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Salient Features of the Constitution

INTRODUCTION

The Indian Constitution is unique in its contents and spirit. Though borrowed from almost every constitution of the world, the constitution of India has several salient features that distinguish it from the constitutions of other countries.

It should be noted at the outset that a number of original features of the Constitution (as adopted in 1949) have undergone a substantial change, on account of several amendments, particularly 7th, 42nd, 44th, 73rd and 74th Amendments. In fact, the 42nd Amendment Act (1976) is known as 'Mini-Constitution' due to the important and large number of changes made by it in various parts of the Constitution. However, in the *Kesavananda Bharati case*¹ (1973), the Supreme Court ruled that the constituent power of Parliament under Article 368 does not enable it to alter the 'basic structure' of the Constitution.

SALIENT FEATURES OF THE CONSTITUTION

The salient features of the Constitution, as it stands today, are as follows:

1. Lengthiest 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. It is a very comprehensive, elaborate and detailed document.

Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. Presently (2013), it consists of a Preamble, about 465 Articles (divided into 25 Parts) and 12 Schedules². The various amendments carried out since 1951 have deleted about 20 Articles and one Part (VII) and added about 85 Articles, four Parts (IVA, IXA, IXB and XIVA) and four Schedules (9, 10, 11 and 12). No other Constitution in the world has so many Articles and Schedules³.

Four factors have contributed to the elephantine size of our Constitution. They are:

- (a) Geographical factors, that is, the vastness of the country and its diversity.
- (b) Historical factors, e.g., the influence of the Government of India Act of 1935, which was bulky.
- (c) Single Constitution for both the Centre and the states except Jammu and Kashmir⁴.
- (d) Dominance of legal luminaries in the Constituent Assembly.

The Constitution contains not only the fundamental principles of governance but also detailed administrative provisions. Further, those matters which in other modern democratic countries have been left to the ordinary legislation or established political conventions have also been included in the constitutional document itself in India.

2. Drawn From Various Sources

The Constitution of India has borrowed most of its provisions from the constitutions of various other

countries as well as from the Government of India Act⁵ 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'⁶.

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 (the 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 Constitution⁷.

The other provisions of the Constitution have been drawn from the constitutions of Canada, Australia, Germany, USSR (now Russia), France, South Africa, Japan, and so on⁸.

However, the criticism that the Indian Constitution is a 'borrowed Constitution', a 'patchwork' and contains nothing new and original is unfair and illogical. This is because, the framers of the Constitution made necessary modifications in the features borrowed from other constitutions for their suitability to the Indian conditions, at the same time avoiding their faults⁹.

3. 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.

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, viz., two government, division of powers, written Constitution, supremacy of Constitution, rigidity of Constitution, independent judiciary and bicameralism.

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

Moreover, 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.

Hence, the Indian Constitution has been variously described as 'federal in form but unitary in spirit', 'quasi-federal' by K C Wheare, 'bargaining federalism' by Morris Jones, 'co-operative federalism' by Granville Austin, 'federation with a centralising tendency' by Ivor Jennings, and so on.

5. Parliamentary Form of Government

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

The parliamentary system is also known as the 'Westminster'¹⁰ model of government, responsible government and cabinet government. The Constitu-

tion establishes the parliamentary system not only at the Centre but also in the states. The features of parliamentary government in India are:

- (a) Presence of nominal and real executives;
- (b) Majority party rule,
- (c) Collective responsibility of the executive to the legislature,
- (d) Membership of the ministers in the legislature,
- (e) Leadership of the prime minister or the chief minister,
- (f) Dissolution of the lower House (Lok Sabha or Assembly).

Even though the Indian Parliamentary System is largely based on the British pattern, there are some fundamental differences between the two. For example, the Indian Parliament is not a sovereign body like the British Parliament. Further, the Indian State has an elected head (republic) while the British State has hereditary head (monarchy).

In a parliamentary system whether in India or Britain, the role of the Prime Minister has become so significant and crucial that the political scientists like to call it a 'Prime Ministerial Government'.

6. 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 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 US. This is because the American Constitution provides for 'due process of law' against that of 'procedure established by law' contained in the Indian Constitution (Article 21).

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

7. Integrated and Independent Judiciary

The Indian Constitution establishes a judicial system that is integrated as well as independent.

The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are high courts at the state level. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts enforces both the central laws as well as the state laws, unlike in USA, where the federal laws are enforced by the federal judiciary and the state laws are enforced by the 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 the expenses of the Supreme Court charged on the Consolidated Fund of India, prohibition on discussion on the conduct of judges in the legislatures, ban on practice after retirement, power to punish for its contempt vested in the Supreme Court, separation of the judiciary from the executive, and so on.

8. Fundamental Rights

Part III of the Indian Constitution guarantees six¹¹ fundamental rights to all the citizens:

- (a) Right to Equality (Articles 14–18),
- (b) Right to Freedom (Articles 19–22),
- (c) Right against Exploitation (Articles 23–24),
- (d) Right to Freedom of Religion (Articles 25–28),
- (e) Cultural and Educational Rights (Articles 29–30), and
- (f) 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. 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 the rights guaranteed by Articles 20 and 21.

9. 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. They can be classified into three broad categories—socialistic, Gandhian and liberal-intellectual.

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'. Hence, they impose a moral obligation on the state authorities for their application. But, the real force (sanction) behind them is political, that is, public opinion.

In the *Minerva Mills case*¹² (1980), the Supreme Court held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles'.

10. Fundamental Duties

The original constitution did not provide for the fundamental duties of the citizens. These were added during the operation of internal emergency (1975–77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.

The Part IV-A of the Constitution (which consists of only one Article—51-A) specifies the eleven Fundamental Duties viz., to respect the Constitution, national flag and national anthem; to protect the sovereignty, unity and integrity of the country; to

promote the spirit of common brotherhood amongst all the people; to preserve the rich heritage of our composite culture and so on.

The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to their country, their society and to their fellow-citizens. However, like the Directive Principles, the duties are also non-justiciable in nature.

11. A Secular State

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 following provisions of the Constitution reveal the secular character of the Indian State:

- (a) The term 'secular' was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.
- (b) The Preamble secures to all citizens of India liberty of belief, faith and worship.
- (c) The State shall not deny to any person equality before the law or equal protection of the laws (Article 14).
- (d) The State shall not discriminate against any citizen on the ground of religion (Article 15).
- (e) Equality of opportunity for all citizens in matters of public employment (Article 16).
- (f) All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).
- (g) Every religious denomination or any of its section shall have the right to manage its religious affairs (Article 26).
- (h) No person shall be compelled to pay any taxes for the promotion of a particular religion (Article 27).
- (i) No religious instruction shall be provided in any educational institution maintained by the State (Article 28).
- (j) Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).
- (k) All minorities shall have the right to establish and administer educational institutions of their choice (Article 30).

- (l) The State shall endeavour to secure for all the citizens 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 multireligious. Hence, 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 representation¹³, that is, reservation of seats in the legislatures on the basis of religion. However, it provides for the temporary reservation of seats for the scheduled castes and scheduled tribes to ensure adequate representation to them.

12. Universal Adult Franchise

The 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.

The introduction of universal adult franchise by the Constitution-makers was a bold experiment and highly remarkable in view of the vast size of the country, its huge population, high poverty, social inequality and overwhelming illiteracy.¹⁴

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.

13. 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. Thus,

he owes allegiance to both and enjoys dual sets of rights—one conferred by the National government and another by the state government.

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them excepting in few cases like tribal areas, Jammu and Kashmir, and so on.

Despite the constitutional provision for a single citizenship and uniform rights for all the people, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes. This means that the cherished goal of the Constitution-makers to build an united and integrated Indian nation has not been fully realised.

14. 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:

- (a) 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.
- (b) 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.
- (c) Union Public Service Commission to conduct examinations for recruitment to all-India services¹⁵ and higher Central services and to advise the President on disciplinary matters.
- (d) State Public Service Commission in every state to conduct examinations for recruitment to state services and to advise the governor 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.

15. 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 rebellion¹⁶ (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 Centre (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.

16. 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 IX¹⁷ 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-A¹⁸ and a new Schedule 12 to the Constitution.

Table 3.1 The Constitution of India at a Glance

Part	Subject Matter	Articles Covered
I	The Union and its territory	1 to 4
II	Citizenship	5 to 11
III	Fundamental Rights	12 to 35
IV	Directive Principles of State Policy	36 to 51
IV-A	Fundamental Duties	51-A
V	The Union Government	52 to 151
	Chapter I – The Executive	52 to 78
	Chapter II – Parliament	79 to 122
	Chapter III – Legislative Powers of President	123
	Chapter IV – The Union Judiciary	124 to 147
	Chapter V – Comptroller and Auditor-General of India	148 to 151
VI	The State Governments	152 to 237
	Chapter I – General	152
	Chapter II – The Executive	153 to 167
	Chapter III – The State Legislature	168 to 212

(Contd.)

Parts	Subject Matter	Articles Covered
	Chapter IV – Legislative Powers of Governor	213
	Chapter V – The High Courts	214 to 232
	Chapter VI – Subordinate Courts	233 to 237
VIII	The Union Territories	239 to 242
IX	The Panchayats	243 to 243-0
IX-A	The Municipalities	243-P to 243-ZG
IX-B	The Co-operative Societies	243-ZH to 243-ZT
X	The Scheduled and Tribal Areas	244 to 244-A
XI	Relations between the Union and the States	245 to 263
	Chapter I – Legislative Relations	245 to 255
	Chapter II – Administrative Relations	256 to 263
XII	Finance, Property, Contracts and Suits	264 to 300-A
	Chapter I – Finance	264 to 291
	Chapter II – Borrowing	292 to 293
	Chapter III – Property, Contracts, Rights, Liabilities, Obligations and Suits	294 to 300
	Chapter IV – Right to Property	300-A
XIII	Trade, Commerce and Intercourse within the Territory of India	301 to 307
XIV	Services under the Union and the States	308 to 323
	Chapter I – Services	308 to 314
	Chapter II – Public Service Commissions	315 to 323
XIV-A	Tribunals	323-A to 323-B
XV	Elections	324 to 329-A
XVI	Special Provisions relating to Certain Classes	330 to 342
XVII	Official Language	343 to 351
	Chapter I – Language of the Union	343 to 344
	Chapter II – Regional Languages	345 to 347
	Chapter III—Language of the Supreme Court, High Courts, and so on	348 to 349
	Chapter IV—Special Directives	350 to 351
XVIII	Emergency Provisions	352 to 360
XIX	Miscellaneous	361 to 367
XX	Amendment of the Constitution	368
XXI	Temporary, Transitional and Special Provisions	369 to 392
XXII	Short title, Commencement, Authoritative Text in Hindi and Repeals	393 to 395

Note: Part VII (dealing with Part-B states) was deleted by the 7th Amendment Act (1956). On the other hand, both Part IV-A and Part XIV-A were added by the 42nd Amendment Act (1976), while Part IX-A was added by the 74th Amendment Act (1992), and Part IX-B was added by the 97th Amendment Act (2011).

Table 3.2 Important Articles of the Constitution at a Glance

Articles	Deals with
1	Name and territory of the Union
3	Formation of new states and alteration of areas, boundaries or names of existing states
13	Laws inconsistent with or in derogation of the fundamental rights
14	Equality before law
16	Equality of opportunity in matters of public employment
17	Abolition of untouchability
19	Protection of certain rights regarding freedom of speech, etc.
21	Protection of life and personal liberty
21A	Right to elementary education
25	Freedom of conscience and free profession, practice and propagation of religion
30	Right of minorities to establish and administer educational institutions
31C	Saving of laws giving effect to certain directive principles
32	Remedies for enforcement of fundamental rights including writs
38	State to secure a social order for the promotion of welfare of the people
40	Organisation of village panchayats
44	Uniform civil code for the citizens
45	Provision for early childhood care and education to children below the age of 6 years.
46	Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections
50	Separation of judiciary from executive
51	Promotion of international peace and security
51A	Fundamental duties
72	Power of president to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
74	Council of ministers to aid and advise the president
78	Duties of prime minister as respects the furnishing of information to the president, etc.
110	Definition of Money Bills
112	Annual financial statement (Budget)
123	Power of president to promulgate ordinances during recess of Parliament
143	Power of president to consult Supreme Court
155	Appointment of governor
161	Power of governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
163	Council of ministers to aid and advise the governor
167	Duties of chief minister with regard to the furnishing of information to governor, etc.
169	Abolition or creation of legislative councils in states
200	Assent to bills by governor (including reservation for President)
213	Power of governor to promulgate ordinances during recess of the state legislature

(Contd.)

Articles	Deals with
226	Power of high courts to issue certain writs
239AA	Special provisions with respect to Delhi
249	Power of Parliament to legislate with respect to a matter in the State List in the national interest
262	Adjudication of disputes relating to waters of inter-state rivers or river valleys
263	Provisions with respect to an inter-state council
265	Taxes not to be imposed save by authority of law
275	Grants from the Union to certain states
280	Finance Commission
300	Suits and proceedings
300A	Persons not to be deprived of property save by authority of law (Right to property)
311	Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a state.
312	All-India Services
315	Public service commissions for the Union and for the states
320	Functions of Public service commissions
323-A	Administrative tribunals
324	Superintendence, direction and control of elections to be vested in an Election Commission
330	Reservation of seats for scheduled castes and scheduled tribes in the House of the People
335	Claims of scheduled castes and scheduled tribes to services and posts
352	Proclamation of Emergency (National Emergency)
356	Provisions in case of failure of constitutional machinery in states (President's Rule)
360	Provisions as to financial emergency.
365	Effect of failure to comply with, or to give effect to, directions given by the Union (President's Rule)
368	Power of Parliament to amend the Constitution and procedure therefor
370	Temporary provisions with respect to the state of Jammu and Kashmir

Table 3.3 Schedules of the Constitution at a Glance

Numbers	Subject Matter	Articles Covered
First Schedule	1. Names of the States and their territorial jurisdiction. 2. Names of the Union Territories and their extent.	1 and 4
Second Schedule	Provisions relating to the emoluments, allowances, privileges and so on of: 1. The President of India 2. The Governors of States 3. The Speaker and the Deputy Speaker of the Lok Sabha 4. The Chairman and the Deputy Chairman of the Rajya Sabha	59, 65, 75, 97, 125, 148, 158, 164, 186 & 221

(Contd.)

Numbers	Subject Matter	Articles Covered
	5. The Speaker and the Deputy Speaker of the Legislative Assembly in the states	
	6. The Chairman and the Deputy Chairman of the Legislative Council in the states	
	7. The Judges of the Supreme Court	
	8. The Judges of the High Courts	
	9. The Comptroller and Auditor-General of India	
Third Schedule	Forms of Oaths or Affirmations for:	75, 84, 99, 124, 146, 173, 188 and 219
	1. The Union ministers	
	2. The candidates for election to the Parliament	
	3. The members of Parliament	
	4. The judges of the Supreme Court	
	5. The Comptroller and Auditor-General of India	
	6. The state ministers	
	7. The candidates for election to the state legislature	
	8. The members of the state legislature	
	9. The judges of the High Courts	
Fourth Schedule	Allocation of seats in the Rajya Sabha to the states and the union territories.	4 and 80
Fifth Schedule	Provisions relating to the administration and control of scheduled areas and scheduled tribes.	244
Sixth Schedule	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.	244 and 275
Seventh Schedule	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 100 subjects (originally 97), the state list contains 61 subjects (originally 66) and the concurrent list contains 52 subjects (originally 47).	246
Eighth Schedule	Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages. They are: Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21 st Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71 st Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92 nd Amendment Act of 2003.	344 and 351

(Contd.)

Numbers	Subject Matter	Articles Covered
Ninth Schedule	Acts and Regulations (originally 13 but presently 282) ¹⁹ of the state legislatures dealing with land reforms and abolition of the zamindari system and of the Parliament dealing with other matters. This schedule was added by the 1 st Amendment (1951) to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights. However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to judicial review.	31-B
Tenth Schedule	Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52 nd Amendment Act of 1985, also known as Anti-defection Law.	102 and 191
Eleventh Schedule	Specifies the powers, authority and responsibilities of Panchayats. It has 29 matters. This schedule was added by the 73 rd Amendment Act of 1992.	243-G
Twelfth Schedule	Specifies the powers, authority and responsibilities of Municipalities. It has 18 matters. This schedule was added by the 74 th Amendment Act of 1992.	243-W

Table 3.4 Sources of the Constitution at a Glance

Sources	Features Borrowed
1. Government of India Act of 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
2. British Constitution	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
3. US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.
4. Irish Constitution	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
5. Canadian Constitution	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
6. Australian Constitution	Concurrent List, freedom of trade, commerce and inter-course, and joint sitting of the two Houses of Parliament.
7. Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency.
8. Soviet Constitution (USSR, now Russia)	Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
9. French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
10. South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha.
11. Japanese Constitution	Procedure established by Law.

NOTES AND REFERENCES

1. *Kesavananda Bharati v. State of Kerala*, (1973)
2. For details on Parts, important Articles and Schedules, see Tables 3.1, 3.2 and 3.3 at the end of this chapter.
3. The American Constitution originally consisted of only 7 Articles, the Australian 128, the Chinese 138, and the Canadian 147.
4. The State of Jammu and Kashmir has its own Constitution and thus, enjoys a special status by virtue of Article 370 of the Constitution of India.
5. About 250 provisions of the 1935 Act have been included in the Constitution.
6. *Constituent Assembly Debates*, Volume VII, P. 35–38.
7. P M Bakshi, *The Constitution of India*, Universal, Fifth Edition, 2002, P. 4.
8. See Table 3.4 at the end of this chapter.
9. In this context, Dr B R Ambedkar said: ‘One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a constitution should be has long been settled. Similarly, what are the fundamentals of a constitution are recognised all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure, on an inadequate study of the Constitution. As to the accusation that the draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution’. (*Constituent Assembly Debates*, Volume VII, p. (35–38).
10. Westminster is a place in London where the British Parliament is located. It is often used as a symbol/synonym of the British Parliament.
11. Originally, the Constitution provided for seven Fundamental Rights. However, the Right to Property (Article 31) was deleted from the list of Fundamental Rights by the 44th Amendment Act of 1978. It is made a legal right under Article 300-A in Part XII of the constitution.
12. *Minerva Mills v. Union of India*, (1980).
13. The 1909, 1919, and 1935 Acts provided for communal representation.
14. Even in the western countries, the right to vote was extended only gradually. For example, USA gave franchise to women in 1920, Britain in 1928, USSR (now Russia) in 1936, France in 1945, Italy in 1948 and Switzerland in 1971.
15. At present, there are three All-India services, namely Indian Administrative Service (IAS), Indian Police Service (IPS) and Indian Forest Service (IFS). In 1947, Indian Civil Service (ICS) was replaced by IAS and the Indian Police (IP) was replaced by IPS and were recognised by the Constitution as All-India Services. In 1963, IFS was created and it came into existence in 1966.
16. The 44th Amendment Act (1978) has replaced the original term ‘internal disturbance’ by the new term ‘armed rebellion’.
17. Part IX of the Constitution provides for a three-tier system of panchayati raj in every state, that is, panchayats at the village, intermediate and district levels.
18. Part IX-A of the Constitution provides for three types of municipalities in every state, that is, nagar panchayat for a transitional area, municipal council for a smaller urban area and municipal corporation for a larger urban area.
19. Though the last entry is numbered 284, the actual total number is 282. This is because three entries (87, 92 and 130) have been deleted and one entry is numbered as 257-A.

4

Preamble of the Constitution

The American Constitution was the first to begin with a Preamble. Many countries, including India, followed this practice. The term 'preamble' refers to the introduction or preface to the Constitution. It contains the summary or essence of the Constitution. N A Palkhivala, an eminent jurist and constitutional expert, called the Preamble as the 'identity card of the Constitution.'

The Preamble to the Indian Constitution is based on the 'Objectives Resolution', drafted and moved by Pandit Nehru, and adopted by the Constituent Assembly¹. It has been amended by the 42nd Constitutional Amendment Act (1976), which added three new words—socialist, secular and integrity.

TEXT OF THE PREAMBLE

The Preamble in its present form reads:

"We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, Social, Economic and Political;
LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity *and integrity* of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION".

INGREDIENTS OF THE PREAMBLE

The Preamble reveals four ingredients or components:

1. Source of authority of the Constitution: The Preamble states that the Constitution derives its authority from the people of India.
2. Nature of Indian State: It declares India to be of a sovereign, socialist, secular democratic and republican polity.
3. Objectives of the Constitution: It specifies justice, liberty, equality and fraternity as the objectives.
4. Date of adoption of the Constitution: It stipulates November 26, 1949 as the date.

KEY WORDS IN THE PREAMBLE

Certain key words—Sovereign, Socialist, Secular, Democratic, Republic, Justice, Liberty, Equality and Fraternity—are explained as follows:

1. Sovereign

The word 'sovereign' implies that India is neither a dependency nor a dominion of any other nation, but an independent state². There is no authority above it, and it is free to conduct its own affairs (both internal and external).

Though in 1949, India declared the continuation of her full membership of the Commonwealth of Nations and accepted the British Crown as the head of the Commonwealth, this extra-constitutional declaration does not affect India's sovereignty in any manner³. Further, India's membership of the United Nations Organisation (UNO) also in no way constitutes a limitation on her sovereignty⁴.

Being a sovereign state, India can either acquire a foreign territory or cede a part of its territory in favour of a foreign state.

2. Socialist

Even before the term was added by the 42nd Amendment in 1976, the Constitution had a socialist content in the form of certain Directive Principles of State Policy. In other words, what was hitherto implicit in the Constitution has now been made explicit. Moreover, the Congress party itself adopted a resolution⁵ to establish a 'socialistic pattern of society' in its Avadi session as early as in 1955 and took measures accordingly.

Notably, the Indian brand of socialism is a 'democratic socialism' and not a 'communistic socialism' (also known as 'state socialism') which involves the nationalisation of all means of production and distribution and the abolition of private property. Democratic socialism, on the other hand, holds faith in a 'mixed economy' where both public and private sectors co-exist side by side⁶. As the Supreme Court says, 'Democratic socialism aims to end poverty, ignorance, disease and inequality of opportunity'. Indian socialism is a blend of Marxism and Gandhism, leaning heavily towards Gandhian socialism⁸.

The new economic policy (1991) of liberalisation, privatisation and globalisation has, however, diluted the socialist credentials of the Indian State.

3. Secular

The term 'secular' too was added by the 42nd Constitutional Amendment Act of 1976. However,

as the Supreme Court said in 1974, although the words 'secular state'⁹ were not expressly mentioned in the Constitution, there can be no doubt that Constitution-makers wanted to establish such a state and accordingly Articles 25 to 28 (guaranteeing the fundamental right to freedom of religion) have been included in the constitution.

The Indian Constitution embodies the positive concept of secularism ie, all religions in our country (irrespective of their strength) have the same status and support from the state¹⁰.

4. Democratic

A democratic¹¹ polity, as stipulated in the Preamble, is based on the doctrine of popular sovereignty, that is, possession of supreme power by the people.

Democracy is of two types—direct and indirect. In direct democracy, the people exercise their supreme power directly as is the case in Switzerland. There are four devices of direct democracy, namely, **Referendum, Initiative, Recall and Plebiscite**¹². In indirect democracy, on the other hand, the representatives elected by the people exercise the supreme power and thus carry on the government and make the laws. This type of democracy, also known as representative democracy, is of two kinds—parliamentary and presidential.

The Indian Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions. Universal adult franchise, periodic elections, rule of law, independence of judiciary, and absence of discrimination on certain grounds are the manifestations of the democratic character of the Indian polity.

The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.

This dimension was stressed by Dr. Ambedkar in his concluding speech in the Constituent Assembly on November 25, 1949, in the following way:

"Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality and fraternity. The principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a

union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty, would kill individual initiative".^{12a}

In the same context, the Supreme Court observed in 1997 that: "The Constitution envisions to establish an egalitarian social order rendering to every citizen social, economic and political justice in a social and economic democracy of the Bharat Republic".

5. Republic

A democratic polity can be classified into two categories—monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position, that is, he comes into office through succession, eg, Britain. In a republic, on the other hand, the head of the state is always elected directly or indirectly for a fixed period, eg, USA.

Therefore, the term 'republic' in our Preamble indicates that India has an elected head called the president. He is elected indirectly for a fixed period of five years.

A republic also means two more things: one, vesting of political sovereignty in the people and not in a single individual like a king; second, the absence of any privileged class and hence all public offices being opened to every citizen without any discrimination.

6. Justice

The term 'justice' in the Preamble embraces three distinct forms—social, economic and political, secured through various provisions of Fundamental Rights and Directive Principles.

Social justice denotes the equal treatment of all citizens without any social distinction based on caste, colour, race, religion, sex and so on. It means absence of privileges being extended to any particular section of the society, and improvement in the conditions of backward classes (SCs, STs and OBCs) and women.

Economic justice denotes the non-discrimination between people on the basis of economic factors.

It involves the elimination of glaring inequalities in wealth, income and property. A combination of social justice and economic justice denotes what is known as 'distributive justice'.

Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government.

The ideal of justice—social, economic and political—has been taken from the Russian Revolution (1917).

7. Liberty

The term 'liberty' means the absence of restraints on the activities of individuals, and at the same time, providing opportunities for the development of individual personalities.

The Preamble secures to all citizens of India liberty of thought, expression, belief, faith and worship, through their Fundamental Rights, enforceable in court of law, in case of violation.

Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. However, liberty does not mean 'license' to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself. In brief, the liberty conceived by the Preamble or fundamental rights is not absolute but qualified.

The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789–1799).

8. Equality

The term 'equality' means the absence of special privileges to any section of the society, and the provision of adequate opportunities for all individuals without any discrimination.

The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality—civic, political and economic.

The following provisions of the chapter on Fundamental Rights ensure civic equality:

- (a) Equality before the law (Article 14).
- (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).

- (c) Equality of opportunity in matters of public employment (Article 16).
- (d) Abolition of untouchability (Article 17).
- (e) Abolition of titles (Article 18).

There are two provisions in the Constitution that seek to achieve political equality. One, no person is to be declared ineligible for inclusion in electoral rolls on grounds of religion, race, caste or sex (Article 325). Two, elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage (Article 326).

The Directive Principles of State Policy (Article 39) secures to men and women equal right to an adequate means of livelihood and equal pay for equal work.

9. Fraternity

Fraternity means a sense of brotherhood. The Constitution promotes this feeling of fraternity by the system of single citizenship. Also, the Fundamental Duties (Article 51-A) say that it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities.

The Preamble declares that fraternity has to assure two things—the dignity of the individual and the unity and integrity of the nation. The word ‘integrity’ has been added to the preamble by the 42nd Constitutional Amendment (1976).

According to K M Munshi, a member of the Drafting Committee of the Constituent Assembly, the phrase ‘dignity of the individual’ signifies that the Constitution not only ensures material betterment and maintain a democratic set-up, but that it also recognises that the personality of every individual is sacred. This is highlighted through some of the provisions of the Fundamental Rights and Directive Principles of State Policy, which ensure the dignity of individuals. Further, the Fundamental Duties (Article 51A) also protect the dignity of women by stating that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women, and also makes it the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India.

The phrase ‘unity and integrity of the nation’

embraces both the psychological and territorial dimensions of national integration. Article 1 of the Constitution describes India as a ‘Union of States’ to make it clear that the states have no right to secede from the Union, implying the indestructible nature of the Indian Union. It aims at overcoming hindrances to national integration like communalism, regionalism, casteism, linguism, secessionism and so on.

SIGNIFICANCE OF THE PREAMBLE

The Preamble embodies the basic philosophy and fundamental values—political, moral and religious—on which the Constitution is based. It contains the grand and noble vision of the Constituent Assembly, and reflects the dreams and aspirations of the founding fathers of the Constitution. In the words of Sir Alladi Krishnaswami Iyer, a member of the Constituent Assembly who played a significant role in making the Constitution, ‘The Preamble to our Constitution expresses what we had thought or dreamt so long’.

According to K M Munshi, a member of the Drafting Committee of the Constituent Assembly, the Preamble is the ‘horoscope of our sovereign democratic republic’.

Pandit Thakur Das Bhargava, another member of the Constituent Assembly, summed up the importance of the Preamble in the following words: ‘The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a jewel set in the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution’.

Sir Ernest Barker, a distinguished English political scientist, paid a glowing tribute to the political wisdom of the authors of the Preamble. He described the Preamble as the ‘key-note’¹³ to the Constitution. He was so moved by the text of the preamble that he quoted¹⁴ it at the opening of his popular book, *Principles of Social and Political Theory* (1951).

M Hidayatullah, a former Chief Justice of India, observed, ‘Preamble resembles the Declaration of Independence of the United States of America, but is more than a declaration. It is the soul of our

Constitution, which lays down the pattern of our political society. It contains a solemn resolve, which nothing but a revolution can alter¹⁵.

PREAMBLE AS PART OF THE CONSTITUTION

One of the controversies about the Preamble is as to whether it is a part of the Constitution or not.

In the *Berubari Union*¹⁶ case (1960), the Supreme Court said that the Preamble shows the general purposes behind the several provisions in the Constitution, and is thus a key to the minds of the makers of the Constitution. Further, where the terms used in any article are ambiguous or capable of more than one meaning, some assistance at interpretation may be taken from the objectives enshrined in the Preamble. Despite this recognition of the significance of the Preamble, the Supreme Court specifically opined that Preamble is *not* a part of the Constitution.

In the *Kesavananda Bharati* case¹⁷ (1973), the Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution. It observed that the Preamble is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble. In the *LIC of India* case¹⁸ (1995) also, the Supreme Court again held that the Preamble is an integral part of the Constitution.

Like any other part of the Constitution, the Preamble was also enacted by the Constituent Assembly, but, after the rest of the Constitution was already enacted. The reason for inserting the Preamble at the end was to ensure that it was in conformity with the Constitution as adopted by the Constituent Assembly. While forwarding the Preamble for votes, the president of the Constituent Assembly said, 'The question is that Preamble stands part of the Constitution'¹⁹. The motion was then adopted. Hence, the

current opinion held by the Supreme Court that the Preamble is a part of the Constitution, is in consonance with the opinion of the founding fathers of the Constitution.

However, two things should be noted:

1. The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature.
2. It is non-justiciable, that is, its provisions are not enforceable in courts of law.

AMENDABILITY OF THE PREAMBLE

The question as to whether the Preamble can be amended under Article 368 of the Constitution arose for the first time in the historic case of *Kesavananda Bharati* (1973). It was urged that the Preamble cannot be amended as it is not a part of the Constitution. The petitioner contended that the amending power in Article 368 cannot be used to destroy or damage the basic elements or the fundamental features of the Constitution, which are enshrined in the Preamble.

The Supreme Court, however, held that the Preamble is a part of the Constitution. The Court stated that the opinion tendered by it in the *Berubari Union* (1960) in this regard was wrong, and held that the Preamble can be amended, subject to the condition that no amendment is done to the 'basic features'. In other words, the Court held that the basic elements or the fundamental features of the Constitution as contained in the Preamble cannot be altered by an amendment under Article 368²⁰.

The Preamble has been amended only once so far, in 1976, by the 42nd Constitutional Amendment Act, which has added three new words—Socialist, Secular and Integrity—to the Preamble. This amendment was held to be valid.

NOTES AND REFERENCES

1. Moved by Nehru on December 13, 1946 and adopted by the Constituent Assembly on January 22, 1947.
2. Till the passage of the Indian Independence Act, 1947, India was a dependency (colony) of the British Empire. From August 15, 1947

to January 26, 1950, India's political status was that of a dominion in the British Commonwealth of Nations. India ceased to be a British dominion on January 26, 1950, by declaring herself a sovereign republic. However, Pakistan continued to be a British Dominion until 1956.

3. To dispel the lurking fears of some members of the Constituent Assembly, Pandit Nehru said in 1949 thus: 'We took pledge long ago to achieve *Purna Swaraj*. We have achieved it. Does a nation lose its independence by an alliance with another country? Alliance normally means commitments. The free association of the sovereign Commonwealth of Nations does not involve such commitments. Its very strength lies in its flexibility and its complete freedom. It is well-known that it is open to any member-nation to go out of the commonwealth if it so chooses'. He further stated, 'It is an agreement by free will, to be terminated by free will'.
4. India became a member of the UNO in 1945.
5. The Resolution said: 'In order to realise the object of Congress and to further the objectives stated in the Preamble and Directive Principles of State Policy of the Constitution of India, planning should take place with a view to the establishment of a socialistic pattern of society, where the principal means of production are under social ownership or control, production is progressively speeded up and there is equitable distribution of the national wealth'.
6. The Prime Minister, Indira Gandhi, said, 'We have always said that we have our own brand of socialism. We will nationalise the sectors where we feel the necessity. Just nationalisation is not our type of socialism'.
7. *G.B. Pant University of Agriculture and Technology v. State of Uttar Pradesh* (2000).
8. *Nakara v. Union of India* (1983).
9. On the basis of the attitude of the state towards religion, three types of states can be conceived of:
 - (a) *Atheistic State*: The state is anti-religion and hence, condemns all religions.
 - (b) *Theocratic State*: The state is pro-religion and hence, declares one particular religion as the state religion, as for example, Nepal, Bangladesh, Burma, Sri Lanka, Pakistan, and so on.
 - (c) *Secular State*: The state is neutral in the matter of religion and hence, does not uphold any particular religion as the state religion, as for example, USA and India.

G S Pande, *Constitutional Law of India*, Allahabad Law Agency, eighth edition, 2002, P. 222.

10. The then Union Law Minister, H R Gokhale defined this concept as: 'There will be freedom, liberty of faith and worship, whatever religion you belong to. The State will not have anything to do, as a state, with any religion excepting to treat every religion equally, but the State will not have any foundation of religion'. Similarly, P B Gajendragadkar, a former Chief Justice of India, defined secularism as in the Indian Constitution in the following way: 'The State does not owe loyalty to any particular religion as such: it is not irreligious or anti-religious; it gives equal freedom to all religions'.
11. The term 'democracy' is derived from two Greek words, namely, *Demos* and *Kratia* meaning 'People' and 'rule' respectively.
12. *Referendum* is a procedure whereby a proposed legislation is referred to the electorate for settlement by their direct votes.
Initiative is a method by means of which the people can propose a bill to the legislature for enactment.
Recall is a method by means of which the voters can remove a representative or an officer before the expiry of his term, when he fails to discharge his duties properly.
Plebiscite is a method of obtaining the opinion of people on any issue of public importance. It is generally used to solve the territorial disputes.
- 12a. B. Shiva Rao, *The Framing of Indian Constitution: Select Documents*, Volume IV, P. 944.
13. He said that the Preamble of the Indian Constitution states 'in a brief and pithy form the argument of much of the book; and it may accordingly serve as a key-note'.
14. He wrote: 'I am all the more moved to quote it because I am proud that the people of India should begin their independent life by subscribing to the principles of a political tradition which we in the west call western, but which is now something more than the western'.

15. M Hidayatullah, *Democracy in India and the Judicial Process*, p. 51.
16. Reference by the President of India under Article 143 of the Constitution on the implementation of the Indo-Pakistan agreement relating to Berubari union and exchange of enclaves (1960).
17. *Kesavananda Bharati v. State of Kerala* (1973).
18. *LIC of India v. Consumer Education and Research Centre* (1995).
19. 'Constituent Assembly Debates', Volume 10, P. 450–456.
20. The Court observed, 'The edifice of our Constitution is based upon the basic elements mentioned in the Preamble. If any of these elements are removed, the structure will not survive and it will not be the same Constitution or it cannot maintain its identity. An amending power cannot be interpreted so as to confer power on the Parliament to take away any of these fundamental and basic characteristics of the polity'.