

Polity Class 04

20th May, 2023 at 9:00 AM

SALIENT FEATURES OF THE INDIAN CONSTITUTION(CONTINUED) (9:03 AM):

Parliamentary form of government/ Parliamentary democracy:

- Citizens choose among themselves representatives to make laws on their behalf.
- The territory is divided into constituencies as per population, and each constituency will elect a single representative.
- The Union legislature has two houses:

I. Lower House: Lok Sabha or House of People

- This consists of members that are directly elected by the people of India.
- The total number of members is 545.
- States have been allocated seats as per their population as per the 1971 census.
- This is why some states have more Lok Sabha seats than others.

II. Upper House: Rajya Sabha or the Council of States

- The members are elected by the members of state legislative assemblies (the state version of Lok Sabha).
- The members of the state legislative assemblies have been directly elected by the people.
- So the Rajya Sabha Members are indirectly elected by the people of India.
- States have been allocated seats as per their population as per the 1949 Census.
- Some states have more seats than others.
- The number of allocated seats to each state is mentioned in the **Schedule IV** of the Constitution.
- Such an asymmetric distribution is different from the USA where the upper house has 100 members- 2 from each state.
- The total number of members is 250.

Formation of the government:

- Any political party or group of parties (alliance/coalition. etc) needs to secure a majority in the lower house only.
- The **Council of Ministers** will be headed by the Prime Minister and it can have members from within the parliament.
- As per **Article 75**, the Council of Ministers is collectively responsible to the House of the People(Lok Sabha).
- Any member of the parliament- both houses and any party, can be a member of the Council of Ministers(even the Prime Minister can be from Rajya Sabha).
- This is different from the UK where the Council of Ministers must only be constituted from the lower house(House of People) and no member from the upper house(House of Lords) can be a minister.
- This council of ministers headed by the Prime Minister is known as the **Government** or the **Union Executive**.
- Hence, it is clear that India does not follow a strict separation of powers between the Legislature and Executive, as the Executive must be a part of the legislature.
- All the non-ministers in the parliament are called **Private members**, and they can be of both the ruling party and any other party.
- No private member bill has been passed after the 1970s.
- All the members of the Council of Ministers must be a member of either house of the parliament, either while being made a member, or within 6 months of being a member of the Council of Ministers.

PRESIDENTIAL AND SEMI-PRESIDENTIAL SYSTEMS (9:30 AM):

- In nations that follow the Presidential system like the USA, the Executive, and the legislature is totally separate.
- The American President is indirectly elected by the citizens of the USA.
- The president is not a part of any house of the US parliament.
- The President picks his cabinet and even the members are not a part of any house of the US parliament.
- Some nations like **France** follow the Semi-Presidential system.
- France has direct elections for the President and the Prime Minister is indirectly elected like India.
- This system has given more powers to the President.

- This system can cause a power tussle between the President and Prime Minister, who can also be of different parties.
- It also incurs large expenditures as two separate elections need to be conducted.

INDIAN PARLIAMENTARY SYSTEM (10:00 AM):

- Members of the executive are compulsory members of the legislature.
- It means that there is an overlap between the executive and the legislature.
- In this system, the Council of Ministers owes its existence to the support they enjoy in the Lok Sabha.
- Therefore, the Council of Ministers may be removed from power upon withdrawal of support in the Lok Sabha.
- In this system, the head of the state has nominal powers, and the real powers of the executive are vested in the council of ministers, which is headed by the Prime Minister.
- In the **Presidential system**, the executive and the legislature are completely separated from each other, and the council of ministers and the President do not have any common members.
- The president is both the head of the State as well as the real head of the executive.
- The president chooses his own council of ministers and enjoys a fixed tenure as compared to the parliamentary system in which the tenure of the government depends upon the support enjoyed in the popularly elected house.

Why did India choose the parliamentary form of democracy :

- The familiarity developed during British rule.
- In the parliamentary system, the executive enjoys powers based on support from the popularly elected house.
- Therefore, the executive is always on its toes and the chances of abuse of powers are lesser.
- In the presidential system, the President is the only power center, whereas, in the parliamentary system, the powers are diffused between the various members of the council of ministers.
- The parliamentary system helps in accommodating the diverse nature of the society in the executive.
- The legislature and the executive are fused into each other and therefore the chances of conflict between the two, leading to a deadlock are minimal

BENEFITS OF THE PRESIDENTIAL SYSTEM (10:30 AM):

- The president enjoys a fixed tenure and is not dependent on support from the directly elected house.
- This results in more stability.
- The separation of powers between the legislature and the executive is much stricter in nature.
- Hence the interference of the executive in the matters of the legislature is minimal.
- The president can choose his ministers from a large talent pool and is not limited by the members of the parliament.
- The decision-making is much swifter as the president is more powerful than the other ministers.
- The legislature is more focused on its primary work(to legislate) rather than devising ways to criticize the government.

Indian Parliamentary experience:

- If we compare the first Indian parliament of 1951 and the present parliament, we can see that:
- The present parliament is richer, older, and has more criminal cases over it.
- The present parliament also meets for around 100 days a year, as compared to around 150 days that the first parliament did.
- The present parliament also sees much more disruptions.

INDEPENDENT & INTEGRATED JUDICIARY (11:00 AM):

- Independence of the judiciary means it is free from the influence of the executive and the legislature.
- Judicial independence is very important as the judiciary is the guarantor of fundamental rights.
- Judiciary also has the responsibility to ensure that the executive and the legislature function according to the limits set by the Constitution.
- Not only that, the judiciary is supposed to decide federal disputes, and therefore its independence is important.
- Judiciary independence is also very important because the government is the biggest litigator in India.
- An Independent judiciary can more effectively protect the fundamental rights of the citizens against an authoritarian government.

- Judiciary independence has been secured through various constitutional provisions.
- There is a restriction on the discussion on the conduct of judges of the supreme court and high court in the parliament.
- The salaries and allowances of the judges of the Supreme Court and the high courts are a **Charged Expenditure** on the consolidated fund of India and no vote can be made by the parliament to the same.
- We have also adopted an integrated judicial system where separate courts do not exist for entertaining cases related to federal and state laws.
- In India, the entire judicial system is integrated from top to bottom where all the decisions of the higher court are binding on the lower courts.

Welfare state:

- The Indian constitution expects the Indian state to be a welfare state which would be concerned with the welfare of its citizens.
- **For example-** The DPSPs cast a certain responsibility on the Indian state to take care of its citizens on numerous matters like health, nutrition, livelihood, etc.
- Not only that but the Indian constitution was also perceived as a tool to bring about a social revolution in India and to establish a more just and equitable society.
- **For example,** Articles 15(3) and 16(4) highlight the responsibility of the state to make special provisions for the weak and the marginalized.

FEDERALISM (11:30 AM):

- Federalism is a setup in which the powers of the state are divided into two or more levels.
- Usually, in a federal setup, two levels of government exist- One at the central or federal level and one at the regional or state level.
- Some essential features of a federal system are as follows:

I. Distribution of powers:

- The powers are divided in legislative and executive matters between the union and the states, according to the constitution and not as per ordinary law made by the parliament.
- A **written constitution** is of utmost importance in a federal setup.
- The parliament should not have unchecked powers to alter the distribution of powers between the union and the states, which must be done according to the Constitution.

- An **Independent Judiciary** is "sine qua non" for federalism.
- A non-independent judiciary is called a **Committed Judiciary**, which refers to a judiciary that is committed to the government.
- Federal disputes between the union and the state must be decided in an impartial manner and for this, an impartial judiciary is essential.
- A certain amount of **rigidity in the constitution** is necessary.
- This is necessary because the union government cannot unilaterally change the constitution to take away the powers of the states.
- The UK constitution is very flexible and the US constitution is very rigid- only 27 amendments have taken place in more than 200 years.
- Indian constitution is less flexible than the UK but is more flexible than the USA.
- **For example-** Any amendment of the constitution of India that affects the powers of the states requires approval from more than half of state legislatures, apart from the parliament.
- A single constitutional amendment in India can amend various articles of the constitution.

Reasons for choosing a constitution with a unitary bias:

- **Political reasons:**
- At the time of writing of the constitution, there were many separatist forces in the country.
- The founding fathers believed that a strong center was the only way to maintain the unity & integrity of the nation.

Social reasons:

- The constitution makers were cynical and skeptical of the intention of the states to focus on issues such as gender equity, upliftment of marginalized sections, etc.
- **Economic reasons:**
- The constitution makers believed that only the central institutions have the capability of rapid economic growth throughout the country.

Directive Principles of the State Policy (DPSP)s could not be made enforceable at the time of Independence because:

- The Indian state did not have the needed resources to ensure that all the promises made under DPSPs are met for everyone.

If anyone is not satisfied with the verdict of the Supreme Court, there are provisions like **Review Petition & Curative Petition.**

India as a quasi-federal polity:

- Some scholars believe that India is a quasi-federal setup at best as the union has more powers as compared to the states which is exactly the opposite of the USA, which was the original federal polity.

Some of the examples of this unitary bias are as follows:

- I. As per Article 3, the parliament can change the names, areas, and boundaries of the states, even if the states do not agree to the same.
- II. Emergency provisions give powers to the union to convert India into a unitary setup.
- III. Appointment to many important constitution posts is made only by the central government- UPSC, Election Commission, Finance Commission, etc.
- The list is not exhaustive and we will learn about more such features as we read more topics.

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