

Lecture 3: Brief Overview of Salient Features of the Indian Constitution

The salient features of the Indian Constitution are listed and briefed below:

1. Lengthiest Written Constitution

Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution.

The Constitution of India is distinct for being the lengthiest among all written constitutions and the most detailed Constitutional document that the world has so far witnessed.

The factors that contributed to the massive size of the Indian Constitution are:

Geographical factors: the vastness and diversity of the country.

Historical factors, particularly, the influence of the Government of India Act of 1935, which was already a huge document.

Single constitution for both the Centre and the states.

The dominance of legal luminaries in the Constituent Assembly, which created a lot debates, discussions and three readings of the draft to make adequate changes.

The Constitution of India contains not only the fundamental principles of governance but also has detailed administrative provisions.

Both justiciable and non-justiciable rights are included in the Constitution.

2. Drawn from Various Sources

Several Provisions were adapted from constitutions of different countries.

From the British Constitution: First Past the Post Parliamentary Form of Government, the idea of the rule of law, Institution of the Speaker and her/his role in Law-making procedure

From United States Constitution: Charter of Fundamental Rights, Power of Judicial Review and independence of the judiciary.

From Irish Constitution: Directive Principles of State Policy

From French Constitution: Principles of Liberty, Equality and Fraternity

From Canadian Constitution: A quasi-federal form of government (a federal system with a strong central government) and the idea of Residual Powers

The structural part of the Constitution is, to a large extent, derived from the Government of India Act of 1935.

The philosophical part of the Constitution (Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions respectively.

The political part of the Constitution (the principle of Cabinet government and the relations between the executive and the legislature) have been largely drawn from the British Constitution.

3. Blend of Rigidity and Flexibility

Constitutions can be rigid and flexible. A rigid constitution is one that requires a special procedure for its amendment, like the American Constitution.

A flexible constitution is one that can be amended in the same manner as the ordinary laws are made, like the British Constitution.

The Indian Constitution is a unique example of the combination of rigidity and flexibility with three types of amendments ranging from simple to most difficult procedures depending on the nature of the amendment.

4. Federal System with Unitary Bias

The Constitution of India establishes a federal system of government. It contains all the usual features of a federation, such as two governments (the central or union government and state or provincial government), division of powers between legislature, judiciary and the executive, written constitution, supremacy and rigidity of the constitution, independent judiciary both at the state and central levels and bicameralism (two houses at the Centre, one representing the states and another directly elected by the people).

However, the Indian Constitution also contains a large number of unitary or non-federal features, such as a strong Centre, single Constitution, appointment of state governor by the Centre, all-India services, integrated judiciary, and so on.

Moreover, the term 'Federation' has nowhere been used in the Constitution. Article 1, describes India as a 'Union of States' which implies two things: (a) Indian Federation is not the result of an agreement by the states. (b) No state has the right to secede from the federation.

Hence, the Indian Constitution has been variously described as 'federal in form but unitary in spirit', described as 'quasi-federal' by K.C. Wheare, an expert in the field of constitutional studies of the British Commonwealth.

5. Parliamentary Form of Government

The Constitution of India has opted for the British Parliamentary System of Government rather than the American Presidential system of government.

The parliamentary system is based on the principle of cooperation and coordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs.

The parliamentary system is also known as the 'Westminster' model of government, responsible government and cabinet government.

The Constitution establishes the parliamentary system not only at the Centre but also in the States.

In a parliamentary system, the role of the Prime Minister has become so significant, and therefore it is called a 'Prime Ministerial Government'.

The features of parliamentary government in India are as follows: (a) Presence of real and nominal executives (b) Majority party rule (c) Collective responsibility of the executive to the

legislature (d) Membership of the ministers in the legislature (e) The leadership of the prime minister in the Parliament and the chief minister in the Legislative assembly (f) Dissolution of the lower house (Lok Sabha or Assembly) (g) Parliamentary Government combined with an elected President at the head (Republic).

6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy

Indian Parliament is not a sovereign body like the British Parliament. The doctrine of the sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court. Just as the 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 the US.

Therefore, the framers of the Indian Constitution have preferred a synthesis between the British principle of parliamentary sovereignty and the American principle of Judicial supremacy.

The Supreme Court can declare the parliamentary laws as unconstitutional through its power of judicial review.

The Parliament can amend the major portion of the Constitution through its constituent power.

7. Rule of Law: Equality before law and the law is supreme

8. Integrated and Independent Judiciary: The Supreme Court stands as the apex court of the judicial system. Below the Supreme Court are the High Courts at the state level.

Under a high court, there is a hierarchy of subordinate courts, that is district courts and the other lower courts.

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.

9. Fundamental Rights

Part III of the Indian Constitution guarantees six fundamental rights to all Citizens.

Fundamental Rights are one of the important features of the Indian Constitution.

The Constitution contains the basic principle that every individual is entitled to enjoy certain rights as a human being and the enjoyment of such rights does not depend upon the will of any majority or minority.

No majority has the right to abrogate such rights.

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.

They are justiciable in nature, that is, enforceable by the courts for their violation.

10. 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 were included in our Constitution in order to provide social and economic justice to our people.

Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.

They are non-justiciable in nature.

11. Fundamental Duties:

The original constitution did not provide for the fundamental duties of the citizens.

Fundamental Duties were added to our Constitution by the 42nd Amendment Act of 1976 on the recommendation of the Swaran Singh Committee.

It lays down a list of 10 Fundamental Duties for all citizens of India.

Later, the 86th Constitutional Amendment Act of 2002 added one more fundamental duty.

While the rights are given as guarantees to the people, the duties are obligations that every citizen is expected to perform.

However, like the Directive Principles of State Policy, the duties are also non-justiciable in nature.

As of now, there is a total of 11 Fundamental duties altogether.

12. Indian Secularism

The 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 distinguishing features of a secular democracy contemplated by the Constitution of India are:

The State will not identify itself with or be controlled by any religion;

While the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an antagonist or an atheist), it will not accord preferential treatment to any of them;

No discrimination will be shown by the State against any person on account of his religion or faith; and

The right of every citizen, subject to any general condition, to enter any office under the state will be equal to that of the fellow citizens. Political equality which entitles any Indian citizen to seek the highest office under the State is the heart and soul of secularism as envisaged by Constitution.

The conception aims to establish a secular state. This does not mean that the State in India is anti-religious.

The western concept of secularism connotes a complete separation between religion and the state (negative concept of secularism).

But, the Indian constitution embodies the positive concept of secularism, i.e., giving equal respect to all religions or protecting all religions equally.

Moreover, the Constitution has also abolished the old system of communal representation under the garb of separate electorate.

13. Universal Adult Franchise

Indian democracy functions on the basis of 'one person one vote'.

Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status.

The Indian Constitution establishes political equality in India through the method of universal adult franchise.

14. Single Citizenship

In a federal state usually, the citizens enjoy double citizenship as is the case in the USA.

In India, there is only single citizenship.

It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth.

He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chattisgarh to which he/she may belong but remains a citizen of India.

All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of India.

The Constitution makers deliberately opted for single citizenship to eliminate regionalism and other disintegrating tendencies.

Single citizenship has undoubtedly forged a sense of unity among the people of India.

15. 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 like the Election Commission of India, Union Public Service Commission, Comptroller and Auditor General of India, .

They are envisaged by the Constitution as the bulwarks of the democratic system of Government in India.

16. Emergency Provisions

The Constitution makers also foresaw that there could be situations when the government could not be run as in ordinary times.

To cope with such situations, the Constitution elaborates on emergency provisions.

There are three types of emergency

Emergency caused by war, external aggression or armed rebellion [Article 352]

Emergency arising out of the failure of constitutional machinery in states [Article 356 & 365]

Financial emergency [Article 360].

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.

During an emergency, the central government becomes all-powerful and the states go into total control of the centre.

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.

17. Three-tier Government

Originally, the Indian 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 (that is, Local Government), 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 government) by adding a new Part IX-A and a new schedule 12 to the Constitution.

18. Co-operative Societies

The 97th Constitutional Amendment Act of 2011 gave a constitutional status and protection of cooperative societies.

In this context, it made the following three changes in the Constitution:

It made the right to form cooperative societies a fundamental right (Article 19).

It included a new Directive Principles of State Policy on the promotion of cooperative societies (Article 43-B).

It added a new Part IX-B in the Constitution which is entitled “The Co-operative Societies” [Articles 243-ZH to 243-ZT].

The new Part IX-B contains various provisions to ensure that the cooperative societies in the country function in a democratic, professional, autonomous and economically sound manner.

It empowers the Parliament in respect of multi-state cooperative societies and the state legislatures in respect of other cooperative societies to make the appropriate law.