

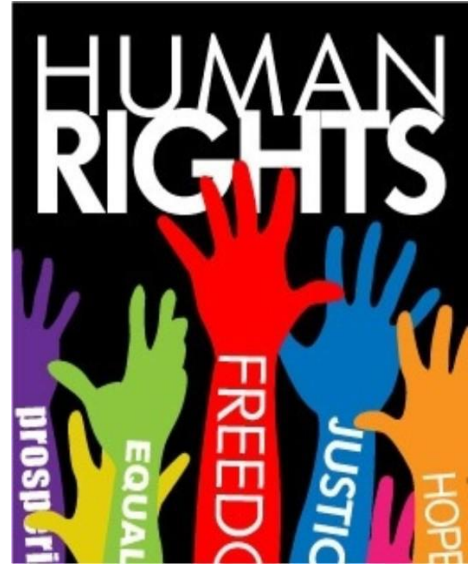
ಕರ್ನಾಟಕ ರಾಜ್ಯ ಮುಕ್ತ ವಿಶ್ವವಿದ್ಯಾನಿಲಯ  
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Karnataka State Open University  
Mukthagangothri, Mysuru-570006

**B.Sc., B.B.A., B.C.A., B.Sc.IT., B.Sc. Home Science  
(First Semester)**

**INDIAN CONSTITUTION AND HUMAN RIGHTS**



**AMC-106**

**BLOCK – 1 to 2**

## **Dear Student,**

I am extremely happy to welcome you to this course. In this course you will study a thrilling paper entitled Indian Constitution and Human Rights . In this fascinating paper you will study three different aspects in one paper mentioned above. The first part of the paper deals with Indian Constitution its importance and Historical development. It is such a sacred document consisting of various aspects of human life. It deals with Framing of the Indian Constitution, Fundamental Rights and Duties, Directive Principles of State Policy. Since there is a constitutional supremacy, it gives direction to ruler as well as ruled. It contains Directive Principles of state policy which give directions to state legislature in making laws. It consists of socialistic principles, Gandhian principles and liberal principles for the welfare of the people. The second important aspect introduced in this paper regarding the importance of universal declaration of Human Rights. Since 1979 special mechanism have been created by the united nation to examine the position of Human Rights in different countries. The presence of Human Rights is global and the context of Human Rights encompasses in the least and the most deprived. But it is hard to say whether the Human Rights situation in the world has actually improved. While in some countries freedom, Democracy and the Rule of law have certainly gained ground, there are other countries where the situation is worse than ever. The united Nations Human Right experts fought towards the realisation of Human Rights as the highest aspiration of the common people as the universal declaration of Human Rights proclaimed. To implement and execute the National Human Right Commission was constituted on October 1993. This paper contains two different aspects, Indian Constitution and Human Rights.

There can be no states without a constitution which contains the fundamental principles of governance and provides rights to the people. It is regarded as the sacred document of the land, which every citizen of India follows and respects. In the context of political turmoil resulting in the torture of human beings and violation of Human Rights. The study of Indian Constitution and Human Rights is of tremendous and paramount significance. Keeping this importance in mind overwhelmingly the course "Indian Constitution" and "Human Rights" is prescribed for all those who seek admission for all undergraduate courses of Karnataka State Open University.

**Dr. N. Ananda Gowda**  
**Chairman**  
DOS & Research in Political Science,

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**Year/Semester:** 1<sup>st</sup> Sem

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**First Semester: Paper-AMC - 106**  
**(02 Credits)**  
**Indian Constitution and Human Rights**

**Block Introduction**

This course is offered with a sole mission of imparting the students as to how the country is being governed the powers and functions of the three organs of the government the rights and duties of the people, the objectives and glorious ideals which the constitution is intended to promote and the basic structure of the constitution which is the sacred document of the land. Another important objective of this course is to make the students to understand the importance of Human Rights and various steps initiated against the violation of Human Rights.

This paper deals with two aspects the first part deals with Indian Constitution part second deals with Human Rights part. The above mentioned paper starts with Indian Constitution the details are on follows ;

**Block 1** consisting of four units. Unit 1 deals with Constitution - meaning, importance and salient features of the Indian Constitution . Unit 2 deals with Framing of the Indian Constitution and Preamble. Unit 3 deals with the Fundamental Rights and Duties and Directive Principles of the State Policy. Unit 4 deals with the Union Legislature, Executive and Judiciary – A) Lok Sabha and Rajya Sabha : Composition, powers and functions B) The President, Prime Minister and Council of Ministers - powers and functions C) Supreme Court : composition, and Jurisdiction of power

**Block 2** consisting of four units (5 to 8) Unit 5 deals with Human Rights – meaning, importance and Universal Declaration of Human Rights. Units 6 deals with Development Of Human Rights and Fundamental Rights, International Law And Its Position In India Unit 7 deals with Human Rights and NGO's -People's Union For Civil Liberty (PUCL) and People's Union For Democratic Rights (PUDR) Unit 8 deals with Centre and State Human Rights Commission : composition and functions.

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**First Semester: Paper-AMC - 106**  
**(02 Credits)**  
**Indian Constitution and Human Rights**

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## **BLOCK - 1**

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# **UNIT- 1 : CONSTITUTION : MEANING, IMPORTANCE AND SALIENT FEATURES OF THE INDIAN CONSTITUTION.**

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### **STRUCTURE**

- 1.0 Objectives
- 1.1 Introduction
- 1.2 Meaning of the term Constitution
- 1.3 Importance of the Constitution
- 1.4 Sources of the Indian Constitution
- 1.5 Salient Features of the Indian Constitution
- 1.6 Check Your Progress
- 1.7 Summary
- 1.8 Key words
- 1.9 Questions for self- study
- 1.10 References

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## **1.0 OBJECTIVES**

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This unit deals with the Meaning and Importance of the Constitution. The development of the Indian Constitution. After going through this unit, you will be able to;

- Examine the meaning of the Constitution.
- Explain the importance of the Constitution.
- Examine the Salient features.

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## **1.1 INTRODUCTION**

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The basis of any system of government is its constitution. Generally sovereign states have written or unwritten laws defining the powers of the government and rights and duties of the governed. And it is rather difficult to conceive of a state in which there is no constitution. Even an absolute monarch is supposed to govern the country according to certain principles. These very principles could form the constitution of that despotic state. According to Aristotle, “To live by the rule of the constitution ought not to be regarded as slavery, but rather salvation”.

Thus a constitution is essential to the proper working of every state. It has been rightly remarked by Prof. Jellineck, that ‘a state without a constitution would not be a state but a regime of a monarchy. In a modern representative democracy of the existence constitution is considered an important requirement.

It is imperative to know how the Indian Constitution has been evolved in a paced manner. This will throw a light on the growth and understanding of the Indian Constitution.

The Constitution of a country, in simple terms, is a collection of the legal rules providing the frame work for the governance of the country. It reflects the dominant beliefs and interest which are characteristics of the society at the time it was framed and adopted.

You know already that to prepare a Constitution for our India, a Constituent Assembly was constituted. This Assembly met for the first time on December 9, 1946. One of the gigantic tasks before the framers of the Constitution was how to move ahead with the great task of Constitution making. But the task was completed by a group of eminent personalities who were the freedom fighters to achieve political freedom. After achieving the political freedom, the framers of the Constitution were confronted with a problem of achieving two more goals, namely social and economic. This was reflected in the emotional language of Jawaharlal Nehru; “The first task of this Assembly is to free India through a new

Constitution, to feed the starving people, and to cloth the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity.”

To fulfill the above needs of the Indians, the framers of the Constitution had drawn widely and wisely from all other Constitutions of the world. Then the Draft of the Constitution was prepared. Further, the Indian Constitution drew much from the Government of India Act of 1935. Next, we have to study the features of the Constitution.

While preparing the constitution the framers felt the need for including Article 368 which deals with various procedures of amending the constitution.

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## **1.2 MEANING AND DEFINITIONS OF THE CONSTITUTION**

---

The term ‘constitution’ is derived from the word ‘constitute’ which means ‘to form’ or to, establish or ‘to compose’. Therefore the constitution is the act of establishing the basic form or structure of government. In very simple terms, the constitution of a state may be defined as “a body of rules and regulations, written as well as unwritten, which determine the organization and functions of government”. In other words, “the collection of principles or rules dealing with the organization and powers of government and the rights and duties of the people is called constitution”. To understand the meaning of ‘constitution’ a few important aspects of the concept may be noted.

According to Aristotle, the constitution is “the arrangement of power in a state especially of the supreme power”. Lewis who agrees with this view calls the constitution as the arrangement and distribution of the sovereign powers in the community, or form of government.”

**Sir James Macintosh** defines constitution as “the body of those written or unwritten fundamental laws which regulate the most important rights of the higher magistrates and the most essential privileges of the subjects.” **Jellinek** defines the constitution as “a body of juridical rules which determine the supreme organs of the state, which prescribe their mode of creation, their mutual relation, their sphere of action and finally the fundamental place of each of them in their relation to the state”. According to **Gilchrist** the constitution of a state is that body of rules and laws, written or unwritten, which determines the organization of government, the distinction of powers to the various organs of government, and the general principles on which these powers are to be exercised.

Woolsey says that a constitution is the collection of principles according to which the power of the government and the rights of the governed and the relation between the two are adjusted”.

James Bryce, defines the constitution as “the aggregate of laws and customs under which the life of the state goes on”, or “the complex totality of laws embodying the principles and rules whereby the community is organized, governed and held together”. Dicey defines a constitution as “all rules which directly or indirectly affect the distinction or exercise of sovereign power in the state”.

According to Gettel, “the fundamental principles that determine the form of a state are called its constitution”, J.W. Garner calls the constitution as the body of fundamental law either written or customary, which has to do with the organization of the state”.

According to K.C. Wheare, the word ‘constitution’ is commonly used in two senses. First of all, it is used to describe the whole system of government of a country, the collection of rules both legal and non-legal which establish and regulate or govern the government. These rules are partly legal in the sense that the law courts recognize and enforce them in the governance of the country and they are partly non-legal or extra legal, taking the form of usages, customs, and conventions which courts do not recognize as law, but they are not less effective in regulating the government. In most countries of the world the system of government is composed of this mixture of legal and non-legal rules and it is possible to speak of this Collection of rules as the “Constitution”.

In the narrow sense, it is used to describe not the whole collection of rules legal and non-legal, but rather a selection of them which are embodied in one document or in a few closely related documents. For example American, Indian and other written constitutions are used in this sense.

In the wider sense, the term “constitution” is used to denote the whole body of rules and regulations, customs and conventions, and judicial decisions which determine the form and character of governmental system, the rights and duties of government in relation to the citizens and those of citizens in relation to government.

An analysis of the above definitions reveals that a modern constitution describes :

- 1 The organization and form of state (Whether a Democracy or Dictatorship, Unitary or Federal).

- 2 Powers and function of different organs of government and their mutual relations (separation or fusion).
- 3 Rights of the citizens with their judicial protection.
- 4 Government - people relationship (Fair and Free election).
5. Procedure for the amendment of the constitution.

---

### **1.3 IMPORTANCE OF THE CONSTITUTION**

---

A constitution is essential to the proper and orderly working of every state. In the absence of the constitution there will be anarchy, i.e., chaos, confusion and disorder. Jellineck Says that, “a state without a constitution would not be a state, but a regime of anarchy”. Hence every state, whether democratic or otherwise, must possess a constitution. In modern representative democracy, the importance of the constitution is immense. Even the totalitarian state requires some semblance of a constitution to avoid disorder and to ensure the efficiency of government. It does not matter whether the constitution is in the form of a document or in the form of customs and conventions. What is required is a set of rules which would ensure legitimacy of the government. In the absence of a constitution, people could be harassed and exploited by dishonest and selfish politicians.

Modern states are governed by constitutional government. A government which functions on the basis of laws laid down by the constitution is known as ‘constitutional government’. Under this government the people are not subject to the whims and fancies of the rulers. It will be the government of laws and not of men.

A constitutional government is ‘limited government’. It sets definite limits to the authority of the rulers and thus checks arbitrary action on their part. It avoids confusion and introduces definiteness in administration. It checks the government from usurping or interfering with the rights of the people. It implies responsible government based on a system of restraints.

Thus the significance and the need for the constitution cannot be denied. It establishes rule of law and orderly government as opposed to the rule of men and disorderly government, because the governmental powers are clearly defined. It is a frame of reference. As a result, it minimizes political controversies and confusions. It ensures political stability and continuity in political institutions. Rights are secured and greater participation of the people in the political process is also ensured by most modern constitutions. Finally constitution guarantees peaceful change through legal and legitimate methods.

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## **1.4 SOURCES OF THE CONSTITUTION**

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The framers of the Indian Constitution were taken to learn from the experience of other countries as well as their own past experience. Therefore, they freely borrowed from the constitutions of other countries keeping in mind the needs and conditions of India. As a result the Constitution which was ultimately adopted contained features of a number of Constitutions.

The framers of the constitution were greatly influenced by the constitutional system and practices prevailing in England. The parliamentary system of government, the rule of law, the privileges of the members of Parliament etc. were all taken from British political system.

The impact of the American Constitution is mainly visible in the provisions relating to preamble, the Fundamental Rights, and the role of the Judiciary. Directive Principles of state policy were taken from the Constitution of Republic of Ireland. The federal system in the Indian Constitution is largely based upon the Canadian pattern, emergency provision from the Constitution of Germany and Government of India Act, 1935. The provisions relating to the election of the members of Rajya Sabha and amendment of the Indian Constitution were greatly influenced by the Constitution of South Africa. The greatest influence on the new Constitution of India was exerted by the Government of India Act 1935.

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## **1.5 SALIENT FEATURES OR NATURE OF INDIAN CONSTITUTION**

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### **1.5.1 Written Constitution**

The Constitution of India was drafted and enacted by a sovereign Constituent Assembly of India. This written constitution has the distinction of being the most lengthy and detailed one the world has so far produced. The original constitution contained 395 articles and 8 schedules. But today with subsequent amendments, additions and deletions, it has 444 articles and 12 schedules. (See page - 32. D.D. Basu Introduction to the Constitution of India 18th edition 1997). The extraordinary bulk of the Constitution is due to several reasons. The detailed administrative procedures, incorporation of fundamental rights and directive principles of state policy, elaborately dealt federal relations, special provisions for Jammu and Kashmir have made the Constitution bulky.

### **1.5.2 Both Rigid and Flexible Document**

Indian Constitution is both flexible and rigid. K.C. Wheare said that Indian Constitution strikes a good balance between extreme rigidity and too much flexibility. The founding,

fathers of the Constitution were well guided by the principle that a Constitution should be flexible enough, so as to change with the call of the time.

It is only the amendment of the few provisions of the Constitution that requires the ratification by the state legislatures, otherwise the rest of the Constitution may be amended by a special majority of the union parliament. On the other hand, parliament has been given the power to alter or modify many of the provisions of the Constitution by a simple majority as is required for general legislation. The flexibility of our Constitution is illustrated by the fact that during the first fifty-two years of its working it had been amended Eighty three times.

### **1.5.3 Sovereign Democratic Republic**

The Constitution declares that India is a sovereign democratic republic. Indians are free people under the Constitution. Though India is a member of the Common Wealth of Nations, it does not affect her sovereign character. Further, the Constitution establishes representative democracy. The vast electorate of the country shares the political power. But it is not possible to the electorate of the country shares the political power. But it is not possible to the electorate to exercise any political function by their direct vote. They can act only through their representatives.

The term ‘republic’ has different meaning in political science. However, the framers of the Constitution seem to have been guided by the general meaning of the word ‘republic’ as given in the new Oxford English Dictionary. According to his “Republic means a state in which the supreme power rests in the people and their elected representatives or officers as opposed to one governed by a king or as similar ruler.” Thus we know that we have an elected President instead of a hereditary king as the head of our state.

### **1.5.4 A Welfare State**

The Indian Constitution seeks to establish a welfare state where there should be justice social, economic and political. It gives to the individual citizens various rights and liberties to achieve his or her welfare. Social justice is an essential condition of a welfare state, as it prohibits discrimination. Economic justice is an essential condition of a welfare state, as it prohibits discrimination. Economic justice is a corollary to the social justice. It means non-discrimination between persons on the basis of economic values. Political justice ensures free and fair participation of the people in their political life. Therefore it involves adult franchise which has been accepted, introduced without any qualifications of any kind, to become an voter.

### **1.5.5 Federal System**

As noted earlier to bring unity out of diversity, federal system as our political system has been accepted by our constitution makers. Though the word 'federal' is not to be found anywhere in our Constitution, yet the Article-1 says India i.e., Bharath shall be a union of states. In accordance with the federal set up there is division of powers between the centre and the states. Rajya Sabha, which is the upper house, represents the units of the Indian Federation. In case of any disputes between the centre and the states there is independent judiciary with the power to solve all the disputes yet there is a criticism that Indian Constitution has many unitary features which have made the critics to call Indian Constitution as a quasi-federal constitution. This will be analyzed later.

### **1.5.6 Parliamentary System of Executive**

In the Constituent Assembly majority of the members decided that India should adopt the parliamentary system of government, as we were trained in this system by the Britishers. The second reason to adopt this system was, the people's representatives will be exercising the sovereign power, so that if the executive goes wrong, it can be checked or controlled by the legislature in this system. By adding 24th and 42nd amendments to the Constitution, supremacy or sovereignty has been conferred to the parliament. Parliamentary system of government is also called as cabinet system of government, because cabinet in the real sense is the government. The same parliamentary system is adopted at the state level also.

### **1.5.7 Fundamental Rights**

Part III of our Constitution dealing with the Fundamental Rights constitute the Magna Carta of the essential freedom of the Indian people. These rights establish favorable conditions for the maximum development of the individual's personality. There were seven fundamental rights which were enshrined when the Constitution was inaugurated. Now there are only six 1 fundamental rights - Right to Equality, Right to Freedom, Right against Exploitation, Right to Religion, Cultural and Educational Rights and Right to Constitution Remedies. Right to Property has been removed from this part which was a fundamental right before the 44th amendment was added to the Constitution. But these fundamental rights guaranteed can be suspended during the day's of national emergency.

### **1.5.8 Directive Principles of State Policy**

Part IV of the Constitution deals with these directives. These have been described by Dr. Ambedkar as a 'novel feature', in view of the fact that these constitute a very comprehensive political, social and economic programme for a modern democratic state. If part III lays foundation for political democracy, part IV lays the foundation for social and economic democracy. These principles are assurances to the people as to what they can expect from the state as well as directives to the state to establish and maintain a new social order in which justice, social, economic and political shall inform all the institutions of national life.

These directive principles lay down the substance of a democratic socialistic order as conceived by Mahatma Gandhiji and Pandit Nehru. These are positive instructions to the government to do certain things. More information will be given about the directive principles of State Policy in the Unit 5.

### **1.5.9 Fundamental Duties**

The forty-second Amendment of the Constitution added a new part to the Constitution part-IV-A incorporating ten fundamental duties of the citizens under Article-51-A. The intention to add duties to the constitution is to place before the country a code of conduct which the citizens are expected to follow in their actions and conduct. Duties and rights are two sides of the same coin. When an Indian citizen wants to enjoy the rights must not forget the duties to be fulfilled.

### **1.5.10 Independent and Integrated Judicial System**

Though India has accepted the Federal System, Constitution has provided integrated judicial system, which is against federal system. Courts can protect the rights of the citizens without any fear, impartially and independently. The judges of the Supreme and High Courts are appointed by the President of India. They cannot be removed easily. By protecting their salary and other privileges their independence is ensured. In this integrated judicial system Supreme Court is at the apex. Below High Courts are placed, and lower level courts are also there.

### **1.5.11 Single Citizenship**

Usually in a federation there should be double citizenship. One as a citizen of the federation and another citizenship to state he / she belongs. But the dual citizenship is not provided to Indian citizens. The reason was to curb the growth of provincialism and to

encourage the growth of nationalism. So citizens belong to the Indian union, not to any state. Accordingly the Constitution confers on all citizens similar rights and they are subject to identical obligations.

#### **1.5.12 Universal Adult Franchise**

The introduction of adult franchise without qualification of any kind was the boldest step taken by the Constitution makers, and it was an act of faith they had placed in the common man. Constitution clearly says that election to the Lok Sabha and to Legislative Assembly of every state shall be on the basis of adult suffrage. That is to say every person who is a citizen of India and who is not otherwise disqualified is entitled to be a voter. Adult franchise is the acceptance of the fullest implication of democracy and it is the most striking feature of India's Constitution.

#### **1.5.13 Secular State**

India is a secular state according to the Constitution. A multi-religious nation like India has to be secular. Secularism means that the state or government cannot aid one religion as against another. Secular state means

- a. There is no official religion for India and Parliament has no right to impose a particular religion as an official religion.
- b. It also means that all citizens irrespective of the religious beliefs are to be treated equally, and
- c. No discrimination will be shown by the state against any person on account of his / her religion for participation in political affairs, or entry into government service or admission to any educational institutions.

#### **1.5.14 Emergency Provisions**

One more unique feature of our constitution of India is the emergency provisions incorporated in the Part XVIII of the Constitution. Articles 352 to 360 deals with the three types of emergency. The President of India whenever he feels that there is a threat to the nation as a whole, or to any part of its territory by external aggression or internal armed rebellion, emergency may be imposed which is called as National Emergency. Second when the situation arises that in any state (unit of the federation) it is not possible to carry on the administration according to the Constitution emergency can be proclaimed, called as constitutional emergency or it is also called President's rule in a state. Third when President



<b>Delegation</b>	-Transfer of power
<b>Residuary power</b>	- Remaining power
<b>Provinces</b>	- Under the 1935 Act, the Units of the Indian government were called as provinces

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### **1.9 QUESTIONS FOR SELF STUDY**

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1. Explain the meaning of the term Constitution.
2. Examine the importance of the Constitution.
3. Discuss the salient features of the Indian Constitution.

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### **1.10 REFERENCES**

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1. Herman Finer, 1954, *Theory and Practice of Modern Governments*, Methuen & Ltd.
2. K.C. Wheare, 1966, *Modern Constitution*, New Delhi, Oxford University Press.
3. J.C. Johari, 2001, *Indian Constitution-New Delhi*, vishal
4. D.D. Basu, 1994, *Introduction to the Constitution of India New Delhi* prentice Hall.
5. The Constitution of India, *Government of India (Publication)*
6. B.L. Fadia, 2011, *Indian Government and Politics*, Agra, Sahitya Bhawan.
7. Granville Austin, 2000, *The Indian Constitution: Corner Stone of a Nation*. London, Oxford University Press.
8. Subhash Kashyap, 2011, *Our Parliament*, New Delhi, National book Trust.
9. Basu .D.D, 2001, *Introduction to the Constitution of India -19th New Delhi*, prentice Hall -2001
10. Pylee.M.V, 2004, *Constitutional Government in India*, New Delhi, S.Chand & co Ltd.
11. T.S. Rajagopallyengar, 1972, *Indian parliament A critical study*. Prasaranga. University of Mysore.
12. N.A. Somanna& others, 2009, *Indian constitution*, Mysore Book House.
13. Dr.H.M. Rajashekar, 2006, *Indian Government and politics*, Kiran Publications.
14. Mr. Rajeev & H.T. Ramakrishna, 2008, *Indian constitution*, New Delhi. Quantum Creations Lalitha Prakashana
15. Anupchand Kapur&K.K. Misra, 1956, *Select ed constitution*, S.Chand Company.
16. C.P.Bhambri, 1998, *Politics in India 1947-1987*, New Delhi, Vikas Pub.

17. Hansraj, 1920, *Indian Political System*, New Delhi, Surjeet Publication.
18. K.K. Ghai, 2007, *Indian government and politics*, New Delhi, Kalyani Publisher.
19. Fadia & Fadia, 2013, *Indian government and politics*, Agra, Sahitya Bhawan.
20. LaxmiKanth , 2013, *Indian Polity*, Mcgrew hill education India Pvt Ltd.
21. Subhas Kashyap, 2011, *Our Constitution*, New Delhi, National book Trust.
22. Mohit Bhattacharya , 2009, *New Horizons of public Administration*, Jawahar Publishers & Distributors.
23. Chakkravarthy .M, 1987, *The Right to be Human*, New Delhi, Lancer International.
24. Chiranjeevi .S, 1999, *Human Rights, Social Justice and Political Challenges*, New Delhi, Kanishka Publishers.
25. Davidson, 1981, *Basic Documents on Human Rights*, Oxford, Clarendon.
26. Cronin Kiran, 1992, *Rights and Christian ethics*, Cambridge University press, Cambridge.
27. J.M. Barbalet, 1988, *Citizenship rights struggle and class inequality*, Open University Press.

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## **UNIT - 2 : FRAMING OF THE INDIAN CONSTITUTION AND PREAMBLE**

---

### **STRUCTURE**

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Background
- 2.3 Composition of the constituent Assembly
- 2.4 Drafting Committee
- 2.5 Role of Dr.B.R.Ambedkar
- 2.6 Contributions of Dr.B.R.Ambedkar
- 2.7 Preamble of the Indian constitution
- 2.8 Significance of the preamble
- 2.9 Check your progress
- 2.10 Summary
- 2.11 Key words
- 2.12 Questions for self-study
- 2.13 References

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## **2.0 OBJECTIVES**

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After going through this unit you will be able to understand.

- The organization of the constituent assembly of India.
- The importance of the drafting committee
- The importance of the constituent assembly of India
- Role and contributions of Dr.B.R.Ambedkar in framing the constitution of India.
- The Preamble of the Indian constitution and its importance.

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## **2.1 INTRODUCTION**

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Every country must have a constitution of its own. Constitution by being the basic law of the country gives direction to the country. It directs the three organs of the Government and the whole country. Such constitution cannot be framed by everyone. Framing the constitution needs experts knowledge and commitment towards the development of the country. In this unit, therefore, we are concerned with how the constituent assembly was framed under the leadership of Dr.Rajendra Prasad; how such constituent assembly formed different committees.

Nearly 22 committees were formed. Among such committees, the drafting committee was an important committee under the able leadership of Dr.B.R.Ambedkar.

Just like every country must have a constitution every constitution must have a preamble. The preamble of the Indian constitution has been appreciated as the best preamble. We should make an endeavor here to know how constituent assembly was framed, how a drafting committee was framed. We should especially look into the role of Dr.B.R.Ambedkar as a Chairman of such a drafting committee and we should necessarily understand various contributions of Dr.B.R.Ambedkar.

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## **2.2 BACKGROUND**

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Great patriots of India, who selflessly fought for the freedom of India, demanded for Swarajya as early as 1905. Mahatma Gandhi put forward the idea that the future of India shall be determined by representatives of the people of India themselves. Indian National Congress,therefore, demanded to establish a constituent assembly consisting of representatives of India only.

Pandit Nehru while supporting the formation of such a constituent assembly opined that free India constitution must be framed without any outside interference by a constituent assembly which was to be elected on adult franchise. The decision for establishing constituent assembly, therefore, was considered very strongly till August 1940. It was inevitable on the part of the British Govt. to concede to the demands of Indian National Congress. It declared consequently that “framing of constitution must be the responsibility of Indian themselves”.

Cripps Mission was sent to India by the British Govt. to set up a constitution making body with the task of framing a new constitution to India. Finally however the constituent assembly was setup on the recommendation of cabinet mission plan.

Every constitution has preamble. Such a preamble is nothing but an introduction to the constitution. It speaks about the source, aims, objectives and goals of the constitution. It is, however, to be noticed that Principles enumerated in the preamble are not justiciable. To put in nutshell they can't be questioned in the court of law.

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### **2.3 COMPOSITION OF THE CONSTITUENT ASSEMBLY**

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The demand for a constituent assembly to frame a constitution which is most suitable to India became a part of official policy. They refused to accept mere constitutional reforms put forward by the British Government. They were after framing the constitution drawn up by a constituent assembly elected on the basis of adult franchise. It had its concrete form in the manifesto of Congress party. In the year 1938 Pandit Nehru strongly expressed the opinion that the Indian National Congress stands for independent and a democratic state. The constitution of free India must be framed, without outside interference by a constituent assembly elected on the basis of adult franchise. Severe attempts were therefore made to constitute the constituent assembly of India. It is noteworthy that M.N.Roy an advocate of radical democratism put forward the idea of a constituent assembly for India in the year 1934.

Every Indian especially students of political science and public administration should study and understand how such constituent assembly was framed in India.

Such constituent assembly established in 1946 assigned the task of preparing the constitution for free India. It consisted of leaders and great patriots like Pandit Nehru, Sardar Vallabha Patel, Moulana Azad, Dr. Rajaendra Prasad, Dr.B.R.Ambedkar, H.N.Kunzru, H.V.Kamat, K.M.Munshi, Rajaji and most of such luminaries. It had fifteen ladies also. Some

of them were Sucheta Krapalani, Hons Mehata, Smt.V.Jayalakshmi Pandit, Sarojini Naidu and Rajakumari Amruth Kaur and others.

The constituent assembly had 292 members elected by the legislative assemblies of eleven British Indian provinces, 93 members nominated by the Indian princely states.

There were 4 members representing the chief commissioner of Delhi, Coorg, Ajmer Merwara and Anadaman and Nicobar Islands.

As a result of partition of India in accordance with the Mount Batten plan of 1947 a separate constituent assembly was setup for Pakistan.

It is to be noted that provisional legislative assemblies were to elect their representatives by the method of proportional representation by means of single transferable vote system where the representatives of princely states was to be determined by consultation.

The first session of constituent assembly of India was held on December 9<sup>th</sup> 1946 on the basis of request of J.B.Krupalani then the congress president Mr.Sachidanda Sinha assumed the charge of provisional president of the constituent assembly. On December 11, 1946 Dr.Rajendra Prasad was permanently elected as president of the constituent assembly of India. 'The Independence Act of 1947 had converted the constituent Assembly constituted in 1946 into full sovereign body free from all limitations. It is quite interesting to note further that such a constituent assembly worked as provisional Parliament of India till April 1952. Then the parliament elected on the basis of adult franchise came into existence in India.

Under the statesmanship of Dr.Rajendra Prasad, the work of constituent assembly was done magnificently. It took nearly three years with eleven sessions to complete the task. Each and every provisions of the drafting committee which was led by Dr.B.R.Ambedkar were discussed and approved by the constituent assembly of India. Ultimately therefore the constituent assembly accepted the constitution in November 26, 1949. According to article 394, some of the provisions of the constitution had come in to practice, whereas rest of the articles were adopted on January 26, 1950. Therefore constitution of India came into practice on the above date. We are, therefore, celebrating the republic day on 26<sup>th</sup> of January every year. Everyone in the country must respect the constitution and abide by it.

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## **2.4 DRAFTING COMMITTEE OF THE CONSTITUTION OF INDIA.**

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The role of drafting committee needs be glorified; it played a marvelous role under the able leadership of Dr.B.R.Ambedkar in framing the constitution of India. There were altogether 22 committees including drafting committee.

Some of such important committees were :

Rules of procedure committee

Finance and staff committee

House committee

Order of business committee

Hindi translation committee

Union constitution committee

States committee

Advisory committee

Urdu translation committee

Union powers committee

Ad-hoc committee on national flag etc.

Each one of the above committees played its useful role towards the constitution of India. These committees submitting their reports which were considered by the constituent assembly on the basis of these decisions the final shape and form were given by drafting committee.

### **Organisation of the drafting committee.**

On August 29, 1947 the constituent assembly set up a drafting committee to prepare a draft constitution. Such a drafting committee was headed by Dr.B.R.Ambedkar. The other members of drafting committees were Sri.Alladi Krishna swamy Iyer Gopalswamy Iyengar. T.T.Krishnachari K.M.Munshi, Syed Mohamad Saadulah, Sri.B.L. Mittar, and D.P.Khaitan.

It is noteworthy that B.N. Rao an eminent constitutional expert worked as constitutional advisor in the drafting committee.

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## **2.5 THE ROLE OF DR.BABASAHEB AMBDEDKAR BY BEING THE CHAIRMAN OF THE DRAFTING COMMITTEE.**

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Dr.B.R.Ambedkar dedicated his entire knowledge, which he had acquired within the country and abroad in working as chairman of the drafting committee and also in the working of constituent assembly. There was a lack of total involvement among the other members of drafting committee due to health and other personal reasons. Dr.B.R.Ambedkar worked more than 18 hours per day in looking into various aspects of the drafting committee pros and cons of each issue in detail. It is very interesting to note how he was answering the various questions put forward by the members of the constituent assembly, and how they were appreciating him. Ultimately he was not only a legal luminary but also a great humanist. If one reads and understands the book “commentaries on the constitution of India” by D.D.Basu and a work entitled as “Builders of modern India” by W.B.Kabeer, certainly appreciates Dr.B.R.Ambedkar. Very much appreciating the role of Dr.B.R.Ambedkar both in the constituent assembly and the drafting committee, M.V.Pylee, an eminent constitutional expert called Dr.B.R.Ambedkar as father of the Indian constitution. He also appreciates him as an architect of the Indian constitution and modern man.

Colombia and Usmania universities awarded Dr.B.R.Ambedkar recognizing the valuable role he had played in framing the constitution of India.

Nicoles Beverly an eminent expert in his work on verdict on world history dispassionately by expressing the opinion that “If an attempt is made to find out five top most intellectuals in the world Dr.Babasahab Ambedkar of India, certainly appears there”.

Dr.Babasahab Ambedkar undoubtedly a great intellectual, a great humanist and a statesman; Bharata Ratna was therefore awarded to him posthumously in the year 1990.

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## **2.6 CONTRIBUTIONS OF DR.B.R.AMBEDKAR TOWARDS THE CONSTITUTION AND THE INDIAN SOCIETY.**

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By being a great constitution expert, social reformer and a great humanist Dr.B.R.Ambedkar, contributed very much to the constitution, as well as to the Indian society. He was able to contribute so much, out of his intellectual height, social commitment and patriotic feeling, which was in his blood. It is because his father and grandfather were in military service. Sri. Ramji Sakpal father of Ambedkar fought for the Dalits to enter into

military service. He had social commitment, because he himself was born in a dalit family, on April 14-1891. Bheemabai was the mother of Ambedkar, he was the 14<sup>th</sup> child in the family. He was born in Ambevadi a taluk in Ratanagiri district of Maharashtra state.

The conditions of dalit then were in a bad shape : they were treated as untouchable. They were not allowed to use public wells; they were denied education. Their condition was very painful and intolerable.

Dr.B.R.Ambedkar himself subjected to inhuman treatments by the caste hindus. Dr.B.R.Ambedkar then thought that it is not enough if he alone becomes educated and enlightened. Entire dalit communities must be educated and come forward. He had gone to the extent of declaring that the dalits should become the rulers of India. He fought against the caste ridden society tirelessly till the end. But no one should be under a wrong impression that he worked only for dalits untouchables; he contributed very much for the development of the country. He became very popular not only in India but also in other countries of world due to high humanistic approaches with this background following contributions of B.R.Ambedkar can be analysed and appreciated. First of all Dr.B.R.Ambedkar worked as the chairman of the drafting committee of the Indian constitution. He involved wholeheartedly in preparing the various provisions of the constitution. He declared that India is a union of states.

States do not enjoy total freedom. They are, to be under the guidance control of the union govt. He advocated unity in diversity. He was of the opinion that strength of India ultimately depends upon its unity. He advocated therefore, for a strong and stable India. He was of the firm conviction that first country everything comes next. He was in favour of establishing a strong central Government. It can be treated as the best contribution of Dr.B.R.Ambedkar.

Secondly he worked very much to create such a constitution best suited to India Appreciating the constitution of India Dr.Rajendra Prasad president of the constituent assembly expressed the opinion that the constitution has provision in it which are objectionable. Such details are inherent in the situation in the country and in the people at large.

3. A very much useful contribution is the incorporation of article -14 in the constitution; All are equal in the eye of an administration on artificial grounds like caste, sex, religion is

prohibited. Equality of opportunity under equal circumstances shall be practiced and followed. It also goes with equal protection of law to all the citizens of India. Indian society in a society of unequal's- it therefore needs such provisions of the constitution, to improve itself.

4. Due to the personal experience of being ill-treated by some caste Hindus, Dr.B.R.Ambedkar inserted art- 17 to the constitution according to it preaching or practising inhuman the practice of untouchability has been made a cognizable offence. No one should be degraded or defaced based upon his birth. Everyone should be allowed to be on his own. Everyone should be allowed to lead a respectful and peaceful life. It is not the birth but the work of individuals which is important.

5. Dr.B.R.Ambedkar made provisions for the protection of individual rights and freedoms. No one can be detained and punished arbitrarily. Punishment shall be to the nature of the offence committed; no one should be punished twice for the same offence etc. Individual freedom is as important as the freedom of the society. It can therefore, be considered as an important contribution of Dr.B.R.Ambedkar.

6. He advocated against forced labour, by misusing the helpless conditions of individuals in society: He advocated the prevention of traffic in human beings, under articles 23 & 24 of the Indian constitution. Dr.B.R.Ambedkar strongly opposed the misuse of women and children for immoral and unethical uses or practice. It reflects the moral standard of Ambedkar.

7. Dr.B.R.Ambedkar made the constitution totally secular articles 25 to 28 are proof to it. Religious freedom is accorded to each & everyone in the country. Every religion is treated equally. State doesn't discriminate between one and another religion. Highest post in both political and administrative field can be occupied by any worthy citizens of the country. To put it in nutshell there is no state religion in India. On the other hand Pakistan is declared as a theocratic state.

8. Provisions made by Dr.B.R.Ambedkar to protect the interest of minorities in India can be said to be another contribution. Cultural and educational rights are given under article 29 and 30 of the constitution for the same purpose. Dr.B.R.Ambedkar was of the strong opinion that both majority and minority should respect each other. They should unitedly work for the development and progress of the nation.

9. He advocated for the establishment of a socialistic pattern of society, where the resources of the Nation shall be shared by all; equal pay for equal work for both men and women.

10. In the constituent assembly discussion, he firmly stood for the establishment of Parliamentary executive in India. He wanted to establish accountability of the government towards the legislature; govt. therefore now can't work according to its whims & fancy: it is held accountable to the parliament of India which is consisted of direct and indirect representatives of the people of India.

11. Right to constitutional remedies under article 32 of the constitution constitutes another important contribution. Here declaration of fundamental rights is of no use: unless there is a provision for protecting them whenever an individual right is violated by any he/she may approach the court directly. Supreme and High Courts are empowered to issue writs like Habeas, Corpus Mandamus etc. to protect the rights of the citizens. Dr.B.R.Ambedkar therefore praised this article- 32 as the heart and soul of the constitution.

12. Declaration of national emergencies under article 352 and 360 and declaration of presidential rule in a state under article -356 constitute another contribution of B.R.Ambedkar . Union govt. then assumes power becomes very powerful under such declaration: National emergency can be declared whenever the safety and security of India is threatened due to internal rebellion and external aggression by our enemy countries. Presidential rule in a state, whenever there is the breakdown of constitutional machinery in a state.

13. Dr.B.R.Ambedkar advocated the cause of social justice in the form of reservation and other such privileges to the depressed class in society. Reservation for scheduled caste, scheduled tribes and backward classes etc. are necessary. Many talented and industrious students are availed that benefit, and working efficiently in their respective fields today. This type of opportunity was not there earlier, in our Indian Society.

14. He opened schools and colleges for the education of dalits and other needy people and tirelessly worked for the betterment of labourers: he advised them to be effective and efficient in their field and to achieve individual and collective efficiency.

15. Dr.B.R.Ambedkar advocated that India should be friendly with all other countries of the world. Especially with our immediate neighbouring countries like Srilanka, Malaysia Indonesia etc. that indicates the positive thinking and attitude of the great and proud son of India.

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## **2.7 PREAMBLE OF THE INDIAN CONSTITUTION**

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Every constitution must begin with a preamble of its own: such a preamble is nothing but an introduction to the constitution. It clearly explains the source of the constitution, objectives and goals of the constitution: it also explains the date on which the constitution came into existence.

The preamble of the Indian constitution has been appreciated as one of the best preamble in the world. However it is most worthy that we can't move a court of law, if some of the objectives of the preamble can't be achieved or implemented.

The preamble is therefore, said to be non-Justiciable. It is Just and introduction and not the body of the constitution. It goes with the declaration of objectives with which the constitution of India begins with.

Following is the preamble of the Indian constitution "we the people of India, having solemnly resolved to constitute India into a soverigm democratic socialistic secular republic and to secure to all its citizens.

Justice – Social economic and political

Liberty of thought, expression, belief faith and worship

Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

In our constituent Assembly this twenty sixth day of November 1949 do

HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

When the constitution was adopted in the year 1950, the two words secular and socialistic were not there in the preamble of the constitution. They were inserted to the preamble through the 42<sup>nd</sup> amendment made during 1976 to the constitution of India. The Janata Party Government through the 44<sup>th</sup> amendment decided to retain those two words socialist and secular in the preamble of the constitution.

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## **2.8 SIGNIFICANCE OF THE PREAMBLE OF THE INDIAN CONSTITUTION**

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Importance or significance of the preamble is due to the emphasis on making India a sovereign state. India became an independent country. and decided to form its own

constitution; India therefore, today is sovereign both internally and externally. It shouldn't be surrendered ever.

Internal sovereignty of India refers to the supremacy of the India over all its individuals and their associations. They are to be loyal and obedient to India and respect it whole heartedly.

External sovereignty refers to free foreign policy that it can follow with other countries of the world. Without surrendering its national interest and also the interests of its citizens.

India is a democratic country. Adult franchise has been practiced right from the beginning. One who completes 18 years of age is allowed to vote, irrespective of his caste, sex, religion, etc. periodical elections are held in India to elect the representatives both at the centre and the states. The vast electorates share the political power in the country. But it is to be noticed that representatives of the people exercise power, not the people of India directly.

India is a socialistic secular democratic republic. Socialist system refers to the resources of the nation shall be shared by all. The ownership and management of all the means of production will be in the hands of society. Socialism is therefore, should be the basis of economy of India: the gap between the rich and poor shall be diminished. Many provisions that are found in directive principles of states policy indicate the socialistic objectives of the constitution of India.

**Secular :** Through an amendment of the constitution the word secular was inserted to the constitution. Preamble itself had assured liberty of factors through belief and worship. Religious freedom is allowed and practiced in India. Everyone is entitled to secure a job, without any discrimination on the grounds of Religion. We don't have any state religion. The Indian state is neither religious nor anti-religious It encourages every religion in its progress and development no religion is allowed to enjoy, what can't be enjoyed by other religion. They can preach and practice their religion but imposing it on other is not allowed. Worthy citizens of any religion in India can acquire any job and go to the topmost political post also.

Democratic Republic refers to the fact that ultimate power resides in the people (voters) in the country: Representatives should respect the verdicts of the citizens. They have to work for the progress and prosperity of the citizens. Right to recall the elected representatives has been exercised by the citizens of Switzerland. It is yet to be adopted and practiced in India. Whether such a system is feasible in India is to be examined seriously.

Republic refers to the fact that the head of the state shall be elected either directly or indirectly. Accordingly the Indian president has been elected by an election college: which consists of the representatives of the people. Direct election of the president is a very difficult, costly and time consuming.

To put in a nutshell there can't be a monarch as head of the state under any republican govt. It is not worthy that every democratic state need not be a republican govt. for instance the United Kingdom

### **Goals of the constitution which are laid in the preamble of the constitution.**

Justice, liberty, equality and fraternity are said to be the goals of the Indian constitution. We are therefore bound to understand the meaning of such above concepts and their importance in our constitutional setup.

Accordingly justice means harmonious reconciliation of individual conduct, with the general welfare of the society. No one should be deprived his or her due. Equality of opportunity under equal circumstances shall be followed. Free legal aid to marginalized sections of the society is required to maintain justice in the country. Speedy disposal of cases is of much use. It is because, justice delayed is justice denied. Reservation for scheduled caste tribes and other backward classes are in tune with social justice in India.

Liberty refers to creating those conditions necessary for the all round development of the personality of citizen's in the country. There shall not be restrictions on the freedom of individuals. It is because social progress of the society is certainly depends upon the individual's progress and prosperity.

Article 19 of the Indian constitution therefore speaks about the freedom of individuals. It states about freedom of speech freedom of expression freedom to practice the profession of his choice with necessary legal qualification. Freedom to move freely and settle down in any part of the country single citizenship is advocated and protected in India. USA on the other hand provides the double citizenship to its citizens.

**Equality** : it refers to equality of opportunity under equal circumstances for both men and women. It refers to equal protection of law also. Liberty and equality are said to be the two faces of the same coin one carries no meaning in the absence of another. Equality can't be

maintained among unequal. What is the use of giving liberty to individuals when there is no equality at all. They are complimentary to each other.

**Fraternity** : every citizens of India should act together with the spirit of brotherhood. It is necessary to ensure the dignity and decorum of individuals. It is indispensable to maintaining and integrity nation. The declaration of Human rights by UNO emphasizes the same idea of fraternity among all the citizens of the world. It is very much needed in India and elsewhere. Dr.B.R.Ambedkar therefore of the firm opinion that love and love alone can solve our problems. It gives room for peaceful co-existence. It is therefore, made an important principle of Foreign policy of India.

The Preamble of the Indian constitution with the above legal moral and ethical principles naturally appreciated as one of the best preambles in the world. It is not an exaggeration to say that, with this preamble, constitution of India has also been appreciated as the best constitution in the world.

Many of the framers, who were in the constituent assembly, were not only constitutional experts but also “great patriots: they fought and Jailed for the freedom of the country”. They were selfless in their approach and commitment.

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## **2.9 CHECK YOUR PROGRESS**

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1. Which body framed the constitution of Independent India
2. The constituent assembly was setup in -----
3. Who among the following was the president of the constituent assembly?
  - A. Dr. Rajendra prasad
  - B. Dr.B.R.Ambedkar
  - C. Lal Bahadur Shastri
  - D. Nehru
4. Who among the following was the chairman of the union constitution committee of the constituent assembly?
  - A. Dr.B.R.Ambedkar
  - B. Nehru
  - C. J.B. Kripalani
  - D. Rajendra Prasad
5. The constitution of India was adopted on-----
6. The preamble of the constitution is a part of the constitution. True or False
7. When was the term ‘Secular’ added to the preamble of Indian constitution

8. ----- said that the preamble is termed as “political horoscope”
9. Which country’s constitution used the word ‘preamble’ for the first time
10. Which case in the supreme court asserted that ‘preamble is a part of the constitution’

### **ANSWERS TO CHECK YOUR PROGRESS**

1. Drafting committee
2. 1946
3. A
4. B
5. 26th November 1949
6. True
7. 1976 by 42nd amendment
8. K.M. Munshi
9. America
10. Kesavananda bharti case

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### **2.10 SUMMARY**

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Under Unit III Attempts are made to know about the constituent assembly drafting committee of the Indian constitution Role and contribution of Dr.B.R.Ambedkar to the constitution as well as to the Indian society. Preamble of the constitution has also been discussed. While attempting to do so, we came to know about how the constituent assembly under the able leadership of Dr.Rajandraprasad was formed. Who were its members, how they were elected, nominated etc. we also came to know how such constituent assembly formed various committees to look into various issues of the constitution. How they performed their assignment effectively.

Specifically we made reference to the drafting committee headed by Dr.B.R.Ambedkar and other members of it, role of Dr.B.R.Ambedkar has been specifically discussed.

We also understood various contributions of Dr.B.R.Ambedkar. It is noticed that he was not only a legal luminary but also a great humanist and role model to others, in India and abroad the reason for which he was awarded “Bharat Ratna”.

Ultimately a detailed analysis has been made regarding the contents of the preamble of the Indian constitution. Various principle of preamble also analyzed in this chapter.

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## **2.11 KEY WORDS**

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**Endevour** – Attempt

**Opined** – is of the opinion

**Task** – assignment

**Enumerated** – incorporated Posthumously – after the death

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## **2.12 QUESTIONS FOR SELF-STUDY**

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1. Explain the composition of constituent assembly.
2. Discuss the composition of the drafting committee.
3. Explain the role of Dr.B.R.Ambedkar in the drafting committee of the Indian Constitution.
4. Discuss the various contributions of Dr.B.R.Ambedkar
5. Narrate the contents and significance of the preamble of the Indian Constitution.

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## **2.13 REFERENCES**

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1. The constitution of India  
A Political Legal study – J.C.Johari
2. Indian parliament – T.S.Rajagopal Iyengar, A critical study
3. Indian constitution – by N.A.Somanna & others.
4. Indian Government and polities –Dr.H.M.Rajashekar
5. Indian constitution –Mr.Rajeev & H.T.Ramakrishna
6. Selected constitution –Anup chand Kapur & K.K.Misra
7. India’s Constitution – by M.V.Pylee.
8. Bharata Ratna Dr.Ambedkar – by G.V.Shastry

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## **UNIT - 3 : FUNDAMENTAL RIGHTS AND DUTIES – DIRECTIVE PRINCIPLES OF THE STATE POLICY**

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### **STRUCTURE:**

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Historical Perspective
- 3.3 Meaning of Fundamental Rights
- 3.4 Nature of Fundamental Rights
- 3.5 Fundamental Rights
- 3.6 Fundamental Duties
- 3.7 Directive Principles Of State Policy- Historical Background
- 3.8 Nature
- 3.9 Classification of Directives
- 3.10 Sanctions to the Directives
- 3.11 Differences between Fundamental Rights and Directive Principles  
of State Policy
- 3.12 Implementation
- 3.13 Changing scope of the Directive Principles of State Policy
- 3.14 Check your progress
- 3.15 Summary
- 3.16 Key words
- 3.17 Questions for self-study
- 3.18 References

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### **3.0 OBJECTIVES**

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This Unit deals with the Fundamental Rights and Duties- Directive Principles Of State Policy. After going through this unit you will be able to ;

- Discuss the importance of fundamental rights to the citizens.
- Examine the fundamental rights guaranteed to the citizens of India.
- Examine the nature of the Directive Principles of State Policy
- Define the importance of the Directive Principles of State Policy
- Explain the sanction behind Directive Principles of State Policy
- Explain the place they have occupied in the Constitution and actual administration.

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### **3.1 INTRODUCTION**

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H.J. Laski said “rights are those conditions of social life without which no man can seek to himself at his best.” Fundamental Rights have both the connotation of positive and negative aspect.

Part III of the Indian Constitution deals with Fundamental Rights which constitutes the Magna Carta of the essential freedoms of the Indians. It contains a very comprehensive list of the rights that have a justifiable character inspite of the fact that the state may impose ‘reasonable restrictions’ on their use and enjoyment, and also they can be suspended by the President during the period of national emergency. In addition to, this chapter contains an elaborate discussion on the duties and privileges given by the Constitution to the weaker sections of the society.

Part IV of the Constitution dealing with the ‘Directive Principles of State Policy’ provides one of the most novel and striking features of the modern constitutional government. These directive principles aim at attaining social, political and economic justice. They are laid down as guidelines which are fundamental in the governance of the country. The state and its agencies are expected to be guided by these principles in the enactment and implementation of laws. In this sense, they constitute the ideal policy guidelines for every branch of the state machinery in India.

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### **3.2 HISTORICAL PERSPECTIVE**

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Inclusion of fundamental rights as a constitutional guarantee is comparatively a recent origin. It was after the French Revolution and the US struggle for freedom that nations of the world seriously thought of giving some basic rights to their people. It was in 1789 that French National Assembly adopted “The Declaration of Rights of Man.” The Constitution of USA also incorporated a chapter on Bill of Rights.

The idea of incorporating a list of fundamental rights in a new constitution of India had excited the imagination of almost all political thinkers and constitutionalists in India from the time of independence from the Britishers. The American Bill of Rights the French Declaration of Human Rights, the Declaration of Human Rights by UN in 1948 and the 1935 Irish Constitution, had a tremendous impact on Indian Constitution Makers. The Indian National Congress, the Liberals, Moderates, the Muslims, the Christians and the Sikhs, all considered it not only desirable but essential. This is because for two reasons, for the protection of the rights of minorities and for infusing confidence in the majority community. The British Government never agreed to include any provision to guarantee fundamental rights when many Acts were passed. In the absence of any provisions in any Act, Indians suffered bitterly in the hands of Britishers. The working of the British Government in India amply demonstrated the necessity of incorporating a list of fundamental rights in the constitution of independent India.

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### **3.3 MEANING OF FUNDAMENTAL RIGHTS**

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A ‘right’ is nothing but an opportunity available only in a state. Such opportunities must be available to all, and by making use of these opportunities, each individual tries to develop his personality. But a Fundamental Right may be defined as an opportunity provided by the higher law of the country. Fundamental Right finds its sanction in the constitutional provisions. According, to D.D. Basu, “fundamental right is one which is specified, protected and guaranteed by the written constitution of the state.” These are called fundamental because, while ordinary rights may be changed by the legislature in the ordinary process shorter than amending the constitution itself. On the other hand, the fundamental rights being guaranteed by the fundamental law of the land, no organs of the State Executive, Legislature or Judiciary can act in contravention of such rights.

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### **3.4 NATURE OF FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTION**

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The fundamental rights guaranteed under the Indian Constitution have the following characteristics :

1. In the part III of the Constitution of Indian the term ‘State’ refers to union government, state governments and local governments. The State is called upon not to enact any legislation or issue any order which takes away or abridges or suppresses the fundamental rights guaranteed by the Constitution.

2. The Constitution makes use of terms, citizens and ‘persons’, at different places, which means that, while some rights are given to the citizens, some others are available to all persons living in this country. For example, equality of opportunity in matters of employment, protection from discrimination on any ground like that of religion, race, caste, sex, residence etc. are available only to citizens ; but equality before law and its equal protection of life and property, etc. are available to all the persons residing in the state.

3. Our fundamental rights are not absolute, state can laid down reasonable restrictions on their use and enjoyment. The parliament may make laws as per the need of the times to limit the exercise of these rights. The state may also deny some of the fundamental rights to a class of people, as police and armed forces. This is in the interest of administrative efficiency or national integrity. These fundamental rights can be amended or even suspended during the time of national emergency.

4. Fundamental Rights are justifiable. That is, when a citizen is infringed of his fundamental right he can move the court of law. Article 32 appoints the Supreme Court as the guardian of these rights. Right to Constitutional Remedies is itself a fundamental right.

Now let us examine the fundamental rights incorporated and guaranteed to the citizens of India by the constitution.

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### **3.5 FUNDAMENTAL RIGHTS**

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The original Constitution which was inaugurated in 1950 guaranteed seven Fundamental Rights. They were ;

- a. Right to equality ;
- b. Right to freedom ;

- c. Right against exploitation ;
- d. Right to freedom of religion ;
- e. Cultural and Educational Rights ;
- f. Right to property ; and
- g. Right to constitutional remedies.

Of these, the right to property has been removed from the fundamental rights chapter by the 44th Amendment Act, 1978. Thus now we have only six fundamental rights. Right to property is now only a legal right. Let us study each of these.

### **3.5.1 Right to Equality**

Articles 14, 15, 16, 17 and 18 of our Constitution deal with the right to equality. According to this right, every person enjoys equality before the law and equal protection of the law. The State is called upon not to deny these rights to any person in India. These provisions of the Constitution of India echo the provisions of the British common law rule and the 'due process of law' of the American Constitution. It does not mean that all persons will have an absolute equality and identity of positions and status. For example, the President, Governors, Judges and Officers enjoy special privileges and status appertaining to their offices. Ordinary citizens cannot claim these privileges and status. The term 'equality' is used in the sense that among equals the law should be equal and should be equally administered.

Constitution also provides civil and social equality. Discrimination against any citizen on grounds of religion, race, caste, sex or place of birth is prohibited. All citizens have equal access to public places maintained by the state. Equality of opportunity in matters relating to employment or appointment to any office under the state is also guaranteed to all citizens. While distributing these opportunities, the state has been called upon not to practice discrimination against any citizen on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. However, the state is permitted to provide for reservation of jobs in favor of backward classes, schedule caste and scheduled tribes and special provision may be made in favor of women and children.

The Constitution of India declares that "untouchability" is abolished and its practice is prohibited. The enforcement of any disability arising out of the practice of untouchability is

made a punishable offence. A fine of Rupees 500, or imprisonment up to 6 months or both may be imposed on any person who practices untouchability. In spite of these due to illiteracy and lack of awareness practice of untouchability is being continued even today. A change of heart and attitudes very essential to root out untouchability.

The Constitution calls upon the state not to confer any title, not being academic on any person. Similarly, the officials of the government of India and of the state are prohibited from accepting any title, or office of any kind that may be conferred by any foreign state. However the Government of India has initiated a policy of awarding decoration for meritorious service or contribution to the advancement of learning in science, art, literature. Awards like Bharath Ratna, Padma Vibhushan, Padma Bhushan, Padma Shri are some of awards, awarded to persons to recognize their service.

In conclusion, Articles 14, 15, 16, 17 and 18 of the Constitution of India guarantees right to equality.

### **3.5.2 The Right to Freedom**

The Constitution of India guarantees six fundamental freedoms to people. In the original Constitution, there were 7 freedoms, but now only there are 6 freedoms because 'class (f) under Article 19, "to acquire, hold and dispose of property" has now been deleted. Article 19 forms the core of the chapter on Fundamental Rights. Article 19, 20, 21 and 22 guarantee right to freedom.

Article 19(1) a to g except (f) guarantees to every citizen.

- a. The right to freedom of speech and expression
- b. Freedom to assemble peacefully and without arms
- c. Freedom to form associations and unions
- d. Freedom to move freely throughout the territory of India ;
- e. Freedom to reside and settle in any part of the territory of India, and
- f. To practice any profession, or to carry on any occupation, trade or business.

But the above freedoms are subject to such reasonable restrictions as may be imposed by law by the state in the interest of public order, morality or in the interest of general public, the protection of interest of any scheduled tribe. The state may lay down special qualifications for practicing any profession. The, state may also take over, to the exclusion of others, the trade or business.

According to Article 20, a person

- a. Can be convicted of an offence only, if he has violated a law in force at the time when he is alleged to have committed the offence ;
- b. No person can be subjected to a grater penalty than what might have
- c. been given to him under the law that was prevalent when he committed the offence;
- d. No person can be prosecuted and punished for the same offence more than once ;
- e. No person accused of an offence can be compelled to be a witness against himself.

According to Article 21, a person should not be deprived of his life or personal liberty except according to procedure established by law. Article 22 says, whenever a person is arrested he must be informed on the grounds of arrest and detention and he may be given chance to defend his cause against authorities with the help of a lawyer of his choice. Whenever a person is arrested and detained in custody he must be produced before the magistrate within 24 hours of such arrest, and a person shall not be detained without the authority of the magistrate. However, the enemy aliens, persons detained under the Preventive Detention Law are not entitled to this protection. A person detained under the Preventive Detention Act, must be given a chance to know the grounds of arrest and the right to represent his case before the Advisory Board, and the detention of a person shall not be prolonged for more than three months. If period of detention is to be extended beyond 3 months, the matter must be referred to the Advisory Board.

This right to freedom found in the chapter III of the Constitution, contains references to British Common Law Rules. On the one hand, it guarantees freedom to the citizens and on the other, it arms authority with power to restrict the enjoyment of freedom. The right to freedom is complementary to the democratic system of government.

### **3.5.3 Right against Exploitation**

The framers of the Constitution of India were very much influenced by the idea of Karl Marx, Declaration of Human Rights and Soviet Constitution. As consequence the framers of our Constitution have incorporated two Articles, 23 and 24 in the Constitution, which provide for the prohibition of traffic in human beings and similar forms of forced labour. The state, organizations and private individuals are called upon not to employ children who are below the age of 14 years to work in any factory or other forms of hazardous work But state is permitted to call upon all citizens to defend their state and political order by joining compulsory military or other kind of service. These two articles were included, because the system of Jitadari and Devadasi system were prevailing in certain parts of Rajasthan, Bihar, Mysore and Western parts of India. It is to do away with these bad practices the section dealing with right against exploitation was added. All those who carry on traffic in human beings or immoral traffic in human beings will be subject to a penalty of 500 rupees or imprisonment up to 6 months or both.

### **3.5.4 The Right to Freedom of Religion**

Indian Constitution, true to its tradition of religion tolerance provides freedom of religion to all. Religious freedom is subject to only to the public order, morality, health and other essential conditions. In other words, every person has the right to freedom, conscience, the right to profess, practice and propagate religion freely. The state has been given the power to regulate or restrict any economic, financial, political or other secular activities associated with the religious institutions. Every religious group, sect or denomination has the right to establish and maintain institutions either for charitable purposes or for religious purposes. They are also permitted to manage their affairs in religious matters. They are also entitled to acquire and hold movable or immovable property but such property must be administered in accordance with the law. The state is also called upon not to impose taxes for the purpose of establishing or supporting any religion. There is no state religion in India. The educational institutions are also not permitted to give instruction in religious matters to students, who are below the age of 18 years ; But endowment institutions are entitled to impart instruction in religious matters. The state in other words is a secular state. It does not mean an irreligious or anti-God state. It only means that religion is purely an individual affair and state does not interfere with this freedom. All religious are entitled to equal protection.

### **3.5.5 Cultural and Educational Rights**

Indian Constitution opens a new era to all kinds of minorities by adding this Fundamental Right. Article 29 and 30 guarantee to every citizen of India or any section thereof the right to preserve, and protect its language, script and culture. All minorities, religious or linguistic have been given the right to establish and administer educational institutions of their choice. The state and the private educational institution receiving state aid, are called upon not to practice discrimination between citizens in matters relating to admission to educational institutions or grounds only of religion, race, caste or language or any one of them. The state in matters relating to distribution of grants-in-aid, is also called upon not to practice discrimination against any educational institution only on grounds of language or religion. The state is also prohibited from imposing any culture on any cultural minorities. But the state has been given special powers to make provision for the advancement of socially and educationally backward classes of citizens or S.T and S.C's. The right to education in the mother tongue of the child at the primary school stage has been given constitutional recognition. The seventh Amendment to the constitution 1956 authorizes the President to issue such directions to any states, as he considers necessary for securing such facilities. This amendment also provides for the appointment of special officer to report on the working of these safeguards provided for linguistic minorities in India to the President of India. The President is required to place such reports before each house of Parliament of India.

### **3.5.6 Right to Constitutional Remedies**

Abstract declarations of fundamental rights in the Constitution are useless, unless there is the means to make them effective. Constitutional experience in all countries shows that the reality of the existence of such rights is tested only in the courts. The power of the courts to enforce obedience to the fundamental rights again depends not only upon the impartiality and independence of the courts but also upon the effectiveness of the instruments available to it to compel such obedience against the executive and legislative authorities. The Constitution of India provides for both these principles and thus provides for the enforcement of fundamental rights by appropriate writs, orders including such writs as Habeas Corpus, Mandamus, Prohibition, Certiorari and Quo-warranto. Dr. Ambedkar described these provisions of India's Constitution as the heart and soul of the whole Constitution. Every

citizen of India has the right to move the Supreme Court and High Courts by appropriate writs or proceedings for the enforcement of the fundamental rights guaranteed by this Constitution.

The rights guaranteed by this part of the Constitution of India shall not be suspended except as provided for by the provisions of Articles 358 and 359 of the constitution. The Parliament of India has been given the power to determine by law, to what extent any of the fundamental rights shall be restricted or abrogated when they are applied to members of the armed forces of our country.

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### **3.6 FUNDAMENTAL DUTIES**

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In the original constitution of 1950, Duties were not incorporated. As rights were guaranteed, it was implicit that these rights have duties to be performed by the citizens of the country. However, the Congress government thought to specify the duties in the constitution.

By the forty-second Amendment Act to the Constitution, 1976, ten (10) fundamental duties were incorporated in Article 51A as part of IVA. Again in 2003, the 11th Duty is added through 86th Constitutional amendment. The intention is quite clear and that is to place before the country a code of conduct which the citizens are expected to follow in their actions and conduct. The fundamental duties are as follows :

It shall be the duty of every citizen of India,

- a. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem
- b. To cherish and follow the noble ideals which inspired our national struggle for freedom
- c. To uphold and protect the sovereignty, unity and integrity of India
- d. To defend the country and render national service when called upon to do so
- f. To promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional diversities, to renounce practices derogatory to the dignity of women
- f. To value and preserve the rich heritage of our composite culture
- g. To protect and improve the natural environment including forests,

lakes, rivers and wild life and to have compassion for living creatures

- h. To develop the scientific temper, humanism and the spirit of inquiry ;
- i. To safeguard public property and to abjure violence and
- j. To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.
- k. To provide compulsory education to all the children from 6 to 14 years. the parents are made responsible to provide education.

This part IV A was added in accordance with the recommendations of the Swaran Singh committee. It is meant to bring our Constitution in line with the Universal Declaration of Human Rights and the Constitution of Japan, China and erstwhile USSR.

Though, Fundamental duties have been incorporated in the Constitution, there is no provision in the Constitution for direct enforcement of any of these duties nor any Sanction to prevent their violation. But it may be expected that in determining the constitutionality of any law, if a court finds that it seeks to give effect to any of these duties, it may consider such law to be reasonable in relation to Article 14 and 19, and thus save such law from unconstitutionality. These duties would also serve as a warning to reckless citizens against anti-social activities such as burning the constitution, destroying public property and the like

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### **3.7 HISTORICAL BACKGROUND**

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The framers of the Constitution were influenced by the Constitution of the Irish Republic which embodies a chapter on 'Directive principles of state policy'. The Irish themselves had however, taken the idea from the Constitution of Republican Spain, which was the first constitution to incorporate such principles as part of a constitution But the idea of such principles can be traced to the Declaration of Independence by the American colonies: The influence of these principles compelled the states to take positive measures for the removal of many anti-social practices which had been considered as normal in those days, apart from over-throwing all forms of political tyranny. Apart from these above influences the charter of the United Nations as well as the universal Human Rights chapter also influenced the constitution makers to add this IV chapter to the Indian Constitution.

However, it would be wrong to presume that the various principles embodied in this chapter are more foreign borrowings or adaptations of principles of recent western political and social philosophy. In fact, a number of these principles are entirely Indian, particularly those which formed an integral part of the very foundations of the National Movement were the ideas of Indian National Congress and the ideas of Mahatma Gandhiji. Above these, the Directive Principles are like the instruments of instructions. The only difference is that directives are instructions to the legislature and the executive. Whoever captures power have to respect and implement the directives.

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### **3.8 NATURE OF THE DIRECTIVE PRINCIPLES OF STATE POLICY**

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The Directive Principles of State Policies are incorporated in the IV Chapter of the Constitution. These directives are having the following nature. They are:

1. These principles are directives to the various governments and governmental agencies (including even village panchayats) to be followed as fundamental in the governance of the country.

2. The Directive Principles enshrine the fundamentals for the realization of which the state in India stands. They reflect the noble idea which the preamble of the Constitution proclaims, that is, political, economic and social justice liberty, equality, and fraternity. In short they aim at a welfare state.

3. These directives are non-justiciable i.e., when a person or group of persons are affected by the implementation or violation of these directives, cannot move the court-of law, questioning any governmental agency to get relief. No court will take cognizance of the violation of these principles.

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### **3.9 CLASSIFICATION OF DIRECTIVE PRINCIPLES**

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There are sixteen (16) Articles of the Constitution from 36 to 51 that deal with the Directive Principles. They may be classified under several groups.

#### **3.9.1 Directives aiming at the establishment of welfare state**

Article 38 provides that state shall strive to promote the welfare of the people by securing a social order permeated by social, economic, and political justice. Article 43 provides that the state shall endeavour to secure just and human conditions of work, a living wage, a decent standard of living and social and cultural opportunities for all workers.

Article 47 provides that the state shall endeavour to raise the level of nutrition and standard of living and to improve public health.

Article 51 provides that the state shall endeavour to promote international peace and unity.

Article 39 provides that the state shall direct its policy towards securing equitable distribution of the material resources of the community and prevention of concentration of wealth and means of production. These are the ideals, which according to the framers of the constitution, the state should strive for:

### **3.9.2 Directives relating to economic matters**

The Articles which can be classified under this heading strive to establish economic democracy and justice by securing certain economic rights to the citizens. Article 44 provides for a uniform civil code for the citizens.

Article 45 urges the need to provide free and compulsory primary education. Article 43 states that the state shall endeavour to develop cottage industries.

Article 48 provides to organize agriculture and animal husbandry on modern lines and to prevent slaughter of useful cattle.

Article 49 provides for the protection and maintenance of places of historic or artistic interest.

Article 50 states that the state shall take steps to separate the judiciary from the executive in the public services of the states. These articles indicate, in what manner the state should exercise their legislative and executive powers.

### **3.9.3 Other Directives**

Article 39 (a) - Right to adequate means of livelihood.

Article 39 (d) - Right of both sexes to equal pay for equal work.

Article 39 (e) (f) - Right against economic exploitation.

Article 41 - Right to work and

Article 42 - Right to public assistance in case of unemployment, old age, sickness and other cases of undeserved wants which provide for certain rights of the citizens, which though not enforceable by the courts, but which the state shall nevertheless aim at securing by regulation of administrative policy.

By 42nd Amendment, certain changes have been inserted in part IV, adding New Directives, to accentuate the socialist-bias of the constitution.

i. Article 39A has been inserted to enjoin the state to provide 'free legal aid' to the poor and to take suitable steps to ensure equal justice to all.

ii. Article 43A has been inserted in order to direct the state to ensure the participation of workers in the management of industry and other undertakings.

iii. Article 48A has been inserted in order to direct the state to protect and improve the environment and to safeguard the forests and wildlife of the country.

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### **3.10 SANCTIONS BEHIND THE DIRECTIVES AND THEIR UTILITY**

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The Directives are not enforceable by the courts, if even the government of the day fails to carry out these objectives. No court can make the government ensure them. But these principles have been declared to be fundamental in the governance of the country.

The sanctions behind them are in fact political. Dr. Ambedkar observed in the Constituent Assembly, 'if any government ignore them they will certainly have to answer for them before the electorate at the election time'. It would also be a patent weapon in the hands of the opposition to discredit the Government on the ground that any of the executive or legislative acts is opposed to the Directive Principles.

The courts, too have of late started paying attention to the Directives in their interpretation of constitutional law. The courts according to Article 36 are part of the state. Therefore courts have the responsibility in so interpreting the Constitution as to ensure implementation of the Directives, and to harmonize the social objectives underlying the Directives with the individual rights. The Directive Principles sum up the political philosophy of our nationalist movement. They endeavour to reconcile the liberties of the individual with the claims of common good. They have an educative value for the citizens of India. They present to the government a ready programme to be implemented sooner than later for the achievement of a welfare state.

As Directive Principles form part of the Constitution, it should be the duty of the union to see that every state takes steps for implementing the directives, as far as possible. Hence, it should be competent for the union to issue directives to implement any of the Directive Principles. In case if the State or States fails to implement, Union may apply Article 365 against such recalcitrant state. Otherwise, the Directives in Part IV shall ever remain a dead letter.

### **3.10.1 Values and limitations of these Directives**

Owing to the legal deficiencies of the Directives, the utility of their incorporation in the constitution has been criticized from different quarters. Ivor Jennings, characterized them as ‘pious aspirations’, and also questioned the utility of these.

Nevertheless, the incorporation of these in the Constitution has been justified by a consensus of opinion, as well as the working of the Constitution since 1950.

The Directives have their own value and significance, as they are fundamental in the governance of the country. They are the Directives to which the Government has to turn while making policies and programmes. The policy of the government has been shaped according to these principles. This will be understood if we survey the social, labour and economic legislations undertaken after independence. In fact, G. Austin considers these Directives to be ‘aimed at furthering the goals of the social revolution to foster this revolution by establishing the conditions necessary for its achievement’.

In short, the Directives emphasize in amplification of the preamble, that the goal of the Indian polity is not Laissez faire, but a welfare state, where the State has a positive duty to ensure to its citizens, social, and economic justice. In fact, 25th and 42nd amendments to the Constitution have given Directives precedence over fundamental rights.

With all these above significance the directions have their own limitations. They are :

- a. not enforceable in the court of law
- b. violation or non-implementation of these cannot be questioned
- c. they are only moral instructions to the union, state and local governments.

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### **3.11 DIFFERENCES BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES**

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In part III of the constitution the Fundamental Rights and in Part IV Directive Principles are incorporated. They differ in the following respects:

- i. Fundamental Rights are enforceable by the courts, whereas directives are not enforceable by the courts and do not create any justiciable rights in favour of individuals.
- ii. Unlike the fundamental rights, the directive principles are merely in the nature of instructions to the government of the day to do certain things and to achieve certain ends by their actions.
- iii. The fundamental rights define a negative action on the part of the state and imposes upon it the obligation not to interfere with the rights guaranteed to the people; the directives give some positive powers to the State to do things in the society as a whole, even if such action comes in the way of individual rights.
- iv. Fundamental Rights promises political democracy but directives, economic, and social democracy.

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### **3.12 IMPLEMENTATION OF THE DIRECTIVE PRINCIPLES**

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It is not very easy to make a survey of the progress made by the government of the union and the states in implementing such a large number of directives over a period of nearly five decades, since the constitution was put into practice. Yet we have to make an attempt to know how far the directives have been realized by the union and states.

a.) The greatest progress in carrying out the directives has taken place with regards to the directive enshrined in article 39 (b) This directive states, that state should secure that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. In an agrarian country like India, the main item of material resources is no doubt agricultural. Therefore, in order to prevent a concentration of land holdings, legislation has been enacted in many of the states, fixing a ceiling, that is to say, a maximum area of land which may be held by an individual owner. Not only legislation has been enacted together, these reforms have been facilitated by amending the constitution to shield these laws from challenging in the courts.

b.) A large number of laws have been enacted to implement the directive in Article 40 to organize village panchayats and endow them with power of self-government. Almost all the states have established the local government units. After the 73rd and 74th Amendment Acts, almost all the states have enacted laws vesting various degrees of powers of self-government in the hands of Panchayats.

c. For the promotion of small scale and cottage industries, which is a state subject, the central government has established several boards to help the state governments, in the matter of financing, marketing etc. These are All India Khadi and Village Industries Board, All India Handicrafts Board, All India Handloom Board, Small Scale Industries Board, Silk Board, Coir Board, etc.

d. Legislation for compulsory primary education has been enacted in most of the states and in three Union Territories.

e. To increase the standard of living especially of the rural population, the government of India had launched community development project in 1952. Later on Integrated Rural Employment Programme (IRDP) in 1978-79, National Rural Employment Programme (NREP), Rural Land less Employment Guarantee Programme (RLEGP), Drought Prone Areas Programme (DPAP) etc, were launched.

f. Most states have passed laws prohibiting cow slaughter and to promote the welfare of the scheduled castes and scheduled tribes and to promote the economic interest of the weaker and backward sections of the people. Some progress has also been made regarding the Directives added by the 42nd Amendment, such as free legal aid and protection of environment. Several States have introduced prohibition either wholly or in part. But it is not so effective, because paucity of the financial resources of the states is the primary reason for the failure to fully implement this Directive until people imbibe the Gandhian ideals of life, prohibition will be a failure.

g. Regarding the separation of the executive from the Judiciary, criminal procedure code in 1973 has been enacted by the union government, which has placed the function of judicial trial in the hands of the 'Judicial Magistrate' who are members of the judiciary and are under the complete control of the High Court.



C. Fundamental Rights

D. Matter of state to pass bill

9. The architects of Indian constitution borrowed the concept of directive principles from;

A. The constitution of USA

B. The constitution of UK

C. The constitution of Ireland

D. Government of India Act, 1935

10. Who said that directive principles of state as “Novel Features” of Indian constitution

### **ANSWERS TO CHECK YOUR PROGRESS**

1. Equality before law

2. True

3. 6

4. 1978

5. Dr. B.R.Ambedkar

6. Part 4

7. True

8. A

9. C

10. Dr.B.R Ambedkar

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### **3.15 SUMMARY**

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In this Unit, we have understood the meaning and nature of fundamental rights. Then we have analyzed the fundamental rights guaranteed by the Indian Constitution with exceptions, limitations imposed by the constitution itself. Also this unit explains the criticisms leveled against this chapter by the critics and a note on fundamental duties enriched in our constitution.

Finally special provisions for certain sections which are considered as backward and not developed have been provided which have been explained.

In this unit, the Directive Principles of state policy that found a place in the Part IV of the Indian Constitution have been analyzed. Their nature, importance and their implementation have been dealt in detail.

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### 3.16 KEY WORDS

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<b>Comprehensive</b>	- including all or very wide.
<b>Justifiable</b>	- which comes under the jurisdiction of the court.
<b>Tremendous</b>	- great
<b>Imperative</b>	-urgent or obligatory.
<b>Amplify</b>	- abundant.
<b>Abridge</b>	- shorten
<b>Irreligious</b>	- nonreligious
<b>Habeas corpus</b>	- a writ issued by courts which directs to produce the person or persons before the court.
<b>Derogatory</b>	- stating a low estimation
<b>Profess</b>	- to teach
<b>Propagate</b>	- to spread
<b>Non-justiciable</b>	- Not possible to move the court; to get the justice.
<b>Primacy</b>	- Importance

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### 3.17 QUESTIONS FOR SELF STUDY

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1. Explain the nature of fundamental rights.
2. Examine the importance of Right to Freedom.
3. What is the importance of Right to Constitutional Remedies ?
4. Give a list of the fundamental duties.
5. Explain the special privileges enjoyed by the Scheduled Castes and Scheduled Tribes.

6. Evaluate the Fundamental Rights found in Constitution.
7. Explain the nature of the D.P.S.P.
8. Examine the sanctions behind these principles.
9. How far they have been realized.

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### **3.18 REFERENCES**

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1. Herman Finer, 1954, Theory and Practice of Modern Governments, Methuen & Ltd.
2. K.C. Wheare, 1966, Modern Constitution, New Delhi, Oxford University Press.
3. J.C. Johari, 2001, Indian Constitution-New Delhi, vishal
4. D.D. Basu, 1994, Introduction to the Constitution of India New Delhi prentice Hall.
5. The Constitution of India, Government of India (Publication)
6. B.L. Fadia, 2011, Indian Government and Politics, Agra, Sahitya Bhawan.
7. Granville Austin, 2000, The Indian Constitution: Corner Stone of a Nation. London, Oxford University Press.
8. Subhash Kashyap, 2011, Our Parliament, New Delhi, National book Trust.
9. Basu .D.D, 2001, Introduction to the Constitution of India -19th New Delhi, prentice Hall -2001
10. Pylee.M.V, 2004, Constitutional Government in India, New Delhi, S.Chand & co Ltd.
11. T.S. Rajagopallyengar, 1972, Indian parliament A critical study. Prasaranga. University of Mysore.
12. N.A. Somanna& others, 2009, Indian constitution, Mysore Book House.
13. Dr.H.M. Rajashekar, 2006, Indian Government and politics, Kiran Publications.
14. Mr. Rajeev & H.T. Ramakrishna, 2008, Indian constitution, New Delhi. Quantum Creations Lalitha Prakashana
15. Anupchand Kapur&K.K. Misra, 1956, Select ed constitution, S.Chand Company.
16. C.P.Bhambri, 1998, Politics in India 1947-1987, New Delhi, Vikas Pub.
17. Hansraj, 1920, Indian Political System, New Delhi, Surjeet Publication.
18. K.K. Ghai, 2007, Indian government and politics, New Delhi, Kalyani

Publisher.

19. Fadia & Fadia, 2013, Indian government and politics, Agra, Sahitya Bhawan.
20. LaxmiKanth , 2013, Indian Polity, Mcgrew hill education India Pvt Ltd.
21. Subhas Kashyap, 2011, Our Constitution, New Delhi, National book Trust.
22. Mohit Bhattacharya , 2009, New Horizons of public Administration, Jawahar Publishers & Distributors.
23. Chakkravarthy .M, 1987, The Right to be Human, New Delhi, Lancer International.
24. Chiranjeevi .S, 1999, Human Rights, Social Justice and Political Challenges, New Delhi, Kanishka Publishers.
25. Davidson, 1981, Basic Documents on Human Rights, Oxford, Clarendon.
26. Cronin Kiran, 1992, Rights and Christian ethics, Cambridge University press, Cambridge.
27. J.M. Barbalet, 1988, Citizenship rights struggle and class inequality, Open University Press.

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## **UNIT - 4: UNION LEGISLATURE, EXECUTIVE AND JUDICIARY A) LOKA SABHA AND RAJYA SABHA : COMPOSITION, POWERS AND FUNCTIONS B) THE PRESIDENT, PRIME MINISTER AND COUNCIL OF MINISTERS : POWERS AND FUNCTIONS C) SUPREME COURT : COMPOSITION, JURISDICTION OF POWER**

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### **STRUCTURE**

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Composition, Powers and functions of Union Parliament
- 4.3 Relation between Loka Sabha and Rajya Sabha
- 4.4 President of India
- 4.5 Prime Minister of India
- 4.6 Council of Ministers
- 4.7 Supreme Court : Composition and Jurisdiction
- 4.8 Check Your Progress
- 4.9 Summary
- 4.10 Key words
- 4.11 Questions for Self- Study
- 4.12 References

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## 4.0 OBJECTIVES

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This Unit deals with the Union Parliament - Loka Sabha and Rajya Sabha, President, Prime Minister, and Council of Ministers, and Supreme Court. After going through this unit you will be able to ;

- Explain the composition and organisation of Loka Sabha.
- Discuss the powers and functions of Loka Sabha.
- Explain the composition and organisation of Rajya Sabha.
- Examine the powers and functions of Rajya Sabha.
- Discuss the relation between the Loka Sabha and Rajya Sabha.
- Examine critically the powers and functions of the president of India
- Evaluate the role of Prime Ministers of India
- Explain the composition, powers and functions of council of Ministers
- Explain the organisation of the Supreme Court of India
- Discuss the jurisdiction of powers of the supreme court.

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## 4.1 INTRODUCTION

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The parliament is the legislative organ of the union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of parliamentary form of government.

Articles 79 to 122 in part V of the constitution deal with the organization, composition, duration, officers, procedures, privileges, powers and so on of the parliament.

Dear student, since India is Republic, the constitution provides for a president on India and the executive power of the union government, including the supreme command of the defence forces, is vested in him. The president is the head of the Indian state. He is the first citizen of India.

As the constitution of India provides for a parliamentary system of government modelled on the British pattern the president of India is the nominal executive authority and the prime Minister is the real executive authority. In other words, president is the head of the state while prime Minister is the head of the government. The Prime Minister is the head of the council of Ministers which constitutes the real executive. Thus, the union executive consists of the president, the vice -president, the Prime Minister, and the council of Ministers.

Along with the legislature and executive, the judiciary is one of the three basic organs of state. Judiciary is one of the pillars of democratic mansion. The judiciary exists to see that the laws are properly administered and the authority is not abused. Moreover, it is only through the judiciary that the powers of different organs of government are kept under control. A strong, independent and well-organized judiciary plays a vital role in a democratic system of government. Under the federal form of government like India judiciary plays an additional role as the guardian of the constitution.

With this introduction, let us proceed to discuss the organisation and powers of the supreme court in the following sections.

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## **4.2 COMPOSITION, POWERS AND FUNCTIONS OF UNION PARLIAMENT**

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Under the constitution, the parliament of India consists of president, the House of People and the council of states. The House of the people (Lok Sabha) is the lower House (First chamber or popular House). The Rajya Sabha is the upper House (Second chamber or House of Elders). The Lok Sabha represents the people of India as a whole, while Rajya Sabha represents the states and the union territories of the Indian union.

Though the president of India is not a member of either House of parliament and does not sit in the parliament to attend its meetings, he is an integral part of the parliament. This is because a bill passed by both the Houses of parliament cannot become law without the assent of the president. He also performs certain functions relating to the proceedings of the parliament like summoning and protogation of both Houses, dissolve the Lok Sabha, addresses both the Houses and so on.

### **4.2.1. Composition and organizations of Lok Sabha**

The maximum strength of the Lok Sabha is fixed at 552. Out of this, 530 members are to be representatives of the states, 20 members are to be representatives of the union territories and 2 members are to be nominated by the president from the Anglo-Indian community.

At present, the Lok Sabha has 545 members. Of these, 530 members represent the states, 13 members represent the union territories, and 2 Anglo-Indian members are nominated by the president.

## **Qualifications of members**

To be qualified for election to the Lok Sabha, a person must be **a.** a citizen of India, **b.** must complete 25 years of age and **c.** he must possess such other qualifications as may be prescribed by parliament.

Under the constitution, a person shall be disqualified for being elected as a members of Lok Sabha. **1.** if he holds any office of profit under the union or state government (except a minister or any other office exempted for parliament) **2.** if he is of unsound mind. **3.** if he is an undischarged insolvent. **4.** if he is not a citizen of India. **5.** if he is so disqualified under any law made by parliament. **6.** if he is so disqualified on the ground of defection under the provisions of the 10th schedule, which was added to the constitution by the 52nd Amendment.

## **Mode of Election**

The members of the Lok Sabha are directly elected by the people from the territorial constituencies in the states. The election is based on the principle of universal adult franchise. Every Indian citizen who is above 18 years of age is eligible to vote at such election. The voting age was reduced from 21 to 18 years by the 61st constitutional Amendment Act, 1988.

The president can nominate two members from the Anglo- Indian community if the community is not adequately represented in the Lok Sabha.

## **Term**

The normal term of Lok Sabha is five years from the date of its first meeting after the general elections. But it may be dissolved at any time even before the completion of five years and this cannot be challenged in a court of law.

Further, the term of Lok Sabha can be extended during the period of national emergency by law of parliament for one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.

## **Presiding officers of Lok Sabha**

The Lok Sabha elects its own presiding officer who is known as the speaker. The speaker is elected by the House from among its members in its first meeting of the first session. The speaker conducts the proceedings of the House, maintains order and decorum and discipline therein, and protects the rights and privileges of its members. He posses the right of casting vote in case of tie. The office of the speaker is one of the highest offices of

the land. The house also elects a deputy speaker who presides over the House in the absence of the speaker. He is elected in the same manner in which the speaker is elected by the House. To facilitate the work of the House in the absence of the speaker and Deputy speaker, the speaker nominates, from time to time, six members of the House to constitute a panel of chairmen.

#### **4.2.2. Powers and Functions of Lok Sabha**

The Lok Sabha is India's political centre of gravity. Its powers are enormous and they can be divided into following heads:- Legislative, Executive, financial, judicial, constituent electoral etc.

##### **Legislative powers :**

The primary function of the Lok Sabha is to make laws for the country along with Rajya Sabha. The Lok Sabha can enact laws on subjects enumerated in the union and concurrent lists. During emergency, the Lok Sabha can also legislate on the subjects enumerated in the state list. Thus, the Lok Sabha can enact new laws, repeal old laws and amend the existing laws.

##### **Executive powers**

The Lok Sabha exercises control over the union executive. This is one of the most important functions of the Lok Sabha. The council of Ministers is collectively responsible to Lok Sabha for all its acts of omission and commission. The ministers remain in office so long as they enjoy the confidence of majority in the Lok Sabha. Lok Sabha exercises control over the executive through questions, adjournment motions, calling attention motion, by criticizing the policies adopted by them, and by rejecting the ordinary and Money Bills of government. Lok Sabha can remove the council of Ministers by passing a vote of no-confidence against it.

##### **Financial powers**

In regard to money-bills, the Lok Sabha has a monopoly of power. It is the real custodian of national purse. It has exclusive financial powers. It passes the budget and determines how money is to be raised and spent. No tax can be levied and no expenditure can be incurred without the consent and authority of parliament. All money bills can be introduced only in the Lok Sabha. After passed by it such a bill is sent to the Rajya Sabha. A money bill passed by Lok Sabha can be delayed by the Rajya Sabha for a maximum period of

14 days. The recommendations of Rajya Sabha may or may not be accepted by the Lok Sabha. Thus, the Lok Sabha has the final decision with regard to financial matters.

### **Judicial powers**

The Lok Sabha performs some judicial functions also. The Lok Sabha along with Rajya Sabha has the power of initiating, investigating and deciding the impeachment charges against the president of India. The Lok Sabha along with the Rajya Sabha can pass a resolution for the removal of a judge of supreme court or of a state High Court. It can also take a disciplinary action against any member or any citizen who is found by it guilty of committing a contempt of the House.

### **Constituent powers**

Lok Sabha plays a vital role in the amendment of the Indian constitution in accordance with the prescribed procedure under Act 368. Constitution Amendment Bill can be introduced in either House of parliament and passed by both Houses in identical terms.

### **Electoral Functions**

The Lok Sabha also performs some electoral functions. The elected members of Lok Sabha take part in the election of president and members of Lok Sabha participate in the election of vice-president of India. The members of Lok Sabha also elect a speaker and Deputy speaker from amongst themselves.

The resolutions and debates of the Lok Sabha on legislative measures and governmental policies provide ample opportunities for the ventilating the grievances. As a matter of fact the Lok Sabha plays a role of great educator. It can be described as a mirror of public opinion.

#### **4.2.3. Composition and organizations of Rajya Sabha**

The maximum strength of the Rajya Sabha is fixed at 250, out of which, 238 are to be the representatives of the states and union territories (elected indirectly) and 12 are nominated by the president.

At present, the Rajya Sabha has 245 members. Of these, 229 members represent the states, 4 members represent the union territories and 12 members are nominated by the president. The seats are allotted to the states in the Rajya Sabha on the basis of population.

## **Qualifications of members**

The constitution lays down the following qualifications for the membership of the Rajya Sabha. **1.** He must be a citizen of India. **2.** He must complete 30 years age **3.** He must possess such other qualifications as parliament may by law prescribed.

The disqualifications prescribed for member of Lok Sabha are also applicable to member of Rajya Sabha.

## **Method of election**

The members of the Rajya Sabha are elected by the elected members of state legislative assemblies. The seats are allotted to the states in the Rajya Sabha on the basis of population. Hence, the number of representatives varies from state to state.

The representatives of each union territory in Rajya Sabha are indirectly elected. Out of the 7 union territories, only two (Delhi and Pondicherry) have representation in Rajya Sabha. The population of other 5 union territories are too small to have any representative in the Rajya Sabha.

The president of India nominates 12 members to the Rajya Sabha from people who have special knowledge or practical experience in art, literature, science and social service.

## **Term**

The Rajya sabha is a continuing chamber, that is it is a permanent body and not subject to dissolution. However, 1/3 of its members retire every second year. These seats are filled by fresh election. The retiring members are eligible for reelection.

The constitution has not fixed the term of office of members of Rajya Sabha and left it to the parliament. Accordingly, the parliament, in the representation of the people Act (1951) provided that the term of office of a members of the Rajya Sabha shall be six years.

## **presiding officers of Rajya Sabha**

The presiding officer of the Rajya Sabha is known as the chairman. The vice-president of India is the ex-officio chairman of the Rajya Sabha. Unlike the speaker (who is a member of the House), the chairman is not a member of the House. As a presiding officer, the powers and functions of the chairman in the Rajya Sabha are similar to those of the speaker. However, the speaker has two special powers which are not enjoyed by the chairman. **1.** speaker decides whether a bill is a money bill or not and his decision on this matter is final. **2.** The speaker presides over a joint sitting of two Houses.

Like speaker, the chairman of Rajya Sabha also cannot vote, but he can cast a vote in the case of an equality of votes. In the absence of the chairman, the deputy chairman of Rajya Sabha presides over the meetings of Rajya Sabha. The deputy chairman is elected by the Rajya Sabha itself from amongst its members. Wherever the office of deputy falls vacant, the Rajya Sabha elects another member to fill the vacancy.

#### **4.2.4 Powers and functions of Rajya Sabha**

##### **Legislative powers**

The Rajya Sabha enjoys equal powers with the Lok Sabha in the sphere of ordinary law making. In all non-financial matters, including constitutional amendments, the extent of the powers of the Rajya Sabha is the same as that of the Lok Sabha. The Rajya Sabha can amend or reject a Bill that is passed by the Lok Sabha. In the event of disagreement over non-money bill between the two Houses, a joint sitting of both Houses may be held to resolve deadlock over the controversial measure. In the joint sitting the decision to be taken by a simple majority.

##### **Executive powers**

The Rajya Sabha has limited role in the exercise of executive powers. The Council of Ministers is collectively responsible for all its acts of commission and omission to the Lok Sabha only. The Rajya Sabha has no right to pass a censure motion or no-confidence motion against the government. However, the Rajya Sabha can only check the ministers by seeking information regarding their work, criticising the policies adopted by them, by asking questions and supplementary questions etc.

##### **Financial Powers**

In the financial sphere the Rajya Sabha plays a minor role. A money bill can be introduced only in the Lok Sabha. A money bill passed by the Lok Sabha goes to the Rajya Sabha for its consideration. The Rajya Sabha must return the Bill to Lok Sabha within 14 days, if Rajya Sabha fails to pass the bill, the bill, will be considered to have been passed by both the Houses. The recommendations or amendments proposed by Rajya Sabha may or may not be accepted by Lok Sabha. Thus the Rajya Sabha can only delay the passing of a Money Bill for a maximum period of 14 days. Rajya Sabha has only advisory role and the Lok Sabha has the final say in financial matters.

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### **4.3 RELATION BETWEEN LOK SABHA AND RAJYA SABHA.**

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The relation between Lok Sabha and Rajya Sabha can be studied as follows:

**A.** Both the Houses of the parliament enjoy equal powers in passing ordinary Bills, in the sphere of constitutional amendment process, in the process of impeaching the president of India, and in the removing Supreme court and High Court judges. Both Houses enjoy equal electoral powers. The elected members of Lok Sabha and Rajya Sabha take part in the election of president and vice president of India, and both the House have equal power in approving the emergency declared by the president.

**B.** Lok Sabha is superior over the Rajya Sabha in the following respects.

1. The Money Bills can be introduced only in the Lok Sabha. The final say in money matters lies with the Lok Sabha.
2. In the executive sphere also Rajya Sabha occupies a place of less importance. The council of ministers is collectively responsible only to the Lok Sabha. The Lok Sabha can dismiss the council of ministers by passing the vote of no-confidence. The members of Rajya Sabha cannot dismiss the government by passing the vote of no-confidence.

**C. Special powers of Rajya Sabha in the following respects.**

1. under Article 249 of the constitution, the Rajya Sabha can empower parliament to legislate on any subject in the state list.
2. under Act - 312, the Rajya can authorise the parliament to create one or more All-India Services common to both the union and the states.

A comparative study of powers of Lok Sabha and Rajya Sabha reveals that the former is decidedly more powerful than the later. But at the same time, it would be wrong to assume that the Rajya Sabha is secondary or reactionary chamber. It also enjoys some special powers as well as equal powers with the Lok Sabha in same spheres, which make its position important.

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### **4.4 PRESIDENT OF INDIA**

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The executive power of the Indian union is vested in the president of India. All executive decisions of the union government are taken in his name. The president is the highest dignitary of the land.

#### **4.4.1 Election, qualifications, Term, Removal etc.**

The constitution prescribe indirect election for the president. The president is elected by an electoral college consisting of :

1. the elected members of both the Houses of parliament
2. the elected members of the legislative assemblies of the states; and
3. the elected members of the legislative assemblies of the union Territories of Delhi and pondichery.

The nominated members of both the Houses of parliament and nominated members of state legislative assemblies do not participate in the election of the president.

#### **Qualifications**

Any person who: **1.** is a citizen of India, **2.** has completed the age of 35 years, **3.** is qualified for election as a member of Lok Sabha, **4.** does not hold office of profit under the government of India or government of any state or under any local authority, can contest election for the office of the president of India. However, president, vice-president, the governor of any state or a cabinet Minister of union or state, is not debarred from contesting the election for the office of the president of India.

Before entering upon his office the president is required to take an oath in the presence of chief Justice or the senior most judge of the supreme court of India.

#### **Term**

The president holds office for a term of 5 years from the date on which he enters upon his office. However, he can resign from his office at any time by addressing the resignation letter to the vice - president. Further, he can also be removed from office before completion of his term by the process of impeachment.

He is also eligible for re-election to that office. He may be elected for any number of terms. In U.S.A. a person cannot be elected to the office of the president more than twice.

#### **Removal**

The president can be removed from office by a process of impeachment for violation of the constitution. An impeachment is a quasi-judicial procedure in the parliament adopted to remove the head of the state. The charges of impeachment can be initiated by either House of parliament. These charges should be signed by 1/4 members of House (framed the

charges) and a 14 days notice should be given to the president. If the resolution is passed by 2/3 of the total membership of that House, it is sent to the other House which investigates the charges. As a result of such investigation, a resolution is passed by a 2/3 majority of total membership stating that charge has been sustained, then the president stands removed.

If the office falls vacant by resignation, removal, death or otherwise, then the election to fill the vacancy should be held within 6 months from the date of occurrence of such vacancy. The newly elected president remains in office for full term of 5 years.

When the vacancy occurs in the office of the president, the vice-president acts as the president until a new president is elected. In case the office of vice-president is vacant, the chief justice of India acts as the president of India.

#### **4.2.2 Powers and functions**

The powers enjoyed and the functions performed by the president can be studied under the following heads.

##### **Executive powers**

All the executive powers of the union government are carried on in the name of the president. He is the supreme commander of Indian defence forces. He can make rules for more convenient transaction of business of the union government.

1. He appoints the Prime Minister and the other ministers on the advice of the Prime Minister. They hold office during his pleasure.
2. He appointed the Attorney General of India and determines his remuneration. The attorney general holds office during the pleasure of the president.
3. He appoints the Comptroller General of India, the Chief Election Commissioner and other election commissioners, the chairman and members of U.P.S.C; the governors of states, the chairman and members of finance commission and so on.
4. He can seek any information relating to administration, and proposals for legislation from the Prime Minister.
5. He can appoint a commission to investigate into the conditions of STs, SCs and other backward classes.
6. He can appoint inter-state council to promote centre-state cooperation

7. He directly administers union-territories

### **Legislative powers**

The President is an inseparable part of parliament. He possesses some legislative powers, such as summoning and proroguing the two Houses of the parliament, dissolving the Lok Sabha, addressing the joint session of the two Houses, sending messages to either or both Houses, assenting bills passed by the parliament, calling joint session of the two Houses in case of differences of opinion between them regarding any non-Money bill, promulgation of ordinance etc. He has also the power to nominate 12 members to Rajya Sabha and not more than 2 members of the Anglo-Indian community to Lok-Sabha, if he feels that the Anglo-Indian community is not adequately represented in the Lok Sabha.

### **Judicial powers**

Besides the appointment of chief Justice and other judges of Supreme Court and High Courts, the president has the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute conviction or sentence of any person **a.** in all court Martial cases; **b.** in cases involving the breach of union law; and **c.** in all cases where the sentence of death (Act 72)

### **Financial Powers**

The financial powers and functions of the president are :

1. Money bills can be introduced in the parliament only with the prior recommendation of the president.
2. He causes to be laid before the parliament the annual financial statement i e Union Budget.
3. No demand for grant can be made except on his recommendation
4. He can make advances out of the contingency fund to meet any unforeseen expenditure.
5. He constitutes a finance commission after every 5 years.

### **Military powers**

The president is the supreme commander of the defence forces of India. In that capacity he appoints the chiefs of the Army, Navy and Airforce. He can declare war or conclude peace subject to the approval of parliament.

## **Emergency powers**

In addition to the powers mentioned above, the constitution confers extraordinary powers on the president to deal with the following 3 types of emergencies. **1.** National emergency **2.** Constitutional emergency **3.** Financial emergency.

### **1. National Emergency (Art - 352)**

Under Article 352, the president can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or internal armed rebellion.

While the proclamation of emergency is in operation - **1.** the executive authority of the states becomes subordinate to the union **2.** the legislative authority of the parliament extends to the making of laws on the state list. **3.** the operation of Act 19 relating to right to freedom is suspended, and **4.** the president is authorized to suspend the right to move any court for enforcement of Fundamental Rights except those guaranteed under Article 20 and 21.

### **2. Constitutional Emergency (Art 356 & 365)**

Under Art 356 on receiving report from the governor of a state or otherwise, if the president is satisfied that the governmental of that state cannot be carried on accordance with the provisions of the constitution, he may declare a constitutional emergency or president rule in the state.

When the president rule is imposed in a state, the president dismisses the state council of ministers headed by the chief minister. The state governor, on behalf of president carries on the state administration with the help of the chief secretary or the advisors appointed by the president : Further, the president either suspends or dissolves the state legislative assembly. The parliament passes the state legislative bill and the state budget.

### **The financial emergency**

If the president is satisfied that the financial stability or credit of India is threatened, he may proclaim a financial emergency under Act 360. When such emergency is in operation, the president can issue necessary directions to any state, including those for the reduction of salaries and allowances of persons serving in the state and union government including the judges of the supreme court and High Courts.

The proclamation of emergencies detailed above have to be approved by parliament within one month in case of national emergency and two months in case of president rule and

financial emergency. The national emergency continues for six months and can be extended to an indefinite period with an approval of parliament for every 6 months. The president rule continues for 6 months. It can be extend for a maximum period of 3 years with the approval of parliament for every 6 months. The financial emergency continues indefinitely till it is revoked.

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## **4.5 PRIME MINISTER OF INDIA**

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The Prime Minister occupies a unique position in the political system in general and council of Ministers in particular. He is described as “the key stone of cabinet arch.” The Indian P.M. is the creation of the constitution which gives formal recognition to his pre-eminence position.

### **4.5.1. Appointment, Tenure**

According to Act 75 of the constitution, the P.M. is appointed by the president and the other ministers are appointed by the president on the advice of the P.M. The president has to appoint the leader of the majority party in the Lok Sabha as the P.M. But, when no party has a clear majority in the Lok Sabha, then the president may exercise his personal discretion in the selection and appointment of the P.M.

The P.M. may be a member of any of the two Houses of parliament. The term of the P.M. is not fixed and holds office during the pleasure of the president. However, this does not mean that president can dismiss the P.M. at any time. So long as the P.M. enjoys the majority support in the Lok Sabha, he cannot be dismissed by the president. However, if he loses the confidence of the Lok Sabha, he must resign or the president can dismiss him.

### **4.5.2. Powers and functions**

1. The Prime Minister enjoys enormous powers. It is the P.M. who forms the council of Ministers and distributes portfolios among them. It is he who presides over the meetings of the cabinet and determines what business shall be transacted at these meetings. He can reshuffle his cabinet as he pleases. In case there is a difference of opinion between the P.M. and another minister it is the latter who must either yield or resign. It is through the P.M. that the collective responsibility of the council of Ministers is enforced. Other ministers are directly responsible to the P.M.
2. The P.M. is a linchpin of the government. He is actually responsible for the emulation and execution of the government’s policy. He has the right to

exercise general supervision on individual ministers. He co ordiates the work of various ministers and resolves differences among them.

3. The P.M. acts as the connecting link between the president and the cabinet, Art 78 of the constitution enjoins upon the P.M. the duty to communicate to the president all decisions of the council of Ministers and to furnish such information relating to the administration of the affairs of the union and proposals for legislation as the president may call for. It is for P.M. alone to report to the president the substance of cabinet discussions.
4. The P.M. is also the main link between the cabinet and parliament. He is the chief spokesman of the government in parliament. He is the leader of the parliament. It is he who makes major policy announcements. He intervenes in the debates of general importance whenever he finds this necessary to clarify government's position or policy. His dual role position as head of the government and leader of parliament makes him the real leader of the nation.

It is obvious that the P.M. has vast and stupendous powers. As a matter of fact, the entire list of powers formally vested in the president are in reality the powers of the P.M. Thus the P.M. is the pivot of the whole system of government.

The Prime Minister's supremacy, however, depends upon the personality of the individual concerned. It varies with the character and personality of man who holds it.

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## **4.6 COUNCIL OF MINISTERS.**

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The constitution provides for a council of Ministers, with P.M. as its head, to aid and advise the president. The president is required to act according to its advice.

### **4.6.1 Appointment, Tenure etc.**

The president first appoints the P.M. and then on his advice appoints other ministers. This means that president can appoint only those persons as ministers who are recommended by the P.M. usually, the members of parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of parliament can also be appointed as a ministers. But, within six months, he must become a member of either House, either by election or by nomination. If he does become a member of parliament, he ceases to be ministers.

The tenure of the council of Ministers is not fixed. Art 75 of the constitution declares that ministers hold office during the pleasure of the president, which really means that the ministers remain in office so long as they enjoy the confidence of the majority in the Lok Sabha or so long as the P.M. does not resign. The resignation of the P.M. means the resignation of the entire council of Ministers. The Lok Sabha can dismiss the council of Minister by passing a vote of confidence against the ministry.

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers. The difference between them lies in their respective ranks, emoluments and political importance. At the top of all these ministers stands the P.M.- the supreme governing authority of the country.

The cabinet ministers head the important ministries of central government like home, defence, finance, external affairs etc. They are the members of the cabinet, attend its meetings and play an important role in deciding policies. Thus their responsibilities extend over the entire gamut of central governments.

The ministers of state can either be given independent charge of ministries or can be attached to cabinet ministers. They are not he members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their ministries are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of ministries /departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

There is one more category of ministers, called parliamentary secretaries. They have no departments under their control. They are attached to the senior ministers and assist them in the discharge of their parliamentary duties. However, since 1967 no parliamentary secretaries have been appointed.

#### **4.6.2. Role and functions of council of ministers.**

If the president is the nominal executive the council of ministers is the real executive. The functions of the council of ministers are numerous and varied. It rules the country and is the supreme executive of the nation. It determines the policy of the state and has full control over the administration. It functions can be studied as follows.

### **Policy making and administrative functions.**

The cabinet decides and determines the general policy of the government of India, internal and external. It is the supreme policy formulating organ and general controlling body in the state. The council of ministers administers the affairs of the union government. It exercises control over the entire administrations of the country. It is the real executive of the nation. Each of its members is incharge of one or more departments. They exercise control and administer their respective departments. The cabinet coordinates the working of the various departments of the government and thus secures harmony and cooperation.

### **Legislative Functions**

The cabinet is responsible for initiating legislation. It prepares the legislative programs for the union legislature. All government measures, i.e. important Bills are introduced by ministers who also pilot them and get them passed by the legislature. A bill not supported by the council of ministers cannot get passed in the parliament because the ministry enjoys the support of the majority.

The president summons, prorogues the sessions of parliament and dissolve the Lok Sabha only in accordance with the wishes of the cabinet. Thus, the cabinet plays an important role in the sphere of legislation. The ministers take full and active part in the deliberative, legislative and financial functions of the parliament. The role of the cabinet in legislation is so vital that it would not be wrong to say that today it is the cabinet which legislates with the consent of the parliament.

### **Financial powers**

Legally and constitutionally, the parliament is the custodian of national finances and exercises all powers in the financial sphere. However, in practice, the cabinet plays a leading role in this sphere also.

The budget is prepared by the cabinet (finance Minister). It is the cabinet which determines the estimated income and expenditure of the government, it lays down the financial policies of the government. The cabinet gets the budget passed by the parliament. The cabinet runs the financial administration in accordance with the provisions of the budget passed by the parliament. All proposals for additional taxes emanate from the cabinet. Money bills can be introduced in the Lok Sabha only by the ministers. The budget is always brought before the cabinet for discussion before its presentation to parliament.

Thus the council of ministers has full control over the internal and external policy and administration of the Indian union. The above account of the powers and functions of the council of ministers reveals the strong and central position that it occupies as the real and powerful executive in the Indian political system.

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#### **4.7 SUPREME COURT : COMPOSITION AND JURISDICTION OF POWER**

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The Supreme Court is the apex and final court of the Indian judicial system. It has been set up under the constitution to act as the custodian and final interpreter of the constitution and an arbiter of disputes between the states and union governments. It also acts as the protector of the fundamental rights of the citizens guaranteed to them by the constitution.. The supremecourt, is thus, the highest tribunal of the land. Now let us discuss the composition, organisation, powers and jurisdiction of the supreme court in the following sections.

##### **4.7.1 Composition and organisation of the Supreme Court.**

Under the composition and organisation of the supreme court, the number of judges, their appointment, qualifications, term of office, grounds for their removal, remunerations, oath of affirmation etc., have to be discussed.

At present, the supreme court consists of one chief justice and 30 other judges, total 31 judges including the chief justice. The parliaments has the power to prescribe the number of judges. The power to increase or decrease the number of judges in the supreme court rests with the parliament.

**4.7.2 Appointment of judges :** Every judge of the supreme court is appointed by the president in consultation with such other judges of the supreme court and of the High Courts as the president deems necessary. But while appointing a judge, other than the chief justice, the chief justice of India shall always be consulted. In other words, the consultation of chief justice is obligatory in the case of appointment of other judges. The constitution provides for an appointment of one or more High Court judges or retired judges of the supreme court as ad hoc judges at any time when the quorum of the judges is not complete.

**4.7.3 Qualifications :** For appointment as a judge of the supreme court a person-

1. must be a citizen of India.and
2. should have been a judge of High court for 5 years or
3. should have been an advocate of a High court for at least 10 years or

4. must be a distinguished jurist in the opinion of the president.

From the above, it is clear that the constitution has not prescribed a minimum age for appointment as a judge of the supreme court.

**4.7.4 Tenure of Judges :** The constitution has not fixed the tenure of the judges of the supreme court. Once appointed the judges of the supreme court hold office until they attain the age of 65 years. A judge can resign his office earlier by addressing his resignation to the president. A judge of the supreme court can be removed from his office by the president on the recommendation of the parliament.

**4.7.5 Removal of Judges :** A judge of the supreme court can be removed from his office only on the ground of proved misbehavior or incapacity. He can be removed from his position by an order of the president passed after an address from each House of the parliament, supported by a majority of the total membership of that House and by a majority of not less than 2/3 members present and voting.

**4.7.6 Remuneration :** The salaries, allowances, privileges, leave and pension of the judges of the supreme court are determined from time to time by the parliament. A judge of the supreme court gets a salary of Rs. 90,000 per month. The salary of the chief justice is Rs. 1,00,000. In addition, each judge is also entitled to a free House and certain other allowances and privileges. The salary and allowances cannot be varied to their disadvantage after their appointment except during a financial emergency.

The retired chief justice and judges are entitled to 50% of their last drawn salary as monthly pension.

**4.7.7 Oath of Affirmation :** A person appointed as a judge of the supreme court, before entering upon his office, has to make and subscribe an oath before the president or some person appointed by him for this purpose.

**4.7.8 Independence of Supreme court :** The independence of the supreme court becomes very essential for effective discharge for the duties assigned to it. It should be free from pressures and interference of the executive and the legislature. It should be allowed to do justice without fear or favor.

The constitution has secured the independence of the judges in a number of ways.

1. security of service of the judges is assured. Though appointed by the president, the process of removing the judges from office is difficult and they can be removed only on the grounds of proved misbehavior or incapacity.
2. Salaries of judges are fixed and cannot be varied to their disadvantage during their term except during financial emergency. These salaries are charged on consolidated fund of India which are not voted by parliament.
3. The conduct of judges of Supreme Court is not to be discussed in parliament, except when a motion for their removal is under consideration.
4. After retirement, a judge of the Supreme Court is prohibited from pleading before any court
5. The court is free to recruit its staff and determine their service conditions.
6. The court has the right to punish any person for its contempt.
7. The jurisdiction of the court- cannot be curtailed.

#### **4.7.9 Powers and Jurisdiction of supreme court.**

##### **Jurisdiction of Supreme Court**

<b>Original Jurisdiction</b>	<b>Appellate Jurisdiction</b>	<b>Advisory Jurisdiction</b>
<ul style="list-style-type: none"> <li>• Disputes between union and states and among the states</li> <li>• Enforcement of Fundamental Rights</li> </ul>	<ul style="list-style-type: none"> <li>• constitutional cases</li> <li>• civil cases</li> <li>• criminal cases</li> </ul>	

##### **Original Jurisdiction**

The Supreme court of India exercises original, appellate and advisory jurisdictions. It is the final interpreter of the constitution. The original jurisdiction of the supreme court covers all disputes **1.** between the centre and one or more states **2.** between the centre and any state or states on one side and one or more states on the other. **3.** between two or more states. **4.** disputes regarding the enforcement of Fundamental Rights.

The Supreme court is empowered to issue writs including Habeas corpus, Mandamus, prohibition, certiorari and quo-warranto for the enforcement of Fundamental Rights of an aggrieved citizen. In this regard, the supreme court has original jurisdiction in the sense that an aggrieved citizen can directly go to the supreme court, not by way of appeal.

### **Appellate Jurisdiction**

The supreme court enjoys wide appellate jurisdiction in constitutional matters, civil matters, criminal matters and in granting special leave to appeal.

In the constitutional matters, an appeal can be made to the supreme court from any judgement of a High court, if the High court certifies that the case involves a substantial question of law as to the interpretation of the constitution.

In civil cases, an appeal lies to the supreme court if the High court certifies that the case involves a substantial question of law of general importance; and the said question needs to be decided by the supreme court.

In criminal cases, an appeal lies to the supreme court - **1.** If the session judge has acquitted the accused, but the High court reversed the decision of the acquittal and sentenced the accused to death. OR **2.** If the High court has taken before itself any case from a subordinate court and convicted the accused person and sentenced him to death. OR **3.** If the High court certifies that the case is a fit- one for appeal to the supreme court.

### **Advisory Jurisdiction**

The president may obtain the opinion of the supreme court on a question of law or fact which in his opinion is of public importance. If the president refers the same to the supreme court for advisory opinion, the supreme court is duty bound to give its opinion on the matter refer to it. However, the opinion of the supreme court is not binding on the president (Art - 143).

### **Protector of Fundamental Rights**

The supreme court is the guardian and protector of the Fundamental Rights and liberties of the people. The court can declare a law as null and void if it encroaches upon the fundamental rights of the citizens. The court protects the fundamental right by issuing appropriate writ.

### **Interpreter of the constitution**

The supreme court is the final interpreter and custodian of the constitution. It has been empowered to examine the constitutionality of laws passed by the legislature and declare them ultra vires if they contravene any of the provisions for the constitution.

Finally, the supreme court is also entitled to review its judgement in order to remove any mistake or error that might have crept in the judgement.

The supreme court is a court of Record.

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### **4.8 CHECK YOUR PROGRESS.**

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1. What is the minimum age to become a member of Lok sabha?
2. Members of Lok sabha are elected by the way of -----
3. What is the maximum strength of Rajya sabha?
4. What is the term of a member of Rajya sabha?
5. What is the minimum age for the eligibility to be a presidential candidate ?
6. Who is regarded as the head of the Indian state ?
7. ----- is the chairman of the policy commission
8. Who appoints the prime minister?
9. The jurisdiction of the supreme court of India may be enlarged by
  - A. Parliament by law
  - B. Parliament by resolution
  - C. The president
  - D. The president in consultation with the chief justice of India
10. A High court judge may be appointed as an adhoc judge of the supreme court for a temporary period.

True

False

### **ANSWERS TO CHECK YOUR PROGRESS**

1. 25 Years
2. People's representation
3. 250
4. 06 Year

5. 35
6. President
7. Prime minister
8. President
9. A.
10. True

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#### 4.9 SUMMARY

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The parliament of India is the legislative organ of union government. It is composed of president, Lok Sabha and Rajya Sabha. Lok Sabha is the Lower House representing the people of India. Rajya Sabha is the second or upper House, representing the status and union territories of the Indian union.

The parliament exercises multifarious functions like law making, controlling the executive, judicial i.e. impeaching the president, removing the judges of supreme and High Court, financial, constituent, i.e. the amending the constitution etc.

In this unit we have studied the president of India as the nominal executive, method of election, term, impeachment procedure, legislative, executive, financial, judicial, military, emergency powers so on.

We have also discussed the powers and functions of P.M. and council of ministers as the real executive. Different categories of ministers and their status, role of the P.M. in the administration of the union government have also been studied.

In this units we have discussed the composition, organisation and powers of Indian supreme court.

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#### 4.10 KEY WORDS

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<b>No- confidence Motion</b>	- A motion expressing want of confidence in government; it is moved by a members or leader of opposition.
<b>Prorogation of Parliament</b>	-Discontinue meetings of parliament etc. without dissolving it
<b>Dissolution</b>	-Termination, ending of a Lok Sabha with a view to have fresh election.

<b>Electoral college</b>	- A body of electorate constituted for the purpose of particular election
<b>Impeachment</b>	- The process of framing charges against the president and judges of supreme court and High courts by legislative body.
<b>Pardon</b>	- An act of grace which releases a person from punishment for same offence.

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#### **4.11 QUESTIONS OF SELF STUDY**

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1. Explain the composition and organization of Lok Sabha.
2. Discuss the powers and functions of the Lok Sabha.
3. Discuss the composition and organisation of Rajya Sabha.
4. Examine the powers and functions of the Rajya Sabha.
5. Examine the relation between Lok Sabha and Rajya Sabha
6. Explain the method of election, qualifications, term and removal of president of India.
7. Discuss the powers and functions of president of India
8. Discuss the functions and role of the Prime Minister of India
9. Explain the composition and tenure of the council of ministers.
10. Examine the role and functions of the council of ministers.
11. Explain the composition, organisation of supreme court of India.
12. Discuss the powers and jurisdiction of the supreme court.

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#### **4.12 REFERENCES**

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1. Herman Finer, 1954, *Theory and Practice of Modern Governments*, Methuen & Ltd.
2. K.C. Wheare, 1966, *Modern Constitution*, New Delhi, Oxford University Press.
3. J.C. Johari, 2001, *Indian Constitution-New Delhi*, vishal
4. D.D. Basu, 1994, *Introduction to the Constitution of India* New Delhi prentice Hall.
5. The Constitution of India, *Government of India (Publication)*
6. B.L. Fadia, 2011, *Indian Government and Politics*, Agra, Sahitya Bhawan.
7. Granville Austin, 2000, *The Indian Constitution: Corner Stone of a Nation*. London, Oxford University Press.
8. Subhash Kashyap, 2011, *Our Parliament*, New Delhi, National book Trust.

9. Basu .D.D, 2001, *Introduction to the Constitution of India -19th New Delhi, prentice Hall -2001*
10. Pylee.M.V, 2004, *Constitutional Government in India, New Delhi, S.Chand & co Ltd.*
11. T.S. Rajagopallyengar, 1972, *Indian parliament A critical study. Prasaranga. University of Mysore.*
12. N.A. Somanna& others, 2009, *Indian constitution, Mysore Book House.*
13. Dr.H.M. Rajashekar, 2006, *Indian Government and politics, Kiran Publications.* 14.  
Mr. Rajeev & H.T. Ramakrishna, 2008, *Indian constitution, New Delhi. Quantum Creations Lalitha Prakashana*
15. Anupchand Kapur&K.K. Misra, 1956, *Select ed constitution, S.Chand Company.*
16. C.P.Bhambri, 1998, *Politics in India 1947-1987, New Delhi, Vikas Pub.*
17. Hansraj, 1920, *Indian Political System, New Delhi, Surjeet Publication.*
18. K.K. Ghai, 2007,*Indian government and politics, New Delhi, Kalyani Publisher.*
19. Fadia & Fadia, 2013, *Indian government and politics, Agra, Sahitya Bhawan.*
20. LaxmiKanth , 2013, *Indian Polity, MCGraw hill education India Pvt Ltd.*
21. Subhas Kashyap, 2011, *Our Constitution, New Delhi, National book Trust.*
22. Mohit Bhattacharya , 2009, *New Horizons of public Administration, Jawahar Publishers & Distributors.*
23. Chakkravarthy .M, 1987, *The Right to be Human, New Delhi, Lancer International.*
24. Chiranjeevi .S, 1999, *Human Rights, Social Justice and Political Challenges, New Delhi, Kanishka Publishers.*
25. Davidson, 1981, *Basic Documents on Human Rights, Oxford, Clarendon.*
26. Cronin Kiran, 1992, *Rights and Christian ethics, Cambridge University press, Cambridge.*
27. J.M. Barbalet, 1988, *Citizenship rights struggle and class inequality, Open University Press.*

## **BLOCK - 2**

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# **UNIT - 5 :HUMAN RIGHTS:MEANING, IMPORTANCE AND UNIVERSAL DECLARATION OF HUMAN RIGHTS**

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### **STRUCTURE**

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Meaning and Importance of Human Rights
- 5.3 Universal Declaration of Human Rights
- 5.4 Check Your Progress
- 5.5 Summary
- 5.6 Key words
- 5.7 Questions for Self- Study
- 5.8 References

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## **5.0 OBJECTIVES**

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This unit deals with the Human Rights-Meaning and Importance. Universal Declaration of Human Rights. After going through this unit, you will be able to know,

- Explain the meaning of Human Rights.
- Describe the importance of Human Rights.
- Give adequate exposure to the students regarding the meaning and importance of universal declaration of Human Rights.
- Appreciate the significance of this declaration in the light of changing global scenario.

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## **5.1 INTRODUCTION**

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Millions of people around the world look to the United Nations to resolve problems that affect their daily lives. They expect the United Nations to work towards the improvement of their standard of living and enhance their enjoyment of fundamental rights and freedoms. The challenge of achieving universal respect for all human rights remains as difficult as ever.

The United Nations human rights mechanisms contribute to the United Nations early warning system. Since its creation in 1945, the United Nations has worked diligently and systematically to promote and protect human rights. It has enabled the international community to organize its response to human rights violations. Since 1979, special mechanisms have been created by the United Nations to examine specific country situations or themes from a human rights perspective. The United Nations Commission on Human Rights has mandated experts to study particular human rights issues. These experts now constitute what are known as the United Nations human rights mechanisms or mandates, or the system of special procedures. Although the mandate holders have different titles, such as special reporter, special representative or independent experts, each is considered as an expert on mission within the meaning of the 1946 Convention on Privileges and Immunities of the United Nations. This is why they are all referred to here as experts.

Yet the importance of human right seems to reclaim its position interns achieving the desired goal. The growing awareness of the need to protect and promote Human Rights is reflected in the introduction of the subject in to the curriculum at various stages of learning is yet another millstone to speak of it importance. It is in this direction that the process of covering world conference on Human Rights began officially by 1989. This in fact adequately speaks of the importance of Human Rights in this era of a globalize world.

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## 5.2 MEANING AND IMPORTANCE OF HUMAN RIGHTS

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The presence of Human Rights is global and the context of human rights encompasses in the least and the most deprived.

Debate over this and several related issues have been heard within the UN system since the Organization's earliest efforts to define, promote and protect human rights.

Both development and human rights have as their main concerns survival, justice and human well-being. In a sense, development can be viewed as the process by which all human rights are to be realized and human rights as the goal of development and a set of standards to be met through development.

Development was once defined almost solely in terms of economic growth. But development strategies oriented merely towards economic considerations have often failed to achieve social justice. In the process, human rights may have been infringed or denied.

Today development is understood to include participation in decision making, equal opportunity, equal access to resources and adherence to international human rights standards. It is also acknowledge that no one model of development is universally applicable to all cultures and peoples. As a result of all these, people concerned with to the development and Human Rights are today seeking greater concern for Human Rights. As a result. Just about everybody is paying lip service to human rights these days. At the United Nations Conference on Human Rights in Vienna, Western nations are pushing for a more general acceptance of their human rights standards as in the rest of the world. A special international court as well as a High Commissioner for human rights are supposed to guard against violations of fundamental human rights. Minimum human rights standards are also made conditions for development cooperation by Northern donor countries. No visit by a high ranking official from a Western democratic state in a developing country will pass without the human rights situation being discussed and mentioned in the final press conference as an important point on the agenda.

In spite of this, it is hard to say whether the human rights situation in the world has actually improved. While in some countries, freedom, democracy and the rule of law have certainly gained ground, there are other countries where the situation is worse than ever. The most basic of all human rights is the right to life and security, but this right seems to be increasingly in danger. Statistics show that the number of wars in the world has been rising steadily since the end of World War II. At the moment almost 50 wars of different types are

being waged around the world, most of them in Asia and Africa. Millions of people are affected by these wars and are either killed and wounded or drift around as refugees. Many are expelled from their homes as part of ethnic cleansing a common phenomenon not only in former Yugoslavia but also in many other civil war type conflicts.

All these are serious human rights violations. But how can they be redressed can the international community be held responsible and asked to intervene in all these cases to help the victims of wars, operation and persecution to assert their human rights can the United Nations possibly be expected to be mounting peace making and peace keeping operations in 50 war type conflicts around the globe. Who is supposed to provide the troops, the logistics, and the money for such a gigantic undertaking.

Therefore when we speak of human rights and its importance we should also speak of human duties and responsibilities.

As we have the right to live in peace and personal freedom and security. We also have the duty to compromise and to bring our own house in order. Thus any discussion about the importance of Human Rights should cover with international and domestic situations and Rights and duty discourse This is about the importance Human Rights. The meaning of Human Rights however begins with defining it.

The definition of human rights, in the eyes of the Third World, not only includes political but also social and economic rights. They rightly argue that a person cannot enjoy and use his civil liberties unless he can meet his basic needs of food, shelter, and health care. Hence the demand to the rich industrial North not only to preach democracy and the rule of law, but also to assist the South in eradicating widespread poverty.

If we want to act on the improvement of human rights, we, must therefore, first shoulder our human duties the duty to keep the peace at home and to work for compromise between the various groups in society, the duty to balance out the economic interests and remove the staggering discrepancies in incomes and standards of living, the duty, also, to remove unfair barriers to international trade so that all nations have a chance to compete on equal terms. It is no use clamoring for human rights if we are not prepared to accept our human duties.

It is in this direction that they have brought the universal Declaration of Human Rights to the focus let us now read through this.

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### **5.3 UNIVERSAL DECLARATION OF HUMAN RIGHTS**

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The United Nations human rights experts play a vital role in working towards the universal achievement of freedom from fear and want. They are not paid. Their reward is the satisfaction of working towards the realization of human rights, as the highest aspiration of the common people as the Universal Declaration of Human Rights proclaimed.

The Universal Declaration of Human Rights is an international document adopted by the United Nations General Assembly that enshrines the rights and Freedoms of all Human beings. Drafted by a UN Committee chaired by Eleanor Roosevelt, it was accepted by the General Assembly as Resolution 217 during its third session on 10 December 1948 at the in Paris, France.

The system remains seriously under-resourced and has yet to achieve its full potential, however. Efforts are continuing to be made to strengthen the system to enable it to achieve the goal of universal respect for all human rights. With the cooperation of various actors, in particular Governments, United Nations bodies, and the non-governmental sector, its effectiveness could be considerably enhanced.

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 cooperation 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 realization 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.

#### **Article-1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### **Article-2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-government or under any other limitation of sovereignty

#### **Article -3**

Everyone has the right to life, liberty and security of person.

#### **Article - 4**

No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms.

#### **Article - 5**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## **Article - 6**

Everyone has the right to recognition everywhere as a person before the law.

## **Article-7**

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

## **Article-8**

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

## **Article-9**

No one shall be subjected to arbitrary arrest, detention or exile.

## **Article-10**

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

## **Article-11**

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
2. Non one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

## **Article-12**

1. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attack.

**Article-13**

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

**Article-14**

3. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
4. This right may not be invoked in the case of prosecutions genuinely arising from nonpolitical crimes or from acts contrary to the purposes and principles of the United Nations.

**Article-15**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article-16**

1. Men and women of full age, without any limitation due to race, nationality or religion, .have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article-17**

1. Everyone has the right to own property alone as well as in association with other.
2. No one shall be arbitrarily deprived of his property.

**Article-18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom either alone or in community

with other and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### **Article-19**

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any means and regardless of frontiers.

#### **Article-20**

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

#### **Article-21**

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public services in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### **Article-22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### **Article-23**

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

#### **Article-24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

#### **Article-25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social service, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

#### **Article-26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among the nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

#### **Article-27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

### **Article-28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

### **Article-29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his 'rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

### **Article-30**

Nothing in this Declaration be interpreted as implying for any State, group of person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

The deep concern of the international community for the promotion and protection of human rights is clearly expressed in the charter of the United Nations, in which the peoples of the United Nations record their determination to reaffirm faith in fundamental human rights of men and women and of nations large and small, and for this purpose to practices tolerance and live together in peace with one another as good neighbors and to employ international machinery for the promotion of the economic and social advancement of all peoples. Thus the importance of Human Rights in the declaration an the responsibility of one and all.

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## **5.4 CHECK YOUR PROGRESS**

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1. The Universal declaration of Human Rights was adopted by UN on
  - A . December 10, 1948
  - B. January 10, 1948.
  - C. December 31, 1948
  - D. January 15,1948.



determination of peoples Another is to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

The Charter authorizes a number of organs to deal with questions of human rights. Article 13, Article 62, Article 60.

Thus, Each of the six principal organs of the United Nations the General Assembly, the Economic and social council, the security council, the Trusteeship Council, the International Court of Justice and the Secretariat Plays an active role in the unceasing efforts of the United Nations to promote and protect the realization of human rights and fundamental freedoms throughout the world.

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## **5.6 KEYWORDS**

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<b>Conscience</b>	-moral sense
<b>Advent</b>	-appearance
<b>aspiration</b>	-ambition
<b>recourse</b>	- resort to
<b>reaffirmed</b>	- upheld

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## **5.7 QUESTIONS FOR SELF-STUDY**

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1. Explain the meaning of Human Rights.
2. Write a note on importance of Human Rights.
2. Discuss the various provisions under Human Rights.
4. Write an essay on Universal declaration of Human Rights.

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## **5.8 REFERENCES**

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1. Herman Finer, *1954, Theory and Practice of Modern Governments, Methuen & Ltd.*
2. K.C. Wheare, *1966, Modern Constitution, New Delhi, Oxford University Press.*
3. J.C. Johari, *2001, Indian Constitution-New Delhi, vishal*
4. D.D. Basu, *1994, Introduction to the Constitution of India New Delhi prentice Hall.*

5. The Constitution of India, *Government of India (Publication)*
6. B.L. Fadia, 2011, *Indian Government and Politics*, Agra, Sahitya Bhawan.
7. Granville Austin, 2000, *The Indian Constitution: Corner Stone of a Nation*. London, Oxford University Press.
8. Subhash Kashyap, 2011, *Our Parliament*, New Delhi, National book Trust.
9. Basu .D.D, 2001, *Introduction to the Constitution of India -19th New Delhi*, prentice Hall -2001
10. Pylee.M.V, 2004, *Constitutional Government in India*, New Delhi, S.Chand & co Ltd.
11. T.S. Rajagopal Iyengar, 1972, *Indian parliament A critical study*.Prasaranga. University of Mysore.
12. N.A. Somanna& others, 2009, *Indian constitution*, Mysore Book House.
13. Dr.H.M. Rajashekar, 2006, *Indian Government and politics*, Kiran Publications. 14. Mr. Rajeev & H.T. Ramakrishna, 2008, *Indian constitution*, New Delhi. Quantum Creations Lalitha Prakashana
15. Anupchand Kapur&K.K. Misra, 1956, *Select ed constitution*, S.Chand Company.
16. C.P.Bhambri, 1998, *Politics in India 1947-1987*, New Delhi, Vikas Pub.
17. Hansraj, 1920, *Indian Political System*, New Delhi, Surjeet Publication.
18. K.K. Ghai, 2007,*Indian government and politics*, New Delhi, Kalyani Publisher.
19. Fadia & Fadia, 2013, *Indian government and politics*, Agra, Sahitya Bhawan.
20. LaxmiKanth ,2013, *Indian Polity*, Mcgrew hill education India Pvt Ltd.
21. Subhas Kashyap, 2011, *Our Constitution*, New Delhi, National book Trust.
22. Mohit Bhattacharya ,2009, *New Horizons of public Administration*, Jawahar Publishers & Distributors.
23. Chakkravarthy .M, 1987, *The Right to be Human*, New Delhi, Lancer International.
24. Chiranjeevi .S, 1999, *Human Rights, Social Justice and Political Challenges*, New Delhi,Kanishka Publishers.

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## **UNIT-6 : DEVELOPMENT OF HUMAN RIGHTS AND FUNDAMENTAL RIGHTS, INTERNATIONAL LAW AND ITS POSITION IN INDIA**

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### **STRUCTURE**

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Development of Human Rights
- 6.3 Fundamental Rights
- 6.4 International Law and its Position in India
- 6.5 Check Your Progress
- 6.6 Summary
- 6.7 Key words
- 6.8 Questions for Self - Study
- 6.9 References

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## **6.0 OBJECTIVES**

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This Unit deals with the Development of human rights and fundamental rights, International law and its position in India. After going through this unit you will be able to know;

- Discuss the development of Human Right.
- Explain the fundamental rights.
- Describe whether it is enshrined in the constitution.
- Assess the relationship between Human Rights & International Law

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## **6.1 INTRODUCTION**

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Dear students, Human Rights are generally defined as the rights which every human being is entitled to enjoy and to have protected. All societies and cultures have in the past developed some conception of rights and principles that should be respected and some of these rights and principles have been considered universal in nature. The struggle for the recognition of human rights and the struggle against political, economic, social and cultural oppression, against injustice and inequalities, have been an integral part of the history of all human societies. The conception of the rights which every human being is entitled to enjoy by virtue of being a member of the human species has evolved through history in the course of these struggles. This is the central axis on which Human Rights function today.

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## **6.2 DEVELOPMENT OF HUMAN RIGHTS**

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The origins of the contemporary conception of human rights can be traced to the period of the Renaissance and later of the Enlightenment of which humanism may be said to be the heart and soul. The system of views called humanism extolled man, stressed his essential worth and dignity, expressed deep faith in his limitless creative potential, and proclaimed freedom of the individual and inalienable rights of the individual. The revolutionary movements that began to emerge from about the last quarter of the eighteenth century to oust despotic and authoritarian political regimes made rights of man which they considered inalienable and sacred as the fundamental basis of their struggle as well as of the new order that they sought to build. The two most important declarations which inspired revolutionary movements the world over were the American Declaration of Independence and the French Declaration of the Rights of man and Citizen. The latter also had a marked universal character. The main concern of these movements was the ending of despotic rule establishment of democratic polities (though women continued to be excluded from it for

long) and the protection of the liberties of the individual. A new element to the evolving concept of human rights was added by the socialist movement which emerged in the nineteenth century with its stress on the abolition of class rule and the establishment of social and economic equality.

The contemporary conception of human rights and its universal nature and universal recognition, while based on the rich heritage of the past, should be seen in the specific historical context of the twentieth century. The history of the almost entire first half of the twentieth century is characterized by the prevalence of colonial rule in large parts of the world, the rise of authoritarian governments in many countries and the establishment of fascist barbarous and aggressive regimes in some countries on the one hand and the rise of national liberation movements in the colonies and of movements of democracy and social progress in various countries on the other. The twentieth century also saw the two most devastating wars in human history the twenty years of peace between the two being mainly a period of preparation for the second world War. Because of this, the period from 1914, when the First World War broke out, to 1945 when the Second World War ended has been described as the Age of Catastrophe. It was during the closing years of this Age of Catastrophe, during the war against fascism, that the conceptualization and articulation of human rights in their present meaning took place. The most significant feature of the new conceptualization was its universality. It was reflected in various declarations of the war aims proclaimed by countries allied against fascism and militarism. It was expressed in the charter of the United Nations which began with the following words: United Nations determined to save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom. The universal Declaration of Human Rights 1948 which was proclaimed in a little over three years after the UN Charter, an elaborate list of human rights intended as a common standard of achievement for all peoples and all nations is the contemporary statement of human rights which are intended to be universally applicable.

The Universal Declaration has been followed by other declarations which present in an elaborate form the human rights principles in respect of specific issues and aspects. There

have also been many covenants/conventions which are also elaborate statements of specific rights relating to specific aspects. These covenants conventions may be considered in a sense more important because the countries that are signatories to them have explicitly agreed to follow them.

It may be useful to refer to certain aspects of the evolution of the contemporary concept of human rights. It is common to refer to the evolving concept in terms of three generations of human rights. The first generation rights are those of the individual or the liberty oriented rights. These were meant to impose negative obligations on governments to desist from interfering with the exercise of individual liberties. These rights were among the major concerns of all liberal and democratic movements since the nineteenth century.

The second generation rights are those which can be said to be security oriented and provide for social economic and cultural security. These rights social economic and cultural are more positive in nature in that they make it the duty of the State to ensure that these rights are realized. The Universal Declaration of Human rights reflects the consensus on the principles which form the basis of the first and second generation rights.

The third generation of human rights are of relatively recent origin. They have evolved in response to various new concerns over which international consensus has emerged in recent years. These include environmental, cultural and and developmental rights. They are concerned with rights of groups and peoples rather than of individuals and include such rights as the right to self -determination and the right to development. The developing countries have played a leading role in bringing about international consensus on these rights. The Declaration on the Right to Development adopted by the UN General Assembly in 1986 is the most important example of these rights.

Since the adoption of the universal declaration, there have been many controversies regarding the question of which rights are more important and which less. The representatives of some States had been asserting that civil and political rights are more important than economic, social and cultural rights. They also had serious reservations about acknowledging the right to development which, if effectively implemented would affect the existing pattern of economic and political power in the world. Other countries stressed the importance of economic, social and cultural rights and the right to development. These controversies, in principle, can be said to have been resolved when all human rights were recognized to be indivisible. The Vienna Declaration, issued after a conference in which representatives of 171

countries and hundreds of non-governmental organizations participated, unambiguously affirmed that "All human rights are universal, indivisible, interdependent and interrelated". It has also been affirmed that democracy is the sole guarantor of individuals rights civil, political economic, social and cultural and collective rights within States and within the community of States.

As stated earlier, the Universal Declaration has influenced the constitutions and the legal systems of various countries. Many countries are signatories to the covenants/conventions on human rights which means that they have undertaken to implement them. The declarations, though statements of intent or principle, are equally applicable. Therefore, it is the responsibility of the governments to protect and promote all these rights. However, it is necessary to remember the distinction between human rights as articulated in international declarations and covenants/conventions and rights that are laid down in the law of the country and can be enforced, if necessary, through the intervention of the courts.

The record of the past half a century since the adoption of the UN Charter in the implementation of human rights and even in regard to preservation of peace has been dismal some have call it catastrophic. The necessity of building an understanding and concern for making human rights a reality has never been greater. It may be considered, without any exaggeration, an imperative of existence.

Education in human rights has been stressed in all human rights documents and has been viewed as an essential contribution to the development of a global human rights culture. This compilation has been designed with a view to making major human rights documents accessible to the large body of personnel involved in various sectors of education policy , curriculum development, classroom and out of class teaching learning activities to enrich the human rights education programmes wherever and in whatever form they exist, and as the basis for promoting awareness of current issues and controversies relating to human rights.

### **Declaration of the Rights of Man and Citizen**

In 1789 occurred the French Revolution. The storming of the fortress of Bastille, a state prison, by the people of Paris on 14 July that year symbolized the end of autocracy and of the old regime in France. The National Assembly of France which had started meeting in June 1789 adopted the Declaration of the Rights of Man and Citizen on 26 August 1789 as a preamble to the new constitution that it was framing for France. This Declaration was truly international in its appeal and inspired revolutionary and democratic movements in almost

every country of Europe and in Central and South America and, later, in Asia and Africa. Reproduced below is the text this Declaration.

The representatives of the French people, constituted as a National Assembly, considering that ignorance, disregard or contempt of the rights of man are the sole cause of public misfortunes and governmental corruption, have resolved to set forth a solemn declaration of the natural, inalienable and sacred rights of man. in order that this declaration, by being constantly present to all members of the social body, may keep them at all times aware of their rights and duties, that the acts of both the legislative and executive powers, by being liable at every moment to comparison with the aim of all political institutions., may be the more fully respected, and that demands of the citizens by being founded henceforward on simple and incontestable principles, may always redound to the maintenance of the constitution and the general welfare.

The Assembly consequently recognizes and declares, in the presence and under the auspices of the Supreme being, the following rights of man and the citizen.

1. Man are born free and equal in rights. Social distinctions may be based only on common utility.
2. The aim of all political association is to preserve the natural and imprescriptible rights of man. These rights are liberty, property, security and resistance to oppression.
3. The principle of al sovereignty rests essentially in the nation. No body and no individuals may exercise authority which does not emanate from the nation expressly.
4. Liberty consists in the ability to do whatever does not harm another, hence the exercise of the natural rights of each man has no limits except those which assure to other members of society the enjoyment of the same rights. These limits can only be determined by law.
5. Law may rightfully prohibit only those actions which are injurious to society. No hindrance should be put in the way of anything not prohibited by law, nor may any man be forced to do what the law does not require.
6. Law is the expression of the general will. All citizens have the right to take part, in person or by their representatives, in its formation .it must be the same for all

whether it protects or penalizes. All citizens being equal in its eyes are equally admissible to all public dignities, offices and employments, according to their capacity, and with no other distinction than that of their virtues and talents.

7. No man be indicated, arrested or detained except in cases determined by law and according to the forms which it has prescribed. Those who instigate, expedite, execute or cause to be executed arbitrary orders should be punished, but any citizen summoned or seized by virtue of the law should obey instantly, and renders himself guilty by resistance.
8. Only strictly necessary punishments may be established by law, and no one may be punished except by virtue of a law established and promulgated before the time of the offence, and legally put into force.
9. Every man being presumed innocent until judged guilty, if it is deemed indispensable to keep him under arrest, all rigor not necessary to secure his person should be severely repressed by law.
10. No one may be disturbed for his opinions, even in religion, provided that their manifestation does not trouble public order as established by law.
11. Free communication of thought and opinion is one of the most precious of the rights of man. Every citizen may therefore speak, write and print freely, on his own responsibility for abuse of this liberty in cases determined by law.
12. Preservation of the rights of man and the citizen requires the existence of public force. These forces are therefore instituted for the advantage of all, not for the private benefit of those of whom they are entrusted.
13. For maintenance of public forces and for expenses of administration common taxation is necessary. It should be apportioned equally among all citizens according to their capacity to pay.
14. All citizens have the rights, by themselves or through their representatives, to have demonstrated to them the necessity of public taxes, to consent to them freely to follow the use made of the proceeds and to determine the shares to be paid, the means of assessment and collection and the duration.
15. Society has the right to hold accountable every public agent of administration.

16. Any society in which guarantee of rights is not assured or the separation of powers not determined has no constitution.
17. Property being an invincible and sacred right, no one may be deprived of it except for an obvious requirement of public necessity, certified by law, and then on condition of a just compensation in advance.

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### **6.3 FUNDAMENTAL RIGHTS**

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In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The congress, therefore, declares that any constitution which may be agreed to on its behalf should provide, or enable the Swaraj Government to provide, for the following:

1. Fundamental rights of the people, including
  - Freedom of association and combination;
  - Freedom of speech and of the press;
  - Freedom of conscience and the free profession and practice of religion, subject to public order and morality;
  - Protection of the culture, language, and scripts of the minorities.
  - Equal rights and obligation of all citizens, without any bar on account of sex.
  - No disability to attach to any citizen by reason of his or her religion caste or creed or sex in regard to public employment, office or power or honor, and in the exercise of any trade or calling.
  - Equal to all citizens in regard to public roads, wells, schools and other places of public resort.
  - Right to keep and bear arms in accordance with regulations and reservations made in that behalf.
  - No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law.
2. religious neutrality on the part of the state.
3. Adult suffrage.
4. Free primary education.

5. A living wage for industrial workers, limited hours of labour, healthy conditions of work, protection against the economic consequence of old age, sickness and unemployment.
6. Labour to be freed from serfdom or conditions bordering on serfdom.
7. Protection of woman workers, and specially adequate provisions for leave during maternity period.
8. Prohibition against employment of children of school going age in factories.
9. Right of labour to form unions to protect their interests with suitable machinery for settlement of disputes by arbitration.
10. Substantial reduction in agricultural rent or revenue paid by the peasantry and in case of uneconomic holdings, exemption from rent for such period as may be necessary, relief being given to small zaminadars wherever necessary by reason of such reduction.
11. Imposition of a progressive income tax on agricultural incomes above a fixed minimum.
12. A graduated inheritance tax.
13. Military expenditure to be reduced by at least one half of the present scale.
14. Expenditure and salaries in civil departments to be largely reduced. No servant of the state, other than specially employed experts and the like, to be paid above a certain fixed figure which should not ordinarily exceed Rs. 500 per month.
15. Protection of indigenous cloth by exclusion of foreign cloth and foreign yarn from the country
16. Total prohibition of intoxicating drinks and drugs.
17. No duty on salt manufactured in India.
18. Control over exchange and currency policy so as to help Indian industries and bring relief to the masses.
19. Control by the state of key industries and ownership of mineral resources.
20. Control of usury direct or indirect.

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## **6.4 INTERNATIONAL LAW AND ITS POSITION IN INDIA**

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In the world community of nations sovereign states conduct their relations on a body of norms, treaties and other standards of conduct that together form the foundation of modern international law. International law has been applied frequently to relatively routine relations between states. To understand the nature of international law an insight into the dynamic nature of law becomes essential. Any law, national or international is a set of rules, combination of expectations and practices that help to govern human behaviour. According to Rourke(1993) certain features determine the dynamic nature of law. Firstly, all legal systems are dynamic, continually evolving systems. Second, no legal system is perfect. Even in law abiding societies, rules are broken and the guilty sometimes escape punishment. Third, law both reflects and directs a society. In other words, law often mirror the norms of a society. We legalize what we do in practice. People began wearing clothes long before there were laws against public nudity. Law, however, can also lead a society to change its behaviour by enacting philosophical principles into required standards of conduct. In the United States, Laws and court decisions requiring the racial desegregation of schools and other public facilities preceded and facilitated the easing, although not the end, of racial bigotry. Fourth, law depends on a mixture of voluntary compliance and coercing to maintain order. Sometimes we may obey the law because we are afraid that if we do not we will be caught and punished. More often, people are law abiding because they agree with the law or recognize that laws are necessary to regulate society.

Thus, law is a process of evolution and growth. It evolves and advances from primitive nature to more sophisticated level in a political system.

### **Meaning of International Law**

International law in its modern form is the result of the great political transformation that marked the transition from Middle Ages to the modern period of history. The development of a territorial state led to formation of the supreme authority, within the territory of the state. When this transformation was consummated in the 16th century the political world consisted of a number of states that within their respective territories were legally speaking, completely independent of each other (Moregenthau, 1973).

For an atmosphere of peace and order, in relation, among such sovereign entities it was inevitable that certain rules of law should govern these relations, and if anarchy and violence are not the order of the day, legal rules must determine the mutual rights and obligations in

such situations and these core of rules came to be known as international law. Oppenheim (1905) an authority spoke of it as the name for a treaty of customary and conventional rules which are considered legally binding by civilized state in their intercourse with each other. if Fennwich 1920) defines it as the body of rules accepted by the general community of nations as defining their rights and the means of procedure by which those rights may be protected or violations of them redressed.

Jessup (1948) wrote that International law is generally defined as law applicable to relations between states Ellery C. Stowell (1931) explained that International law embodies certain rules relating to human relations throughout the world, which are generally observed by mankind and enforced primarily through the agency of the government of the independent communities into which humanity is degraded.

Y. Korovin (1962) a communist thinker defines contemporary international law as the international code of peaceful existence.

### **How International Law is made:**

In a domestic political system the law is made through a constitution, a legislative body, as well as judicial decisions which establish guidelines and precedents for later decisions by courts. At times customary or common law also forms part of the sources of law along with settlement of disputes sometimes on the basis of equity.

Modern international law differs from the domestic law in its sources.

Article 38 of the Statute of the International Court of Justice identifies the sources of international law as follows:

- a. International conventions (treaties), whether general or particular, establishing rules expressly recognized states.
- b. International custom, as evidence of a general practice accepted as law.
- c. The general principles of law recognized by civilized nations.
- d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publications of the various nations, as subsidiary means for the determines of the rules of law (palmer and Perkins, 1976).

The treaties and decisions regulate relations between states arising from variety of communications, exchange of goods and services and international organizations where nations cooperate for mutuality of interests. The general principle of law are those that are

common to municipal legal systems of various nations. The judicial decisions were rendered by Permanent Court of Arbitration, Permanent Court of International Justice, the International Court of Justice, and military tribunal such as Neuremberg and Tokyo trials. Juristic opinions of Grotius, Oppenheim, Briery have also contributed in the evolution of international law. Some students of international law add a fifth course the pronouncements of international representative assemblies like the U.N. General Assembly.

These diverse sources imply that international law making is decentralized. There is no single institutional or intellectual source of law, besides, it remains uncodified today which creates problems in its interpretations. Due to the unclear nature of the law, states try to interpret it in a manner so as to suit their national interest. Yet decentralization does not mean non-existence of the law. Despite some inconsistencies the law exists.

### **Effectiveness of International Law**

One of the charges leveled against the credibility of international law is that it exists only in theory and not in practice. In the first place the violation of law does not mean absence of law. International law is effective in many areas (Chiu. 1987) Failure to flowed it does not disprove its existence, e.g. every domestic political system has a code of law for discipline and orderly society yet crimes, thefts, robberies and other such cases are always reported. Does that mean there is no law.

International law is most effective in functional international relations. Which ideal with routine, procedural, communications and trade matters termed as low politics interactions. But international law is least effective in high politics interaction which involve political and security relations among sovereign states. Where vital national interests are involved government try to interpret international law in a manner so as to justify their actions rather than alter their actions to conform to the law.

In the ultimate analysis even in areas of high politics it is gradually becoming effective. The law does influence political decisions. It was Iraq's violation of international norms that triggered such an adverse reaction in the world and was demonstrated in the total solidarity in the U.N. against Iraq. Virtually all countries condemned Iraq's invasion of Kuwait and disagreed with its declaration that Kuwait was a province of Iraq. Almost all states honored the UN sanctions and a number of them sent military contingents too. In the end law had to be enforced. Iraq had detained hundreds of foreign hostages in violation of international law. This set off an intense reaction by the world community against Iraq and it eventually

announced that all hostages were free to leave. However, the effectiveness of international law like all legal systems, will be most effective when people demand that everyone, citizens and leaders alike, abide by its principles (Falk, 1989)

### **Limitations of International Law**

Popular hopes and political declarations of goals have created certain illusions about peace through world law. Generally considered, legal and constitutional law applied in the domestic society are also applicable to international relationship and a world state is envisaged. It has been assumed that international law emerged from primitive society to creation of a state to the final establishment of an international order. This concept is considered invalid in the present context. While domestic law is imposed by the group that holds monopoly of organized force, international law owes its existence and operation to two factors; decentralized character of identical and complementary interests of individual states and the distribution of power among them. Where there is neither, there is no international law. International law is based on necessity and mutual consent.

International law is voluntary. Only those nations who obey are party to the agreement or treaty. Some nations conclude agreements among themselves and include it in the sphere of international law. Governments generally refrain from accepting the restraining influence that international law might have upon their foreign relations, use it to promote their national interests and yet evade any legal obligation that might have upon their foreign relations, use it to promote their national interests and yet evade any legal obligation that might be detrimental to their interests. Thus, international law becomes a tool in their hands for furthering national interests. The basic reason for this is the decentralized nature of international law which accounts for lack of precision and continues to sap its strength.

India is an open country with a vigorous press and a strong judiciary which has delivered some highly creative judgment to protect fundamental rights. Yet even these and other Indian institutions with substantive powers to safeguard the rights of India's citizens have failed to provide effective protection to the hundreds, if not thousands, of Indian citizens who have died after torture and ill treatment. The victims have been ordinary men and women, even children, some of them picked up on the flimsiest of criminal charges, and have come from nearly every state during the past decade. At least 459 of them have, since 1985, been deprived, in custody, of the most basic human right of all the right to life.

One welcomes the Indian Government's reiteration in June 1992 that India firmly believes in human rights. However, time and again government official have refused to acknowledge that the problem of torture exists.

No administration has shown the political will to bring about change we believe the government must act urgently to create an effective institutional framework to prevent Human Rights and related abuses. Officials charged with carrying this out it is felt must be given full assistance at every level of government.

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## **6.5 CHECK YOUR PROGRESS**

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1. The origins of the contemporary conception of human rights can be traced to the period of the ----- .
2. The aim of all -----is to preserve the natural and imprescriptible rights of man.
3. Popular hopes and political declarations of goals have created certain illusions about peace through ----- .
4. India is an open country with ----- and ----- which has delivered some highly creative judgment to protect fundamental rights.

## **ANSWERS TO YOUR PROGRESS**

1. Renaissance
2. political association
3. world law
4. a vigorous press and a strong judiciary

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## **6.6 SUMMARY**

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Thus, the millions of people world around who are in search of Justice of Some kind will find Human Rights Fundamental Rights as redeeming while International law seeks to legalize and universalize them for the betterment of mankind.

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## **6.7 KEY WORDS**

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- |                  |              |
|------------------|--------------|
| <b>Despotic</b>  | - tyrannical |
| <b>Inception</b> | - beginning  |
| <b>redeeming</b> | - saving     |

**abuse** - mistreatment

**prevent** - avert.

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## 6.8 QUESTIONS FOR SELF - STUDY

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1. Trace the development of Human Rights .
2. Explain the fundamental rights.
3. Write a short essay on International law.
4. Assess the relationship between Human Rights & International Law.

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## 6.9 REFERENCES

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1. Herman Finer, 1954, *Theory and Practice of Modern Governments*, Methuen & Ltd.
2. K.C. Wheare, 1966, *Modern Constitution*, New Delhi, Oxford University Press.
3. J.C. Johari, 2001, *Indian Constitution-New Delhi*, vishal
4. D.D. Basu, 1994, *Introduction to the Constitution of India New Delhi* prentice Hall.
5. The Constitution of India, *Government of India (Publication)*
6. B.L. Fadia, 2011, *Indian Government and Politics*, Agra, Sahitya Bhawan.
7. Granville Austin, 2000, *The Indian Constitution: Corner Stone of a Nation*. London, Oxford University Press.
8. Subhash Kashyap, 2011, *Our Parliament*, New Delhi, National book Trust.
9. Basu .D.D, 2001, *Introduction to the Constitution of India -19th New Delhi*, prentice Hall -2001
10. Pylee.M.V, 2004, *Constitutional Government in India*, New Delhi, S.Chand & co Ltd.
11. T.S. Rajagopal Iyengar, 1972, *Indian parliament A critical study*.Prasaranga. University of Mysore.
12. N.A. Somanna& others, 2009, *Indian constitution*, Mysore Book House.
13. Dr.H.M. Rajashekar, 2006, *Indian Government and politics*, Kiran Publications.
14. Mr. Rajeev & H.T. Ramakrishna, 2008, *Indian constitution*, New Delhi. Quantum Creations Lalitha Prakashana
15. Anupchand Kapur&K.K. Misra, 1956, *Select ed constitution*, S.Chand Company.
16. C.P.Bhambri, 1998, *Politics in India 1947-1987*, New Delhi, Vikas Pub.
17. Hansraj, 1920, *Indian Political System*, New Delhi, Surjeet Publication.

18. K.K. Ghai, 2007, *Indian government and politics*, New Delhi, Kalyani Publisher.
19. Fadia & Fadia, 2013, *Indian government and politics*, Agra, Sahitya Bhawan.
20. LaxmiKanth ,2013, *Indian Polity*, Mcgrew hill education India Pvt Ltd.
21. Subhas Kashyap, 2011, *Our Constitution*, New Delhi, National book Trust.
22. Mohit Bhattacharya ,2009, *New Horizons of public Administration*, Jawahar Publishers & Distributors.
23. Chakkravarthy .M, 1987, *The Right to be Human*, New Delhi, Lancer International.
24. Chiranjeevi .S, 1999, *Human Rights, Social Justice and Political Challenges*, New Delhi, Kanishka Publishers.
25. Davidson, 1981, *Basic Documents on Human Rights*, Oxford, Clarendon.
26. Cronin Kiran, 1992, *Rights and Christian ethics*, Cambridge University press, Cambridge.
27. J.M. Barbalet, 1988, *Citizenship rights struggle and class inequality*, Open University Press.

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## **UNIT-7 : HUMAN RIGHTS AND NGO'S - PEOPLE'S UNION FOR CIVIL LIBERTY (PUCL) - PEOPLE'S UNION FOR DEMOCRATIC RIGHTS (PUDR)**

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### **STRUCTURE**

- 7.0 Objectives
- 7.1 Introduction
- 7.2 PUCL and PUDR Today
- 7.3 Organizational Structure of PUCL and PUDR
- 7.4 Issues and concerns
- 7.5 Check Your Progress
- 7.6 Summary
- 7.7 Key words
- 7.8 Questions for Self - Study
- 7.9 References

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## **7.0 OBJECTIVES**

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This Unit deals with the Human Rights and NGO's and People's Union for Civil Liberty (PUCL) People's Union for Democratic Rights (PUDR). After going through this unit, you will be able to know ;

- Explain the role of voluntary organization.
- Assess how this organization have been expanding and have established branches in all most all the states.
- Explain the organization of people's union for civil liberty.
- Discuss the organization and functions of people's union for democratic rights.

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## **7.1 INTRODUCTION**

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The fact is that human rights are as much a global as a national concern. Countries across the world recognized this when they became a party to the International covenant on civil and political rights. In doing so, they undertook legal obligations to the international community to observe and protect human rights. Not only did they make a unilateral declaration against Torture saying that they would comply with the UN Declaration against Torture, they even initiated the resolutions of the UN General Assembly that introduced these Declarations.

Civil liberties, civil rights, or human rights are terms which are often used interchangeably. For the common person it does not matter as to how it is used. Correctly speaking the difference between civil liberties and civil rights on the one hand and human rights on the other is that the former two are generally liberties that are guaranteed to a citizen by law in a country. For example, the Constitution or the laws and legal traditions of a country may guarantee every individual the liberty of thought, speech, action, enjoyments of life and property, etc. Similarly, equal right to protection of law to exemption from servitude. These liberties are limited by the enjoyment of same liberties by other individuals.

Human rights, on the other hand, are the inalienable rights of a person by virtue of being a human. All or some of these may or may not be written in the Constitution and laws of a country. These rights are considered to be universal and have been concretized by the United Nations in various categories. Such as political, economic, social, or cultural rights.

## **Early Growth**

In early 1936 Jawaharlal Nehru wrote to a large number of political leaders and intellectuals about his idea of the need of a nonpolitical and broad based civil liberties organization for purposes of collecting and disseminating information and educating the masses. This culminated in the founding of the Indian Civil Liberties Union on August 24, 1936. This was followed by the formation of Unions at Bombay, Madras, Calcutta, and in Punjab as its units. Rabindranath Tagore was the first Honorary President of the ICLU and Sarojini Naidu the President. K B Menon Kerala was appointed as the General Secretary Rammanohar Lohia, M Venkatarangaiah, S Pratap Reddy also made important contributions to popularise the concepts of civil liberties by writing booklets, articles, and pamphlets. Thus the early growth of PUCL of PUCL/PUDR had an excellent and intelligent roots.

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## **7.2 PUCL AND PUDR TODAY**

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Ever since 1980, these organization have been expanding its membership and have established branches in all most all the states of India. Some of them have more successfully pursued public interest litigation in the courts. There are of interest varies according to the interests and capacities of the elected office bearers and active members. If PUCL\* is a major actor in the national level, PUDR\* also is a major in actor in the pockets of certain states but both are in fact friendly and cooperative to each other.

Mobilising public opinion in favour of a better climate for protection of civil liberties and Democratic right in the country are their major concerns.

The United Nations Organization has adopted a document known as the Universal Declaration of Human Rights. Every member country of the United Nations is a signatory to this declaration, which makes it mandatory for every member country to protect the human rights of its citizens. This document was adopted on December 10,1948 and, therefore, this date is observed as the Human Rights Day all over the world. Besides this declaration, there are other covenants concerning human rights which have been adopted by the United Nations from time to time and member countries have been invited to sign and accept, irrespective of the fact that a country may make laws to that effect, or in the absence of such laws, may implement them through policies and programmes.

Some of the important documents, apart from the Declaration of Human Rights, are the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Optional protocol to the International Covenant

on Civil and Political Rights; the Convention Against Torture and other cruel, Inhuman or Degrading Treatment or punishment. These international documents define and continually expand the horizon of human rights. In India the Supreme Court has ruled that the High Courts can implement the provisions of these documents provided there are no laws specifically against them.

Conducting investigations into incidents of violations of human rights, brought to notice by the victims, the press, a member, or any concerned individual Publishing the findings of these investigations in the Bulletins and releasing them to the press, or making them public by other mean such as public meetings, mass media Filing petitions, on the basis of their investigations, or even otherwise are some of their major activities which lie in fact in the arena of civil society. An area where governments do not perform, but where society plays a proactive role

These cases are prepared and argued by lawyers who are members of either PUCL or PUDR in the local courts, High Courts or the Supreme Court. The beauty of this is that they meet all the expenses incurred on these cases, from their own pocket in the larger interest of the society.

The PUCL maintains fraternal relations with many national and international organizations concerned with Human Rights and exchanges literature with them. Some of the important international organizations are the Amnesty International, the World Organization against Torture, the Human Rights Watch, the Netherlands Institute of Human Rights, the UN Centre for Human Rights, the Law Asia, the Article 19, the Asian Human Rights Commission similarly the National groups with which the PUCL maintains very close cooperative relations are CFD, APCLC, PUDR, APDR, CPDR, similarly There are many democratic rights and civil liberties organizations in India, who work closely with PUDR Apart from PUDR, there is the Andhra Pradesh Civil Liberties Committee (APCLC). the Association for Protection of Democratic Rights, (APDR). West Bengal, the Peoples Union for Civil Liberties, (PUCL) and many others. It is important to note that this is the strength of their organizations.

Since the establishment of the National Human Rights Commission, in India the PUCL/ PUDR have made a lot of efforts in utilizing this forum for redressed of grievances against violation of rights of the people. But the PUCL is dissatisfied by its scope and the methods as laid down in the Protection of Human Rights Act, 1993, and also with the working of the National Human Rights Commission. It is continuously pressurizing the government as well as the Commission to remedy the situation. Besides the NHRC, the

PUCL and PUDR are working with the National Commission for Women, the National Commission for Minorities, and the National Commission for Safai Karmacharis to enlarge the democratic and civil rights to those who have been subjected to oppression due to socio cultural ethics of countries like

India. Thus, PUCL/PUDR are today the major players in the civil liberties and Democratic movement in the country.

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### **7.3 ORGANIZATIONAL STRUCTURE**

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The PUCL has a three tier structure. A national Convention is held every two years in the beginning to elect the office bearers and the National Council, including the national Executive Committee.

The PUCL also establishes the State branches. The Structure of the State branch follows the pattern at the national level. The State branch and its office bearers organise and co-ordinate the working of the organization in the State concerned. They are responsible for establishing local branches in the district and cities and towns. Here too the structure follows the same pattern.

The PUDR on the other hand Over the last 20-30 years, has been working along with the civil rights movement in India and has emerged as an autonomous voice in defence of civil liberties and democratic rights of our people. The Peoples Union for Democratic Rights, Delhi. It is thus, this has earned a name for itself in the sphere of civil rights. It came into existence in 1976-77 as the Delhi unit of a larger national forum, and became PUDR on 1 February, 1981.

In the last two and a half decades of its existence the organisation has taken up hundreds of instances of violations of democratic rights, covering most parts of the country and involving the rights of many sections of society. PUDR conducts investigations, issues statements, distributes leaflets, organizes public meetings, demonstrations and dharnas, and fights legal cases to highlight the violation of people's rights, and to help towards their redressal.

The bases of the PUCL and PUDR are the local level branches. The office bearers and the members of a local branch are the most crucial functionaries, as only they are in a position to intervene directly. It is here that the actual suppression or the denial of the liberties and Democratic rights are infringed upon. of the people. It is the activities at the local level that give shape and an identity to these organizations. The initiative and the alertness shown by the members of these organizations at the district or city level is the most important element in the movement for civil liberties and democratic rights Wherever

necessary, a local branch can enlist the help and support of the state branch, and if necessary, also of the national branches of these organizations. The state and the national organizations can only act on the basis of the information supplied to them by their, respective local groups.

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#### **7.4 ISSUES AND CONCERNS**

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PUCL and PUDR are the watch dogs of democracy. Whenever some important situation develops affecting the liberties and right of some individuals, or a group, or the common people, the concerned branch of the PUCL/PUDR have to ascertain the facts before taking any action or committing itself to an action. Then take Care not to become involved in activities of the political parties or groups. Therefore the issues and concerns of these organizations are clearly a political.

If some incident takes place which is of wider significance, then action will be organized on a wider level, state both at and/or at national level. Co-ordination of activities with the State and or national office is of utmost significance for these organizations in such cases involvement of higher level branches take place only and if necessary and at times on request basis.

The PUCL has its branches in almost all the States. Whereas PUDR is not as extensive in its network as of PUCL. All the State/local branches of both these organizations are required to print letter heads with the address of the it national offices apart from their own addresses.

In an under developed and poor country most often it is the poor and the disadvantaged and vulnerable sections of society, including women, children minorities, prisoners, and various other, under privileged sections whose rights and liberties are at stake. In India, one has to take special care of the oppression of the social evils of the system as also the communal divide. On the other hand, neither organizations can afford to neglect the wider issues like freedom of the press and other media, the independence of the judiciary, etc. which are basically institutions that protect and preserve Democratic essences and civil liberties intact. It is, therefore, difficult, and also unnecessary, to differentiate between issues of civil liberties and human rights/Therefore, these organizations often find themselves engaged in activities that may not be strictly related to civil liberties/or Democratic right alone.

Though it is not possible to list issues that these organizations concern itself with and the actions that can be taken, list below indicates some important activities that these organizations are concerned with;

1. The Police Police firings Torture Deaths in custody Encounters Repression of democratic Movements Collusion with vested interests Role in communal conflicts issues of Cr. P.C., I.P.C., etc.
2. Jail and custody conditions Compliance of guidelines issued by the NHRC/Supreme Court from time to time.
3. Political prisoners Arrest made under laws violating human rights Pending cases, without trial
4. Rural poor Repression of struggles for minimum legal rights Non application of Tenancy Acts Alienation of lands Exploitation by landlords, traders etc. Oppression of scheduled castes and tribes
5. Industrial workers Repression of strikes Problems on shop floor Pollution at work place, etc Displacement caused by semimechanisation. (PUCL as a rule does not get involved in inter trade union rivalry unless the police intervenes)
6. Tribals Impact of development policies Industrialization Land alienation Displacement Rehabilitation Exploitation of natural resources Suppression of other rights
7. Dalits Practices of untouchability Denial of access to social customs and traditions, or places of worship, etc.
8. Women Rights affecting both economic and social conditions Dowry deaths, rape, Molestation Supreme Court guidelines on sexual exploitation of women at workplace
9. Press Attacks on Journalists Intimidation of editors Attempts at censorship
10. Judiciary Problems of lower courts (delays, favouritism, etc)
11. Universities Intimidation of dissenting intellectuals Discrimination against Karmacharis Persecution of politically conscious students and teachers Non enforcement of rights of the Scheduled Castes and Tribes students Ragging.
12. Environment Rights over natural resources Pollution air, water, noise, etc. Deforestation Displacement caused by dams, industries, mining, etc.
13. Culture Attacks on individuals and cultural groups Intimidation of minorities and tribals keen on maintaining their cultural autonomy
14. Communal conflicts Role of administration, police, State, and central governments Role of individuals, groups and political parties in abetting the communal elements and rioters.

However, while involving in these issues the following strategies are normally chosen by these organizations;

1. Public meetings
2. Demonstrations
3. Investigations
4. Press statements
5. Cases filed in Courts
6. Assisting local mass organizations towards mobilizing the poor
7. Holding conventions of activists working among the poor and the underprivileged with a view to developing new perspectives and understanding of civil liberties issues.

As a matter of policy the PUCL/PUDR does not accept money from any funding agency, Indian or foreign. All the expenses are met by the members, the office bearers, and the activists from their pocket. For the expenses on the activities by the national office money is raised from sympathizers and members by way of donations.

PUDR also takes up issues of general importance that affect the rights of people through general campaigns, publications and legal interventions. These include: gender equality; rights of forest-dwellers and forest policy; working class rights; agrarian conflict; caste oppression; deaths, rapes and torture in police custody; and undemocratic legislation, in particular the various incarnations of the 'terrorist act' (earlier TADA, now POTA) etc.

PUDR is actively engaged in legal defense of civil liberties and democratic rights. It has taken up hundreds of cases in the last two decades, including many of constitutional importance, such as the As labor petition which opened the doors to public interest litigation in India.

PUDR is an entirely voluntary organization. Members are not paid for their time, and funds are generated entirely from sale of its literature and from small donations. PUDR does not accept foreign funds, or funds from any institutional funding agencies, foreign or national.

Thus, conclusion it can be summarized that, PUCL/PUDR as agencies of civil and democratic rights firmly believe in;

- a. upholding and promote by peaceful means civil liberties and the democratic way of life throughout India;
- b. in securing the recognition to the principle of dignity of the individual;
- c. undertaking a constant review of penal laws and the criminal procedure with a view to bringing them in harmony with humane and liberal principles;
- c. working for the withdrawal repeal of all repressive laws including preventive detention;

- e. encouraging freedom of thought and defend the right of public dissent;
- f. ensuring the freedom of the press and independence of mass media like radio and television;
- g. securing the rule of law and independence of the judiciary;
- h. making legal aid available to the poor;
- i. making legal assistance available for the drench of civil liberties;
- j. working for the reform of the judicial system so as to remove inordinate delays, reduce heavy expenses, and eliminate inequities;
- k. To bring about prison reform;
- l. To oppose police excesses and use of third degree method
- m. To oppose police discrimination) on the ground of religion, race, caste, sex, or place of birth;
- n. To combat social evils) which encroach on civil liberties, such as untouchability, castesim, and communalism;
- o. To defend in particular the civil liberties of the weaker sections of society and of women and children;
- p. To do all acts and things that may be necessary, helpful, or incidental to the above aims and objects.

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## **7.5 CHECK YOUR PROGRESS**

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1. The United Nations Organization has adopted a document on ----- known as the Universal Declaration of Human Rights.
2. PUCL and PUDR are the ----- of democracy.
3. PUDR is actively engaged in legal defense of ----- and ----- .
4. The PUCL has a ----- tier structure.

## **ANSWERS TO YOUR PROGRESS**

1. December 10,1948
2. Watch dogs
3. Civil liberties and democratic rights.
4. Three

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## **7.6 SUMMARY**

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In one world PUCL/PUDR are the two eyes of democratic governance. In any democratic s I up eternal vigilance is the price that we pay for protecting our civil liberties. If PUCL/ PUCR are leading this vigilant Society, they also are responsible to the societies. In

the context of Global changes. And capitalist formations roll of PUCL/PUDR needs no elaboration. These two organizations are thus concerned about the welfare of the individual one hand and the society the other hand. It is because of this, that the study of PUCL/PUDR are important to day. The study of these organizations in our opinion must therefore enlighten you to be citizens with consciousness about rights and duties.

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### 7.7 KEYWORDS

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<b>Penalty</b>	-punishment
<b>Breadwinner</b>	- wage earner
<b>Arbitrary</b>	- not committed to any rule
<b>Intermediaries</b>	-mediators
<b>striving</b>	- endeavor
<b>discrimination</b>	- distinction
<b>Harmonious</b>	-good relationship
<b>Egalitarian</b>	- classless and casteless society
<b>Culminate</b>	- reach

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### 7.8 QUESTIONS FOR SELF –STUDY

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1. Write an essay on PUCL and PUDR Today.
2. Examine the Organizational Structure of PUCL.
3. Evaluate the concerns of PUCL/PUDR.
4. Discuss the Issues and concerns of PUCL/PUDR.

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### 7.9 REFERENCES

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1. Herman Finer, 1954, *Theory and Practice of Modern Governments*, Methuen & Ltd.
2. K.C. Wheare, 1966, *Modern Constitution*, New Delhi, Oxford University Press.
3. J.C. Johari, 2001, *Indian Constitution-New Delhi*, Vishal
4. D.D. Basu, 1994, *Introduction to the Constitution of India* New Delhi prentice Hall.
5. The Constitution of India, *Government of India (Publication)*
6. B.L. Fadia, 2011, *Indian Government and Politics*, Agra, Sahitya Bhawan.
7. Granville Austin, 2000, *The Indian Constitution: Corner Stone of a Nation*. London, Oxford University Press.
8. Subhash Kashyap, 2011, *Our Parliament*, New Delhi, National book Trust.

9. Basu .D.D, 2001, *Introduction to the Constitution of India -19th New Delhi, prentice Hall -2001*
10. Pylee.M.V, 2004, *Constitutional Government in India, New Delhi, S.Chand & co Ltd.*
11. T.S. Rajagopal Iyengar, 1972, *Indian parliament A critical study.Prasaranga. University of Mysore.*
12. N.A. Somanna& others, 2009, *Indian constitution, Mysore Book House.*
13. Dr.H.M. Rajashekar, 2006, *Indian Government and politics, Kiran Publications.*
14. Mr. Rajeev & H.T. Ramakrishna, 2008, *Indian constitution, New Delhi. Quantum Creations Lalitha Prakashana*
15. Anupchand Kapur&K.K. Misra, 1956, *Select ed constitution, S.Chand Company.*
16. C.P.Bhambri, 1998, *Politics in India 1947-1987, New Delhi, Vikas Pub.*
17. Hansraj, 1920, *Indian Political System, New Delhi, Surjeet Publication.*
18. K.K. Ghai, 2007,*Indian government and politics, New Delhi, Kalyani Publisher.*
19. Fadia & Fadia, 2013, *Indian government and politics, Agra, Sahitya Bhawan.*
20. LaxmiKanth ,2013, *Indian Polity, Mcgrew hill education India Pvt Ltd.*
21. Subhas Kashyap, 2011, *Our Constitution, New Delhi, National book Trust.*
22. Mohit Bhattacharya ,2009, *New Horizons of public Administration, Jawahar Publishers & Distributors.*
23. Chakkravarthy .M, 1987, *The Right to be Human, New Delhi, Lancer International.*
24. Chiranjeevi .S, 1999, *Human Rights, Social Justice and Political Challenges, New Delhi,Kanishka Publishers.*
25. Davidson, 1981, *Basic Documents on Human Rights, Oxford, Clarendon.*
26. Cronin Kiran, 1992, *Rights and Christian ethics, Cambridge University press, Cambridge.*
27. J.M. Barbalet, 1988, *Citizenship rights struggle and class inequality, Open University Press.*

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## **UNIT- 8 : CENTRE AND STATE HUMAN RIGHTS COMMISSION :**

### **COMPOSITION AND FUNCTIONS**

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#### **STRUCTURE**

- 8.0 Objectives
- 8.1 Introduction
- 8.2 National Human Rights Commission: Composition and Functions
- 8.3 State Human Rights Commission: Composition and Functions
- 8.4 Remedies against violation of Human Rights
- 8.5 Check Your Progress
- 8.6 Summary
- 8.7 Key words
- 8.8 Questions for Self –Study
- 8.9 References

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## **8.0 OBJECTIVES**

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This unit deals with the Human Rights Commission and Minorities Commission Remedies against violation of Human Rights. After going through this unit, you will be able to;

- To examine the role of National Human Rights of commissions.
- To explain the composition and function of State Human Rights.
- To discuss the remedies against violation of Human Rights

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## **8.1 INTRODUCTION**

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The Commission on Human Rights (hereafter "The Commissions") are subsidiaries of the Economic and Social Council. The Charter of the United Nations specifies that the Council "shall set up Commissions in the economic and social field and for the promotion of human rights". In its first meeting in 1946, the Economic and Social Council established two functional commissions, one on human rights and the other on the status of women. It was decided that these commissions would be composed of State representatives. The Commission on Human Rights is now composed of 53 States elected by the Economic and Social Council.

Immediately following its creation, the Commission established a subsidiary body that is now known as the Sub Commission on the Promotion and protection of Human Rights (hereafter "the Sub Commission"). The Sub Commission, which is composed of 26 experts who are elected by the States members of the Commission, has inter alia a mandate to undertake studies authorized by the Commission and to make recommendations.

The Commission meets annually for six weeks in Geneva in March April. The sub Commission meets for three weeks in August, also in Geneva. The office of the High Commissioner for Human Rights acts as secretariat to the Commission and the Sub Commission.

Similarly the report of the High Commissioner 28 February 2—3 compiles and analyses information concerning the rights of persons belonging to minorities through the lens of conflict prevention. The report notes that the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities the Declaration is the only UN instrument addressing exclusively the rights of persons belonging to minorities.

The report states that the linkage between minority protection and the prevention of conflict has been recognized and highlighted in the basic UN documents reports of the Secretary General, the Millennium Declaration, reports of the High Commissioner.

The High Commissioner stated that the OHCHR will continue to collect information and analysis of problems related to minorities with a view to providing input to the UN's work on conflict prevention. Thus, the minority commissions are working for the betterment of human society, avoiding conflicts of all types.

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## **8.2 NATIONAL HUMAN RIGHTS COMMISSION : COMPOSITION AND FUNCTIONS**

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The National Human Rights Commission was constituted in October 1993 under the Human Rights ordinance of 28 September 1993, which was soon after enacted as the protection of Human Rights Act, 1993 (hereinafter referred to as the Act). It is a fully autonomous body; its autonomy derived out of the method of appointment of the members, their fixity of tenure, and statutory guarantees thereto, the status they have been accorded, the manner in which the staff responsible to the Commission would be appointed and would conduct themselves; as also the autonomy it enjoys in terms of its financial powers.

### **Composition of the Commission**

The Act envisages that the Commission shall consist of :

- a. A Chairperson who has been a Chief Justice of the Supreme Court;
- b. One member who is or has been, a Judge of the Supreme Court;
- c. One member who is, or has been, the Chief Justice of a High court;
- d. Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Women shall be deemed to be members of the Commission for the discharge of certain functions.

There shall be a Secretary General of the rank of the Secretary to the Government of India who shall function as the Chief Executive Officer of the Commission.

The Headquarters of the Commission shall be at Delhi and there is an enabling provision in the Act to establish offices at other places in India with the previous approval of the Central Government.

The method of appointment envisaged in the Act is unique in as much as it is made by the President on the recommendations of a high powered Committee consisting of the following:

- a. The Prime Minister- Chairperson
- b. Speaker of the House of the People Member
- c. Minister in-charge of the MHA in the Government of India- Member
- d. Leader of the Opposition in the House of the People- Member
- e. Leader of the Opposition in the Council of States- Member
- f. Deputy Chairman of the Council of States- Members

However, no sitting Judge of the Supreme Court or a sitting Chief Justice of a High Court shall be appointed without consultation with the Chief Justice of India.

The Chairperson or any other Member of the Commission can only be removed from his office by an order of the President on the ground of proved misbehavior or incapacity after the Supreme Court has, on an inquiry held in this behalf recommended such removal.

The term of office of the Chairperson and members will be five years from the date of assumption of office or until the age of 70 years, whichever is earlier. On ceasing to hold office, the Chairperson and Members shall be ineligible for further appointment under the Government of India or under the government of any State.

The Act provides that besides the Secretary General, the Central Government shall make available to the commission such police and investigative staff and an officer not below the rank of Director General of police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission. The commission may appoint other administrative, technical and scientific staff considered necessary in conformity with the Rules made by the Central government in this behalf.

In terms of Section 2 of the Act, "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India. "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16 December 1966.

***The following functions devolve on the Commission under the Act:***

- a. inquire, on its own initiative or on a petition presented to it by a victim or any persons on his behalf, into complaints of
  - i. violation of human rights or abutment thereof; or
  - ii. negligence in the prevention of such violation, by a public servant.
- b. intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

- c. visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
- d. review the safeguards provided by or under the constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; ,
- e. review the factor, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- f. study treaties and other international instruments on human rights and make recommendations for their effective implementation;
- g. undertake and promote research in the field of human rights;
- h. spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
- i. encourage the efforts of non- governmental organizations and institutions working in the field on human rights; and
- j. such other functions as it may consider necessary for the promotion of human rights.

The complaints are expected to be self -contained. They may be in Hindi, English or in any language included in the Eighth Schedule of the constitution. No fee is charged on complaints. The commission may ask for further information and affidavits to be filed in support of allegations whenever considered necessary. The commission may, in its discretion, accept telegraphic complaints and complaints conveyed through FAX.

Ordinarily, complaints of the following nature are not entertained by the Commission :

- a. in regard to event s which happened more than one year before the making of the complaints;
- b. with regard to matters which are sub-judice;
- c. which are vague anonymous or pseudonymous;
- d. which are frivolous nature;
- e. those which are outside the purview of the Commission; and
- f. which pertain to service matters.

The commission is vested with the wide ranging powers relating to inquiries and investigation under the Act. While inquiring into complaints under the Act, the Commission

could exercise all the powers of a civil court trying a suit under the code of civil procedure, 1908, and in particular in respect of the following namely:

- a. summoning and enforcing the attendance of witnesses and examining them on oath;
- b. discovery and production of any document;
- c. receiving evidence on affidavits;
- d. requisitioning any public record or copy thereof from any court or office;
- e. issuing commissions for the examination of witnesses or documents; and
- f. any other matter which may be prescribed.

The commission has its own investigating staff for investigation into complaints of human rights violations. Under the Act, it is also open to the Commission to utilize the services of any officer or investigation agency of the Central Government or nay State Government. In addition, the Commission envisages the association in appropriate cases of outsiders as Investigators or Observers.

The commission, while inquiring into complaints of violations of human rights, may call for information or report from the central Government or nay State Government or any other authority or organization subordinate thereto within such time as may be specified by it. If the information or report is not received within the time stipulated by the commission, it may proceed to inquire into the complaint on its own; on the other hand, if, on receipt of information or report, the commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

The Commission may take any of the following steps upon the completion of an inquiry:

1. where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority the initiation of proceedings for prosecution or such other action as the commission may deem fit against the concerned person or persons:
2. approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary; and
3. recommend to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary;

4. subject to the provisions (5) below, provide a copy of the inquiry report to the petitioner or his representative;

5. the commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority and the concerned government or authority shall, within a period of one month, or such further time as the commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;

6. the commission shall publish its inquiry report together with the comments of the concerned government or authority, if any, and the action taken or proposed to be taken by the concerned government or authority on the recommendations of the commission.

The term 'armed forces' for purposes of the Act means the naval, military and air forces and includes any other armed forces of the union. The Act envisages the procedure with respect to armed forces which is at variance with the procedure set out for complaints of violations of human rights by any other public servant.

1. The commission shall notwithstanding other provisions of the Act, adopt the following procedure while dealing with complaints of violations of human rights by members of the armed forces.

a. it may, either on its own motive or on receipt of a petition, seek a report from the Central Government.

b. After the receipt of the report, it may either not proceed with the complaint or, as the case may be, make its recommendations to that government.

2. The Central Government shall inform the commission of the action taken on the recommendations within three months or such further time as the commission may allow.

3. The commission shall publish its report together with its recommendations made to the central government and the action taken by that government on such recommendations.

4. The commission shall provide a copy of the aforesaid report to the petitioner or his representative.

Responsibility of the Central Government/State Government/Authority to which report/ recommendations have been sent

The central government/state government/authority has to indicate its comments/action taken on the report/ recommendations of the commission within a period of one month in respect of general complaints and within three months in respect of complaints relating to armed forces.

### **Annual and Special Reports of the Commission**

The commission is required to submit an Annual Report to the Central Government as well as the State Governments concerned. Besides, the Commission may at any time submit special reports on matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the Annual Report.

It is enjoined on the Central Government as well as the concerned State government to lay before each House of parliament or the State Legislatures respectively the Annual and Special Reports of the commission along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

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### **83 STATE HUMAN RIGHTS COMMISSION : COMPOSITION AND FUNCTIONS**

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There is an enabling provision in the Act for State Human Rights Commission to be constituted by the respective State Governments. The State Commission shall consist of:

- a. Chairperson who has been a Chief Justice of a High Court.
- b. One member who is, or has been, a judge of a High Court;
- c. One Member who is, or has been, a District Judge in that State;
- d. Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

There shall be secretary who shall be the Chief Executive officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him

The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

#### **Constitution of the State Commission**

The Chairperson and other members of the Commission shall be appointed by the Government after obtaining the recommendations of a Committee consisting of

- a. the Chief Minister-Chairperson
- b. Speaker of the Legislative Assembly- Member
- c. Minister in-charge of the Department of Home in that State- members
- d. Leader of the Opposition in the Legislative Assembly- Members

Where there is a Legislative Council in a State, the Chairman of that Council and the Leader of the Opposition in that Council shall also be members of the Committee. No sitting judge of a High Court or a sitting District Judge shall be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

The Chairperson or any other Members of a State Commission can only be removed from his office by an order of the President in accordance with the procedure envisaged for the National Commission.

The term of office of the Chairperson or Member will be five years from the date of assumption of office or at the age of 70 years, whichever is earlier. A member is however eligible for reappointment for another term of five years subject to the age limit of 70 years. On ceasing to hold office, the Chairperson or a member are ineligible for appointment under the Government of the State or under the Government of India.

#### **Officers and Staff of the State Commission**

The concerned State Government shall make available to the State Commission an officer not below the rank of a Secretary to the State Government who shall be the secretary of the State Commission and such police and investigative staff under an officer not below the rank of an Inspector General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the State Commission. The State Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.

#### **Functions of the State Commission**

A State Commission may inquire into violations of human rights only in respect of matters relating to any of the entries enumerated in List II (State List) and List III Concurrent List) in the Seventh Schedule of the Constitution. However, if any such matter is already being inquired into by the National Commission or any other Statutory commission, the State Commission shall not inquire into the said matter. Subject to this, the powers, the procedure of investigation, inquiry and steps to be taken thereafter are comparable to those of the National Commission.

The State commission shall submit Annual Report to the respective State Governments and may, at any time, submit special reports on any matter which in their opinion is of urgency or importance. It is enjoined on the State Governments to cause to lay on the Table of the respective State Legislature the Annual and Special Reports of the State Human Rights Commission.

#### **Human Rights Courts**

The Act envisages that for the purpose of providing speedy trial of offences arising out of violations of human rights, State Governments may with the concurrence of the Chief Justice of the concerned High Court specify for each District Court of Sessions to be a Human Rights Court to try such offences. For every Human Rights Court, the State

Government shall specify a public prosecutor or appoint an advocate of at least seven years standing as a Special public Prosecutor for the purpose of conducting cases in that Court.

### **Finance, Accounts and Audit**

The Central Government and the concerned State Government shall, after due appropriation made in this behalf, of to the National Commission and the concerned State Commission respectively by way of grants necessary funds for being utilized for purposes of the Act. The accounts of the Commission will have to be maintained in an appropriate form devised in consultation with the Comptroller and auditor General of India and are subject to audit by the latter or any person appointed by him. The accounts of the Commission as certified by the Comptroller and Auditor General or his appointee together with the Audit Report shall be laid before each House of Parliament by the Central Government in the case of National Commission and before the appropriate State Legislature by the concerned State Government in respect of the State Commission.

### **Miscellaneous**

The National Commission as well as the State Commission shall not inquire into any matter which is pending before a State Commission or National Commission as the case may be or nay other statutory commission.

If the Government considers it necessary, it may, notwithstanding anything contained in any other law, constitute one or more special investigation teams consisting of the requisite police officers for purposes of investigation and prosecution of offences arising out of violations of human rights.

The Central Government as well as the State Government concerned may make rules to carry out the provisions of the Act. The Rules so made are required to be laid before each House of Parliament for a total period of 30 days as regards the National Human Rights Commission and appropriate State Legislature in respect of the State Commissions.

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## **8.4 REMEDIES AGAINST VIOLATION OF HUMAN RIGHTS**

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Over the years, the working of these Commission have changed substantially. Very early on these Commissions focused on elaborating various human rights standards including minorities. It drafted the Universal Declaration of Human Rights and the two Covenants, on civil and political rights, and on economic, social and cultural rights and later minority rights. Coon, the main challenge before the Commission came to be how to respond to the human rights violations varied kind including minority rights violations. In 1947, the Economic and Social Council passed a resolution stating that the Commission had "no power to take any action in regard to any complaints concerning human rights". So long as those in charge

within the country have not fallen in line with these international covenants. However, later on the Commission was faced with a number of individual petitions from South Africa and came under considerable pressure to deal with them. This forced it to grapple with the elaboration of procedures to deal with issues connected to Human Rights and minority violations. A taboo was broken. Soon when the Commission established an ad hoc working group of experts to investigate the situation of human rights and minority violations. The demand to act on the situation in southern Africa led to recognition of the need for public debate on specific countries.

The Commission then was able to deal with various other situations, such as coup against a government

By setting up Working groups to inquire into the situation of violations of minorities and human rights in This working group was replaced by a special rapporteur and two experts to study such cases later. By 1980, the Commission established the working group on Disappearances to deal with the question of enforced disappearances and other violations of Human Rights throughout the world. Since then, there has been less reluctance to establish expert mechanisms to deal with human minorities and rights challenges in various parts of the world. Such mechanisms were progressively applied in a more innovative manner and adapted to an increasing range of violations.

The Commission solicits the help of human rights experts to assist it in the task of examining specific situations including minority rights as can be seen in earlier pass. Over the years, the work of these experts has provided a much needed analysis on how human rights principles are applied in reality. It has formed the basis for an informed and substantive debate at the intergovernmental level. It has given a voice to the often silenced victims and offered a basis for dialogue with Governments on the concrete measures to be taken to enhance protection. Works of the experts is debated during the annual session of the Commission on Human Rights. About one third of the experts also reports to the United Nations General Assembly in New York. Some experts have informally briefed the United Nations Security Council. Thus Remedies to Human Rights violations of any kind to day are built in to the institutional structures established. The preceding paragraphs therefore clearly speaks of these remedies too.

The United Nations human rights experts play a vital role in working towards the universal achievement of freedom from fear and want. They are not paid. Their reward is the satisfaction of working towards the realization of human rights, as the highest aspiration of the common people as the Universal Declaration of Human Rights proclaimed.

The system remains seriously under-resource and has yet to achieve its full potential, however Efforts are continuing to be made to strengthen the system to enable it to achieve the goal of universal respect for all human rights. With the cooperation of various actors, in particular Governments, United Nations bodies, and the non -governmental sector, its effectiveness could.be considerably enhanced.

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### **8.5 CHECK YOUR PROGRESS**

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1. who appointed the Chairman of the National Human Rights Commission  
A. President of India.                      B. Prime Minister  
C. Supreme Court Chief Justice        D. Governor
2. Who should be the chairman of the National Human Rights Commission?.  
A. President                                  B. Supreme Court Chief Justice  
C. High Court Chief Justice    D. Chief Minister
3. When did the National Human Rights Commission of India Constitute?  
A. 1991.                                        B. 1993  
C. 1989                                        D. 1995
4. The tenure of the Chairperson of National Human Right Commission is.  
A. 3 Year s or upto 68 Years of age.                      B. 4 Years or Upto 69 Years of age.  
C. 5 Years or upto 70 Years of age.                      D. None of the above
5. Where is the headquarters of the National Human Rights Commission?.  
A. Delhi                                        B. Kolkata  
C. Mumbi                                        D. Bengalure

### **ANSWERS YOUR PROGRESS**

- A. President of India
- B. Supreme Court chief Justice
- B. 1993
- C. 5Years or upto 70 Years of age
- A. Delhi

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## 8.6 SUMMARY

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While summing up it is pertinent to realize the Human Rights and Minorities commission can do little to remedy their violations otherwise, necessary mechanisms and institutions are set in place. The following could be considered in this direction

Consider establishing or strengthening regional conflict prevention and resolution mechanisms, and cooperate with the Working Group on Minorities in this regard.

Assist national governments in the implementation of recommendations emanating from regional and international human rights mechanisms.

Support greater cooperation between the Working Group on Minorities and regional mechanisms and institutions.

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## 8.7 KEYWORDS

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<b>Contributory</b>	-provide for
<b>Subsidiary</b>	-supplementary
<b>Authorized</b>	- to give power

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## 8.8 CHECK YOUR PROGRESS

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1. Discuss the Composition and functions of National human rights commission.
2. Describe the functions of National human rights commission.
3. Explain the Composition and functions of State human rights commission.
4. Analyze the remedies against violation of human rights.

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## 8.9 REFERENCES

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1. Herman Finer, 1954, *Theory and Practice of Modern Governments*, Methuen & Ltd.
2. K.C. Wheare, 1966, *Modern Constitution*, New Delhi, Oxford University Press.
3. J.C. Johari, 2001, *Indian Constitution-New Delhi*, vishal
4. D.D. Basu, 1994, *Introduction to the Constitution of India* New Delhi prentice Hall.
5. The Constitution of India, *Government of India (Publication)*
6. B.L. Fadia, 2011, *Indian Government and Politics*, Agra, Sahitya Bhawan.
7. Granville Austin, 2000, *The Indian Constitution: Corner Stone of a Nation*. London, Oxford University Press.
8. Subhash Kashyap, 2011, *Our Parliament*, New Delhi, National book Trust.
9. Basu .D.D, 2001, *Introduction to the Constitution of India -19th New Delhi*, prentice Hall -2001
10. Pylee.M.V, 2004, *Constitutional Government in India*, New Delhi, S.Chand & co Ltd.

11. T.S. Rajagopal Iyengar, 1972, *Indian parliament A critical study*.Prasaranga. *University of Mysore.*
12. N.A. Somanna& others, 2009, *Indian constitution, Mysore Book House.*
13. Dr.H.M. Rajashekar, 2006, *Indian Government and politics, Kiran Publications.*
14. Mr. Rajeev & H.T. Ramakrishna, 2008, *Indian constitution, New Delhi. Quantum Creations Lalitha Prakashana*
15. Anupchand Kapur&K.K. Misra, 1956, *Select ed constitution, S.Chand Company.*
16. C.P.Bhambri, 1998, *Politics in India 1947-1987, New Delhi, Vikas Pub.*
17. Hansraj, 1920, *Indian Political System, New Delhi, Surjeet Publication.*
18. K.K. Ghai, 2007,*Indian government and politics, New Delhi, Kalyani Publisher.*
19. Fadia & Fadia, 2013, *Indian government and politics, Agra, Sahitya Bhawan.*
20. LaxmiKanth ,2013, *Indian Polity, Mcgrew hill education India Pvt Ltd.*
21. Subhas Kashyap, 2011, *Our Constitution, New Delhi, National book Trust.*
22. Mohit Bhattacharya ,2009, *New Horizons of public Administration, Jawahar Publishers & Distributors.*
23. Chakkravarthy .M, 1987, *The Right to be Human, New Delhi, Lancer International.*
24. Chiranjeevi .S, 1999, *Human Rights, Social Justice and Political Challenges, New Delhi,Kanishka Publishers.*
25. Davidson, 1981, *Basic Documents on Human Rights, Oxford, Clarendon.*
26. Cronin Kiran, 1992, *Rights and Christian ethics, Cambridge University press, Cambridge.*
27. J.M. Barbalet, 1988, *Citizenship rights struggle and class inequality, Open University Press.*