Council can still send back the same advice and the President would then be bound by that advice, such a request by the President to reconsider the decision, would naturally carry a lot of weight. So, this is one way in which the president can act in his own discretion. Secondly, the President also has veto power by which he can withhold or refuse to give assent to Bills (other than Money Bill) passed by the Parliament. Every bill passed by the Parliament goes to the President for his assent before it becomes a law. The President can send the bill back to the Parliament asking it to reconsider the We saw that there is no time limit on the President for giving his assent to a bill. Do you know that such a thing has already happened? In 1986, the Parliament passed a bill known as Indian Post office (amendment) bill. This bill was widely criticised by many for it sought to curtail the freedom of the press. The then President, Gyani Zail Singh, did not take any decision on this bill. After his term was over, the next President, Venkataraman sent the bill finally back to the Parliament for reconsideration. By that time, the government that brought the bill before the Parliament had changed and a new government was elected in 1989. This government belonged to a different coalition and did not bring the bill back before the Parliament. Thus, Zail Singh's decision to postpone giving assent to the bill effectively meant that the bill could never become a law! Ιτ ισ περψ ωελλ το ταλκ οφ της Πρεσιδεντ ασ Ηε ορ Σηε, βυτ ηασ α ωομαν επερ βεχομε της Πρεσιδεντ?

2022-23 2022-23 87 Chapter 4: Executive bill. This 'veto' power is limited because, if the Parliament passes the same bill again and sends it back to the President, then, the President has to give assent to that bill. However, there is no mention in the Constitution about the time limit within which the President must send the bill back for reconsideration. This means that the President can just keep the bill pending with him without any time limit. This gives the President an informal power to use the veto in a very effective manner. This is sometimes referred to as 'pocket veto'. Then, the third kind of discretion arises more out of political circumstances. Formally, the President appoints the Prime Minister. Normally, in the parliamentary system, a leader who has the support of the majority in the Lok Sabha would be appointed as Prime Minister and the question of discretion would not arise. But imagine a situation when after an election, no leader has a clear majority in the Lok Sabha. Imagine further that after attempts to forge alliances, two or three leaders are claiming that they have the support of the majority in the house. Now, the President has to decide whom to appoint as the Prime Minister. In such a situation, the President has to use his own discretion in judging who really may have the support of the majority or who can actually form and run the government. Since 1989 major political changes have considerably increased the importance of the presidential office. In the four parliamentary elections held from 1989 to 1998, no single party or coalition attained President's role in choosing the Prime Minister After 1977, party politics in India became more competitive and there have been many instances when no party had clear majority in the Lok Sabha. What does the President do in such situations? No political party or coalition secured majority in the elections held in March 1998. The BJP and its allies secured 251 seats, 21 short of a majority. President Narayanan adopted an elaborate procedure. He asked the leader of the alliance, Atal Behari Vajpayee, "to furnish documents in support of his claim from concerned political parties." Not stopping at this the President also advised Vajpayee to secure a vote of confidence within ten days of being sworn in. 2022-23 2022-23 88 Indian Constitution at Work a majority in the Lok Sabha. These situations demanded presidential intervention either in order to constitute governments or to grant a request for dissolution of Lok Sabha by a Prime Minister who could not prove majority in the House. It may thus be said that presidential discretion is related to political conditions. There is greater scope for presidential assertiveness when governments are not stable and coalitions occupy power. For the most part, the President is a formal power holder and a ceremonial head of the nation. You may wonder why then do we need a President? In a parliamentary system, the Council of Ministers is dependent on the support of the majority in the legislature. This also means that the Council of Ministers may be removed at any time and a new Council of Ministers will have to be put in place. Such a situation requires a Head of the state who has a fixed term, who may be empowered to appoint the Prime Minister and who may symbolically represent the entire country. This is exactly the role of the President in ordinary circumstances. Besides, when no party has a clear majority, the President has the additional responsibility of making a choice and appointing the Prime Minister to run the government of the country. The Vice President of India The Vice President is elected for five years. His election method is similar to that of the President, the only difference is that members of State legislatures are not part of the electoral college. The Vice President may be removed from his office by a resolution of the Rajya Sabha passed by a majority and agreed to by the Lok Sabha. The Vice President acts as the exofficio Chairman of the Rajya Sabha and takes over the office of the President when there is a vacancy by reasons of death, resignation, removal by impeachment or otherwise. The Vice President acts as the President only until a new President is elected. B. D. Jatti acted as President on the death of Fakhruddin Ali Ahmed until a new President was elected. 2022-23 2022-23 89 Chapter 4: Executive PRIME MINISTER AND COUNCIL OF MINISTERS Check your progress Imagine that the Prime Minister wants to impose 'President's rule' in one State because the State government has failed to effectively curb atrocities against the Dalits in that State. The President has a different position. He is saying that the provision regarding President's rule should be used only

sparingly. In this situation which of the following courses are open to the President? a. Tell the Prime Minister that he will not sign on the order promulgating President's rule. b. Dismiss the Prime Minister. c. Ask the Prime Minister to send CRPF to that State. d. Make a press statement about how the Prime Minister is wrong. e. Discuss the matter with the Prime Minister and try to dissuade him from taking this action, but if he insists, agreeing to sign the said order. READ A CARTOON There is no Council of Ministers without the Prime Minister. This cartoon shows how, literally, the Prime Minister 'leads' the Council of Ministers! Shankar. Copyright: Children's Book Trust. 22 August 1954

2022-23 90 Indian Constitution at Work No discussion of government or politics in India, would normally take place without mentioning one office: the Prime Minister of India. Can you imagine why this is so? We have already seen earlier in this chapter that the President exercises his powers only on the advice of the Council of Ministers. The Council of Ministers is headed by the Prime Minister. Therefore, as head of the Council of Ministers, the Prime Minister becomes the most important functionary of the government in our country. In the parliamentary form of executive, it is essential that the Prime Minister has the support of the majority in the Lok Sabha. This support by the majority also makes the Prime Minister very powerful. The moment this support of the majority is lost, the Prime Minister loses the office. For many years after independence, the Congress party had the majority in the Lok Sabha and its leader would become the Prime Minister. Since 1989, there have been many occasions when no party had majority in the Lok Sabha. Various political parties have come together and formed a coalition that has majority in the House. In such situations, a leader who is acceptable to most partners of the coalition becomes the Prime Minister. Formally, a leader who has the support of the majority is appointed by the President as Prime Minister. The Prime Minister then decides who will be the ministers in the Council of Ministers. The Prime Minister allocates ranks and portfolios to the ministers. Depending upon the seniority and political importance, the ministers are given the ranks of cabinet minister, minister of State or deputy minister. In the same manner, Chief Ministers of the States choose ministers from their own party or coalition. The Prime Minister and all the ministers have to be members of the Parliament. If someone becomes a minister or Prime Minister R K Laxman in The Times of India. READ A CARTOON Why do people want to be ministers? This cartoon seems to suggest that it is only for perks and status! Then why is there competition for some portfolios? 2022-23 91 Chapter 4: Executive without being an MP, such a person has to get elected to the Parliament within six months. There were some members in the Constituent Assembly who felt that ministers should be elected by the legislature and not selected by the Prime Minister or Chief Minister: "Swiss system under which the legislature elects the executive for a certain period ...is to my mind the best form of government for the provinces... The system of the single transferable vote is ...the best system that can be adopted for the appointment of the executive because in that all interests will be represented and no party in the legislature will have any occasion to feel that it is not represented." Begum Aizaz Rasul, CAD, Vol. IV, p. 631, 17 July 1947

Size of the Council of Ministers Before the 91st Amendment Act (2003), the size of the Council of Ministers was determined according to exigencies of time and requirements of the situation. But this led to very large size of the Council of Ministers. Besides, when no party had a clear majority, there was a temptation to win over the support of the members of the Parliament by giving them ministerial positions as there was no restriction on the number of the members of the Council of Ministers. This was happening in many States also. Therefore, an amendment was made that the Council of Ministers shall not exceed 15 percent of total number of members of the House of the People (or Assembly, in the case of the States). In the chapter on the legislature, you will study in detail the various mechanisms through which the Parliament controls the executive. But remember that the most important feature of parliamentary executive is that the executive is routinely under the control and supervision of the legislature. The Council of Ministers is collectively responsible to the Lok Sabha. This provision means that a Ministry which loses confidence 2022-23

2022-23 92 Indian Constitution at Work of the Lok Sabha is obliged to resign. The principle indicates that the ministry is an executive committee of the Parliament and it collectively governs on behalf of the Parliament. Collective responsibility is based on the principle of the solidarity of the cabinet. It implies that a vote of no confidence even against a single minister leads to the resignation of the entire Council of Ministers. It also indicates that if a minister does not agree with a policy or decision of the cabinet, he or she must either accept the decision or resign. It is binding on all ministers to pursue or agree to a policy for which there is collective responsibility. In India, the Prime Minister enjoys a pre-eminent place in the government. The Council of Ministers cannot exist without the Prime Minister. The Council comes into existence only after the Prime Minister has taken the oath of office. The death or resignation of the Prime Minister automatically brings about the dissolution of the Council of Ministers but the demise, dismissal or resignation of a minister only creates a ministerial vacancy. The Prime Minister acts as a link between the Council of Ministers on the one hand and the President as well as the Parliament on the other. It is this role of the Prime Minister which led Pt. Nehru to describe him as 'the linchpin of Government'. It is also the constitutional obligation of the Prime Minister to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation. The Prime Minister is involved in all crucial decisions of the government and decides on the policies of the government. Thus, the power wielded by the Prime Minister flows from various sources: control over the Council of Ministers, leadership of the Lok Sabha, command over the bureaucratic machine, access to media, projection of personalities during elections, projection as national leader during international summitry as well as foreign visits. *Ισ ιτ τηατ α περσον βεχομεσ Πριμε Μινιστερ βεχαυσε ηε/σηε ισ ποωερφυλ ορ ισ ιτ τηατ ψου βεχομε ποωερφυλ ονχε ψου ηαπε βεχομε τηε Πριμε Μινιστερ?* 2022-23 2022-23 93 Chapter 4: Executive However, the power which the Prime Minister wields and actually puts into use depends upon the prevailing political conditions. The position of the Prime Minister and Council of Ministers has been unassailable whenever a single political party has secured majority in the Lok Sabha. However, this has not been the case when governments have been led by coalitions of political parties. Since 1989, we have witnessed many coalition governments in India. Many of these governments could not remain in power for the full term of the Lok Sabha. They were either removed or they resigned due to loss of support of the majority. These developments have affected the working of the parliamentary executive. In the first place, these developments have resulted in a growing discretionary role of the President in the selection of Prime Ministers. Secondly, the coalitional nature of Indian politics in this period has necessitated much more consultation between political partners, leading to erosion of prime ministerial authority. Thirdly, it has also brought restrictions on various prerogatives of the Prime Minister like choosing the ministers and deciding their ranks and portfolios. Fourthly, even the policies and programmes of the government cannot be decided by the Prime Minister alone. Political parties of different ideologies come together both as pre-poll and post-poll allies to form a government. Policies are framed after a lot of negotiations and compromises among the allies. In this entire process, the Prime Minister has to act more as a negotiator than as leader of the government. At the State level, a similar parliamentary executive exists, though with some variations. The most important variation is that there is a Governor of the State appointed by the President (on the advice of R K Laxman in The Times of India. READ A CARTOON This Chief Minister is not happy even after winning the confidence motion! Can you imagine why this is so? 2022-23 2022-23 94 Indian Constitution at Work the central government). Though the Chief Minister, like the Prime Minister is the leader of the majority party in the Assembly, the Governor has more discretionary powers. However, the main principles of parliamentary system operate at the State level too. Check your progress Suppose the Prime Minister is to select the Council of Ministers. What will he/she do? a. Select those who are experts in the various subjects. b. Select only those who are from his/her party.

c. Select those who are personally loyal and dependable. d. Select those who are supporters of the government. e. Take into account the political weight of the various aspirants and choose from among them. **PERMANENT EXECUTIVE: BUREAUCRACY** Who implements the decisions of the ministers? The Executive organ of the government includes the Prime Minister, the ministers and a large organisation called the bureaucracy or the administrative machinery. To underline the difference between this machinery and the military service, it is described as civil service. Trained and skilled officers who work as permanent employees of the government are assigned the task of assisting the ministers in formulating policies and implementing these policies. In a democracy, the elected representatives and the ministers are in charge of government and the administration is under their control and supervision. In the parliamentary system, the legislature also exercises control over the administration. The administrative officers cannot act in violation of the policies adopted by the legislature. It is the responsibility of the ministers to retain political control over the administration. India has established professional administrative 2022-23 2022-23 95 Chapter 4: Executive machinery. At the same time, this machinery is made politically accountable. The bureaucracy is also expected to be politically neutral. This means that the bureaucracy will not take any political position on policy matters. In a democracy, it is always possible that a party is defeated in elections and the new government wants to opt for new policies in the place of policies of the previous government. In such a situation, it is the responsibility of the administrative machinery to faithfully and efficiently participate in drafting the policy and in its implementation. The Indian bureaucracy today is an enormously complex system. It consists of the All-India services, State services, employees of the local governments, and technical and managerial staff running public sector undertakings. Makers of our Constitution were aware of the importance of the non-partisan and professional bureaucracy. They also wanted the members of the civil services or bureaucracy to be impartially selected on the basis of merit. So, the Union Public Service Commission has been entrusted with the task of conducting the process of recruitment of the civil servants for the government of India. Similar public service commissions are provided for the States also. Members of the Public Service Commissions are appointed for a fixed term. Their removal or suspension is subject to a thorough enquiry made by a judge of the Supreme Court. While efficiency and merit are the norms for recruitment, the Constitution also ensures that all sections of the society including the weaker sections have an opportunity to be part of the public bureaucracy. For this purpose, the Constitution has provided for reservation of jobs for the Dalits and Adivasis. Subsequently, reservations have also been provided for women and other backward classes. These provisions ensure that the bureaucracy would be more representative and social inequalities will not come in the way of recruitment to the civil service. Ψες, Ι κνωω τηατ τηε οφφιχερς αρε τηερε το σερωε τηε πεοπλε. Βυτ πεοπλε αρε αλωανς αφραιδ οφ τηεσε οφφιχερς. Ανδ οφφιχερς αλσο βεηαπε ασ ιφ τηεψ ωερε τηε μαστερς! 2022-23 2022-23 96 Indian Constitution at Work Persons selected by the UPSC for Indian Administrative Service and Indian Police Service constitute the backbone of the higher level bureaucracy in the States. You may know that the collector of a district is the most important officer of the government at the district level. Do you know that the collector is normally an IAS officer and that the officer is governed by the service conditions laid down by the central government? An IAS or IPS officer is assigned to a particular State, where he or she works under the supervision of the State government. However, the IAS or IPS officers are appointed by the central government, they can go back into the service of the central government and most importantly, only the central government can take disciplinary action against them. This means that the key administrative officers of the States are under the supervision and control of the central government. Apart from the IAS and the IPS officers appointed by the UPSC, the administration of the State is looked after by officers appointed through the State Public Service Commissions. As we shall study later in the chapter on federalism, this feature of the bureaucracy strengthens the control of the



central government over the administration of the States. The bureaucracy is an instrument through which welfare policies of the government must reach the people. But most often, it is so powerful that people are afraid of approaching a government officer. It is a common experience of the people that bureaucracy is insensitive to the demands and expectations of the ordinary citizen. Only if the democratically elected government controls the bureaucracy, some of these problems can be effectively handled. On the other hand, too much political interference turns the bureaucracy into an instrument in the hands of the politician. Though the Constitution has created independent machinery for recruitment, many people think that there is no provision for protecting the civil

2022-23 2022-23 97 Chapter 4: Executive servants from political interference in the performance of their duties. It is also felt that enough provisions are not there to ensure the accountability of the bureaucracy to the citizen. There is an expectation that measures like the Right to Information may make the bureaucracy a little more responsive and accountable. Conclusion The modern executive is a very powerful institution of government. The executive enjoys greater powers compared to other organs of the government. This generates a greater need to have democratic control over the executive. The makers of our Constitution thought with foresight that the executive must be put firmly under regular supervision and control. Thus, a parliamentary executive was chosen. Periodic elections, constitutional limits over the exercise of powers and democratic politics have ensured that executive organ cannot become unresponsive. Exercises 1. A parliamentary executive means: a. Executive where there is a parliament b. Executive elected by the parliament c. Where the parliament functions as the Executive d. Executive that is dependent on support of the majority in the parliament 2. Read this dialogue. Which argument do you agree with? Why? Amit: Looking at the constitutional provisions, it seems that the President is only a rubber stamp. Shama: The President appoints the Prime Minister. So, he must have the powers to remove the Prime Minister as well. Rajesh: We don't need a President. After the election, the Parliament can meet and elect a leader to be the Prime Minister. 2022-23 2022-23 98 Indian Constitution at Work 3. Match the following i. Works within the particular State in a. Indian Foreign Service ii. Works in any central government b. State Civil Service located either at the national capital or elsewhere in the country iii. Works in a particular State to which c. All India Services allotted; can also be sent on deputation to the centre iv. Works in Indian missions abroad d. Central Services 4. Identify the ministry which may have released the following news items. Would this be a ministry of the central government or the State government? Why? a. An official release said that in 2004-05 the Tamil Nadu Textbooks Corporation would release new versions for standards VII, X and XI. b. A new railway loop line bypassing the crowded Tiruvallur-Chennai section to help iron ore exporters. The new line, likely to be about 80 km long, will branch off at Puttur and then reach Athipattu near the port. c. The three-member sub-divisional committee formed to verify suicide by farmers in Ramayampet mandal has found that the two farmers who committed suicide this month have had economic problems due to failure of crops. 5. While appointing the Prime Minister, the President selects a. Leader of the largest party in the Lok Sabha b. Leader of the largest party in the alliance which secures a majority in the Lok Sabha c. The leader of the largest party in the Rajya Sabha d. Leader of the alliance or party that has the support of the majority in Lok Sabha 2022-23 2022-23 99 Chapter 4: Executive 6. Read this discussion and say which of these statements applies most to India. Alok: Prime Minister is like a king, he decides everything in our country. Shekhar: Prime Minister is only 'first among equals', he does not have any special powers. All ministers and the PM have similar powers. Bobby: Prime Minister has to consider the expectations of the party members and other supporters of the government. But after all, the Prime Minister has a greater say in policy making and in choosing the ministers. 7. Why do you think is the advice of the Council of Ministers binding on the President? Give your answer in not more than 100 words. 8. The parliamentary system of executive vests many powers in the legislature for controlling the executive. Why, do you think, is it so necessary to control

the executive? 9. It is said that there is too much political interference in the working of the administrative machinery. It is suggested that there should be more and more autonomous agencies which do not have to answer to the ministers. a. Do you think this will make administration more peoplefriendly? b. Do you think this will make administration more efficient? c. Does democracy mean full control of elected representatives over the administration? 10. Write an essay of two hundred words on the proposal to have an elected administration instead of an appointed administration.

2022-23 2022-23100 Indian Constitution at Work Chapter Five LEGISLATURE

INTRODUCTION You have already studied the importance of elections and the method of election adopted in India. Legislatures are elected by the people and work on behalf of the people. In this chapter you would study how elected legislatures function and help in maintaining democratic government. You will also learn about the composition and functioning of the parliament and State legislatures in India and their importance in democratic government. After reading this chapter you would know ± the importance of the legislature; ± the functions and powers of the Parliament of India; ± the law making procedure; ± how the Parliament controls the executive; and ± how the Parliament regulates itself.

2022-23 2022-23 101 Chapter 5: Legislature WHY DO WE NEED A PARLIAMENT? Legislature is not merely a law making body. Lawmaking is but one of the functions of the legislature. It is the centre of all democratic political process. It is packed with action; walkouts, protests, demonstration, unanimity, concern and co-operation. All these serve very vital purposes. Indeed, a genuine democracy is inconceivable without a representative, efficient and effective legislature. The legislature also helps people in holding the representatives accountable. This is indeed, the very basis of representative democracy. Yet, in most democracies, legislatures are losing central place to the executive. In India too, the Cabinet initiates policies, sets the agenda for governance and carries them through. This has led some critics to remark that the Parliament has declined. But even very strong cabinets must retain majority in the legislature. A strong leader has to face the Parliament and answer to the satisfaction of the Parliament. Herein lies the democratic potential of the Parliament. It is recognised as one of the most democratic and open forum of debate. On account of its composition, it is the most representative of all organs of government. It is above all, vested with the power to choose and dismiss the government.

Activity Consider these newspaper reports and then think: what would happen if there were no legislatures? After reading each news report, state how the legislature succeeded or failed in maintaining control over the executive.

λ 28th February 2002: The Union Finance Minister, Jaswant Singh, announced in the Union budget proposal an increase of Rs. 12 in the price of a 50 kg bag of urea and a smaller increase in the price of two other fertilizers which constituted about 5 per cent rise in prices. The current urea price of Rs. 4,830 a tonne carries a subsidy of as much as 80 per cent.

2022-23 2022-23 102 Indian Constitution at Work WHY DO WE NEED TWO HOUSES OF PARLIAMENT? The term 'Parliament' refers to the national legislature. The legislature of the States is described as State legislature. The Parliament in India has two houses. When there are two houses of the legislature, it is called a bicameral legislature. The two Houses of the Indian Parliament are the Council of States or the Rajya Sabha and the House of the People or the Lok Sabha. The Constitution has given the States the option of establishing either a unicameral or bicameral legislature. At present only six States have a bicameral legislature.

λ 11 March 2002. The Finance Minister had to roll back the increases in fertilizer prices under intense opposition pressure (The Hindu, 12 March 2002) λ On 4 June 1998, the Lok Sabha witnessed acrimonious scenes over the hike in urea and petroleum prices. The entire opposition staged a walkout. The issue rocked the house for two days leading to walkout by opposition. The finance minister in his budget proposal had proposed a hike of 50 paise per kilogram of urea to reduce subsidy on it. This forced the finance minister Mr. Yashwant Sinha to roll back the hike in urea prices ( Hindustan Times, 4 and 5 June 1998) λ 22 February 1983: In a rare move, the Lok

Sabha today unanimously decided to suspend official business and give precedence to debate on Assam. Home Minister P.C.Sethi made a statement "I seek the cooperation of all members whatever their views and policies, in promoting harmony among different communities and groups living in Assam. What is needed now is not acrimony but a healing touch." (Hindustan Times, 22 February 1983) λ Congress Members voiced protest against atrocities on Harijans in Andhra Pradesh (The Hindu, 3 March 1985) 2022-23 2022-23 103 Chapter 5: Legislature States having a bicameral legislature are given below: (i) Andhra Pradesh (ii) Bihar (iii) Karnataka (iv) Maharashtra (v) Telangana (vi) Uttar Pradesh 2022-23 2022-23 104 Indian Constitution at Work Countries with large size and much diversity usually prefer to have two houses of the national legislature to give representation to all sections in the society and to give representation to all geographical regions or parts of the country. A bicameral legislature has one more advantage. A bicameral legislature makes it possible to have every decision reconsidered. Every decision taken by one house goes to the other house for its decision. This means that every bill and policy would be discussed twice. This ensures a double check on every matter. Even if one house takes a decision in haste, that decision will come for discussion in the other house and reconsideration will be possible. Rajya Sabha Each of the two Houses of Parliament has different bases of representation. The Rajya Sabha represents the States of India. It is an indirectly elected body. Residents of the State elect members to State Legislative Assembly. The elected members of State Legislative Assembly in turn elect the members of the Rajya Sabha. We can imagine two different principles of representation in the second chamber. One way is to give equal representation to all the parts of the country irrespective of their size or population. We may call this as symmetrical representation. On the other hand, parts of the country may be given representation according to their "...an Upper House could perform the...useful function of being a revising body, and ...its views may count but not its votes... ...,those who could not enter into the rough and tumble of active politics could...advise the Lower House." Purnima Banerji CAD, Vol. IX, p. 33, 30 July 1949 2022-23 2022-23 105 Chapter 5: Legislature population. This second method means that regions or parts having larger population would have more representatives in the second chamber than regions having less population. In the USA, every state has equal representation in the Senate. This ensures equality of all the states. But this also means that a small state would have the same representation as the larger states. The system of representation adopted for the Rajya Sabha is different from that in the USA. The number of members to be elected from each State has been fixed by the fourth schedule of the Constitution. What would happen if we were to follow the American system of equality of representation in the Rajya Sabha? Uttar Pradesh with a population of 1998.12 lakhs would get seats equal to that of Sikkim whose population is only 6.10 lakhs. The framers of the Constitution wanted to prevent such discrepancy. States with larger population get more representatives than States with smaller population get. Thus, a more populous State like Uttar Pradesh sends 31 members to the Rajya Sabha, while a smaller and less populous State like Sikkim has one seat in the Rajya Sabha. Members of the Rajya Sabha are elected for a term of six years. They can get re-elected. All members of the Rajya Sabha do not complete their terms at the same time. Every two years, one third members of the Rajya Sabha Bicameralism in Germany Germany has a bicameral legislature. The two Houses are known as Federal Assembly (Bundestag) and Federal Council (Bundesrat). Assembly is elected by a complex system combining direct and proportional representation for a period of four years. The 16 federal states of Germany are represented in the Federal Council. The 69 seats of the Bundesrat are divided among states on the basis of a range of populations. These members are generally the ministers in the governments at the state level and are appointed, not elected, by the governments of the federal states. According to the German law, all the members from one state have to vote as a bloc as per the instructions of the state governments. Sometimes due to coalition government at the state level, they fail to reach an agreement and may have to abstain. The Bundesrat does not vote on all legislative initiatives but all

the policy areas on which the federal states have concurrent powers and are responsible for federal regulations must be passed by it. It can also veto such legislation. 2022-23 2022-23 106 Indian Constitution at Work complete their term and elections are held for those one third seats only. Thus, the Rajya Sabha is never fully dissolved. Therefore, it is called the permanent House of the Parliament. The advantage of this arrangement is that even when the Lok Sabha is dissolved and elections are yet to take place, the meeting of the Rajya Sabha can be called and urgent business can be conducted. Apart from the elected members, Rajya Sabha also has twelve nominated members. The President nominates these members. These nominations are made from among those persons who have made their mark in the fields of literature, science, art and social service. Activity Find out the number of representatives elected from different States. Prepare a chart showing number of representatives and the population of the State according to the 2011 census. Lok Sabha The Lok Sabha and the State Legislative Assemblies are directly elected by the people. For the purpose of election, the entire country (State, in case of State Legislative Assembly) is divided into territorial constituencies of roughly equal population. One representative is elected from each constituency through universal adult suffrage where the value of vote of every individual would be equal to another. At present there are 543 constituencies. This number has not changed since 1971 census. The Lok Sabha is elected for a period of five years. This is the maximum. We have seen in the chapter on the executive that before the completion of five years, the Lok Sabha can be dissolved if no party or coalition can form the government or if the Prime Minister advises the President to dissolve the Lok Sabha and hold fresh elections. I don't understand why there is a provision for nominating sports persons and artists and scientists. Why do they represent? And, do they really contribute much to the progress of the country? 2022-23 2022-23 107 Chapter 5: Legislature WHAT DOES THE PARLIAMENT DO? What is the function of the legislature? Do both Houses of the Parliament have similar functions? Is there a difference in the powers of the two Houses? Apart from law making, the Parliament is engaged in many other functions. Let us list the functions of the Parliament: ± Legislative Function: The Parliament enacts legislations for the country. Despite being the chief law making body, the Parliament often merely approves legislations. The actual task of drafting the bill is performed by the bureaucracy under the supervision of the minister concerned. The substance and even the timing of the bill are decided by the Cabinet. No major bill is introduced in the Parliament without the approval of the Cabinet. Members other than ministers can also introduce bills but these have no chance of being passed without the support of the government. ± Control of Executive and ensuring its accountability: Perhaps the most vital function of the Parliament is to ensure that the executive does not overstep its authority and remains responsible to the people who have elected them. We shall discuss this function in greater detail later in this chapter. ± Financial Function: Government is about spending a lot of money on various matters. Where does this money come from? Every Check your progress ± Do you think that composition of Rajya Sabha has protected the position of States of India? ± Should indirect election of Rajya Sabha be replaced by direct elections? What would be its advantages and disadvantages? ± Since 1971 census the number of seats in the Lok Sabha has not increased. Do you think that it should be increased? What should be the basis for this? 2022-23 2022-23 108 Indian Constitution at Work government raises resources through taxation. However, in a democracy, legislature controls taxation and the way in which money is used by the government. If the Government of India proposes to introduce any new tax, it has to get the approval of the Lok Sabha. The financial powers of the Parliament involve grant of resources to the government to implement its programmes. The government has to give an account to the legislature about the money it has spent and resources that it wishes to raise. The legislature also ensures that the government does not mispend or overspend. This is done through the budget and annual

financial statements. ± Representation: Parliament represents the divergent views of members from different regional, social, economic, religious groups of different parts of the country. ± Debating Function: The Parliament is the highest forum of debate in the country. There is no limitation on its power of discussion. Members are free to speak on any matter without fear. This makes it possible for the Parliament to analyse any or every issue that faces the nation. These discussions constitute the heart of democratic decision making. The Parliament is the boss and the ministers are looking very humble here. That is the effect of the Parliament's power to sanction money to different ministries. Shankar. Copyright: Children's Book Trust. 3 April 1955 READ A CARTOON 2022-23 2022-23 109 Chapter 5: Legislature ± Constituent Function: The Parliament has the power of discussing and enacting changes to the Constitution. The constituent powers of both the houses are similar. All constitutional amendments have to be approved by a special majority of both Houses. ± Electoral functions: The Parliament also performs some electoral functions. It elects the President and Vice President of India. ± Judicial functions: The judicial functions of the Parliament include considering the proposals for removal of President, Vice-President and Judges of High Courts and Supreme Court. Powers of Rajya Sabha We discussed above, the functions that are performed by the Parliament in general. However, in a bicameral legislature, there is some difference between the powers of the two Houses. Look at the charts showing the powers of Lok Sabha and Rajya Sabha. Powers of Rajya Sabha ± Considers and approves non money bills and suggests amendments to money bills. ± Approves constitutional amendments. ± Exercises control over executive by asking questions, introducing motions and resolutions. ± Participates in the election and removal of the President, Vice President, Judges of Supreme Court and High Court. It can alone initiate the procedure for removal of Vice President. ± Can give the Union parliament power to make laws on matters included in the State list. Powers of the Lok Sabha ± Makes Laws on matters included in Union List and Concurrent List. Can introduce and enact money and non money bills. ± Approves proposals for taxation, budgets and annual financial statements. ± Controls the executive by asking questions, supplementary questions, resolutions and motions and through no confidence motion. ± Amends the Constitution. ± Approves the Proclamation of emergency. ± Elects the President and Vice President and removes Judges of Supreme Court and High Court. ± Establishes committees and commissions and considers their reports. 2022-23 2022-23 110 Indian Constitution at Work Special Powers of Rajya Sabha As you know, the Rajya Sabha is an institutional mechanism to provide representation to the States. Its purpose is to protect the powers of the States. Therefore, any matter that affects the States must be referred to it for its consent and approval. Thus, if the Union Parliament wishes to remove a matter from the State list (over which only the State Legislature can make law) to either the Union List or Concurrent List in the interest of the nation, the approval of the Rajya Sabha is necessary. This provision adds to the strength of the Rajya Sabha. However, experience shows that the members of the Rajya Sabha represent their parties more than they represent their States. Powers exercised only by the Lok Sabha: Then, there are powers that only the Lok Sabha exercises. The Rajya Sabha cannot initiate, reject or amend money bills. The Council of Ministers is responsible to the Lok Sabha and not Rajya Sabha. Therefore, Rajya Sabha can criticise the government but cannot remove it. Can you explain why? The Rajya Sabha is elected by the MLAs and not directly by the people. Therefore, the Constitution stopped short of giving certain powers to the Rajya Sabha. In a democratic form as adopted by our Constitution, the people are the final authority. By this logic, the representatives, directly elected by the people, should have the crucial powers of removing a government and controlling the finances. In all other spheres, including passing of non-money bills, constitutional amendments, and impeaching the President and removing the Vice President the powers of Lok Sabha and Rajya Sabha are co-equal. HOW DOES THE PARLIAMENT MAKE LAWS? The basic function of any legislature is to make laws for its people. A definite procedure is followed in the process of

making law. Some of the procedures of law making are Σο, της Λοκ Σαβηα χοντρολσ της πυρσε! Τηεν ιτ μυστ βε τηε μορε ποωερφυλ Ηουσε. 2022-23 2022-23 111 Chapter 5: Legislature mentioned in the Constitution, while some have evolved from conventions. Follow a bill through the legislative process and you will clearly see that the law making process is technical and even tedious. Peoples' inputs Committee gives report Bill Sent to Committee or discussed in the House itself. Bill House may or may not accept the report Introduction in either House in case of non-money bill Detailed discussion of bill in House Bill is accepted or rejected Sent to the Other House Other House approves or gives recommendations Joint Session of Parliament (if required) President approves or sends back for reconsideration Bill becomes Law 2022-23 2022-23 112 Indian Constitution at Work A bill is a draft of the proposed law. There can be different types of bills. When a non-minister proposes a bill, it is called private member's Bill. A bill proposed by a minister is described as Government Bill. Let us now see the different stages in the life of a bill. Even before a bill is introduced in the Parliament there may be a lot of debate on the need for introducing such a bill. A political party may pressurise the government to initiate a bill in order to fulfil its election promises or to improve its chances of winning forthcoming elections. Interest groups, media and citizens' forums may also persuade the government for a particular legislation. Law making is thus not merely a legal procedure but also a political course of action. The preparation of a bill itself involves many considerations such as resources required to implement the law, the support or opposition that the bill is likely to produce, the impact that the law may have on Types of Bills Ordinary Bill Constitution Amendment Bill Government Bill Non-Money Bill Private Member's Bill Money Bill 2022-23 2022-23 113 Chapter 5: Legislature the electoral prospect of the ruling party etc. In the era of coalition politics especially, a bill proposed by the government has to be acceptable to all the partners of the coalition. Such practical considerations can hardly be ignored. The Cabinet considers all these before arriving at a decision to enact a law. Once the Cabinet approves the policy behind the legislation, the task of drafting the legislation begins. The draft of any bill is prepared by the concerned ministry. For instance a bill raising the marriageable age of girls from 18 to 21 will be prepared by the law ministry. The ministry of women and child welfare may also be involved in it. Within the Parliament, a bill may be introduced in the Lok Sabha or Rajya Sabha by a member of the House (but often a minister responsible for the subject introduces the bill). A money bill can be introduced only in Lok Sabha. Once passed there, it is sent to the Rajya Sabha. A large part of the discussion on the bills takes place in the committees. The recommendation of the committee is then sent to the House. That is why committees are referred to as miniature legislatures. This is the second stage in the law making process. In the third and final stage, the bill is voted upon. If a non-money bill is passed by one House, it is sent to the other House where it goes through exactly the same procedure. As you know, a bill has to be passed by both Houses for enactment. If there is disagreement between the two Houses on the proposed bill, attempt is made to resolve it through Joint Session of Parliament. In the few instances when joint sessions of the parliament were called to resolve a deadlock, the decision has always gone in favour of the Lok Sabha. If it is a money bill, the Rajya Sabha can either approve the bill or suggest changes but cannot reject it. If it takes no action within 14 days the bill is deemed to have been passed. Amendments to the bill, suggested by Rajya Sabha, may or may not be accepted by the Lok Sabha. READ A CARTOON Is this how they follow the 'rules of the game'? R K Laxman in The Times of India. 2022-23 2022-23 114 Indian Constitution at Work When a bill is passed by both Houses, it is sent to the President for his assent. The assent of the President results in the enactment of a bill into a law. Article 109 Special procedure in respect of Money Bills. —(1) A Money Bill shall not be introduced in the Council of States Check your progress ± From the discussion of the law making process, do you think that Parliament can devote enough time for thorough discussion of the bills? If not, then what remedies would you suggest to overcome this difficulty? HOW DOES THE PARLIAMENT CONTROL THE EXECUTIVE? In a parliamentary democracy, the executive is drawn from

the party or a coalition of parties that has a majority in Lok Sabha. It is not difficult for the executive to exercise unlimited and arbitrary powers with the support of the majority party. In such a situation, parliamentary democracy may slip into Cabinet dictatorship, where the Cabinet leads and the House merely follows. Only if the Parliament is active and vigilant, can it keep regular and effective check on the executive. There are many ways in which the Parliament can control the executive. But basic to them all is the power and freedom of the legislators as people's representatives to work effectively and fearlessly. For instance, no action can be taken against a member for whatever the member may have said in the legislature. This is known as parliamentary privilege. The presiding officer of the legislature has the final powers in deciding matters of breach of privilege. The main purpose of such privileges is to enable the members of the legislature to represent the people and exercise effective control over the executive. How does the Parliament exercise such control? What are the means available at its disposal? Is parliamentary control successful in curbing executive excesses? Instruments of Parliamentary Control

The legislature in parliamentary system ensures executive accountability at various stages: policy making, implementation of law or policy and during and postimplementation stage. The legislature does this through the use of a variety of devices: ± Deliberation and discussion ± Approval or Refusal of laws ± Financial control ± No confidence motion

**Deliberation and discussion:** During the law making process, members of the legislature get an opportunity to deliberate on the policy direction of the executive and the ways in which policies are implemented. Apart from deliberating on bills, control may also be exercised during the general discussions in the House. The Question Hour, which is held every day during the sessions of Parliament, where Ministers have to respond to searching questions raised by the members; Zero Hour where members are free to raise any matter that they think is important (though the ministers are not bound to reply), half-an-hour discussion on matters of public importance, adjournment motion, etc., are some instruments of exercising control. Perhaps the question hour is the most effective method of keeping vigil on the executive and the administrative agencies of the government. Members of Parliament have shown great interest in question hour and maximum attendance is recorded during this time. Most of the questions aim at eliciting information from the government on issues of public interest such as, price rise, availability of food grains, atrocities on weaker sections of the society, riots, black-marketing, etc. This gives the members an opportunity to criticise the government, and represent the problems of their constituencies. The discussions during the question hour are so heated that it is not uncommon to see members raise their voice, walk to the well of the house or walk out in protest to make their point. This results in considerable loss of legislative time. At the same time, we must remember that many of these actions are political techniques to gain concessions from government and in the process force executive accountability.

**Approval and ratification of laws:** Parliamentary control is also exercised through its power of ratification. A bill can become a law only with the approval of the Parliament. A government that has the support of a disciplined majority may not find it difficult to get the approval of the Legislature. Such approvals however, cannot be taken for granted. They are the products of intense bargaining and negotiations amongst the members of ruling party or coalition of parties and even government and opposition. If the government has majority in Lok Sabha but not in the Rajya Sabha, as has happened during the Janata Party rule in 1977 and N.D.A. rule in 2000, the government will be forced to make substantial concessions to gain the approval of both the Houses. Many bills, such as the Lok Pal Bill have failed enactment, Prevention of Terrorism bill (2002) was rejected by the Rajya Sabha.

**Financial control:** As mentioned earlier, financial resources to implement the programmes of the government are granted through the budget. Preparation and presentation of budget for the approval of the legislature is constitutional obligation of the government. This obligation allows the legislature to exercise control

It must be difficult to be a minister. This is like giving an

εξαμινάτιον αλμοστ επερψ δαψ! 2022-23 2022-23 117 Chapter 5: Legislature over the purse strings of the government. The legislature may refuse to grant resources to the government. This seldom happens because the government ordinarily enjoys support of the majority in the parliamentary system. Nevertheless, before granting money the Lok Sabha can discuss the reasons for which the government requires money. It can enquire into cases of misuse of funds on the basis of the report of the Comptroller and Auditor General and Public Accounts committees. But the legislative control is not only aimed at financial propriety. The legislature is concerned about the policies of the government that are reflected in the budget. Through financial control, the legislature controls the policy of the government. No Confidence Motion: The most powerful weapon that enables the Parliament to ensure executive accountability is the no-confidence motion. As long as the government has the support of its party or coalition of parties that have a majority in the Lok Sabha, the power of the House to dismiss the government is fictional rather than real. However, after 1989, several governments have been forced to resign due to lack of confidence of the house. Each of these governments lost the confidence of the Lok Sabha because they failed to retain the support of their coalition partners. Thus, the Parliament can effectively control the executive and ensure a more responsive government. It is however important for this purpose, that there is adequate time at the disposal of the House, the members are interested in discussion and participate effectively and there is willingness to compromise amongst the government and the opposition. In the last two decades, there has been a gradual decline in sessions of the Lok Sabha and State Legislative Assemblies and time spent on debates. Moreover, the Houses of the Parliament have been plagued by absence of quorum, boycott of sessions by members of opposition which deprive the house the power to control the executive through discussion. Activity Watch the Dooradarshan telecast of Parliament sessions for three continuous days. Or collect the newspaper reports for three continuous days and make a wallpaper. Take care to observe the issues 2022-23 2022-23 118 Indian Constitution at Work WH AT DO THE COMMITTEES OF PARLIAMENT DO? A significant feature of the legislative process is the appointment of committees for various legislative purposes. These committees play a vital role not merely in law making, but also in the day-to-day business of the House. Since the Parliament meets only during sessions, it has very limited time at its disposal. The making of law for instance requires in-depth study of the issue under consideration. This in turn demands more attention and time. Similarly, there are other important functions also, like studying the demands for grants made by various ministries, looking into expenditure incurred by various departments, investigating cases of corruption etc. Parliamentary committees perform such functions. Since 1983, India has developed a system of parliamentary standing committees. There are over twenty such departmentally related committees. Standing Committees supervise the work of various departments, their budget, their expenditure and bills that come up in the house relating to the department. Apart from standing committees, the Joint Parliamentary Committees have occupied a position of eminence in our country. Joint Parliamentary Committees (JPCs) can be set up for the purpose of discussing a particular bill, like the joint committee to discuss being discussed, the role of the speaker, questions being asked, the political parties of the representatives, representatives from your region, nature of the issues of discussion – whether they were all of national or regional in character. READ A CARTOON Walkout is a frequently adopted measure by the opposition to register their protest against the government. Has there been an overuse of that weapon? Irfan 2022-23 2022-23 119 Chapter 5: Legislature bill, or for the purpose of investigating financial irregularities. Members of these committees are selected from both Houses. The committee system has reduced the burden on the Parliament. Many important bills have been referred to committees. The Parliament has merely approved the work done in the committees with few occasional alterations. Of course legally speaking, no bill can become law, and no budget will be sanctioned unless approved



by the Parliament. But the Parliament rarely rejects the suggestions made by the committees. HOW DOES THE PARLIAMENT REGULATE ITSELF? Parliament as mentioned earlier is a debating forum. It is through debates that the parliament performs all its vital functions. Such discussions must be meaningful and orderly so that the functions of the Parliament are carried out smoothly and its dignity is intact. The Constitution itself has made certain provisions to ensure smooth conduct of business. The presiding officer of the legislature is the final authority in matters of regulating the business of the legislature. Σο, τηε λαωμακερσ τοο, αρε συβφεχτ το σομε λαωσ! "The nature of the legislature is such that there are restrictions only so far as procedure is concerned. But in substance there is no restriction, no limitation on the sovereignty of the legislature or Parliament..." N.V. Gadgil, CAD, Vol. XI, p.659, 18 November 1949 2022-23 120 Indian Constitution at Work There is one more way in which the presiding officers control the behaviour of the members. You may have heard about the anti-defection law. Most of the members of the legislatures are elected on the ticket of some political party. What would happen if they decide to leave the party after getting elected? For many years after independence, this issue was unresolved. Finally there was an agreement among the parties that a legislator who is elected on one party's ticket must be restricted from 'defecting' to another party. An amendment to the Constitution was made (52nd amendment act) in 1985. This is known as anti-defection amendment. It has also been subsequently modified by the 91st amendment. The presiding officer of the House is the authority who takes final decisions on all such cases. If it is proved that a member has 'defected', then such

Ι δοντ υνδερστανδ ωηψ τηεψ χηανγε παρτιεσ. Δο τηεψ επεν χομε βαχκ το τηε παρτυ τηεψ ονχε λεφτ? READ A CARTOON "We are not walking out, we have been ordered out," said the MPs. Why do you think such situations occur? Irfan 2022-23 121 Chapter 5: Legislature member loses the membership of the House. Besides, such a person is also disqualified from holding any political office like ministership, etc. What is defection? If a member remains absent in the House when asked by the party leadership to remain present or votes against the instructions of the party or voluntarily leaves the membership of the party, it is deemed as defection. Experience of the past twenty years shows that the anti-defection amendment has not been able to curb defections, but it has given additional powers to the party leadership and the presiding officers of the legislatures over the members. Conclusion Have you watched the live telecast of the proceeding of the Parliament? You will find that our Parliament is truly a rainbow of colourful dresses symbolising different regions of the country. Members speak different languages in the course of the proceedings. They come from various castes, religions and sects. They often fight bitterly. Many times an impression is created that they are wasting the time and money of the nation. But we have seen in this chapter that these same parliamentarians can effectively control the executive. They can express the interests of various sections of our society. On account of its composition, Legislature is the most representative of all organs of government. The sheer presence of members of diverse social backgrounds makes the legislatures more representative and potentially more responsive to people's expectations. In a parliamentary democracy, legislature, as a body representing the wishes of the people occupies a high position of power and responsibility. Herein lies the democratic potential of the Parliament. 2022-23 122 Indian Constitution at Work Exercises 1. Alok thinks that a country needs an efficient government that looks after the welfare of the people. So, if we simply elected our Prime Minister and Ministers and left to them the task of government, we will not need a legislature. Do you agree? Give reasons for your answer. 2. A class was debating the merits of a bicameral system. The following points were made during the discussion. Read the arguments and say if you agree or disagree with each of them, giving reasons. ✓ Neha said that bicameral legislature does not serve any purpose. ✓ Shama argued that experts should be nominated in the second chamber. ✓ Tridib said that if a country is not a federation, then there is no need to have a second chamber. 3. Why can the Lok Sabha control the executive more

effectively than the Rajya Sabha can? 4. Rather than effective control of the executive, the Lok Sabha is a platform for the expression of popular sentiments and people's expectations. Do you agree? Give reasons. 5. The following are some proposals for making the Parliament more effective. State if you agree or disagree with each of them and give your reasons. Explain what would be the effect if these suggestions were accepted. ✓ Parliament should work for longer period. ✓ Attendance should be made compulsory for members of Parliament. ✓ Speakers should be empowered to penalise members for interrupting the proceedings of the House. 6. Arif wanted to know that if ministers propose most of the important bills and if the majority party often gets the government bills passed, what is the role of the Parliament in the law making process? What answer would you give him?

2022-23 2022-23 123 Chapter 5: Legislature 7. Which of the following statements you agree with the most? Give your reasons. ✓ Legislators must be free to join any party they want. ✓ Anti-defection law has contributed to the domination of the party leaders over the legislators. ✓ Defection is always for selfish purposes and therefore, a legislator who wants to join another party must be disqualified from being a minister for the next two years. 8. Dolly and Sudha are debating about the efficiency and effectiveness of the Parliament in recent times. Dolly believed that the decline of Indian Parliament is evident in the less time spent on debate and discussion and increase in the disturbances of the functioning of the House and walkouts etc. Sudha contends that the fall of different governments on the floor of Lok Sabha is a proof of its vibrancy. What other arguments can you provide to support or oppose the positions of Dolly and Sudha? 9. Arrange the different stages of passing of a bill into a law in their correct sequence: ✓ A resolution is passed to admit the bill for discussion ✓ The bill is referred to the President of India – write what happens next if s/he does not sign it ✓ The bill is referred to other House and is passed ✓ The bill is passed in the house in which it was proposed ✓ The bill is read clause by clause and each is voted upon ✓ The bill is referred to the subcommittee – the committee makes some changes and sends it back to the house for discussion ✓ The concerned minister proposes the need for a bill ✓ Legislative department in ministry of law, drafts a bill 10. How has the system of parliamentary committee affected the overseeing and appraisal of legislation by the Parliament?

2022-23 2022-23 124 Indian Constitution at Work Chapter Six JUDICIARY INTRODUCTION Many times, courts are seen only as arbitrators in disputes between individuals or private parties. But judiciary performs some political functions also. Judiciary is an important organ of the government. The Supreme Court of India is in fact, one of the very powerful courts in the world. Right from 1950 the judiciary has played an important role in interpreting and in protecting the Constitution. In this chapter you will study the role and importance of the judiciary. In the chapter on fundamental rights you have already read that the judiciary is very important for protecting our rights. After studying this chapter, you would be able to understand ± the meaning of independence of judiciary; ± the role of Indian Judiciary in protecting our rights; ± the role of the Judiciary in interpreting the Constitution; and ± the relationship between the Judiciary and the Parliament of India. 2022-23 2022-23 125 Chapter 6: Judiciary WHY DO WE NEED AN INDEPENDENT JUDICIARY? In any society, disputes are bound to arise between individuals, between groups and between individuals or groups and government. All such disputes must be settled by an independent body in accordance with the principle of rule of law. This idea of rule of law implies that all individuals — rich and poor, men or women, forward or backward castes — are subjected to the same law. The principal role of the judiciary is to protect rule of law and ensure supremacy of law. It safeguards rights of the individual, settles disputes in accordance with the law and ensures that democracy does not give way to individual or group dictatorship. In order to be able to do all this, it is necessary that the judiciary is independent of any political pressures. What is meant by an independent judiciary? How is this independence ensured? Independence of Judiciary Simply stated independence of judiciary means that ± the other organs of the government like the executive and

legislature must not restrain the functioning of the judiciary in such a way that it is unable to do justice. ± the other organs of the government should not interfere with the decision of the judiciary. ± judges must be able to perform their functions without fear or favour. Independence of the judiciary does not imply arbitrariness or absence of accountability. Judiciary is a part of the democratic political structure of the No fisticuffs please, this is rule of law! READ A CARTOON R K Laxman in The Times of India. 2022-23 2022-23 126 Indian Constitution at Work country. It is therefore accountable to the Constitution, to the democratic traditions and to the people of the country. How can the independence of judiciary be provided and protected? The Indian Constitution has ensured the independence of the judiciary through a number of measures. The legislature is not involved in the process of appointment of judges. Thus, it was believed that party politics would not play a role in the process of appointments. In order to be appointed as a judge, a person must have experience as a lawyer and/or must be well versed in law. Political opinions of the person or his/ her political loyalty should not be the criteria for appointments to judiciary. The judges have a fixed tenure. They hold office till reaching the age of retirement. Only in exceptional cases, judges may be removed. But otherwise, they have security of tenure. Security of tenure ensures that judges could function without fear or favour. The Constitution prescribes a very difficult procedure for removal of judges. The Constitution makers believed that a difficult procedure of removal would provide security of office to the members of judiciary. The judiciary is not financially dependent on either the executive or legislature. The Constitution provides that the salaries and allowances of the judges are not subjected to the approval of the legislature. The actions and decisions of the judges are immune from personal criticisms. The judiciary has the power to penalise those who are found guilty of contempt of court. This authority of the court is seen as an effective protection to the judges from unfair criticism. Parliament cannot discuss the conduct of the judges except when the proceeding to remove a judge is being carried out. This gives the judiciary independence to adjudicate without fear of being criticised. Ι ρεμεμβερ της χασε οφ Μαχηαλ μεντιονεδ ιν χηαπτερ τωο.

Δον□τ τηεψ σαψ, □φυστιχε δελαψεδ ις φυστιχε δενιεδ□? Σομεβοδψ σηνουλδ δο σομετηινγ αβουτ τηις. 2022-23 2022-23 127 Chapter 6: Judiciary Activity Hold a debate in class on the following topic. Which of the following factors do you think, work as constraints over the judges in giving their rulings? Do you think these are justified? ± Constitution ± Precedents ± Opinion of other courts ± Public opinion ± Media ± Traditions of law ± Laws ± Time and staff constraints ± Fear of public criticism ± Fear of action by executive Appointment of Judges The appointment of judges has never been free from political controversy. It is part of the political process. It makes a difference who serves in the Supreme Court and High Court— a difference in how the Constitution is interpreted. The political philosophy of the judges, their views about active and assertive judiciary or controlled and committed judiciary have an impact on the fate of the legislations enacted. Council of Ministers, Governors and Chief Ministers and Chief Justice of India — all influence the process of judicial appointment. As far as the appointment of the Chief Justice of India (CJI) is concerned, over the years, a convention had developed whereby the senior-most judge of the Supreme Court was appointed as the Chief Justice of India. This convention was however broken twice. In 1973 A. N. Ray was appointed as CJI superseding three senior Judges. Again, Justice M.H. Beg was appointed superseding Justice H.R. Khanna (1975). Ι αμ αφραιδ, Ι αμ γεπτινγ χονφυσεδ. Ιν α δεμοχραχψ, ψου χαν χριτιχισε τηε Πριμε Μινιστερ ορ επεν τηε Πρεσιδεντ, βυτ νοτ τηε φυδγες! Ανδ ωηατ ις τηις χοντεμπτ οφ χουρτ? Βυτ αμ Ι βεινγ γυιλτψ οφ χοντεμπτ ιφ Ι ασκεδ αβουτ τηεσε ματτερς? 2022-23 2022-23 128 Indian Constitution at Work The other Judges of the Supreme Court and the High Court are appointed by the President after ‘consulting’ the CJI. This, in effect, meant that the final decisions in matters of appointment rested with the Council of Ministers. What then, was the status of the consultation with

the Chief Justice? This matter came up before the Supreme Court again and again between 1982 and 1998. Initially, the court felt that role of the Chief Justice was purely consultative. Then it took the view that the opinion of the Chief Justice must be followed by the President. Finally, the Supreme Court has come up with a novel procedure: it has suggested that the Chief Justice should recommend names of persons to be appointed in consultation with four senior-most judges of the Court. Thus, the Supreme Court has established the principle of collegiality in making recommendations for appointments. At the moment therefore, in matters of appointment the decision of the group of senior judges of the Supreme Court carries greater weight. Thus, in matters of appointment to the judiciary, the Supreme Court and the Council of Ministers play an important role. Removal of Judges The removal of judges of the Supreme Court and the High Courts is also extremely difficult. A judge of the Supreme Court or High Court can be removed only on the ground of proven misbehaviour or incapacity. A motion containing the charges against the judge must be approved by special majority in both Houses of the Parliament. Do you remember what special majority means? We have studied this in the chapter on Elections. It is clear from this procedure that removal of a judge is a very difficult procedure and unless there is a general consensus among Members of the Parliament, a judge cannot be removed. It should also be noted that while in making appointments, the executive plays a crucial role; the legislature has the powers of removal. This has ensured

Βυτ Ι τηνκ, φιναλλψ τηε Χουνχιλ οφ Μινιστερσ वोυल्ड ηαπε γρεατερ σαψ ιν απποιντινγ φυδγεσ. Ορ ισ ιτ τηατ τηε φυδιχιαρψ ισ α σελφ- απποιντινγ βοδυ? 2022-23 2022-23 129 Chapter 6: Judiciary both balance of power and independence of the judiciary. So far, only one case of removal of a judge of the Supreme Court came up for consideration before Parliament. In that case, though the motion got two-thirds majority, it did not have the support of the majority of the total strength of the House and therefore, the judge was not removed.

Unsuccessful Attempt to Remove a Judge In 1991 the first-ever motion to remove a Supreme Court Justice was signed by 108 members of Parliament. Justice V. Ramaswami, during his tenure as the Chief Justice of the Punjab and Haryana High Court was accused of misappropriating funds. In 1992, a year after Parliament had started the removal proceedings, a high-profile inquiry commission consisting of Judges of the Supreme Court found Justice V. Ramaswami “guilty of wilful and gross misuses of office . . . and moral turpitude by using public funds for private purposes and reckless disregard of statutory rules” while serving as the Chief Justice of the Punjab and Haryana High Court. Despite this strong indictment, Ramaswami survived the parliamentary motion recommending removal. The motion recommending his removal got the required two-thirds majority among the members who were present and voting, but the Congress party abstained from voting in the House. Therefore, the motion could not get the support of one-half of the total strength of the House. Check your progress ± Why is independence of the judiciary important? ± Do you think that executive should have the power to appoint judges? ± If you were asked to make suggestions for changing the procedure of appointing judges, what changes would you suggest? 2022-23 2022-23 130 Indian Constitution at Work

STRUCTURE OF THE JUDICIARY The Constitution of India provides for a single integrated judicial system. This means that unlike some other federal countries of the world, India does not have separate State courts. The structure of the judiciary in India is pyramidal with the Supreme Court at the top, High Courts below them and district and subordinate courts at the lowest level (see the diagram below). The lower courts function under the direct superintendence of the higher courts. Supreme Court of India ± Its decisions are binding on all courts. ± Can transfer Judges of High Courts. ± Can move cases from any court to itself. ± Can transfer cases from one High Court to another. High Court ± Can hear appeals from lower courts. ± Can issue writs for restoring Fundamental Rights. ± Can deal with cases within the jurisdiction of the State. ± Exercises superintendence and control over courts below it. District Court ± Deals with cases arising in the

District. ± Considers appeals on decisions given by lower courts. ± Decides cases involving serious criminal offences. Subordinate Courts ± Consider cases of civil and criminal nature 2022-23 2022-23 131 Chapter 6: Judiciary Jurisdiction of Supreme Court The Supreme Court of India is one of the very powerful courts anywhere in the world. However, it functions within the limitations imposed by the Constitution. The functions and responsibilities of the Supreme Court are defined by the Constitution. The Supreme Court has specific jurisdiction or scope of powers. Jurisdiction of Supreme Court of India Original Settles disputes between Union and States and amongst States. Appellate Tries appeals from lower courts in Civil, Criminal and Constitutional cases Advisory Advises the President on matters of public importance and law Writ: Can issue writs of Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo warrant to protect the Fundamental Rights of the individual. Special Powers Can grant special leave to an appeal from any judgement or matter passed by any court in the territory of India. 2022-23 2022-23 132 Indian Constitution at Work Original Jurisdiction Original jurisdiction means cases that can be directly considered by the Supreme Court without going to the lower courts before that. From the diagram above, you will notice that cases involving federal relations go directly to the Supreme Court. The Original Jurisdiction of the Supreme Court establishes it as an umpire in all disputes regarding federal matters. In any federal country, legal disputes are bound to arise between the Union and the States; and among the States themselves. The power to resolve such cases is entrusted to the Supreme Court of India. It is called original jurisdiction because the Supreme Court alone has the power to deal with such cases. Neither the High Courts nor the lower courts can deal with such cases. In this capacity, the Supreme Court not just settles disputes but also interprets the powers of Union and State government as laid down in the Constitution. Writ Jurisdiction As you have already studied in the chapter on fundamental rights, any individual, whose fundamental right has been violated, can directly move the Supreme Court for remedy. The Supreme Court can give special orders in the form of writs. The High Courts can also issue writs, but the persons whose rights are violated have the choice of either approaching the High Court or approaching the Supreme Court directly. Through such writs, the Court can give orders to the executive to act or not to act in a particular way. Appellate Jurisdiction The Supreme Court is the highest court of appeal. A person can appeal to the Supreme Court against the decisions of the High Court. However, High Court must certify that the case is fit for appeal, that is to say that it involves a serious matter of interpretation of law or Constitution. In addition, in criminal cases, if the lower court has sentenced a person to death then an appeal can be made to the High Court or Supreme Court. Of course, the Supreme Court holds the powers to decide whether to admit appeals even when appeal is not allowed by the High Court. Appellate jurisdiction means that the Supreme Court will reconsider the case and the legal issues involved 2022-23 2022-23 133 Chapter 6: Judiciary in it. If the Court thinks that the law or the Constitution has a different meaning from what the lower courts understood, then the Supreme Court will change the ruling and along with that also give new interpretation of the provision involved. The High Courts too, have appellate jurisdiction over the decisions given by courts below them. Advisory Jurisdiction In addition to original and appellate jurisdiction, the Supreme Court of India possesses advisory jurisdiction also. This means that the President of India can refer any matter that is of public importance or that which involves interpretation of Constitution to Supreme Court for advice. However, the Supreme Court is not bound to give advice on such matters and the President is not bound to accept such an advice. What then is the utility of the advisory powers of the Supreme Court? The utility is two-fold. In the first place, it allows the government to seek legal opinion on a matter of importance before taking action on it. This may prevent unnecessary litigations later. Secondly, in the light of the advice of the Supreme Court, the government can make suitable changes in its action or legislations.

Ισν□τ ιτ φυννψ τηατ γιπινγ αδπιχε ισ οπτιοναλ ανδ αχχεπτινγ τηατ αδπιχε ισ αλσο οπτιοναλ? Ι τηουγητ τηατ τηε Χουρτσ γαπε δεχισιονς τηατ ωερε βινδινγ! Article 137 ..... the

Supreme Court shall have power to review any judgment pronounced or order made by it. Article 144 ..... All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

2022-23 2022-23 134 Indian Constitution at Work Read the articles quoted above. These articles help us to understand the unified nature of our judiciary and the powers of the Supreme Court. Decisions made by the Supreme Court are binding on all other courts within the territory of India. Orders passed by it are enforceable throughout the length and breadth of the country. The Supreme Court itself is not bound by its decision and can at any time review it. Besides, if there is a case of contempt of the Supreme Court, then the Supreme Court itself decides such a case. Check your progress Match the following Dispute between State of Bihar and Union of India will be heard by Appeal from District court of Haryana will go to Single Integrated Judiciary Declaring a law unconstitutional JUDICIAL ACTIVISM Have you heard of the term judicial activism? Or, Public Interest Litigation? Both these terms are often used in the discussions about judiciary in recent times. Many people think that these two things have revolutionised the functioning of judiciary and made it more people-friendly.

Ωηψ ις της Συπρεμε Χουρτ αλλοωεδ το χηανγε ις οων ρυλινγ? Ις ιτ βεχαυσε χουρτσ χαν αλσο μακε μιστακες? Ις ιτ ποσσιβλε τηατ της σαμε φυδγε ις παρτ οφ της □Βενχη□ τηατ ρεπισεσ της ρυλινγ ανδ ωασ αλσο ον της Βενχη τηατ γαπε της ρυλινγ ιν της φιρστ πλαχε? High Court Advisory Jurisdiction Judicial review Original Jurisdiction Supreme Court Single Constitution 2022-23 2022-23 135 Chapter 6: Judiciary The chief instrument through which judicial activism has flourished in India is Public Interest Litigation (PIL) or Social Action Litigation (SAL). What is PIL or SAL? How and when did it emerge? In normal course of law, an individual can approach the courts only if he/she has been personally aggrieved. That is to say, a person whose rights have been violated, or who is involved in a dispute, could move the court of law. This concept underwent a change around 1979. In 1979, the Court set the trend when it decided to hear a case where the case was filed not by the aggrieved persons but by others on their behalf. As this case involved a consideration of an issue of public interest, it and such other cases came to be known as public interest litigations. Around the same time, the Supreme Court also took up the case about rights of prisoners. This opened the gates for large number of cases where public spirited citizens and voluntary organisations sought judicial intervention for protection of existing rights, betterment of life conditions of the poor, READ A CARTOON Do you know that in recent times the judiciary has ruled that bandhs and hartals are illegal? Irfan 2022-23 2022-23 136 Indian Constitution at Work protection of the environment, and many other issues in the interest of the public. PIL has become the most important vehicle of judicial activism. Judiciary, which is an institution that traditionally confined to responding to cases brought before it, began considering many cases merely on the basis of newspaper reports and postal complaints received by the court. Therefore, the term judicial activism became the more popular description of the role of the judiciary. Some Early PILs ± In 1979, newspapers published reports about ‘under trials’. There were many prisoners in Bihar who had spent long years in jail, longer than what they would have spent if they had been punished for the offences for which they were arrested. This report prompted an advocate to file a petition. The Supreme Court heard this case. It became famous as one of the early Public Interest Litigations (PILs). This was the Hussainara Khatoon vs. Bihar case. ± In 1980, a prison inmate of the Tihar jail managed to send a scribbled piece of paper to Justice Krishna Iyer of the Supreme Court narrating physical torture of the prisoners. The judge got it converted into a petition. Though later on, the Court abandoned the practice of considering letters, this case, known as Sunil Batra vs. Delhi Administration (1980) also became one of the pioneers of public interest litigation. Through the PIL, the court has expanded the idea of rights. Clean air, unpolluted water, decent living, etc., are rights for the entire society. Therefore, it was felt by the courts that individuals as parts of the society must have the right to seek justice wherever such rights were violated. Secondly, through PIL and judicial activism of the post-1980 period, the judiciary has also shown

readiness to take into consideration rights of those sections who I ηαπε ηεαρδ σομεονε σαψ τηατ ΠΙΛ μεανσ □πριωατε ιντερεστ λιτιγατιον□. Ωηψ ουλδ τηατ βε σο? 2022-23 2022-23 137

Chapter 6: Judiciary cannot easily approach the courts. For this purpose, the judiciary allowed public spirited citizens, social organisations and lawyers to file petitions on behalf of the needy and the deprived. It must be remembered that the problems of the poor ...are qualitatively different from those which have hitherto occupied the attention of the Court and they need ....a different kind of judicial approach. If we blindly follow the adversarial procedure in their case, they would never be able to enforce their fundamental rights. — Justice Bhagwati in Bandhua Mukti Morcha vs. Union of India, 1984. Activity Find out the details about at least one case involving a PIL and study the way in which that case helped in serving public interest. Judicial activism has had manifold impact on the political system. It has democratised the judicial system by giving not just to individuals but also groups access to the courts. It has forced executive accountability. It has also made an attempt to make the electoral system much more free and fair. The court asked candidates contesting elections to file affidavits indicating their assets and income along with educational qualifications so that the people could elect their representatives based on accurate knowledge. There is however a negative side to the large number of PILs and the idea of a proactive judiciary. In the first place it has overburdened the courts. Secondly, judicial activism has blurred the line of distinction between the executive and legislature on the one hand and the judiciary on the other. The court has been involved in resolving questions which belong to the executive. Thus, for

Ι τηινκ φυδιχιαλ αχτιπισμ ισ μορε αβουτ τελλινγ τηε λεγισλατυρε ανδ τηε εξεχυτιψε ωηατ τηεψ σηουλδ δο. Ωηατ ωιλλ ηαππεν ιφ τηε λεγισλατυρε ανδ εξεχυτιψε σταρτεδ γιπινγ φυστιχε? 2022-23 2022-23 138 Indian Constitution at Work instance, reducing air or sound pollution or investigating cases of corruption or bringing about electoral reform is not exactly the duty of the Judiciary. These are matters to be handled by the administration under the supervision of the legislatures. Therefore, some people feel that judicial activism has made the balance among the three organs of government very delicate. Democratic government is based on each organ of government respecting the powers and jurisdiction of the others. Judicial activism may be creating strains on this democratic principle. JUDICIARY AND RIGHTS We have already seen that the judiciary is entrusted with the task of protecting rights of individuals. The Constitution provides two ways in which the Supreme Court can remedy the violation of rights. ± First it can restore fundamental rights by issuing writs of Habeas Corpus; mandamus etc. (article 32). The High Courts also have the power to issue such writs (article 226). ± Secondly, the Supreme Court can declare the concerned law as unconstitutional and therefore non-operational (article 13). YOU ARE THE JUDGE A group of citizens from a city have approached the court through a PIL asking for an order to the city municipal authorities to remove slums and beautify the city in order to attract investors to the city. They argue that this is in the ‘public interest.’ The residents of the slum localities have responded by saying that this will encroach on their right to life. They argue that right to life is more central to ‘public interest’ than the right to a clean city. Imagine that you are the judge. Write a judgement deciding if the PIL involves ‘public interest’. 2022-23 2022-23 139 Chapter 6: Judiciary Together these two provisions of the Constitution establish the Supreme Court as the protector of fundamental rights of the citizen on the one hand and interpreter of Constitution on the other. The second of the two ways mentioned above involves judicial review. Perhaps the most important power of the Supreme Court is the power of judicial review. Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable. The term judicial review is nowhere mentioned in the Constitution. However, the fact that India has a written constitution and the Supreme Court can strike down a law that goes against fundamental rights, implicitly gives the Supreme Court the power

of judicial review. Besides, as we saw in the section on jurisdiction of the Supreme Court, in the case of federal relations too, the Supreme Court can use the review powers if a law is inconsistent with the distribution of powers laid down by the Constitution. Suppose, the central government makes a law, which according to some States, concerns a subject from the State list. Then the States can go to the Supreme Court and if the court agrees with them, it would declare that the law is unconstitutional. In this sense, the review power of the Supreme Court includes power to review legislations on the ground that they violate fundamental rights or on the ground that they violate the federal distribution of powers. The review power extends to the laws passed by State legislatures also. Together, the writ powers and the review power of the Court make judiciary very powerful. In particular, the review power means that the judiciary can interpret the Constitution and the laws passed by the legislature. Many people think that this feature enables the judiciary to protect the Constitution effectively and also to protect the rights of citizens. The practice of entertaining PILs has further added to the powers of the judiciary in protecting rights of citizens. *Επιπλέον, η δραστική βελτίωση της προστασίας των δικαιωμάτων των πολιτών, που προέκυψε από την εισαγωγή των αιτήσεων για προστασία του συνόλου, ενίσχυσε περαιτέρω την εξουσία του δικαστηρίου στην προστασία των δικαιωμάτων των πολιτών.*

2022-23 2022-23 140 Indian Constitution at Work Do you remember that in the chapter on rights we mentioned the right against exploitation? This right prohibits forced labour, trade in human flesh and prohibits employment of children in hazardous jobs. But the question is: how could those, whose rights were violated, approach the court? PIL and judicial activism made it possible for courts to consider these violations. Thus, the court considered a whole set of cases: the blinding of the jail inmates by the police, inhuman working conditions in stone quarries, sexual exploitation of children, and so on. This trend has made rights really meaningful for the poor and disadvantaged sections. Did you know that the practice of public interest litigation is now becoming more and more acceptable in many other countries? While many courts across the world, particularly in South Asia and Africa practice some form of judicial activism comparable to that of the Indian judiciary, the constitution of South Africa has incorporated public interest litigation in its bill of rights. Thus, in South Africa, it is a fundamental right of the citizen to bring before the Constitutional Court, cases of violation of other persons' rights. Check your progress ± When does the Court use the review powers? ± What is the difference between judicial review and writ? JUDICIARY AND PARLIAMENT Apart from taking a very active stand on the matter of rights, the court has been active in seeking to prevent subversion of the Constitution through political practice. Thus, areas that were considered beyond the scope of judicial review such as powers of the President and Governor were brought under the purview of the courts. 2022-23 2022-23 141 Chapter 6: Judiciary There are many other instances in which the Supreme Court actively involved itself in the administration of justice by giving directions to executive agencies. Thus, it gave directions to CBI to initiate investigations against politicians and bureaucrats in the hawala case, the Narasimha Rao case, illegal allotment of petrol pumps case etc. You may have heard about some of these cases. Many of these instances are the products of judicial activism. The Indian Constitution is based on a delicate principle of limited separation of powers and checks and balances. This means that each organ of the government has a clear area of functioning. Thus, the Parliament is supreme in making laws and amending the Constitution, the executive is supreme in implementing them while the judiciary is supreme in settling disputes and deciding whether the laws that have been made are in accordance with the provisions of the Constitution. Despite such clear cut division of power the conflict between the Parliament and judiciary, and executive and the judiciary has remained a recurrent theme in Indian politics. We have already mentioned the differences that emerged between the Parliament and the judiciary over right to property and the Parliament's power to amend the Constitution. Let us recapitulate that briefly: Immediately after the implementation of the Constitution began, a controversy arose over the Parliament's power to restrict right to property. The Parliament wanted to put some restrictions on the right to hold



property so that land reforms could be implemented. The Court held that the Parliament cannot thus restrict fundamental rights. The Parliament then tried to amend the Constitution. But the Court said that even through an amendment, a fundamental right cannot be abridged. The following issues were at the centre of the controversy between the Parliament and the judiciary. ± What is the scope of right to private property? ± What is the scope of the Parliament's power to curtail, abridge or abrogate fundamental rights? ± What is the scope of the Parliament's power to amend the constitution? ± Can the Parliament make laws that abridge fundamental rights while enforcing directive principles? 2022-23 2022-23 142 Indian Constitution at Work During the period 1967 and 1973, this controversy became very serious. Apart from land reform laws, laws enforcing preventive detention, laws governing reservations in jobs, regulations acquiring private property for public purposes, and laws deciding the compensation for such acquisition of private property were some instances of the conflict between the legislature and the judiciary. In 1973, the Supreme Court gave a decision that has become very important in regulating the relations between the Parliament and the Judiciary since then. This case is famous as the Kesavananda Bharati case. In this case, the Court ruled that there is a basic structure of the Constitution and nobody—not even the Parliament (through amendment)—can violate the basic structure. The Court did two more things. First, it said that right to property (the disputed issue) was not part of basic structure and therefore could be suitably abridged. Secondly, the Court reserved to itself the right to decide whether various matters are part of the basic structure of the Constitution. This case is perhaps the best example of how judiciary uses its power to interpret the Constitution. This ruling has changed the nature of conflicts between the legislature and the judiciary. As we studied earlier, the right to property was taken away from the list of fundamental rights in 1979 “While there can be no two opinions on the need for the maintenance of judicial independence, ...it is also necessary to keep in view one important principle. The doctrine of independence is not to be raised to the level of a dogma so as to enable the judiciary to function as a kind of super -legislature or super - executive. The judiciary is there to interpret the Constitution or adjudicate upon the rights...” Alladi Krishnaswami Ayyar, CAD, Vol. XI, p. 837, 23 November 1949 2022-23 2022-23 143 Chapter 6: Judiciary and this also helped in changing the nature of the relationship between these two organs of government. Some issues still remain a bone of contention between the two — can the judiciary intervene in and regulate the functioning of the legislatures? In the parliamentary system, the legislature has the power to govern itself and regulate the behaviour of its members. Thus, the legislature can punish a person who the legislature holds guilty of breaching privileges of the legislature. Can a person who is held guilty for breach of parliamentary privileges seek protection of the courts? Can a member of the legislature against whom the legislature has taken disciplinary action get protection from the court? These issues are unresolved and are matters of potential conflict between the two. Similarly, the Constitution provides that the conduct of judges cannot be discussed in the Parliament. There have been several instances where the Parliament and State legislatures have cast aspersions on the functioning of the judiciary. Similarly, the judiciary too has criticised the legislatures and issued instructions to the legislatures about the conduct of legislative business. The legislatures see this as violating the principle of parliamentary sovereignty. These issues indicate how delicate the balance between any two organs of the government is and how important it is for each organ of the government in a democracy to respect the authority of others. Check your progress The main issues in the conflict between the judiciary and the Parliament have been: ± Appointment of judges ± Salaries and allowances of judges ± Scope of Parliament's power to amend the Constitution ± Interference by the Parliament in the functioning of the judiciary Ωηψ χαν□τ της Χουρτ τελλ υς ονχε ανδ φορ αλλ ωηατ αρε τηοσε ασπεχτσ τηατ αρε □βασιχ στρυχτυρε□ οφ της Χονστιτυτιον? 2022-23 2022-23 144 Indian Constitution at Work Conclusion In this chapter, we have studied the role of the

judiciary in our democratic structure. In spite of the tensions that arose from time to time between the judiciary and the executive and the legislature, the prestige of the judiciary has increased considerably. At the same time, there are many more expectations from the judiciary. Ordinary citizens also wonder how it is possible for many people to get easy acquittals and how witnesses change their testimonies to suit the wealthy and the mighty. These are some issues about which our judiciary is concerned too. You have seen in this chapter that judiciary in India is a very powerful institution. This power has generated much awe and many hopes from it. Judiciary in India is also known for its independence. Through various decisions, the judiciary has given new interpretations to the Constitution and protected the rights of citizens. As we saw in this chapter, democracy hinges on the delicate balance of power between the judiciary and the Parliament and both institutions have to function within the limitations set by the Constitution. How active is the judiciary in trying to curb corruption in public life? READ A CARTOON R K Laxman in The Times of India. 2022-23 2022-23 145 Chapter 6: Judiciary 2022-23 2022-23 146 Indian Constitution at Work Exercises 1. What are the different ways in which the independence of the judiciary is ensured? Choose the odd ones out. Chief Justice of the Supreme Court is consulted in the appointment of other judges of Supreme Court. Judges are generally not removed before the age of retirement. Judge of a High Court cannot be transferred to another High Court. Parliament has no say in the appointment of judges. 2. Does independence of the judiciary mean that the judiciary is not accountable to any one? Write your answer in not more than 100 words. 3. What are the different provisions in the constitution in order to maintain the independence of judiciary? 4. Read the news report below and identify the following aspects: ✓ What is the case about? ✓ Who has been the beneficiary in the case? ✓ Who is the petitioner in the case? ✓ Visualise what would have been the different arguments put forward by the company. ✓ What arguments would the farmers have put forward? Supreme Court orders REL to pay Rs 300 crore to Dahanu farmers Our Corporate Bureau 24 March 2005 Mumbai: The Supreme Court has ordered Reliance Energy to pay Rs. 300 crore to farmers who grow the chikoo fruit in the Dahanu area outside Mumbai. The order comes after the chikoo growers petitioned the court against the pollution caused by Reliance's thermal power plant. Dahanu, which is 150 km from Mumbai, was a self-sustaining agricultural and horticultural economy known for its fisheries and forests just over a decade ago, but was devastated in 1989 when a thermal power plant came into operation in the region. The next year, this fertile belt saw its first crop failure. Now, 70 i. ii. iii. iv. 2022-23 2022-23 147 Chapter 6: Judiciary per cent of the crop of what was once the fruit bowl of Maharashtra is gone. The fisheries have shut and the forest cover has thinned. Farmers and environmentalists say that fly ash from the power plant entered ground water and polluted the entire eco-system. The Dahanu Taluka Environment Protection Authority ordered the thermal station to set up a pollution control unit to reduce sulphur emissions, and in spite of a Supreme Court order backing the order the pollution control plant was not set up even by 2002. In 2003, Reliance acquired the thermal station and re-submitted a schedule for installation process in 2004. As the pollution control plant is still not set up, the Dahanu Taluka Environmental Protection Authority asked Reliance for a bank guarantee of Rs. 300 crores. 5. Read the following news report and, ✓ Identify the governments at different levels ✓ Identify the role of Supreme Court ✓ What elements of the working of judiciary and executive can you identify in it? ✓ Identify the policy issues, matters related to legislation, implementation and interpretation of the law involved in this case. Centre, Delhi join hands on CNG issue By Our Staff Reporter, The Hindu 23 September 2001 NEW DELHI, SEPT. 22. The Centre and the Delhi Government today agreed to jointly approach the Supreme Court this coming week... for phasing out of all non-CNG commercial vehicles in the Capital. They also decided to seek a dual fuel policy for the city instead of putting the entire transportation system on the single-fuel mode "which was full of dangers and would result in disaster." It was also decided to discourage the use of CNG by

private vehicle owners in the Capital. Both governments would press for allowing the use of 0.05 per cent low sulphur diesel for running of buses in the Capital. In addition, it would be pleaded before the Court that all commercial vehicles, which fulfil the Euro-II standards, should be allowed to ply in the city. Though both the Centre and the State would file separate affidavits, these would contain common points. The Centre would also go out and support the Delhi Government's stand on the issues concerning CNG. 2022-23 2022-23 148 Indian Constitution at Work These decisions were taken at a meeting between the Delhi Chief Minister, Ms. Sheila Dikshit, and the Union Petroleum and Natural Gas Minister, Mr. Ram Naik. Ms. Dikshit said the Central Government would request the court that in view of the high powered Committee appointed under Dr. R.A. Mashelkar to suggest an "Auto Fuel Policy" for the entire country, it would be appropriate to extend the deadline as it was not possible to convert the entire 10,000-odd bus fleet into CNG during the prescribed time frame. The Mashelkar Committee is expected to submit its report within a period of six months. The Chief Minister said time was required to implement the court directives. Referring to the coordinated approach on the issue, Ms. Dikshit said this would take into account the details about the number of vehicles to be run on CNG, eliminating long queues outside CNG filling stations, the CNG fuel requirements of Delhi and the ways and means to implement the directive of the court. The Supreme Court had ...refused to relax the only CNG norm for the city's buses but said it had never insisted on CNG for taxis and auto rickshaws. Mr. Naik said the Centre would insist on allowing use of low sulphur diesel for buses in Delhi as putting the entire transportation system dependent on CNG could prove to be disastrous. The Capital relied on pipeline supply for CNG and any disruption would throw the public transport system out of gear. 6. The following is a statement about Ecuador. What similarities or differences do you find between this example and the judicial system in India? "It would be helpful if a body of common law, or judicial precedent, existed that could clarify a journalist's rights. Unfortunately, Ecuador's courts don't work that way. Judges are not forced to respect the rulings of higher courts in previous cases. Unlike the US, an appellate judge in Ecuador (or elsewhere in South America, for that matter) need not provide a written decision explaining the legal basis of a ruling. A judge may rule one way today and the opposite way, in a similar case, tomorrow, without explaining why." 2022-23 2022-23 149 Chapter 6: Judiciary 7. Read the following statements: Match them with the different jurisdictions the Supreme Court can exercise - Original, Appellate, and Advisory. ✓ The government wanted to know if it can pass a law about the citizenship status of residents of Pakistan-occupied areas of Jammu and Kashmir. ✓ In order to resolve the dispute about river Cauvery the government of Tamil Nadu wants to approach the court. ✓ Court rejected the appeal by people against the eviction from the dam site. 8. In what way can public interest litigation help the poor? 9. Do you think that judicial activism can lead to a conflict between the judiciary and the executive? Why? 10. How is judicial activism related to the protection of fundamental rights? Has it helped in expanding the scope of fundamental rights? 2022-23 2022-23 150 Indian Constitution at Work Chapter Seven FEDERALISM INTRODUCTION Look at the political maps (on next two pages) of India 1947 and 2017. They have changed dramatically over the years. Boundaries of States have changed, names of States have changed, and the number of States has changed. When India became independent, we had a number of provinces that the British government had organised only for administrative convenience. Then a number of princely states merged with the newly independent Indian union. These were joined to the existing provinces. This is what you see in the first map. Since then boundaries of States have been reorganised many times. During this entire period, not only did boundaries of States change, but in some cases, even their names changed according to the wishes of the people of those States. Thus, Mysore changed to Karnataka and Madras became Tamil Nadu. The maps show these large scale changes that have taken place in the span of over seventy years. In a way, these maps also tell us the story of functioning of federalism in India. After studying this chapter you will be able to understand the

following: ± what is Federalism; ± the federal provisions in the Indian Constitution; ± the issues involved in the relations between the centre and the States; and ± the special provisions for certain States having a distinct composition and historical features. 2022-23 2022-23 151 Chapter 7: Federalism INDIA IN 1947 2022-23 2022-23 152 Indian Constitution at Work 2022-23 2022-23 153 Chapter 7: Federalism WHAT IS FEDERALISM? USSR was one of the world's super powers, but after 1989 it simply broke up into several independent countries. One of the major reasons for its break up was the excessive centralisation and concentration of power, and the domination of Russia over other regions with independent languages and cultures of their own e.g. Uzbekistan. Some other countries like Czechoslovakia, Yugoslavia, and Pakistan also had to face a division of the country. Canada came very close to a break up between the English-speaking and the French-speaking regions of that country. Isn't it a great achievement that India, which emerged as an independent nation-state in 1947 after a painful partition, has remained united over seven decades of its independent existence? What accounts for this achievement? Can we attribute it to the federal structure of governance that we in India adopted through our Constitution? All the countries mentioned above, were federations. Yet they could not remain united. Therefore, apart from adopting a federal constitution, the nature of that federal system and the practice of federalism must also be important factors. Federalism in West Indies You may have heard about the cricket team of West Indies. But is there a country called West Indies? Like India, West Indies was also colonised by the British. In 1958, the federation of West Indies came into being. It had a weak central government and the economy of each unit was independent. These features and political competition among the units led to the formal dissolution of the federation in 1962. Later, in 1973 by Treaty of Chiguaramas the independent islands established joint authorities in the form of a common legislature, supreme court, a common currency, and, to a degree, a common market known as the Caribbean Community. The Caribbean Community has even a common executive, and Heads of the governments of member countries are members of this executive. Thus, the units could neither live together as one country, nor can they live separately! 2022-23 2022-23 154 Indian Constitution at Work India is a land of continental proportions and immense diversities. There are more than 20 major languages and several hundred minor ones. It is the home of several major religions. There are several million indigenous peoples living in different parts of the country. In spite of all these diversities we share a common land mass. We have also participated in a common history, especially, when we fought for independence. We also share many other important features. This has led our national leaders to visualise India as a country where there is unity in diversity. Sometimes it is described as unity with diversity. Federalism does not consist of a set of fixed principles, which are applied, to different historical situations. Rather, federalism as a principle of government has evolved differently in different situations. American federalism – one of the first major attempts to build a federal polity – is different from German or Indian federalism. But there are also a few key ideas and concepts associated with federalism. ± Essentially, federalism is an institutional mechanism to accommodate two sets of polities—one at the regional level and the other at the national level. Each government is autonomous in its own sphere. In some federal countries, there is even a system of dual citizenship. India has only a single citizenship. ± The people likewise, have two sets of identities and loyalties—they belong to the region as well as the nation, for example we are Gujaratis or Jharkhandis as well as Indians. Each level of the polity has distinct powers and responsibilities and has a separate system of government. ± The details of this dual system of government are generally spelt out in a written constitution, which is considered to be supreme and which is also the source of the power of both sets of government. Certain subjects, which concern the nation as a whole, for example, defence or currency, are the responsibility of the union or central government. Regional or local

Ι γετ ιτ! Ιτ□σ λικε ουρ σχηοολ. Ωε ηαπε ουρ ιδεντιτυ ασ στυδεντς

οφ χλασσ ΕΙ ορ ΕΠ ανδ σο ον. Ανδ ωε αλσο ηαπε χομπετιτιον αμονγ της παριους

διπλοσιονσ. But ωε αλλ βελονγ το τηε σχηοολ ανδ αρε προυδ οφ ιτ. 2022-23 2022-23 155

Chapter 7: Federalism matters are the responsibility of the regional or State government. ± To prevent conflicts between the centre and the State, there is an independent judiciary to settle disputes. The judiciary has the powers to resolve disputes between the central government and the States on legal matters about the division of power. Real politics, culture, ideology and history determine the actual working of a federation. A culture of trust, cooperation, mutual respect and restraint helps federations to function smoothly. Political parties also determine the way a constitution would work. If any single unit or State or linguistic group or ideology comes to dominate the entire federation it could generate a deep resentment among people or its units not sharing the dominant voice. These situations could lead to demands for secession by the aggrieved units or could even result in civil wars. Many countries are embroiled in such conflict situations.

Ψεσ, Ι ρεμεμβερ ωηατ ωε ρεαδ ιν τηε φιρστ χηαπτερ: α χονστιτυτιον δεχιδεσ ωηο σηουλδ ηαπε ηοω μυχη ποωερ. 2022-23 2022-23 156 Indian Constitution at Work Federalism in Nigeria If the regions and various communities do not trust each other, even a federal arrangement can fail to produce unity. The example of Nigeria is instructive: Till 1914, Northern and Southern Nigeria were two separate British colonies. At the Ibadan Constitutional Conference of 1950 Nigerian leaders decided to form a federal constitution. The three major ethnic groups of Nigeria—Yoruba, Ibo and Hausa-Fulani—controlled the regions of the West, the East and the North respectively. Their attempt to spread their influence to other regions led to fears and conflicts. These led to a military regime. In the 1960 constitution, both federal and regional governments jointly controlled the Nigerian police. In the military-supervised constitution of 1979, no state was allowed to have any civil police. Though democracy was restored in Nigeria in 1999, religious differences along with conflicts over who will control revenues from the oil resources continue to present problems before the Nigerian federation. Local ethnic communities resist centralised control of the oil resources. Thus, Nigeria is an example of overlap of religious, ethnic and economic differences among the units.

Check your progress ± Who decides the powers of the central government in a federation? ± How are conflicts between the central government and the States resolved in a federation? 2022-23 2022-23 157 Chapter 7: Federalism FEDERALISM IN THE INDIAN CONSTITUTION Even before Independence, most leaders of our national movement were aware that to govern a large country like ours, it would be necessary to divide the powers between provinces and the central government. There was also awareness that Indian society had regional diversity and linguistic diversity. This diversity needed recognition. People of different regions and languages had to share power and in each region, people of that region should govern themselves. This was only logical if we wanted a democratic government. The only question was what should be the extent of powers to be enjoyed by the regional governments. In view of the agitation of the Muslim League for greater representation to the Muslims, a compromise formula to give very large powers to the regions was discussed during the negotiations before Partition. Once the decision to partition India was taken, the Constituent Assembly decided to frame a government that would be based on the principles of unity and cooperation between the centre and the States and separate powers to the States. The most important feature of the federal system adopted by the Indian Constitution is the principle that relations between the States and the centre would be based on cooperation. Thus, while recognising diversity, the Constitution emphasised unity. Do you know for example, that the Constitution of India does not even mention the word federation? This is how the Constitution describes India — Article 1: (1) India, that is Bharat, shall be a Union of States. (2) The States and the territories thereof shall be as specified in the First Schedule. Αφτερ αλλ, τηε πυρποσε οφ λιπινγ

τογετηερ μυστ βε τηατ αλλ οφ υσ αρε ηαππγ ανδ μυστ μακε εαχη οτηερ βε ηαππγ. 2022-23 2022-23 158 Indian Constitution at Work Division of Powers There are two sets of government

created by the Indian Constitution: one for the entire nation called the union government (central government) and one for each unit or State called the State government. Both of these have a constitutional status and clearly identified area of activity. If there is any dispute about which powers come under the control of the union and which under the States, this can be resolved by the Judiciary on the basis of the constitutional provisions. The Constitution clearly demarcates subjects, which are under the exclusive domain of the Union and those under the States. (Study the chart given on the next page carefully. It shows how powers are distributed between the centre and the States.) One of the important aspects of this division of powers is that economic and financial powers are centralised in the hands of the central government by the Constitution. The States have immense responsibilities but very meagre revenue sources. Check your progress ± Do you think that there is a need for mentioning Residuary powers separately? Why? ± Why do the States feel dissatisfied about the division of powers? I φεελ τηατ Στατες ουολδ ηαπε περψ λιττλε μονεψ οφ τηειρ οων. Ηοω χαν τηεψ μαναγε τηειρ αφφαιρς? Ιτ ις λικε σομε φαμιλιεσ ωηερε τηε μονεψ ις ωιτη τηε ηυσβανδ ανδ τηε ωιφε ηασ το μαναγε τηε ηουσεηολδ. 2022-23 2022-23 159 Chapter 7: Federalism Constitution of India Union List Includes subjects like, ± Defence ± Atomic Energy ± Foreign Affairs ± War and Peace ± Banking ± Railways ± Post and Telegraph ± Airways ± Ports ± Foreign Trade ± Currency & Coinage Union Legislature alone can make laws on these matters. State List Includes subjects like ± Agriculture ± Police ± Prison ± Local Government ± Public Heath ± Land ± Liquor ± Trade and Commerce ± Livestock and Animal Husbandry ± State Public Services Normally only the State Legislature can make laws on these matters Concurrent List Includes subjects like, ± Education ± Transfer of Property other than Agricultural land ± Forests ± Trade Unions ± Adulteration ± Adoption and Succession Both Union and State Legislature alone can make laws on these matters. Residuary Powers Include all other matters not mentioned in any of the Lists. ± Cyber Laws Union Legislature alone has the power to legislate on such matters 2022-23 2022-23 160 Indian Constitution at Work FEDERALISM WITH A STRONG CENTRAL GOVERNMENT It is generally accepted that the Indian Constitution has created a strong central government. India is a country of continental dimensions with immense diversities and social problems. The framers of the Constitution believed that we required a federal constitution that would accommodate diversities. But they also wanted to create a strong centre to stem disintegration and bring about social and political change. It was necessary for the centre to have such powers because India at the time of independence was not only divided into provinces created by the British; but there were more than 500 princely states which had to be integrated into existing States or new States had to be created. “Let me tell my honourable Friends in the House that the drift... in all constitutions has been towards the centre... because of circumstances that have now come into being that the States have become, ...federal or unitary, welfare states from being Police States and the ultimate responsibility as for the economic well-being of the country has become the paramount responsibility of the centre.” T.T. Krishnamachari, CAD, Vol. XI, p. 955-956, 25 November 1949 Besides the concern for unity, the makers of the Constitution also believed that the socio-economic problems of the country needed to be handled by a strong central government in cooperation with the States. Poverty, illiteracy and inequalities of wealth were some of the problems that required planning and coordination. Thus, the concerns for unity and development prompted the makers of the Constitution to create a strong central government. Let us look at the important provisions that create a strong central government: 2022-23 2022-23 161 Chapter 7: Federalism ± The very existence of a State including its territorial integrity is in the hands of Parliament. The Parliament is empowered to ‘form a new State by separation of territory from any State or by uniting two or more States...’. It can also alter the boundary of any State or even its name. The Constitution provides for some safeguards by way of securing the view of the concerned State legislature. ± The Constitution has certain very powerful

emergency provisions, which can turn our federal polity into a highly centralised system once emergency is declared. During an emergency, power becomes lawfully centralised. Parliament also assumes the power to make laws on subjects within the jurisdiction of the States. ± Even during normal circumstances, the central government has very effective financial powers and responsibilities. In the first place, items generating revenue are under the control of the central government. Thus, the central government has many revenue sources and the States are mostly dependent on the grants and financial assistance from the centre. Secondly, India adopted planning as the instrument of rapid economic progress and development after independence. Planning led to considerable centralisation of economic decision making. Planning commission appointed by the union government is the coordinating machinery that controls and supervises the resources management of the States. Besides, the Union government uses its discretion to give grants and loans to States. This distribution of economic resources is considered lopsided and has led to charges of discrimination against States ruled by an opposition party. ± As you will study later, the Governor has certain powers to recommend dismissal of the State government and the dissolution of the Assembly. Besides, even in normal circumstances, the Governor

Ι νοω υνδερστανδ ωηψ ουρ Χονστιτυτιον ις νοτ ονλψ αβουτ βορροωινγ φρομ οτηερς. Ιτ μυστ ηαπε δεσιγνεδ φεδεραλισμ αχχορδινγ το ουρ νεεδς. 2022-23 2022-23 162 Indian Constitution at Work has the power to reserve a bill passed by the State legislature, for the assent of the President. This gives the central government an opportunity to delay the State legislation and also to examine such bills and veto them completely. ± There may be occasions when the situation may demand that the central government needs to legislate on matters from the State list. This is possible if the move is ratified by the Rajya Sabha. The Constitution clearly states that executive powers of the centre are superior to the executive powers of the States. Furthermore, the central government may choose to give instructions to the State government. The following extract from an article of the Constitution makes this clear. Article 257 (1): The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. ± You have already studied in the chapter on executive that we have an integrated administrative system. The all-India services are common to the entire territory of India and officers chosen for these services serve in the administration of the States. Thus, an IAS officer who becomes the collector or an IPS officer who serves as the Commissioner of Police, are under the control of the central government. States can neither take disciplinary action nor can they remove these officers from service. Οη! Τηε χεντραλ γοπερνμεντ αππεαρς το με το βε αλλ- ποωερφυλ. Δοντ τηε Στατες χομπλαιν αβουτ ιτ? 2022-23 2022-23 163 Chapter 7: Federalism ± Articles 33 and 34 authorise the Parliament to protect persons in the service of the union or a state in respect of any action taken by them during martial law to maintain or restore order. This provisions further strengthens the powers of the union government. The Armed Forces Special Powers Act has been made on the basis of these provisions. This Act has created tensions between the people and the armed forces on some occasions. Check your progress ± Give two reasons for the claim that our Constitution has a unitary bias. ± Do you think that: ✓ a strong centre makes the States weak? ✓ strong States will weaken the centre? CONFLICTS IN INDIA'S FEDERAL SYSTEM In the previous section, we have seen that the Constitution has vested very strong powers in the centre. Thus, the Constitution recognises the separate identity of the regions and yet gives more powers to the centre. Once the principle of identity of the State is accepted, it is quite natural that the States would expect a greater role and powers in the governance of the State and the country as a whole. This leads to various demands from the States. From time to time, States have demanded that they should be given more powers and more autonomy. This leads to tensions and conflicts in the

relations between the centre and the States. While the legal disputes between the centre and the States (or between States) can be resolved by the judiciary, demands for autonomy are of political nature and need to be resolved through negotiations. Centre-State Relations The Constitution is only a framework or a skeleton, its flesh and blood is provided by the actual processes of politics. Hence federalism 2022-23 2022-23 164 Indian Constitution at Work in India has to a large extent been influenced by the changing nature of the political process. In the 1950s and early 1960s the foundation of our federalism was laid under Jawaharlal Nehru. It was also a period of Congress dominance over the centre as well as the States. Except on the issue of formation of new States, the relations between the centre and the States remained quite normal during this period. The States were hopeful that they would be making progress with the help of the grants-in-aid from the centre. Besides, there was considerable optimism about the policies of socio-economic development designed by the centre. In the middle of the 1960s Congress dominance declined somewhat and in a large number of States opposition parties came to power. It resulted in demands for greater powers and greater autonomy to the States. In fact, these demands were a direct fallout of the fact that different parties were ruling at the centre and in many States. So, the State governments were protesting against what they saw as unnecessary interference in their governments by the Congress government at the centre. The Congress too, was not very comfortable with the idea of dealing with governments led by opposition parties. This peculiar political context gave birth to a discussion about the concept of autonomy under a federal system. Finally, since the 1990s, Congress dominance has largely ended and we have entered an era of coalition politics especially at the centre. In the States too, different parties, both national and regional, have come to power. This has resulted in a greater say for the States, a respect for diversity and the beginning of a more mature federalism. Thus, it is in the second phase that the issue of autonomy became very potent politically. Demands for Autonomy Many States and even many political parties have, from time to time, demanded that States should have more autonomy vis-à-vis the central government. However,

Τηισ ις θυιτε ιντερεστινγ. Σο, λαωσ ανδ χονστιτυτιονς αλονε δο νοτ δεχιδε επερψτηινγ. Αφτερ αλλ, αχτυαλ πολιτιχς δεχιδεσ της νατυρε οφ ουρ γοπερνμεντ! 2022-23 2022-23 165 Chapter 7: Federalism ‘autonomy’ refers to different things for different States and parties. ± Sometimes, these demands expect that the division of powers should be changed in favour of the States and more powers and important powers be assigned to the States. Many States (Tamil Nadu, Punjab, West Bengal) and many parties (DMK, Akali Dal, CPI-M) have made demands of autonomy from time to time. ± Another demand is that States should have independent sources of revenue and greater control over the resources. This is also known as financial autonomy. In 1977, the Left Front Government in West Bengal brought out a document demanding a restructuring of centre-State relations in India. In the autonomy demands of Tamil Nadu and Punjab also, there was an implicit support to the idea of greater financial powers. ± The third aspect of the autonomy demands relates to administrative powers of the States. States resent the control of the centre over the administrative machinery. ± Fourthly, autonomy demands may also be related to cultural and linguistic issues. The opposition to the domination of Hindi (in Tamil Nadu) or demand for advancing the Punjabi language and culture are instances of this. Some States also feel that there is a domination of the Hindi-speaking areas over the others. In fact, during the decade of 1960s, there were agitations in some States against the imposition of the Hindi language. Ψεσ, Ι κνωω τηατ Ηινδι ις Ινδια□σ οφφιχιαλ λαγγυαγε. Βυτ μανψ οφ μψ φριενδς φρομ διφφερεντ παρτσ οφ της χουντρψ δον□τ κνωω Ηινδι. During discussion on the national language in the Constituent Assembly, Nehru had to appeal to the Hindi-speaking provinces to show greater tolerance towards others. Don’t spare me Shankar, p.24 READ A CARTOON Shankar. Copyright: Children’s Book Trust. 18 September 1949 2022-23 2022-23 166 Indian Constitution at Work Role of



Governors and President's Rule The role of Governors has always been a controversial issue between the States and the central government. The Governor is not an elected office-holder. Many Governors have been retired military officers or civil servants or politicians. Besides, the Governor is appointed by the central government and therefore, actions of the Governor are often viewed as interference by the Central government in the functioning of the State government. When two different parties are in power at the centre and the State, the role of the Governor becomes even more controversial. The Sarkaria Commission that was appointed by the central government (1983; it submitted its report in 1988) to examine the issues relating to centre-State relations, recommended that appointments of Governors should be strictly non-partisan. Powers and role of the Governor become controversial for one more reason. One of the most controversial articles in the Constitution is Article 356, which provides for President's rule in any State. This provision is to be applied, when 'a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.' It results in the takeover of the State government by the Union government. The President's proclamation has to be ratified by Parliament. President's rule can be extended till three years. The Governor has the power to recommend the dismissal of the State government and suspension or dissolution of State assembly. This has led to many conflicts. In some cases, State governments were dismissed even when they had a majority in the legislature, as had happened in Kerala in 1959 or without testing their majority, as happened in several other States after 1967. Some cases went to the Supreme Court and the Court has ruled that constitutional validity of the decision to impose President's rule can be examined by the judiciary. READ A CARTOON "When Nehru was appointing governors, some were reluctant to quit ministerial chairs." Don't spare me Shankar, p.89 Shankar. Copyright: Children's Book Trust. 27 April 1952 2022-23 2022-23 167 Chapter 7: Federalism Article 356 was very sparingly used till 1967. After 1967 many States had nonCongress governments and the Congress was in power at the centre. The centre has often used this provision to dismiss State governments or has used the office of the Governor to prevent the majority party or coalition from assuming office. For instance, the central government removed elected governments in Andhra Pradesh and Jammu and Kashmir in the decade of 1980s. Demands for New States The other dimension of tension in our federal system has been the demand to create new States. The national movement not only created a pan-Indian national unity; it also generated distinct unity around a common language, region and culture. Our national movement was also a movement for democracy. Therefore, in the course of the national movement itself, it was decided that as far as possible, States would be created on the basis of common cultural and linguistic identity. This ultimately led to the demand for the creation of READ A CARTOON Toppling the State governments. Everyone loves to play this game! READ A CARTOON Flood of demands for creating new States Shankar. Copyright: Children's Book Trust. R K Laxman in The Times of India. 26 July 1953 2022-23 2022-23 168 Indian Constitution at Work linguistic States after Independence. In December 1953, the States Reorganisation Commission was set up and it recommended the creation of linguistic States, at least for the major linguistic groups. In 1956, reorganisation of some States took place. This saw the beginning of the creation of linguistic States and the process is still continuing. Gujarat and Maharashtra were created in 1960; Punjab and Haryana were separated from each other in 1966. Later, the North Eastern region was reorganised and new States like Manipur, Tripura, Meghalaya, Mizoram and Arunachal Pradesh were created. Activity Make a list of the States of India and find out the year in which each of the States was created. In 2000, some of the larger States were further divided both to meet the demands for a separate State as well as to meet the need for greater administrative efficiency. Thus Madhya Pradesh, Uttar Pradesh and Bihar were divided to create three new States. They are: Chhattisgarh, Uttarakhand and Jharkhand respectively. In 2014, the State of Telangana was formed by dividing Andhra Pradesh. Some regions and linguistic groups are still struggling for separate Statehood like Vidarbha in Maharashtra. Interstate Conflicts While the

States keep fighting with the centre over autonomy and other issues like the share in revenue resources, there have been many instances of disputes between two States or among more than two States. It is true that the judiciary acts as the arbitration mechanism on disputes of a legal nature but these disputes are in reality not just legal. They have political implications and therefore they can best be resolved only through negotiations and mutual understanding. So, federalism is all about conflicts! First, we talked about Centre-State conflicts and now conflict among States. Can't we live together peacefully? 2022-23 2022-23 169 Chapter 7: Federalism

Broadly, two types of disputes keep recurring. One is the border dispute. States have certain claims over territories belonging to neighbouring States. Though language is the basis of defining boundaries of the States, often border areas would have populations speaking more than one language. So, it is not easy to resolve this dispute merely on the basis of linguistic majority. One of the longstanding border disputes is the dispute between Maharashtra and Karnataka over the city of Belgaum. Manipur and Nagaland too, have a long-standing border dispute. The carving out of Haryana from the erstwhile State of Punjab has led to dispute between the two States not only over border areas, but over the capital city of Chandigarh. This city today houses the capital of both these States. In 1985, the then Prime Minister Rajiv Gandhi reached an understanding with the leadership of Punjab. According to this understanding, Chandigarh was to be handed over to Punjab. But this has not happened yet. While border disputes are more about sentiment, the disputes over the sharing of river waters are even more serious, because they are related to problems of drinking water and agriculture in the concerned States. You might have heard about the Cauvery water dispute. This is a major issue between Tamil Nadu and Karnataka. Farmers in both the States are dependent on Cauvery waters. Though there is a river water tribunal to settle water disputes, this dispute has reached the Supreme Court. In another similar dispute Gujarat, Madhya Pradesh and Maharashtra are battling over sharing the waters of Narmada river. Rivers are a major resource and therefore, disputes over river waters test the patience and cooperative spirit of the States. Activity Collect information about at least one dispute about river waters involving two or more States. Ψεσ, χονφλιχτ οπερ Γοπερνορσ, οπερ λανγυαγε, οπερ βορδερσ ανδ οπερ ωατερ□.ανδ ψετ ωε μαναγε το λιπε τογετηερ!

2022-23 2022-23 170 Indian Constitution at Work SPECIAL PROVISIONS The most extra-ordinary feature of the federal arrangement created in India is that many States get a differential treatment. We have already noted in the chapter on Legislature that the size and population of each State being different, an asymmetrical representation is provided in the Rajya Sabha. While ensuring minimum representation to each of the smaller States, this arrangement also ensures that larger States would get more representation. In the case of division of powers, too, the Constitution provides a division of powers that is common to all the States. And yet, the Constitution has some special provisions for some States given their peculiar social and historical circumstances. Most of the special provisions pertain to the north eastern States (Assam, Nagaland, Arunachal Pradesh, Mizoram, etc.) largely due to their sizeable indigenous tribal population with a distinct history and culture. However, these provisions have not been able to stem alienation and the insurgency in parts of the region. Special provisions also exist for hilly States like Himachal Pradesh and some other States like Andhra Pradesh, Goa, Gujarat, Maharashtra Sikkim and Telangana. Jammu and Kashmir The other State which had a special status was Jammu and Kashmir (J&K) (Art. 370). Jammu and Kashmir was one of the large princely States, which had the option of joining India or Pakistan or remaining independent. Check your progress ± Why do States want more autonomy? ± What is the difference between autonomy and secession? I now understand what they meant by 'intelligent and balanced design' in the first chapter. 2022-23 2022-23 171 Chapter 7: Federalism

However, immediately after independence in October, 1947 Pakistan sent tribal infiltrators from its side to capture Kashmir. This forced the Maharaja Hari Singh to ask for Indian help and acceded to the Indian Union. Many of the Muslim majority areas in the Western and Eastern parts joined Pakistan but J&K was an exception. Under

these circumstances, it was given much greater autonomy by the Constitution. According to Article 370, the concurrence of the State was required for making any laws in matters mentioned in the Union and Concurrent lists. This was different from the position of other states. In the case of the other States, the division of powers as listed through three lists automatically applies. In the case of Jammu and Kashmir, the central government had only limited powers and other powers listed in the Union list and Concurrent list could be used only with the consent of the State government. This gave greater autonomy to the State of Jammu and Kashmir. Earlier, there was a constitutional provision that allowed the President, with the concurrence of the State government, to specify which parts of the Union list should apply to the State. The President had issued two Constitutional orders in concurrence with the government of J&K making large parts of the Constitution applicable to the State. As a result, though J&K had a separate constitution and a flag, the Parliament's power to make laws on subjects in the Union List was fully accepted. The remaining difference between the other States and the State of J&K were that no emergency due to internal disturbances could be declared in J&K without the concurrence of the State. The Union government could not impose a financial emergency in the State and the Directive Principles did not apply in J&K. Amendments to the Indian Constitution (under Art. 368) could apply in concurrence with the government of J&K. At present, the special status given under 370 no longer exists. By the Jammu and Kashmir reorganisation Act 2019, the State has been bifurcated into two Union Territories viz., (i) Jammu and Kashmir and (ii) Ladakh. The new arrangement has come into effect from 31 October, 2019.

2022-23 172 Indian Constitution at Work Conclusion Federalism is like a rainbow, where each colour is separate, yet together they make a harmonious pattern. Federalism has to continuously maintain a difficult balance between the centre and the States. No legal or institutional formula can guarantee the smooth functioning of a federal polity. Ultimately, the people and the political process must develop a culture and a set of values and virtues like mutual trust, toleration and a spirit of cooperation. Federalism celebrates both unity as well as diversity. National unity cannot be built by streamlining differences. Such forced unity only generates greater social strife and alienation and tends finally to destroy unity. A responsive polity sensitive to diversities and to the demands for autonomy can alone be the basis of a cooperative federation.

Exercises 1. From the list of following events which ones would you identify with the functioning of federalism? Why?

- ✓ The Centre on Tuesday announced Sixth Schedule status to GNLG-led Darjeeling Gorkha Hill Council, which would ensure greater autonomy to the governing body in the Hill district of West Bengal. A tripartite Memorandum of Settlement was signed in New Delhi between the Centre, West Bengal government and the Subhas Ghising-led Gorkha National Liberation Front (GNLF) after two days of hectic deliberations.
- ✓ Government for action plan for rain-hit States: Centre has asked the rain-ravaged States to submit detailed plans for reconstruction to enable it to respond to their demands for extra relief expeditiously.
- ✓ New Commissioner for Delhi: The Capital is getting a new municipal commissioner. Confirming this, present MCD Commissioner Rakesh Mehta said he has received his transfer orders and that he is likely to be replaced by IAS officer Ashok Kumar, who is serving as the Chief Secretary in Arunachal Pradesh. Mehta, a 1975 batch IAS officer, has been heading the MCD for about three-and-a-half years.

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- ✓ CU Status for Manipur University: Rajya Sabha on Wednesday passed a Bill to convert the Manipur University into a Central University with the Human Resource Development Minister promising such institutions in the North Eastern States of Arunachal Pradesh, Tripura and Sikkim as well.
- ✓ Funds released: The Centre has released Rs. 553 lakh to Arunachal Pradesh under its rural water supply scheme. The first instalment was of Rs. 466.81 lakh.
- ✓ We'll teach the Biharis how to live in Mumbai: Around 100 Shiv Sainiks stormed J. J. Hospital, disrupted daily operations, raised slogans and threatened to take matters into their own hands if no action was taken against non-Maharashtrian students.
- ✓ Demand for dismissal of

Government: The Congress Legislature Party (CLP) in a representation submitted to State Governor recently, has demanded dismissal of the ruling Democratic Alliance of Nagaland (DAN) government for its alleged financial mismanagement and embezzlement of public money. ✓ NDA government asks naxalites to surrender arms: Amid a walkout by opposition RJD and its allies Congress and CPI (M), the Bihar government today appealed to the naxalites to shun the path of violence and reaffirmed its pledge to root out unemployment to usher in a new era of development in Bihar.

2. Think which of the following statements would be correct. State why. ✓ Federalism enhances the possibility of people from different regions to interact without the fear of one's culture being imposed upon them by others. ✓ Federal system will hinder easier economic transaction between two different regions that have distinct types of resources. ✓ A federal system will ensure that the powers of those at the centre will remain limited.

3. Based on the first few articles of Belgian constitution – given below – explain how federalism is visualised in that country. Try and write a similar Article for the Constitution of India.

Title I: On Federal Belgium, its components and its territory.

2022-23 2022-23 174 Indian Constitution at Work Article 1 : Belgium is a Federal State made up of communities and regions. Article 2 : Belgium is made up of three communities: The French Community, the Flemish Community and the German Community. Article 3 : Belgium is made up of three regions: The Walloon region, the Flemish region and the Brussels region. Article 4 : Belgium has four linguistic regions: The Frenchspeaking region, the Dutch-speaking region, the bilingual region of Brussels Capital and the German-speaking region. Each «commune» (county borough) of the Kingdom is part of one of these linguistic regions. .... Article 5 : The Walloon region is made up of the following provinces: The Walloon Brabant, Hainault, Liege, Luxemburg and Namur. The Flemish region is made up of the following provinces: Antwerp, the Flemish Brabant, West Flanders, East Flanders and Limburg. ....

4. Imagine that you were to rewrite the provisions regarding federalism. Write an essay of not more than 300 words making your suggestions about: a. division of powers among the centre and the States, b. distribution of financial resources, c. methods of resolving inter-State disputes and d. appointment of Governors

5. Which of the following should be the basis for formation of a State? Why? a. Common Language b. Common economic interests c. Common religion d. Administrative convenience

6. Majority of people from the States of north India – Rajasthan, Madhya Pradesh, Uttar Pradesh, Bihar—speak Hindi. If all these States are combined to form one State, would it be in tune with the idea of federalism? Give arguments.

7. List four features of the Indian Constitution that give greater power to the central government than the State government.

8. Why are many States unhappy about the role of the Governor?

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9. President's rule can be imposed in a State if the government is not being run according to the provisions of the Constitution. State whether any of the following conditions are a fit case for imposition of President's rule in the State. Give reasons. ✓ two members of the State legislative assembly belonging to the main opposition party have been killed by criminals and the opposition is demanding dismissal of the State government. ✓ Kidnapping of young children for ransom is on rise. The number of crimes against women are increasing. ✓ No political party has secured majority in the recent elections of the State Legislative Assembly. It is feared that some MLAs from the other parties may be lured to support a political party in return for money. ✓ Different political parties are ruling in the State and at the centre and they are bitter opponents of each other. ✓ More than 2000 people have been killed in the communal riots. ✓ In the water dispute between the two States, one State government refused to follow the decision of the Supreme Court.

10. What are the demands raised by States in their quest for greater autonomy?

11. Should some States be governed by special provisions? Does this create resentment among other States? Does this help in forging greater unity among the regions of the country?

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INTRODUCTION In a democracy, it is not sufficient to have an elected government at the centre and

at the State level. It is also necessary that even at the local level, there should be an elected government to look after local affairs. In this chapter, you will study the structure of local government in our country. You will also study the importance of the local governments and ways to give them independent powers. After studying this chapter, you will know: ± the importance of local government bodies; ± the provisions made by the 73rd and 74th amendments; and ± functions and responsibilities of the local government bodies.

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### WHY LOCAL GOVERNMENTS?

Geeta Rathore belongs to Jamonia Talab Gram Panchayat, Sehore district, Madhya Pradesh. She was elected Sarpanch in 1995 from a reserved seat; but in 2000, the village people rewarded her for her admirable work by electing her again - this time from a non-reserved seat. From a housewife, Geeta has grown into a leader displaying political farsightedness - she has harnessed the collective energy of her Panchayat to renovate water tanks, build a school building, construct village roads, fight against domestic violence and atrocities against women, create environmental awareness, and encourage afforestation and water management in her village. — Panchayati Raj Update, Vol. XI, No. 3, February 2004.

There is another story of yet another woman achiever. She was the President (Sarpanch) of a Gram Panchayat of Vengaivasal village in Tamil Nadu. In 1997, the Tamil Nadu government allotted two hectares of land to 71 government employees. This piece of land fell within the vicinity of this Gram Panchayat. On the instructions of higher authorities the District Collector of Kancheepuram directed the President of the Gram Panchayat to pass a resolution endorsing the allotment of the said land for the purpose already decided. The President and the Gram Panchayat refused to pass such an order and the Collector issued an order to acquire the land. The Gram Panchayat filed a writ petition in the Madras High Court against the Collector's action. The single judge bench of the High Court upheld the Collector's order and ruled that there was no need to take the Panchayat's consent. The Panchayat appealed to the Division bench against the single judge's order. In its order, the Division Bench reversed the order of the single judge. The judges held that the government order amounted to not only infringement of the powers of the Panchayats but a gross violation of the constitutional status of the Panchayats. — Panchayati Raj Update, Vol. XII, June 2005.

Both these stories are not isolated incidents. They are representative of a larger transformation that is taking place across India especially after constitutional status was accorded to local government institutions in 1993.

Βυτ ἀρεν τ τηρε χασεσ οφ μαλε μεμβερσ οφ της πιλλαγε πανχηαψατ ηαρασσινγ της ωομαν Σαρπανχη ιν σομε πλαχεσ? Ωηψ αρε μεν νοτ ηαππψ ωηεν ωομεν ασσυμε ποσιτιονσ οφ ρεσπονσιβιλιτυ? 2022-23 2022-23 178

### Indian Constitution at Work

Local government is government at the village and district level. Local government is about government closest to the common people. Local government is about government that involves the day-to-day life and problems of ordinary citizens. Local government believes that local knowledge and local interest are essential ingredients for democratic decision making. They are also necessary for efficient and people-friendly administration. The advantage of local government is that it is so near the people. It is convenient for the people to approach the local government for solving their problems both quickly and with minimum cost. In the story of Geeta Rathore, we noticed that she was able to bring about a significant change in Jamonia Talab because of her pro-active role as Sarpanch of the Gram Panchayat. Vengaivasal village is able to still retain its land and the right to decide what to do with it because of the relentless efforts of its Gram Panchayat President and members. So, local governments can be very effective in protecting the local interests of the people. Democracy is about meaningful participation. It is also about accountability. Strong and vibrant local governments ensure both active participation and purposeful accountability. Geeta Rathore's story is one of committed participation. Vengaivasal village Gram Panchayat's relentless efforts to secure its rights over its own land were an example of a mission to ensure accountability. It is at the level of local government that common citizens can be involved in decision making concerning their lives, their needs and above all their development. It is

necessary that in a democracy, tasks, which can be performed locally, should be left in the hands of the local people and their representatives. Common people are more familiar with their local government than with the government at the State or national level. They are also more concerned with what local government does or has failed to do as it has a direct bearing and impact on

Ισ ιτ ποσσιβλε τηατ ωε ονλψ ηαδ γοπερνμεντς ατ τηε λοχαλ λεπελ

ανδ α χοορδινατινγ βοδψ ατ τηε νατιοναλ λεπελ? Ι τηνκ Μαηατμα Γανδηι αδποχατεδ

σομε ιδεασ αλονγ τηεσε λινεσ. 2022-23 2022-23 179 Chapter 8: Local Governments their day-to-day life. Thus, strengthening local government is like strengthening democratic processes. Check your progress ± How does local government strengthen democracy? ± In the example given above, what

do you think the Government of Tamil Nadu should have done? GROWTH OF LOCAL GOVERNMENT IN INDIA Let us now discuss how local government has grown in India and what our Constitution says

about it. It is believed that self-governing village communities existed in India from the earliest times in the form of 'sabhas' (village assemblies). In the course of time, these village bodies took the shape of Panchayats (an assembly of five persons) and these Panchayats resolved issues at the village level. Their role and functions kept on changing at different points of time. In modern times, elected local

government bodies were created after 1882. Lord Rippon, who was the Viceroy of India at that time, took the initiative in creating these bodies. They were called the local boards. However, due to slow progress in this regard, the Indian National Congress urged the government to take necessary steps to make all local bodies more effective. Following the Government of India Act 1919, village

panchayats were established in a number of provinces. This trend continued after the Government of India Act of 1935. During India's freedom movement, Mahatma Gandhi had strongly pleaded for decentralisation of economic and political power. He believed that strengthening village panchayats

was a means of effective decentralisation. All development initiatives must have local involvement in Ι δοντ κνωω αβουτ τηε παστ, βυτ Ι συσπεχτ τηατ α νον-ελεχτεδ πιλλαγε πανχηαψατ

ωουλδ νατυραλλψ βε δομινατεδ βψ τηε πιλλαγε ελδερς, τηε ριχη ανδ μεν

φρομ υπερ στρατα. 2022-23 2022-23 180 Indian Constitution at Work order to be successful.

Panchayats therefore were looked upon as instruments of decentralisation and participatory

democracy. Our national movement was concerned about the enormous concentration of powers in the hands of the Governor General sitting at Delhi. Therefore, for our leaders, independence meant an assurance that there will be decentralisation of decision making, executive and administrative powers. The independence of India should mean the independence of the whole of

India...Independence must begin at the bottom. Thus every village will be a republic... It follows

therefore that every village has to be self-sustained and capable of managing its affairs. In this structure composed of innumerable villages, there will be everwidening, ever-ascending circles. Life

will be a pyramid with the apex sustained by the bottom - Mahatma Gandhi When the Constitution was prepared, the subject of local government was assigned to the States. It was also mentioned in

the Directive Principles as one of the policy directives to all governments in the country. As you have read in Chapter 2, being a part of the Directive Principles of State Policy, this provision of the

Constitution was non-justiciable and primarily advisory in its nature. It is felt that the subject of local government including panchayats did not receive adequate importance in the Constitution. Do you

know why this happened? A few reasons can be advanced here. Firstly, the turmoil due to the Partition resulted in a strong unitary inclination in the Constitution. Nehru himself looked upon

extreme localism as a threat to unity and integration of the nation. Secondly, there was a powerful voice in the Constituent Assembly led by Dr. B.R. Ambedkar which felt that the faction and caste-

ridden nature of rural society would defeat the noble purpose of local government at the rural level. However, nobody denied the importance of people's participation in development planning. Many

members of the Constituent Assembly wanted Village Panchayats to be the basis of democracy 2022-23 2022-23 181 Chapter 8: Local Governments in India but they were concerned about factionalism

and many other ills present in the villages. "... in the interests of democracy, the villages maybe trained in the art of self-government, even autonomy... We must be able to reform the villages and introduce democratic principles of government there..." Local Governments in Independent India

Local governments got a fillip after the 73rd and 74th Constitution Amendment Acts. But even before that, some efforts in the direction of developing local government bodies had already taken place. First in the line was the Community Development Programme in 1952, which sought to promote people's participation in local development in a range of activities. In this background, a three-tier Panchayati Raj system of local government was recommended for the rural areas. Some States (like Gujarat, Maharashtra) adopted the system of elected local bodies around 1960. But in many States those local bodies did not have enough powers and functions to look after the local development. They were very much dependent on the State and central governments for financial assistance. Many States did not think it necessary to establish elected local bodies. In many instances, local bodies were dissolved and the local government was handed over to government officers. Many States had indirect elections to most local bodies. In many States, elections to the local bodies were postponed from time to time.

Ωηψ αρε πεοπλε αφραιδ οφ φαχτιοναλισμ ατ τηε πιλλαγε λεπελ  
 ωην αλλ τηε πολιτιχαλ παρτιες ανδ οργανισατιονς ορ επεν μψ χλασσ  
 ηας φαχτιονς? Αρε γρουπς ανδ φαχτιονς αλωαψς σο βαδ? Ananthasayanam Ayyangar, CAD, Vol. VII, p. 428, 17 November 1948

2022-23 2022-23 182 Indian Constitution at Work After 1987, a thorough review of the functioning of local government institutions was initiated. In 1989 the P.K.Thungon Committee recommended constitutional recognition for the local government bodies. A constitutional amendment to provide for periodic elections to local government institutions, and enlistment of appropriate functions to them, along with funds, was recommended. Check your progress ± Both Nehru and Dr. Ambedkar were not very enthusiastic about local government bodies. Did they have similar objections to local governments? ± What was the constitutional provision about local governments before 1992? ± Which were the States that had established local government during the 1960s and 1970s ?

### 73RD AND 74TH AMENDMENTS

In 1989, the central government introduced two constitutional amendments. These amendments aimed at strengthening local governments and ensuring an element of uniformity in their structure and functioning across the country. The Constitution of Brazil has created States, Federal Districts and Municipal Councils. Each of these is assigned independent powers and jurisdiction. Just as the Republic cannot interfere in the affairs of the States (except on grounds provided by the constitution), states are prohibited from interfering in the affairs of the municipal councils. This provision protects the powers of the local government. Later in 1992, the 73rd and 74th constitutional amendments were passed by the Parliament. The 73rd Amendment is about rural local governments (which are also known as Panchayati Raj Institutions 2022-23 2022-23 183 Chapter 8: Local Governments or PRIs) and the 74th amendment made the provisions relating to urban local government (Nagarpalikas). The 73rd and 74th Amendments came into force in 1993. We have noticed earlier that local government is a 'State subject'. States are free to make their own laws on this subject. But once the Constitution was amended, the States had to change their laws about local bodies in order to bring these in conformity with the amended Constitution. They were given one year's time for making necessary changes in their respective State laws in the light of these amendments.

### 73rd Amendment

Let us now examine the changes brought about by the 73rd amendment in Panchayati Raj institutions. Three Tier Structure All States now have a uniform three tier Panchayati Raj structure. At the base is the 'Gram Panchayat'. A Gram Panchayat covers a village or group of villages. The intermediary level is the Mandal (also referred to as Block or Taluka). These bodies are called Mandal or Taluka Panchayats. The intermediary level body need not be constituted in smaller States. At the apex is the Zilla Panchayat covering the entire rural area of the District. The amendment also made a provision for the mandatory creation of the Gram Sabha. The Gram Sabha would comprise all the adult

members registered as voters in the Panchayat area. Its role and functions are decided by State legislation. Elections All the three levels of Panchayati Raj institutions are elected directly by the people. The term of each Panchayat body is five years. If the State government dissolves the Panchayat before the end of its five year term, Δοεσ α Γραμ σαβηα μεαν της δεμοκρατιχ φορυμ οφ της εντιρε πιλλαγε? Δο Γραμ σαβηασ αχτυαλλψ μεετ ρεγυλαρλψ? Ιφ Ι υνδερστανδ της χορρεχτλψ, της χεντρε φορχεδ λοχαλ γοπερνμεντ ρεφορμσ ον της Στατες. Τηισ ις φυννψ: ψου αδοπτ δεχεντραλισατιον τηρουγη α χεντραλισεδ προχεσσ! 2022-23 2022-23 184 Indian Constitution at Work fresh elections must be held within six months of such dissolution. This is an important provision that ensures the existence of elected local bodies. Before the 73rd amendment, in many States, there used to be indirect elections to the district bodies and there was no provision for immediate elections after dissolution. Reservations One third of the positions in all panchayat institutions are reserved for women. Reservations for Scheduled Castes and Scheduled Tribes are also provided for at all the three levels, in proportion to their population. If the States find it necessary, they can also provide for reservations for the other backward classes (OBCs). It is important to note that these reservations apply not merely to ordinary members in Panchayats but also to the positions of Chairpersons or 'Adhyakshas' at all the three levels. Further, reservation of one-third of the seats for women is not merely in the general category of seats but also within the seats reserved for Scheduled Castes, Scheduled Tribes and backward castes. This means that a seat may be reserved simultaneously for a woman candidate and one belonging to the Scheduled Castes or Scheduled Tribes. Thus, a Sarpanch would have to be a Dalit woman or an Adivasi woman. Transfer of Subjects Twenty-nine subjects, which were earlier in the State list of subjects, are identified and listed in the Eleventh Schedule of the Constitution. These subjects are to be transferred to the Panchayati Raj institutions. These subjects were mostly linked to development and welfare functions at the local level. The actual transfer of these functions depends upon the State legislation. Each State decides how many of these twenty-nine subjects would be transferred to the local bodies. Ωε ρεαδ ιν της χηαπτερ ον Ελεχτιονσ τηατ της βιλλ φορ ρεσερπατιονσ φορ ωομεν ιν της Ασσεμβλιεσ ανδ ιν της Παρλιαμεντ χουλδ νοτ βε πασσεδ. Ηω χομε ωομεν□σ ρεσερπατιονσ ιν λοχαλ βοδιεσ ωερε αχχεπτεδ σο εασιλψ? 2022-23 2022-23 185 Chapter 8: Local Governments Ωηψ αρε συβφεχτσ ονλψ φορμ Στατε λιστ το βε τρανσφερρεδ? Ωηψ χαν□τ ωε τρανσφερ σομε συβφεχτσ φορμ της Υνιον Λιστ αλσο? Some subjects listed in the eleventh schedule 1. Agriculture, ... 3. Minor irrigation, water management and watershed development. .... 8. Small scale industries, including food processing industries. .... 10. Rural housing. 11. Drinking water. .... 13. Roads, culverts,.... 14. Rural electrification,.... ..... 16. Poverty alleviation programme. 17. Education, including primary and secondary schools. 18. Technical training and vocational education. 19. Adult and non-formal education. 20. Libraries. 21. Cultural activities. 22. Markets and fairs. 23. Health and sanitation, including hospitals, primary health centres and dispensaries. 24. Family welfare. 25. Women and child development. 26. Social welfare, ... 27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes. 28. Public distribution system. ...□ Article 243G. Powers, authority and responsibilities of Panchayats.—....., the Legislature of a State may, by law, endow the Panchayats with such powers and authority..... ..with respect to—.....the matters listed in the Eleventh Schedule. 2022-23 2022-23 186 Indian Constitution at Work The provisions of the 73rd amendment were not made applicable to the areas inhabited by the Adivasi populations in many States of India. In 1996, a separate act was passed extending the provisions of the Panchayat system to these areas. Many Adivasi communities have their traditional customs of managing common resources such as forests and small water reservoirs, etc. Therefore, the new act protects the rights of these communities to manage their resources in ways acceptable to them. For this purpose, more powers are given to the Gram Sabhas



of these areas and elected village panchayats have to get the consent of the Gram Sabha in many respects. The idea behind this act is that local traditions of self government should be protected while introducing modern elected bodies. This is only consistent with the spirit of diversity and decentralisation. State Election Commissioners The State government is required to appoint a State Election Commissioner who would be responsible for conducting elections to the Panchayati Raj institutions. Earlier, this task was performed by the State administration which was under the control of the State government. Now, the office of the State Election Commissioner is autonomous like the Election Commissioner of India. However, the State Election Commissioner is an independent officer and is not linked to nor is this officer under the control of the Election Commission of India. State Finance Commission The State government is also required to appoint a State Finance Commission once in five years. This Commission would examine the financial position of the local governments in the State. It would also review the distribution of revenues between the State and local governments on the one hand and between rural and urban local governments on the other. This innovation ensures that allocation of funds to the rural local governments will not be a political matter.

Στατε γοπερνμεντς τηεμσελπεσ αρε ποορ. Ιν τηε λαστ χηαπτερ ωε ρεαδ τηατ τηεψ ασκ φορ μονεψ φορομ τηε Χεντραλ γοπερνμεντ. Ηωο χαν τηεψ γιπε μονεψ το τηε λοχαλ γοπερνμεντ? 2022-23 187 Chapter 8: Local Governments Activity ± Identify some of the powers that your State government has delegated to panchayats. 74th Amendment As we mentioned earlier, the 74th amendment dealt with urban local bodies or Nagarpalikas. What is an urban area? It is very easy to identify a big city like Mumbai or Kolkata, but it is not so easy to say this about some very small urban areas that are somewhere between a village and a town. The Census of India defines an urban area as having: (i) a minimum population of 5,000; (ii) at least 75 per cent of male working population engaged in non-agricultural occupations and (iii) a density of population of at least 400 persons per sq. km. As per the 2011 Census, about 31% of India's population lives in urban areas. In many ways the 74th amendment is a repetition of the 73rd amendment, except that it applies to urban areas. All the provisions of the 73rd amendment relating to direct elections, reservations, transfer of subjects, State Election Commission and State Finance Commission are incorporated in the 74th amendment also and thus apply to Nagarpalikas. The Constitution also mandated the transfer of a list of functions from the State government to the urban local bodies. These functions have been listed in the Twelfth Schedule of the Constitution.

IMPLEMENTATION OF 73RD AND 74TH AMENDMENTS All States have now passed a legislation to implement the provisions of the 73rd and 74th amendments. During the ten years since these amendments came into force (1994- 2004) most States have had at least two rounds of elections to the local bodies. States like Madhya Pradesh, Rajasthan and a few others have in fact held three elections so far. Χαν Ι ηοπε τηατ τηεσε υρβαν λοχαλ βοδιεσ ωιλλ δο σομετηινγ φορ βεττερ ηουσιινγ φορ τηε σλυμ δωελλερσ? Ορ ατ λεαστ προπιδε τηεμ τοιλετς? 2022-23 188 Indian Constitution at Work Today there are more than 600 Zilla Panchayats, about 6,000 block or intermediary Panchayats, and 2,40,000 Gram Panchayats in rural India and over 100 city Corporations, 1400 town Municipalities and over 2000 Nagar Panchayats in urban India. More than 32 lakh members are elected to these bodies every five years. Of these, at least 13 lakhs are women. In the State Assemblies and Parliament put together we have less than 5000 elected representatives. With local bodies, the number of elected representatives has increased significantly. The 73rd and 74th amendments have created uniformity in the structures of Panchayati Raj and Nagarpalika institutions across the country. The presence of these local institutions is by itself a significant achievement and would create an atmosphere and platform for people's participation in government. The provision for reservation for women at the Panchayats and Nagarpalikas has ensured the presence of a significant number of women in local bodies. As this reservation is also applicable for the positions of Sarpanch and Adhyaksha, a large number of women elected

representatives have come to occupy these positions. There are at least 200 women Adhyakshas in Zilla Panchayats, another 2000 women who are Presidents of the block or taluka panchayats and more than 80,000 women Sarpanchas in Gram Panchayats. This flag is a symbol of the expectations of the people about local governments. People don't want only formal laws. They want genuine implementation of those laws. Write briefly what you think about this slogan — We are the government here in the village!

**READ AN IMAGE** 2022-23 2022-23 189 Chapter 8: Local Governments

2022-23 2022-23 190 Indian Constitution at Work We also have more than 30 women Mayors in Corporations, over 500 women Adhyakshas of Town Municipalities and nearly 650 Nagar Panchayats headed by women. Women have gained more power and confidence by asserting control over resources. Their presence in these institutions has given many women a greater understanding of the working of politics. In many cases, they have brought a new perspective and a greater sensitivity to discussions at local bodies. In many cases, women were unable to assert their presence or were mere proxies for the male members of their family who sponsored their election. Such instances, however are becoming fewer. While reservations for Scheduled Castes and Tribes are mandated by the constitutional amendment, most States have also made a provision to reserve seats for Backward Castes. As the Indian population has 16.2 per cent Scheduled Castes and 8.2 per cent Scheduled Tribes, about 6.6 lakh elected members in the urban and local bodies hail from these two communities. This has

**READ AN IMAGE** Look at this photograph. The local Sarkar is sitting out in the sun. Is there any other feature that strikes you?

2022-23 2022-23 191 Chapter 8: Local Governments

significantly altered the social profile of local bodies. These bodies have thus become more representative of the social reality they operate within. Sometimes this leads to tensions. The dominant social groups which controlled the village earlier do not wish to give up their power. This leads to intensification of struggle for power. But tension and struggle is not always bad. Whenever there is an attempt to make democracy more meaningful and give power to those who did not enjoy it earlier, there is bound to be some conflict and tension in society. The Constitutional amendments assigned as many as 29 subjects to the local governments. All these subjects are related to functions linked to local welfare and development needs. The experience with the functioning of local government in the past decade has shown that local governments in India enjoy limited autonomy to perform the functions assigned to them. Many States have not transferred most of the subjects to the local bodies. This means that the local bodies cannot really function in an effective manner. Therefore, the entire exercise of electing so many representatives becomes somewhat symbolic. Some people criticise the formation of the local bodies because this has not changed the way in which decisions are taken at the central and the State level. People at the local level do not enjoy much powers of choosing welfare programmes or allocation of resources.

Σο, της λαω ις γοοδ  
βυτ ιτ ις μοστλν ον παπερ. Ις τηις ωηατ τηεν χαλλ της γαπ βετωεεν τηεορψ ανδ πραχτιχε?

Bolivia is frequently cited as one of the most successful cases of democratic decentralisation in Latin America. In 1994, the Popular Participation Law decentralised power to the local level, allowing for the popular election of mayors, dividing the country into municipalities, and crafting a system of automatic fiscal transfers to the new municipalities. Bolivia is divided into 314 municipal governments. These governments in Bolivia are headed by popularly-elected mayors (presidente municipal) and a municipal council (cabildo). Local elections occur nationwide every five years.

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Local bodies have very little funds of their own. The dependence of local bodies on the State and central governments for financial support has greatly eroded their capacity to operate effectively. While rural local bodies raise 0.24% of the total revenues collected, they account for 4% of the total expenditure made by the government. So they earn much less than they spend. That makes them dependent on those who give them grants. Conclusion This experience suggests that local governments continue to be agencies implementing the welfare and development schemes of the central and State government. Giving more power to local government

means that we should be prepared for real decentralisation of power. Ultimately, democracy means that power should be shared by the people; people in the villages and urban localities must have the power to decide what policies and programmes they want to adopt. As you have studied earlier, democracy means decentralisation of power and giving more and more power to the people. The laws about local governments are an important step in the direction of democratisation. But the true test of democracy is not merely in the legal provisions but in the practice of those provisions.

Bolivian local governments have been entrusted with building local health and education facilities, as well as maintenance of this infrastructure. In Bolivia, 20% of nationwide tax collections are distributed among municipalities on a per capita basis. While these municipalities may levy taxes on motor vehicles, urban property, and large agricultural properties, fiscal transfers provide the bulk of the operating budget for these units. 2022-23 2022-23 193 Chapter 8: Local Governments Exercises

1. Constitution of India visualised village panchayats as units of selfgovernment. Think over the situation described in the following statements and explain how do these situations strengthen or weaken the panchayats in becoming units of self-government.

- Government of a State has allowed a big company to establish a huge steel plant. Many villages would be adversely affected by the steel plant. Gram Sabha of one of the affected villages passed a resolution that before establishing any big industries in the region, village people must be consulted and their grievances should be redressed.
- The government has decided that 20 % of all its expenditure would be done through the panchayats.
- A village panchayat kept on demanding funds for a building for village school, the government officials turned down their proposal saying that funds are allocated for certain other schemes and cannot be spent otherwise.
- The government divided a village Dungarpur into two and made a part of village Jamuna and Sohana. Now village Dungarpur has ceased to exist in government's books.
- A village panchayat observed that water sources of their region are depleting fast. They decided to mobilise village youth to do some voluntary work and revive the old village ponds and wells.

2. Suppose you are entrusted to evolve a local government plan of a State, what powers would you endow to the village panchayats to function as units of self-government? Mention any five powers and the justification in two lines for each of them for giving those powers.

3. What are the provisions for the reservations for the socially disadvantaged groups as per the 73rd amendment? Explain how these provisions have changed the profile of the leadership at the village level.

4. What were the main differences between the local governments before 73rd amendment and after that amendment?

5. Read the following conversation. Write in two hundred words your opinion about the issues raised in this conversation. 2022-23 2022-23 194 Indian Constitution at Work

Alok: Our Constitution guarantees equality between men and women. Reservations in local bodies for women ensure their equal share in power.

Neha: But it is not enough that women should be in positions of power. It is necessary that the budget of local bodies should have separate provision for women.

Jayesh: I don't like this reservations business. A local body must take care of all people in the village and that would automatically take care of women and their interests.

6. Read the provisions of the 73rd Amendment. Which of the following concerns does this amendment address?

- Fear of replacement makes representatives accountable to the people.
- The dominant castes and feudal landlords dominate the local bodies.
- Rural illiteracy is very high. Illiterate people cannot take decisions about the development of the village.
- To be effective the village panchayats need resources and powers to make plans for the village development.

7. The following are different justifications given in favour of local government. Give them ranking and explain why you attach greater significance to a particular rationale than the others. According to you, on which of these rationales the decision of the Gram panchayat of Vengaiwasal village was based? How?

- Government can complete the projects with lesser cost with the involvement of the local community.
- The development plans made by the local people will have greater acceptability than those made by the government officers.
- People know their area, needs problems and priorities. By collective

participation they should discuss and take decisions about their life. d. It is difficult for the common people to contact their representatives of the State or the national legislature. 8. Which of the following according to you involve decentralisation? Why are other options not sufficient for decentralisation? a. To hold election of the Gram Panchayat. b. Decision by the villagers themselves about what policies and programmes are useful for the village. 2022-23 2022-23 195 Chapter 8: Local Governments c. Power to call meeting of Gram Sabha. d. A Gram Panchayat receiving the report from the Block Development Officer about the progress of a project started by the State government. 9. A student of Delhi University, Raghavendra Parpanna, wanted to study the role of decentralisation in decision making about primary education. He asked some questions to the villagers. These questions are given below. If you were among those villagers, what answer would you give to each of these questions? A meeting of the Gram Sabha is to be called to discuss what steps should be taken to ensure that every child of the village goes to the school. a. How would you decide the suitable day for the meeting? Think who would be able to attend / not attend the meeting because of your choice. (i) A day specified by the BDO or the collector (ii) Day of the village haat (iii) Sunday (iv) Naag panchami / sankranti b. What is a suitable venue for the meeting? Why? (i) Venue suggested by the circular of the district collector. (ii) Religious place in the village. (iii) Dalit Mohalla. (iv) Upper caste Tola (v) Village school c. In the Gram Sabha meeting firstly a circular sent by the district collector was read. It suggested what steps should be taken to organise an education rally and what should be its route. The meeting did not discuss about the children who never come to school or about girls' education, or the condition of the school building and the timing of the school. No women teacher attended the meeting as it was held on Sunday. What do you think about these proceedings as an instance of people's participation? d. Imagine your class as the Gram Sabha. Discuss the agenda of the meeting and suggest some steps to realise the goal. 2022-23 2022-23 196 Indian Constitution at Work Chapter Nine CONSTITUTION AS A LIVING DOCUMENT INTRODUCTION In this chapter, you will see how the Constitution has worked in the last 69 years and how India has managed to be governed by the same Constitution. After studying this chapter you will find out that: ± the Indian Constitution can be amended according to the needs of the time; ± though many such amendments have already taken place, the Constitution has remained intact and its basic premises have not changed; ± the judiciary has played an important role in protecting the Constitution and also in interpreting the Constitution; and ± the Constitution is a document that keeps evolving and responding to changing situations. 2022-23 197 Chapter 9: Constitution as a Living Document ARE CONSTITUTIONS STATIC? It is not uncommon for nations to rewrite their constitutions in response to changed circumstances or change of ideas within the society or even due to political upheavals. The Soviet Union had four constitutions in its life of 74 years (1918, 1924, 1936 and 1977). In 1991, the rule of the Communist Party of Soviet Union came to an end and soon the Soviet federation disintegrated. After this political upheaval, the newly formed Russian federation adopted a new constitution in 1993. But look at India. The Constitution of India was adopted on 26 November 1949. Its implementation formally started from 26 January 1950. More than 69 years after that, the same constitution continues to function as the framework within which the government of our country operates. Is it that our Constitution is so good that it needs no change? Was it that our Constitution makers were so farsighted and wise that they had foreseen all the changes that would take place in the future? In some sense both the answers are correct. It is true that we have inherited a very robust Constitution. The basic framework of the Constitution is very much suited to our country. It is also true that the Constitution makers were very farsighted and provided for many solutions for future situations. But no constitution can provide for all eventualities. No document can be such that it needs no change. France had numerous constitutions in the last two centuries. After the revolution and during the Napoleonic period, France underwent continuous experimentation about a constitution: The postrevolution constitution of 1793 is called the period of the first French republic. Then commenced

the second French republic in 1848. The third French republic was formed with a new constitution in 1875. In 1946, with a new constitution, the fourth French republic came into being. Finally, in 1958, the fifth French republic came into being with yet another constitution. It seems to me that constitutional changes are very closely linked to political developments. 2022-23 198 Indian Constitution at Work Then how does the same Constitution continue to serve the country? One of the answers to such questions is that our Constitution accepts the necessity of modifications according to changing needs of the society. Secondly, in the actual working of the Constitution, there has been enough flexibility of interpretations. Both political practice and judicial rulings have shown maturity and flexibility in implementing the Constitution. These factors have made our Constitution a living document rather than a closed and static rulebook. In any society, those responsible for drafting the constitution at a particular time would face one common challenge: the provisions of the constitution would naturally reflect efforts to tackle the problems that the society is facing at the time of making of the constitution. At the same time, the constitution must be a document that provides the framework of the government for the future as well. Therefore, the constitution has to be able to respond to the challenges that may arise in the future. In this sense, the constitution will always have something that is contemporary and something that has a more durable importance. At the same time, a constitution is not a frozen and unalterable document. It is a document made by human beings and may need revisions, changes and reexamination. It is true that the constitution reflects the dreams and aspirations of the concerned society. It must also be kept in mind that the constitution is a framework for the democratic governance of the society. In this sense, it is an instrument that societies create for themselves. This dual role of the constitution always leads to difficult questions about the status of the constitution: is it so sacred that nobody ever can change it? Alternatively, is it so ordinary an instrument that it can be modified just like any other ordinary law? The makers of the Indian Constitution were aware of this problem and sought to strike a balance. They placed the Constitution above ordinary law and expected that

Ι κνωω τηατ της Χονστιτυτιον οφ της ΥΣ χαμε ιντο εξιστενχε μορε  
τηαν 200 ψεαρσ αγο ανδ σο φαρ ιτ ηασ βεεν αμενδεδ ονλψ 27 τιμεσ!

Ισν□τ τηατ περψ ιντερεστινγ? 2022-23 199 Chapter 9: Constitution as a Living Document the future generations will respect this document. At the same time, they recognised that in the future, this document may require modifications. Even at the time of writing the Constitution, they were aware that on many matters there were differences of opinion. Whenever society would veer toward any particular opinion, a change in the constitutional provisions would be required. Thus, the Indian Constitution is a combination of both the approaches mentioned above: that the constitution is a sacred document and that it is an instrument that may require changes from time to time. In other words, our Constitution is not a static document, it is not the final word about everything; it is not unalterable. Check your progress After reading the section above, a number of students in the class were confused. They made the following statements. What would you say about each of these statements? ± The Constitution is like any other law. It simply tells us what are the rules and regulations governing the government. ± The Constitution is the expression of the will of the people, so there must be a provision to change the Constitution after every ten or fifteen years. ± The Constitution is a statement of the philosophy of the country. It can never be changed. ± The Constitution is a sacred document. Therefore any talk of changing it is against democracy. HOW TO AMEND THE CONSTITUTION? Article 368: ...Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article. 2022-23 200 Indian Constitution at Work We have already seen that the makers of our Constitution wanted to strike a balance. The Constitution must be amended if so required. But it must be protected from unnecessary and frequent changes. In other words, they wanted the Constitution to be 'flexible' and at the same time 'rigid'. Flexible means open

to changes and rigid means resistant to changes. A constitution that can be very easily changed or modified is often called flexible. In the case of constitutions, which are very difficult to amend, they are described as rigid. The Indian Constitution combines both these characteristics. The makers of the Constitution were aware of the fact that there may be some faults or mistakes in the Constitution; they knew that the Constitution could not be totally free of errors. Whenever such mistakes would come to light, they wanted the Constitution to be easily amended and to be able to get rid of these mistakes. Then there were some provisions in the Constitution that were of temporary nature and it was decided that these could be altered later on once the new Parliament was elected. But at the same time, the Constitution was framing a federal polity and therefore, the rights and powers of the States could not be changed without the consent of the States. Some other features were so central to the spirit of the Constitution that the Constitution makers were anxious to protect these from change. These provisions had to be made rigid. These considerations led to different ways of amending the Constitution.

Ι δον□τ υνδερστανδ ηοω αχονστιτυτιον χαν βε φλεξιβλε ορ ριγιδ. Ισν□τ ιτ τηε πολιτιχσ οφ τηατ περιοδ ωηιχη μακεσ τηε χονστιτυτιον ριγιδ ορ φλεξιβλε? How to amend the Constitution

Similar to ordinary law: simple majority in Parliament: as mentioned in some articles  
 Special majority in Parliament in both Houses separately: as per article 368  
 Special majority + Legislatures of half the states: article 368

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There are many articles in the Constitution, which mention that these articles can be amended by a simple law of the Parliament. No special procedure for amendment is required in such cases and there is no difference at all between an amendment and an ordinary law. These parts of the Constitution are very flexible. Read carefully the following text of some articles of the Constitution. In both these articles, the wording 'by law' indicates that these articles can be modified by the Parliament without recourse to the procedure laid down in Article 368. Many other articles of the Constitution can be modified by the Parliament in this simple manner.

Article 2: Parliament may by law admit into the union .....new states....  
 Article 3: Parliament may by law... b) increase the area of any state....

For amending the remaining parts of the Constitution, provision has been made in Article 368 of the Constitution. In this article, there are two methods of amending the Constitution and they apply to two different sets of articles of the Constitution. One method is that amendment can be made by special majority of the two houses of the Parliament. The other method is more difficult: it requires special majority of the Parliament and consent of half of the State legislatures. Note that all amendments to the Constitution are initiated only in the Parliament. Besides the special majority in the Parliament no outside agency— —like a constitution commission or a separate body—is required for amending the Constitution. Similarly, after the passage in the Parliament and in some cases, in State legislatures, no referendum is required for ratification of the amendment. An amendment

Ωηατ ηαππενσ ιφ σομε Στατεσ ωαντ αν αμενδμεντ το τηε Χονστιτυτιον? Χαν□τ τηεψ προποσε αν αμενδμεντ? Ι τηινκ τηισ ισ ανοτηερ εξαμπλε οφ φαπουρινγ τηε χεντρε αγαινστ τηε Στατεσ!

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bill, like all other bills, goes to the President for his assent, but in this case, the President has no powers to send it back for reconsideration. These details show how rigid and complicated the amending process could have been. Our Constitution avoids these complications. This makes the amendment procedure relatively simple. But more importantly, this process underlines an important principle: only elected representatives of the people are empowered to consider and take final decisions on the question of amendments. Thus, sovereignty of elected representatives (parliamentary sovereignty) is the basis of the amendment procedure.

Special Majority

In the chapters on Election, Executive and Judiciary, we have come across provisions that require 'special majority'. Let us repeat again what special majority means. Ordinarily, all business of the legislature requires that a motion or resolution or bill should get the support of a simple majority of the members voting at that time. Suppose that at the time of voting on a bill, 247 members were

present in the house and all of them participated in the voting on the bill. Then, the bill would be passed if at least 124 members voted in favour of the bill. Not so in the case of an amendment bill. Amendment to the Constitution requires two different kinds of special majorities: in the first place, those voting in favour of the amendment bill should constitute at least half of the total strength of that House. Secondly, the supporters of the amendment bill must also constitute two-thirds of those who actually take part in voting. Both Houses of the Parliament must pass the amendment bill separately in this same manner (there is no provision for a joint session). For every amendment bill, this special majority is required. Can you see the significance of this requirement? In the Lok Sabha there are 545 members. Therefore, any amendment must be supported by a minimum of 273 members. Even if only 300 members are present at the time of voting, the amendment bill must get the support of 273 out of them. But imagine that 400 members of Lok Sabha have voted on an amendment bill. How many members should support the bill to get the bill passed? In addition to this, both the Houses must pass the amendment bill (with special majorities) separately. This means that unless there

2022-23 203 Chapter 9: Constitution as a Living Document Two principles dominate the various procedures of amending the constitutions in most modern constitutions. ± One is the principle of special majority. For instance, the constitutions of U.S., South Africa, Russia, etc. have employed this principle: In the case of constitution of US, it is two-thirds majority, while in South Africa and Russia, for some amendments, three-fourths majority is required. ± The other principle that is popular among many modern constitutions is that of people's participation in the process of amending the constitution. In Switzerland, people can even initiate an amendment. Other examples of countries where people initiate or approve amendment to the constitution are Russia and Italy, among others.

Ἡ ἀμ φεδ υπ ωιτη τηις βυσινεσσ οφ σπεχιαλ μαφοριτυ. Ἰτ φορχεσ ψου το μακε διφφιχυλτ χαλχυλατιονσ αλλ τηε τιμε. Ἰσ ιτ πολιτιχσ ορ ματησ? "If those who are dissatisfied with the Constitution have only to obtain a 2/3 majority and if they cannot obtain even (that)...., their dissatisfaction with the Constitution cannot be deemed to be shared by the general public." Note that Dr. Ambedkar is talking here not only of parliamentary majority. He refers to 'sharing (of the views) by the general public'. This indicates that behind the majority there is the principle of public opinion that governs decisionmaking. is sufficient consensus over the proposed amendment, it cannot be passed. If the party in power enjoys very thin majority, it can pass legislation of its choice and can get budget approved even if the opposition does not agree. But it would need to take at least some opposition parties into confidence, if it wanted to amend the Constitution. So, the basic principle behind the amending procedure is Dr. Ambedkar, CAD, Vol. XI, p. 976, 25 November 1949

2022-23 204 Indian Constitution at Work that it should be based on broad support among the political parties and parliamentarians. Ratification by States For some articles of the Constitution, special majority is not sufficient. When an amendment aims to modify an article related to distribution of powers between the States and the central government, or articles related to representation, it is necessary that the States must be consulted and that they give their consent. We have studied the federal nature of the Constitution. Federalism means that powers of the States must not be at the mercy of the central government. The Constitution has ensured this by providing that legislatures of half the States have to pass the amendment bill before the amendment comes into effect. We can say that for some parts of the Constitution, greater or wider consensus in the polity is expected. This provision also respects the States and gives them participation in the process of amendment. At the same time, care is taken to keep this procedure somewhat flexible even in its more rigid format: consent of only half the States is required and simple majority of the State legislature is sufficient. Thus, the amendment process is not impracticable even after taking into consideration this more stringent condition. We may summarise that the Constitution of India can be amended through large-scale consensus and limited participation of the States. The founding fathers took care that Constitution would not be open to easy tampering. And yet, future generations were

given the right to amend and modify according to the needs and requirements of the time. Check your progress For making the following amendments to the Constitution of India, what conditions need to be fulfilled? Place a tick mark in the chart wherever applicable. 2022-23 205 Chapter 9: Constitution as a Living Document WHY HAVE THERE BEEN SO MANY AMENDMENTS? On 26 January 2019, the Constitution of India completed 69 years of its existence. In these years, it was amended 103 times (as on 12 January 2019). Given the relatively difficult method of amending the Constitution, the number of amendments appears quite high. Let us try to find out how it is that so many amendments took place and what it means. Let us first look at the brief history of the amendments: look carefully at the graphs below. The same information is presented in two different ways. The first graph depicts the number of constitution amendments made every ten years; the bar indicates the number of amendments in that period. The second graph depicts the time taken for every ten amendments; the bar depicts the years taken for ten amendments. You will notice that the two decades from 1970 to 1990 saw a large number of amendments. On the other hand, the second graph tells one more story: ten amendments took place between a short span of three Why was our Constitution amended so many times? Is there something wrong with our society or with the Constitution? Subject of amendment Special Ratification majority by States Citizenship clause Right to freedom of religion Changes in the Union List Changes in State boundaries Provision regarding Election Commission 2022-23 206 Indian Constitution at Work years between 1974 and 1976. And again, in just three years, from 2001 to 2003, ten amendments took place. In the political history of our country, these two periods are remarkably different. The first was a period of Congress domination. Congress party had a vast majority in Parliament ( it had 352 seats in the Lok Sabha and a majority in most State Assemblies). On the other hand, the period between 2001 and 2003 was a period marked by coalition politics. It was also a period when different parties were in power in different States. The bitter rivalry between the BJP and its opponents is another feature of this period. And yet, this period saw as many as ten amendments in just three years. So, the incidence of amendments is not dependent merely on the nature of majority of the ruling party alone. Graph 1 Amendments per decade Graph 2 Years taken for every ten amendments 2022-23 207 Chapter 9: Constitution as a Living Document There is always a criticism about the number of amendments. It is said that there have been far too many amendments to the Constitution of India. On the face of it, the fact that 103 amendments took place in 69 years does seem to be somewhat odd. But the two graphs above suggest that amendments are not only due to political considerations. Barring the first decade after the commencement of the Constitution, every decade has witnessed a steady stream of amendments. This means that irrespective of the nature of politics and the party in power, amendments were required to be made from time to time. Was this because of the inadequacies of the original Constitution? Is the Constitution too flexible? Contents of Amendments made so far Amendments made so far may be classified in three groups. In the first group there are amendments, which are of a technical or administrative nature and were only clarifications, explanations, and minor modifications etc. of the original provisions. They are amendments only in the legal sense, but in matter of fact, they made no substantial difference to the provisions. This is true of the amendment that increased the age of retirement of High Court judges from 60 to 62 years (15th amendment). Similarly, salaries of judges of High Courts and the Supreme Court were increased by an amendment (54th amendment). We may also take the example of the provision regarding reserved seats in the legislatures for scheduled castes and scheduled tribes. The original provision said that these reservations were for a period of ten years. However, in order to ensure fair representation of these sections, it was necessary to extend this period by ten years. Thus, after every ten years an amendment is made to extend the period by another ten years. This has led to six amendments so far. But these amendments have not made any difference to the original provision. In this sense, it is only a technical amendment. Yes, I think we should be looking at the changes



rather than the number of amendments. That is what we should be doing as students of politics.

2022-23 208 Indian Constitution at Work Do you remember the discussion in chapter four about the role of the President? In the original Constitution, it was assumed that in our parliamentary government, the President would normally abide by the advice of the Council of Ministers. This was only reiterated by a later amendment when Article 74 (1) was amended to clarify that the advice of the Council of Ministers will be binding on the President (President shall act in accordance with the advice of the Council of Ministers). In reality, this amendment did not make any difference because, that is exactly what has been happening all through. The amendment was only by way of explanation.

Differing Interpretations A number of amendments are a product of different interpretations of the Constitution given by the judiciary and the government of the day. When these clashed, the Parliament had to insert an amendment underlining one particular interpretation as the authentic one. It is part of the democratic politics that various institutions would interpret the Constitution and particularly the scope of their own powers in a different manner. Many times, the Parliament did not agree with the judicial interpretation and therefore, sought to amend the Constitution to overcome the ruling of the judiciary. In the period between 1970 and 1975 this situation arose frequently. In the chapter on the Judiciary, you have already studied the issues of difference between the Judiciary and the Parliament: one was the relationship between fundamental rights and directive principles, the other was the scope of right to private property and the third was the scope of Parliament's power to amend the Constitution. In the period 1970-1975, the Parliament repeatedly made amendments to overcome the adverse interpretations by the judiciary. It may be kept in mind that during this period (1970- 75) many political events were unfolding and thus this history of our constitutional development can be fully I αμ στιλλ χονφυσεδ. Ιφ τηρε ισ α ωριττεν χονστιτυτιον, ωηερε ισ τηε σχοπε φορ διφφερεντ ιντερπρετατιονς? Ορ δο πεοπλε ρεαδ ιν τηε χονστιτυτιον ωηατ τηεψ ωαντ το βε τηερε? 2022-23 209 Chapter 9: Constitution as a Living Document understood only in the context of the politics of that period. You will know more about these issues in the next year when you study the political history of independent India.

Amendments through Political Consensus Thirdly, there is another large group of amendments that have been made as a result of the consensus among the political parties. We may say that this consensus made it necessary that some changes had to be made in order to reflect the prevailing political philosophy and aspirations of the society. In fact, many of the amendments of the post-1984 period are instances of this trend. Remember our question above about the peculiarity that even when there were coalition governments, this period saw so many amendments? The reason is because many of these amendments were based on an evolving consensus on certain issues. Starting with the anti-defection amendment (52nd amendment), this period saw a series of amendments in spite of the political turbulence. Apart from the anti-defection amendments (52nd and 91st), these amendments include the 61st amendment bringing down the minimum age for voting from 21 to 18 years, the 73rd and the 74th amendments, etc. In this same period, there were some amendments clarifying and expanding the scope of reservations in jobs and admissions. After 1992-93, an overall consensus emerged in the country about these measures and therefore, amendments regarding these measures were passed without much difficulty (77th, 81st, and 82nd amendments).

Controversial Amendments Our discussion so far, should not create an impression that there has never been any controversy over amending the Constitution. In fact, amendments during the period 1970 to 1980 generated a lot of legal and political controversy. The parties that were in opposition during the period 1971-1976, saw many of these amendments Σο, πολιτιχιανς δο αγρεε ον σομε ματτερς! Ανδ ψετ τηεψ φιγητ οπερ τηε μεανινγ οφ ωηατ τηεψ αγρεεδ ον! 2022-23 210 Indian Constitution at Work as attempts by the ruling party to subvert the Constitution. In particular, the 38th, 39th and 42nd amendments have been the most controversial amendments so far. These three amendments were made in the background of internal emergency declared in the

country from June 1975. They sought to make basic changes in many crucial parts of the Constitution. The 42nd amendment was particularly seen as a wideranging amendment affecting large parts of the Constitution. It was also an attempt to override the ruling of the Supreme Court given in the Kesavananda case. Even the duration of the Lok Sabha was extended from five to six years. In the chapter on Rights, you have read about Fundamental Duties. They were included in the Constitution by this amendment act. The 42nd amendment also put restrictions on the review powers of the Judiciary. It was said at that time that this amendment was practically a rewriting of many parts of the original Constitution. Do you know that this amendment made changes to the Preamble, to the seventh schedule of the Constitution and to 53 articles of the Constitution? Many MPs belonging to the opposition parties were in jail when this amendment was passed in Parliament. In this backdrop, elections were held in 1977 and the ruling party (Congress) was defeated. The new government thought it necessary to reconsider these controversial amendments and through the 43rd and 44th amendments, cancelled most of the changes that were effected by the 38th, 39th and the 42nd amendments. The constitutional balance was restored by these amendments. Activity Find out the amendments about the right to education (RTE) and the Goods and Services Tax (GST). What do you think is the importance of these amendments? Σο, ιτ ις αλλ αβουτ πολιτιχς!

Διδντ Ι σαψ τηατ τηις εντιρε τηινγ αβουτ χονστιτυτιονς ανδ αμενδμεντς ις λινκεδ το πολιτιχς ρατηερ τηαν λαω? 2022-23 211 Chapter 9: Constitution as a Living Document BASIC STRUCTURE AND EVOLUTION OF THE CONSTITUTION One thing that has had a long lasting effect on the evolution of the Indian Constitution is the theory of the basic structure of the Constitution. You know already that the Judiciary advanced this theory in the famous case of Kesavananda Bharati. This ruling has contributed to the evolution of the Constitution in the following ways: ± It has set specific limits to Parliament's power to amend the Constitution. It says that no amendment can violate the basic structure of the Constitution; ± It allows Parliament to amend any and all parts of the Constitution (within this limitation); and ± It places the Judiciary as the final authority in deciding if an amendment violates basic structure and what constitutes the basic structure. The Supreme Court gave the Kesavananda ruling in 1973. In the past four decades, this decision has governed all interpretations of the Constitution and all institutions in the country have accepted the theory of basic structure. In fact, the theory of basic structure is itself an example of a living constitution. There is no mention of this theory in the Constitution. It has emerged from judicial interpretation. Thus, the Judiciary and its interpretation have practically amended the Constitution without a formal amendment. All living documents evolve in this manner through debates, arguments, competition and practical politics. Since 1973, the Court has, in many cases, elaborated upon this theory of basic structure and given instances of what constitutes the basic structure of the Constitution of India. In a sense, the basic structure doctrine has further consolidated the balance between rigidity and flexibility: by saying that certain parts cannot be amended, it has underlined the rigid nature while by allowing amendments to all others it has underlined the flexible nature of the amending process.

Αη! Σο ιτ ις της φυδιχιαρψ τηατ ηας της φιναλ ωορδ! Ις τηις αλσο φυδιχιαλ αχτιπιςμ? 2022-23 212 Indian Constitution at Work There are many other examples of how judicial interpretation changed our understanding of the Constitution. In many decisions the Supreme Court had held that reservations in jobs and educational institutions cannot exceed fifty per cent of the total seats. This has now become an accepted principle. Similarly, in the case involving reservations for other backward classes, the Supreme Court introduced the idea of creamy layer and ruled that persons belonging to this category were not entitled to benefits under reservations. In the same manner, the Judiciary has contributed to an informal amendment by interpreting various provisions concerning right to education, right to life and liberty and the right to form and manage minority educational institutions. These are instances of how rulings by the Court contribute to the evolution of the Constitution. Review of the Constitution In the late nineties, efforts were made to review the

entire Constitution. In the year 2000 a commission to review the working of the Constitution was appointed by the Government of India under the chairmanship of a retired Chief Justice of the Supreme Court, Justice Venkatachaliah. Opposition parties and many other organisations boycotted the commission. While a lot of political controversy surrounded this commission, the commission stuck to the theory of basic structure and did not suggest any measures that would endanger the basic structure of the Constitution. This shows the significance of the basic structure doctrine in our constitutional practice. Ἰτ□σ ἀλλ ὡρονγ. Φιρστ τηεψ σαψ τηατ αν αμενδμεντ ρεθυιρεσ χονσενσυς ανδ νοω ωε σεε τηατ θυδγεσ χηανγε τηε ωηολε μεανινγ οφ τηε Χονστιτυτιον.

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We have described our Constitution as a living document. What does that mean? Almost like a living being, this document keeps responding to the situations and circumstances arising from time to time. Like a living being, the Constitution responds to experience. In fact that is the answer to the riddle we mentioned at the beginning about the durability of the Constitution. Even after so many changes in the society, the Constitution continues to work effectively because of this ability to be dynamic, to be open to interpretations and the ability to respond to the changing situation. This is a hallmark of a democratic constitution. In a democracy, practices and ideas keep evolving over time and the society engages in experiments according to these. A constitution, which protects democracy and yet allows for evolution of new practices becomes not only durable but also the object of respect from the citizens. The important point is: has the Constitution been able to protect itself and protect democracy? In the past six decades, some very critical situations arose in the politics and constitutional development of the country. We have made a brief reference to some of these in this chapter already. In terms of constitutional-legal issues, the most serious question that came up

Check your progress State whether the following statements are correct or not: ± After the Basic Structure ruling, Parliament does not have power to amend the Constitution. ± The Supreme Court has given a clear list of the basic features of our Constitution, which cannot be amended. ± Judiciary has the power to decide whether an amendment violates basic structure or not. ± The Kesavananda Bharati ruling has set clear limits on Parliament's power to amend the Constitution.

2022-23 214 Indian Constitution at Work again and again from 1950 was about the supremacy of the Parliament. In a parliamentary democracy, the Parliament represents the people and therefore, it is expected to have an upper hand over both Executive and Judiciary. At the same time, there is the text of the Constitution and it has given powers to other organs of the government. Therefore, the supremacy of the Parliament has to operate within this framework. Democracy is not only about votes and people's representation. It is also about the principle of rule of law. Democracy is also about developing institutions and working through these institutions. All the political institutions must be responsible to the people and maintain a balance with each other. Contribution of the Judiciary

During the controversy between the Judiciary and the Parliament, the Parliament thought that it had the power and responsibility to make laws (and amendments) for furthering the interests of the poor, backward and the needy. The Judiciary insisted that all this has to take place within the framework provided by the Constitution and pro-people measures should not bypass legal procedures, because, once you bypass laws even with good intentions, that can give an excuse to the power holders to use their power arbitrarily. And democracy is as much about checks on arbitrary use of power as it is about the well-being of the people. The success of the working of the Indian Constitution lies in resolving these tensions. The Judiciary, in its famous Kesavananda ruling found a way out of the existing complications by turning to the spirit of the Constitution rather than its letter. If you read the Constitution, you will not find any mention of the 'basic structure' of the Constitution. Nowhere does the Constitution say that such and such are part of the basic structure. In this sense, the 'basic structure' theory is the Ἰ γετ ιτ! Ἰτ□σ λικε α σεε-σαω. Ορ ισ ιτ α γαμε οφ τυγ οφ ωαρ?

2022-23 215 Chapter 9: Constitution as a Living Document invention of the Judiciary. How did it invent such a nonexistent thing? And how is it that all other institutions have accepted this during the past four decades? Therein lies the distinction between letter and spirit. The Court came to the conclusion that in reading a text or document, we must respect the intent behind that document. A mere text of the law is less important than the social circumstances and aspirations that have produced that law or document. The Court was looking at the basic structure as something without which the Constitution cannot be imagined at all. This is an instance of trying to balance the letter and the spirit of the Constitution. Maturity of the Political Leadership Our discussion of the role of Judiciary, in the paragraph above, brings out one more fact. In the background of the fierce controversy that raged between 1967 and 1973, Parliament and the Executive also realised that a balanced and long term view was necessary. After the Supreme Court gave the ruling in the Kesavananda case some attempts were made to ask the Court to reconsider its ruling. When these failed, the 42nd amendment was made and parliamentary supremacy was asserted. But the Court again repeated its earlier stand in the Minerva Mills case (1980). Therefore, even four decades after the ruling in the Kesavananda case, this ruling has dominated our interpretation of the Constitution. Political parties, political leaders, the government, and Parliament, accepted the idea of inviolable basic structure. Even when there was talk about 'review' of the Constitution, that exercise could not cross the limits set by the theory of the basic structure. When the Constitution was made, leaders and people of our country shared a common vision of India. In Nehru's famous speech at the time of independence, this vision was described as a tryst with destiny. In the Constituent Assembly also, all the leaders mentioned this vision: dignity and freedom of the individual, social and

Λετ υς νοτ ιγνορε τηατ τηερε αρε μανψ ινστανχεσ οφ πολιτιχαλ ιμματυριτυ ασ ωελλ.

Δοεσ ονε ηαπε το λιστ τηεσε? Οφ χουρσε, ιφ τηερε αρε νο ριγητσ ανδ νο ελεχτιονσ, τηε Χονστιτυτιον ωον□τ μακε μυχη σενσε. Ανδ ιφ τηερε ισ νο ωελλ βεινγ, ελεχτιονσ ανδ ριγητσ ωον□τ μακε σενσε. Ισ τηις ηοω ωε υνδερστανδ τηε □σπιριτ□ οφ ουρ Χονστιτυτιον?

2022-23 216 Indian Constitution at Work economic equality, well-being of all people, unity based on national integrity. This vision has not disappeared. People and leaders alike hold to the vision and hope to realize it. Therefore, the Constitution, based on this vision, has remained an object of respect and authority even after half a century. The basic values governing our public imagination remain intact. Conclusion There can still be debates about what constitutes basic structure. There is nothing wrong in such debates. We must remember that politics in a democracy is necessarily full of debates and differences. That is a sign of diversity, liveliness and openness. Democracy welcomes debates. At the same time, our political parties and leadership have shown maturity in setting limits to these debates. Because, politics is also about compromises and give-and-take. Extreme positions may be theoretically very correct and ideologically very attractive, but politics demands that everyone is prepared to moderate their extreme views, sharp positions and reach a common minimum ground. Only then democratic politics becomes possible. Politicians and the people of India have understood and practised these skills. That has made the experience of working of the democratic Constitution quite successful. Among the different organs of the government, there will always be competition over which one is more important than the others. They will also always fight over what constitutes Even within the Constituent Assembly, there were some members who felt that this Constitution was not suited to the Indian situation: "The ideals on which this draft constitution is framed have no manifest relation to the fundamental spirit of India. ...this Constitution ...would not prove suitable and would break down soon after being brought into operation."

Lakshminarayan Sahu, CAD, Vol. XI, p. 613, 17 November 1949 2022-23 217 Chapter 9: Constitution as a Living Document the welfare of the people. But in the last instance, the final authority lies with the people. People, their freedoms and their well-being constitute the purpose of democracy and also the outcome of democratic politics. Exercises 1. Choose the correct statement from the

following. A constitution needs to be amended from time to time because, ✓ Circumstances change and require suitable changes in the constitution. ✓ A document written at one point of time becomes outdated after some time. ✓ Every generation should have a constitution of its own liking. ✓ It must reflect the philosophy of the existing government.

2. Write True / False against the following statements.

- The President cannot send back an amendment bill for reconsideration of Parliament.
- Elected representatives alone have the power to amend the Constitution.
- The Judiciary cannot initiate the process of constitutional amendment but can effectively change the Constitution by interpreting it differently.
- Parliament can amend any section of the Constitution.

3. Which of the following are involved in the amendment of the Indian Constitution? In what way are they involved?

- Voters
- President of India
- State Legislatures
- Parliament
- Governors
- Judiciary

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4. You have read in this chapter that the 42nd amendment was one of the most controversial amendments so far. Which of the following were the reasons for this controversy?

- It was made during national emergency, and the declaration of that emergency was itself controversial.
- It was made without the support of special majority.
- It was made without ratification by State legislatures.
- It contained provisions, which were controversial.

5. Which of the following is not a reasonable explanation of the conflict between the legislature and the judiciary over different amendments?

- Different interpretations of the Constitution are possible.
- In a democracy, debates and differences are natural.
- Constitution has given higher importance to certain rules and principles and also allowed for amendment by special majority.
- Legislature cannot be entrusted to protect the rights of the citizens.
- Judiciary can only decide the constitutionality of a particular law; cannot resolve political debates about its need.

6. Identify the correct statements about the theory of basic structure. Correct the incorrect statements.

- Constitution specifies the basic tenets.
- Legislature can amend all parts of the Constitution except the basic structure.
- Judiciary has defined which aspects of the Constitution can be termed as the basic structure and which cannot.
- This theory found its first expression in the Kesavananda Bharati case and has been discussed in subsequent judgments.
- This theory has increased the powers of the judiciary and has come to be accepted by different political parties and the government.

7. From the information that many amendments were made during 2000-2003, which of the following conclusions would you draw?

- Judiciary did not interfere in the amendments made during this period.
- One political party had a strong majority during this period.
- There was strong pressure from the public in favour of certain amendments.
- There were no real differences among the parties during this time.
- The amendments were of a non-controversial nature and parties had an agreement on the subject of amendments.

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8. Explain the reason for requiring special majority for amending the Constitution.

9. Many amendments to the Constitution of India have been made due to different interpretations upheld by the Judiciary and Parliament. Explain with examples.

10. If amending power is with the elected representatives, judiciary should NOT have the power to decide the validity of amendments. Do you agree? Give your reasons in 100 words.

2022-23 220 Indian Constitution at Work Chapter Ten THE PHILOSOPHY OF THE CONSTITUTION INTRODUCTION

In this book, so far we have studied some important provisions of our Constitution and the way in which these have worked in the last 69 years. We also studied the way in which the Constitution was made. But have you ever asked yourself why leaders of the national movement felt the need to adopt a constitution after achieving independence from British rule? Why did they choose to bind themselves and the future generations to a constitution? In this book, you have repeatedly visited the debates in the Constituent Assembly. But it should be asked why the study of the constitution must be accompanied by a deep examination of the debates in the Constituent Assembly? This question will be addressed in this chapter. Secondly, it is important to ask what kind of a constitution we have given ourselves. What objectives did we hope to achieve by it? Do these objectives have a moral content? If so, what

precisely is it? What are the strengths and limitations of this vision and, by implication, the achievements and weaknesses of the Constitution? In doing so, we try to understand what can be called the philosophy of the Constitution. After reading this chapter, you should be able to understand: ± why it is important to study the philosophy of the Constitution; ± what are the core features of the Indian Constitution; ± what are the criticisms of this Constitution; and ± what are the limitations of the Constitution? 2022-23 2022-23 221 Chapter 10: The Philosophy of the Constitution

WHAT IS MEANT BY PHILOSOPHY OF THE CONSTITUTION? Some people believe that a constitution merely consists of laws and that laws are one thing, values and morality, quite another. Therefore, we can have only a legalistic, not a political philosophy approach to the Constitution. It is true that all laws do not have a moral content, but many laws are closely connected to our deeply held values. For example, a law might prohibit discrimination of persons on grounds of language or religion. Such a law is connected to the idea of equality. Such a law exists because we value equality. Therefore, there is a connection between laws and moral values. We must therefore, look upon the constitution as a document that is based on a certain moral vision. We need to adopt a political philosophy approach to the constitution. What do we mean by a political philosophy approach to the constitution? We have three things in mind. ± First, we need to understand the conceptual structure of the constitution. What does this mean? It means that we must ask questions like what are the possible meanings of terms used in the constitution such as 'rights', 'citizenship', 'minority' or 'democracy'? ± Furthermore, we must attempt to work out a coherent vision of society and polity conditional upon an interpretation of the key concepts of the constitution. We must have a better grasp of the set of ideals embedded in the constitution. ± Our final point is that the Indian Constitution must be read in conjunction with the Constituent Assembly Debates in order to refine and raise to a higher theoretical plane, the justification of values embedded in the Constitution. A philosophical treatment of a value is incomplete if a detailed justification for it is not provided. When the framers of the Constitution Δοεσ ιτ μεαν τηατ αλλ χονστιτυτιονσ ηαπε α πηιλοσοπηψ? Ορ ισ ιτ τηατ ονλψ σομε χονστιτυτιονσ ηαπε α πηιλοσοπηψ? 2022-23 2022-23 222 Indian Constitution at Work chose to guide Indian society and polity by a set of values, there must have been a corresponding set of reasons. Many of them, though, may not have been fully explained. A political philosophy approach to the constitution is needed not only to find out the moral content expressed in it and to evaluate its claims but possibly to use it to arbitrate between varying interpretations of the many core values in our polity. It is obvious that many of its ideals are challenged, discussed, debated and contested in different political arenas, in the legislatures, in party forums, in the press, in schools and universities. These ideals are variously interpreted and sometimes wilfully manipulated to suit partisan short term interests. We must, therefore, examine whether or not a serious disjunction exists between the constitutional ideal and its expression in other arenas. Sometimes, the same ideal is interpreted differently by different institutions. We need to compare these differing interpretations. Since the expression The Japanese Constitution of 1947 is popularly known as the 'peace constitution'. The preamble states that "We, the Japanese people desire peace for all time and are deeply conscious of the high ideals controlling human relationship". The philosophy of the Japanese constitution is thus based on the ideal of peace. Article 9 of the Japanese constitution states — 1) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. 2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained... This shows how the context of making the constitution dominates the thinking of the constitution makers. Ψεσ, οφ χουρσε, Ι δο ρεμεμπερ τηισ ισσυε οφ διφφερεντ ιντερπρετατιονσ οφ τηε Χονστιτυτιον. Ωε δισχυσσεδ ιτ ιν τηε λαστ χηαπτερ, διδν□τ ωε?

2022-23 2022-23 223 Chapter 10: The Philosophy of the Constitution of the ideal in the constitution has considerable authority it must be used to arbitrate in conflict of interpretation over values or ideals. Our Constitution can perform this job of arbitration. Constitution as Means of Democratic Transformation In the first chapter we have studied the meaning of the term constitution and the need to have a constitution. It is widely agreed that one reason for having constitutions is the need to restrict the exercise of power. Modern states are excessively powerful. They are believed to have a monopoly over force and coercion. What if institutions of such states fall into wrong hands who abuse this power? Even if these institutions were created for our safety and well-being, they can easily turn against us. Experience of state power the world over shows that most states are prone to harming the interests of at least some individuals and groups. If so, we need to draw the rules of the game in such a way that this tendency of states is continuously checked. Constitutions provide these basic rules and therefore, prevent states from turning tyrannical. Constitutions also provide peaceful, democratic means to bring about social transformation. Moreover, for a hitherto colonised people, constitutions announce and embody the first real exercise of political self-determination. Nehru understood both these points well. The demand for a Constituent Assembly, he claimed, represented a collective demand for full self-determination because; only a Constituent Assembly of elected representatives of the Indian people had the right to frame India's constitution without external interference. Second, he argued, the Constituent Assembly is not just a body of people or a gathering of able lawyers. Rather, it is a 'nation on the move, throwing away the shell of its past political and possibly social structure, and fashioning for itself a new garment of its own making.' The Indian Constitution was designed to break the shackles of traditional social hierarchies and to usher in a new era of freedom, equality and justice. Σο, χαν ωε σαψ τηατ μεμβερσ

οφ της Χονστιτυεντ Ασσεμβλψ ωερε αλλ εαγερ το βρινγ σοχιαλ τρανσφορματιον? Βυτ ωε αλσο κεεπ σαψινγ τηατ αλλ πιεω ποιντσ ωερε ρεπρεσεντεδ ιν της Ασσεμβλψ! 2022-23 2022-23 224 Indian Constitution at Work This approach had the potential of changing the theory of constitutional democracy altogether: according to this approach, constitutions exist not only to limit people in power but to empower those who traditionally have been deprived of it. Constitutions can give vulnerable people the power to achieve collective good. Why do we need to go back to the Constituent Assembly? Why look backwards and bind ourselves to the past? That may be the job of a legal historian — to go into the past and search for the basis of legal and political ideas. But why should students of politics be interested in studying the intentions and concerns of those who framed the Constitution? Why not take account of changed circumstances and define anew the normative function of the constitution? In the context of America — where the constitution was written in the late 18th century— it is absurd to apply the values and standards of that era to the 21st century. However, in India, the world of the original framers and our present day world may not have changed so drastically. In terms of our values, ideals and conception, we have not separated ourselves from the world of the Constituent Assembly. A history of our Constitution is still very much a history of the present. Activity Read again the quotes from the Debates of the Constituent Assembly (CAD) given in the following chapters. Do you think that the arguments in those quotations have relevance for our present times? Why? i. Quotes in Chapter two ii. Quote in Chapter seven Furthermore, we may have forgotten the real point underlying several of our legal and political practices, simply because somewhere down the road we began to take them for granted. These reasons have now slipped into the background, screened off from our consciousness even though they still provide the organizational principle to current practices. When the going is good, this forgetting 2022-23 2022-23 225 Chapter 10: The Philosophy of the Constitution is harmless. But when these practices are challenged or threatened, neglect of the underlying principles can be harmful. In short, to get a handle on current constitutional practice, to grasp their value and meaning, we may have no option but to go back in time to the Constituent

Assembly debates and perhaps even further back in time to the colonial era. Therefore, we need to remember and keep revisiting the political philosophy underlying our Constitution. WHAT IS THE POLITICAL PHILOSOPHY OF OUR CONSTITUTION? It is hard to describe this philosophy in one word. It resists any single label because it is liberal, democratic, egalitarian, secular, and federal, open to community values, sensitive to the needs of religious and linguistic minorities as well as historically disadvantaged groups, and committed to building a common national identity. While all ideas unfold on this playfield, democracy is the 'Umpire'. READ A CARTOON

Τησις του γη. Ωηψ χουλδν τ τηεψ πλαινλψ τελλ υσ ωηατ τηε

πηιλοσοπηψ οφ τηις Χονστιτυτιον ις? Ηοω χαν ορδιναρψ χιτιζενς

υνδερστανδ τηε πηιλοσοπηψ ιφ ιτ ις ηιδδεν λικε τηις? Shankar. Copyright: Children's Book

Trust. 26 January 1950 2022-23 2022-23 226 Indian Constitution at Work In short, it is committed to freedom, equality, social justice, and some form of national unity. But underneath all this, there is a clear emphasis on peaceful and democratic measures for putting this philosophy into practice.

Individual freedom The first point to note about the Constitution is its commitment to individual freedom. This commitment did not emerge miraculously out of calm deliberations around a table.

Rather, it was the product of continuous intellectual and political activity of well over a century. As early as the beginning of the nineteenth century, Rammohan Roy protested against curtailment of the freedom of the press by the British colonial state. Roy argued that a state responsive to the needs of individuals must provide them the means by which their needs are communicated.

Therefore, the state must permit unlimited liberty of publication. Likewise, Indians continued to demand a free press throughout the British rule. It is not surprising therefore that freedom of expression is an integral part of the Indian Constitution. So is the freedom from arbitrary arrest. After all, the infamous Rowlatt Act, which the national movement opposed so vehemently, sought to deny this basic freedom. These and other individual freedoms such as freedom of conscience are part of the liberal ideology. On this basis, we can say that the Indian Constitution has a pretty strong liberal character. In the chapter on fundamental rights we have already seen how the Constitution values individual freedom. It might be recalled that for over forty years before the adoption of the Constitution, every single resolution, scheme, bill and report of the Indian National Congress mentioned individual rights, not just in passing but as a nonnegotiable value. Social Justice When we

say that the Indian Constitution is liberal, we do not mean that it is liberal only in the classical western sense. In the book on Political Theory, you will learn more about the idea of liberalism. Classical liberalism always privileges rights of the individuals over demands of social justice and community values. 2022-23 2022-23 227 Chapter 10: The Philosophy of the Constitution The

liberalism of the Indian Constitution differs from this version in two ways. First, it was always linked to social justice. The best example of this is the provision for reservations for Scheduled Castes and Scheduled Tribes in the Constitution. The makers of the Constitution believed that the mere granting of the right to equality was not enough to overcome age-old injustices suffered by these groups or to give real meaning to their right to vote. Special constitutional measures were required to advance their interests. Therefore the constitution makers provided a number of special measures to protect the interests of Scheduled Castes and Scheduled Tribes such as the reservation of seats in legislatures. The Constitution also made it possible for the government to reserve public sector jobs for these groups. Check your progress State which of the following rights are part of individual freedom: ± Freedom of expression ± Freedom of religion ± Cultural and educational rights of minorities ± Equal access to public places And while talking of social justice, let us not forget the directive principles. Indian liberalism has two streams. The first stream began with Rammohan Roy. He emphasised individual rights, particularly the rights of women. The second stream included thinkers like K.C. Sen, Justice Ranade and Swami Vivekananda. They introduced the spirit of social justice within orthodox Hinduism. For Vivekananda, such a reordering of Hindu society could not



have been possible without liberal principles. — K.M. Panikkar, In Defence of Liberalism, Bombay, Asia Publishing House, 1962. 2022-23 2022-23 228 Indian Constitution at Work Respect for diversity and minority rights The Indian Constitution encourages equal respect between communities. This was not easy in our country, first because communities do not always have a relationship of equality; they tend to have hierarchical relationships with one another (as in the case of caste). Second, when these communities do see each other as equals, they also tend to become rivals (as in the case of religious communities). This was a huge challenge for the makers of the Constitution: how to make communities liberal in their approach and foster a sense of equal respect among them under existing conditions of hierarchy or intense rivalry? It would have been very easy to resolve this problem by not recognising communities at all, as most western liberal constitutions do. But this would have been unworkable and undesirable in our country. This is not because Indians are attached to communities more than others. Individuals everywhere also belong to cultural communities and every such community has its own values, traditions, customs and language shared by its members. For example, individuals in France or Germany belong to a linguistic community and are deeply attached to it. What makes us different is that we have more openly acknowledged the value of communities. More importantly, India is a land of multiple cultural communities. Unlike Germany or France we have several linguistic and religious communities. It was important to ensure that no one community systematically dominates others. This made it mandatory for our Constitution to recognise community based rights. One such right is the right of religious communities to establish and run their own educational institutions. Such institutions may receive money from the government. This provision shows that the Indian Constitution does not see religion merely as a 'private' matter concerning the individual. I ηαπε αλωαψς ωονδερεδ ωηο I

αμ. I ηαπε σο μανψ □ιδεντιτιες□ ιν μψ βαγ: I ηαπε μψ ρελιγιουσ ιδεντιτψ, I ηαπε μψ λινγυιστιχ ιδεντιτψ, I ηαπε τιες ωιτη μψ παρενταλ τοων, ανδ οφ χουρσε, I αμ α στυδεντ αλσο. 2022-23 2022-23 229 Chapter 10: The Philosophy of the Constitution Secularism Secular states are widely seen as treating religion as only a private matter. That is to say, they refuse to give religion public or official recognition. Does this mean that the Indian Constitution is not secular? This does not follow. Though the term 'secular' was not initially mentioned, the Indian Constitution has always been secular. The mainstream, western conception, of secularism means mutual exclusion of state and religion in order to protect values such as individual freedom and citizenship rights of individuals. Again, this is something that you will learn more about in Political Theory. The term 'mutual exclusion' means this: both religion and state must stay away from the internal affairs of one another. The state must not intervene in the domain of religion; religion likewise should not dictate state policy or influence the conduct of the state. In other words, mutual exclusion means that religion and state must be strictly separated. What is the purpose behind strict separation? It is to safeguard the freedom of individuals. States which lend support to organised religions make them more powerful than they already are. When religious organisations begin to control the religious lives of individuals, when they start dictating how they should relate to God or how they should pray, individuals may have the option of turning to the modern state for protecting their religious freedom, but what help would a state offer them if it has already joined hands with these organisations? To protect religious freedom of individuals, therefore, state must not help religious organisations. But at the same time, state should not tell religious organisations how to manage their affairs. That too can thwart religious freedom. The state must, therefore, not hinder religious organisations either. In short, states should neither help nor hinder religions. Instead, they should keep themselves at an arm's length from them. This has been the prevalent western conception of secularism. Ηαπε τηεψ σταρτεδ τεαχηινγ υς τηε Πολιτιχαλ Τηεορψ χουρσε? 2022-23 2022-23 230 Indian Constitution at Work Conditions in India were different and to respond to the challenge they posed, the makers of the Constitution had to work out an alternative

conception of secularism. They departed from the western model in two ways and for two different reasons. ± Rights of Religious Groups First, as mentioned already, they recognised that intercommunity equality was as necessary as equality between individuals. This was because a person's freedom and sense of self-respect was directly dependent upon the status of her community. If one community was dominated by another, then its members would also be significantly less free. If, on the other hand, their relations were equal, marked by an absence of domination, then its members would also walk about with dignity, self-respect and freedom. Thus, the Indian Constitution grants rights to all religious communities such as the right to establish and maintain their educational institutions. Freedom of religion in India means the freedom of religion of both individuals and communities. ± State's Power of Intervention Second, separation in India could not mean mutual exclusion. Why is it so? Because, religiously sanctioned customs such as untouchability deprived individuals of the most basic dignity and self-respect. Such customs were so deeply rooted and pervasive that without active state intervention, there was no hope of their dissolution. The state simply had to interfere in the affairs of religion. Such intervention was not always negative. The state could also help religious communities by giving aid to educational institutions run by them. Thus, the state may help or hinder religious communities depending on which mode of action promotes values such as freedom and equality. In India separation between religion and state did not mean their mutual exclusion but rather

Η ουλδ λικε το κνω ωηετηερ φινάλλψ, τηε στατε χαν ρεγυλατε ματτερσ ρελατεδ το ρελιγιον ορ νοτ. Οτηερωισε, τηερε χαν βε νο ρελιγιουσ ρεφορμ. 2022-23 2022-23 231

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principled distance, a rather complex idea that allows the state to be distant from all religions so that it can intervene or abstain from interference, depending upon which of these two would better promote liberty, equality and social justice. We have hitherto mentioned three core features — these can also be seen as the achievements — of our Constitution. ± First, our Constitution reinforces and reinvents forms of liberal individualism. This is an important achievement because this is done in the backdrop of a society where community values are often indifferent or hostile to individual autonomy. ± Second, our Constitution upholds the principle of social justice without compromising on individual liberties. The constitutional commitment to caste-based affirmative action programme shows how much ahead India was compared to other nations. Can one forget that affirmative action programmes in the U.S. were begun after the 1964 Civil Rights Act, almost two decades after they were constitutionally entrenched in India? ± Third, against the background of inter-communal strife, the Constitution upholds its commitment to group rights (the right to the expression of cultural particularity). This indicates that the framers of the Constitution were more than willing to face the challenges of what more than four decades later has come to be known as multiculturalism. Universal franchise Two other core features may also be regarded as achievements. First, it is no mean achievement to commit oneself to universal franchise, specially when there is widespread belief that traditional hierarchies in India are congealed and more or less impossible to eliminate, and when the right to vote has only recently been extended to women and to the working class in stable, Western democracies. Once the idea of a nation took root among the elite, the idea of democratic self-government followed. Thus, Indian nationalism always conceived of a political order based on the will of every single member of society. The idea of universal franchise lay securely within the heart of nationalism. As early as the Constitution of India Bill (1895), the first non-official attempt at drafting a constitution for India, the author declared that every citizen, i.e., anyone born in

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Indian Constitution at Work India, had a right to take part in the affairs of the country and be admitted to public office. The Motilal Nehru Report (1928) reaffirms this conception of citizenship, reiterating that every person of either sex who has attained the age of twenty-one is entitled to vote for the House of Representatives or Parliament. Thus from very early

on, universal franchise was considered as the most important and legitimate instrument by which the will of the nation was to be properly expressed. Federalism Second, by introducing the article concerning North-East (Art. 371), the Indian Constitution anticipates the very important concept of asymmetric federalism. We have seen in the chapter on federalism that the Constitution has created a strong central government. But despite this unitary bias of the Indian Constitution, there are important constitutionally embedded differences between the legal status and prerogatives of different sub-units within the same federation. Unlike the constitutional symmetry of American federalism, Indian federalism has been constitutionally asymmetric. To meet the specific “The Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will... promote the well-being...” It’s certainly a matter of pride that the principle of ‘one man one vote’ was accepted almost uncontested. Isn’t it true that women had to struggle for their right to vote in many other countries? Alladi Krishnaswami Ayyar, CAD, Vol. XI, p. 835, 23 November 1949 2022-23 2022-23 233 Chapter 10: The Philosophy of the Constitution needs and requirements of some sub-units, it was always part of the original design to have a unique relationship with them or to give them special status. Under Article 371A, the privilege of special status was also accorded to the North-Eastern State of Nagaland. This Article not only confers validity on pre-existing laws within Nagaland, but also protects local identity through restrictions on immigration. Many other States too, are beneficiaries of such special provisions. According to the Indian Constitution, then, there is nothing bad about this differential treatment. Although the Constitution did not originally envisage this, India is now a multi-lingual federation. Each major linguistic group is politically recognised and all are treated as equals. Thus, the democratic and linguistic federalism of India has managed to combine claims to unity with claims to cultural recognition. A fairly robust political arena exists that allows for the play of multiple identities that complement one another. National identity Thus, the Constitution constantly reinforces a common national identity. In the chapter on federalism, you have studied how India strives to retain regional identities along with the national identity. It is clear from what is mentioned above that this common national identity was not incompatible with distinct religious or linguistic identities. The Indian Constitution tried to balance these various identities. Yet, preference was given to common identity under certain conditions. This is clarified in the debate over separate electorates based on religious identity which the Constitution rejects. Separate electorates were rejected not because they fostered difference between religious communities as such or because they endangered a simple notion of national unity but because I am really impressed! Who says our Constitution is based on imitation?. In every ‘borrowed’ aspect, we have put our own distinct imprint. 2022-23 2022-23 234 Indian Constitution at Work they endangered a healthy national life. Rather than forced unity, our Constitution sought to evolve true fraternity, a goal dear to the heart of Dr. Ambedkar. As Sardar Patel put it, the main objective was to evolve ‘one community’. PROCEDURAL ACHIEVEMENTS All these five core features are what might be called the substantive achievements of the Constitution. However, there were also some procedural achievements. ± First, the Indian Constitution reflects a faith in political deliberation. We know that many groups and interests were not adequately represented in the Constituent Assembly. But the debates in the Assembly amply show that the makers of the Constitution wanted to be as inclusive in their approach as possible. This open-ended approach indicates the willingness of people to modify their existing preferences, in short, to justify outcomes by reference not to self-interest but to reasons. It also shows a willingness to recognise creative value in difference and disagreement. ± Second, it reflects a spirit of compromise and accommodation. These words, compromise and accommodation, should not always be seen with disapproval. Not all compromises are bad. “But in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country and that in India there is only

one community...” Sardar Patel, CAD, Vol. VIII, p. 272, 25 May 1949

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If something of value is traded off for mere self-interest, then we naturally have compromised in the bad sense. However, if one value is partially traded off for another value, especially in an open process of free deliberation among equals, then the compromise arrived in this manner can hardly be objected to. We may lament that we could not have everything but to secure a bit of all things important cannot be morally blameworthy. Besides, a commitment to the idea that decisions on the most important issues must be arrived at consensually rather than by majority vote is equally morally commendable.

CRITICISMS The Indian Constitution can be subjected to many criticisms of which three may be briefly mentioned: first, that it is unwieldy; second, that it is unrepresentative and third, that it is alien to our conditions. The criticism that it is unwieldy is based on the assumption that the entire constitution of a country must be found in one compact document. But this is not true even of countries such as the US which do have a compact constitution. The fact is that a country’s constitution is to be identified with a compact document and with other written documents with constitutional status. Thus, it is possible to find important constitutional statements and practices outside one compact document. In the case of India, many such details, practices and statements are included in one single document and this has made that document somewhat large in size. Many countries for instance, do not have provisions for election commission or the civil service commission in the document known as constitution. But in India, many such matters are attended to by the Constitutional document itself. A second criticism of the Constitution is that it is unrepresentative. Do you remember how the Constituent Assembly was formed? At that time, adult franchise was I υνδερεστανδ χομπρομισες ιν τηε δεσιγν οφ ινστιτυτιονς, βυτ ηοω χαν χομφλιχτινγ πρινχιπλες βε αχχομμοδατεδ? 2022-23 2022-23 236 Indian Constitution at Work not yet granted and most members came from the advanced sections of the society. Does this make our Constitution unrepresentative? Here we must distinguish two components of representation, one that might be called voice and the other opinion. The voice component of representation is important. People must be recognised in their own language or voice, not in the language of the masters. If we look at the Indian Constitution from this dimension, it is indeed unrepresentative because members of the Constituent Assembly were chosen by a restricted franchise, not by universal suffrage. However, if we examine the other dimension, we may not find it altogether lacking in representativeness. The claim that almost every shade of opinion was represented in the Constituent Assembly may be a trifle exaggerated but may have something to it. If we read the debates that took place in the Constituent Assembly, we find that a vast range of issues and opinions were mentioned, members raised matters not only based on their individual social concerns but based on the perceived interests and concerns of various social sections as well. Is it a coincidence that the central square of every other small town has a statue of Dr. Ambedkar with a copy of the Indian Constitution? Far from being a mere symbolic tribute to him, this expresses the feeling among Dalits that the Constitution reflects many of their aspirations. A final criticism alleges that the Indian Constitution is entirely an alien document, borrowed article by article from western constitutions and sits uneasily with the cultural ethos of the Indian people. This criticism is often voiced by many. Even in the Constituent Assembly itself, there were some voices that echo this concern. How far is this charge true? It is true that the Indian Constitution is modern and partly western. Do you remember that in the first chapter we have listed the various sources from which our Constitution ‘borrowed’? But in this chapter you have also Οφ χουρσε! Ισν□τ ιτ ωηατ ωε λεαρντ ιν τηε φιρστ χηαπτερ? Τηατ τηερε σηουλδ βε α παλιδ ρεασον φορ επερψ σεχτιον οφ σοχιετη το γο αλονγ ωιτη τηε Χονστιτυτιον? 2022-23 2022-23 237 Chapter 10: The Philosophy of the Constitution seen that it was never a blind borrowing. It was innovative borrowing. Besides, as we shall see, this does not make it entirely alien. First, many Indians have not only adopted modern ways of thinking, but have

made these their own. For them westernisation became a form of protest against the filth in their own tradition. Rammohan Roy started this trend and it is continued to this day by Dalits. Indeed, as early as 1841, it was noticed that the Dalit people of northern India were not afraid to use the newly introduced legal system and bring suits against their landlords. So, this new instrument of modern law was effectively adopted by the people to address questions of dignity and justice. Second, when western modernity began to interact with local cultural systems, something like a hybrid culture began to emerge, possibly by creative adaptation, for which a parallel can be found neither in western modernity nor in indigenous tradition. This cluster of newly developed phenomenon forged out of western modern and indigenous traditional cultural systems have the character of a different, alternative modernity. In non-western societies, different modernities emerged as non-western societies tried to break loose not only from their own past practices but also from the shackles of a particular version of western modernity imposed on them. Thus, when we were drafting our Constitution, efforts were made to amalgamate western and traditional Indian values. It was a process of selective adaptation and not borrowing. Limitations All this is not to say that the Constitution of India is a perfect and flawless document. Given the social conditions within which the “...we wanted the music of Veena or Sitar, but here we have the music of an English band. That was because our constitution makers were educated that way. ...That is exactly the kind of Constitution Mahatma Gandhi did not want and did not envisage.” K. Hanumanthaiya CAD, Vol. XI, pp.616-617, 17 November 1949 2022-23 2022-23 238 Indian Constitution at Work Constitution was made, it was only natural that there may be many controversial matters, that there would be many areas that needed careful revision. There are many features of this Constitution that have emerged mainly due to the exigencies of the time. Nonetheless, we must admit that there are many limitations to this Constitution. Let us briefly mention the limitations of the Constitution. ± First, the Indian Constitution has a centralised idea of national unity. ± Second, it appears to have glossed over some important issues of gender justice, particularly within the family. ± Third, it is not clear why in a poor developing country, certain basic socio-economic rights were relegated to the section on Directive Principles rather than made an integral feature of our fundamental rights. It is possible to give answers to these limitations, to explain why this happened, or even to overcome them. But that is not our point. We are arguing that these limitations are not serious enough to jeopardise the philosophy of the Constitution. Conclusion In the previous chapter we described the Constitution as a living document. It is these core features of the Constitution that give it this stature of a living document. Legal provisions and institutional arrangements depend upon the needs of the society and the philosophy adopted by the society. The Constitution gives expression to this philosophy. The institutional arrangements that we studied throughout this book are based on a core and commonly agreed vision. That vision has historically emerged through our struggle for independence. The Constituent Assembly was the platform on which this vision was stated, refined and articulated in legal-institutional form. Thus, the No δοχουμεντ χαν βε περφεχτ ανδ νο ιδεαλσ χαν βε φυλλψ αχηιεπεδ. But δοεσ τηατ μεαν ωε σηουλδ ηαπε νο ιδεαλσ? No πισιον? Αμ Ι ριγητ? 2022-23 2022-23 239 Chapter 10: The Philosophy of the Constitution Constitution becomes the embodiment of this vision. Many people have said that the best summary of this vision or the philosophy of the Constitution is to be found in the preamble to our Constitution. Have you carefully read the preamble? Apart from the various objectives mentioned in it, the preamble makes a very humble claim: the Constitution is not ‘given’ by a body of great men, it is prepared and adopted by ‘We, the people of India...’. Thus, the people are themselves the makers of their own destinies, and democracy is the instrument that people have used for shaping their present and their future. More than five decades since the Constitution was drafted, we have fought over many matters, we have seen that the courts and the governments have disagreed on many interpretations, the centre and the States have many differences of opinion, and

political parties have fought bitterly. As you will study next year, our politics has been full of problems and shortcomings. And yet, if you asked the politician or the common citizen, you will find that every one continues to share in that famous vision embodied in the Constitution: we want to live together and prosper together on the basis of the principles of equality, liberty and fraternity. This sharing in the vision or the philosophy of the Constitution is the valuable outcome of the working of the Constitution. In 1950, making of this Constitution was a great achievement. Today, keeping alive the philosophical vision of that Constitution may be our important achievement.

**Exercises**

- The following are certain laws. Are they connected with any value? If yes, then what is the underlying value? Give reasons.
  - Both daughters and sons will have share in the family property.
  - There will be different slabs of sales tax on different consumer items.
  - Religious instructions will not be given in any government school.
  - There shall be no begar or forced labour.
- Which of the options given below cannot be used to complete the following statement? Democratic countries need a constitution to Check the power of the government. Protect minorities from majority. Bring independence from colonial rule. Ensure that a long-term vision is not lost by momentary passions. Bring social change in peaceful manner.
- The following are different positions about reading and understanding Constituent Assembly debates.
  - Which of these statements argues that Constituent Assembly debates are relevant even today? Which statement says that they are not relevant?
  - With which of these positions do you agree and why?
    - Common people are too busy in earning livelihood and meeting different pressures of life. They can't understand the legal language of these debates.
    - The conditions and challenges today are different from the time when the Constitution was made. To read the ideas of Constitution makers and use them for our new times is trying to bring past in the present.
    - Our ways of understanding the world and the present challenges have not changed totally. Constituent Assembly debates can provide us reasons why certain practises are important. In a period when constitutional practises are being challenged, not knowing the reasons can destroy them.
- Explain the difference between the Indian Constitution and western ideas in the light of
  - Understanding of secularism.
  - Articles 370 and 371.
  - Affirmative action.
  - Universal adult franchise.
- Which of the following principles of secularism are adopted in the Constitution of India?
  - that state will have nothing to do with religion
  - that state will have close relation with religion
  - that state can discriminate among religions
  - that state will recognise rights of religious groups
  - that state will have limited powers to intervene in affairs of religions
- Match the following.
 

a. Freedom to criticise	i. Substantive treatment of widows achievement
b. Taking decisions in the	ii. Procedural achievement constituent assembly on the basis of reason, not self interest
c. Accepting importance of	iii. Neglect of gender justice community in an individual's life
d. Article 370 and 371	iv. Liberal individualism
e. Unequal rights to women	v. Attention to requirements of regarding family property and a particular region children
- This discussion was taking place in a class. Read the various arguments and state which of these do you agree with and why.
 

Jayesh: I still think that our Constitution is only a borrowed document.

Saba: Do you mean to say that there is nothing Indian in it? But is there such a thing as Indian and western in the case of values and ideas? Take equality between men and women. What is western about it? And even if it is, should we reject it only because it is western?

Jayesh: What I mean is that after fighting for independence from the British, did we not adopt their system of parliamentary government?

Neha: You forget that when we fought the British, we were not against the British as such, we were against the principle of colonialism. That has nothing to do with adopting a system of government that we wanted, wherever it came from.
- Why is it said that the making of the Indian Constitution was unrepresentative? Does that make the Constitution unrepresentative? Give reasons for your answer.
- One of the limitations of the Constitution of India is that it does not adequately attend to gender justice. What evidence can you give to substantiate

this charge? If you were writing the Constitution today, what provisions would you recommend for remedying this limitation? 10. Do you agree with the statement that “it is not clear why in a poor developing country, certain basic socio-economic rights were relegated to the section on Directive Principles rather than made an integral feature of our Fundamental Rights”? Give reasons for your answer. What do you think are the possible reasons for putting socio-economic rights in the section on Directive Principles? 11. How did your school celebrate the Constitution Day on November 26th?

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How did you like the test book? What was your experience in reading the book?  
What were the difficulties you faced? What changes would you like to see in the next  
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