

## INDIAN CONSTITUTION: SALIENT FEATURES

**T**he salient features of the Indian Constitution are of two types. There are some features that are unique to this Constitution; no previous Constitution possessed them, while there are others which, though not peculiar, are still important characteristics.

### UNIQUE FEATURES

**Not an imposed Constitution:** This Constitution has been framed by the representatives of the people of India through a Constituent Assembly during 1946-1949. Prior to it, the British Parliament enacted all the Constitutions. The Constituent Assembly, however, was elected indirectly by the Provincial Legislative Assemblies that were themselves elected on a restricted franchise. The representatives of the princely states were the nominees of their rulers. In spite of it, the Constituent Assembly could be called a representative body because the then ruling party at the Centre had decided to give representation to all sections of society as well as to all shades of opinion.

**Derived from Various Sources:** The Indian Constitution has been described as a patchwork. It is a unique document that was derived from various sources. Our Constitution makers were inspired to draft the provisions regarding Fundamental Rights and Supreme Court from the U.S.A, Directive Principles of State Policy from Ireland, Emergency from Germany, Distribution of legislative powers from Canada, and Parliamentary Institutions from the United Kingdom. Besides, they borrowed extensively from the Government of India Act, 1935. (Main sources mentioned at the end of the Chapter).

**Sovereignty of the People:** The Constitution declares the supremacy of the people of India. Prior to it, the supreme authority lay in the British Parliament. Even the Indian Independence Act, 1947 through which India got independence recognized the supremacy of the British Parliament. The term Sovereignty implies that the

people of India are not subordinate to any other external agency. The membership of the Commonwealth of Nations, sometimes, is misinterpreted as a limitation on the sovereignty of the people of India. This, however, is not correct. The Commonwealth has now undergone a sea-change. It is now purely a voluntary association of independent sovereign States.

**Republican Polity:** The Constitution provides for the republican form of polity in India. Republic means that the Head of State in India i.e., the President is an elected one and not an hereditary one. Prior to it, the British king was the Head of the State who owed his office to the laws of inheritance. It is note-worthy that in Ancient India there existed republican governments in a number of parts for about one thousand years. But in modern times there was not a single territory where republican form of government prevailed.

**Secular Polity:** This Constitution provides for a secular polity in India. Though the term secular has not been defined in the Constitution anywhere, the substance of secularism can be deduced from various provisions of the Constitution. It symbolizes absence of any state religion. It has been used in the sense of absence of discrimination on grounds of religion and equal respect for all religions. Articles 25-28 mentioned under Part III of the Constitution guarantees right to freedom of religion to all. Apart from this, Article 15 prohibits discrimination on the grounds of religion and Article 16 provides for absence of discrimination in public employment on the grounds of religion. Article 326 provides for right to vote to all the citizens irrespective of their religion. Prior to it, the Government of India Act, 1935 had provided for a separate department of Ecclesiastical Affairs.

**Fundamentals Rights and Duties:** The Constitution provides for Fundamental Rights and Fundamental Duties of the citizens of India. No previous Constitution provided for them. The leaders of the Indian National Movement always



demanded for the inclusion of Fundamental Rights in the Constitution of India. The Fundamental Rights are those human rights which have got a special sanction of law. Part III of the Constitution incorporates the various provisions regarding the Fundamental Rights. The chapter on the Fundamental Rights contains a wide gamut of rights which include- right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right against constitutional remedies. The Constitution initially did not provide for Fundamental Duties. This provision was inserted in the Constitution through the Constitution (Forty Second Amendment) Act, 1976.

**Directive Principles of State Policy:** The Constitution provides for the Directive Principles of State Policy. No previous Constitution had such a provision. Though the Instrument of Instructions attached to the Government of India Act, 1935, appears to be analogous to the Directives, the aims and objects of the two are very different. It is to be noted that the leaders of the Indian National Movement had made various promises regarding the Fundamental Rights that the citizens of free India would enjoy. But when India got independence in 1947, the leaders realised that they did not possess sufficient means to grant those rights, particularly economic and social rights, immediately. But at the same time they did not want to go back upon their promises. They, therefore, decided to put the Fundamental Rights into two categories: (i) those that were granted immediately and (ii) those that would be granted in future if and when they were capable to do so. The first were included in Chapter III entitled Fundamental Rights and the second were included in Chapter IV entitled Directive Principles of State Policy. The rights included in Chapter IV are non-enforceable through courts of law but they are the fundamental principles of governance which 'the State' (i.e. the Government and Parliament of India; the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of Government of India) is required to take cognisance of. **Judicial Review:** The Constitution provides for the judicial review of the Acts of Legislatures (of both, the Union and States) as

well as of the activities of the executives (Union and State). Prior to it, there was no such provision. This provision keeps the legislative and the executive branches of governments under restraint and they cannot exercise their authority arbitrarily.

**Universal Adult Franchise:** It provides for the universal adult franchise. Prior to it all the Constitutions provided for restricted franchise. According to the Government of India Act, 1935, which granted the largest amount of franchise, only 14% of the people had a right to vote. It is noteworthy that most of the western democracies had taken a number of decades to grant such a right to their citizens. It is really a very revolutionary step taken by the Constituent Assembly to grant universal adult franchise by a stroke of pen. The Constitution (Sixty- First Amendment) Act, 1985 lowered the voting age to 18 years.

**Unique Blend of Rigidity and Flexibility:** The Constitution provides for an amending procedure. Prior to it, there was no provision for an amendment of the prevalent Constitution. The British Parliament alone was entitled to do it. The procedure for an amendment is a unique blend of rigidity and flexibility. Some provisions of the Constitution can be amended by simple majority of the two Houses of Parliament, though technically they are not treated as amendments in the Constitution, others require absolute majority of the total strength of the two Houses of Parliament and two-thirds majority of the members present and voting and still others require an additional support by half of the States' legislatures. For instance, a change in the name or territory of a State can be made through an ordinary law enacted by the two Houses of Parliament; whenever there is a change proposed in the federal character of the Constitution, absolute majority of the total strength of the two Houses of Parliament and two-thirds majority of the members present and voting and also ratification by at least half the State Legislatures is required; in all other matters a resolution passed by an absolute majority of the two Houses of Parliament and two-thirds majority of the members present and voting is sufficient for any change in the Constitution. (For details refer chapter 1).



**Comprehensive Document:** It is a comprehensive document having 395 Articles and twelve Schedules. Originally there were only eight Schedules. Later on, various Constitution Amendment Acts added four new Schedules.

**Parliamentary Democracy:** It provides for a Parliamentary Democracy. Prior to it, steps were taken in this direction, particularly by the Government of India Act, 1935, which provided for Provincial Autonomy, but there were so many restraints laid down that full Parliamentary Democracy could not be evolved. In a Parliamentary democracy elections are held at regular intervals for choosing the representatives of the people. The representatives control the executive and the Council of Ministers who in turn is collectively responsible to them.

**Federal Form of Polity:** It provides for a federal form of polity. Though the Government of India Act, 1935, had also provided for the establishment of a federal form of government, due to strong opposition, particularly from the princely states, it could not take a practical shape. Even after the establishment of a federal form of government, according to the provisions of the Constitution, there are critics who are dissatisfied with it as it is fully loaded with strong centralizing tendencies. In fact, some critics go to the extent of calling it a Unitary Constitution with some federal features rather than a Federal Constitution with strong unitary tendencies.

**Affirmative Action:** The Constitution provides for affirmative action by the State to improve the conditions of the weaker sections of society by providing reservations in the legislatures and government jobs. Article 15 of the Constitution authorizes the Government to make special provisions for the socially and educationally backward classes including the Schedule Castes and Schedule Tribes. Article 16 authorizes the government to make reservations in jobs for the socially and educationally backward classes including the Schedule Castes and Schedule Tribes. Prior to it the Indian Councils Act, 1909, the Government of India Act, 1919, and the Government of India Act, 1935, also had provided for the policy of reservation.

**Emergency Provisions:** The Constitution makes

provisions for the proclamation of National Emergency under Article 352, State Emergency under Article 352 and Financial Emergency. Under Article 360. Prior to it the Government of India Act, 1935, also had, more or less, similar provisions. By national emergency we mean an emergency which is declared when the President is satisfied that the security of India or of any part thereof is threatened by war or external aggression or armed rebellion, he may proclaim an emergency. In such a situation the federal character of the Constitution takes the shape of a unitary Constitution.

By failure of Constitutional machinery we mean a situation where President feels satisfied that it is not possible to carry on the Government of a State according to the provisions of the Constitution, he can impose President's rule in that State. The executive authority of the State becomes subordinate to the Union executive and the legislative authority of the State becomes subordinate to Parliament.

By Financial emergency we mean a situation when the financial stability of the nation or of any part thereof is at stake, then President may declare a financial emergency. Such a declaration authorizes the President to issue directions to States with regard to the way they must manage their financial affairs. It also authorizes President to reduce salaries, allowances etc., of all or any class of government employees.

### Independent Agencies

The Constitution also provides for some Independent Agencies to perform functions allotted to them. Prior to it, the Government of India Act, 1935 also had provided for such Agencies. Some of the Agencies, provided by the Constitution are as follows:

- (i) Election Commission under Article 324 for conducting free and fair elections of the Union and States' Legislatures and of the President and Vice President of India. Provisions have been made to make the members of the Commission free from executive control.
- (ii) Comptroller and Auditor General under Article 148 to keep a watch on the finances and accounts of the Union and States. Provisions have been made to keep him



free from any control of the executive of the Union or States.

(iii) Union and State Public Service Commissions under Article 315 to conduct examinations for recommending candidates for appointments in higher services in both the Centre and the States.

(iv) Finance Commission under Article 280 to recommend for the distribution of resources between the centre and the state.

### SOURCES OF THE CONSTITUTION

While evolving the most balanced governmental arrangements, the makers of our Constitution did not hesitate to learn from the experiments and experiences of other countries. Thus, the framers of the Constitution were not averse to borrowings from other Constitutional traditions. Indeed, it is a testament to their wide learning that they could lay their hands upon any intellectual argument or historical example that was necessary for fulfilling the task at hand. So they borrowed a number of provisions from different countries. But borrowing these ideas was not slavish imitation. Each provision of the Constitution had to be defended on grounds that it was suited to Indian problems and aspirations from different countries. India was extremely lucky to have an Assembly that instead of being parochial in its outlook could take the best available everywhere in the world and make it their own. It will not be out of place to quote Dr. Ambedkar in this regard who said, *"One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world... The only new thing, if there can be any, in a Constitution framed so late in the day are the variations, made to remove the failures and accommodate it to the needs of the nation."*

### Government of India Act 1935:

- Federal Scheme,
- Office of Governor,
- Role of federal judiciary,
- Emergency powers and administrative structure of both centre and the State.

### British Constitution:

- Law making process,
- Rule of Law,
- Single citizenship,
- Electoral System,
- First past the post system,
- Parliamentary form of Government,
- Office of the CAG,
- Writ jurisdiction of the Courts,
- Civil Services.
- Office of the Speaker and his role

### American Constitution:

- Fundamental Rights,
- Independent judiciary,
- Judicial Review,
- Procedure for the removal of the judges of the Supreme Court and High Court,
- Preamble,
- Role of Vice-President as the Chairman of Rajya Sabha,

### Canadian Constitution:

- Federation with strong Centre,
- Residuary power given to the Parliament,
- Name-The Union of India.

### Irish Constitution:

- Directive Principles of State Policy,
- Manner of election of the President,
- Nominating certain members in the legislature.

### Weimer Constitution of Germany:

- Emergency powers enjoyed by the Union,
- Suspension of Fundamental Rights during emergency.





**Australian Constitution:**

- Principle of Cooperative federalism,
- Freedom of Inter- state trade, Commerce and Intercourse (Art 301),
- The Idea of Concurrent list.

**South African Constitution**

- Procedure for the Constitutional Amendment,
- Election of the members of Rajya Sabha,

**Japanese Constitution:**

- Procedure established by law
- Fundamental Duties

**French Constitution:**

- Principles of liberty, equality and fraternity.

