

## **Module 1-Introduction and Basic Information about Indian Constitution:**

Meaning of the constitution law and constitutionalism, Historical Background of the Constituent Assembly, Government of India Act of 1935 and Indian Independence Act of 1947, Enforcement of the Constitution, **Indian Constitution and its Salient Features**, The Preamble of the Constitution, Fundamental Rights, Fundamental Duties, Directive Principles of State Policy, Parliamentary System, Federal System, Centre-State Relations, Amendment of the Constitutional Powers and Procedure, The historical perspectives of the constitutional amendments in India, Emergency Provisions: National Emergency, President Rule, Financial Emergency, and Local Self Government – Constitutional Scheme in India.

### **Constitutionalism**

Constitutionalism means that the government should be limited in its powers, and its authority depends upon its ability to observe those limitations. Constitutionalism recognizes the need for a government but insists upon constraints being placed on the powers of the government.

### **Constitution**

A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed.

### **Need of a Constitution**

- It generates trust that is necessary for different kinds of people to live together.
- It specifies how the government will be constituted which means who will have the power and what decisions will they be responsible for.
- It lays down limitations on the powers of the government and makes the citizens aware of their rights.
- It expresses the aspirations of people for building a good society.
- It defines the nature of political system of a country.
- It provides a set of rules that allow the necessary coordination amongst members of society.

### **Characteristics of Indian Constitution**

The Constitution of India has some distinct and unique features as compared to other constitutions to the world. Dr. Ambedkar, the Chairman of Drafting Committee puts it, the framers had tried to accumulate and accommodate the best features of other constitutions, keeping in view the peculiar problems and needs of our country.

#### **The main characteristics are:**

- Longest written constitution
- Partly rigid and flexible
- Democratic Republic
- Parliamentary System of Govt.
- A Federation
- Fundamental Rights
- Directive Principles of State Policy
- Fundamental Duties
- Secular State
- An independent Judiciary
- Single Citizenship

### **Objectives**

- To set up federal form of government with separate state and central governments.

- To set up a democracy in which all power is derived from the people.
- To protect the integrity of India and her sovereign rights over land, sea and air.
- To help India attain its rightful place in the world and work for peace and welfare.

## **Role of Constitution**

- A constitution serves a lot of purpose; its major roles are as follows –
  - It describes rules and regulations that generate a degree of trust and coordination among the people of different strata of a society who live together;
  - It provides a framework within which the government and other institutions work in the country;
  - It lays down the procedure as to how the government will be constituted and the manner in which decisions are taken;
  - It defines the powers, duties, and limits of the respective government.
  - It also tells the rights of the citizens and defines the rule of law and a procedure to protect them.
- All the democratic countries have their own constitutions. But having a full-fledged constitution in a country is not a guarantee for it to be truly democratic.
- The Americans gave themselves a constitution after the War of Independence against the Great Britain in 1787.
- Similarly, the French people approved a democratic constitution after the Revolution, i.e., first in 1791 and recently in 1958. Since then, it has become a practice in all democracies to have a written constitution.
- A compilation of basic rules is called a constitution, and these rules are comprehensive that define –
  - the powers of the elected governments to do things;
  - the limitations for not to do certain things;
  - fundamental rights of the citizen; and

- how the rulers are to be chosen in future.

### **Importance of The Constitution**

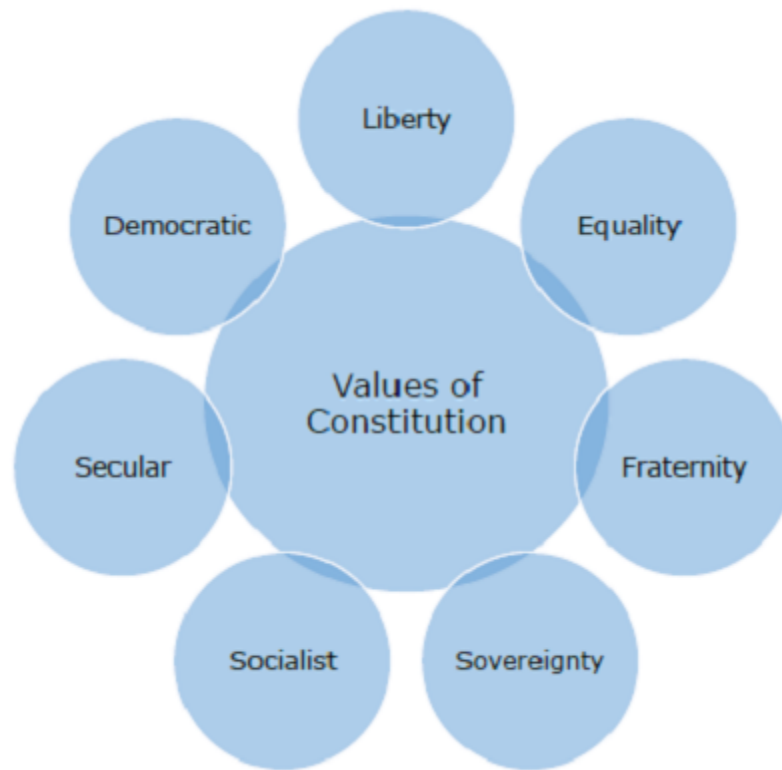
The role of a Constitution is to make certain that the government operates efficiently and in a fair and responsible manner. It does this in three ways:

- It holds the government to the law.
- It provides the distinction of power so that no one part of the government is any more powerful than another.

It provides a series of checks and balances so that when laws are made or amended, the government follows the correct procedure to pass a Bill.

### **Guiding Values of the Constitution**

- India is a Republic Nation and the President of India is the head of the nation. He/she is elected every five years.
- The provisions are written in the Constitution to guarantee Justice for all. No one can be discriminated on the grounds of caste, religion, and gender. Social inequalities on any grounds of caste, religion, and gender are strictly prohibited.
- Welfare for all citizens is the prime objective of the Government; besides, the government also needs to give special attention, particularly to the underprivileged sections of the society.
- The important values of Indian constitutions are depicted in the following illustration –



## **Liberty**

- The Constitution provides every citizen a number of liberties and freedoms under Article 19 to 21, 21A, and 22. It is established that no unreasonable restrictions can be imposed upon citizens to regulate their freedom.
- Right to Freedom under Article 19 includes –
  - The right to freedom of speech and expression;
  - The right to form association;
  - The right to move freely;
  - Reside in any part of the country; and
  - The right to practice any profession, occupation, or business.

## **Equality**

- The Constitution states that all citizens are equal before the law and the government should ensure that the traditional practice of social inequalities on the grounds of caste, religion, and gender has to be ended.
- Right to Equality is enshrined under Articles 14 to 18 of the Indian Constitution of India, which guarantees the right to equality to all persons

and prohibits any kind of discrimination against any citizen on any of the grounds of religion, race, caste, gender, and place of birth.

- Article 14 provides that all persons are equal before the law. This means that all persons shall be equally protected by the laws of the country.
- Article 15 states that no citizen can be discriminated against on the basis of his/her religion, race, caste, sex, or place of birth.
- Article 16 states that the State cannot discriminate against anyone in matters of employment.
- Article 17 abolishes the practice of untouchability from India. It provides that every person has access to all public places including playgrounds, hotels, shops, etc.
- Right against Exploitation is enshrined under Article 23 to 24 of the Constitution of India. It provides fundamental right against exploitation to every citizen of India.
- Article 23 of the Constitution provides for prohibition of any kind of forced labor and any violation of this provision shall be an offence punishable in accordance with the law.
- Article 24 protects the children by stating that no child below the age of 14 shall be employed to work in any factory or mines or any other hazardous employment.

### **Fraternity**

- All the Indians are members of a family, no one is inferior or superior, all are equal and have same rights and duties.

### **Sovereignty**

- The government of India is free to take any decision on internal as well as external matters and no external power can dictate it.

### **Socialist**

- In a socialist country, citizens have the right to property but the government should regulate it by law, the socio-economic activities to reduce inequalities in the society and hence, every citizen has equal right to share the resources of the country.

- The concept of social justice was adopted by the 42nd amendment of Constitution that enables courts to uphold provisions to remove economic inequalities in our society.

## **Secular**

- India is a secular country. There is no official religion of the government and the government treats all the religions equally.
- Articles 25 to 28 provide 'Right to freedom of Religion' for every citizen. This is a Fundamental Right that allows every individual a freedom to live by their religious beliefs and practices as they interpret these beliefs.
- Cultural and Educational Rights (Article 29 to 30) state that all minorities, religious or linguistic, having a distinct language, script or culture of its own, (they) can set up their own educational institutions in order to preserve and develop their language, script, or culture.

## **Democratic**

- The democratic system of government runs according to some basic principles, which are collectively called as 'Rule of Law.'
- In a democratic form of the government, the people of the country enjoy equal political rights, choose to elect and change their representatives, and hold them accountable.

## **Constituent Assembly of India**

The idea of a constituent assembly was first proposed in 1934 by M.N. Roy. However, the actual constituent assembly was formed in 1946 on the basis of the cabinet mission plan.

Initially, the number of members was 389. After partition, some of the members went to Pakistan and the number came down to 299. Out of this, 229 were from the British provinces and 70 were nominated from the princely states.

Dr. Sachchidananda Sinha was the first temporary chairman of the Constituent Assembly. Later, Dr. Rajendra Prasad was elected as the President and its Vice President was Harendra Coomar Mookerjee. BN Rau was the constitutional advisor.

The Constituent Assembly of India was a sovereign body, which was formed on the recommendations of the Cabinet Mission which visited India in 1946 to draft a Constitution for the country. However, later on the Constituent Assembly also faced certain criticism after its formation.

On the basis of the framework provided by the Cabinet Mission, a Constituent Assembly was constituted on 9<sup>th</sup> December, 1946. The Constitution making body was elected by the Provincial Legislative Assembly constituting of 389 members who included 93 from Princely States and 296 from British India.

The seats to the British Indian provinces and princely states were allotted in proportion of their respective population and were to be divided among Muslims, Sikhs and rest of the communities. All sections of the Indian society got representation in the Constituent Assembly in spite of limited suffrage.

**The first meeting of the Constituent Assembly took place on December 9, 1946 at New Delhi with Dr Sachidanand being elected as the interim President of the Assembly.** However, on December 11, 1946, Dr. Rajendra Prasad was elected as the President and H.C. Mukherjee as the Vice-President of the Constituent Assembly.

### **Functions of the Constituent Assembly**

1. Framing the Constitution.
2. Enacting laws and involved in the decision making process.
3. It adopted the National flag on July 22, 1947.
4. It accepted and approved India's membership of the British Commonwealth in May 1949.
5. It elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.
6. It adopted the National anthem on January 24, 1950.
7. It adopted the National song on January 24, 1950.

### **Objective Resolution**

**The Objective Resolution was moved on December 13, 1946 by Pandit Jawaharlal Nehru,** which provided the philosophy and guiding principles for framing the Constitution and later took the form of Preamble of the Constitution of India. This Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947.



The Resolution stated that the Constituent Assembly would firstly proclaim India as an Independent Sovereign Republic which includes all the territories, retaining as autonomous units and possess residuary powers; all the people of India shall be guaranteed justice, equality of status, freedom of thought, expression, belief, faith, worship, vocation, association and subject to law and public morality; adequate safeguards shall be provided for minorities, backward, depressed classes; the integrity of the territories of the Republic and its sovereign rights on land, sea and air and thus India would contribute to the promotion of world peace and the welfare of mankind.

### **Committees of the Constituent Assembly**

The Constituent Assembly appointed eight major committees, which are mentioned below:

1. Constitution Making Union Powers Committee
2. Union Constitution Committee
3. Provincial Constitution Committee
4. Drafting Committee
5. Advisory Committee on Fundamental rights and Minorities
6. Rules of Procedure Committee
7. States Committee
8. Jawaharlal Nehru Steering Committee

Among these eight major committees, the most significant was the Drafting Committee. On 29th August 1947, the Constituent Assembly set up a Drafting Committee under the chairmanship of Dr. B.R. Ambedkar to prepare a Draft Constitution for India.

### **Criticism of the Constituent Assembly**

The grounds on which the Constituent Assembly was criticized were as follows:

**1. Not a Popular body:** Critics argued that the members of the Constituent Assembly were not directly elected by the people of India. The Preamble says that the Constitution has been adopted by the people of India, whereas it was adopted by only few individuals who were not even elected by the people.

**2. Not a Sovereign body:** The critics stated that the Constituent Assembly was not a sovereign body as it was not created by the people of India. It was created by the proposals of the British rulers by executive action before India's independence and its composition was determined by them.

**3. Time consuming:** The critics maintained that the time taken to prepare the Constitution was too much in comparison to other nations. The framers of the US Constitution took only four months to prepare the Constitution.

**4. Dominated by Congress:** The critics continued to argue that the Congress in the Constituent Assembly was quite dominating and imposed its thinking on the people of the country through the Constitution drafted by it.

**5. Dominated by one community:** According to some critics, the Constituent Assembly lacked religious heterogeneity and was dominated by the Hindus.

**6. Dominated by Lawyers:** Critics also argued that the Constitution became bulky and cumbersome due to dominance of lawyers in the Constituent Assembly.

They have made the language of the Constitution difficult for a layman to understand. The other sections of the society couldn't voice their concerns and were unable to participate in the decision making process during the time of drafting of the Constitution.

Therefore, the Constituent Assembly became the Provisional Parliament of India and significantly contributed to the drafting of the historic Constitution of India and later helped to construct the Indian political system.

## **Government of India Act, 1935**

The Government of India Act was passed by the British Parliament in August 1935. It was the longest act enacted by the British Parliament at that time. So, it was divided into two separate acts namely, the Government of India Act 1935 and the Government of Burma Act 1935.

1. There was a growing demand for constitutional reforms in India by Indian leaders.
2. India's support to Britain in the First World War also aided in British acknowledgement of the need for the inclusion of more Indians in the administration of their own country.
3. The Act was based on:

- Simon Commission Report
- The recommendations of the Round Table Conferences
- The White Paper published by the British government in 1933 (based on the Third Round Table Conference)
- Report of the Joint Select Committees.

This Act divided powers between the centre and the provinces. The Viceroy was vested with residual power. There were three lists which gave the subjects under each government.

- Federal List (Centre)
- Provincial List (Provinces)
- Concurrent List (Both)

### **Changes Brought by the Act**

#### **Provincial autonomy**

- The Act gave more autonomy to the provinces.
- Diarchy was abolished at the provincial levels.
- The Governor was the head of the executive.
- There was a Council of Ministers to advise him. The ministers were responsible to the provincial legislatures who controlled them. The legislature could also remove the ministers.
- However, the governors still retained special reserve powers.
- The British authorities could still suspend a provincial government.

#### **Diarchy at the centre**

- The subjects under the Federal List were divided into two: Reserved and Transferred.
- The reserved subjects were controlled by the Governor-General who administered them with the help of three counsellors appointed by him. They were not responsible to the legislature. These subjects included defence, ecclesiastical affairs (church-related), external affairs, press, police, taxation, justice, power resources and tribal affairs.
- The transferred subjects were administered by the Governor-General with his Council of Ministers (not more than 10). The Council had to act in confidence with the legislature. The subjects in this list included local government, forests, education, health, etc.

- However, the Governor-General had 'special powers' to interfere in the transferred subjects also.

### **Bicameral legislature**

- A bicameral federal legislature would be established.
- The two houses were the Federal Assembly (lower house) and the Council of States (upper house).
- The federal assembly had a term of five years.
- Both houses had representatives from the princely states also. The representatives of the princely states were to be nominated by the rulers and not elected. The representatives of British India were to be elected. Some were to be nominated by the Governor-General.
- There were to be separate electorates for the minority communities, women and the depressed classes.
- Bicameral legislatures were introduced in some provinces also like Bengal, Madras, Bombay, Bihar, Assam and the United Provinces.

### **Federal court**

- A federal court was established at Delhi for the resolution of disputes between provinces and also between the centre and the provinces.
- It was to have 1 Chief Justice and not more than 6 judges.

### **Indian Council**

- The Indian Council was abolished.
- The Secretary of State for India would instead have a team of advisors.

### **Franchise**

- This Act introduced direct elections in India for the first time.

### **Reorganisation**

- Sindh was carved out of Bombay Presidency.
- Bihar and Orissa were split.
- Burma was severed off from India.
- Aden was also separated from India and made into a Crown colony.

### **Other Key Points**

- The British Parliament retained its supremacy over the Indian legislatures both provincial and federal.
- A Federal Railway Authority was set up to control Indian railways.
- The act provided for the establishment of Reserve Bank of India.
- The Act also provided for the establishment of federal, provincial and joint Public Service Commissions.
- The Act was a milestone in the development of a responsible constitutional government in India.
- The Government of India Act 1935 was replaced by the Constitution of India after independence.
- The Indian leaders were not enthusiastic about the Act since despite granting provincial autonomy the governors and the viceroy had considerable 'special powers'.
- Separate communal electorates were a measure through which the British wanted to ensure the Congress Party could never rule on its own. It was also a way to keep the people divided.

### **Indian Independence Act or Lord Mountbatten Plan**

The Indian Independence Act, 1947 received the royal assent and entered into force on 18<sup>th</sup> July 1947. This Act put into action the Mountbatten Plan for the independence and partition of India.

### **Indian Independence Act**

- The Indian Independence Act, 1947 was an act of the British Parliament that partitioned India into two independent dominions of India and Pakistan.
- The legislation was drafted by the Labour government of Clement Attlee. It was based on the Mountbatten Plan or the 3rd June Plan which was formulated after the leaders of the Indian National Congress and the Muslim League agreed to the recommendations of the Viceroy Lord Mountbatten.
- Lord Mountbatten came to India with the specific task of seeing over the handing over of the authority to Indians. But the INC and the League could not agree on the question of partition.
- An initial plan proposed by Mountbatten known as the Dickie Bird Plan was opposed by Nehru. According to this plan, the provinces were to be declared independent and then allowed to join or not join the Constituent Assembly. Nehru opposed this as it would, in his opinion, would lead to the country's balkanisation.

- Then, Mountbatten came up with the last plan known as the 3 June Plan which was accepted by all parties. The INC, which was opposed to any partition of the country, finally accepted it as an inevitable process.
- As per this plan, India would be partitioned into India and Pakistan. The constitution framed by the Constituent Assembly would not be applicable to the areas which would go into Pakistan. These provinces would then decide on a separate constituent assembly.
- The Legislative Assemblies of Punjab and Bengal voted for the partition according to which these provinces were to be divided between the two dominions along religious lines.
- The assembly of Sind was given the choice to join the Indian Constituent Assembly or not. It decided to join Pakistan. In the North Western Frontier Province (NWFP) and Sylhet, a referendum was to be held which would decide the country they were to join.
- The complete legislative authority would be given to the Constituent Assemblies of the new countries.
- The Act decided to grant independence to India and Pakistan with effect from 15<sup>th</sup> August 1947.
- The new boundaries of the dominions would be demarcated by the Boundary Commission.
- British suzerainty over the princely states was to end. These states could decide to join either India or Pakistan or remain independent. Over 560 states decided to merge with India.
- The British emperor would cease to use the title 'Emperor of India'.
- Until the new dominions' constitutions would become effective, the heads of state would be the respective Governor-Generals who would continue to assent laws passed by the Constituent Assemblies in the name of the king.
- This Act received the royal assent on 18<sup>th</sup> July 1947 and entered into force.
- Pakistan became independent on 14<sup>th</sup> August and India on 15<sup>th</sup> August 1947. Muhammad Ali Jinnah was appointed Pakistan's Governor-General and Lord Mountbatten became India's.

Jinnah left for Karachi on August 7, 1947. Here the Constituent assembly of Pakistan met on August 11, 1947 and elected him the President. Three days later he was sworn in as Governor General of Pakistan. On the midnight of 14 August and 15 August 1947, India and Pakistan came into existence. The Constituent assembly then appointed Lord Mountbatten as the First Governor General of the

Indian Dominion. In the Morning of August 15, 1947, a new cabinet headed by Jawaharlal Nehru was sworn in. India paid a heavy price, thereafter in the form of thousands of lives lost in the fire of partition.

### **Enforcement of the Constitution**

- The Constitution of India came into force on 26 January, 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.
- The date of 26th January was chosen to commemorate the historical day as on this day in 1930 that Purna Swaraj day was celebrated and the tricolor flag of Indian independence was unfurled following the resolution of the Lahore Session (December 1929) of the Indian National Congress.
- Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and short title contained in Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 came into force on November 26, 1949 itself.
- The remaining provisions (the major part) of the Constitution came into force on January 26, 1950. This day is referred to in the Constitution as the ‘date of its commencement’ and celebrated as the Republic Day.
- With the commencement of the Constitution, the Indian Independence Act of 1947 and the Government of India Act of 1935, with all enactments amending or supplementing the latter Act, were repealed. The Abolition of Privy Council Jurisdiction Act (1949) was however continued.

### **Key Features of Indian Constitution**

- Following are the important features of the Indian Constitution –
  - Indian Constitution is a ‘**written**’ constitution.
  - Indian Constitution is ‘**flexible**’ (it can be amended), but it is also ‘**rigid**’ (as some part, i.e., its ‘**basic structure**’ cannot be amended).
  - Indian Constitution is ‘**Unitary**’ (as Center has more power), but it is also ‘**Federal**’ (as power is divided between the Center and the State).

### **Other Facts of Constitution**

- The Indian National Congress made a demand for a Constituent Assembly in 1934, which came into existence for drafting the constitution of India on 9 December 1946.
- The Constituent Assembly drafted the Constitution for independent India between 9 December 1946 and 26 November 1949.
- We, the people of India, have adopted and enacted the Indian Constitution on 26 November 1949; however, it was made fully functional on 26 January 1950.
- Constitution is a fundamental set of rules and principles on the basis of which the people of this country obliged to be governed by.
- The fundamental rules of Constitution define the type of government and its constituent's parts as well as the nature of the policies to be adopted by the country.
- So, the Constitution serves as a pivot in striking a balance between the differences and provides safeguards to the interests of each of its citizen.
- Likewise, the Constitution of India makes India a democratic country and determines –
  - the procedures of government formation;
  - the methods and process of government's functionality; and
  - the process of interactions among the different parts of the government in the specific area of their work.

In addition, the Constitution also defines a list of Fundamental Rights that are an important part of the Constitution to protect the interest of every citizen against the tyranny of the state as well as from the dominance of a particular community (Who are in majority and in power).

The Constitution is the supreme law of the land and the source of all the powers and authority of the government and its organs. Likewise, the government not only derives its origins from the Constitution, but discharges its functions and responsibilities within the framework of the Constitution.

### **Preamble of the Constitution**

The preamble can be referred to as the preface which highlights the essence of the entire Constitution. It was adopted on 26 November 1949 by the Constituent Assembly and came into effect from 26th January, 1950. The 'preamble' to the



Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document.

The word of the Preamble **We The People** “ signifies that the power is ultimately vested in the hands of the people of India . So far the preamble has been amended only once in 1976 by 42<sup>nd</sup> amendment (change) which inserted the words **Socialism, Secularism and Integrity**.

### **Sovereign**

The word sovereign means supreme or independence. India is internally and externally sovereign - externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people.

### **Socialist**

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State. The term socialist here means democratic socialism i.e. achievement of socialistic goals through democratic, evolutionary and non-violent means.

### **Secular**

Secular means the relationship between the government and the people which is determined according to constitution and law. By the 42nd Amendment, the term “Secular” was also incorporated in the Preamble.

Secularism is the basic structure of the Indian constitution. The Government respects all religions.

### **Democratic**

The first part of the preamble “We, the people of India” and, its last part “give to ourselves this Constitution” clearly indicate the democratic spirit involved even in the Constitution. India is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system popularly known as "one man one vote".

### **Republic**

As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. . The leader of the state is elected by the people.

## **Justice**

The term 'justice' in the preamble refers to three varying aspects - Political, Social and Economic which are secured through different provisions of Fundamental Rights & Directive Principles of State Policy.

## **Liberty**

The ideal of Liberty refers to the freedom on the activities of Indian nationals. All the citizens are secured with liberty of thought, expression, belief, faith & worship through the Fundamental Rights. However, liberty does not mean freedom to do anything, and it must be exercised within the constitutional limits.

## **Equality**

This envisages that no section of the society enjoys special privileges and individuals are provided with adequate opportunities without any discrimination. Again, there are three dimensions of Equality - Political, Economic & Civic.

## **Fraternity**

This refers to a feeling of brotherhood & a sense of belonging with the country among its people.

## **Fundamental Rights**

Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens. They are applied without discrimination on the basis of race, religion, gender, etc. Significantly, fundamental rights are enforceable by the courts, subject to certain conditions.

These rights are called fundamental rights because of two reasons:

1. They are enshrined in the Constitution which guarantees them
2. They are justiciable (enforceable by courts). In case of a violation, a person can approach a court of law.

## **List of Fundamental Rights**

There are six fundamental rights of Indian Constitution along with the constitutional articles related to them are mentioned below:

- Right to Equality (Article 14-18)
- Right to Freedom (Article 19-22)
- Right against Exploitation (Article 23-24)

- Right to Freedom of Religion (Article 25-28)
- Cultural and Educational Rights (Article 29-30)
- Right to Constitutional Remedies (Article 32)

### **1. Right to Equality (Articles 14 – 18)**

Right to equality guarantees equal rights for everyone, irrespective of religion, gender, caste, race or place of birth. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc. This right also includes the abolition of titles as well as untouchability.

### **2. Right to Freedom (Articles 19 – 22)**

Freedom is one of the most important ideals cherished by any democratic society. The Indian Constitution guarantees freedom to citizens. The freedom right includes many rights such as:

- Freedom of speech
- Freedom of expression
- Freedom of assembly without arms
- Freedom of association
- Freedom to practise any profession
- Freedom to reside in any part of the country

### **3. Right against Exploitation (Articles 23 – 24)**

This right implies the prohibition of traffic in human beings, *begar*, and other forms of forced labour. It also implies the prohibition of children in factories, etc. The Constitution prohibits the employment of children under 14 years in hazardous conditions.

### **4. Right to Freedom of Religion (Articles 25 – 28)**

This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

### **5. Cultural and Educational Rights (Articles 29 – 30)**

These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture. Educational rights are for ensuring education for everyone without any discrimination.

## **6. Right to Constitutional Remedies (32 – 35)**

The Constitution guarantees remedies if citizens' fundamental rights are violated. The government cannot infringe upon or curb anyone's rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.

### **Fundamental Rights Available Only to Indian Citizens**

The following is the list of fundamental rights that are available only to citizens (and not to foreigners):

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth (Article 15).
2. Equality of opportunity in matters of public employment (Article 16).
3. Protection of freedom of:(Article 19)
  - Speech and expression
  - Association
  - Assembly
  - Movement
  - Residence
  - Profession

Protection of the culture, language and script of minorities (Article 29).

Right of minorities to establish and administer educational institutions (Article 30).

### **Importance of Fundamental Rights**

Fundamental rights are very important because they are like the backbone of the country. They are essential for safeguarding the people's interests.

### **Amend-ability of Fundamental Rights**

Any changes to the fundamental rights require a constitutional amendment that should be passed by both the Houses of Parliament. The amendment bill should be passed by a special majority of Parliament.

## **Fundamental Duties**

The idea of Fundamental Duties is inspired from the Constitution of Russia. These were incorporated in Part IV-A of the Constitution by the 42<sup>nd</sup> Constitutional Amendment Act, 1976 on the recommendations of Swaran Singh Committee.

Originally 10 in number, 1 more duty was added through the 86<sup>th</sup> Constitutional Amendment Act, 2002. All the eleven duties are listed in Article 51-A of the Constitution (the sole Article in Part-IV-A).

The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to their country, their society and to their fellow-citizens. However, like the Directive Principles, the duties are also non-justiciable in nature.

## **List of Fundamental Duties**

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- To cherish and follow the noble ideals that inspired the national struggle for freedom.
- To uphold and protect the sovereignty, unity and integrity of India;
- To defend the country and render national service when called upon to do so;
- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
- To value and preserve the rich heritage of the country's composite culture;
- To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
- To develop scientific temper, humanism and the spirit of inquiry and reform;

- To safeguard public property and to abjure violence;
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
- To provide opportunities for education to his child or ward between the age of six and fourteen years (added by the 86th Constitutional Amendment Act, 2002).

### **Facts about Fundamental Duties**

- Fundamental Duties are categorized into two – Moral Duty & Civic Duty
  - Moral Duty: cherishing noble ideals of freedom struggle
  - Civic Duty: respecting the Constitution, National Flag and National Anthem
- They essentially contain just a codification of tasks integral to the Indian way of life
- The Fundamental Duties are confined to Indian citizens only and do not extend to foreigners unlike a few Fundamental Rights
- They are also non-justiciable similar to Directive Principle of State Policies
- There is no legal sanction against their violation

### **Concept of Directive Principles of State Policy**

The Constitution lays down certain Directive Principles of State Policy, which though not justifiable, are 'fundamental in governance of the country', and it is the duty of the State to apply these principles in making laws.

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

The Sapru Committee in 1945 suggested two categories of individual rights. One being justiciable and the other being non-justiciable rights. The justiciable rights, as we know, are the Fundamental rights, whereas the non-justiciable ones are the Directive Principles of State Policy.

DPSP are ideals which are meant to be kept in mind by the state while formulating policies and enacting laws. There are various definitions to Directive Principles of State which are given below:

- They are an ‘instrument of instructions’ which are enumerated in Government of India Act, 1935
- They seek to establish economic and social democracy in the country
- DPSPs are Ideals which are not legally enforceable by the courts for their violation

### **Classification of Directive Principles of State Policy**

Indian Constitution has not originally classified DPSPs but on the basis of their content and direction, they are usually classified into three types- Socialistic Principles, Gandhian Principles and, Liberal Intellectual Principles.

The details of the three types of DPSPs are given below:

#### **DPSP - Socialistic Principles**

They are the principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:

Article 38 Promote the welfare of the people by securing a social order through justice—social, economic and political—and to minimize inequalities in income, status, facilities and opportunities

Article 39 Secure citizens:

- Right to adequate means of livelihood for all citizens
- Equitable distribution of material resources of the community for the common good
- Prevention of concentration of wealth and means of production
- Equal pay for equal work for men and women
- Preservation of the health and strength of workers and children against forcible abuse
- Opportunities for the healthy development of children

Article 39A Promote equal justice and free legal aid to the poor

Article 41 In cases of unemployment, old age, sickness and disablement, secure citizens:

- right to work

- Right to education
- Right to public assistance

Article 42 Make provision for just and humane conditions of work and maternity relief

Article 43 Secure a living wage, a decent standard of living and social and cultural opportunities for all workers

Article 43A Take steps to secure the participation of workers in the management of industries

Article 47 Raise the level of nutrition and the standard of living of people and to improve public health

### **DPSP - Gandhian Principles**

These principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement. Under various articles, they direct the state to:

Article 40 Organize village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government

Article 43 Promote cottage industries on an individual or co-operation basis in rural areas

Article 43B Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies

Article 46 Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation

Article 47 Prohibit the consumption of intoxicating drinks and drugs which are injurious to health

Article 48 Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds

### **DPSP - Liberal-Intellectual Principles**



These principles reflect the ideology of liberalism. Under various articles, they direct the state to:

Article 44 Secure for all citizens a uniform civil code throughout the country

Article 45 Provide early childhood care and education for all children until they complete the age of six years

Article 48 Organize agriculture and animal husbandry on modern and scientific lines

Article 49 Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance

Article 50 Separate the judiciary from the executive in the public services of the State

Article 51

- Promote international peace and security and maintain just and honourable relations between nations
- Foster respect for international law and treaty obligations
- Encourage settlement of international disputes by arbitration

### **DPSPs added by the 42nd Amendment Act, 1976**

42nd Amendment Act, 1976 added four new Directive Principles in the list:

Article 39 To secure opportunities for the healthy development of children

Article 39A To promote equal justice and to provide free legal aid to the poor

Article 43A To take steps to secure the participation of workers in the management of industries

Article 48A To protect and improve the environment and to safeguard forests and wildlife.

### **Facts about Directive Principles of State Policies:**

1. A new DPSP under Article 38 was added by the 44th Amendment Act of 1978, which requires the State to minimise inequalities in income, status, facilities and opportunities.

2. The 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.

3. A new DPSP under Article 43B was added by the 97th Amendment Act of 2011 relating to cooperative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

4. The Indian Constitution under Article 37 makes it clear that ‘DPSPs are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.’

### **Criticism of Directive Principles of State Policy**

The following reasons are responsible for the criticism of Directive Principles of State Policy:

- It has no legal force
- It is illogically arranged
- It is conservative in nature
- It may produce constitutional conflict between centre and state

### **Parliamentary system**

A democratic form of government in which the party (or a coalition of parties) with the greatest representation in the parliament (legislature) forms the government, its leader becoming prime minister. Executive functions are exercised by members of the parliament appointed by the prime minister to the cabinet. The parties in the minority serve in opposition to the majority and have the duty to challenge it regularly. Prime ministers may be removed from power whenever they lose the confidence of a majority of the ruling party or of the parliament.

Countries around the world practice democracy through different types of institutions. However, most democracies in the world today use the parliamentary system as opposed to a presidential system like that used in the United States. A few examples among the many parliamentary democracies are Canada, Great Britain, Italy, Japan, Latvia, the Netherlands, and New Zealand.

Defining characteristics of the parliamentary system are the supremacy of the legislative branch within the three functions of government—executive, legislative, and judicial—and blurring or merging of the executive and legislative functions. The legislative function is conducted through a unicameral (one-chamber) or bicameral (two-chamber) parliament composed of members accountable to the people they represent. A prime minister and the ministers of several executive departments of the government primarily carry out the executive function.

The political party or coalition of parties that make up a majority of the parliament's membership select the prime minister and department ministers. The prime minister usually is the leader of the majority party, if there is one, or the leader of one of the parties in the ruling coalition.

In a parliamentary system, laws are made by majority vote of the legislature and signed by the head of state, who does not have an effective veto power. In most parliamentary democracies, the head of state can return a bill to the legislative body to signify disagreement with it. But the parliament can override this “veto” with a simple majority vote.

In most parliamentary systems, there is a special constitutional court that can declare a law unconstitutional if it violates provisions of the supreme law of the land, the constitution. In a few parliamentary systems, such as Great Britain, New Zealand, and the Netherlands, there is no provision for constitutional or judicial review, and the people collectively possess the only check on the otherwise supreme legislature, which is to vote members of the majority party or parties out of office at the next election.

A parliamentary democracy is directly and immediately responsive to popular influence through the electoral process. Members of parliament may hold their positions during an established period between regularly scheduled elections. However, they can be turned out of office at any point between the periodic parliamentary elections if the government formed by the majority party loses the support of the majority of the legislative body. If the governing body, the prime minister and his cabinet of executive ministers, suffers a “no confidence” vote

against it in the parliament, then it is dissolved and an election may be called immediately to establish a new parliamentary membership. A new prime minister and cabinet of executive ministers may be selected by newly elected members of the parliament.

A few parliamentary democracies function as semi-presidential systems. They have a president, elected by direct vote of the people, who exercises significant foreign policy powers apart from the prime minister. They also have a constitutional court with strong powers of constitutional or judicial review. For example, the constitutional democracy of Lithuania is a parliamentary system with characteristics of a presidential system, such as a president of the republic who is directly elected by the people and who has significant powers regarding national defense, military command, and international relations.

Advocates of the parliamentary system claim it is more efficient than the presidential alternative because it is not encumbered by checks and balances among power-sharing departments, which usually slow down the operations of government and sometimes create paralyzing gridlocks. Further, in the parliamentary system, a government that has lost favor with the people can be voted out of office immediately.

Advocates claim that by responding more readily to the will of the people the parliamentary system is more democratic than the presidential alternative. However, both parliamentary and presidential systems can be genuine democracies so long as they conform to the essential characteristics by which a democracy is distinguished from a non-democracy, including constitutionalism, representation based on democratic elections, and guaranteed rights to liberty for all citizens.

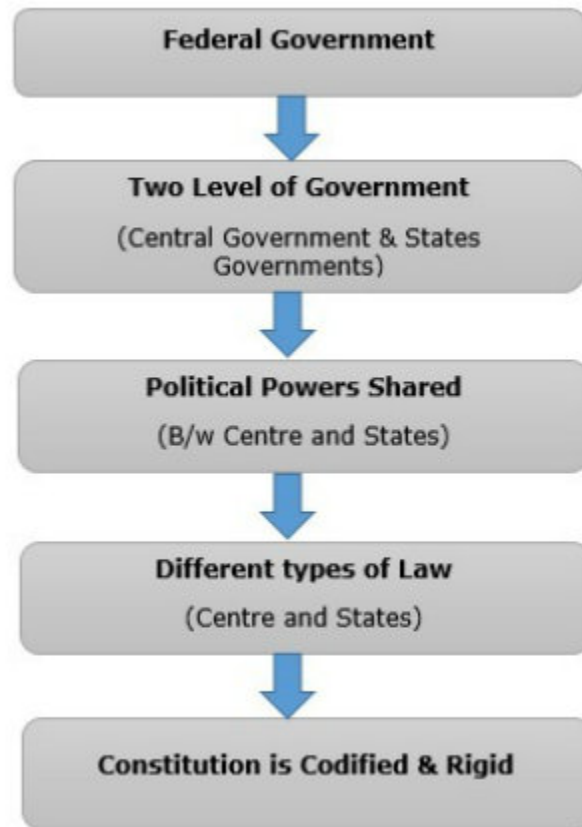
## **Federal system**

A **federal system** of government is one that divides the powers of government between the national government and state and local governments. The Constitution of the United States established the **federal system**, also known as Federalism.

- Federalism is an institutional mechanism to accommodate two sets of polities, i.e., first is the center or national level and second is at the provincial or regional level. Both the sets of polities are autonomous in its own sphere.
- Each level of the polity has distinct powers and responsibilities and has a separate system of government.

- The details of this federalism or dual system of government are generally found in a written constitution.
- Written Constitution is considered to be supreme and also the source of the power of both sets of government.
- Certain subjects, which are the concern of a nation as a whole, for example, defense or currency, are the responsibility of the union or central government.
- On the other hand, regional or local matters are the responsibility of the regional or state government.
- In case of a conflict between the center and the state on any issue, the judiciary has the powers to resolve the disputes.
- Though the Indian Constitution does not use the word ‘federalism’ anywhere; however, the structure of Indian government is divided into two sets of governments i.e.
  - For the entire nation known as the ‘**Union Government**’ (or central government) and
  - For each unit or state known as the ‘**State Government.**’

The following diagram illustrates the basic structure of “Federal System” –



## **Subjects of Federal System**

- The Constitution clearly demarcates subjects, which are under the exclusive domain of the Union and those under the exclusive of States.
- Likewise, the Constitution describes three lists –
  - Union List (subjects dealt by only Central Government);
  - State List (subjects dealt normally by States only); and
  - Concurrent List (both Union and State have the power to legislate these subjects).

## **Union List**

- Subjects of Union List are –
  - Defense
  - Atomic Energy

- Foreign Affairs
- War and Peace
- Banking
- Railways
- Post and Telegraph
- Airways
- Ports
- Foreign Trade
- Currency & Coinage

### **State List**

- Subjects of State Lists are –
  - Agriculture
  - Police
  - Prison
  - Local Government
  - Public Health
  - Land
  - Liquor
  - Trade and Commerce
  - Livestock and Animal Husbandry
  - State Public Services

### **Concurrent List**

- Subjects of Concurrent Lists are –
  - Education
  - Transfer of Property other than Agricultural land
  - Forests
  - Trade Unions
  - Adulteration
  - Adoption and Succession

## Other Facts

- Article 257 of the Constitution is read as: The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
- The *Sarkaria* Commission was appointed by the central government in 1983 to examine the issues relating to center-State relations; the Commission submitted its report in 1988 and recommended that appointments of Governors should be strictly non-partisan.
- In 1953, the States Reorganization Commission was set up and it recommended the creation of linguistic States, at least for the major linguistic groups.
- Resultantly, Gujarat and Maharashtra were created in 1960 and the process is still going on.
- The Constitution of India (under Article 371) has given some special provisions for some States after considering their peculiar social and historical circumstances. However, most of the special provisions are related to the north eastern States (i.e. Assam, Nagaland, Arunachal Pradesh, Mizoram, etc.) largely due to a sizeable indigenous tribal population with a distinct history and culture.
- Under Article 370 of the Constitution, the northern most state Jammu and Kashmir has also special provisions.
- One of the major differences between the other States and the State of J&K are that no emergency due to internal disturbances can be declared in J&K without the concurrence of the State.
- The Union Government cannot impose a financial emergency in J&K and the Directive Principles also do not apply in J&K.
- An amendment to the Indian Constitution (under Art. 368) can only apply in concurrence with the government of J&K.

## Centre-State Relations

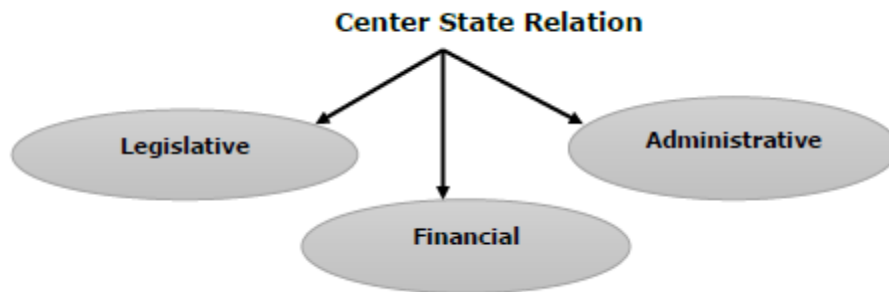


Articles 245 to 263 of Part XI and Articles 268 to 293 of Part XII describe three types of Center-State relations. The centre-state relations are divided into three parts, which are mentioned below:

(A) Legislative Relations (Article 245-255)

(B) Administrative Relations (Article 256-263)

(C) Financial Relations (Article 268-293)



## **Legislative Relations**

Seventh Schedule of the Constitution provides for the distribution of legislative powers between the centre and the states. The legislative subjects are divided into List I (the Union List), List II (the Concurrent List) and List III (the State List).

- At present, there are 100 subjects in the Union list which includes subjects such as foreign affairs, defense, railway, postal services, banking, atomic energy, communication, currency etc.
- At present, there are 61 subjects in the State list. The list includes subjects such as police, public order, roadways, health, agriculture, local government, drinking water facilities, sanitation etc.

At present, there are 52 subjects in the concurrent list. The list includes subjects such as education, forests, protection of wild animals and birds, electricity, labour welfare, criminal law and procedure, civil procedure, population control and family planning, drugs etc.

## **Administrative Relations**

Article 256 to 263 deals with the administrative relations between the centre and the states. Article 256 states that "the executive power of every State shall be so exercised as to ensure compliance with the laws made by the parliament and any

existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

## **Financial Relations**

The Constitution deals with the centre-state financial relations in Article 268-293 of Part XII.

- Allocation of taxing powers

The Constitution has provided the union government and the state governments with the independent sources of revenue. It allocates the powers to centre and the states in the following way:

- (i) The parliament has exclusive power to levy taxes on the subjects mentioned in the Union List.
- (ii) The state legislatures has exclusive power to levy taxes on the subjects mentioned in the State List
- (iii) Both the parliament and the state legislature are empowered to levy taxes on the subjects mentioned in the Concurrent List.
- (iv) The parliament has exclusive power to levy taxes on the matters related to the residuary subjects.

## **Amendments of the Indian Constitution**

To define constitutional amendment process, Article 368 of Part XX of Indian Constitution provides for two types of amendments.

1. By a special majority of Parliament
2. By a special majority of the Parliament with the ratification by half of the total states

But, some other articles provide for the amendment of certain provisions of the Constitution by a simple majority of Parliament, that is, a majority of the members of each House present and voting (similar to the ordinary legislative process). Notably, these amendments are not deemed to be amendments of the Constitution for the purposes of Article 368.

Any of these amendments follow a certain procedure. Hence, this article will talk in detail about the types of amendments in the Indian Constitution, the Constitutional Amendment Process and the scope of amendability.

## **Types of Amendments in Indian Constitution**

The list of types of amendments can be found below. There are three ways in which the Constitution can be amended:

1. Amendment by simple majority of the Parliament
2. Amendment by special majority of the Parliament
3. Amendment by special majority of the Parliament and the ratification of at least half of the state legislatures.

A brief description of the above types of amendments of the Indian Constitution has been laid down below.

### **1. By Simple Majority of Parliament**

A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. These provisions include:

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.
- Second Schedule-emoluments,
- Allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
- Quorum in Parliament.
- Salaries and allowances of the members of Parliament.
- Rules of procedure in Parliament.
- Privileges of the Parliament, its members and its committees.
- Use of the English language in Parliament.
- Number of puisne judges in the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Conferment of more jurisdiction on the Supreme Court.
- Citizenship-acquisition and termination.
- Elections to Parliament and state legislatures.
- Delimitation of constituencies.

- Union territories
- Fifth Schedule-administration of scheduled areas and scheduled tribes.
- Sixth Schedule-administration of tribal areas.

## **2. By Special Majority of Parliament**

- The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.
- The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.
- The provisions which can be amended by this way include (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.

## **3. By Special Majority of Parliament and Consent of States**

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- Election of the President and its manner.
- Extent of the executive power of the Union and the states.
- Supreme Court and high courts.
- Distribution of legislative powers between
- the Union and the states.
- Any of the lists in the Seventh Schedule.

- Representation of states in Parliament.
- Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

### **Constitutional Amendment Process**

The procedure for the amendment of the Constitution as laid down in Article 368 is as follows:

- An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament (Lok Sabha & Rajya Sabha) and not in the state legislatures.
- The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
- The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
- Each House must pass the bill separately.
- In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
- If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
- After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
- The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament
- After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.

### **Scope of Amendability in Indian Constitution**

The present position is that the Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic

structure’ of the Constitution. However, the Supreme Court is yet to define or clarify as to what constitutes the ‘basic structure’ of the Constitution.

From the various judgements, the following have emerged as ‘basic features’ of the Constitution:

1. Supremacy of the Constitution
2. Welfare state (socio-economic justice).
3. Principle of equality
4. Sovereign, democratic and republican nature of the Indian polity.
5. Judicial review
6. Free and fair elections
7. The secular character of the Constitution.
8. Freedom and dignity of the individual
9. Independence of Judiciary
10. Separation of powers between the legislature, the executive and the judiciary.
11. Parliamentary system
12. Limited power of Parliament to amend the Constitution
13. Federal character of the Constitution
14. Rule of law
15. Effective access to justice
16. Unity and integrity of the nation
17. Harmony and balance between Fundamental Rights and Directive Principles
18. Reasonableness

### **The historical perspectives of the constitutional amendments in India**

The Constitution of India is the largest constitution in the world. India’s Constitution is the supreme rule of law. The document sets out the framework for the demarcation of fundamental political code, structure, procedures, powers and responsibilities of government institutions and sets out fundamental rights, guidelines and citizens’ duties. The chairman of the drafting committee, B.R. Ambedkar, is generally regarded as the chief architect. The Constitution declares India to be a sovereign, socialist, secular, democratic republic, ensuring justice, equality and freedom for its citizens, and endeavouring to promote brotherhood.

The original Constitution of 1950 is stored in the Parliament House in New Delhi in a helium-filled situation. During the Emergency the words ‘secular’ and ‘socialist’ were added to the preamble in 1976. It was adopted by the Indian Constituent Assembly on 26 November 1949 and took effect on 26 January 1950. Article 368 of the Indian constitution lays that the government can amend the constitution. There are two types of amendment procedure – (i) Rigid and (ii) Flexible. Under the rigid system, it is very difficult for the people to amend the constitution. This is followed by the constitution of the U.S, Canada, Australia whereas, the flexible procedure is where the amendment can be done in the constitution.

The Indian Constitution is both rigid and flexible, i.e. hard to amend but virtually flexible. In compliance with Article 368 of the Indian Constitution, a provision must be made in any of the houses, which must be passed by a large majority or by a simple majority later. If a vote approves the resolution, it will be submitted to the president for his assent. In 70 years of Indian Independence, the constitution has been amended 104 times. Starting with 395 Articles and 8 Schedules, it now stands at more than 450 Articles and 12 Schedules – arising from 104 amendments.

### **Amendment of Indian Constitution – Article 368**

Under Article 368 of the Indian Constitution, the Parliament is empowered to amend it and its procedures. Amendments to the Indian Constitution are not easy to produce and require compliance with other provisions. Article 368 grants Parliament some powers allowing it to amend it while keeping its fundamental form just the same. Article 368 of the Constitution of India cites two types of amendments to the Constitution of India. The form of amendment is by a simple legislative majority (Lok Sabha & Rajya Sabha), the second type of amendment is

by a special parliamentary majority, and the third type is with the approval of a special majority and by half the total state.

### **Reason for Amendment Procedure by Article 368**

The time is not static, it's continuing to change. The Constitution needs to be revised. People's social, cultural, and political situation is starting to shift. If the constitutional changes were not made, we would not be able to encounter the future difficulties and it would become a hurdle in the path of development. There is an explanation of why our founding fathers made the constitution as robust as it is today. It is to ensure the plans are changing with the country's growth. Therefore, according to Article 368, Parliament's powers to amend the constitution are unlimited in respect of parts of the constitution which it wishes to amend.

### **The basic structure of the Indian Constitution**

In the *Kesavanand Bharati case* of 1973, the Supreme Court ruled that the Parliament could not change certain provisions which constitute the basic constitutional framework. Constitutional ideologies which are essential to constitutional survival. Some examples are Free and Fair Election, the nation's Federal nature, Judicial Review, and Power Separation. It notes that some basic legislative frameworks and founding values constitute the foundation of the Constitution. These cannot be touched by anyone.

### **Major Amendments in the Constitution**

First Amendment, 1951

The Constitution (7th Amendment), 1956

The Constitution (9th Amendment Act), 1960

The Constitution (10th Amendment Act), 1961

The Constitution (11th Amendment Act), 1961



The Constitution (12th Amendment Act), 1962  
The Constitution (13th Amendment Act), 1962  
The Constitution (15th Amendment Act), 1963  
The Constitution (24th Amendment Act), 1971  
The Constitution (26th Amendment Act), 1971  
The Constitution (39th Amendment Act), 1975  
The Constitution (40th Amendment Act), 1976  
The Constitution (42nd Amendment Act), 1976  
The Constitution (31st Amendment Act), 1973  
The Constitution (36th Amendment Act), 1975  
The Constitution (37th Amendment Act), 1975  
The Constitution (43rd Amendment Act), 1978  
The Constitution (44th Amendment Act), 1978  
The Constitution (52nd Amendment Act), 1985  
The Constitution (58th Amendment Act), 1987  
The Constitution (61st Amendment Act), 1989  
The Constitution (62nd Amendment Act), 1989  
The Constitution (65th Amendment Act), 1990  
The Constitution (69th Amendment Act), 1991  
The Constitution (71st Amendment Act), 1992  
The Constitution (73rd Amendment Act), 1992  
The Constitution (76th Amendment Act), 1994  
The Constitution (77th Amendment Act), 1995  
The Constitution (80th Amendment Act), 2000  
The Constitution (81st Amendment Act), 2000  
The Constitution (84th Amendment Act), 2001  
The Constitution (86th Amendment Act), 2002  
The Constitution (88th Amendment Act), 2003  
The Constitution (92nd Amendment Act), 2003  
The Constitution (95th Amendment Act), 2010  
The Constitution (96th Amendment Act), 2011  
The Constitution (97th Amendment Act), 2012

## **Emergency**

An emergency is a situation which arises due to the failure of the government machinery which causes or demands immediate action from the authority. According to the Black Law's Dictionary, "*Emergency is a situation which requires quick action and immediate notice as such a situation causes a threat to the life and property in the nation. It is a failure of the social system to deliver reasonable conditions of life*".

### **Emergency Provisions**

- Article 352: Proclamation of Emergency.
- Article 353: Effect of Proclamation of Emergency.
- Article 354: Application of provisions relating to the distribution of revenues while a proclamation of emergency is in operation.
- Article 355: Duty of the Union to protect States against external aggression and internal disturbance.
- Article 356: Provisions in case of failure of constitutional machinery in State.
- Article 357: Exercise of legislative powers under Proclamation issued under Article 356.
- Article 358: Suspension of provisions of article 19 during Emergencies.
- Article 359: Suspension of the enforcement of the rights conferred by Part III during emergencies.
- Article 360: Provisions as to Financial Emergency.

### **Article 352**

**Article 352 (Part XVIII) talks about "*Proclamation of Emergency*".**

**Clause 1 states that National Emergency may be imposed by the President if he is satisfied that there exists a grave situation due to which there is a threat to the security of India or any part of the territory because of:**

- **War**
- **External Aggression**
- **Armed Rebellion**

The provision of Clause 1 states that an Emergency may be proclaimed by the President even when there is no actual occurrence of war, external aggression, and armed rebellion. In this case, the President must be satisfied that there is an imminent danger.

Clause 2 states that another Proclamation may be issued to revoke and to make any variation in the previous Proclamation.

Clause 3 states that the President of India may declare an Emergency when Union Cabinet (Council of Minister headed by the Prime Minister) advice to him in writing.

Clause 4 states that before issuing Proclamation it is required to be placed before both the Houses of Parliament and shall end its effect at the expiration of one month unless both the Houses of Parliament approve it by resolution before the expiration of the said period.

Clause 5 states that proclamation approved in the second resolution shall have an effect up to six months and on expiry of six months, it will end to operate unless it is revoked in between the period.

### **History on National Emergency**

National Emergency has been imposed three times in India so far. The time period in which this happened was from 1962-1977. Brief description of the emergencies are as follows –

**1. An emergency was imposed at the time of Indo-China war by the then President of India Dr Sarvepalli Radhakrishnan on the ground of external aggression from October 26, 1962, to January 10, 1968.**

**2. Again, an Emergency was imposed from December 3, 1971, to March 21, 1977, by the then President of India Mr V.V. Giri during the Indo-Pakistan war. The reason was the same as above i.e. external aggression.**

**3. The third Emergency was imposed due to a clash between Legislature and Judiciary. Mrs Indira Nehru Gandhi, the then Prime Minister of India with**

**the permission of the then President Fakhruddin Ali Ahmed declared an emergency. It was imposed for a period of 19 months from June 25, 1975 to March 21, 1977.**

### **Effects of National Emergency**

Under Article 358, National Emergency suspends the rights guaranteed under Article 19 of the Indian Constitution. Also, other Fundamental Rights get suspended under Article 359 except Article 20 and 21.

Article 20 of the Indian Constitution deals with the “*Protection in respect of conviction from offences*”. This Article is pillars of all the Fundamental Rights which are guaranteed by the Indian Constitution. It protects the right of an individual in case of conviction.

Article 21 of the Indian Constitution deals with “*Protection of life and personal liberty*” because no person shall be deprived of his life and personal liberty except procedure established by law.

Under this kind of Emergency, the State Government comes under the direct control of the Central Government. The State Government has to work as per the direction is given by the Union.

The distribution of financial resources between the Union and the State may be suspended by the President.

The Parliament acquires power over the subjects of the State List which ceases on the expiry of six months.

### **State Emergency**

Article 356 deals with State Emergency or President’s Rule in the State (“*Provisions in case of Failure of Constitutional Machinery in States*”). The President of India has the power to proclaim State Emergency when he receives a report from the Governor of that particular State explaining that the situation in the State Government is such that they cannot carry out the Constitutional provisions.

President’s Rule has been imposed on the State of Jammu and Kashmir for six years and 264 days from January 19, 1990, to October 9, 1996. The State has always been a target for many external elements. The Indian Government imposed

President's Rule to control the situation of Jammu & Kashmir which was facing a military threat from Pakistan.

Punjab was under the President's Rule for 4 years and 259 days from June 11, 1987, to February 25, 1992. The reason for imposing President's rule in Punjab was the control of Khalistan Commando Forces which was a Sikh organisation which was involved in the genocidal attack on Hindus.

Till January 2016, the President's Rule has been imposed 124 times in India. During Indira Gandhi's regime, the President's Rule was invoked for maximum time. The President's Rule under her cabinet was imposed 35 times in various states.

### **Effects of State Emergency**

During the State Emergency or President's Rule, the entire State administrative machinery is transferred to the Union. President becomes executive head of the State and Governor works under his name.

Legislative Assembly of the state may be dissolved or it may be suspended. Parliament took over the charge of making laws in the **66 subjects** of the **List-II** i.e. State List. All the ministers of State Legislative assembly were barred from performing any action as every money bill is required to be first referred to the Parliament for approval.

State's High Court functions independently in such a situation. There is no effect of an emergency in the State Judiciary. High Court may even entertain the petition filed against the President's Rule. In 2016, the Congress Government approached the Nainital High Court against the President's Rule imposed under Narendra Modi's regime.

It was imposed by the then President of India Pranab Mukherjee. The High Court of Uttarakhand gave its verdict in favour of Harish Rawat's government and declared to restore the Congress Government in the State of Uttarakhand. Later, the judgement was upheld by the Supreme Court of India and the Congress Government continued its period of governance.

### **Financial Emergency**

Article 360 deals with “*Provisions as to Financial Emergency*”. Financial Emergency is imposed by the President when there arises any situation which causes a financial threat to India or any part of India.

Financial Emergency has never been imposed in India. However, in 1990, the possibility of financial emergency emerged but the situation was controlled by the Indian Government as in July 1991 the Reserve Bank of India pledged 46.91 tonnes of Gold with Bank of England and Union Bank of Switzerland to raise \$400 million.

### **Effects of Financial Emergency**

During the Financial Emergency, Parliament has the power to reduce the salaries and allowances of the people working under the Union or the State Government. Financial and Money Bills passed by the State Legislature of the State will be sent to the President of India for his consideration.

### **Difference Between National Emergency and President Rule**

National Emergency (Article 352)	President’s Rule (Article 356)
National Emergency is proclaimed under Article 352 on the ground of <i>war, external aggression and armed rebellion</i> .	State Emergency is proclaimed under Article 356 when the State Government cannot be carried out according to the Constitutional provisions.
State Executive and legislature perform their power as mentioned in List II of Schedule VII. Concurrent List power vests in the Central Government.	State Executive powers get vested in the Central. Governor works in the state on the advice of the President. State Legislative Assembly is dissolved or suspended.
The Proclamation may be continued for an indefinite time as no maximum period is	The maximum period up to which State Emergency may continue is three years

prescribed but it is subject to renew every six months.	after which it will cease but it may be further continued after the Constitutional Amendment.
Fundamental Rights are suspended during National Emergency except Article 20 & 21.	There was no effect on the Fundamental Rights of the people of the State.
Resolution for the continuation of the proclamation of emergency must be passed with a special majority.	Resolution can be passed with a simple majority in the Parliament.
The resolution for the revocation of the proclamation can be passed by Lok Sabha.	Resolution for revocation of the proclamation can be passed by President in his discretion.
During this emergency, the Centre's relation undergoes a modification with all the States.	Centre's relation undergoes a modification only with the state under the President's Rule.
There is no delegation of lawmaking power of Parliament under the State list.	President may make laws for the state after consulting with the Members of Parliament from that state.

### **Parliamentary Approval and Duration Of The Emergency**

In India, there are three types of Emergencies and all the three emergencies have a different duration up to which they remain in force. Parliamentary approval also differs in each emergency as the duration for approval of a resolution of emergency is different in each kind of emergency. The Parliamentary procedure for passing the resolution of Emergency is discussed as follows:

### **Parliamentary Approval and Duration Of The National Emergency**

Proclamation of National Emergency operates for the maximum period of six months subject to approval in every six months. There is no period prescribed up to which period may be extended.

Under Article 352, when the President imposes an Emergency, it must be approved by both the Houses of Parliament by a resolution within a month from the date of its issue. Before the 44th Amendment Act, 1978, the period for approval was two months.

Meanwhile, Lok Sabha gets dissolved when the Proclamation was issued or Lok Sabha dissolved without approving the proclamation of Emergency, one month will be counted from the first day of sitting of the Lower House i.e. Lok Sabha after its reconstitution. It is required that in the meantime Rajya Sabha has approved the proclamation.

When both the houses of Parliament approve the proclamation, it will remain in force for six months and there is no maximum time limit for Proclamation. It is subjected to renew by both the Houses of Parliament through resolution in every six months.

If Lok Sabha gets dissolved within six months from the date of issue of the resolution without further approving the Proclamation of Emergency. In this situation, the Proclamation will survive until a month from the first day of Lok Sabha after its reconstitution. It is required that in the meantime Rajya Sabha has approved the Proclamation.

Every resolution for imposing Emergency or continuance of Emergency must be passed by either of the House of Parliament by a special majority, i.e. a majority of the total membership of that house and a majority of not less than 2/3rd members of the house present and voting.

### **Parliamentary Approval and Duration of the State Emergency**

Proclamation of the State Emergency operates for the maximum period of six months or three years (subject to extension of the period).

Under Article 356, when the President imposes Emergency it must be approved by both the Houses of the Parliament by resolution within two months from the date of its issue after which it ceases to affect.

If Lok Sabha gets dissolved when a proclamation was issued, then it must be passed within 30 days from the first day of sitting of Lok Sabha after its reconstitution. In such situations, Rajya Sabha must approve the Proclamation.



The duration of six months can be extended, subject to the approval in six months. But every Proclamation passed under this Article cannot be extended for more than three years.

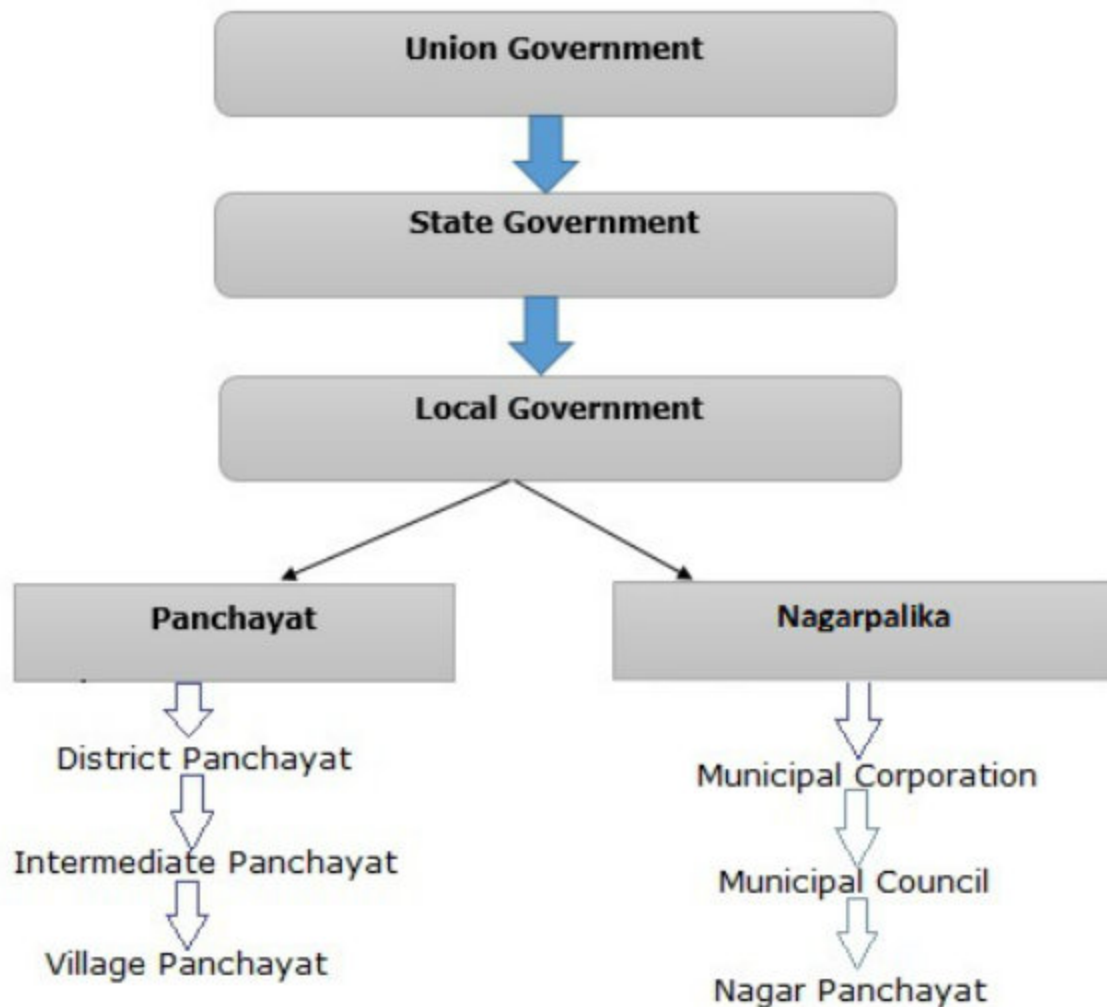
### **Parliamentary Approval and Duration of the Financial Emergency**

Under Article 360, before the President imposes emergency it shall be approved by both Houses of Parliament. Otherwise, after the expiry of two months, from the date of issuance of the proclamation, it ceases to operate.

In case, Lok Sabha dissolves within two months, Lower House is required to approve the proclamation within thirty days from the first day of sitting after its reconstitution. Rajya Sabha must approve it in the meantime.

### **Local Self Government**

- Local government is the government of the village and district level. It is the government closest to the common people that involves in day-to-day life and attempt to resolve problems of ordinary citizens.
- Democracy is in fact about meaningful participation and also about accountability. Hence, strong and vibrant local governments ensure both active participation and purposeful accountability.
- The hierarchy of different levels of Governments (of India) is shown in the following image –



### **Evolution of Local Government**

- In 1882, Lord Rippon, the-then Viceroy of India, took the initiative to form elected local government body.
- Following the Government of India Act 1919, village Panchayats were established in many provinces and the trend continued after the Government of India Act of 1935.
- When the Constitution was prepared, the subject of local government was assigned to the States and it was one of the provisions of the Directive Principles of State Policy.
- After the independence, a three-tier Panchayati Raj system of local government was recommended for the rural areas; resultantly, some of the

states including Gujarat and Maharashtra adopted the system of elected local bodies (1960).

- After 1987, a thorough review of the functioning of local government institutions was initiated and in 1989, the P. K. Thungon Committee recommended constitutional recognition to the local government bodies.
- Finally, in 1992, the 73rd and 74th Constitutional Amendments were passed by the Parliament.
- The 73rd Amendment is about the rural local governments, which are also known as Panchayati Raj Institutions (PRIs).
- The 74th Amendment made the provisions relating to the urban local government (also known as Nagarpalikas).

### **Panchayati Raj**

- Following the 73rd Amendment, all states now have a uniform three tier Panchayati Raj structure as –
  - **Gram Panchayat** – At the bottom level;
  - **Mandal** (also known as Block or Taluka) – Intermediary level; and
  - **Zilla Panchayat** – At the top level.
- A Gram Panchayat covers a village or group of villages.
- The intermediary level is the Mandal covers Block (i.e. a group of gram panchayat).
- The Zilla Panchayat covers the entire rural area of the District.
- All the three levels of Panchayati Raj Institutions are elected directly by the people for five years term.
- One-third of the positions in all panchayat institutions are reserved for the women.
- Twenty-nine subjects (of 11th Schedule of the Constitution), which were earlier in the State list, are transferred to the Panchayati Raj Institutions.
- The 73rd Amendment was not made applicable to the areas inhabited by the Adivasi populations in many states of India; however, a separate provision was passed in 1996 for these areas.

- The State government is required to appoint a State Election Commissioner (independent of Election Commission of India) who would be responsible for conducting elections in the Panchayati Raj Institutions.
- The state government is required to appoint a State Finance Commission once in five years.

## **Nagarpalika**

- The 74th Amendment dealt with urban local bodies (Nagarpalikas or Municipality).
- The Census of India defines an urban area as –
  - A minimum population of 5,000;
  - At least 75% of male working population engaged in non-agricultural occupations, and
  - A density of population is at least 400 persons per sq. km.
- As per the 2011 census (provisional data), about 31 percent of India's population lives in urban areas.
- Many provisions of 74th Amendment are similar to 73rd Amendment.
- The functions of Nagarpalika have been listed in the Twelfth Schedule of the Constitution.
- The Indian population has 16.2 percent Scheduled Castes (SC) and 8.2 percent Scheduled Tribes (ST) and accordingly, the seats for both SC and ST are reserved in local government.

## **Constitutional Scheme in India**

The Indian Constitution is the output of extensive research of various systems across the world. The Constitution of India has borrowed many features from different countries but its spirit is completely Indian.

The drafting committee drew inspiration from many countries and their Constitutions. For example:

- a) The Parliamentary form of government was taken from the British style of governing. The rule of law and the concept of single citizenship were a few other aspects adopted from the British Constitution.
- b) The charter of fundamental rights, federal structure of government, judicial review, and Preamble of the Constitution were a few elements that were borrowed from the United States of America.
- c) The ideals of liberty, equality, and fraternity were taken from the French Constitution.
- d) A few other Constitutions that India borrowed ideas from were Ireland, Canada, the Soviet Union, Australia, South Africa, Japan, and Weimar Constitution (from Germany).

It is truly Indian in spirit as:

- i) protects the rights of all the citizens.
- ii) it serves as the framework for good governance.
- iii) it functions as a social contract between the government and the people governed.

According to Dr. Ambedkar, “The Constitution is workable, it is flexible and it is strong enough to hold the country together both in peacetime and in wartime.”

John Marshall, the fourth Chief Justice of the Supreme Court of the United States, precisely said, “The Constitution is color blind, and it neither knows nor tolerates classes among citizens.”

The same holds to the Indian constitution which gives no scope to 1) ideological clashes, 2) rising intolerance among people of various communities, 3) growing inequality, 4) suppression of disadvantaged or women’s rights; where anything of this nature is unconstitutional or against constitutional morality.

## **Constitution of India-At a glance**

The Indian Constitution is inimitable in its contents and spirit. India, also called Bharat, is a Union of States. It is an Independent Socialist Secular Democratic Republic with a parliamentary system of government.

The Republic is governed in terms of the Constitution of India which was accepted by the Constituent Assembly on 26th November, 1949 and came into force on 26th January, 1950.

The Constitution offers for a Parliamentary form of government which is federal in structure with certain unitary characteristics.

The constitutional head of the Executive of the Union is the President. As per Article 79 of the Constitution of India, the council of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha).

Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to help and advise the President, who shall exercise his/her functions in accordance with the advice.

The real executive power is vested in the Council of Ministers with the Prime Minister as its head.

## **Some Important Questions**

1. Discuss the major features of Government of India Act 1935.
2. Discuss the Directive Principles of State Policy.
3. Discuss the difference in between National Emergency and President Rule.
4. Discuss the Power of the Parliament under Article 368 to Amend the Constitution.
5. Write a note on the article 352.
6. Discuss the structure of Council of State.
7. Constitution of India is above politics and source of national integrity. Comment.
8. Write a note on the relations between union and the state.
9. Discuss the major provisions of Emergency as per the constitution of India.
10. What is local self-government system in India.
11. What are the fundamental rights as per the constitution of India?
12. What are the fundamental duties as per the constitution of India?
13. State the houses of Indian parliament. Discuss the structure of Lok Sabha.
14. Write the major features of the Independence Act 1947.

15. What are the recommendations of Balwant Rai Committee on Panchayati Raj System?
16. What are the conditions under which National Emergency can be imposed?
17. Differentiate between the powers of US president and Indian president.
18. Write note on Constituent Assembly.

### **Short Questions**

1. What was the Mount Batten Plan?
2. Which most important feature made the Indian Constitution unique to any constitution of the world?
3. What is the objective of Directive Principles of State Policy of the constitution?
4. What is the role of Indian constitution?
5. Define constitutionalism.
6. Define Activism.
7. State Fundamental Rights.
8. Define Preamble of the constitution.
9. List three characteristics of Indian constitution.
10. Name the sources from where Indian constitution was borrowed.