

Chapter -2

Philosophy of the Indian Constitution, Preamble Salient Features

1) Longest written constitution

- COI is comprehensive, elaborate and detailed document.
- Originally a preamble, 395 articles , 8 schedules and currently a preamble, 465 articles and 12 schedules.
- Four factors have contributed to elephantine size of our constitution
 1. Geographic factors, vastness of our country
 2. Historical factors , influence of GOI Act, 1935
 3. Single constitution for both centre and states
 4. Dominance of legal experts on Constitutional Assembly

2. Drawn from various sources

- Borrowed from GOI Act, 1935 and Constitution of other Countries
- Dr. B R Ambedkar proudly said that COI has been framed after “Ransacking all the known constitutions of world”.
- Structural part is derived from GOI Act, 1935.
- Philosophical part(Fundamental Rights and directive principles) derived from American and Irish Constitution.
- Political part has been largely derived from British Constitution.
- Other things drawn from Canada, Australia, Germany, USSR, France , South Africa, Japan etc

3. Blend of Rigidity and Flexibility

- **Constitution can be both rigid and flexible.**
 - **Rigid constitution requires special procedure for amendment like American Constitution.**
 - **A flexible constitution can be amended in same manner as ordinary law like British Constitution.**
 - **COI is synthesis of both.**
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- **Article 368 provides two types of amendments:**
 1. **Some provisions can be amended by special majority of parliament. I.e. A two-third majority of the members of each house present and voting and a 50 % of majority of total membership of house.**
 2. **Some other provisions can be amended by a special majority of the parliament and with ratification from half of the states.**

4. Federal system with unitary bias

- COI contains all usual features of a federation like dual government, division of power, written constitution, supremacy of constitution, independent judiciary and bicameralism.
- It also contains large number of non-federal features like a strong centre, single constitution, single citizenship, flexibility of constitution, appointment of state governor by centre, all India services, emergency provisions etc.
- “Federal in form but unitary in spirit” or “ Quasi-federal”

5. Parliament form of Government

- The parliamentary system is also known as the 'Westminster' model of government, responsible government and cabinet government.
- Its features are
 - 1) Presence of nominal and real executive
 - 2) Majority party rule
 - 3) Collective responsibility of executive to the legislature
 - 4) Leadership of Prime Minister or Chief Minister
 - 5) Dissolution of Lower House(Lok Sabha)

6. Synthesis of parliamentary sovereignty and judicial Supremacy

- SOP is associated with British Parliament while principle of judicial supremacy with American Supreme Court
- The supreme court can declare the parliamentary law as unconstitutional through its power of judicial review.
- The parliament, on the other hand, can amend major portion of constitution through its constituent power.

7. Integrated and Independent Judiciary

- Supreme court at top below that high court and district court
- Single system of court enforces both centre and state laws unlike in USA, federal laws federal judiciary and state laws state judiciary
- Supreme court highest court of appeal, guarantor of fundamental rights of citizens and guardian of constitution.
- Hence, constitution has made various provisions to ensure independence of judiciary
- Securities of tenure of judges, fixed service condition of judges, all expense of supreme court charged on consolidated fund of India , prohibition on discussion on the conduct of judges in legislature, ban on practice after retirement, power of punish for its contempt etc.
- SC judge cannot be removed
- SC judge cannot practice law after retirement

8. Fundamental Rights

- Part 3 of IC guarantees six fundamental rights to all citizens
 1. Right to equality (Articles 14-18)
 2. Right to freedom (Articles 19-22)
 3. Right against exploitation (Articles 23-24)
 4. Right to freedom of religion (Articles 25-28)
 5. Cultural and educational rights (Articles 29-30)
 6. Right to constitutional remedies (Articles 32)
- The fundamental rights are meant for promoting the idea of political democracy. They are justiciable in nature , that is, they are enforceable by court for their violation.
- The aggrieved person can directly go to supreme court.
- Fundamental rights are not absolute (subject to reasonable restriction).
- They can be curtailed or repealed by parliament through a constitutional amendment act.
- They can be suspended during National Emergency except rights guaranteed by Articles 20 and 21.

9. Directive principles of state policy

- According to DR. B R Ambedkar directive principles is a 'novel feature' of the constitution
- Classified into three broad categories- Socialistic, Gandhian, Liberal-Intellectual
- Meant for promoting ideal of social and economic democracy.
- Not justiciable
- Impose moral obligation on state authority for their application

10. Fundamental Duties

- The original constitution did not provide fundamental duties of citizen
- These were added in (1975-77) by 42nd constitutional amendment act of 1976 on recommendation of Swarna Singh Committee.
- Various duties are to respect constitution, national flag, national anthem, to protect sovereignty, unity and integrity; to promote spirit of common brotherhood, to preserve rich heritage of culture etc

11. A secular state

- The constitution of India stands for a secular state so it does not uphold any particular religion as the official religion of Indian State.
- The term secular was added to the preamble of the IC by the 42nd constitutional Amendment Act, 1976.
- The state should not deny to any person equality before the law(Article 14).
- The state shall not discriminate against any citizen on the ground of religion (Article 15).
- Equality of opportunity for all citizens in matter of public employment (Article 16).
- All persons have right to freely profess, practice and propagate any religion (Article 25).
- No person should be compelled to pay any taxes for the promotion of particular religion(Article 27).
- No religious instructions shall be provided in any educational institute maintained by state(Article 28).
- All minorities shall have the right to establish and administer educational institutions of their choice (Article 30).

12. Universal Adult Franchise

- The IC adopt universal adult franchise as a basis of elections to Lok sabha and the state legislative assemblies.
- Every citizen who is not less than 18 years of age has right to vote without any discrimination like caste, race, religion, sex, literacy, wealth and so on.
- The voting age has reduced to 18 years from 21 years in 1989 by 61st constitutional amendment act of 1988.

13. Single Citizenship

- Though IC is federal and it has dual polity, it provides single citizenship.
- In countries like USA a person has dual citizenship of both state and country.

14. Independent Bodies

- Election commission to ensure free and fair elections to the parliament, state legislature, president of India etc
- Comptroller and Auditor-General of India to audit the accounts of central and state governments.
- Union Public Service Commission to conduct examinations for recruitment to all India services.
- State Public service commission in every state to conduct exam for state service.

15. Emergency Provision

- The IC contains elaborate emergency provisions to enable the president to meet any extraordinary situation effectively.
- National emergency on the ground of war, external aggression, armed rebellion
- State emergency(President's Rule) on the ground of failure of constitutional machinery in the state(Article 356) or failure to comply with direction of centre(Article 365)
- Financial emergency on the ground of threat to financial stability or credit of India(Article 360)
- Central Government becomes all powerful and states in total control of centre.
- It converts federal structure into unitary structure which is unique feature of IC.

16. Three-tier Government

- Originally IC provided dual polity with regards to centre and state.
- Later, 73rd and 74th constitutional amendment Act (1992) have added a third-tier of Government (local) which is not found in any other constitution of world.
- It gave recognition to Panchayats(rural local government) and Municipalities(urban local governments) by adding schedule 11 and 12.

17. Co-operative societies

- The 97th constitutional amendment Act, 2011 gave a constitutional status and protection to co-operative societies.
- It made the right to form co-operative societies a fundamental right(Article 19).
- Included a new directive principle of state policy on promotion of co-operative societies.
- It added new part in the constitution as “The Co-operative Societies.”

Criticism of the Indian Constitution

- A borrowed Constitution
- A carbon copy of 1935 Act
- An Un-Gandhian Constitution
- Elephantine size
- Paradise for lawyers