

SALIENT FEATURES OF THE CONSTITUTION

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|---|---|
| 1 Written Constitution | 8 Directive principles |
| 2 Longest/lengthiest constitution | 9 Mixture of rigidity with flexibility |
| 3 Democratic form of government | 10 Single citizenship |
| 4 Sovereignty of people | 11 Preventive detention |
| 5 Parliamentary form of government | 12 A Secular State |
| 6 Fundamental rights | 13 Independent judiciary |
| 7 Fundamental duties | 14 Adult suffrage |

- **Borrowed constitution (referred constitution of 60+ countries)**
 - Structural part - GOI act 1935
 - Philosophical part - American + Irish constitution
 - Political part - British constitution
- **Blend of rigidity (American constitution) and flexibility (British constitution)**
- **Synthesis of Parliamentary Sovereignty (Britain) and Judicial Supremacy(USA)**
- **Federal System with Unitary Bias - 'quasi-federal', 'co-operative federalism'.**
- **Fundamental Rights (Part III), DPSP (Part IV) ('novel feature'), FD (Part IVA)**
- **Secular State - Added by 42nd CAA 1976, Preamble, Art. 14,15,16, 25-30, 44.**
- **Universal Adult Franchise -Voting age as 18 years from 21 years (61st CAA 1988)**
- **A Single Citizenship.**
- **Emergency Provisions - Art. 352, 356, 360.**
- **Accords socio-economic justice (DPSP) along with political justice (FR)**
- **Unique blend of Justiciable and non-justiciable rights - Sapru committee**
- **Independent (Federal feature) and Integrated judiciary (Unitary feature)**
- **Independent Bodies - ECI (Art 324), CAG (Art. 148), Public Service commissions (Art 315-323); known a Bulwarks of the democratic system of India.**
- **Third-tier of government - Panchayats (Sch.11) and municipalities (Sch.12)**

Composition Indian constitution consists of 22 parts, 395 articles, and 12 Schedules (initially 8 schedules were there) which are as follow:

Parts of the constitution

Part I - Union and its Territory

Part II - Citizenship.

Part III - Fundamental Rights.

Part IV - Directive Principles and Fundamental Duties.

Part V - The Union.

Part VI - The States.

Part VII - States in the B part of the First schedule.

Part VIII - The Union Territories

Part IX - Panchayat system and Municipalities.

Part X - The scheduled and Tribal Areas

Part XI - Relations between the Union and the States.

Part XII - Finance, Property, Contracts, and Suits

Part XIII - Trade and Commerce within the territory of India

Part XIV - Services Under the Union, the States, and Tribunals

Part XV - Elections

Part XVI - Special Provisions Relating to certain Classes.

Part XVII - Languages

Part XVIII - Emergency Provisions P

Part XIX - Miscellaneous

Part XX - Amendment of the Constitution

Part XXI - Temporary, Transitional and Special Provisions

Part XXII Short title, date of commencement, Authoritative text in Hindi, and Repeals.

Schedules	Details
Schedule 1	State and Union Territories Name and their Boundary details
Schedule 2	Special Powers and Salary details of President, Governors of state, Speakers and Deputy speakers of Rajiya sabha and Lok sabha, Supreme court and High Court Judges.
Schedule 3	Oath and Promises of All authority except President, and vice president.
Schedule 4	Rajiya Sabha MP count of state and Union Territories
Schedule 5	Scheduled Area and scheduled Tribes Administration and control Law Details
Schedule 6	States of Assam, Meghalaya, Tripura and Mizoram Tribal areas Administration and control law details
Schedule 7	Detailed List about Union and State Government Power and Concurrent List
Schedule 8	Official Languages
Schedule 9	Validation of certain Acts and Regulations.
Schedule 10	Details about Party changes and disqualification of MP/MLA
Schedule 11	Responsibilities and Powers of Panchayat
Schedule 12	Responsibilities and Powers of Municipalities

Try yourself: Which pair of the following is not correct?

- The salient feature of the constitution → Borrowed country
- a. Rule of Law → British
 - b. Directive Principles of State Policy → Ireland
 - c. Fundamental Rights → USA
 - d. Fundamental Rights are suspended during Emergency → USSR (Now Russia)

Sources of Indian Constitution

British Constitution

- (i) Parliamentary form of government
- (ii) The idea of single citizenship
- (iii) The idea of the Rule of law
- (iv) Institution of Speaker and his role
- (v) Lawmaking procedure
- (v) Procedure established by Law

United States Constitution

- (i) Charter of Fundamental Rights
- (ii) Federal structure of government
- (iii) Electoral College
- (iv) Independence of the judiciary
- (v) Judicial review
- (vi) President as supreme commander of armed forces
- (vii) Equal Protection under law

Irish Constitution

- (i) Directive principles of state policy

Australian Constitution

- (i) Freedom of trade and commerce within the country and between the states
- (ii) Power of the national legislature to make laws for implementing treaties, even on matters outside normal Federal jurisdiction
- (iii) Concurrent List

French Constitution

- (i) Ideals of Liberty, Equality and Fraternity

Canadian Constitution

- (i) A quasi-federal form of government — a federal system with a strong central government
- (ii) The idea of Residual Powers

Constitution of the Soviet Union

- (i) Fundamental Duties u/a 51-A
- (ii) A Constitutionally mandated Planning Commission to oversee the development of the economy

Weimar Constitution of Germany

- (i) Emergency Provision u/a 356

South Africa

- (i) Procedure for Amendment of Constitution
- (ii) Election of members of Rajya Sabha

Japanese constitution

- (i) Procedure established by Law

Sources of Indian Constitution

British Constitution

First Past the Post

Parliamentary Form of Government

The idea of the rule of law

Institution of the Speaker and her/his role

Law-making procedure

Irish Constitution

Directive Principles of State Policy

French Constitution

Principles of Liberty, Equality and Fraternity

United States Constitution

Charter of Fundamental Rights

Power of Judicial Review and independence of the judiciary

Canadian Constitution

A quasi-federal form of government (a federal system with a strong central government)

The idea of Residual Powers

Dr. B.R Amedkar

“One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than 100 years have rolled when the first written Constitution was drafted. It has been followed by many other countries reducing their Constitutions to writing. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country.

Supplemented by Multiple Amendments

- ♦ Many of the original features of 1950-Constitution have been substantially modified by the 78 Amendments which have been made up to 1996.
- ♦ The 42nd Amendment Act, made some drastic changes and was called by some a "mini constitution" in itself.
- ♦ The 73rd and 74th Amendment Acts added a new layer to our federal polity.
- ♦ Plus, many other Amendments that have practically recast the constitution in vital respects.



42nd Constitutional Amendment



Major Features of the Indian Constitution

Popular Sovereignty:

- Proclaims the sovereignty of the people.
- Elections based on adult suffrage, ensuring government authority derives from the people.
- Aims to bring enlightenment and promote well-being through democratic rule.

Rule of Law:

- Essential for a democracy, ensuring everyone is subject to the law.
- Prevents arbitrariness, upholds fundamental rights, and maintains judicial authority.

Judicial Independence:

- Upholds impartiality and independence of the judiciary.
- Judicial review ensures laws conform to the Constitution.
- The judiciary can strike down legislation contrary to the Constitution's basic framework.

Socialism:

- Encourages government intervention in economic activities.
- The Directive Principles reflect socialist objectives.
- Amendments have progressively moved India towards a socialist state with an emphasis on human rights.

Secularism:

- Declares India as a secular republic.
- Guarantees religious freedom and equality.
- Enforces non-discrimination based on religion, ensuring political equality and a secular state.

Fundamental Rights:

- Ensures citizens enjoy essential rights without majority influence.
- Freedom of speech, movement, association, equality before the law, and religious freedom are protected.
- The right to constitutional remedies empowers citizens to enforce their fundamental rights.

Directive Principles of State Policy:

- Provides guidelines for government policies.
- Encourages the pursuit of social, economic, and political justice.
- Represents the moral and aspirational foundation of the Constitution.

Fundamental Duties:

- Originally absent but introduced as a moral obligation.
- Ensures citizens' commitment to the nation's integrity and ideals.

Parliamentary System:

- Favors a parliamentary government over separate executive and legislative branches.
- Promotes collective responsibility of the executive to the legislature.
- Democracy is upheld through adult suffrage.

Federal and Unitary Features:

- India is described as a "Union of States."
- Dual governments with distinct powers, but not sovereign entities.
- The Constitution emphasizes the supremacy of constitutional law.
- The judiciary interprets the Constitution.
- Some unitary elements distinguish it from typical federal systems.

Lengthy and Legalistic Document:

- A detailed constitution drawn from various sources.
- Explicitly defines the relationship between the Union and States.
- Contains both justiciable and non-justiciable rights, along with fundamental duties.
- Inbuilt safeguards protect against subversion and perversion.

Flexibility of the Constitution:

- Amended over a hundred times.
- More flexible than the U.S. constitution.
- Allows changes by a two-thirds majority of Parliament.
- Can be supplemented by simple legislation and conventions.

Single Citizenship:

- Provides single citizenship for all of India.
- Fosters a sense of unity among the Indian population.

Emergency Provisions:

- Enables the head of state to declare an emergency.
- Impacts fundamental rights and the balance of power between the executive and legislature.
- Various forms of emergency have been declared and amended over time.

Philosophy of Constitution:

- Reflects key principles of secularism, democracy, sarvodaya, socialism, humanism, and decentralization.
- Embraces a mixed economy, Gandhian principles, and the coexistence of private and public sectors.
- Gandhi's ethical and moral values play a significant role in the Constitution's framework.

Lengthiest Constitution

- ◆ The constitution of India has the distinction of being the most lengthy and detailed constitutional document the world has so far produced.
- ◆ It has close to 450 Articles and 12 Schedules, which is a lot.



Why is our Constitution so 'bulky' ???

1. It incorporates the experiences of different constitutions.

2. Inclusion of Detailed Administrative Provisions

- Most constitutions just lay down the 'fundamental principles of governance', whereas Indian Constitution reproduced a lot of portions of GOI Act 1935, which had provided a lot of matters of administrative detail.
- B.R Ambedkar - "It is perfectly possible to pervert the constitution without changing the form of administration".
- It was also felt that the smooth working of an infant democracy might be jeopardised unless the constitution mentioned in detail things which were left in other constitutions to ordinary legislation.

3. Vastness of our country and the peculiarity of the problems that were to be solved contributed towards the bulk of our constitution.

4. Constitution of Federal Units also included

5. Special provisions dealing with regions like J&K, Nagaland, Sikkim etc.

6. Federal Relations elaborately dealt with

7. Exhaustive list of FRs, DPSPs & Fundamental Duties

Constitution: Rigid or Flexible ?

- ♦ In comparison with other written Constitutions of the world (like American & Australian), Indian Constitution is more flexible.
- ♦ Only a few provisions are difficult to amend. These provisions require special majority in Parliament and ratification of half of State Legislatures (American Constitution requires $3/4$ th states' ratification).
- ♦ The rest of the constitution can be amended by the Parliament itself, requiring a special majority ($2/3$ rd members of each house present & voting + majority of total membership of the house).
- ♦ There are certain provisions which can be altered by the Parliament with a simple majority, like an ordinary legislation. It is laid down in the Constitution that such changes "shall not be deemed to be amendments to the constitutions".

Written Constitution with Parliamentary

Sovereignty

- Our Constitution is the combination of the theory of "Fundamental Law" which constitutes the Written Constitution of USA and the theory of "Parliamentary Sovereignty" which underlies the Unwritten Constitution of England.
- Pandit Nehru - "While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a nation's growth, the growth of a living, vital, organic people"
- Dr Ivor Jennings characterised our Constitution rigid for 2 reasons:
 - Process of amendment was complicated and difficult
 - Matters which should have been left to ordinary legislation are also mentioned in the Constitution. Thus, certain mundane provisions of administration require Constitutional Amendment for any changes.
- To illustrate his 2nd point Dr Jennings gave the example of Article 224, which empowers a retired judge to sit in a High Court.

Provision of Judicial Review

- ◆ Our Constitution not only mentions Fundamental Rights, but also the remedies for enforcing these rights.
- ◆ Article 32 guarantees the writs of habeas corpus, mandamus, quo warranto, prohibition and certiorari.
- ◆ Thus, this provision provides a window for judicial review of legislations and executive action.
- ◆ But Article 32 was not appreciated by Sir Ivor Jennings and many other critics who called our Constitution a 'lawyer's paradise'.
- ◆ According to Sir Ivor Jennings, this was due to the fact that the Constituent Assembly was dominated by "lawyer-politicians".

Judicial Supremacy Vs Parliamentary Sovereignty

- A Constitution should always have certain flexibilities.
- The rigid scheme of "separation of powers" and "checks and balance" between the organs in the Constitution of USA has failed in its actual working, and the judiciary has assumed supremacy under its powers of interpretation of the Constitution.
- Chief Justice Hughes - "The Constitution of the USA is what the Supreme Court says it is".
- Vague expressions like "due process" explicitly mentioned in American Constitution makes American Judiciary sit over the wisdom of any legislative policy as if it were a 3rd chamber or a super-chamber of the legislature.
- On the other hand, under the English system, Parliament is supreme and "can do everything that is not naturally impossible" (Blackstone).
- So the English judges have denied themselves any power "to sit as a court of appeal against the Parliament".

Reasonable Restrictions on FRs

- ◆ The idea of incorporating in the Constitution a "bill of rights" has been taken from the United States.
- ◆ But the guarantee of individual rights in our Constitution has been very carefully balanced with need for the security of state itself.
- ◆ American experience demonstrates that a written guarantee of Fundamental Rights has a tendency to engender an atomistic view towards society and state which may at times prove to be dangerous to the common welfare.
- ◆ Though the American Judiciary remedied that by propounding the "doctrine of police powers".
- ◆ Doctrine of Police Powers - under this a legislature is supposed to be competent to interfere with individual rights wherever they constitute a 'clear danger to the safety of the State and other collective interests'.

Federal Features

- ♦ Article 1(1) - India, that is Bharat, shall be a Union of States.
- ♦ DR B.R Ambedkar, the Chairman of the drafting committee, stated that "although its constitution may be federal in structure", the committee had used the term "Union" because of certain advantages. These are :
 - Indian federation is not the result of an agreement by the federating units.
 - The component units have no freedom to secede from it.
- ♦ Many Constitutional experts call Indian Constitution "Quasi Federal" because it is not similar to the classical federal polities like Switzerland or USA, where more powers are given to states.
- ♦ But on a deeper analysis one finds that though Indian Constitution has certain unitary features, it has all necessary features of a Federal Polity.

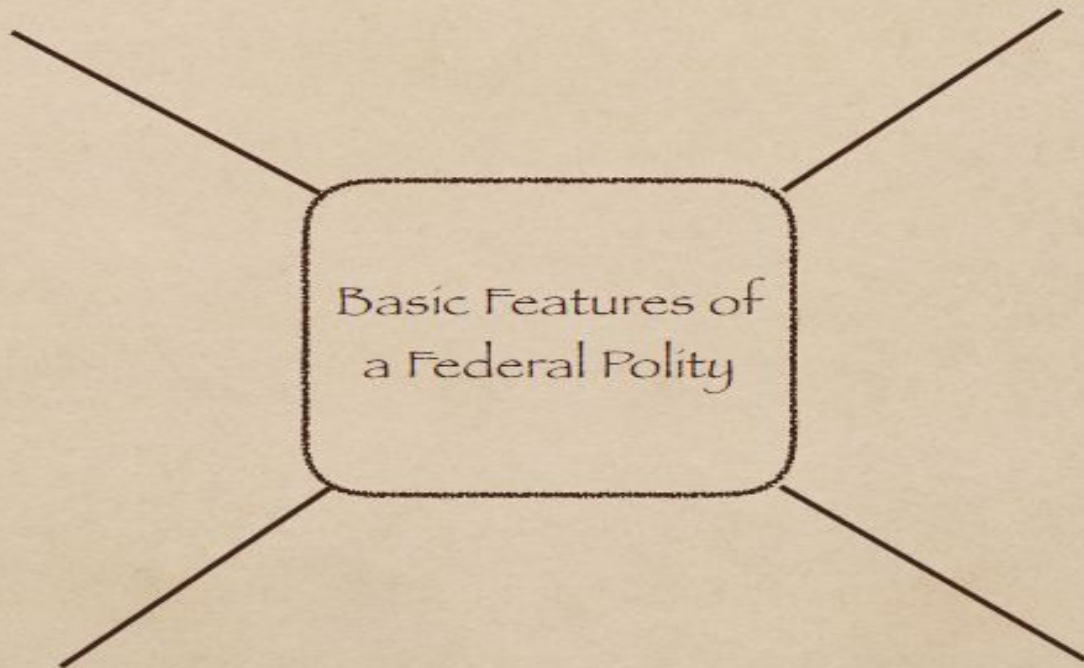
Dual Government

Distribution of
Powers

Basic Features of
a Federal Polity

Supremacy of
Constitution

Authority of
Courts



Lets try few Questions

Consider the following statements: (2005)

- a) The Constitution of India has 20 parts.
- b) There are 390 Articles in the Constitution of India in all.
- c) Ninth, Tenth, Eleventh and Twelfth Schedules were added to the Constitution of India by the Constitution (Amendment) Acts.

Which of the statements given above is/are correct?

- (a) 1 and 2 (b) 2 only (c) 3 only (d) 1, 2 and 3

The most essential feature of the Parliamentary form of Government is the:

- A. Sovereignty of the Parliament
- B. Written constitution
- C. Accountability of the executive to the legislature
- D. Independent judiciary

The Indian Constitution came into force on

- A. 26 Jan 1949
- B. 26 Jan 1950
- C. 15 Nov 1950
- D. 15 Aug 1947

The Indian Constitution is

- A. Federal in form but unitary in spirit
- B. Unitary
- C. Unitary in form but federal in spirit
- D. Purely federal

