

Polity Class 03

19th May, 2023 at 9:00 AM

SALIENT FEATURES OF THE INDIAN CONSTITUTION (9:12 AM):

A modern, yet borrowed constitution:

- The Constitution has many ideals that emerged very recently in the world's political timeline- Liberty, Equality, Fraternity Justice, etc.
- Most of these modern values were unheard of during medieval times (under Monarchy)
- Many provisions, including the Preamble, have been borrowed from the constitutions of many nations (USA, UK, Canada, etc.).
- The Indian constitution also has many provisions from the **Government Of India Act 1935**.
- Despite not everyone voting, British provinces had legislative councils where Indians were elected indirectly.
- We had been accustomed to the British political system after years of British rule.

Values picked up from the British Constitution:

- **Parliamentary form of the Government:**
 - We can see that all the members of the Union Council of Ministers (executive) must be members of the legislature (Parliament) either at the time of holding office or within 6 months of becoming the minister.
- **Integrated Judiciary:**
 - Indian courts are in a hierarchical setup where they all point in the same direction.
 - The hierarchy has Local/Divisional courts at the bottom, High Courts above them, and the Supreme Court at the top.
- **Office of the CAG:**
 - The office of CAG is vital to ensure that the government spends public money in a prudent manner.
 - CAG's reports will help Parliament in holding the government accountable for its financial decisions.
 - The office assumes much significance in light of the fact that the Members of the Parliament are otherwise laymen with no expertise in accountancy and auditing, in most cases.

Comparison with the USA system:

- The USA has a Presidential form of government where the members of the executive are not the members of the legislature.
- The USA has dual citizenship- people are citizens of both their state as well as the USA.
- The USA has separate laws for state and Federal issues and different courts to administer them.

VALUES PICKED UP FROM THE AMERICAN CONSTITUTION (9:40 AM):

Preamble:

- Even the language of both preambles is very similar.

Written Constitution:

- All the provisions and amendments of the Constitution are written in a single place.

Fundamental Rights:

- It was added to the USA's constitution after the first 14 amendments by the "Bill of Rights".

Office of President and Vice President:

- These offices are borrowed by India, despite the fact that there lies a large difference in the powers of the President and Vice President in India and the USA.
- Indian President is closer to the **King of Britain**.

Constitutional Supremacy:

- Just like the USA, India also has a system where the organs of the state(judiciary, legislature, and executive) function as per the provisions of the constitution.

Judicial Review:

- It means the review by the judiciary whether the other two organs(legislature and executive) conform to the provisions of the Constitution.
- In India, we follow the principle of "**Presumption of Constitutionality**" under which the Judiciary assumed that all the legislative and executive steps are by-default constitutional, until and unless some party brings the steps into the question of constitutionality.

Values picked up from the Canadian Constitution:

- **I. Federalism:**
- A federal setup sees the division of powers.
- The distribution of powers between the center and the states is as per the Canadian model.
- As per the **Schedule VII** of our constitution, the law-making powers have been divided between the Central and the State governments.

- The schedule has three lists:
- **A. Union List:**
 - The subjects where national level uniformity is important- Currency, Defense, etc.
 - Only the Parliament can make laws over them.
 - It now has 100 subjects, more than the state list.
 - So we can say that the constitution has kept a stronger center.
- **B. State List:**
 - The subjects in which state-level specifications are important- Law & Order, Agriculture, etc.
 - Only the State Legislative Assemblies can make laws over them.
 - it now has 61 subjects.
- **C. Concurrent list:**
 - The subjects in which national uniformity is desired but not important- Education, Forests, etc.
 - It now has 52 subjects.
 - Both the Parliament and State Assemblies can make laws over them, but Parliamentary laws will prevail.
 - Those subjects that are not on any list will be treated as **Residuary subjects** (Drone technology, Artificial intelligence, etc.), and only the Parliament can make laws on them.
 - The USA only has a central list which has less number of subjects and all other subjects are for the States to legislate.

II. Position of Governor:

- India also has a system of a Governor of the State appointed by the Central Government.
- **Dr, Ambedkar** wanted a system of directly elected governors and a Presidential system (both followed in the USA), but the proposals were not accepted by the Constituent Assembly.

VALUES TAKEN FROM THE SOUTH AFRICAN CONSTITUTION (10:12 AM):

- Amendment of the constitution.

Values that are taken from Ireland:

- Directive Principles of the State Policy.

Values that are taken from USSR's Constitution:

- Socialist principles and values.
- Concept of Fundamental Duties.

Values that are taken from Germany (Weimar Republic):

- Emergency provisions.

Values that are taken from France:

- The idea of a republic(where the will of the people is supreme).
- Liberty, Equality, and Fraternity.

Values that are taken from Japan:

- The procedure is established by law.
- The actual concept is from Britain.

Source	Provision
British Constitution	<ul style="list-style-type: none">• Parliamentary Democracy/form of government
	<ul style="list-style-type: none">• Parliamentary features and functioning.
	<ul style="list-style-type: none">• Single citizenship.
	<ul style="list-style-type: none">• Integrated Judiciary.
	<ul style="list-style-type: none">• Office of the Comptroller and Auditor General(CAG).
	<ul style="list-style-type: none">• Contempt of Court.
	<ul style="list-style-type: none">• Office of Profit
	<ul style="list-style-type: none">• Rule of Law
	<ul style="list-style-type: none">• Preamble
	<ul style="list-style-type: none">• Constitution
USA	<ul style="list-style-type: none">• Fundamental Rights
	<ul style="list-style-type: none">• Office of President and Vice President.
	<ul style="list-style-type: none">• Constitutional Supremacy

	<ul style="list-style-type: none"> • Judicial Review • Federal setup
Canada	<ul style="list-style-type: none"> • Office of the Governor
South Africa	<ul style="list-style-type: none"> • Amendment to the Constitution
Ireland	<ul style="list-style-type: none"> • Directive Principles of the State Policy.
USSR	<ul style="list-style-type: none"> • Socialist principles and values. • Concept of Fundamental Duties.
Germany (Weimar Republic)	<ul style="list-style-type: none"> • Emergency provisions
France	<ul style="list-style-type: none"> • The idea of a republic(where the will of the people is supreme). • Liberty, Equality, and Fraternity. • The procedure is established by law.
Japan	<ul style="list-style-type: none"> • The actual concept is from Britain.

The argument for having a borrowed constitution:

- The above-borrowed provisions have led to a criticism that the Constitution of India is a "slavish imitation of the West".
- **Dr. Ambedkar** addressed this allegation in the Constituent Assembly.
- There is no doubt that the constitution makers picked up several principles from several constitutions of the world.
- He told that as a large time has passed since the first constitution was written(USA's constitution), there is very less scope for having a totally different constitution.

- Also, the basic democratic values have been present and accepted in many nations, hence some similarities are bound to occur.
- There was also no point in "reinventing the wheel" by finding new values, even when the basic democratic values have been debated extensively and accepted.
- The provisions have not been simply lifted, but the principles have been picked and changed as per Indian realities.
- The allegation that the Indian constitution is only a cheap copy reflects ignorance and misreading of the constitution.
- Indian constitution also has many unique features that mirror Indian societal realities:
 - I. Special Provisions for Scheduled Tribes(Schedule V and VI).
 - II. Provision against granting titles(Article 18).
 - III. Provision against untouchability (Article 17).
 - IV. Idea of equality with historic justice. (Article 14).
 - V Special Leave Petition powers of the Supreme Court (Article 136).
 - VI. Mechanism for resolution of inter-state river water dispute (Article 262).
 - VII. Indian concept of Secularism (Articles 25-28).

LENGTH OF THE INDIAN CONSTITUTION (11:04 AM):

- India has perhaps the lengthiest written constitution in the world due to reasons like:
 - I. India has a single constitution for both the states and the union.
 - II. It includes the provision to accommodate the rich diversity of the country like special provisions have been included for women, Schedule castes, Scheduled tribes, etc.
 - III. The details related to the administration have been provided in the constitution itself.
 - **For example-** provisions related to elections services, etc.
 - IV. It is based on the **Government of India Act 1935** which itself was a bulky document.
 - V. Most members of the constituent assembly were lawyers, hence verbose and technical language has been used which extended the length of the constitution.
 - VI. Our freedom fighters(many of whom became members of the constituent assembly) were skeptical regarding future constitutional outcomes.
 - They had experienced many instances of hoping for some constitutional changes and later getting disappointed.

- - **Note:** This point will get clear once we will deal with the **Charter Acts, Regulation Acts, and the Government of India Acts of 1909 and 1919** in our Modern History class
- This is why they chose to add as many provisions as they thought were necessary at that time.

WRITTEN CONSTITUTION (11:30 AM):

- India has adopted a written constitution inspired by the USA.
- A written constitution is one where all of the provisions are written in one place in the form of a code.
- A specially elected /appointed body is given the task of writing the constitution and the institutions are established according to the constitution.
- In such countries, the concept of constitutional supremacy is followed.
- Britain on the other hand does not have a written constitution.
- In Britain, all the laws ordinarily made by the parliament are a part of the Constitution.
- Britain in 2005 collected and wrote down many basic principles and laws in a single place.
- Britain follows the principle of **Parliamentary Supremacy** where the parliament came first and the constitution was made by the parliament.

Guarantee for fundamental rights:

- The Constitution under Part III provides a guarantee of fundamental rights to the citizens of India
- The **Supreme Court** is the final guarantor of fundamental rights in India.
- Citizens can bypass the judicial system (local and high courts) and directly reach the supreme court in case of violation of their fundamental rights.
- Citizens can also directly approach the high courts for their fundamental rights.

Federal Setup:

- The decision of legislative and executive powers happens on two or more levels.
- The USA follows the perfect federal system.
- Britain has a unitary system- powers are centralized only with the Parliament.
- India has adopted a federal setup where the powers of the State have been divided at two levels in executive and legislative domains.

- **For example-** In the Indian Constitution, the powers of legislation have been divided according to the provisions of Article 246 and Schedule VII.
- It is not that the central government gives some powers to the states; both center and states draw their powers independently from the constitution.

The topic for the next class is the continuation of the salient features of the Constitution.