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SALIENT FEATURES OF THE INDIAN CONSTITUTION

1. The lengthiest Constitution in the world.—The Indian Constitution is the lengthiest and the most detailed of all the written Constitutions of the world. While the American Constitution originally consisted of only 7 Articles, the Australian Constitution 128 Articles, the Canadian Constitution 147 Articles, the Indian Constitution originally consisted of 395 articles divided into 22 Parts and 9 Schedules. But after the Constitution 78th amendment Act 1995, the Constitution now consists of 443 Articles divided into 26 Parts and 12 Schedules. Since 1950 to 1995 21 Articles have been repealed and 69 more Articles have been added to the Constitution. The new articles are as follows 31A, 31B, 31C, 39A, 43A, 48A, 51A, 134A, 139A, 224A, 226A, 228A, 233A, 239A, 239AA, 239AB, 239B, 243A to 243 ZG, 244A, 258A, 290A, 300A, 312A, 323A, 323B, 350A, 350B, 361A, 363A, 371A to 371-I, 372A, 378A, 394A. This extraordinary bulk of the Constitution is due to several reasons:—

(1) The framers of the Indian Constitution has gained experience form the working of all the known Constitutions of the world. They were aware of the difficulties faced in the working of these Constitutions. This was the reason that they sought to incorporate good provisions of those constitutions in order to avoid defects and loopholes that might come in future in the working of the Indian Constitution. Accordingly, they framed the Chapter on the Fundamental Rights on the model of the American Constitution, and adopted the parliamentary system of Government from the United Kingdom, they took the idea of the Directive Principles of State Policy from the Constitution of Ireland, and added elaborate provisions relating to Emergency in the light of the Constitution of the German Reich and the Government of India Act, 1935.

(2) The Indian Constitution lays down the structure not only of the Central Government but also of the States. The American Constitution leaves the State to draw up their own Constitutions.

(3) The vastness of the country and peculiar problems relating to the language have added to the bulk of the Constitution.

(4) The Constitution contains a long list of Fundamental Rights and also a number of Directive Principles, which confer no justifiable rights upon the individual. Though these directives by their very nature could not be made legally enforceable yet the framers incorporated them in the Constitution with a view that it would serve as constant reminder to the future governments that they will have to implement them in order to achieve the ideals of the welfare State as envisaged in the preamble of the Constitution. It was also felt that the smooth working of an infant democracy might be jeopardised unless the Constitution mentioned in detail thinks which left in other Constitutions to ordinary legislation. This explains why we have in our Constitution detailed provisions

about the organisation of the judiciary, the services, the Public Service Commissions, Elections and many transitory provisions and the like.¹

Establishment of a Sovereign, Socialist,² Secular,³ Democratic Republic.—The Preamble of the Constitution declares India to be a Sovereign, Socialist, Secular, Democratic Republic. The word Sovereign emphasises that India is no more dependent upon any outside authority. It means that both internally and externally India is sovereign. Its membership of the Commonwealth of Nations and that of the United Nations Organisation do not restrict her sovereignty. Critics say that India's membership of the Commonwealth of Nations is not compatible with her sovereign status. But, it is to be noted that India's membership of the Commonwealth of Nations does not in any way restrict her sovereignty. India's membership of the Commonwealth is a self-imposed limitation. According to Mr. Ramaswamy, "it is a courtesy arrangement devoid of any constitutional significance". Explaining the true position of India in the Commonwealth on 10th May, 1949, the then Prime Minister Jawahar Lal Nehru said "we took a pledge long ago to achieve Purna Swaraj. We have achieved it. Does a nation loose its independence by an alliance with another country? Alliance normally means mutual commitments. The free associations of Sovereign Commonwealth Nations does not involve such commitments. It is well known that it is open to any member nation to go out of the Commonwealth if it chooses..... It must be remembered that the Commonwealth is not a super-State in any sense of the term. We have agreed to consider the king as symbolic head of this free association. But the king has no functions attached to that in the Commonwealth. So far the Constitution of India is concerned, the king has no place and we shall owe no allegiance to him."

The term '*Socialist*' has been inserted in the preamble by the Constitution 42nd Amendment Act, 1976. This concept was already implicit in the Constitution. The amendment merely spells out clearly this concept in the preamble. The word "*Socialism*" is used in democratic as well as socialistic constitutions. It has no definite meaning. In general, however, the word means some form of ownership of the means of production and distribution by the State. The degree of State control will determine whether it is a democratic State or Socialistic State. India has, however, chosen its own brand of socialism e.g., mixed economy.⁴

The term '*Secularism*' means a State which has no religion of its own as recognised religion of State. It treats all religions equally. In a Secular State the State regulates the relation between man and man. It is not concerned with the relation of man with God. The term '*democratic*' indicates that the Constitution has established a form of Government which gets its authority from the will of the people. The rulers are elected by the people and are responsible to them. Justice, Liberty, Equality and Fraternity which are essential characteristics of a democracy are declared in the Preamble of the Constitution as the very objectives of the Constitution. The Preamble to the Constitution declares that the Constitution of India is adopted and enacted by the people of India and they are the ultimate master of the Republic. Thus the real power is in hands of the people of India, both in the Union and in the States. The term '*Republic*' signifies that there shall be an elected head of the State who will be the chief executive head. The President of India, unlike the British King, is not a hereditary monarch but an elected person chosen for a limited period. It is an essential ingredient of a Republic.

1. Constituent Assembly Debates, Vol. XI, pp. 839-40.

2. Added by the 42nd Amendment Act, 1976.

3. Ibid.

4. Constituent Assembly Debates, Vol. VIII, pp. 494-95.

2. Parliamentary form of Government.—The Constitution of India establishes a parliamentary form of Government both at the Centre and the States. In this respect the makers of the Constitution have followed the British model in *toto*. The reason for this is that we were accustomed to this type of Government. The essence of the Parliamentary form of Government is its responsibility to the Legislature. The President is the constitutional head of the State. The real executive power is vested in the Council of Ministers whose head is the Prime Minister. The Council of Ministers is collectively responsible to the Lower House, i.e., Lok Sabha. The members of the Lower House are elected directly by the people on the basis of adult franchise normally for five years. The position is the same in the States. This Government is, therefore, called a responsible Government. On the other hand, the American Constitution establishes a Presidential Government. On the other hand, the American Constitution establishes a Presidential Government based on the principle of separation of powers. The President is the real executive; elected directly by the people for 4 years. All executive powers are vested in him. He is not responsible to the Lower House, i.e., the Congress. The members of his Cabinet are not members of the Legislature. They are appointed by the President and therefore, responsible to him.

Parliamentary v. Presidential System.—For the last two decades, a debate has been going on in the country whether the present parliamentary system should be continued or should be replaced with the presidential system under which the president, elected directly by the people for a fixed term, will function as the nation's executive unhampered by the legislature in taking administrative decisions. He will also have the distinct advantages of choosing his ministerial team from among the best talent, available in the country without being subjected to the pulls and pressures of elected representatives. Those who favour the presidential form of government claim that it has the following advantage: *First*, the chief executive in a presidential system is relatively free from sectional and party disputes. His term is fixed and thus it ensures stability of the government and President can devote his time for the development of the country.⁵ *Secondly*, he is free to choose his team of ministers from the best talent available within the country. His choice is not restricted to elected representatives as is the case in parliamentary system. *Thirdly*, it discourages the disease of defections and maintains discipline among the members of a political party.

On the other hand, those who favour the retention of the present parliamentary form of government claim that it has the following advantages over the presidential form of governments: *First*, it is a responsible government. The government is subjected to security in the legislature as regards its achievements and failures. The ministers are accountable to the legislature. *Secondly*, the Prime Minister who enjoys 2/3 majority in Parliament is much more powerful than the President in the United States. *Thirdly*, there is nothing to prevent the Prime Minister to choose the best talent from outside for his cabinet and get them elected or nominated to either House of Parliament, and *fourthly*, the disease of defection can be removed by appropriate legislation.

At the outset it has to be made clear that the framers of the Constitution preferred the parliamentary system of government mainly for two reasons—(1) the system was already in existence in India and people were well acquainted with it, (2) it provides for accountability of ministers to the Legislature.

However, this hope of the framers have been belied. The happenings during the last two decades clearly demonstrate that the parliamentary form of government have almost failed. Efforts to remove its drawbacks have not been successful. Briefly, it suffers from

(1) *Multiplicity of Political Parties*—The existence of too many political parties has resulted in unstable governments and even created problems in the formation of governments. A number of State Governments have fallen due to the multiplicity of political parties. Till 1979 this evil was confined to States only, but in 1979 this evil has affected the Central Government also and two national governments have fallen. In 1989, the Janata Party came to power at the Centre. It was a combination of a number of political parties. Due to internal dissections there was split in the party and Mr. Charan Singh defected from it and as a result of this the Janata Government headed by Mr. Morarji Desai fell. Because of this it is not possible to have a strong opposition in the legislatures which influences the decision of the government in various forms and exercises control over it.

(2) *Evil of Defection*.—The evil of defection has been threatening the very basis of our parliamentary system resulting in unstable governments. To cure this evil Parliament enacted the 52nd amendment in 1977 and added the Tenth Schedule to the Constitution which provides that if a member of the legislative party voluntarily leaves his party or votes against the whip of the party or nominated member joins other party within sixth month of election he will lose his membership of the legislature. But one of the exceptions to the above rule is that if 1/3 of the members goes out of the party it will be called a split and not defection and the separated group will be a new entity. Unfortunately, this provision of the Tenth Schedule has proved to be a boon for dishonest politicians who aspire for immediate political gain. A number of State Governments were toppled by the power-hungry politicians. In 1979 this evil affected the Centre Government and the Janata Dal Government led by Mr. V.P. Singh fell when Mr. Chandra Shekhar defected from it along with his 57 supporters and formed a separate party. He formed the Government with the outside support of the Congress, but after four months the Congress withdrew its support on a flimsy ground and consequently, his government fell. In 1991 elections, the Congress Party led by Mr. P.V. Narshima Rao formed a minority government but subsequently he secured majority with the help of some M.P.'s who defected from other political parties and joined the Congress Party. (Mr. Ajit Singh's group defected from the Janata Dal had formed a separate group and later on joined the Congress Party).

(3) *Lack of cohesiveness and leadership in National Parties*.—Lack of unity and cohesion in national parties, particularly the Congress Party, and behaviour of the members of the different groups within the party have weakened the authority of the leader of the party who becomes the Prime Minister. It has been seen that the Prime Minister has to devote much of his time in solving party disputes and little time is left to him to look after nation's work. The Prime Minister has to satisfy different sections and groups among his party by giving them ministerial posts. Till 1967, the Congress Party was unified under the strong leadership of Pt. Nehru. Afterwards the era of coalition government came and their fate is well known. In Congress Party also there is no leader of Pt. Nehru's stature and therefore there is lot of dissension in the party. After 1991 elections the Prime Minister P.V. Narshima Rao had to change three Chief Ministers in Karnataka and two in Andhra Pradesh. In 1993 Assembly elections the party has to face difficulty in choosing its leader in Himachal Pradesh and Madhya Pradesh. In 1996 parliamentary elections to the Lok Sabha the position was worse than that of 1979, 89 and 1991 parliamentary elections. No party had obtained the requisite majority in the House. In a 545 member house elections were held for 537 seats, the party position was as follows BJP 160, Shivsena 15, Samta Party 8, HVP 3, Congress 136, Janta Dal 44, CPM 23, CPI 10, Samajwadi Party 17, AIFB 3, RSP 4, DMK 17, TMC 20, TDP (N) 16, Akali 8, BSP 15, AGP 3, Congress T 4, MPVC 2, Independents and others 17. In

such a situation formation of a strong and stable government is not possible.

(4) Illiteracy of voters—National issues versus Local issues.—A vast majority of our electorate is illiterate and politically immature and in exercising his right of franchise is swayed away on the basis of caste, religion and money etc. National issues are not at all considered by the electorates. In 1993 Assembly elections in U.P., M.P. and Rajasthan and again in 1996 U.P. elections caste factor has played a major role.

(5) Growth of regional parties.—Versus the growth of local and regional parties arousing parochial and provincial feelings have also weakened the functioning of the parliamentary system. These regional parties are demanding more autonomy for the States and thus threaten the unity and integrity of the nation. In this respect the 1996 Parliamentary elections was even worse than two earlier elections to Lok Sabha. In 1971 parliamentary elections there had been a marked success of several regional parties, notably the DMK-TMC combine in Tamil Nadu, Assam Gana Parishad, the Haryana Vikas Party (HVP) and the TDP (Naidu group) in Andhra Pradesh. These regional parties have been demanding reconsideration of present division of powers between the Centre and the States, and claiming more autonomy for the States. This is likely to weaken the unity of the Country.

(6) Criminalisation of Politics.—Criminalisation of politics have also affected free and fair elections. Almost all political parties have connections with known criminals. Some political parties have given tickets to known criminals. These criminal leaders spread violence in elections on a large scale. They resort to booth capturing, bribe voting etc. During the 1996 parliamentary elections numerous murders were committed in the State of Bihar and Andhra Pradesh. Many persons with criminal records were elected to the Eleventh Lok Sabha.

Thus, in the light of the experience of functioning of parliamentary form of governments during the last two decades, it may be submitted, that the present system has not been working successfully and therefore it should be replaced with the Presidential form. An executive head directly elected by the people for a fixed term will be free from all these restraints and will be able to provide political stability thereby helping the nation towards fast economic development.⁶

3. Unique blend of rigidity and flexibility.—It has been the nature of the amending process itself in federations which had led political scientists to classify federal constitution as rigid.⁷ A rigid constitution is one which requires a special method of amendment of any of its provisions while in flexible Constitution any of its provisions can be amended by ordinary legislative process. A written constitution is generally said to be rigid. The Indian Constitution, though written, is sufficiently flexible. It is only a few provisions of the Constitution that require the consent of half of the State Legislatures. The rest of the provisions can be amended by a special majority of Parliament. The fact that the Indian Constitution has been amended 78 times during the period of 49 years of its working disapproves the view taken by Sir Ivor Jennings who had characterized our Constitution as rigid for the following reasons. (a) that the process of amendment was complicated and difficult, (b) that matters which should have been left to ordinary legislation having been incorporated into the Constitution no change in these matters is possible without undergoing the process of amendment.

4. Fundamental Rights.—The incorporation of a formal declaration of Fundamental Rights in Part III of the Constitution is deemed to be a distinguishing

6. See Prof. T.K. Tapu—*The Constitutional Law of India*, 1991 ed., p. 958.

7. K.C. Wheare—*Federal Government*, p. 209.

feature of a democratic State. These rights are prohibitions against the State. The State cannot make a law which takes away or abridges any of the rights of the citizens guaranteed in the Part III of the Constitution. If it passes such a law it may be declared unconstitutional by the courts. But mere declaration of certain fundamental rights will be of no use if there is no machinery for their enforcement. Our Constitution has, therefore, conferred on the Supreme Court the power to grant most effective remedies in the nature of writs *Habeas Corpus*, *Mandamus*, *Prohibition*, *Quo Warranto* and *certiorari* whenever these rights are violated. It must, however, be clearly understood that fundamental rights are not absolute rights. They are subject to certain restrictions. Thus our Constitution tries to strike a balance between the individual liberty and the social interest. The idea of incorporating a Bill of Rights has been taken from the Constitution of the United States. But the guarantee of individual rights in our Constitution has been very carefully balanced with the need for security of the State itself.⁸

5. Directive Principles of State Policy.—The Directive Principles of State Policy contained in Part IV of the Constitution set out the aims and objectives to be taken up by the States in the governance of the country. Unlike the Fundamental Rights, these rights are not justiciable. If the State is unable to implement any provisions of Part IV, no action can be brought against the State in a law court. For this want of enforceability there has been much criticism. But the criticism is not justified. Though by their very nature they are not justiciable in the court of law, yet the State authorities have to answer for them to the electorate at the time of election. The idea of a welfare State envisaged in our Constitution can only be achieved if the States endeavour to implement them with a high sense of moral duty.

6. A Federation with strong centralising tendency.—The most remarkable feature of the Indian Constitution is that being a federal Constitution it acquires a unitary character during the time of emergency. During the proclamation of emergency the normal distribution of powers between the Centre and the States undergoes a vital change. The Union Parliament is empowered to legislate on any subjects mentioned in the State List. The Central Government is empowered to give directions to States as to the manner in which it should exercise its executive powers. The financial arrangements between the Centre and States can also be altered by the Union Government. Thus during the proclamation of emergency all powers are centralised in the Union Government and Constitution acquires a unitary character. This combination of federal and unitary system is unique feature of the Indian Constitution. This feature of the Constitution can be better understood in the historical background upon which the federalism has been introduced in India and also in the light of the experience in other federal countries.

7. Adult Suffrage.—The old system of communal electorates has been abolished and the uniform adult suffrage system has been adopted. Under the Indian Constitution every man and woman above 18⁹ years of age has been given the right to elect representatives for the legislature. The adoption of the universal Adult Suffrage (Article 326) without any qualification either of sex, property, taxation, or the like is a bold experiment in India, having regard to the vast extent of the country and its population, with an overwhelming illiteracy. This suffrage is wider than all the democratic countries which have given right to vote to their people. In spite of many difficulties, this bold experiment has been crowned with success. This is evident with the increased number of voters on the electoral rolls in the general elections.

8 Constituent Assembly Debate, Vol. VI, pp. 594-95

9 The Constitution 61st Amendment Act., 1989

8. An Independent Judiciary.—Mere enumeration of a number of fundamental rights in a Constitution without any provision for their proper safeguards will not serve any useful purpose. Indeed, the very existence of a right depends upon the remedy for its enforcement. Unless there is remedy there is no right, goes a famous maxim. For this purpose an independent and impartial judiciary with a power of judicial review has been established under the Constitution of India. It is the custodian of the rights of citizens. Besides, in a federal Constitution it plays another significant role of determining the limits of power of the Centre and States.

9. A Secular State.—A Secular State has no religion of its own as recognised religion of State. It treats all religions equally. The Preamble declares the resolve of the people of India to secure to all its citizens "liberty of.....belief, faith and worship". Articles 25 to 28 of the Constitution give concrete shape to this concept of secularism. It guarantees to every person the freedom of conscience and the right to profess, practise and propagate religion. In a secular State, the State only regulates the relationship between man and man. It is not concerned with the relationship of man with God. One may worship God according to the dictates of his own conscience. However it is to be noted that the freedom of religion is not an absolute freedom, but subject to the regulatory power of the State. In the name of religion nothing can be done which is against public order, morality and health of the public. Secularism is also subject to 'democratic socialism'. Religious freedom cannot therefore be used to practice economic exploitation. The right to acquire, own and administer property by religious institutions is subject to the regulatory power of the State.

Single Citizenship.—Though the Constitution of India is federal and provides for dual polity i.e., Centre and States, but it provides for a single citizenship for the whole of India. The American Constitution provides for dual citizenship i.e., the citizen of America and a State citizenship. On the other hand, there is only one citizenship in India i.e., the citizenship of India. There is no State citizenship. Every Indian is the citizen of India and enjoys the same rights of citizenship no matter in what State he resides.

10. Fundamental Duties.—The Constitution (42nd Amendment) Act, 1976 has introduced a Code of ten "Fundamental Duties" for citizens. The fundamental duties are indeed to serve as a constant reminder to every citizen that while the Constitution has specifically conferred on them certain fundamental rights, it also requires the citizens to observe certain basic norms of democratic conduct and democratic behaviours.

