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## ***INTRODUCTION TO CONSTITUTION***

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## 1. Concept & Relevance of Constitution

The basic structure of a government and fundamental rights of its subjects or citizens in a higher law that cannot be changed unilaterally via an ordinary legislative act. The higher law is also known as a Constitution.

There is no universally accepted definition of constitution. Constitution of any country defines the social order in context to legal and political aspects. A present working definition to define the characteristics of constitution are defines such that, a constitution is a set of fundamental legal-political rules that:

- i. Binding on every subject of the state
- ii. Defines basic structure and operation of the institution of government, political principles and rights of the subjects or citizens
- iii. Are based on political morality
- iv. Are harder to change
- v. Meets the international criteria for democratic system in terms of representation and human rights.

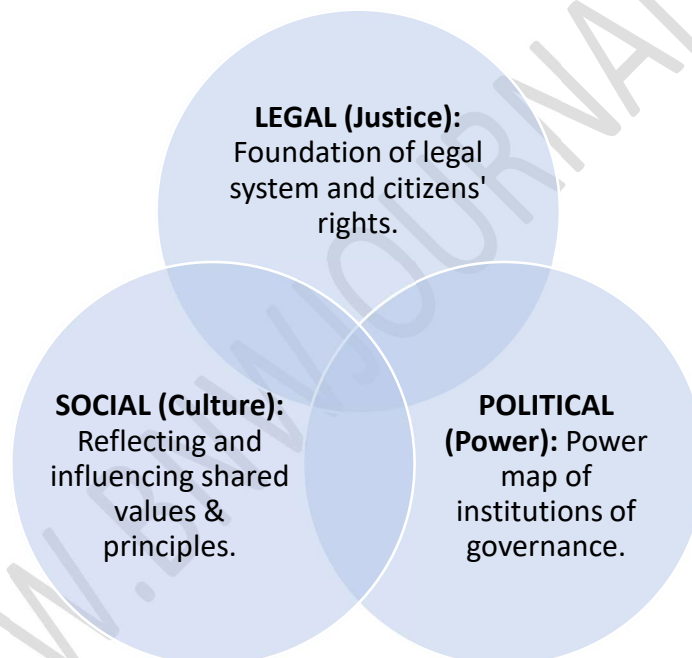
### Functions of a Constitution

1. Declares and defines boundaries of the political community w.r.t.:
  - a. Territorial Boundaries
  - b. Personal Boundaries (viz. Definition of citizenship)
2. Declares the state's fundamental principles and assumptions.
3. Constitution can express the identity and values of a national community.
4. Constitution declare and define the rights and duties of citizens.
5. Constitution can establish and regulate the political institutions of the community – defining the various institutions of government; prescribing their composition, powers and functions; and regulating the relations between them.
6. Constitution can divide or share power between layers of government. Many constitutions establish federal, quasi-federal or decentralized process for sharing of power among its various organs.
7. Constitution can declare the official religious identity of the state.
8. Constitution can commit states to a particular social, economic or development goals.

### The Constitution at the Intersection of Legal, Social & Political Life

- *Constitution as legal instrument:* A constitution 'marries power with justice' – it makes the operation of power procedurally predictable, upholds the rule of law, and places limits on the arbitrariness of power. It is the supreme law of the land, and it provides the standards that ordinary statues have to comply with.

- *Constitution as social declaration:* Constitutions often attempt, to varying degrees, to reflect and shape society. by expressing the (existing or intended) common identity and aspirations of the people, or by proclaiming shared values and ideals. These provisions are generally found in preambles and opening declarations, but can also be found in oaths and mottos or on flags and other symbols that are defined by the Constitution.
- *Constitution as political instrument:* The constitution prescribes a country's decision making institutions: constitutions 'identify the supreme power', 'distribute power in a way that leads to effective decision making' and 'provide a framework for continuing political struggle'. The political provisions show how state institutions (parliament, executive, courts, head of state, local authorities, independent bodies, etc.) are constituted, what powers they have and how they relate to one another.



#### Contents of Constitution

- *Divisions:* Most constitutions are divided and sub-divided into parts that may variously be known as titles, chapters, articles, sections, paragraphs or clauses.
- *Arrangement:* Constitutions vary in the arrangement of their provisions, although it is now usual for principles and rights provisions to be placed in a separate section near the beginning of the text, for the main institutional provisions to be grouped in the middle of the text, and for independent institutions, miscellaneous provisions and

amendments to be placed near the end of the text. The layout of a typical constitution might resemble the following:

1. **Preamble:** a statement of the overarching motives and goals of the constitution-making exercise, sometimes referring to important historical events, national identity or values.
  2. **Preliminaries:** a declaration of sovereignty or of basic principles of government; the name and territory of the state; citizenship and franchise; state ideology, values or objectives.
  3. **Fundamental rights:** a list of rights, including their applicability, enforcement, limitations, suspension or restriction during a state of emergency.
  4. Social and economic rights or policy directives.
  5. **Parliament or legislature:** its structure, composition, terms of office, privileges, procedures, etc.
  6. **Head of state:** the method of selection, powers, terms of office.
  7. **Government** (in a parliamentary or semi-presidential system): government formation rules, responsibility, powers.
  8. **Judiciary:** Court system, judicial appointments, judicial independence, public prosecutors.
  9. **Sub-national government:** federal or devolved powers, local government.
  10. Provisions for referendums.
  11. Institutions of the so-called integrity branch (electoral commission, ombudsman, audit institution, etc).
  12. **Security sector:** commander-in-chief, any restrictions on military power.
  13. **Other miscellaneous provisions:** special provisions for particular groups, language laws, particular institution, etc.
  14. Amendment procedures, implementation timetable and transitional provisions.
- *Size and length:* Constitutions vary in length from a few thousand words (Iceland, Latvia) to more than 50,000 words (India). Newer constitutions tend to be longer than older ones, and federal constitutions longer than unitary ones. A national constitution in printed form may vary from the size of a small pamphlet to that of a fairly large book.

## 2. Constitutionalism

For genuine democracies, constitutions consist of overarching arrangements that determine the political, legal and social structures by which society is to be governed. Constitutional provisions are therefore considered to be paramount or fundamental law. Under these circumstances, if constitutional law itself is inadequate, the nature of democracy and rule of law within a country is affected.

The structure of modern nations has been shaped with government being divided into executive, legislative and judicial bodies, with the commonly accepted notion that these bodies and their powers must be separated. Of course, the separation of powers does not mean these bodies function alone, rather they work interdependently, but maintain their autonomy. Other tenets include the idea of limited government and the supremacy of law.

Together, these can be termed the concept of constitutionalism. In other words, constitutionalism is the idea that government should be limited in its powers and that its authority depends on its observation of these limitations. A constitution is the legal and moral framework setting out these powers and their limitations. This framework must represent the will of the people, and should therefore have been arrived at through consensus.

### **Meaning**

Constitutionalism means limited government or limitation on government. It is antithesis of arbitrary powers. Constitutionalism recognizes the need for government with powers but at the same time insists that limitation be placed on those powers. The antithesis of constitutionalism is despotism. A government which goes beyond its limits loses its authority and legitimacy. Therefore, to preserve the basic freedoms of the individual, and to maintain his dignity and personality, the Constitution should be permeated with 'Constitutionalism'; it should have some inbuilt restrictions on the powers conferred by it on governmental organs.

### **Constitutionalism in India**

India is a democratic country with a written Constitution. Rule of Law is the basis for governance of the country and all the administrative structures are expected to follow it in both letter and spirit.

It is expected that Constitutionalism is a natural corollary to governance in India. But the experience with the process of governance in India in the last six decades is a mixed one. On the one hand, we have excellent administrative structures put in place to oversee even the minutest of details related to welfare maximization but crucially on the other it has only resulted in excessive bureaucratization and eventual alienation of the rulers from the ruled.

Since independence, those regions which were backward remained the same, the gap between the rich and poor has widened, people at the bottom level of the pyramid remained at the periphery of developmental process, bureaucracy retained colonial characters and overall development remained much below the expectations of the people.

### **Case Laws where principle of 'Constitutionalism' is legally recognized by Supreme Court**

*I.R. Coelho (Dead) By LRs. vs. State of Tamil Nadu and Ors.*: View taken by the Supreme Court - The principle of constitutionalism is now a legal principle which requires control over the exercise of Governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights. The principle of constitutionalism advocates a check and balance model of the

separation of powers, it requires a diffusion of powers, necessitating different independent centres of decision making. The protection of fundamental constitutional rights through the common law is main feature of common law constitutionalism.

*Rameshwar Prasad and Ors. Vs. Union of India (UOI) and Anr.*: “The constitutionalism or constitutional system of Government abhors absolutism - it is premised on the Rule of Law in which subjective satisfaction is substituted by objectivity provided by the provisions of the Constitution itself.” Constitutionalism is about limits and aspirations.

*Minerva Mills Case.*: “The Constitution is a precious heritage and, therefore, you cannot destroy its identity”

### 3. Sources of Indian Constitution

Indian Constitution came into existence on 24 November 1949. The Constituent Assembly of 299 members drafted the constitution considering features of constitutions of the other countries as well as from the Government of India Act 1935. There are various sources of Indian constitution for some features of it are borrowed.

There was no hesitation to learn from the experiences of other nations, hence, the Indian Constitution has various features that are borrowed from other nations.

Indian Constitution has absorbed those features from other nations’ constitutions that suited Indian problems and aspirations. Constituent Assembly took the best of features from everywhere and made them its own.

Our constitution has features taken from the Government of India Act, 1935. *Those features are:*

- Federal Scheme
- Office of governor
- Judiciary
- Public Service Commissions
- Emergency provisions
- Administrative details

*The other borrowed provisions from different countries and details of those are given in the table below:*

S.No.	Countries	Borrowed Features of Indian Constitution
1.	Australia	<ul style="list-style-type: none"> <li>• Concurrent list</li> <li>• Freedom of trade, commerce and intercourse</li> <li>• Joint-sitting of the two Houses of Parliament</li> </ul>

2.	Canada	<ul style="list-style-type: none"> <li>• Federation with a strong Centre</li> <li>• Vesting of residuary powers in the Centre</li> <li>• Appointment of state governors by the Centre</li> <li>• Advisory jurisdiction of the Supreme Court</li> </ul>
3.	Ireland	<ul style="list-style-type: none"> <li>• Directive Principles of State Policy</li> <li>• Nomination of members to Rajya Sabha</li> <li>• Method of election of the president</li> </ul>
4.	Japan	<ul style="list-style-type: none"> <li>• Procedure Established by law</li> </ul>
5.	Soviet Union (USSR) (now, Russia)	<ul style="list-style-type: none"> <li>• Fundamental duties</li> <li>• Ideal of justice (social, economic and political) in the Preamble</li> </ul>
6.	UK	<ul style="list-style-type: none"> <li>• Parliamentary government</li> <li>• Rule of Law</li> <li>• Legislative procedure</li> <li>• Single Citizenship</li> <li>• Cabinet system</li> <li>• Prerogative writs</li> <li>• Parliamentary privileges</li> <li>• Bicameralism</li> </ul>
7.	United States of America	<ul style="list-style-type: none"> <li>• Fundamental rights</li> <li>• Independence of judiciary</li> <li>• Judicial review</li> <li>• Impeachment of the president</li> <li>• Removal of Supreme Court and High Court judges</li> <li>• Post of vice-president</li> </ul>
8.	Germany (Weimar)	<ul style="list-style-type: none"> <li>• Suspension of Fundamental Rights during emergency</li> </ul>
9.	South Africa	<ul style="list-style-type: none"> <li>• Procedure for amendment in the Indian Constitution</li> <li>• Election of members of Rajya Sabha</li> </ul>
10.	France	<ul style="list-style-type: none"> <li>• Republic</li> <li>• Ideals of liberty, equality and fraternity in the Preamble</li> </ul>

#### 4. Evolution of Constitutional Schemes in India

Before gaining independence in the year 1947, India was basically divided into two main sections of the society, namely The British India (which consisted of 11 Provinces) and the Princely states ruled by Indian princes as per the Subsidiary Alliance System. The two sections later merged together to form the Indian Union, but many of the rules and regulations from British India are still being followed even now. The historical evolution of the Constitution of India can be traced back to many regulations and Acts passed before India gained its Independence.

It was a series of many incidents and events which resulted in the development of the Constitution of India, the world's largest written constitution. India has been a diverse country in respect of culture, people, and its terrain. So it was a challenging task for the makers of the constitution to form a supreme rule book according to which this rich diversified nation can be effectively governed. In this article, the various Acts, Regulation and Declarations which gave shape to the Indian Constitution are mentioned.

##### Indian System of Administration

There is a Parliamentary form of democracy in India where the executive is responsible to the Parliament. The Parliament has two houses – Lok Sabha and Rajya Sabha. Also, the type of governance in India is Federal, i.e. there is a separation of powers between the Centre and the States. However, governance is of Quasi-Federal nature in reality. We also have self-governance at local Governmental levels. All these systems owe their birth to the British administration.

##### *i. Regulating Act of 1773*

In 1765, after the battle of Buxar, the East India Company (EIC) secured the Diwani rights (Right to collect revenue) in the states of Bengal, Bihar and Orissa. This made the EIC as a commercial cum political establishment in India. This led to the resultant administrative anarchy and the accumulation of an insane amount of wealth by the company servants was being questioned in the British Parliament. As a result, the British government set up a secret committee to probe into the affairs of the company. The report submitted by the committee paved the way for the act submitted by the Parliament called Regulating Act to enforce the governmental control and regulate the affairs of the company.

Under the Regulating Act, various clauses were mentioned such as:

- The Presidency of Bengal was made supreme over those of Bombay and Madras. The governor of Bengal was then designated as the Governor-General of the three provinces. The governor general was given the power of superintendence, direction and control over two remaining territories;
- Warren Hastings was appointed as the Governor-General through the act;



- The Governor-General was assisted by four councillors. Their tenure of office was fixed for a term of 5 years;
- The Governor-General was required to follow the orders of the Directors of the company and keep them informed about all matters which were related to the interest of the company at that time;
- The Governor-General was given the power to make rules, ordinances, and regulations for improved governmental control over the company owned territories;
- The Supreme Court of Judicature at Fort William was established at Calcutta as the apex court and it consisted of Chief Justice and three other Judges.

ii. *Pitt's India Act of 1784*

- In this Act, the company owned territories were called as "The British possessions in India", this was the clear indication that British Crown had claimed the ownership over the territory acquired by the East India Company in India;
- It established a board of control, which was to be appointed by the Crown itself. The Board was given the power to superintend, direct and control all kinds of civil, military and revenue affairs of the company;
- This Act also created a department of the British Government in England to exercise its control over the Directors of the Company and the Indian administration;
- Governor's Councils were established at Madras and Bombay through the establishment of this act.

iii. *Charter Act of 1813*

- The Company's monopoly in the Indian trade was shut down through this act;
- Trade with India was opened to all the British Citizen exception to this was however tea trade and trade with China;
- This act led to the establishment of the Church at the expense of the company in India, this was done for the English to practice their religion.

iv. *Charter Act of 1833*

- It was through this act, the Governor General of Bengal was designated as the Governor General of India. The first Governor-General of India was Lord Bentinck;
- He was given the full power to superintend, direct and control the government of all parts of India which included the matters related to civil, military and revenue administrations;
- The Governor General of India was awarded the duty to pass a resolution to improve the condition of the Indians without hurting the sentiments of the native people;
- It was through this act, the activities of the East India Company ended as a commercial entity and it just became a purely administrative entity.

v. *Charter Act of 1853*

- The Board of control was awarded the authorization to make rules and regulations which would help in governing appointments to the services in India. Due to this development, a new system of an open examination was introduced in the country called the Civil Service Examination. This examination was open to the public and entry to the civil services was made through this competitive examination itself;
- It was through this act that the Governor General's Executive council was extended for the legislative purposes.

vi. *Government of India Act of 1858*

- It was through this Act that the rule of the East India Company was completely replaced by the British Crown;
- The act vested powers in the Secretary of State for India (one of the cabinet ministers of the British Government). The salary of the secretary of state was paid from the Indian revenue;
- The Secretary was assisted by the Council of India, a body consisting of 15 members and he was vested with the full authority and control over the Indian administration through his agent who was the Viceroy;
- It was through this act that the Governor-General of India was made Viceroy of India and the First Viceroy of India was Lord Canning.

vii. *Indian Councils Act of 1861*

- Indians were nominated for the very first time to the legislative council for the purpose of the legislation;
- The number of Indians in the legislative council was 6 at least and could be up to 12. These members were nominated by the Viceroy a period of 2 years;
- The act also provided for the local legislature for the Madras and Bombay and empowered the Viceroy to establish similar local bodies in Bengal and other provinces.

viii. *Indian Councils Act of 1909*

- This Act comes from Sir John Morley, the Secretary of State for India and Minto who was Viceroy of India;
- The act had provisions for the enlargement of the legislative council and at the same time, it made them more effective. The number of additional members of the council was significantly increased;
- In the council which represented the entire state, the majority of the official members were maintained to be the same in number;

- On the other hand, in the provincial or state councils, there was a majority of non-official members, though not elected members, except in Bengal where there was a small majority of elected members;
- The act provided for the appointment of Indians to the Viceroy's Executive council. The executive council was also enlarged. The members could now ask many reasonable questions and could even debate on the budget, but they were not allowed to vote on it;
- It also granted separate electorate to the Muslims (a system of communal representation for the Muslim community).

ix. *Government of India Act of 1919*

- This act comes from E.S Montagu, the then Secretary of State for India and Lord Chelmsford, the then Viceroy of India;
- The act is also referred to as Montague-Chelmsford Reforms;
- The concept dyarchy was introduced through the act, under which the ministers were responsible to their respective subjects and held the charges of "Transferred subjects" while the Governors of provinces and their councillors were to be in charge of the "Reserved Subjects";
- A bicameral legislature was introduced for the first time at the centre and through this act, a second Indian member was included in the Governor-General's Executive Council;
- The Act provided for the establishment of the Public Service Commission of India;
- The Act extended the communal electorate to the minorities present in the nation at that time such as the Sikhs, the Europeans, the Anglo-Indians and Christians.

x. *Government of India Act of 1935*

- This act was the outcome of the Simon Commission Report, deliberation at round table conferences, and the white paper introduced in the British Parliament;
- It was the longest and the last constitutional measure introduced by the Britishers in India;
- The act provided for the Federation of India consisting of Governor Provinces and Princely states;
- The dyarchy introduced by the GOI Act 1919 was abolished and provincial autonomy was introduced instead. All subjects of provincial administration were placed in the hands of Ministers who belonged to the elected legislature;
- The Act gave special powers and responsibilities to the Governors of the states which effectively curbed the power of minister and undermined the provincial autonomy;
- Owing to this act, British India was divided into two parts, the 2 governor provinces and the 5 chief commissioner provinces;
- The Act enlarged the legislature in the provinces. Six provinces, the provinces of Assam, Bengal, Bihar, Bombay, Madras and the united province were going to have bicameral legislature through this act;

- Dyarchy was abolished at the provincial level but it was established at the centre. This meant that the Reserved Subjects (Defense, External Affairs, Tribal Affairs, Etc.) were to be administered by the Viceroy;
- Burma (now Myanmar) was separated from India through this act;
- Sind and North West Frontier Province were to be given the status of provinces through this act.

*xi. Indian Independence Act of 1947*

- The Act provided for the partition of India and the establishment of two dominions by dividing India into India and Pakistan on 15th August 1947. Hence, all the laws enforced in British India would remain applicable until amended by the respective legislature of both nations;
- Each nation and all its provinces were to be governed as per the Government of India Act, 1935 till the formation of their own new constitution;
- The Act provided the terms of termination of the dominion of the British Crown over the Princely States;
- All treaties and functions exercised by the crown over the princely states and the rulers would lapse from August 15, 1947.

*xii. The Constitution of India (January 26, 1950)*

- Dr. Rajendra Prasad as the President of India prepared a draft of the new constitution of India in February 1948;
- The constitution of India was hence finally adopted by the constituent assembly on 26th November in the year 1949 and it came into force on 26th January in the year 1950 (which is regarded as the Republic Day in India), when the Republic of India was born;
- Hence, India was declared as an Independent and sovereign state through this act and it also established responsible Governments at both stages, the centre as well as the provinces or states;
- The Constitution of India was inspired by various other Constitutions already existing in their respective nations, the drafting committee had taken various features from various Constitutions of these nations. These features and the Constitutions which acted as a Source for the Constitution of India are discussed below.

## **5. Objectives of the Indian Constitution**

On January 22, 1947 the Constituent Assembly adopted the Objectives Resolution drafted by Jawaharlal Nehru. The Objectives Resolution contained the fundamental propositions of the Constitution and set forth the political ideas that should guide its deliberations. The main principles of the resolution were:

- that India is to be an independent, sovereign republic ;
- that it is to be a democratic union with an equal level of self-government in all the constituent parts;
- that all power and the authority of the Union Government and governments of the constituent parts is derived from the people;
- that the constitution must strive to obtain and guarantee to the people justice based upon social, economic and political equality, of opportunity and equality before law;
- that there should be freedom of thought, expression, belief, faith, worship, vocation, association and action;
- that the constitution must provide just rights for minorities, and people from backward and tribal areas, etc. so that they can be equal participants of social, economic and political justice; and
- to frame a constitution which should secure for India, a due place in the community of nations.

The philosophical of a Constitutions consists of the ideals for which the constitution stands and the policies which the Constitution enjoins upon the rulers of the Community to follow. The Constitution of India reflects the impact of our ideology in the following spheres :

- A. Secularism:** Secularism is the hallmark of the Indian Constitution. People professing different religions have the freedom of religious worship of their own choice. All the religions have been treated alike. The fact appreciated in India was that all religions love humanity and uphold truth. All the social reformers and political leaders of modern Indian have advocated religious tolerance, religious freedom and equal respect for all the religions. This very principle has been adopted in the Constitution of India where all religions enjoy equal respect. However, the word 'secularism' was nowhere mentioned in the Constitution as adopted in 1949. The word 'secularism' has now been added to the Preamble to the Constitution though the 42nd Amendment passed in 1976.
- B. Democracy:** We have borrowed the modern form of democracy from the West. Under this system, democracy means the periodic responsibilities of the Government to go to the people. For this purpose; elections have been held every five-year to elect a Government by the people. However, democracy covers even the economic and social aspects of life. This aspect of democracy is well-reflected in the Directive Principles of State Policy. They are aimed at human welfare, co-operation, international brotherhood and so on.
- C. Sarvodaya:** Sarvodaya refers to the welfare of all. It is different from the welfare of the majority. It seeks to achieve the welfare of all without exception. It is referred to as Ram Rajya. The concept of Sarvodaya was developed by Mahatma Gandhi Acharya Vinoba Bhave and J.. Narayan under which the material, spiritual, moral and mental

development of everyone is sought to be achieved. The Preamble to the Indian Constitution and the Directive Principles of State Policy represent this ideal.

- D. Socialism:** Socialism is not new to India. Vedanta philosophy has socialism in it. The national struggle for freedom had this aim also in view. Jawaharlal Nehru referred to himself as a socialist and republican. Almost all the parties in India profess to promote democratic socialism. These principles are included in the Directive Principles of State Policy. However, to lay emphasis on this aspect, the word 'socialism' was specifically added to the Preamble to the Constitution through the 42nd Amendment.
- E. Humanism:** Humanism is a salient feature of Indian ideology. Indian ideology regards the whole humanity as one big family. It believes in resolving international disputes through mutual negotiations. This is what we find in the Directive Principles of State Policy.
- F. Decentralization:** Decentralization is another aspect of Sarvodaya. Indian has always practiced decentralization through the Panchayat system. Mahatma Gandhi also advocated decentralization. It is on this account that he is regarded as a philosophical anarchist. We have introduced the Panchayati Raj system in India to achieve the objective of decentralisation. The concept of cottage industries as laid down in the Directive Principles of State Policy also refers to decentralization.
- G. Liberalism:** Liberalism does not refer to the Western concept of liberalism. It refers, in the Indian context, to self-government, secularism, nationalism, economic reforms, constitutional approach, representative institutions etc. all these concepts were advocated by the modern Indian leaders.
- H. Mixed Economy:** Co-existence is a salient feature of our ideology. Co-existence has manifested itself through a mixed system of economy. In this system we have allowed both the private and public sectors of economy to work simultaneously. Large scale and essential industries have been put in the public sector.
- I. Gandhism:** Gandhism represents an ethical and moral India. Gandhi set a new example of fighting foreign rule through non-violence. He taught the importance of non-violence and truth. He advocated untouchability, cottage industry, prohibition, adult education and the uplift of villages. He wanted a society free of exploitation and decentralized in character. All these gandhian principles have found an honourable place in the Constitution of India.

## 6. Salient Features of Indian Constitution

### a. *Popular Sovereignty*

The constitution proclaims the sovereignty of the people in its opening itself. The idea is reaffirmed in several places in the Constitution, particularly in the chapter dealing with elections. Article 326 declares that “the elections to the House of people and the Legislative Assembly of every state shall be on the basis of adult suffrage”. As a result, the Government at the Centre and in the States derive their authority from the people who choose their representatives for Parliament and the State Legislatures at regular intervals.

Further, those who wield the executive power of the government are responsible to the legislature and through them to the people. Thus, in the affairs of the State, it is the will of the people that prevails ultimately and not the will of a few selfish individuals. This is the principle of popular sovereignty.

In spite of the ignorance and illiteracy of large sections of the Indian people, the Constitution Assembly adopted the principle of adult franchise with faith in the common man and the ultimate success of democratic rule. The Assembly was of the opinion that democratic government on the basis of adult suffrage would alone “bring enlightenment and promote well-being.”

Free elections are, perhaps, the greatest forum of mass education. The dangers inherent in adult suffrage among illiterate peoples can be mitigated only by the blessings of universal education. In a country like India, the large majority of whose population is illiterate, the attainment of universal education is a goal still a long way off. But this need not necessarily mean that until a certain minimum standard of universal education is realised, the Indian masses are incapable of properly exercising their right of franchise. Illiteracy is not quite the same thing as ignorance. A free election, which ensures free exchange of ideas and free canvassing by contending parties who stand for different programs of social organization for the realisation of the common welfare, offers the best medium for the political education of the illiterate masses. It is this that the constitution guarantees.

The constitution makers were not satisfied by merely providing for adult suffrage. They wanted to ensure free elections by creating an independent constitutional authority to be in charge of everything connected with elections. Free election is a reality in India. It ensures for the electors both the freedom of choice and the secrecy of the ballot. The general elections have demonstrated that the ordinary man, in spite of his so-called ignorance, has been able to exercise his robust common sense in electing candidates of his choice. Neither money nor social status nor official position has been powerful enough to make him a convenient tool in the hands of a few. It is itself a guarantee that popular sovereignty will remain a living reality in India despite the fact that most of its people are steeped in ignorance, poverty and social backwardness.

All that the constitution provides is that every adult citizen of India shall have right to vote. This becomes significant when viewed in the background that for quite a long time, the women in many parts of Europe did not enjoy any such right. In addition, under the Government of

India Act, 1935, hardly 15 per cent Indian citizens had this right. According to some thinkers this is the boldest step which has been taken by our constitution fathers. This shows that they had full faith in the capacity of the people of India to use their right properly. Some critics of course felt that it was premature to give to the people of India this right when there was poverty and illiteracy and the masses were yet politically not mature. But constitution fathers took a bold step and resolved to go ahead and wanted to make a beginning in this direction right earnestly.

The principle of popular sovereignty has not been a mere ideal embodied in the constitution but has been a living reality during about five decades through which the Constitution has been in operation. The previous right in the hands of citizen which ensures the democratic ideal of “one man, one vote, one value”, irrespective of his wealth, education, social status and “importance”, has, in fact, enhanced their self-respect as citizens of a democratic India

### *b. Rule Of Law*

According to this axiom, people are ruled by law but not by men, that is, the basic truism that no man is infallible. This is vital to democracy.

More important is the meaning that law is the sovereign in democracy. The chief ingredient of law is custom which is nothing but the habitual practices and beliefs of common people over a long number of years. In the final analysis, rule of law means the sovereignty of the common man’s collective wisdom. Apart from this crucial meaning, rule of law means a few more things like:

- i. there is no room for arbitrariness
- ii. each individual enjoys some fundamental rights, and
- iii. the highest judiciary is the final authority in maintaining the sanctity of the law of the land.

It is this spirit that is making us to make various efforts to make Article 14 (all are equal before law and all enjoy equal protection of laws) meaningful, like providing legal assistance to the needy, promotion of Lok Adalats and the venture of the Supreme court known as “public interest litigation”. Also, as per today’s law of the land, any litigant can appeal to the presiding judicial authority to argue the case by himself or seek legal assistance with the help of the judiciary.

### *c. Judicial Review*

The right of the judiciary to review executive acts and legal enactment’s where there they are not in conformity with the established law of the land and its procedures is known as judicial review. Based on this principle the American Supreme court has acquired the power to so interpret the Constitution that it has come to be known as the third chamber of the Constitutions, whereas, in India our Supreme court does not enjoy the power of adding to the Constitution but



it can only strike down any, act or any, legislation on the ground that it is contrary to the basic framework of the constitution or violative of the procedure established by law.

As the constitution stands today, the judiciary in India has the right to review legislative enactments and executive acts provided they are brought before the courts except for a few specific acts like the discretionary powers of the governors, the privileges and immunities of the members of the legislatures, etc. In pronouncing its verdict on legislative acts and executive actions the Supreme Court primarily bases itself on what is known as the basic framework of the Constitution—a phrase which has never been spelt out so that others could know the ingredients that go into the making of the basic frame work of the Constitution.

However, it is clear from the constitution as it is today that the Parliament has the right to amend the constitution as long as it does not erode the basic frame work of the constitution. Thus, making additions or deleting some Articles of the constitution is the power of the Parliament but not that of the Supreme Court as in the case of the U.S.

#### *d. Socialism*

Increasing intervention as well as participation by the State in the economic field has been a distinguishing feature of the twentieth century. There is hardly any country today in which the State is not actively engaged in a variety of economic activities. In varying degrees, governments everywhere are involved in economic, industrial, commercial management. This is broadly described as the influence of socialist ideas on State activity.

Even before the adoption of a new Constitution, the Government of independent India had made clear its policy to enter the economic field in a very active manner. The Industrial Policy Resolution of 1948 gives ample evidence of this. It envisaged a greater role for the State in the economic development of the country.

Certain industries such as atomic energy, manufacturing of arms and ammunition were declared to be the sole monopoly of the State. The right of the State to nationalise any major industry and bring it within the public sector was also clearly stated.

The Directive principles of State Policy, however, unmistakably set out the socialist objective of the Constitution, although one might point out that they do not go far enough to establish a full-fledged socialist order. But then, it is also clear that our conception with its emphasis on a set of guaranteed fundamental rights did not envisage collectivist socialist State like those existed in Eastern Europe during 1945 and 1990.

On the contrary, it aims to establishing a democratic socialist state which while moving progressively towards the social ideal, wants at the same time to protect and preserve basic human rights.

Nevertheless, successive amendments to the Constitution clearly show that the direction is more towards the realisation of socialist than the democratic ideal. The constitution was amended several times with a view to realising this objective. Among those amendments, special mention may be made of the First, Fourth, Seventeenth, Twenty fifth, Twenty ninth, Thirty fourth and Forty second Amendments. Almost every one of these give precedent to the

Directive Principles over Fundamental Rights in the implementation of certain legislative enactments. The Forty second Amendment (1976) went a step further and amended the permeable of the Constitution to include specifically the term “socialist” which was absent in the original form in which it was enacted.

*e. Secularism In Indian*

India has declared its identity as a “Sovereign, Socialist, Secular Democratic Republic.” The attributes of Socialist and Secular were added in 1976 by the 42nd Amendment to the Constitution. The bulky document does not attempt to define secularism. However, a definition is derived from the fundamental right that proclaims that “The State shall not discriminate against any citizen on grounds of religion, race, caste, sex place of birth or any one of them. “The Indian State has no religion of its own. The fundamental right of speech and freedom also means the right to preaching and proselytising religion. This is made clearer in Articles 25—28, “Subject to public order, mortality and health... all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion”.

The wearing and carrying of kirpans (swords) shall be deemed to be included in the freedom of the Sikh religion. Every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes, to maintain its own affairs in matters of religion. No person shall be compelled to pay any taxes for promotion of any particular religion. No religious instructions shall be provided in any educational institutions wholly maintained out of the State funds.”

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

- i. that the State will not identify itself with or be controlled by any religion;
- ii. that 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 any atheist), it will not accord an preferential treatment to any of them;
- iii. that no discrimination will be shown by the State against any person on account of his religion or faith; and
- iv. that 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. Secularism in its original, historical sense was an anti-God and anti-religious concept. But in the Indian context that concept has no relevance.

*f. Fundamental Rights*

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. In fact, the legitimacy of the majority to rule is derived from the existence of these rights. These rights include all the basic liberties such as freedom of speech, movement and association, equality before law and equal protection of laws, freedom of religious belief and cultural and educational freedoms.

The constitution has classified these rights into seven categories and one of them is the right to constitutional remedies which entitles every aggrieved person to approach even the Supreme Court of India to restore to him any fundamental right that may have been violated. It is, thus, a basic affirmation of the Constitution that the political system that it establishes should provide conditions favourable for the maximum development of the individual's personality.

The framers of the Constitution were conscious of the fact that in the absence of the enjoyment of the above mentioned rights, such development of the personality was impossible and democracy would sound an empty word. Having spent most of their lives under a foreign rule and having fought relentlessly for the enjoyment of these rights by themselves, it was only natural that they should have wanted to embody them in the Constitution they framed for the establishment of a democratic political order. They hoped to build this political order on the firm foundation of the freedom of political competition.

The prime importance of these rights is that while the will of the majority decides how these freedoms are to be implemented, the existence of the freedoms themselves is not subject to that will. On the contrary, these freedoms set the conditions under which the will of the majority is to be formed and exercised.

*g. Directive Principles Of State Policy*

It is for the first time in India's Constitution, a chapter on Directive principles of the State Policy has been included. Before it, in the Government of India Act, 1935, there was no Instrument of Instructions for the Governor General, but it was quite different from the present Directives. These Directives are a guideline for the governments, but their violation cannot be challenged in the court of law.

According to few critics when the Directive have no legal binding, these are useless. But that is not so. These are manifestation of our aims and aspirations. The government of the day can choose to violate these but if the people take the violation seriously they can throw the government out of power. The greatest force behind these Directives is the will of people. The Directives are guidelines both for the people as well as the government. These save us from duping in the dark. Thus these principles are not mere precepts but a great moral force.

The wall of separation which the fundamental rights erect between the government and the people is indeed one of the greatest and surest safeguards of the life, liberty and the pursuit of

happiness of the individual. But conditions of absolute and unhindered growth of private power, like absolute governmental power, are capable of destroying individual freedom. Concentration of private power, mainly in the form of economic controls, in the hands of a few individuals is equally destructive of the dynamic qualities of a democratic society as a dictatorial government could be. In a highly capitalist society, a few giants in the industrial and financial world, who concentrate in themselves the bulk of economic power, can easily subject the rest of the community to the travails of a new feudalistic order. After having provided against the emergence of a totalitarian system through the constitutional guarantees of fundamental rights, the framers turned their attention to deal with the possible future menace of a private capitalist concentration of economic power and to ensure the establishment and sustenance of a society which provided for the diffusion of economic power among the different sections of the people. The methods they sought to provide for the purpose are embodied in the chapter on Directive principles of State Policy.

The State and everyone of its agencies are commended to follow certain fundamental principles while they frame their policies regarding the various state activity. These principles, on the one hand, are assurances to the people as to what they can expect from the State and, on the other, are directives to the Government, Central and State.

#### *h. Fundamental Duties*

Originally Fundamental Duties were not there in the constitution. It was great lacuna of the constitution. Hence the Swaran Singh Government was appointed which recommended 12 Fundamental Duties. However, out of that 10 Fundamental Duties were accepted by the 42nd Amendment of the constitution. But at present one more fundamental duty have been added under 86th Amendment Act, 2002. There are total 11 Fundamental duties altogether. Now in their modified form the Fundamental Duties are as follows:

- i. To abide by the constitution and respect the national flag and the national anthem.
- ii. To cherish the noble ideals which inspired our struggle for freedom.
- iii. To uphold the sovereignty, unity and integrity of the country.
- iv. To defend the country and render national service when called on to do so.
- v. To promote harmony and the spirit of common brotherhood among all the people of India.
- vi. To value and preserve the rich heritage of our composite culture.
- vii. To protect and improve the natural environment includes lakes, rivers and Wildlife and have compassion for living.
- viii. To develop scientific temper, humanism and “the spirit of inquiry and reform.
- ix. To safeguard. Public property and abjure violence.
- x. To strive to achieve excellence in all spheres of individual and collective life so that the nation makes progress.
- xi. To provide opportunities for education to his child or ward between the age of six and fourteen years.

*i. Judicial Independence*

Man's long struggle has been to live under a government of laws, not of men. Equal justice under law has for long been his cherished ideal, a system under which the new law is applicable to all alike. Man has in all ages been striving to escape the regime that dispenses justice according to the political or religious ideology of the litigant or the whim or caprice of those who run the government. As a consequence of this struggle, there was established principle of abiding value, that no judiciary can be impartial unless it is independent. In fact the judicial process ceases to be judicial the moment those who seek to judge cease to be independent of every form of external influence. Hence the importance of judicial independence.

*j. Parliamentary System*

The framers of our Constitution preferred parliamentary system of government. Our infant democracy could ill-afford any confrontation between executive and the legislature if they were separate and independent of each other. The President of India is the constitutional head of the Union Executive, but he exercises the executive power, vested in him, in accordance with the advice of the Union Council of Ministers. The real executive power thus vests with the Council of Ministers with the Prime Minister as the head. The Council of ministers is collectively responsible to the Lok Sabha. The same is true of the relationship between the Governors and the Council of Ministers in the States. The parliamentary system of government both at the Centre and in the State is based on adult suffrage whereby all citizens of India who are not less than 18 years of age and not otherwise disqualified by the Constitution or any law, have the right to vote. It is a bold political experiment in view of the vastness of the country, its large population, poverty and illiteracy.

*k. Federal And Unitary Features*

The word 'federation' has not been used anywhere in the Constitution. In fact, India has been described as a Union of States. The provinces and the princely States were not sovereign entities before they joined the federation. The states are not 'inviolable' or 'indestructible' as in the USA. Parliament can by law change or alter the areas and boundaries of any State. No state has the right to succeed from the Union.

But, it has some basic federal features. India has two governments functioning at the national and State levels with a clear cut distribution of powers. Both the State and the Union Government draw their authority from the Constitution. The supremacy of the Republic lies not with either the Union Government or the State Governments but with the Constitution. To uphold the legal supremacy of the Constitution, the power to interpret the constitution has been vested in the judiciary. Thus the Indian Constitution has four federal features: (a) clear division of powers between the two governments; (b) dual system of government; (c) supremacy of the Constitution; and (d) authority of the judiciary to interpret the constitution.

All the constituent States of the Union are not equal. The Union Territory do not enjoy the same status as the States. Unlike the American Constitution, the Indian Constitution does not provide for any safeguards for the protection of the rights of States. Except Jammu & Kashmir, no state has its own Constitution as in the U.S. Whereas the consent of the States is vital for an amendment of the American Constitution, the consent of the States in India is necessary only in regard to a few specific matters.

There are some features in our Constitution unlike the U.S.: (a) the right of the Governor to reserve a Bill for Presidential assent; (2) the role and functions of the State Governors; (3) the Emergency provisions of the Constitution regarding proclamation of national emergency, financial emergency and President's rule; (4) provisions of the Constitution enabling Parliament to legislate for the States; (5) Uniform All-India Services; (6) single and uniform citizenship; and (7) uniform and integrated judicial system. Also, the constitutional schemes of distribution of legislative, administrative and financial powers between the Union and the States has a strong unitary bias, unlike the US where the Federal Government has gained more powers through the interpretation of its Supreme Court.

#### *l. Lengthy And Legalistic Document*

It is the most lengthy and legalistic constitutional document any country has so far adopted. One reason is that the Constitution has drawn from a variety of sources. The other is that the constitution-makers ensured that no element of uncertainty was left. It codifies in detail the relationship between the Union and the States and the State's interests and contains both justiciable and non-justiciable rights as well as fundamental duties. As the Constitution is not only a legal document but an instrument of social change, it has to be a detailed document in order to ensure that it stands the test of any situation in future. Also, care has been taken to ensure that the Constitution is not subverted or perverted by any future government. There are numerous in-built constitutional safeguards.

There are temporary, transitional and special provisions for the state of Jammu and Kashmir and it also take care of the regional problems in States like Gujarat, Maharashtra, Andhra Pradesh, Sikkim, Assam, Nagaland and Manipur. The legalistic nature of the Constitution is also partly because of heavy borrowings from the Government of India Act of 1935.

#### *m. Flexibility Of The Constitution*

Some eminent constitutionalists are of the view that the constitution is rigid. But, we know that it has been possible to amend the constitution over 80 times. Our constitution is more flexible than the American constitution, which requires ratification of amendments by three-fourths of the States. In our constitution only amending of a few provisions requires ratification of amendments by three fourths of the states. In our constitution only amending of a few provisions requires ratification by half of the State Legislatures. While most of the provisions

of the Constitution can be amended by two thirds majority of each of the Houses of Parliament and many of the provisions can be altered or modified by a simple majority. Also, the constitution can be supplemented by simple legislations like the Citizenship Act, National Security Act, the Untouchability Act etc. Moreover, the scope for the growth of conventions to supplement the constitution makes it more flexible. Conventions govern the privileges and rights of the legislature, the functioning of the cabinet system, the status of the Cabinet Secretariate, etc.

#### *n. Single Citizenship*

In a federation there is usually double citizenship. A citizen belongs to the State in which he is born and also enjoys the citizenship rights of the Federation, to which his state has joined as a unit. This is on the basic principle that the states in a federation are of course units, but do not at the same time, give up their individual entity. But in India there is single citizenship. Citizens belong to the Indian Union and not to any state. Provision for single citizenship for the whole of India was perhaps intentional. The constitution fathers did not like that regionalism and other disintegrating tendencies which had already raised their ugly heads and were endangering the very security and integrity of country, should be further encouraged by providing double citizenship. Provision for double citizenship would have naturally stood on the way of emotional and national integration. The people in the State would have thought more in terms of the State than the country as a whole. Single citizenship has undoubtedly forged a sense of unity among the people of India and image of United India is reflected by this provision.

#### *o. Emergency Provisions*

One of the Unique features of the Constitution of India is the way in which situations will be dealt with during emergency. According to emergency provisions when the head of the State is satisfied that it is impossible to run the administration of the country or a part thereof, in accordance with the normal procedure laid down in the Constitution he can declare emergency and take administration of the country or part thereof in his own hands. This emergency can be financial or political.

Declaration of emergency has far-reaching effects and its consequences are that with such a declaration fundamental rights are suspended and the courts of law can refuse to entertain petitions for the enforcement of these rights. Federal set up of the country practically turns out to be a unitary one and no bill can be introduced in the legislature without prior permission of the head of the states.

The President or Governor is the exclusive authority to decide as to whether there is need and necessity of declaration of such an emergency. In India emergency was declared in 1962, when China invaded India. It was again declared in 1965 and 1971 when Pakistan invaded the country. In 1975, internal emergency was declared in the country, as a result of which censorship of press was imposed. During this period Forty Second Constitution Amendment

Act was passed which introduced far-reaching changes in the Constitution. This emergency was lifted only in 1977.

Provisions in the Constitution dealing with declaration of emergency were amended by Constitution Forty-Fourth Amendment Act by which it was ensured that in future it became difficult for any Prime Minister to declare internal emergency. On several occasions the President of India has taken over the administration of states on the plea that there is constitutional break down and administration of the state cannot be run in accordance with the provisions of the constitution. Over the years the salient features of the Indian Constitution have developed clear contours.

The federal features of the Constitution have been weakened because certain centralising influence have become more and more compulsive. The Parliamentary executive has become increasingly assertive because one party has dominated the Indian political scene till now with a brief interlude. The chapter on Fundamental Rights has undergone a radical change with the deletion of the “Right to Property”.

The role of the judiciary, too, is undergoing changes because of the growing radicalism and needs of social justice. And the Directive Principles, although not justiciable, have almost become as important as the Fundamental Rights. A good number of transitional provisions have been dropped. Finally, the conventions that the country has been evolving are also changing the temper of the constitution. Since all these changes have occurred in less than 50 years, it shows that even an elaborate and complex constitution necessarily calls for changes and adjustments.

## **7. Federalism**

Federalism is compound mode of two governments. That is, in one system there will be a mixture of two governments – state government with central government. In India, we can describe federalism as a distribution of authority around local, national, and state governments. This is similar to Canadian model of political organization.

Federalism is at its core a system where the dual machinery of government functions. Generally, under federalism, there are two levels of government. One is a central authority which looks after the major affairs of the country. The other is more of a local government which looks after the day to day functioning and activities of their particular region.

For example, our Indian Constitution says that India too is a federal country. As you know we have two levels of parliament, the at centre the Union government and at State level, we have the individual State governments.

### **Features of Federalism**

The best way to comprehensively understand the federal system is to learn about its features. These characteristics combined to reflect the true essence of federalism. They are:



- i. The essential feature, which is the definition of federalism is that there are two levels of governance in the country at least. There can even be more. But the entire power is not concentrated with one government.
- ii. All levels of governance will govern the same citizens, but their jurisdiction will be different. This means that each level of government will have a specific power to form laws, legislate and execute these laws. Both of the governments will have clearly marked jurisdiction. It will not be that one of the government is just a figurehead government.
- iii. Another important feature is that the constitution must guarantee this federal system of government. Which means the powers and duties of both or all governments must be listed down in the constitution of that country hence guaranteeing a federal system of governance.
- iv. As stated above the federalism of a country must be prescribed by the constitution. But it is also important that just one level of government cannot make unilateral changes or amendments to the important and essential provisions of the constitution. Such changes must be approved by all the levels of the government to be carried through.
- v. Now there are two levels of government with separate jurisdictions and separate duties. Yet there is still a possibility that a conflict may arise between the two. Well in a federal state, it will fall upon the courts or rather the judiciary to resolve this conflict. The courts must have the power to interfere in such a situation and reach a resolution.
- vi. While there is power sharing between the two levels of government, there should also be a system in place for revenue sharing. Both levels of government should have their own autonomous revenue streams. Because if one such government depends on the other for funds to carry out its functions, it really is not autonomous in its true nature.

## 8. Types of Governments

- **Federal:** A federal government is a system of government that divides the power between a larger central government, and the local and regional governments beneath it. In the United States, the federal government's powers were established by the Constitution. Perfect examples of federal governments are those that function best in large countries with a broad diversity among its citizens, though where a common culture still exists, which ties everyone together.
- **Quasi-Federal:** Means an intermediate form of state between a unitary state and a federation. It combines the features of a federal government and the features of a unitary government.
- **Unitary:** A sovereign state governed as a single entity. The central government is supreme, and the administrative divisions exercise only powers that the central government has delegated to them. Sub-divisional units are created and abolished, and their powers may be broadened and narrowed by the central government. The United Kingdom, for example, is a unitary state, as its constituent countries - England,

Scotland, Wales, and Northern Ireland - have no power to challenge the constitutionality of acts of Parliament. Unitary states contrast with federal states.

## 9. Nature of Indian Constitution

Article 1 of the Constitution of India states that 'India that is Bharat shall be a union of states'. Indian model of federalism is called the quasi-federal system as it contains major features of both a federation and union.

### Federal Features of the Indian Constitution

- A. **Supremacy of the Constitution:** Constitution is the supreme law of land in India. A federal state derives its existence from the Constitution.
- B. **Bicameral Legislature:** The main feature of federalism is a bicameral legislature. The Constitution of India also provides for a bicameral legislature i.e. Parliament with two houses of the Lok Sabha and the Rajya Sabha.
- C. **Dual Government Polity:** The Constitution of India has divided powers between the Central government and the state governments through the 7th schedule. It contains three legislative lists which enumerate subjects of administration, viz. Union, State and Concurrent Legislative Lists. Both the governments have their separate powers and responsibilities.
- D. **Written Constitution:** The Indian Constitution is a written document containing 395 Articles and 12 schedules, and therefore, fulfils this basic requirement of a federal government. The Indian Constitution is the most elaborate Constitution of the world.
- E. **Rigid Constitution:** The Indian Constitution is largely a rigid Constitution. All the provisions of the Constitution concerning Union-State relations can be amended only by the joint actions of the State Legislatures and the Union Parliament.
- F. **Independent Judiciary:** In India, the Constitution has provided for a Supreme Court. The Supreme Court of India can declare a law as unconstitutional, if it contravenes any provisions of the Constitution.
- G. **Revenue Sharing:** In the case of a federal country there is a system of revenue sharing between the Centre and the State. In India, there is the principle of dual GST system adopted by the legislation for the constitutional requirement of fiscal federalism.

### Unitary Features of the Indian Constitution

- A. **Single Constitution:** In India, there is only one Constitution. It is applicable to both the Union as a whole and the States. In a true federation, there are separate constitutions for the union and the States.
- B. **Rajya Sabha does not represent the States equality:** In a true federation, the upper house of the legislature has equal representation from the constituting units or the States. But in Rajya Sabha, the States do not have equal representation. The populous States have more representatives in the Rajya Sabha than the less populous States.

- C. **Division of power is not equal:** In a federation, power is divided equally between the two governments. But in India, the Central government has been given more powers and made stronger than the State governments.
- D. **Existence of States depends on the Centre:** In India, the existence of a State or a federal unit depends upon the authority of the Centre. The boundary of a State can be changed by created out of the existing States.
- E. **Constitution is not strictly rigid:** The Constitution of India can be amended by the Indian Parliament easily. On many subjects, the Parliament does not need the approval of the State legislatures to amend the Constitution. In a true federation, both the Union and the State legislatures take part in the amendment of the Constitution with respect to all matters.
- F. **Unified judiciary:** India has a unified or integrated judicial system. The High Courts which work in the States are under the Supreme Court of India.
- G. **Proclamation of emergency:** The Constitution of India has given emergency powers to the President. When an emergency is declared, the Union or Central governments become all powerful and the State governments come under the total control of it. The State governments lose their autonomy.

Thus, on a careful analysis of the federal and unitary features of the constitution, it is evident that with every federal feature, there is an ultimate centralising force which is existing. Therefore, it would not be wrong to conclude that the Constitution of India is federal in structure and unitary in spirit i.e. it is quasi- federal in nature.

Quasi-federalism means an intermediate form of state between a unitary state and a federation. It combines the features of a federal government and the features of a unitary government. India is regarded as a semi-federal state or a quasi-federal state. The Supreme Court of India also describes it as a federal structure with a strong bias towards the Centre.

*Indian Constitution is quasi-federal in nature.*

## 10. Co-operative Federalism

Federalism is the division of power between centre and its various constituents, like provinces, states, cantons and so on. Cooperative federalism is a concept or subset of federalism where national, state and local governments interact cooperatively and collectively to solve common problems. They make various policies separately but more or less equally or clashing over a policy in a system generally dominated by the national government, as in India or Canada.

Cooperative federalism creates such a relationship in which the national government has an upper hand in the policies and behaviours of state governments, often through the use of funding in kind or cash, manipulating the policies and norms (Ex – Freight equalization policy, SEZs etc), Constructing strategic highways or similar corridors and so on for programs. For example, if the federal government is interested in ensuring that national highways are well-maintained, they might create grants in aid, a specific kind of grant from the federal government

that provides funds for the states to pursue a policy. In this case, the grants in aid would likely be for purchasing necessary constituents or other supplies, or might provide funding to pay contractors and road construction workers.

### **Why India followed Cooperative Federalism**

In India Federalism is "an indestructible union of destructible states". It was perceived at the floor of the constituent assembly that states must be integral part of India denying any right to secede. Therefore, a need for strong union was anticipated and the constitution gave dominant power to the central government. However, adequate powers were also relegated to the states in order to administer and govern the local government with much efficacy. Such arrangements have been exhibited in the Union, concurrent and state list of seventh schedule. In order to streamline the development process and enhance the progress of all the regions, cooperation between centre and state is utmost necessary. Such form of cooperative federalism is required more so in case of India, due to its vastness, enormity and extreme diversity.

India's cooperative federalism, however has greatly affected by the report of Simon commission and resultant Government of India Act, 1935. Indian constitution has heavily drew its features from this 1935 act. Cabinet mission, which divided India in Group A, B and C; was another prominent factor enabling India to adopt federalism.

### **How it works in India**

The spirit of co-operative federalism in India is observed by following

1. Distribution of Powers,
2. Supremacy of the Constitution,
3. A Written Constitution,
4. Rigidity and
5. Authority of Courts.

Under this arrangement in the Constitution, Centre has got dominant power as evident from following:

- States must exercise their executive power in compliance with the laws made by the Central government and must not impede on the executive power of the Union within the States.
- Centre can even usurp the legislative discretion of state with the permission of Rajya Sabha
- Governors are appointed by the Central government to oversee the States.
- The Centre can even take over the executive of the States on the issues of national security or breakdown of constitutional machinery of the State..

**Cooperative federalism in India is practiced under following norms:**

- Article 263 of the Constitution has provided for the setting up of an Inter-State Council for investigation, discussion and recommendation for better coordination of relation between the Centre and the States.
- The Zonal Councils set up under the State Reorganization Act 1956 provide another institutional mechanism for centre- state and inter-state cooperation to resolve the differences and strengthen the framework of cooperation.
- The National Development Council and the National Integration Council are the two other important forums that provide opportunities for discussion to resolve differences of opinion. Central councils have been set up by various ministries to strengthen cooperation.

**Examples of overriding the feature**

Although, Indian set up is federal in character, however, its characteristic is unique and federal sui generis. The examples of overriding feature of federalism in Indian constitution are follows:

- Residual powers to centre
- Excessive central character, as depicted by article 249, appointment of governors, hierarchical judiciary, various types of emergency and article 3
- Limited taxation powers to states
- Limited participation in the constitutional amendment process of states
- Unbridled powers of governors, who is arbitrarily appointed by the centre.
- Indian union is "an indestructible union of destructible states"; this probably is the most overriding feature of federalism, prohibiting any sort of autonomy.

**The way forward**

Indian federalism is unique in its own sense; however, there are definitely some remedies to be done in order to streamline the efficacy of cooperative federalism in India. Some such remedies and related rectification can be highlighted by following points:

- Articles 3 & 4 in their present form are enabling provisions empowering Parliament to act in an exceptional situation. Such agreement and proposals should be done with broad consensus or negotiated settlement.
- Appointment of governor should be done generously by taking state government in confidence.
- More bodies like National Development Council, National Integration Council, Inter State Council be created to tackle various issues like tax devolution, constitution amendment, grants and so on.

- There have been blemishes in the application of Article 356 earlier. It should be applied with extreme caution and vigilance adhering to the recommendations of Sarkaria Commission, Punchhi Commission and other guidelines of Supreme Court.
- States in India exercise limited sovereignty, and the federal spirit informs the operation of the Constitution. However, off lately, federalism is deepening in India following global practices. Further prudent autonomy can be provided to states
- Greater encouragement for the participation of states in the legislative process is also highly desirable in order to shed the apprehension of regional parties.

## 11. Principle of Separation of Powers

John Emerich Edward Dalberg-Acton(10 January 1834 – 19 June 1902), was an English Catholic historian, politician, and writer. He is perhaps best known for the remark, "Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men...", which he made in a letter to an Anglican bishop.

It is widely accepted that for a political system to be stable, the holders of power need to be balanced off against each other. The principle of separation of powers deals with the mutual relations among the three organs of the government, namely legislature, executive and judiciary. This doctrine tries to bring exclusiveness in the functioning of the three organs and hence a strict demarcation of power is the aim sought to be achieved by this principle. This doctrine signifies the fact that one person or body of persons should not exercise all the three powers of the government.

The theory of separation of powers signifies three formulations of structural classification of governmental powers:

- The same person should not form part of more than one of the three organs of the government. For example, ministers should not sit in Parliament.
- One organ of the government should not interfere with any other organ of the government.
- One organ of the government should not exercise the functions assigned to any other organ.

On a casual glance at the provisions of the Constitution of India, one may be inclined to say that that the doctrine of Separation of Powers is accepted in India. Under the Indian Constitution, executive powers are with the President, legislative powers with Parliament and judicial powers with judiciary.

The President's function and powers are enumerated in the Constitution itself. Parliament is competent to make any law subject to the provisions of the Constitution and there is no other limitation on its legislative power. The Judiciary is independent in its field and there can be no interference with its judicial functions either by the Executive or by the Legislature. The Supreme Court and High Courts are given the power of judicial review and they can declare any law passed by the Parliament or the Legislature unconstitutional. Taking into account these

factors, some jurists are of the opinion that the doctrine of Separation of Powers has been accepted in the Indian Constitution.

If we study the constitutional provisions carefully, it is clear that the doctrine of Separation of Powers has not been accepted in India in its strict sense. In India, not only there is functional overlapping but there is personnel overlapping also.

The Supreme Court has power to declare void the laws passed by the legislature and the actions taken by the executive if they violate any provision of the Constitution or the law passed by the legislature in case of executive actions. The executive can affect the functioning of the judiciary by making appointments to the office of Chief Justice and other judges. One can go on listing such examples yet the list would not be exhaustive.

### **Separation of Powers and Judicial Pronouncements in India**

The first major judgment by the judiciary in relation to Doctrine of separation of power was in *Ram Jawaya v. state of Punjab* [AIR 1955 SC 549]. The court in the above case was of the opinion that the doctrine of separation of power was not fully accepted in India. Further, the view of *Mukherjea J.* adds weight to the argument that the above-said doctrine is not fully accepted in India. He states that:

*“The Indian Constitution has not indeed recognized the doctrine of separation of powering its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently it can very well be said that our constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belong to another”.*

Then in *Indira Nehru Gandhi v. Raj Narain* [1975 Supp SCC 1], where the dispute regarding Prime Minister’s election was pending before the Supreme Court, it was held that adjudication of a specific dispute is a judicial function which parliament, even under constitutional amending power, cannot exercise. So, the main ground on which the amendment was held ultra vires was that when the constituent body declared that the election of Prime Minister wouldn’t be void, it discharged a judicial function that according to the principle of separation it shouldn’t have done. The place of this doctrine in the Indian context was made a bit clearer after this judgment.

The Supreme Court in *Keshvananda Bharti v Union of India* [(1973) 4 SCC 255] was of the view that amending power was subject to the basic features of the Constitution. And hence, any amendment tampering these essential features will be struck down as unconstitutional. Beg, J. added that separation of powers is a part of the basic structure of the constitution. None of the three separate organs of the republic can take over the functions assigned to the other. Hence this further confirmed the opinion of the court in relation to the doctrine of separation of power.

The doctrine of separation of powers in the strict sense is undesirable and unpractical and therefore till now it has not been fully accepted in any of the country, but this does not mean that the doctrine has no relevance in the world of today.

The logic behind this doctrine is still valid. The logic behind the doctrine is of polarity rather than strict classification, meaning thereby that the centre of authority must be dispersed to avoid absolutism. Hence the doctrine can be better appreciated as a doctrine of 'check and balance'.

## 12. Rule of Law

To simply understand the meaning of rule of law, it means that no man is above law and also that every person is subject to the jurisdiction of ordinary courts of law irrespective of their position and rank.

The term 'rule of law' is originated from England and India has taken this concept. The concept of rule of law further requires that no person should be subjected to harsh or arbitrary treatment. The word 'law' in rule of law means that whether he is a man or a society, he must not be governed by a man or ruler but by law. In other words, as per Article 13 of the Indian Constitution rule of law means law of land.

According to **Black's Law Dictionary**: "Rule of Law" means legal principles of day to day application, approved by the governing bodies or authorities and expressed in the form of logical proposition.

According to **Oxford Advance Learner's Dictionary**: "Rule of Law" means the situation in which all the citizens as well as the state are ruled by the law.

The term 'Rule of Law' is nowhere defined in the Indian Constitution but this term is often used by the Indian judiciary in their judgments. Rule of law has been declared by the Supreme Court as one of the basic features of the Constitution so it cannot be amended even by the constitutional amendment. Rule of law is seen as an integral part of good governance.

As per rule of law, it is required that the people should be governed by the accepted rules rather than the decisions that are arbitrarily taken by the rulers. For this, it is essential to keep in mind that the rules that are made should be general and abstract, known and certain and it should apply equally to all individuals. Legal limitation on government is the essential attribute of constitutionalism. Rulers are not above law under the concept of constitutionalism, government power is divided with laws enacted by one body and administered by another and for that an independent judiciary exists to ensure laws.

In 1885, Professor A.V Dicey developed this concept of 'Rule of Law' and propounded three principles or postulates of the rule of law in his classic book 'Law and the Constitution.' According to Professor A.V Dicey, for achieving supremacy of law three principles of postulates must be followed which are as follows:

- **Supremacy of law**

As per the first postulate, rule of law refers to the lacking of arbitrariness or wide discretionary power. In order to understand it simply, every man should be governed by law.



According to Dicey, English men were ruled by the law and the law alone and also where there is room for arbitrariness and that in a republic no less than under a monarchy discretionary authority on the part of the Government must mean insecurity for legal freedom on the part of its subjects. There must be absence of wide discretionary powers on the rulers so that they cannot make their own laws but must be governed according to the established laws.

- Equality before law and

According to the second principle of Dicey, equality before law and equal subjection of all classes to the ordinary law of land to be administered by the ordinary law courts and this principle emphasizes everyone which included government as well irrespective of their position or rank. But such element is going through the phase of criticisms and is misguided. As stated by Dicey, there must be equality before law or equal subjection of all classes to the ordinary law of land. French legal system of Droit Administrative was also criticized by him as there were separate tribunals for deciding the cases of state officials and citizens separately.

- Predominance of Legal Spirit

According to the third principle of Dicey, general principles of the Indian Constitution are the result of the decisions of the Indian judiciary which determine to file rights of private persons in particular cases. According to him, citizens are being guaranteed the certain rights such as right to personal liberty and freedom from arrest by many constitutions of the states (countries). Only when such rights are properly enforceable in the courts of law, those rights can be made available to the citizens. Rule of law as established by Dicey requires that every action of the administration must be backed and done in accordance with law. In modern age, the concept of rule of law oppose the practice of conferring discretionary powers upon the government and also ensures that every man is bound by the ordinary laws of the land as well as signifies no deprivation of his rights and liberties by an administrative action.

### **Role of Indian Judiciary**

*ADM Jabalpur v. Shivkant Shukla* [(1976) 2 SCC 521]: This case is also known as “Habeas Corpus case”. It is one of the most important case when comes to rule of law. The question that was raised before the hon’ble court was that whether there was any rule of law in India apart from Article 21 of the Indian Constitution. It was in context relating to the proclamation of emergency where the enforcement of Articles 14, 21 and 22 were suspended.

*Som Raj v. State of Haryana* [1990 AIR 1176]: In this case it was held that the absence of arbitrary power is the postulate of rule of law upon which the whole constitutional edifice is dependent.

*Union of India v. Raghbir Singh* [Decided on 18.09.2013]: In this case it was held by the court that a considerable degree that governs the lives of the people and regulates the State function flows from the decision of the superior courts.

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