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Indian Polity

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CONSTITUTION OF INDIA

Unit

I

Constitution of India

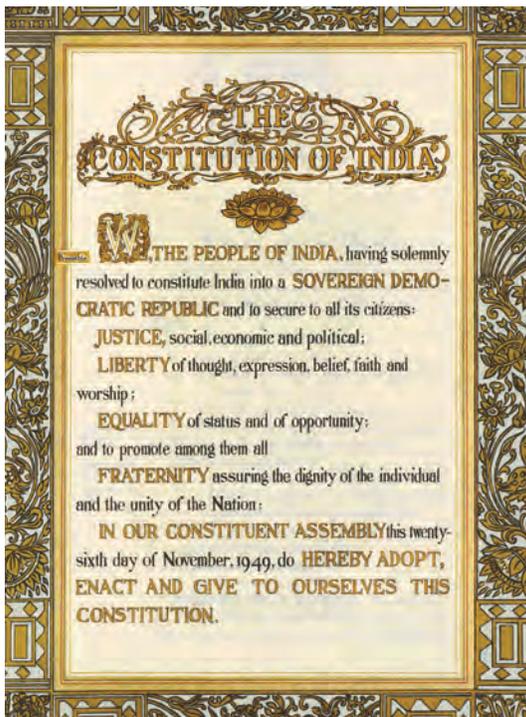
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PREAMBLE TO THE CONSTITUTION OF INDIA

5.1 Introduction

'Preamble' is like an introduction or preface of a book. It sets the tone and gives idea about the broader principles mentioned in the book. It also provides the readers a broad idea about the basic contents of the following chapters and the underlying philosophy and purpose of the document. Most of the Constitutions over the world begin with a preamble to them, to give an idea about the nature of polity in the country.

Similarly, Indian Constitution also begins with an elaborate preamble, which has acted as the lighthouse of Constitutional wisdom in the country since independence. Eminent Jurist *Nani Palkhivala*, called Preamble as "*Identity Card of Constitution*" while *K. M. Munshi* termed it as "*Political Horoscope of Indian Constitution*".



The Original Preamble as Constitution of India Enacted on 26th November 1949.

5.2 Historical Background

American Constitution was the first to begin with a Preamble and emphasized the values of liberty. The Preamble of French Constitution written after the French Revolution stated "*Rights of Man*" as the basic nature of the new Republic.

The Preamble to the Indian Constitution is based on the historic "*Objectives Resolution*" by Pandit Jawaharlal Nehru, which was *adopted by the Constituent Assembly on 22 January 1947*. As the name suggests,

this resolution defined the basic goal or purpose of the Indian Constitution. It acted as the guiding principle for the members of constituent assembly in framing the Constitution.

Preamble

The Preamble to Indian Constitution is considered to be inspired by the US Constitution, as both the Preambles Start with "We the People..."

The Preamble in the Original Constitution of India, has been designed by renowned artist **Beohar Rammanohar Sinha of Jabalpur**, who was the disciple of noted painter Nand Lal Bose.

5.2.1 Significance of Objectives Resolution

On 13 December 1946, Pandit Jawahar Lal Nehru moved the Objectives Resolution in the Constituent Assembly. It was basically the embodiment of the philosophies and values on the basis of which the Constitution was to be drafted. The Preamble to the Constitution of India borrows heavily from the ideals enshrined in the Objectives Resolution. Some of the salient points of Objectives Resolution are:

1. It proclaimed India to be an Independent Sovereign Republic.
2. It stated that power and authority of the Sovereign Independent India, its constituent parts and organs of government, will be derived from the people.
3. It guaranteed and secured the people of India justice, social economic and political, equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.
4. It also called for making efforts to ensure the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilized nation.

Thus, it is evident that, Objectives Resolution contained broad guidelines on which the Constitution of Independent India was to be framed and the noble ideals of the Objectives Resolution have been succinctly incorporated in the Preamble to the Constitution of India.

5.2.2 Need for Preamble

Indian Constitution is the **lengthiest written** Constitution of the world with approximately 450 Articles and 12 Schedules. Main reasons for having a Preamble are:

1. Such a vast document needed to be understood mainly in light of broader philosophies and ideals of the Constitution. It **defined as the soul** of the Constitution. Preamble provides a fundamental view according to which various Articles have to be interpreted.

- The Preamble states the objectives which the Constitution seeks to establish and promote.
- The Preamble helps in the legal interpretation where the language of the Constitution is felt to be ambiguous. Whenever there is doubt in any provision, the Preamble is looked up to by courts to understand the underlying spirit of that provision.

5.3 Preamble

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.

(*These words were added to the Preamble via 42nd Amendment 1976, which came into effect on 03 Jan 1977.)

5.3.1 Key Words in the Preamble

- 'We, The People of India':** This phrase defines the source of the authority of Indian Constitution. It states that Constitution derives its authority and legitimacy from the people of India. This is the essential hallmark of the Sovereignty of India, where the people in general are Sovereign as against the Constitutional Monarchies like UK, where the King is the Sovereign. This phrase also highlights the unity in the nation and fraternity among people.
- Sovereign:** The concept of Sovereignty finds its origin in '*Treaty of Westphalia*' of 1648, which resulted in the formation of nation states with the separation of religion and political affairs. Main features of a Sovereign State include:
 - Sovereignty essentially denotes the independent authority of a State.
 - Sovereign India is not sub-ordinate to any authority or nation and it is free to conduct its own affairs, both externally and internally. The point could be better understood by analyzing the contrast with pre-independent India, when India was a dominion of the crown, and the elected councils of India were under control of British Parliament and the Privy Council of the King.
 - It is also pertinent to mention that India's membership of Commonwealth of Nations (Association of erstwhile countries of British Dominion) in no way undermines the Sovereign nature of Indian State.
- Socialist:** Socialist undertones to the Indian economic and political system were present from the beginning itself. The founding forefathers, particularly Pandit Nehru, were highly impressed by the progress of Socialist USSR and China at that time.

The word 'Socialist' was added to the Preamble of Indian Constitution via *42nd Amendment to the Constitution*. Our Directive Principles show the influence of Socialist Ideology as well.

The Unique Features of Indian Socialism are as follows:

 - The Indian model of Democratic Socialism is different from the Communist Socialism of USSR and China which believes in State Totalitarianism. While in, Communist Socialism, all the means of economic production lies under the strict state control, in India both public and private enterprises co-existed. As per Supreme Court of India, the purpose of Democratic Socialism is to end poverty, ignorance, disease and inequality of opportunity. (**G.B. Pant University of Agriculture & Technology V. State of Uttar Pradesh.**)
 - Socialism was brought for increasing focus on nationalization of the enterprises in 1970s during the emergency years. But, the concept of socialism has been diluted in country after LPG (Liberalization, Privatization and Globalization) reforms in 1991. At present focus on market is increasing but strategic sectors are kept under the control of public sector only. Both state and private sectors are present in the country. The main focus of public sector is to ensure the welfare goods and services for the people and create an enabling environment for the private sector to flourish in the country.
- Secular:** Constitution makers brought Article 25-28 of the Constitution which mentions about the '*Fundamental Right to Religion*' in the spirit of secularism. But the word '*Secular*' was added to the preamble by *42nd amendment to the Constitution in 1976*. Indian secularism is unique in nature mainly because of the following reasons:
 - India has a 'positive concept of Secularism' i.e. all religions of the country have the same status and support from the State. State is not completely separated from religion.
 - This is different from the 'negative concept of Secularism' prevalent in the western democracies, where the State and Religion are completely separated from each other and are non-interfering but are dominant in their own sphere.
 - State does not have any religion in India.
 - Every citizen of India has a right to practice and promote their religion peacefully (Article 25).
 - There is no discrimination on the basis of religion in India (Article 15).
 - In recent times, when there is apprehension of rising intolerance in the society, a re-visit to the Preamble of India, would highly be enlightening and beneficial both to the government of the day and the general public at large. The current debate on Personal laws of some religions can also be viewed in this context,

where a state is bound not to discriminate against its citizens on the grounds of certain tenets of personal laws which are perceived as obsolete or biased against women.

5. **Democratic:** The preamble prescribes a democratic form of government. It is a form of polity where people enjoy equal political rights, elect their representatives, who run the government and make the laws, and hold them accountable. **(Based of Doctrine of populer sovereignty)**

Democracies may be Categorized into many forms but primarily they can be classified into two types:

- ♦ **Direct Democracy:** Where people are the decision maker directly and not through any representative. Devices of Direct Democracy: 1. Refferendum, 2. Initiative, 3. Recall, 4. Plebisite.
- ♦ **Indirect Democracy:** Where people chose their representative and decisions are taken by representatives through legislation.

Indian Constitution provides for the Indirect Parliamentary democracy, where people choose their representatives through election and the executive is responsible to the legislature. Various institutions are enshrined in the Constitution to uphold the democratic nature of the state. Some of these are Universal Adult Franchise, Rule of law, and Independent Judiciary etc.

Moreover, the democracy envisaged in the Preamble is not merely limited to political sphere. According to Dr. Ambedkar, political democracy would remain incomplete without attaining Social and Economic Democracy. Therefore, later parts of the Preamble and many parts of Constitution focus on promoting Social and Economic Democracy in the Country.

Constitutional provisions, like emergency provisions, are believed to be against the democratic spirit of the governance. The invocation of emergency in mid 1970s was called as the darkest hour of the Indian Democracy. In recent times, other systems like monarchy are moving towards democracy such as Arab Spring. ***It is mainly because Democracy is the best system of governance out of all available forms of governance.***

Another new development enhancing the democratic nature of the country has been the rise of Civil Society organizations. In ensuring day to day accountability various NGOs and other civil society institutions are playing a vital role in democracy.

6. **Republic:** The word '*Republic*' in the Preamble specifies that in India, the Head of the state i.e. The President, would be elected from among the common citizens of the country. The word 'republic' is derived from *res publica*, meaning public property or commonwealth. This system of government is different from Constitutional Monarchies, like UK, where the King/Queen is the head of the state which is a hereditary position obtained through succession.

The '*Republic*' nature of the state also signifies the ***vesting of political sovereignty in the people and the absence of privileged class.*** It also denotes that no public office in the Indian Sate can be hereditary in nature and would be open to all Indian citizens without any discrimination.

7. **Justice:** The Ideals of Social, Economic and Political Justice in our Preamble have been taken from the Russian Revolution. The broad dimensions of what is meant by these three types of justices are as follows:

- ♦ **Social Justice:** This highlights the focus of the Constitution on the redistributive justice. Weaker sections are granted special protection through Constitution. Focus on welfare of old age persons, tribals, women, differently-abled persons in the Constitution are the important aspect of social justice. Article 14 of Constitution enshrines the right to equality in this spirit. State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15). To address the historical injustices met to certain sections of the society Article 15 and 16 provide for "Affirmative Action" (reservation of certain seats in education or jobs for the deprived sections of the society) by the government.
- ♦ **Economic Justice:** The concept of Economic Justice is to reduce the inequalities in wealth, income and property among the citizens of country. Many directive principles take forward the concept of Economic Justice in our Constitution. In recent times, Financial Inclusion has been increasingly seen as the instrument of Economic Justice in the country.

(Combination of both Economic & Social Justice is called Distributive Justice.)

- ♦ **Political Justice:** This implies that all citizens should have equal political rights, equal access to all political offices and equal voices in the government. The principles of Universal Adult Suffrage, One Man One Vote have ensured the delivery of political justice in country.

Fundamental Rights in the Constitution aim to promote Political Justice. And DPSPs aim to promote Social and Economic justice. Fundamental Rights are binding in nature and DPSPs are not binding in nature. It has been observed that, out of the three justices envisaged, we have seen greater progress in delivery of Political Justice. We are still far behind the desired levels of Social and Economic Justice, which could be seen from our dismal ranking in various global social and economic indices.

8. **Liberty:** The concepts of '*Liberty, Fraternity and Equality*' in the Preamble are inspired by the ideals of ***The French Revolution.*** Liberty or freedom signifies absence of restraint on individual action within the realm of what is allowed by law. It also means providing opportunities for the development of individual capacities and

personalities. The Fundamental Right to Life and Liberty in the Constitution provides both these negative and positive rights to the citizens of India. The Preamble to the Constitution of India professes to secure liberty of belief, thought, expression, faith and worship which are essential for the development of the individuals and the nation.

In philosophical discourse, liberty is considered to be one of the *natural and inalienable rights of mankind*. Therefore, all the democratic Constitutions in the world emphasize on it.

9. Equality: The Preamble talks about the Equality of Status and Opportunity. Every citizen should get equal opportunity in political participation, education, employment etc. Various Fundamental Rights (Article 14, 15, 16, 17 & 18) Fundamental Duties and DPSPs for equal wages help realize this noble goal of the Preamble. Despite this noble intent, glaring socio-economic inequalities are present in our society. Thus, only Constitutional mandate is not sufficient. There is need for social awareness and upliftment to realize the aim of equality in the true sense.

10. Fraternity: Fraternity means a *'spirit of brotherhood'*. As the Constitution of India was drafted amid the violence and hatred of Partition, the framers of Constitution wisely chose to insert *"Fraternity"* in the Preamble. Fraternity is the cementing factor of the inherent diversities based on race, religions, languages and cultures. It seeks to ensure 'dignity of Individual and community' because feeling of oneness or brotherhood is not possible unless the dignity of each individual is preserved and mutually respected. The Fundamental Duties in Part IV A specifically emphasizes on the citizens of India to display fraternity.

Fraternity also seeks to ensure *'Unity and Integrity'* of India. The concept captures both territorial and psychological dimensions of national integration. At psychological level it envisages unity or oneness among the people of the country, whereas at the territorial level it envisages oneness of the country and its territory.

5.4 Significance of the Preamble in Constitution

1. Preamble is a vital part of our Constitution as it gives us idea about the thoughts of Constitution makers in framing the Constitution of India.
2. It succinctly captures the idea of India, that all of us should aspire and strive for.
3. It contains the basic philosophy of the Constitution.
4. It is neither enforceable nor justifiable, but its importance is in its role of being the source of the basic objectives of the Constitution.
5. It helps Supreme Court in checking validity of law or in interpretation of the Constitution.

6. It serves two purposes:

- ◆ It indicates the source from which the Constitution derives its authority.
- ◆ It also states the objects which the Constitution seeks to establish and promote.

5.5 Amendment of the Preamble

The Preamble like other parts of Constitution could be amended as per the provisions of Article 368 of the Constitution. But it is limited to only those provisions which were not part of the Basic Structure of the Constitution, as laid down in the *Kesavananda Bharati Case in 1973*.

Subsequent to the judgement, the Preamble to the Constitution has only been amended once in 1976, when the words *'Socialist', 'Secular' and 'Integrity'* were added to the original text of the Preamble.

Forty-second Amendment, 1976 (The Mini Constitution)

The Preamble has been amended only once so far. On 18 December 1976, during the Emergency in India, the Indira Gandhi government pushed through several changes in the Forty-second Amendment of the Constitution. A committee under the chairmanship of *Sardar Swaran Singh* recommended that this amendment be enacted, after being constituted to study the question of amending the Constitution in the light of past experience. Through this amendment the words "socialist" and "secular" were added between the words "Sovereign" and "democratic" and the words "unity of the Nation" were changed to "unity and integrity of the Nation".

Addition to Preamble by the 42nd Amendment

- ◆ Socialist
- ◆ Secular
- ◆ Integrity of the Nation

5.6 Issues Associated with Preamble

Preamble: A Part of the Constitution

There has been various debates and discussions over the question whether the Preamble to the Constitution is part of Constitution or not? The corollary to this question was whether the Preamble can be amended by legislative process, if at all. Supreme Court looked into the matter in two crucial cases which dealt with this issue in detail were:

1. Berubari Union Case
2. Kesavananda Bharati Case

Berubari Union Case (1960)

In 1960, the President of India referred a matter seeking advice on implementation of Indo-Pakistan agreement relating to the Berubari Union and exchange of enclaves to the Supreme Court under Art. 143(1) of the Constitution of India. The Supreme Court in its judgement held that:

1. The Preamble is not the part of Constitution
2. It is not the source of the several powers conferred on government under the provisions of the Constitution.
3. It serves as a key to the minds of the framers of the Constitution and shows the general purpose for which they made the several provisions in the Constitution.

Kesavananda Bharati Case (1973)

The earlier decision of the Supreme Court on Preamble was reversed by the 13-Judges Bench of Supreme Court in the historic Kesavananda Bharati Case in 1973. It held that:

1. The Preamble to the Constitution of India is a part of Constitution.
2. It has a significant role to play in the interpretation of statues and also in the interpretation of various provisions of the Constitution.

OTHER IMPORTANT CASES

In **Sajjan Singh Vs. State of Rajasthan** (1965) the Supreme Court held that the Preamble indicates the Source of the Constitution.

In S.R. Bommai case (1994), and also in Union Government v. LIC of India (1995) the Supreme Court reiterated that the Preamble is an integral part of the Constitution. In Mandal Commission Case (1992), it opined that in our Constitution the goals are spelled out in the Preamble and the methodology for attaining those goals is elaborated in various parts of the Constitution of India.

5.7 Analysis of Debate on Inclusion of 'Socialist' in Preamble

It is often argued that the word 'Socialist' was added in haste by the 42nd amendment to the Constitution, in a state of emergency, and when the government of that time wanted to nationalize all the economic agencies so as to exert absolute control on the economy.

On the other hand, it is argued that Our Constitution itself has many implicit features of Socialism in it. Given the lack of capital and highly prevalent inequality in society, the view of majority of the members of the constituent assembly was tilted towards socialism.

5.7.1 Constitutional Debates

In one of the famous debates on Socialism, **Prof. K. T. Shah** wanted to include the words "secular, federal, socialist" in Article 1 of the Constitution.

Dr. Ambedkar replying to the debate stated that, "If these directive principles to which I have drawn attention are not socialistic in their direction and in their content I fail to understand what more socialism can be. Therefore, my submission is that these socialist principles are already embodied in our Constitution and it is unnecessary to accept this amendment".

5.7.2 Arguments Against

Some of the arguments against the inclusion of word 'Socialist' are:

1. **Difficult to practice in true sense:** It limits policy choices and development if socialism is practised in true sense. This is mainly because Indian society is diverse in nature and Socialism may bring a sense of homogenization.
2. **Socialism must be decided by people with time:** Even Ambedkar argued against the inclusion of 'socialist' in preamble by stating that "What should be policy of the state, how the society should be organized in its social and economic side are matters which must be decided by people themselves according to time and circumstances".
3. **Pragmatic free market approach led to good Economic Development:** It is also observed that in current times, of privatization and globalization, market dynamics are driving the nature of economy, and India has emerged as the 3rd largest economy of the world not just on the basis of Socialistic Ideals but due its pragmatic free market approach.
4. **Socialism against notion of market led Development:** Focus on market promotes competition and efficiency. Market skills can help in culture of innovation as well. Socialism may be against the notion of market led development.

5.7.3 Arguments For

But, few scholars vehemently argue for continuation of word 'Socialist' in Preamble. Their arguments are:

1. Successive governments even after 1991 economic liberalization have followed Socio-economic planning with a view to pursue a socialistic pattern. In such system the principal means of production are under social ownership or control to ensure welfare and there is equitable distribution of national wealth.
2. Market works on the principle of consumer rather than citizen. So economically well off section will be benefited more than poor and vulnerable. It can lead to exclusion of poor. So, socialistic orientation is a welcome step.
3. Moreover, it is argued that in the rising wave of de-globalization and protectionism all around the world, led by big economies like US & UK, it would be imprudent for India to let free market forces take sole position in the domestic economy.
4. The Economic survey highlights that the government control of the financial sector ensured its stability during the Sub-prime Crisis of 2008-09.
5. Also the unsatisfactory level of Socio-economic development in India, deems it fit to continue word 'Socialist' in preamble to show our firm commitment to the principle.

Thus, according to the proponents, Indian socialism is different in letter and spirit. It works on the principle of participation of market for welfare of citizen.

5.8 Analysis of Debate on Inclusion of 'Secular' in Preamble

The Union home minister said that 'Secularism' is the most misused word in our political scenario on November 26 in 2014. He went on to mention that 'Secularism' is the inherent feature of our Constitution and this is the reason why framers of Constitution did not include it explicitly in the original version of the Preamble.

There are many experts who consider this debate as 'needless', 'redundant' and 'unnecessary'. According to legal experts, since Supreme Court in many of its judgements including **S. R. Bommai V. Union of India** case have considered Secularism as basic feature of the Constitution, therefore mere addition or removal of word from the preamble wouldn't change the nature of Constitution. In present times, where there is presence of mistrust between minorities and other communities, any attempt to remove the word 'Secular' from the Preamble would further erode their confidence in Indian State.

The need of the word 'Secular' could be judged from the fact that, the Janta government after emergency in 44th Amendment Act chose to keep the word 'Secular' in the Preamble to the Constitution.

5.9 Conclusion

Although, the Preamble does not grant any power, it gives direction and purpose to the Constitution. It outlines the objectives of the whole Constitution. Therefore, while making a law or amending existing laws, lawmakers have to inevitably examine it on the threshold of the Preamble of the Constitution.

Therefore, Preamble is the integral feature of the Constitution. Whenever, there is any doubt about the article or statute of the Constitution, the Preamble can always be resorted to for getting the right interpretation. It's a simple declaration which acts as fountainhead of the wisdom for the Constitution of India.

■■■■



TRY SOME MAINS PREVIOUS YEAR QUESTIONS

1. Discuss each adjective attached to the word 'Republic' in the preamble. Are they defensible in the present circumstances? (Write in 200 words) **(2016)**
2. Discuss the possible factors that inhibit India from enacting for its citizens a uniform civil code as provided for in the Directive Principles of State Policy. (Write in 200 words) **(2015)**

UNION AND ITS TERRITORY

6.1 Introduction

Article 1 to Article 4 of part I of the Constitution deals with The Union and its territory. Presence of linguistic and cultural diversity has led to regional aspirations. The country is divided into several units, known as states and union territories mainly for administrative conveniences. This part gives the idea about nature of relationship of the Union and the State. This part indicates the wisdom of Constitution makers in providing stability in long term federal relationship.

Articles at a Glance	
Article 1	Name and Territory of the Union.
Article 2	Admission or establishment of new States.
Article 2A	Sikkim to be associated with the Union (REPEALED)
Article 3	Formation of new States and alteration of areas, boundaries or names of existing States.
Article 4	Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.

6.2 Article 1: Name and Territory of the Union

Article 1(1): India, that is Bharat, shall be a Union of States.

The name of the Union is India or Bharat and the members of this *Union at present are the 28 States*. The Union of India has federal characteristics which is visible through distribution of powers between The Union and The State.

The expression '*Union of India*' is distinct from the expression '*Territory of India*' mainly because;

1. The Territory of India includes the States, the Union Territory and the acquired Territory.
2. The Union of India includes only States

So, the 'Territory of India' is a wider expression than the 'Union of India'.

6.2.1 Dr. B.R. Ambedkar's Opinion

According to Dr. B.R. Ambedkar, the phrase '*Union of States*' has been preferred to '*Federation of states*'. During the submission of a draft Constitution, Dr. B.R. Ambedkar stated that, "Although Constitution may be federal in structure", but the committee used the term 'Union' because of following reasons viz.

1. The Indian federation is not the result of an agreement by the states unlike American Constitution.
2. The states have no freedom to secede from the union.

3. The states were lacking in administrative capacity post-independence in governance.
4. There were chances of secessionist tendencies mainly after independence so indestructible union is the most desired structure at that time.

Article 1(2): The states and its territory shall be as specified in the first schedule.

The names of the States and the Union Territory is described in the First Schedule of constitution of India. In 1950, this schedule had four Categories of State and territories, which were divided in Part A, Part B, Part C and Part D.

TERRITORY OF INDIA IN 1950			
States in Part A	States in Part B	States in Part C	States in Part D
Assam	Hyderabad	Ajmer	Andaman and Nicobar Islands
Bihar	Jammu and Kashmir	Bhopal	
Bombay	Madhya Bharat	Bilaspur	
Madhya Pradesh	Mysore	Cooch-Bihar	
Madras	Patiala and East Punjab	Coorg	
Orissa	Rajasthan	Delhi	
Punjab	Saurashtra	Himachal Pradesh	
United Provinces	Travancore-Cochin	Kutch	
West Bengal	Vindhya Pradesh	Manipur	
		Tripura	

7th Constitutional Amendment Act abolished this four-fold classification and several new states were formed, eg. Haryana, Goa, Nagaland, Mizoram etc.

Article 1(3): The territory shall comprise
 (a) Territories of the states.
 (b) The Union territories as specified in First Schedule.
 (c) Such other territories as may be acquired.

Presently the territory of India comprises of the 28 states, 8 Union territories and other territories as may be acquired from time to time.

6.3 Article 2: Admission or Establishment of New States

Article 2: Parliament may by law admit into the Union of India or establish, new states on such terms and conditions as it thinks fit.

Article 2 grants two powers to the Parliament:

1. The power to admit new states into the Union of India.
2. The power to establish new states.

While the first provision refers to the admission of duly organized political communities the second refers to the admission or formation of a State where none existed before. The second provision relates to the admission or establishment of new states that are not part of the Union of India. E.g. 35th Amendment and 36th Amendment Act added Sikkim into The Union.

6.4 Reorganization of States

The demand for reorganization of the states on linguistic basis came immediately after independence. Language became the basis of state reorganisation protest mainly because

1. There existed a huge linguistic diversity in the nation.
2. Language is closely related to culture and therefore to the customs of people.
3. Language has symbolic importance for Identity, politics and economy.

After the Initial opposition, Jawahar Lal Nehru appointed the *States Reorganization Commission (SRC) with Justice Fazl Ali, K. M. Panikkar and Hridaynath Kunzru* as members in December 1953. Its main objective was to examine 'objectively and dispassionately' the entire question of the reorganization of the states of the union.

6.4.1 State Reorganization Committees

1. **Dhar Commission:** S.K.Dhar was appointed to examine the feasibility of division of states on linguistic basis. This commission submitted report in December 1948 and rejected the idea of division of states on linguistic basis. It recommended division on the basis of Administrative Convenience.
2. **JVP Committee:** Recommendation of Dhar commission resulted in agitations in the southern part of India where demand for linguistic states was at its peak. So again in 1948 a new committee was formed which was jointly led by Jawaharlal Nehru, Vallabhbhai Patel, and Pattabhi Sitaramayya. It submitted its report in 1949 and it also rejected the idea of formation of states on linguistic basis.

The outcome of the JVP Committee didn't pacify the agitating population of Southern India. On the contrary, the agitation grew aggressively result of which was the creation of Andhra Pradesh State, which was the first state to be carved out on linguistic basis. It was created after the separation of Telugu speaking area from Madras in 1953. This move intensified the agitation and demand for other such states on the basis of language.

3. **Fazl Ali Commission:** This commission was appointed for the purpose of studying the feasibility of the creation of linguistic states in 1953. The commission submitted its report in 1955, and *it accepted the idea of formation of states on the basis of language* but not such that one

state for one language. Broadly its recommendations were on the basis of :

- ♦ Preservation and strengthening of unity and security must be top most priority.
- ♦ Linguistic and cultural homogeneity.
- ♦ Financial, economic and administrative considerations.
- ♦ Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.

The commission remarked that four-fold classification must be removed from the Constitution. Government accepted most of the recommendation and ended the four-fold classification of the states. This led to the passing of *State Reorganization Act and 7th Constitutional Amendment Act (1956)*, which resulted in the creation of 14 new states and six union territories.

6.4.2 States Reorganization Act, 1956

The Government appointed a Commission under S.K. Dhar to examine the feasibility of reorganization of States on linguistic basis in June 1948. This committee rejected the linguistic basis of reorganization mainly on the basis of following criteria:

1. Geographical Contiguity
2. Financial Self-reliance
3. Administrative Viability
4. Potential for development

However, in 1953 the first linguistic state Andhra Pradesh was created by separating the Telugu speaking areas from the State of Madras.

The creation of Andhra Pradesh intensified the demand for linguistic States from other regions of country. As a result, a commission was set up under justice F. Fazl Ali with H. N. Kunzru and K. M. Panikkar, as members to study the demand, which submitted its report in 1955. On the basis of these suggestions, States Reorganisation Act was passed in 1956.

As a result, the fourfold distribution of States was replaced by 14 States (Andhra Pradesh, Assam, Bihar, Bombay, Jammu & Kashmir, Kerala, Madhya Pradesh, West Bengal, Madras, Mysore, Orissa, Punjab, Rajasthan and Uttar Pradesh) and six Union Territories (Andaman and Nicobar Islands, Delhi, Himachal Pradesh, Laccadive, Minicoy and Amindivi Manipur and Tripura) by the States Reorganisation Act 1956. The Seventh Constitution Amendment was brought to incorporate the change.

Some States were added in the Union post 1956 in following manner:

1. Agitation and violence again resulted in the bifurcation of the State of Bombay into two States, viz. Maharashtra and Gujarat in 1960.
2. The State of Nagaland was created comprising a tribal area from the State of Assam in 1963.
3. The State of Punjab was reorganized on linguistic basis in 1966. It was because of growing pressure over the

creation of a Punjabi Suba. The Punjabi speaking areas were constituted into the State of Punjab, while the predominantly Hindi-speaking areas were constituted as the new State of Haryana. The hill areas were merged with the contiguous Union Territory of Himachal Pradesh. Chandigarh became a Union Territory serving as a common capital of two States.

4. Meghalaya was created as an autonomous sub-state within the State of Assam in 1969. It was made a State in 1971. Himachal Pradesh was granted statehood in 1971.
5. In 1972 Manipur and Tripura were elevated to statehood.
6. In 1975 Sikkim was admitted as the 22nd State of India.
7. Mizoram, Arunachal Pradesh (erstwhile Union Territories carved out of Assam in 1969) and Goa became (23rd, 24th, and 25th) states in 1987.
8. Chhattisgarh, Uttaranchal and Jharkhand (now known as Uttarakhand) (26th, 27th and 28th) got separated from Madhya Pradesh, Uttar Pradesh and Bihar respectively. Main reason for these reorganization is uneven resource base in the region.
9. Telangana became a new State of India after separation from Andhra Pradesh in 2014. Main reason for this reorganization is development disparity.
10. In 2019 the state of Jammu and Kashmir (J&K) bifurcated into the Union Territory of J&K and Union Territory of Ladakh.

6.5 Article 3: Provision for Existing States

Article 3: Formation of new state or alteration of areas, boundaries or names of existing states. Parliament may by law:

1. Form a new state by separation of territory from any state, by uniting two or more states or parts of state or by uniting any territory to a part of any state.
2. Increase the area of any state.
3. Diminish the area of any state.
4. Alter the boundaries of any state.
5. Alter the name of any state.

Article 3 also provides the procedure for creating a new state or for making any change in the areas or alteration in the boundary and names of the existing states. For this following step are to be taken:

1. The prior recommendation of The President is essential to introduce the bill for this purpose in the Parliament.
2. The President shall refer the bill to the concerned state for its opinion before giving its recommendation.
3. If the state legislature doesn't give its opinion within specified time or any extended time, if given by President, it is deemed to be approved by the State Legislature.
4. Parliament is not bound to accept or act in accordance with the view of state legislature.
5. The bill for the reorganization of states may be introduced in either house of the Parliament

6. To get the bill passed in the Parliament only simple majority is required.
7. It is mandatory for the President to give his assent to this bill, once it is passed by the Parliament.

Being a Sovereign State, India can acquire foreign territories according to the modes recognized by International Law:

1. Cession (following treaty, purchase, gift, lease or plebiscite).
2. Occupation (hitherto unoccupied by a recognized ruler).
3. Conquest or Subjugation.

Since the commencement of the Constitution, India acquired several foreign territories such as Daman and Diu, Dadar and Nagar Haveli, Goa, Puducherry and Sikkim.

The Supreme Court in *Berubari Union Case* stated that **Article 3** does not cover Cession of a territory to foreign country. So such Cessations needs a Constitution amendment. On the other hand, Supreme Court in 1969 ruled that if settlement of boundary dispute is done through executive decision, such actions does not invite Constitutional amendment as this does not involve Cession of Indian territory to a foreign country.

NAMES CHANGED UNDER ARTICLE 3		
Year	Old Name	New Name
1950	United Provinces	Uttar Pradesh
1969	Madras	Tamil Nadu
1973	Mysore	Karnataka
1973	Laccadive, Minicoy and Amindivi Islands	Lakshadweep
1991	Union Territory of Delhi	National Capital Territory of Delhi
2007	Uttaranchal	Uttarakhand
2006	Pondicherry	Puducherry
2011	Orissa	Odisha

6.6 Article 4: Other Matters Related to States

Article 4: Laws made under Articles 2 and 3 to provide for the amendment of the first and the fourth schedules and supplemental, incidental and consequential matters.

Article 4(1): The bill so passed itself contains the provisions to amend schedule 1 and schedule 4.

Article 4(2): To incorporate the provisions of the bill and for this no separate Constitutional amendment is required under Article 368.

Article 4 of the Constitution itself declares that laws made for admission or establishment of new states, formation or alteration of state, boundaries or rename the existing state, are not to be considered as amendment of the Constitution under **Article 368**. This means that such laws can be passed by a simple majority and by the ordinary legislative powers.

Jharkhand, Chhattisgarh, Uttarakhand and Telangana were created only on the basis of bills which were passed by a simple majority of the Parliament.

A Schedule provides supplementary information.

Schedule 1: State and Union Territory.

Schedule 4: Allocation of seats of different states in the Council of States.

Article 368: Power of Parliament to amend the Constitution and procedure therefore.

Different Types of Majorities Required

For amendment under Article 368: special majority in both house (Lok Sabha & Rajya Sabha) is required.

Simple majority: 50% plus one.

Special Amendments majority: 2/3rd majority and 50% State legislature.

6.7 Background of Formation of Indian States

The British India, which consisted of modern-day India, Pakistan and Bangladesh, was made of two types of states:

1. Some of the provinces that were ruled directly by the British officials were Ajmer-Merwara, Assam, Balochistan, Bengal, Bihar Bombay, Central Provinces and Berar, Coorg, Delhi, Madras, North-West Frontier, Orissa, Punjab, and United Provinces.
2. Hundreds of Princely States of varying sizes that were ruled by local hereditary rulers, who acknowledged British Sovereignty in return for local autonomy.

At the time of independence in 1947, India comprised of provinces and Princely States under the British. Under British supervision, several Indian provinces were divided. The provinces of Bengal and Punjab were partitioned along religious lines between India and Pakistan and the Princely States were given the options of joining either of the dominions.

Timeline of Integration of Princely States

1. The Hyderabad state was integrated through police action in September 1948. Andhra state was merged with Telugu speaking area of Hyderabad state to create Andhra Pradesh.
2. Junagarh was integrated through referendum.
3. Jammu and Kashmir was integrated through Instrument of Accession.
4. Bombay state was enlarged by adding the area of Saurashtra and Kutch, Nagpur division of Madhya Pradesh, Marathwada region of Hyderabad.
5. Kerala state formed by merger of Travancore state with Malabar district of Madras State.
6. Madhya Pradesh was formed by merging Madhya Bharat province, Bhopal state and Vindhya Pradesh.
7. Mysore state enlarged by addition of Coorg state and western Hyderabad state, and later on in 1973, it was renamed as Karnataka.
8. Patiala and East Punjab states union were merged to enlarge the Punjab state.
9. Rajasthan state was enlarged by adding Ajmer state and part of Madhya Pradesh and Bombay State.

TimeLine of Formation of Indian States

State	Year	Description
Uttar Pradesh	1947	The British united Oudh and Agra regions called as United Provinces. In 1950, it was renamed Uttar Pradesh.
West Bengal	1947	Winning the Battle of Plassey gave British the entry to India and Bengal was their administrative capital. In 1905, Bengal was partitioned into East and West Bengal but by 1911 it was reunited. The Hindu-Muslim riots in the run-up to the partition hastened the division of Bengal, with East Bengal becoming East Pakistan and West Bengal becoming a state of the Indian Union.
Rajasthan	1948	Known as the Rajputana under British India, the Princely States came together in 1948 to form The United State of Rajasthan. In May 1949, it was renamed United State of Greater Rajasthan and in 1956, the state of Rajasthan was born.
Assam	1950	Ruled by the Ahoms for over six hundred years, Assam became a British protectorate in 1826 when the Burmese handed the territory to the British. Assam was separated from Bengal in 1874 and in 1912 it was made Assam province under British rule. Greater Assam included Meghalaya, Nagaland and Mizoram, amongst other areas, before they became independent states.
Odisha	1950	Orissa was made a separate province in 1936 by the British and in 1950 became a state. It was renamed Odisha in 2011.
Bihar	1950	Formed as a state in 1950, Bihar has remained a politically important state.
Tamil Nadu	1950	Erstwhile Madras Presidency was reorganized as a state in 1950 and renamed Tamil Nadu in 1969.
Tripura	1956	Surrounded by Bangladesh on three sides, Tripura remained a Union Territory till 1972 when it became an independent state.
Madhya Pradesh	1956	What was Central Provinces and Berar under British India merged with Madhya Bharat, Vindhya Pradesh and Bhopal to form India's second largest state in 1956.
Kerala	1956	Former states of Travancore and Cochin were merged along with Malabar to form the state of Kerala in 1956.

TimeLine of Formation of Indian States		
State	Year	Description
Karnataka	1956	Mysore state was created by bringing together all Kannada speaking regions together in 1956. The state was renamed Karnataka in 1973.
Andhra Pradesh	1956	Post-independence, in 1953, all Telugu speaking regions were separated from the erstwhile Madras Presidency and unified as Andhra Pradesh. In 1956, at the time of reorganization of states, Hyderabad state was merged with Andhra Pradesh and the state officially came into existence. Post formation of Telangana in 2014, Amravati is the new capital of Andhra Pradesh.
Maharashtra	1960	At the time of independence, Bombay Province covered a large part of western India. In 1960, the states of Maharashtra and Gujarat were formed as independent states.
Gujarat	1960	Part of Bombay Presidency in British India, Gujarat was separated and formed as an independent state in 1960.
Goa	1961	This Portuguese Colony was liberated in 1961 by the Indian Army and made part of the Union Territory along with Daman and Diu. The state of Goa was formed in 1987, while Daman and Diu continue to remain as Union Territories.
Nagaland	1963	In 1957, the Naga Hills Tuensang Area was brought under central control and administered from Assam. With increasing calls and protests for a separate identity to preserve its unique culture, the region was separated from Assam and the state of Nagaland was formed in 1963 with Kohima as its capital.
Punjab	1966	Post-independence, the Princely State of Patiala was merged with eight other similar states to form Patiala and East Punjab States Union (PEPSU). In 1956, this region was merged with rest of Punjab and in 1966, Haryana was separated as an independent state. Both Punjab and Haryana share Chandigarh as its capital, which is a Union Territory.
Haryana	1966	Created from Punjab in 1966.
Himachal Pradesh	1971	Himachal Pradesh was created with the merger of 30 Princely States in 1950, and in 1956, was declared a Union Territory. It became an independent state in 1971 with Shimla as its capital.
Manipur	1972	While Manipur gained independence along with India in 1947, it joined the Indian Union as a C state in 1950. In 1956 it became a Union Territory and became an independent state in 1972 with Imphal as its capital.
Meghalaya	1972	The north-eastern state of Meghalaya was formed as an autonomous state within Assam in 1969. It became a separate state in 1972 with Shillong as its capital.
Arunachal Pradesh	1972	The strategically important state of Arunachal Pradesh was part of the North East Frontier Agency (NEFA) and controlled by the Central government but was part of Assam region. In 1972, it became a Union Territory and in 1987 became an independent state of India with Itanagar as its capital.
Sikkim	1975	This peaceful state was an Indian protectorate until it merged with the Indian Union as an independent state in 1975 with Gangtok as its capital.
Mizoram	1987	This was a district of Assam and was declared a Union Territory in 1972. After the peace accord was signed with the Mizo National Front in 1986, Mizoram was declared an independent state in 1987 with Aizawl as its capital.
Chhattisgarh	2000	The central Indian state of Chhattisgarh was carved out of Madhya Pradesh and formed as an independent state in 2000 with Raipur as its capital.
Jharkhand	2000	This tribal dominated state was carved out of Bihar and made an independent state in 2000 with Ranchi as its capital.
Uttarakhand	2000	The hilly state of Uttaranchal was carved out of Uttar Pradesh as an independent state in 2000 with Dehradun as its capital. In 2007, the state was renamed Uttarakhand.
Telangana	2014	The state was carved out of Andhra Pradesh as an independent state in 2014 with Hyderabad as its capital. The demand for an independent Telangana dates back to the time of reorganization of Indian states in the post-independence period.
Jammu and Kashmir	2019	In October 1947, the Dogra King Maharaja Hari Singh signed the Instrument of Accession to India and in 1956 Jammu & Kashmir completed the process of merging with the Indian Union. In 2019 Reorganisation of state of Jammu and Kashmir was took place. Union Territory of Jammu & Kashmir and Ladakh were constituted.

6.8 Demand for New and Smaller States

The demands for separate states have come from across the country - for Kukiland in Manipur to Kongu Nadu in Tamil Nadu, from Kamatapur and Gorkhaland in North Bengal to Tulu Nadu in Karnataka. Some of the new states demanded are:

6.8.1 Division of Uttar Pradesh

In 2011, the Uttar Pradesh Assembly had passed a proposal to split the state into four parts –

1. Purvanchal (21 districts),
2. Bundelkhand (7 districts),
3. Awadh Pradesh (21 districts) and
4. Paschim Pradesh (26 districts).



6.8.2 Saurashtra or Southern Gujarat

The Saurashtra state movement for separate Saurashtra state was initiated in 1972 by advocate Ratilal Tanna, who was a close aide of former Prime Minister Morarji Desai. As per the Saurashtra Sankalan Samiti, more than 300 organisations across the Saurashtra region support the demand of the separate State. The Samiti claims that compared to other parts of Gujarat, Saurashtra is underdeveloped and also it is linguistically different from the rest of the state with its Saurashtra dialect being in use.



6.8.3 Bodoland or Northern Assam

The Bodos are an ethnic and linguistic community centered on the Udalguri and Kokrajhar of Assam. They

are largest of 18 ethnic sub-groups within the Bodo-Kachari group. The demand for a separate land for Bodos began as back as 1930s when Gurudev Kalicharan Brahma, a leader of the Bodos submitted memorandum to Simon Commission demanding for a separate political set up for the indigenous and tribal people of Assam. This demand was met neither by British India nor by Independent India.

Agitation for creation of a separate Bodoland state resulted in an agreement between the Indian Government, the Assam state government and the Bodo Liberation Tigers Force. According to the agreement made on February 10, 2003, the Bodoland Territorial Council, an entity subordinate to the government of Assam, was created to govern four districts covering 3082 Bodo-majority villages in Assam.



6.8.4 Gorkhaland (Northern West Bengal)

The crisis in Gorkhaland has been brewing for many decades. Main reasons for this demand include

1. **Cultural Reason:** Nepali speaking people (ethnic Gorkhas) vs. Bengali speaking people.
2. **Geographical Reason:** Hill area (Gorkhas) v/s Plain area (Bengalis).
3. **Historical Reason:** The demand for a separate administrative region has existed since 1907, when the Hills Men's Association of Darjeeling submitted a memorandum to the Morley-Minto reforms committee. The movement for a separate state of Gorkhaland gained serious momentum during the 1980s, when a violent agitation was carried out by Gorkha National Liberation Front (GNLF) led by Subhash Ghising. The agitation once came to fore in 2017.

Recently, the Bengal government tried to make Bengali compulsory which revived demand for Gorkhaland.



6.8.5 Vidarbha or Eastern Maharashtra

The demand for a separate state of Vidarbha was raised for the first time over 100 years ago. Vidarbha is a region that comprises the Amravati and Nagpur divisions of eastern Maharashtra. This region is agriculture based region and facing the serious problems in form of farmer's stress. The State Reorganisation Act of 1956 placed Vidarbha in Bombay State. Shortly after this, the States Reorganisation Commission recommended the creation of Vidarbha state with Nagpur as the capital, but instead it was included in Maharashtra state, which was formed on May 1, 1960.

Support for a separate state of Vidarbha had been expressed by Loknayak Bapuji Aney and Brijlal Biyani. Earlier in 2014, Vijay Kelkar committee recommended autonomous status for Vidarbha region of Maharashtra.



6.8.6 Kongu Nadu or Southern Tamil Nadu

There have been demands for the creation of a separate state of Kongu Nadu (also called Kongu Desam), comprising the regions of western Tamil Nadu, parts of southern Karnataka and central-east Kerala with its capital at Coimbatore, based on demography, culture, language and other factors.



6.9 State and Union Territory: A Comparison

1. States are the administrative unit that has its elected government, which has the right to frame its laws. While the Union Territories are the constituent division which enjoys very less power but has special rights and status.

2. The Governor acts as the representative of the President, in states. On the other hand, UTs are governed directly by the Central Government. The administrator or the Lieutenant Governor is appointed as a representative, by the President of India in Union Territories.
3. There are total eight union territories in India, out of which two, i.e. Delhi and Puducherry, have their elected members and the Chief Minister, as these are granted with partial statehood, by amendment to the Constitution. These two possess their own legislative assembly and executive council and operate like states. These Union territories have their representation in Rajya Sabha as well. The remaining union territories are controlled and regulated by the Union of the country, that's why named as a Union Territory.
4. After bifurcation of Jammu and Kashmir and making J&K union territory, the delimitation commission proposed a 90 seats Legislative assembly for union territory of Jammu and Kashmir .

Dimensions	State	Union Territory
Meaning	Administrative units with their own elected government.	Constituent units controlled and administered by the Central Government.
Relationship with Center	Federal	Unitary
Head of Executive	Governor	President
Administered by	Governor	President
Area	Large	Small
Autonomy	Yes	No

6.9.1 Special Category Status State

'Special category' status is a classification given by Central government to assist in development of those states that face geographical and socio-economic disadvantages. These include:

1. Hilly terrain.
2. Low population density and/or sizeable share of tribal population.
3. Strategic location along borders with neighboring countries.
4. Economic and infrastructure backwardness.
5. Non-viable nature of State finances.

Presently there are 10 states having 'special category' status, namely, Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, and Uttarakhand.

After 14th finance commission with increase in share of vertical devolution from 32% to 42%. Idea of special category status has lost its relevance. However, states like Bihar and Andhra Pradesh are demanding for Special Category status till now. It is mainly because Special category states or also given tax benefits apart from

giving extra grant. A special package can be brought for states which are comparatively backward, in place for granting special category status.

6.9.2 Big States and Small States: A Comparison

Small States

Advantages

1. Smaller states are relatively easy to administer.
2. Financial cost for administration is relatively less.
3. Better focus on less developed or backward regions.
4. Decisions on local issues will be taken with closer approach. For example: Neither Delhi nor Mumbai could think of solutions for food shortage and farmer suicides in Chhattisgarh, AP, Vidarbha, etc.
5. Better representation and participation for minorities in terms of caste/religion/tribe etc.
6. Better access to administration for developments for hitherto ignored areas and people.
7. Re-distribution of resources will be better utilized for the overall development.

Disadvantages

1. Setting up of various new institutions or offices either government or private, is not easy, requires huge sums of initial cost.
2. New issues are likely to arise such as River water distribution, available resources, land distribution etc.
3. Political parties may come up leading to more disputes and dividing people further on regional grounds too.
4. If demand of one state is accepted or granted, it will encourage other states to follow their lead. This is called Dominos effect.

Big States

Advantages

1. In terms of economies of scale and growth rate, larger states tend to fare better than smaller states.
2. State performance of larger state is good as compared to smaller state in terms of utilization of available natural resources.
3. Overall progress and proper utilization of manpower is well nurtured in big states.
4. Larger state witness more internal trade as highlighted by economic survey.
5. The political will and orientation of a state government determine the development of its people, and concentrated political agendas in certain areas may sometimes help bring people together in larger states.

Disadvantages

1. Administering larger states is more complex and leads to inefficiency on part of government and bureaucracy.
2. Diversity is not only about language but also about economy and culture.

3. Allocation of resources isn't easy in larger states due to inconsistent-yet-influential power structures created by politicians for their own selfish ends.

6.10 Delhi: Statehood

Presently, Delhi is a Union Territory with institutions like an elected Legislative Assembly and a High Court. There is no denying that Delhi is a quasi-state – partly a Union Territory, partly a state.

In 1991, the Parliament, through the 69th amendment, introduced Article 239AA (Special Provisions with respect to Delhi) and conferred the right upon the people of the NCT of Delhi to elect their own legislature and government to make laws under certain entries of the state list of the Seventh Schedule of the Constitution and execute these laws respectively. This amendment, however, did not confer full statehood upon Delhi and powers with respect to public order, land and police remained with the Union government.

All arguments for full statehood are centered on the fact that government of the National Capital Territory of Delhi (GNCTD) has no jurisdiction over the police, the Delhi Development Authority (DDA) and the Municipal Corporation of Delhi. More recently Supreme Court has sought more clarity on the scope and boundaries of the relationship between the Delhi government and the Centre. Both the Centre and Delhi government contest each other's right to administer and govern the National Capital and demands have been raised to give statehood to Delhi.

6.10.1 Arguments Favouring Statehood to Delhi

1. In the current system, power is divided between the Chief Minister and the Lieutenant Governor who is a representative of Central government. This dual control creates an inherent tension between the two power centers.
2. Though Delhi Assembly is given the powers to govern and make laws on state list subjects except three subjects – public order, police and land. But the Union government has been violating this Constitutional provision and has been exercising authority on several subjects.
3. Delhi Police reports to the Union Home Ministry and this ties their hands in ensuring maintenance of law and order in the capital. Statehood can bring autonomy to Delhi Police.
4. The Delhi government cannot decide on its own the use that the city's land should be put to.
5. Each state of India has its own Public Service Commission, Delhi, being a Union Territory, does not have a cadre of officers of its own and is part of a common cadre shared with other UTs.

6.10.2 Arguments Against Full Statehood to Delhi

1. It would weaken the case for delegation of authority under various statutes which is feasible and a necessity.

- Delhi is a strategic location. Buildings like Parliament and Supreme Court etc. are of national importance. So union control is desirable.
- Delhi is different than other UTs because as the nation's capital, it must reflect the best that the country offers. And that is only possible if land-use, zoning plans and building regulations are managed in consonance with the standards expected of a capital city.
- Statehood would bring land allocation under the city government, which brings the state's priority for satisfying local demand than that of national concern.

6.11 Issue of Kachchatheevu Island

Kachchatheevu is a controversial uninhabited island situated on the Sri Lankan side of the maritime boundary. According to Sri Lanka's ministry of external affairs website, Kachchatheevu is an uninhabited islet in the Palk Strait that was formed due to volcanic eruption in the 14th century. The 285-acre land, strategically important for fishing activities, was owned by the Raja of Ramnad (Ramanathapuram) and later became part of the Madras Presidency after the delimitation of Gulf of Mannar and Palk Strait during British rule between the then governments of Madras and Ceylon. In 1921, both Sri Lanka and India claimed this piece of land for fishing and the dispute remained unsettled.

This island was with India till 1974 when it was ceded to Sri Lanka by then Prime Minister Indira Gandhi. Though ceded to Sri Lanka, the agreement, which did not specify fishing rights, allowed Indian fishermen to fish around Kachchatheevu and to dry their nets on the island.

But then in 1976, delimitation of International Maritime Boundary Line (IMBL) was agreed upon as required by the UNCLOS. With this, Indian fishermen do not have any right to even engage in drying of nets and use of Church because 1976 agreement superseded 1974 agreement. Since then, Indian people from Tamil Nadu have demanded to get it back from Sri Lanka.

With the establishment of the Exclusive Economic Zones by the two countries, India and Sri Lanka will exercise sovereign rights over the living and non-living resources of their respective zones. The fishing vessels and fishermen of India shall not engage in fishing in the historic waters, the territorial sea and the Exclusive Economic Zone of Sri Lanka, nor shall the fishing vessels and fishermen of Sri Lanka engage in fishing in the historic waters, the territorial sea and the Exclusive Economic Zone of India, without the express permission of Sri Lanka or India.

6.11.1 Illegality of Cessation of Kachchatheevu in India

The Government of India maintains in courts that the settlement of the island was legal and final, though it was not ratified by Indian Parliament. However, in the Berubari Union case (1960), the Supreme Court had already ruled that cessation of Indian Territory to other country had to be ratified by the Parliament via a Constitution amendment

act. Thus, this cessation was Unconstitutional and illegal because Constitutional process was not followed.

India and Bangladesh: Land Boundary Agreement

India and Bangladesh share a 4,156 km land boundary. On this boundary, some 30,000-50,000 people were residing in so called Chitmahals or Indo-Bangladesh enclaves. There are 102 Indian enclaves inside Bangladesh and 61 Bangladeshi ones inside India. There were also enclaves inside enclaves known as counter-enclaves.



Due to this reason, there was identity crisis among the people living in these enclaves. They struggle to get basic services which a citizen is entitled to receive from the state. To remove the hardship of the people living in these enclaves, it was desirable to exchange the adversely held enclaves through Land Boundary Agreement between these two countries.

In 2015, the Land Boundary Agreement was concluded by enactment of the 100th Constitutional Amendment Act by the Parliament. According to this agreement, India and Bangladesh exchanged adversely-held enclaves to resolve the border dispute. India received 51 Bangladeshi enclaves covering 7,110 acres while Bangladesh received 111 Indian enclaves covering 17,160 acres.

6.12 Boundary Issue with China

India and China have a 4058 km long disputed Line of Actual Control (LAC) which is proving to be a barrier to stronger relation between the two neighbors. The border issue between India and China includes Aksai Chin on westernmost side of border and McMahon line/Arunachal Pradesh on easternmost side. Central region in Himachal Pradesh and Uttarakhand region dispute is largely settled.

Currently, China has occupied approximately 38,000 km² of Indian Territory in Aksai Chin. Moreover, under China-Pakistan "Boundary Agreement" of 1963, Pakistan ceded 5,180 km² of Indian territories in Pakistan occupied

Kashmir (PoK) to China. CPEC also passes through POK region which is a national sovereignty issue.

China claims approximately 90,000 km² of Indian territories in Arunachal Pradesh. China says that it does not recognize Arunachal Pradesh and considers it as a part of South Tibet.

While mutual distrust led to outright hostility and even a war in 1962, the issue has not been satisfactorily resolved. The following reasons impede resolution of the problem:

1. **Nationalistic Reasons:** Negotiations over disputed boundaries require some manner of give and take. India may lose her territory if she involves in give and take type negotiation.
2. **Political Reasons:** Negotiations are held hostage to political climate in both the countries. As a result, they are sometimes not given due priority which slows the process.
3. **Strategic Reasons:** While India claims the Aksai Chin plateau, China does not wish to give it up because a strategic road connecting Xinjiang and Tibet passes through Aksai Chin. On the other hand, while China claims Arunachal Pradesh, India cannot give that up due to the people living there.
4. **Realpolitik:** An unsettled border with India gives China a strategic advantage as it creates uncertainty in the mind of India. China shows less willingness in resolving the border dispute.

Shimla Accord

Shimla Accord was signed between British India and Tibet in 1914 through British and Tibetan Government representative. But it is disputed by Chinese Government on the basis that Tibetan Government has no authority to do so because it was under Chinese suzerainty as per the Anglo Russian Accord and Chinese representatives have not accepted or signed it. Communist Government of Beijing brought Tibet under its direct control in 1948. And Jawahar Lal Nehru declared McMahon Line to be final boundary line between India and China in return of India giving up its extra-territorial right over Tibet. But since 1959 failure of Tibet uprising and Dalai Lama arrival in India things changed and China refused to recognise McMahon Line as boundary.

5. **Economic Reasons:** As India seeks greater economic integration with China, China is delaying the boundary settlement so that it can then leverage its economic

control over India to dictate a more favorable boundary settlement.

6.13 Delimitation of India's Maritime Boundaries

It often comes as a surprise to many that India has maritime boundaries with a larger number of states than those with which it shares land borders. Whereas India's maritime boundaries necessitate delimitation with seven states on adjacent and opposite coasts—Pakistan, Maldives, Sri Lanka, Indonesia, Thailand, Myanmar, and Bangladesh.

In view of the prospective changes in the international law of the sea (the United Nations Conference on the Law of the Sea [UNCLOS] III), which was to provide vastly extended maritime zones to coastal and island states, India began the difficult task of demarcating boundaries with its maritime neighbors in the early 1970s. Although UNCLOS III clearly determined the precise limits of various maritime zones, it failed to agree on any single universal set of principles by which these boundaries were to be delimited. Consequently, the process of delimitation, and subsequent demarcation (of maritime boundaries) continues to remain in dispute.

6.14 Way Forward

As discussed above, India is often called as 'Indestructible union of the destructible states'. Article 1-4 of the Indian Constitution contains the provision regarding the territory of the Indian State. Since, the independence there has been various alterations, both in internal and the external boundaries. Various new states have been created, the names have been changed and the boundaries with the neighbors have seen modifications.

Still, there are demands for the further re-organization of the states in India. There is a need for the engagement and dialogue with all the stakeholders, so as to create states which ensure political desirability, administrative efficiency and the financial viability.

Settlement of the international boundary disputes are more complex in nature as they involve interest of several states. Therefore, a quick resolution is difficult to achieve. However, it can be hoped that with renewed political will and international engagement, these issues may be sorted out in due course.

