

## Lecture# 3

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### Preamble of Constitution , Union and its territories & citizenship

- ✓ The **American** Constitution was the **first** to begin with a **Preamble**.
- ✓ The term 'preamble' refers to the introduction or preface to the Constitution.
- ✓ It contains the summary or essence of the Constitution.
- ✓ **N A Palkhivala**, an eminent jurist and constitutional expert, called the Preamble as the '**identity card of the Constitution**.'
- ✓ The Preamble to the Indian Constitution is based on the '**Objectives Resolution**', drafted and moved by Pandit Nehru, and **adopted by the Constituent Assembly**.
- ✓ It has been amended by the 42<sup>nd</sup> Constitutional Amendment Act (1976), which added three new words—**socialist, secular** and **integrity**.

"We, **THE PEOPLE OF INDIA**, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens: **JUSTICE, Social, Economic** and Political; **LIBERTY** of **thought, expression, belief, faith** and **worship**; **EQUALITY** of status and of opportunity; and to promote among them all; **FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION".

#### Sovereign Republic

- The **Preamble begins** with the words, "We, the people of India....", thus clearly indicating the source of all authority under the Constitution.
- The Preamble establishes the **ultimate sovereignty** of the people of India on whose authority the Constitution rests.
- It points out the Constitution of India has been **ordained by** the people of India through their representatives in Constituent Assembly.
- In the **present times**, the term '**sovereignty**' may be losing rigid connotations of "supreme and absolute power acknowledging no superior" -no modern state can be considered sovereign in that sense. However, through the words of the Preamble, what is sought to be established is the oneness of the people of India (not the people of different states but of one nation), that the sovereignty vests in the collectivity, and that the people of India are **not subordinate** to any **external authority**.
- With the enactment of the Constitution, India was no longer a 'dominion' it was a 'republic'.

### Q. IS PREAMBLE A PART OF THE CONSTITUTION?

- ✓ The preamble of an Act is not recognised as part of the Act because it is not enacted and adopted by the enacting body in the same manner as the acting provisions.
- ✓ The preamble of Indian Constitution was, however, enacted and adopted by the same procedure as the rest of the Constitution. This difference was not brought to the notice of the Supreme Court in Berubari Union and Exchange of Enclaves case where it observed that "the preamble is not part of the constitution".
- ✓ Later when the constituent history of the preamble was brought to the notice of the Court in Keshavananda Bharti v. State of Kerala it held that "the preamble of the Constitution was part of the Constitution and the observations to the contrary in Berubari Union case were not correct".

- ✓ The **recognition of the preamble** as an **integral part** of the **Constitution** makes the preamble a valuable aid in the construction of the provisions of the Constitution because unlike the preamble to an Act, the preamble of the Constitution occupies the same position as other enacting words or provisions of the Constitution.
  
- **A republic derives** its powers directly or indirectly from the people and "is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour" (Madison).
- India is a republic in that sense. From January 26, 1950 when the Constitution commenced, India ceased to owe allegiance to the British crown. India has a President as head of the Union, elected indirectly for a fixed term by the people's representatives.
- All citizens are equal in law, there is no privileged class, every citizen has the right to try for any public office irrespective of caste, race, sex or religion.
- Despite declaring itself a republic India remained a member of the Commonwealth of Nations.
- Indeed the group of nations accommodated India's status as a sovereign independent republic owing no allegiance to the British Crown: the 'British Commonwealth of Nations' became simply 'Commonwealth of Nations'.
- The King or Queen would be the 'symbolic' head of the Commonwealth as far as India was concerned, and the decisions at the conferences of the Commonwealth will not be binding on Indians.
  
- India's conduct would be based on 'free will'. The decision to remain in the Commonwealth was in keeping with the ideal of promoting international cooperation and peace - a concept expressed in our Constitution.

## Democracy

- ✓ The term 'democracy' has assumed different connotations for different people. But common to all forms of democracies is the participation of the people directly or indirectly.
- ✓ India has adopted the representative parliamentary democracy. The Constitution makes no provision for direct control by the people through such devices as 'referendum' and 'initiative'. However, the people of India exercise their sovereignty through a Parliament at the Centre and a legislature in each State elected on the basis of
  - ✓ universal adult franchise.
  - ✓ The Executive is responsible to the popular house of the Legislature.
  - ✓ Beyond political democracy, the Preamble also envisages social and economic democracy.
  - ✓ Equality in the political sphere gives each adult citizen the power to vote freely. Equality must also pervade society and economic conditions, as far as possible.
  - ✓ Dr. Ambedkar considered social and economic democracy to be the real goals to strive for.
  - ✓ Jawaharlal Lal Nehru too felt that political structure would weaken and disintegrate if socio-economic problems like poverty and gross inequalities are not tackled and removed.
  - ✓ A vote, after all, does not mean much to a starving person. It is in this context that the Preamble speaks of justice, equality, liberty and fraternity.

## Socialism

- ✓ While the original Constitution did not mention any particular ideology, it did give expression to the resolve of securing to the citizens economic justice and equality of opportunity.
- ✓ This is the essence of socialism. The word 'socialist' was introduced in the Preamble by the 42<sup>nd</sup> Amendment. The term, however, is not defined in the Constitution. It may be pointed out that the

socialism envisaged in India does not mean abolition of private property or nationalisation of all means of production.

- ✓ Thus a 'mixed economy' was envisaged, along with provision of equal
- ✓ opportunity, abolition of vested interests, and elimination of inequality in income and status and standards of living. In the present context of economic liberalisation, however, the socialist credentials of our State may well be questioned.

### Secularism

- ✓ The term 'secular' was inserted in the Preamble only in 1976, but the state envisaged by the Constitution was always a secular state- it could not have been otherwise in a country of such a vast size and diversity of culture and religions. Indeed, the fraternity and unity of the country could be built only on a secular basis.
- ✓ The term 'secular', has not been defined in the Constitution but its operative meaning may be drawn from the different provisions of the Constitution.
- ✓ Discrimination on the basis of religion is forbidden to the State. Equality is assured to all irrespective of religion. Freedom of faith, belief and worship is allowed to all.
- ✓ The State is to be impartial towards all religions. Furthermore, the state does not uphold any particular religion as the state religion, but protects all religions equally.

### Justice

- The Preamble speaks of social, economic and political justice. The concept of justice goes beyond its narrow legal connotation.
- Significantly the words 'social' and 'economic' occur before the word 'political'. Social justice implies that discrimination on the basis of birth, caste, race, sex or religion should cease.

- To that end all citizens should enjoy equal opportunities in the matter of public appointment.
- It is the good of all people that the Government must strive to achieve. The concept of a welfare state as envisaged in the Directive Principles is an embodiment of guidelines for ensuring the social justice expected in the Preamble.
- Economic justice implies that the gap between the rich and the poor is bridged, and the exploitation ceases. Removal of poverty is to be achieved not by taking away assets from those who have but by ensuring a more equitable distribution of national wealth and resources
- among those who contribute to its creation.
- Thus the Directive Principles call upon the state to try and secure ownership and control over resources to subserve common good, reduce concentration of wealth, ensure equal pay for equal work, and see that people, especially women and children, are not abused or forced by economic want into work unsuitable for their age or strength.
- Political justice implies that all citizens should have equal opportunity to participate in the political system.
- One person-one vote is ensured irrespective not only of caste, sex or religion, but also of proprietary or educational qualifications. It is the basis of the political democracy envisaged in the Constitution.

### Liberty

- ✓ Democracy is closely connected with the idea of liberty; certain minimal rights must be enjoyed by every person in a community for a
- ✓ free and civilised existence.
- ✓ These basic rights are spelt out by the Preamble as freedom of thought, expression, belief, faith and worship.

- ✓ The chapter on Fundamental Rights guarantees these freedoms explicitly, subject to certain regulations; after all, liberty is not to degenerate into licence if democracy is to survive.

### Equality

- ✓ Rights have no meaning if they cannot be enjoyed equally by all members of the community. To ensure that it is possible for all to enjoy these rights, social and economic equality is sought to be achieved.
- ✓ The Fundamental Rights enjoin the State not to discriminate between citizen and citizen simply on the basis of caste, race, sex or religion. Public places are open to all citizens, titles of honour stand abolished, untouchability is abolished, among other things.

### The rule of law is to prevail:

- All citizens are equal before law and enjoy equal protection of the laws of the land.
- Political equality is provided by the principle of universal adult franchise and by allowing, at least in principle, any citizen the opportunity to participate in the process of governance.
- Economically, the same ability and work entitles persons to the same salary. Exploitation of individual or group is to be removed.

### Fraternity

- ✓ A democratic system would function in a healthy manner only if there is a **spirit of brotherhood** of oneness, among the people of the land.
- ✓ India being a land of immense diversity is all the more in need of this spirit of unity - the sense of belonging to one nation.

- ✓ The principle of common citizenship is directed towards strengthening this sense of '**unity and integrity**' of the nation.
- ✓ Fraternity is also sought to be promoted by ensuring equal rights to all.
- ✓ Fraternity, said **DR. Ambedkar**, "is the principle which **gives unity and solidarity to social life**".
- ✓ It is the feeling that will protect the unity of India against external attack or disintegration through internal unrest born of social, political and economic causes.
- ✓ Fraternity, how ever is not possible unless the dignity of each individual is preserved and respected.
- ✓ Maintaining this dignity requires the guarantee of **certain minimal justiciable rights** to each individual. The ensure that an individual is free from want and misery - without which freedom, ideas of self-respect and dignity are meaningless- **the Directive Principles** have been framed calling upon the State to form its policies to benefit all citizens equally in the matter of providing adequate means of livelihood.
- ✓ The **State is also asked** to provide just and humane conditions of work and create conditions in which a decent standard of life and full enjoyment of leisure and social and cultural opportunities become possible for all the people of this land.
- ✓ It is in keeping with the principle of individual dignity that the practice of **untouchability** has been abolished by the Constitution.
- ✓ In the context of fraternity, it may also be mentioned that India's Constitution goes beyond national boundaries, and speaks of the ideal of universal brotherhood, an international fraternity with all nations and peoples coexisting in peace and amity.

### THE UNION AND ITS TERRITORY

Q.'**INDIAN TERRITORY**' IS OF HOW MANY TYPES?



The territory of India falls under three categories :

**(i) State territories, (ii) the Union territories and (iii) territories which may be acquired by the Government of India.**

- No Parliamentary legislation is required to acquire a foreign territory. It is the inherent attribute of a sovereign State to acquire new territories. Article 1(3) (c), in including the acquired territory as part of the Indian territory, merely states a factual situation and does not confer a power on Parliament to acquire foreign territory.
- The Union Territories are centrally administered according to provisions contained in Part VII of the Constitution. They are governed by the President through an Administrator appointed by him.
- ✓ At present there are 29 states in India.
- ✓ Since 1987, there are seven Union Territories : Delhi, Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Pondicherry and Chandigarh.

#### **Q. WHAT IS AN 'ACQUIRED TERRITORY'?**

- ✓ A territory can be said to have been acquired when the Indian Union acquires sovereignty over such territory.
- ✓ The expression 'acquired' should be taken to be a reference to 'acquisition' as understood in public international law. If there was any public notification, assertion or declaration by which the Government of India had declared or treated a territory as part and parcel of India, the courts would be bound to recognise an 'acquisition' as having taken place, with the consequence that the territory would be part of the
- ✓ territory of the Union within Articles 1(3) (c).

- ✓ A statement by the Government of India that it did not consider a particular area to have been acquired by it is binding on the Court.

Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.

### **UNION OF STATES**

- ✓ Article 1 describes India, that is, Bharat as a 'Union of States' rather than a 'Federation of States'.
- ✓ This provision deals with two things: one, name of the country, and two, type of polity.
- ✓ There was no unanimity in the Constituent Assembly with regard to the name of the country.
- ✓ Some members suggested the traditional name (Bharat) while other advocated the modern name (India).
- ✓ Hence, the Constituent Assembly had to adopt a mix of both ('India, that is, Bharat') Secondly, the country is described as 'Union' although its Constitution is federal in structure.
- ✓ According to Dr B R Ambedkar, the phrase 'Union of States' has been preferred to 'Federation of States' for two reasons: one, the Indian Federation is not the result of an agreement among the states like the American Federation; and two, the states have no right to secede from the federation.
- ✓ The federation is an Union because it is indestructible. The country is an integral whole and divided into different states only for the convenience of administration.

**Ques. 1: Bring out the significance of the expression "Union" instead of the expression "Federation" in the Indian Constitution?**

- I. Ans. Moving the Draft Constitution for the consideration of the Constituent Assembly in 1948, Dr. Ambedkar explained the significance of the use of the expression “Union” instead of the expression “Federation”.
- II. Two reasons are given Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source.
- III. The expression- India is a Union of States was chosen as India was already a Union at the time of the Constituent Assembly debates.
- IV. There are two expressions used in the context of governance in India- ‘Union of India’ and ‘Territory of India’ the former includes States that share federal powers with the Union Government, the latter includes not only States but all other units like UT’s and soon. In other words, territory of India encompasses a larger area than Union of India. That is, Territory of India encompasses the entire territory over which Indian sovereignty is exercised while Union of India covers only the federal system.
- V. Government of India can acquire any territory by purchase, treaty, cession, conquest or any other method, administer it on the basis of Parliamentary Act.
- VI. The States and the territories, thereof are specified in the First Schedule. ‘The territory of India ‘comprises of the territories of the States; the Union territories specified in the First Schedule; and such other territories as may be acquired.

**Ques. 2 : The amendment of the Article 2 and Article 3 are not to be deemed to be an amendment under Article 368. Discuss?**

Ans. Art.2 says that the Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Art 3. Formation of the States and alteration of areas, boundaries or names of existing States: - Parliament may by law:-

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a Part of any State;

(b) increase the area of any State;

(c) diminish the area of any State; (d) alter the boundaries of any State;

(e) alter the name of any State;

The relevant Bill may be introduced in either House of Parliament only on the recommendation of the President.

The Bill should be referred by the President to the Legislature/Legislatures of the State/States for expressing views within such period as may be specified in the reference. Such period may be extended by the President.

The opinion of the State Legislatures is not binding on the President. The Bill can be introduced in the Parliament- either House- only on the recommendation of the President. The Bill needs to be passed by the Parliament by a simple majority.

Art. 4 says that laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and incidental and consequential matters are not to be deemed to be an amendment of this Constitution for the purposes of Article 368.

**Ques. 3 : The use of the provisions under Article 2 and Article 3 since independence has been truly federal rather than unitary in nature. Examine the statement with examples?**

Ans. A federation is one consisting of 'an. indestructible Union of indestructible States' as in the USA. India, though a federation, has Constitutional mandate for the abolition of a state. That is, in India, states are not indestructible'. A state can be abolished or merged with another state. Its boundaries, area and name can be changed. The process is initiated by the Union Government and the role of the affected state is only to express its opinion which is not binding on the Union Government. Parliament needs to pass the Bill only by a simple majority. The Council of States (Rajya Sabha) which is the representative of states does not have any special powers in this matter. Thus, the process is Unitary. However, there are certain aspects that require consideration

President is given the power to refer the Bill to the state concerned. The Bill can not be introduced in the Parliament without the Presidential recommendation. The President is unlikely to allow abuse of the power by the union government.

The need for political integration after Independence even in the face of any provincial resistance was the overriding factor.

The Constitution was drafted at a time when the country was partitioned and the danger from centrifugal tendencies made the Constituent Assembly members feel the need for a strong centre.

It is true that the provisions in Art. 2 and 3 are unitary in content. But, as shown the use of the provisions is truly federal.

### **The case of Pondicherry (Puducherry)**

- ✓ It is a former French colony. A treaty of cession was signed by India and France in 1956. It was ratified by the French parliament in May 1962.
- ✓ Till 1962, therefore, it could not be given the status of a Union Territory and was given the status of 'acquired territory'.
- ✓ In 1962 India and France exchanged the instruments of ratification under which France ceded to India full sovereignty over the territories it held.
- ✓ It came to be administered as the Union Territory of Pondicherry from 1963. Its new name is Puducherry.
- ✓ Parliament in 2006 passed a Bill to rename the Union Territory (UT) of Pondicherry as Puducherry in response to the wishes of the people of the Union Territory expressed through a unanimous resolution by the legislative Assembly in 1980. The Bill amends Part VIII, the First and Fourth Schedules of the Constitution and the Government of Union Territories Act 1963.

- ✓ Puducherry encompasses four regions - Puducherry, Karaikal (near Nagapattinam in Tamil Nadu), Mahe (near Thalassery, Kerala) and Yanam (near Kakinada, Andhra Pradesh).

### **The Case of Sikkim**

- ✓ Sikkim was originally a protectorate\* of India. Reflecting the wishes of the people of Sikkim, the Constitution (Thirty-fifth amendment) was passed in Parliament in 1974 to up-grade the status of Sikkim from a protectorate to an associate state of the Indian Union.
- ✓ Sikkim Assembly unanimously adopted a resolution in April, 1975, abolishing the institution of the Chogyal (royalty) and declaring Sikkim as a constituent unit of India.
- ✓ The Assembly also resolved to submit its resolution to the people of Sikkim by way of a general referendum. Consequently, Parliament made the Thirty- sixth Constitution Amendment Act in 1975 and Sikkim became the 22nd state of the Indian Union.
- ✓ \*In international law, a protectorate is a political entity that formally agrees by treaty to enter into a relationship with another, stronger state, called the protector, which agrees to protect it (diplomatically or militarily) against third parties, in exchange for which the protectorate usually accepts specified obligations.

### **Union Territories**

'The reasons for having UTs differ with the Union Territory in question. General reasons are: unique history; geographical size/location; cultural heritage; Inter- State disputes; need for territories administered by the Union Government.

Specific reasons are

1. Delhi — capital of India.
2. Pondicherry - French colonial & cultural heritage - small far-flung areas.
3. Daman & Diu - Portuguese colonial & cultural heritage - far from Goa.
4. Dadra & Nagar Haveli - Portuguese heritage - far from Goa, Daman & Diu.
5. Andaman & Nicobar - group of islands deep into the Bay of Bengal far from the mainland.
6. Lakshwadweep - group of small islands deep into the Arabian Sea - far from mainland.
7. Chandigarh - dispute between states of Punjab & Haryana - Punjab Accord awarded to Punjab - transfer not yet through - continues as UT.

Creating New States

Even before Independence, Government was exploring the appropriate basis for states reorganization. Dhar Commission was set up by the President of the Indian Constituent Assembly in 1948 to consider the question of



reorganization of states in India. The Commission favoured reorganization on the basis of administrative efficacy and not language. The Indian National Congress at its Jaipur Session (1948) set up a high level committee called Linguistic Provinces Committee - consisting of Jawaharlal Nehru, Vallabh bhai Patel and Pattabhi Sitararniah to consider the Dhar Commission's recommendations. In its report (J.V.P. Report) the committee counseled utmost caution in proceeding with the proposal for the linguistic reorganization of states.

Political movements for the creation of new language based states emerged after independence. The Telugu-speaking people agitated in Madras State for the formation of Andhra. In 1953, the 16 Telugu-speaking districts of Madras State became the new State of Andhra. It comprised Coastal Andhra and Rayalaseema Regions. In 1956 Andhra State was merged with the Telangana region of Hyderabad State to form a united Telugu-speaking state of Andhra Pradesh.

Jawahar Lal Nehru subsequently appointed the States Reorganization Commission (1953) that included Fazl Ali, KM Panikkar and HN Kunzru. In 1955 the States Reorganization Commission submitted its report recommending that many British-imposed administrative boundaries be redrawn to recognize certain regional, cultural, and linguistic configurations. The change was justified on the basis of administrative efficiency - the use of a single language in a given state. Explaining the criterion of language as the basis for constituting a state, it said:

**Ques. 4 : “Linguistic homogeneity provides the only rational basis for reconstituting the state for it reflects the social and cultural pattern of living obtaining in well defined regions of the country”? Critically examine the statements.**

Ans. The four criteria laid down by the States Reorganisation Commission (SRC) for accepting the demand by a region for the formation of a State are:

- Creation of new States should strengthen and preserve national unity.
- States are to be formed on the basis of linguistic and cultural unity.
- Financial, administrative and economic viability should govern the formation of new states. It should aid the process of implementation of five years plans.
  
- Parliament passed the States Reorganization Act (1956) that was based on the SRC report. This was the beginning of states reorganization in India on a linguistic basis. It was a major development toward incorporating cultural identities into political and administrative units. The federal devolution of power strengthened this expression of cultural diversity. Linguistic reorganization of states was the only viable model as it helped administrative efficiency; greater citizen convenience; effective management of diversities and thus strengthening the federal system of governance. It prevents fissiparous tendencies like separatism and disintegration.
- Formation of States in India on the basis of languages in 1956 was because language represented relatively acceptable base in comparison to other contending criteria like geography, ethnicity, ecology, economic development and so on.

### **States Reorganization Act 1956 and Constitution (Seventh) Amendment Act 1956**

- ✓ In order to understand the significance of the SR Act 1956 and the Constitution (Seventh) Amendment Act 1956, the nature of political and administrative organization under the British needs to be followed. British India had two types of territories provinces, governed directly by British officials who were responsible to the Governor-General of India and princely states under the control of local hereditary rulers having British government as the sovereign but enjoying autonomy based on a treaty. When India became Independent on August 15, 1947, British dissolved their treaty relations with over 600 princely states, who had the option of acceding to either India or Pakistan.
- ✓ Most of the princely states joined India. Hyderabad was incorporated into India after armed intervention.
- ✓ In the three year period during 1947-1950, the princely states were politically integrated into the Indian Union- either merged with the existing provinces or organised into new provinces.
- ✓ The Constitution of India, when it came into existence on January 26, 1950 had three class of states.
- ✓ The nine Part A states, which were the former governors' provinces of British India, were ruled by an elected governor and state legislature:
- ✓ The eight Part B states were former princely states or groups of princely states, governed by a Rajpramukhs, who was often a former prince, along with an elected legislature. The Rajpramukh was appointed by the President of India.
- ✓ The ten Part C states included both the former chief commissioners' provinces and other centrally administered areas except Andaman and Nicobar islands. The chief commissioner was appointed by the President of India.
  
- ✓ The States Reorganization Act 1956 brought about linguistic reorganization of the states under which absorbed the former British provinces and princely states on the basis of language. The Seventh

Amendment to the Constitution (1956) abolished the difference between Part A and Part B states- both became “states” constituting a single category. Part C states were renamed “union territories.”

- ✓ The personal privileges of the princes - the Privy Purse, the exemption from customs duty etc continued till they were abolished in 1971.

### **CITIZENSHIP**

- ✓ The provisions of citizenship are covered by Articles 5 to 11 of Indian Constitution and are embodied in Part II of the Constitution.
- ✓ Article 5 refers to citizenship not in any general sense but to citizenship on the date of the commencement of the Constitution.
- ✓ Article to lay down a permanent law of citizenship for the country. That business was left to the Parliament of India.
- ✓ Accordingly, at the commencement of the Constitution, every person who had his domicile in the territory of India and who was born in India, or either of whose parents was born in India, or who had been ordinarily resident in India for not less than five years immediately preceding the commencement of the Constitution, was to be considered a citizen of India.
- ✓ Persons of Indian origin who had been residing outside India at the commencement of the Constitution were given the free choice of becoming Indian citizens under the above provisions if they so desired. The only condition that they had to fulfill in his connection was to get themselves registered as Indian citizens by the diplomatic or consular representatives of India in the country where they were residing (Art. 8).

- ✓ Articles 6 and 7 deal with two categories of persons, namely, those who were residents in India but had migrated to Pakistan and those who were residents in Pakistan but had migrated to India. Those who migrated from Pakistan to India were divided into two categories:
- ✓ those who came before July 19, 1948 and those who came after that date.
- ✓ According to article 6 those who came before July 19, would automatically become citizens on the commencement of the Constitution, and those who came after July 19 would become such provided they had been registered in the form and manner prescribed for this purpose by the Government of India.
- ✓ These two articles thus provided for all cases of mass migration from Pakistan to India without making any distinction between one community and another, although the partition of the country itself was based upon such as a distinction Article 7 provides for those who had migrated to Pakistan but who had returned to India from Pakistan with the intention of permanently residing in India. Such a provision had to be made because the Government of India, in dealing with persons who left India for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under what is called a "permit system".
- ✓ This permit system was introduced from July 19, 1948.

### **The Citizenship Act, 1955**

- ✓ A comprehensive law dealing with citizens was passed by Parliament in 1955 in accordance with the powers vested in it by Article 11 of the Constitution.
- ✓ The provisions of the Act may be broadly divided into three parts, acquisition of citizenship, termination of citizenship and supplemental provisions.

#### WHY THE ISSUE OF INDIAN CITIZENSHIP WAS NOT PERMANENTLY SETTLED BY THE CONSTITUTION?

- There is hardly any constitution in which an attempt has been made to embody a detailed nationality law. But since India's Constitution is of a republican character and provision is made throughout the Constitution for election to various offices under the State by and from among the citizens, it was thought essential to have some provisions which precisely determined who was an Indian citizen at the commencement of the Constitution.
- Otherwise, there could have arisen difficulties in connection with the holding of particular offices and even with the starting of representative institutions in the country under the republican Constitution. This is why Parliament has been given plenary power to deal with the question of nationality and enact any law in this connection that it deems suited to the conditions of the country.
- Such Parliamentary power embraces not only the question of acquisition of citizenship but also its termination as well as any other matter relating to citizenship (Art. 11) Also under Article 9 of the Constitution, and person who voluntarily acquires the citizenship of any foreign State, even if qualified for Indian citizenship under any provision of the Constitution, may not be a citizen of India.

#### Acquisition of Citizenship

- The Act provides five modes of acquiring the citizenship of India. These are:

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- These two articles thus provided for all cases of mass migration from Pakistan to India without making any distinction between one community and another, although the partition of the country itself was based upon such as a distinction.

**(1) By Birth:**

- ✓ Every person born in India on or after January 26, 1950, shall be a citizen of India by birth.

- ✓ There are two exceptions, to this rule, namely, children born to foreign diplomatic personnel in India and those of enemy aliens whose birth occurs in a place then under occupation by the enemy.

**(2)By Descent** : A person born outside India on or after January 26, 1950, shall be citizen of India by descent if his father or mother is a citizen of India at the time of his birth.

- ✓ Children of those who are citizens of India by descent, as also children of non-citizens who are in service under a government in India, may also take advantage of this provision and become Indian citizens by descent, if they so desire, through registration.

**(3) By Registration** : Any person who is not already an Indian citizen by virtue of the provisions of the Constitution or those of this Act can acquire citizenship by registration if that person belongs to any one of the following five categories :

- (a) Persons of **Indian origin** who are ordinarily resident in India and who have been so resident for at least six months immediately before making an application for registration.
- (b) Persons of Indian origin who are ordinarily resident in any country or place outside undivided India;
- (c) Women who are, or have been, married to citizens of India;
- (d) Minor children of persons who are citizens of India; and
- (e) Persons of full age and capacity who are citizen of the Common wealth countries or the Republic of Ireland.



**(4) By Naturalisation** : Any person who does not come under any of the categories mentioned above can acquire Indian citizenship by naturalisation if his application for the same has been accepted by the Government of India and certificate is granted to him to that effect.

An applicant for a naturalisation certificate has to satisfy the following conditions:

- (a) He is not a citizen of a country which prohibits Indians becoming citizens of that country by naturalisation;
- (b) He has renounced the citizenship of the country to which he belonged;
- (c) He has either resided in India or has been in the service of a government in India, normally, for one year immediately prior to the date of application;
- (d) During the seven years proceeding the above mentioned one year, he has resided in India or been in the service of a government in India for a period amounting in the aggregate to not less than four years;
- (e) He is of good character;
- (f) He has an adequate knowledge of a language specified in the Constitution;
- (g) If granted a certificate, he intends to reside in India or enter into, or continue in service under a government in India. The Act provides, however, for a conspicuous exemption under which any or all of the above conditions may be waived in favour of a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally.

Every person to whom a certificate of naturalisation is granted has to take an oath of allegiance solemnly affirming that he will bear true faith and allegiance to the Constitution of India as by law established, and that he will faithfully observe the laws of India and fulfill his duties as a citizen of India.

**(5) By Incorporation of Territory** : If any territory becomes part of India, the Government of India, by order, may specify the persons who shall be citizen of India by reason of their connection with that territory.

### **Termination of Citizenship**

The Act envisages three situations under which a citizen of India may lose his Indian nationality. These are:

**(1) By Renunciation**: If any citizen of India who is also a national of another country renounces his Indian citizenship through a declaration in the prescribed manner, he ceases to be an Indian citizen of registration of such declaration. When a male person ceases to be a citizen of India, every minor child of his also ceases to be a citizen of India. However, such a child may within one year after attaining full age, becomes Indian citizen by making a declaration of his intention to resume Indian citizenship.

**(2) By Termination**: Any person who acquired Indian citizenship by naturalisation, registration or otherwise,, of he or she voluntarily acquired the citizenship of another country at any time between January 26, 1950, the date of commencement of the Constitution, and December 30, 1955, the date of commencement of this Act, shall have ceased to be a citizen of India from the date of such acquisition.

- ✓ **By Deprivation**: The Central Government is empowered to deprive a citizen of his citizenship by issuing an order under 10 of the Act. But, this power of the Government may not be used in case of every citizen; it applies only to those who acquired Indian citizenship by naturalisation or by virtue only of clause (c) of Article 5 of the Constitution or by registration.

- ✓ The possible grounds of such deprivation are : obtaining of a citizenship certificate by means of fraud, false representation, concealment of any material fact; disloyalty or disaffection towards the Constitution shown by act or speech; assisting an enemy with whom India is at war; sentence to imprisonment in any country for a term of not less than two years within the first five years after the acquisition of Indian citizenship and continuous residence outside India for a period of seven years without expressing in a prescribed manner his intention to retain his Indian citizenship.
- ✓ The Act also provides for reasonable safeguards in order to see that a proper procedure is followed in every case of deprivation
- ✓ of citizenship.

### Single Citizenship

The most important aspect of the constitutional provisions dealing with citizenship is that it has established a unified or single system of citizenship law for the whole country.

A citizen of India is accepted legally as a citizen in every part of the territory of India with almost all the benefits and privileges that attend such a status.

This is in striking contrast to the system of double citizenship that prevails in some federal states.

Before the inauguration of the Constitution, there were two broad divisions among Indian citizens, British Indian subjects and state subjects.

Since there were over 500 Indian States, the State subjects themselves were further subdivided into as many groups of citizens as there were states.

Thus, the term Indian citizenship had little precise legal significance except that the Indian people as a whole came under the overall jurisdictions of the British Government that ruled India.

The abolition of such distinctions makes the essential unity of the nation a reality.

A single citizenship for the entire country removes much of the artificial State barriers that prevailed in pre Independence days and facilitates the freedom of trade and commerce throughout the territory of India.

There is, however one barrier still that hinders that full realisation of the ideal of a single citizenship established under the Constitution.

This is the existence of what are known as "**domiciliary rule**" in the different states in India.

The term "domicile" is difficult to define. According to the rules prevailing today, in the different States in India, domicile requirements vary from three to fifteen years' continuous residence within the State in addition to other conditions.

Thus, the status of domicile is given only to a permanent resident of the State. On the basis of such a distinction, there exist practices in different States which amount to gross discrimination as between citizen and citizen.

The also engender provincialism and parochialism which tend to disrupt the unity to the nation. Domiciliary rules which govern eligibility to public services in most of the State illustrate this point. Such rules are applied in some State not only to determine eligibility for appointment to public services but also to regulate admission to higher educational institutions, the awards of contracts and rights in respect of fisheries, ferries, toll-bridges, forests and exciseshops.

The conditions to be satisfied for acquiring a domicile in some of the states are of such an extremely rigorous nature that it is almost impossible for any person to satisfy them.

✚ If further you feel any problem, & any problem regarding to ias preparation than can discuss with me on my FB Id always welcome thanks.

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