

# **SALIENT FEATURES OF CONSTITUTION**

## Longhiest Written Constitution

- Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution. The Constitution of India is the lengthiest of all the written constitutions of the world
- Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules.

## Drawn From Various Sources

- Constitution of India has borrowed most of its provisions from the constitutions of various other countries as well as from the Government of India Act of 1935. Dr B R Ambedkar proudly acclaimed that the Constitution of India has been framed after 'ransacking all the known Constitutions of the world.
- The founding fathers of the Constitution had before them the accumulated experience from the working of all the known constitutions of the world and were aware of the difficulties faced in the working of those constitutions.
- The Indian Constitution lays down, unlike the federal constitutions of the U.S.A. and Australia, provisions relating to the government's machinery not only in the Centre but also in the States.

## Blend of Rigidity and Flexibility

- Constitutions are also classified into rigid and flexible. A rigid Constitution is one that requires a special procedure for its amendment, as for example, the American Constitution. A flexible constitution, on the other hand, is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution.
- The Constitution of India is neither rigid nor flexible but a synthesis of both. Article 368 provides for two types of amendments:
- (a) Some provisions can be amended by a special majority of the Parliament, i.e., a two-third majority of the members of each House present and voting, and a majority (that is, more than 50 per cent), of the total membership of each House.
- (b) Some other provisions can be amended by a special majority of the Parliament and with the ratification by half of the total states.
- At the same time, some provisions of the Constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. Notably, these amendments do not come under Article 368.

## Federal System with Unitary Bias

- The term 'Federation' has nowhere been used in the Constitution. Article 1, on the other hand, describes India as a 'Union of States' which implies two things: one, Indian Federation is not the result of an agreement by the states; and two, no state has the right to secede from the federation. Constitution of India has opted for British parliamentary System of Government rather than American Presidential System of Government.

# Parliamentary Form of Government

Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution. The Constitution of India is the lengthiest of all the written constitutions of the world.

- The parliamentary system is based on the principle of cooperation and co-ordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs.
- Parliamentary system is also known as 'Westminster' model of government, responsible government & cabinet government.
- Constitution establishes the parliamentary system not only at the Centre but also in the states. The features of parliamentary government in India are:
  - Presence of nominal and real executives;
  - Majority party rule,
  - Collective responsibility of executive to legislature,
  - Membership of the ministers in the legislature,
  - Leadership of the prime minister or the chief minister,
  - Dissolution of the lower House (Lok Sabha or Assembly).

## Some fundamental differences between Indian and British system:

- The Indian Parliament is not a sovereign body like the British Parliament.
- The Indian State has an elected head (republic) while the British State has hereditary head (monarchy).

## Synthesis of Parliamentary Sovereignty and Judicial Supremacy

- The doctrine of sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court.
- Just as Indian parliamentary system differs from the British system, the scope of judicial review power of the Supreme Court in India is narrower than that of what exists in US.
- The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review. The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power.

# Integrated and Independent Judiciary

- The Indian Constitution establishes a judicial system that is integrated as well as independent.
- Unlike in USA, where the federal laws are enforced by federal judiciary and the state laws are enforced by state judiciary.
- The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution. Hence, the Constitution has made various provisions to ensure its independence—
  - security of tenure of the judges,
  - fixed service conditions for the judges,
  - all expenses of Supreme Court charged on the Consolidated Fund of India,
  - prohibition on discussion on conduct of judges in legislatures,
  - ban on practice after retirement,
  - power to punish for contempt,
  - separation of the judiciary from the executive.

# Fundamental Rights

- **Part III of the Indian Constitution guarantees six fundamental rights to all the citizens:**
- Right to Equality (Articles 14–18),
- Right to Freedom (Articles 19–22),
- Right against Exploitation (Articles 23–24),
- Right to Freedom of Religion (Articles 25–28),
- Cultural and Educational Rights (Articles 29–30), and
- Right to Constitutional Remedies (Article 32).
- The Fundamental Rights are meant for promoting the idea of political democracy. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature.
- The Constitution has made express provisions dealing with such restrictions of Fundamental Rights as are necessary in the public interest.
- They are justiciable in nature, that is, they are enforceable by the courts for their violation. The aggrieved person can directly go to the Supreme Court which can issue the writs of habeas corpus, mandamus, prohibition, certiorari and quo warranto for the restoration of his rights.
- However, the Fundamental Rights are not absolute and subject to reasonable restrictions. Further, they are not sacrosanct and can be curtailed or repealed by the Parliament through a constitutional amendment act. They can also be suspended during the operation of a National Emergency except rights guaranteed by Articles 20 and 21.

# Directive Principles of State Policy

- According to Dr. B. R. Ambedkar, the Directive Principles of State Policy is a 'novel feature' of the Indian Constitution. They are enumerated in Part IV of the Constitution. The directive principles are meant for promoting the ideal of social and economic democracy. They seek to establish a 'welfare state' in India. However, unlike the Fundamental Rights, the directives are non-justiciable in nature, that is, they are not enforceable by the courts for their violation.
- Yet, the Constitution itself declares that 'these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws'.
- They are the imperative basis of State policy and are based on the ideals of justice, liberty, equality and fraternity. They provide a code of conduct for the Indian administrators and legislators.



## Fundamental Duties

- The original constitution did not provide for the fundamental duties of the citizens. These were added during the operation of internal emergency by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. Like DPSPs, they are also non justiciable in nature

# A Secular State

- Constitution of India stands for a secular state. Hence, it does not uphold any particular religion as the official religion of the Indian State.
- The following provisions of the Constitution reveal the secular character of the Indian State:
- Term ‘secular’ in Preamble 42<sup>nd</sup> Constitutional Amendment Act 1976).
- Preamble secures to all citizens of India liberty of belief, faith and worship.
- Equality before law & equal protection of laws (Art 14)
- No discrimination on the ground of religion (Article 15).
- Equality of opportunity in matters of public employment (Article 16).
- Freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).
- Right to manage its religious affairs for all religious denominations (Article 26)
- No taxes for promotion of any particular religion (Art 27)
- No religious instruction in any educational institution maintained by the State (Article 28).
- Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).
- Right to establish and administer educational institutions to all minorities (Article 30).
- State shall endeavor to secure a Uniform Civil Code (Article 44).
- The Western concept of secularism connotes a complete separation between the religion (the church) and the state (the politics). This negative concept of secularism is inapplicable in the Indian situation where the society is multi-religious. Hence, the Indian Constitution embodies the positive concept of secularism, i.e., giving equal respect to all religions or protecting all religions equally.

## Universal Adult Franchise

- Indian Constitution adopts universal adult franchise as a basis of elections to the Lok Sabha and the state legislative assemblies. Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth, and so on. The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act of 1988.
- Universal adult franchise makes democracy broad-based, enhances the self-respect and prestige of the common people, upholds the principle of equality, enables minorities to protect their interests and opens up new hopes and vistas for weaker sections.

## Single Citizenship

- Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship.
- In countries like USA, on the other hand, each person is not only a citizen of USA but also a citizen of the particular state to which he belongs.

# Independent Bodies

- The Indian Constitution not only provides for the legislative, executive and judicial organs of the government (Central and state) but also establishes certain independent bodies. They are envisaged by the Constitution as the bulwarks of the democratic system of Government in India. These are:
- **Election Commission** to ensure free and fair elections to the Parliament, the state legislatures, the office of President of India and the office of Vice-president of India.
- **Comptroller and Auditor-General** of India to audit the accounts of the Central and state governments. He acts as the guardian of public purse and comments on the legality and propriety of government expenditure.
- **Union Public Service Commission** to conduct examinations for recruitment to all-India services<sup>15</sup> and higher Central services and to advise the President on disciplinary matters.
- The Constitution ensures the independence of these bodies through various provisions like security of tenure, fixed service conditions, expenses being charged on the Consolidated Fund of India, and so on.

# Emergency Provisions

- The Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectively. The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.
- The Constitution envisages three types of emergencies, namely:
- **National emergency** on the ground of war or external aggression or armed rebellion<sup>16</sup> (Article 352);
- **State emergency** (President's Rule) on the ground of failure of Constitutional machinery in the states (Article 356) or failure to comply with the directions of the Center (Article 365); and
- **Financial emergency** on the ground of threat to the financial stability or credit of India (Article 360).
- During an emergency, the Central Government becomes all powerful and the states go into the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution.
- This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

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## Three-tier Government

- Originally, the Indian Constitution, like any other federal constitution, provided for a dual polity and contained provisions with regard to the organisation and powers of the Centre and the states. Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government (i.e., local) which is not found in any other Constitution of the world.
- The 73rd Amendment Act of 1992 gave constitutional recognition to the Panchayats (rural local governments) by adding a new Part IX and a new Schedule 11 to the Constitution. Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local governments) by adding a new Part IX-A and a new Schedule 12 to the Constitution.
- Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.
- Name and territory of the Union.
- Admission or establishment of new States.
- Formation of new States and alteration of areas, boundaries or names of existing States.
- Laws made under articles 2 and 3 not to be Constitutional Amendments.