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# **SALIENT FEATURES OF THE INDIAN CONSTITUTION**

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## **ABSTRACT**

The Constitution of India came into effect on 26 January 1950. Before this, India was governed under the “Government of India Act” 1935. This became effective on 1937. At that time India was part of British Empire. Sovereignty of British crown prevailed over the country and through the exercise of this sovereignty that the British parliament had enacted the act of 1935. The Government of India Act, 1935 has been a source of not only administrative details, but also the verbatim (in exactly the same words as were used originally) language of many provisions of the constitution. Before 1947, the power and control over the Indian administration lay with the secretary of state, the governor-general and the governors. Indian participation in the governmental process was minimal. Our Constitution makers were aware of our country’s condition and based on our previous mistakes, they gave us a liberal and amendable constitution and gave us the right to vote, fundamental rights, citizenship, parliamentary form of government, free judiciary, right to freedom, etc. The Indian constitution is also the lengthiest and heavily borrowed constitution. There are many salient features, but the most prevalent are mentioned in detail.

## **INTRODUCTION**

The constitution of India became effective on 26 January 1950. Before the arrival of this constitution, India was governed under the Government of India Act, 1935, which became effective in 1937. India was then a part of the British Empire; sovereignty of the British Crown prevailed over the country and during this sovereign rule, the British Parliament had enacted the Act of 1935. Two major features of this Act are –

1) The act gave very little rights of self- governance to Indians. The executive authority of a province was given to the governor who was appointed by the queen. He acted on the advice of ministers who were responsible to provincial legislature which was elected for a limited time. In certain situations, the governor could act in his discretion, in which case he was not bound by ministerial advice and was subject to governor-general’s control.

The executive authority was vested in governor-general which was appointed by the crown. He would also act on ministerial advice but while working in his discretion, he was not bound by these

advices; instead he was subject to control of secretary of state who was a member of the British cabinet. Defense, external affairs, etc. fell in this category.

2) Secondly, the Act of 1935 sought to change the character of the Indian Government from unitary to federal. The Indian Federation was to consist of the provinces in which British India was divided, and the States under the native princes.

The federal scheme never became fully operative as the princes didn't join the federation. The federal concept was implemented only partially in the relationship between center and provinces.

The ministerial form of government mentioned under the act of 1935 could not be introduced to the center which was functioning under the govt. of India act 1919. The Central Government consisted of the Governor-General and a nominated Executive Council. In this structure, the Governor-General occupied the key position as he could overrule his Council on any point if the safety, tranquility or interests of British India were materially affected.

Before 1947, the control over the Indian administration lay with the secretary of state, governors-general and governors. Indian participation was minimal and due to this dispensation (exemption from a rule), Indians never felt reconciled.

This led to demand for independence which led to formation of a constituent assembly which was responsible for drafting a constitution for a free India. They started this task on 9th December 1946 where they held their first meeting but couldn't get much done as there was a lack of understanding between the Indian National Congress and the Muslim League. This led to a situation where no progress was possible mainly due to disagreement. This was resolved in 1947 when the British parliament enacted the India independence act which partitioned the country into two independent countries- India and Pakistan. After three years the constituent assembly finalized and adopted the constitution of India on 26th November 1949.

## **SALIENT FEATURES OF THE INDIAN CONSTITUTION**

### **1) Modern Constitution**

Framers of the Indian constitution looked at the various constitutional processes operating in various countries of the world and they drew upon a rich fund of human experience, wisdom, heritage in the area of governmental process in order to make a system suited to the political, social and economic conditions of India.

The Indian federalism (the federal principle or system of government) is influenced by the American, Canadian and Australian federalism. The influence of British constitutional law, theories, practices is on the Indian constitution is quite pervasive [(especially of an unwelcome influence or physical effect) spreading widely throughout an area or a group of people]. Parliamentary form of India is quite similar to British model. The system of prerogative (In law, a prerogative is an exclusive right bestowed by a government or state and invested in an individual or group, the content of which is separate from the body of rights enjoyed under the general law) writs (a form of written command in the name of a court or other legal authority to act, or abstain from acting, in a particular way) which plays a crucial role in protecting people's legal rights.

### **2) Preamble**

The Constitution of India has an elaborate preamble. The purpose of preamble is to tell who has made the constitution, what its source is, what the ultimate sanction behind it is, what is the nature of the polity (a form or process of civil government or constitution) which is sought to be established by the constitution and what are its goals and objectives. The preamble gives a direction and purpose to the constitution and also contains the fundamentals of the constitution. The preamble to the constitution declares India to be a “sovereign socialist secular democratic republic”. ‘Sovereign’ denotes that India is subject to no external authority and that the state has the power to legislate on any subject in conformity (compliance) with constitutional limitations. ‘Democratic’ signifies that India has a responsible parliamentary form of govt. which is accountable to an elected legislature. Democracy is the basic feature of the constitution as stated by Supreme Court. ‘Republic’ denotes that head of the state is not a hereditary monarch, but an elected functionary.

The purpose of preamble is to, for example:

- 1) Contain the enacting clause which brings the constitution into force.
- 2) Declare the rights and freedoms which the people of India intended to secure to all its citizens.
- 3) Declare the type of govt. and polity (a form or process of civil government or constitution) which is sought to be established in the country.
- 4) It throws light on the source of the constitution, viz. the people of India.

Sovereignty lies in the people; the constitution emanates from them. The ultimate source for the validity of, and the sanctions behind the constitution is the will of the people. The constitution has not been imposed on them by any external force or authority, but it is made by Indians themselves. Source of the constitution are the people themselves from whom the constitution derives its ultimate sanction.

The goals and objectives of the preamble are to secure to all its citizens social, economic, and political justice; liberty of thought, expression, belief, faith and worship; equality of status and opportunities; to promote fraternity so as to secure the dignity of the individual and the unity and integrity of the nation. The goals and objectives of the Indian polity are to be further clarified, strengthened and concretized through the directive principles of state policy. It is essential that the preamble be read along with the directive principles which lay down certain goals for the govt. to achieve so as to maximize social welfare of the people. Thus, the constitution is an instrument to achieve the goal of economic democracy along with political and social democracy.

Ordinarily, preamble does not form part of the constitution, but the view has changed. The judges constituting the bench of Kesavananda said that the preamble does form part of the constitution. Our courts and supreme courts look to the preamble for guidance and for interpreting the constitution or other laws.

The preamble lays emphasis on principle of equality. It is a basic feature of the constitution which means that a constitutional amendment offending the basic structure of the constitution is ultra virus (done beyond one's legal power or authority). A legislature can't transgress this basic feature of the constitution while making a law.

### **3) Written Constitution**

Indian constitution deals with the organization and structure not only of the central govt. but also of the states because in a federal constitution, Centre-state relationship is very important. The constitution has reduced to writing many unwritten conventions of the British constitution. There also exist various communities in India. To remove distrust among them, it was necessary to include detailed provisions on fundamental rights, safeguards to minorities, scheduled tribes, scheduled castes and backward classes. One of the reasons our constitution is lengthy because it includes directive principles of state policy to ensure that the future India is based on the concept of social welfare. The constitution contains not only the fundamental principles of governance, but also provisions regarding citizenship, official language, govt. services, electoral services, etc. but in other constitutions, these matters are left to be regulated by the law of the land. After the British rule ended, India emerged as an independent nation but lacked democratic values. The framers thought not to take unnecessary risk and also wrote in the constitution the form of administration as well, instead of leaving it to the legislature, so that the whole mechanism may become viable.

The difference between a written and unwritten Constitution is somewhat basic. A written Constitution is the formal source of all Constitutional law in the country. It is regarded as the supreme or fundamental law of the land, and it controls and permeates each institution in the country. Every organ in the country must act in accordance with the Constitution.

Our constitution provides scope, though not so much as in Britain, for the growth and development of conventions.

### **4) Socialist State**

The word “socialist” was not there originally in the Preamble. The concept of socialism has been made very clear and there’s no room for doubt and India’s commitment to this ideal has been strengthened. The term “socialist” has not been defined in the Constitution. It does not form a mental picture of this doctrine in the sense of insistence (the fact or quality of insisting that something is the case or should be done) on state ownership as a matter of policy. It does not mean total removal of private enterprise and complete state ownership of resources of the Nation.

Mixed economy is followed in India and accepted by the government where both the public and private sector play a major role. Till now private enterprises have been controlled by the

government, but in the future the private enterprise is going to play a much important role than before.

The Supreme Court has referred to the concept of socialism many times and has also used it with directive principles of the state to evaluate economic legislation (it is a measure taken by government to control and regulate the private sector to bring its activities in alignment to the country's economic goals. Its objective is to achieve economic growth, economic stability and equitable employment). The Court has derived the concept of social justice where all people are treated equal and deserve equal rights and opportunities from socialism. The principle aim of socialism is to provide a decent standard of life to the working people and remove inequality of income, status and standard of life. Social justice must be followed to attain some level of social, economic and political equality.

In India, democratic socialism is implemented which aims to end poverty, disease, inequality of opportunity, etc. if a country at large wants to function under the true spirit of constitution, it should implement the socialistic concept. By reading socialism in the preamble with article 14 and 16 which contain fundamental rights, the Supreme Court came up with the fundamental right to “equal pay for equal work and compassionate appointment”.

Relevant case- *Samatha v State of Andhra Pradesh*, the Supreme Court defined socialism as an establishment of an egalitarian society (where all people are treated equal and deserve equal rights and opportunities) through rule of law.

## **5) Welfare State**

This concept is embedded in the Indian constitution as it was drafted in the mid-twentieth century when this term is regarded as very crucial. Therefore, the Indian constitution has a modern and systematic approach on how to set the objectives of the state, how the state is going to achieve them and also the functions of the state. Our constitution shapes the philosophy of our government and states that India will be a social welfare state, i.e. A state which gives social service to people and promotes their welfare. After writing and declaring of the social objectives contained within the preamble, we can see the result of modern political philosophy where it regards the state as an organ that secures the welfare of people.

The concept of welfare state is supported by directive principles of state policy (The Directive Principles of State Policy of India are the guidelines or 15 principles given to the federal institutes governing the State of India, to be kept in citation while framing laws and policies. Directive Principles of State Policy aim to create social and economic conditions under which the citizens can lead a good life. They also aim to establish social and economic democracy through a welfare state). These directives grant certain non-justifiable rights on the people and put the govt. under an obligation to maximize social welfare and social values like education, employment, health, etc. the constitution of India sets up machinery that helps the government achieve the goals of an economic as well as a political democracy.

## **6) Responsible Government**

To give reality to democratic ideas given in preamble, the constitution establishes parliamentary form of government, both at center and state level in which the executive is responsible to an elected legislature. This system is different from the presidential system prevailing in U.S.A. the American system is based on the doctrine of separation of powers between the executive and the legislative organs, the Indian system is based on the principle of co-ordination and co-operation of the two organs.

The president is the head of the Indian union and is elected by the members of the parliament and the state legislative assembly. This system of election ensures that the President is the choice of the people throughout the country and that he represents both the Centre and the States.

The executive power is vested in the president, exercised by council of ministers, headed by prime minister and responsible to Lok Sabha. The president is more of a symbol that performs ceremonial functions. The same pattern is followed in states with some modifications.

The head of the state is called the governor and he is the nominee of the center. He too is a symbol like the president, but unlike him, he has some functions to discharge as a representative of the Central Government.

Effective power in a state is lies in the council of ministers and is headed by the chief minister. They are responsible to the elected house of the state legislature. Details of relationship between president or governor and the council of ministers are not fully written in the constitution. This is where conventions play a major role.

## **7) Secular State**

In India, there are many types of religious groups but the constitution states that India is a secular country. The word “secular” was not originally present in the preamble but was added in 1976 and even before 1976 the concept of secularism was embedded in the Indian constitutional jurisprudence as many courts of that era used this concept to solve cases.

The concept of secularism has not been defined in the constitution even though it was added in the preamble in 1976. The objective was to spell out ideas of secularism and to maintain integrity of the nation which is subject to considerable stress and strain. This concept is based on certain postulates. There is no official religion in India, there is no state recognized religion, several fundamental rights guarantee freedoms of worship and religion as well as outlaw discrimination on the ground of religion and this concept prohibits the establishment of a theoretical state. The state doesn't favor any particular religion and treats all religions and religious sects equally.

The Indian constitution states that all citizens are equal and the religion of a citizen is irrelevant when it comes to enjoying his/her fundamental rights. It gives equal freedom to all religions and states that religion has nothing to do with the socio-economic status of a person. The constitution does not interfere with religious freedom but does not allow religion to affect the secular rights of citizens, nor the socio-economic relation between state and citizens. The Supreme Court has declared secularism as the basic feature of the Indian Constitution and an integral part of fundamental law. Secularism is not to be confused with religious concepts of an individual/group. It means that the state should not have a religion of its own. Each person, irrespective of his religion must get an assurance from the state that he has the protection of law to freely practice his religion.

Religion cannot be mixed with secular activities of the state. The courts noted many disturbing events like fanning religious fundamentalism, competing with others to prove their point, etc. these events put stress on the constitutional machinery by pushing ideas of religious priorities.

## **8) Minorities and Backward Classes**

The Indian society lacks the quality of being all the same as there exists differences of religion, language, culture, etc. some sections of people are economically, socially and culturally weaker than others. There exists suspicion and distrust between different religious and linguistic groups.

To promote a sense of security among minorities and other backward classes, to make them useful members of society and to bring together diverse elements into one national and political stream, the Constitution contains a liberal scheme of safeguards to Minorities, Backward Classes and Scheduled Castes. Provisions have been made to reserve seats in legislatures, make reservations in services, to promote welfare of backward classes and to protect the language and culture of minorities. No special privilege has been given to any section in the matter of representation in the legislature.

The constitution has set up institutional machinery to oversee that these safeguards and schemes are properly executed by various governments in the country and this machinery is strengthened by statutory bodies.

## **9) Elections**

India has adopted adult suffrage as a basis of elections to the Lok Sabha and the State Legislative Assemblies. Every citizen, male or female, who has reached the age of 18 years or over, has a right to vote without any discrimination.

Constitution makers knew that there were millions of illiterate people in India but they added adult suffrage to make sure democracy was broad based and the system of the govt. was based on sanction of the people.

To introduce educational qualification for exercising the franchise would have amounted to a negation of democratic principles because such franchise would have disfranchised a large number of depressed and poor people. It can't be assumed that a person with elementary education would be in a better position to vote than a laborer or a cultivator who knows what his interests are and will choose his representative accordingly.

After many general elections based on adult franchise, farmers appear to have been well advised in the matter of voting.

To conduct fair elections and to protect them from being manipulated by politicians, the constitution sets up an autonomous election commission to supervise and conduct elections to Parliament and State Legislatures.

## **10) Fundamental Rights**

The Indian constitution gives basic human rights such as equal protection of laws, freedom of speech and expression, freedom of worship and religion, freedom of assembly and association, freedom to move freely and to reside and settle anywhere in India, freedom to follow any occupation, trade or business, freedom of person, freedom, against double jeopardy and against ex post facto laws. Untouchability has been abolished and it is now a thing of the past.

A person can claim Fundamental Rights against the state subject to the state imposing some permissible restrictions in the interests of social control. The grounds for imposing these restrictions on Fundamental Rights are expressly mentioned in the Constitution itself and, therefore, these rights can be abridged only to the extent laid down.

These rights constitute inhibitions (a feeling that makes one self-conscious and unable to act in a relaxed and natural way.) on the legislative and executive heads of the state. No law infringing a fundamental right can be regarded valid. The constitution demarcates an area of fundamental rights and liberty which the govt. cannot interfere.

The Constitution provides effective machinery in Arts. 32 and 226 for the enforcement of these Rights and the judiciary ensures an effective and speedy enforcement of these rights.

Since the inauguration of the constitution, many legal battles have been fought in the area of fundamental rights and the Supreme Court has taken a stand that these rights should be interpreted broadly and liberally and not narrowly.

The constitutions makers incorporated fundamental rights in the constitution because of massive minority problem in India, struggles against the tyrannical British rule, acknowledgement of ghandhian ideals, international opinion and American experience.

These fundamental rights draw a balance between individual freedom and social control. These rights were framed out of the liberal spirit and constitute a counterpart of the American bill of rights. There is some resemblance between the two but these rights in India cover a much wider ground and are expressed in much greater detail than in U.S.A. The bill of rights has served as a defensive wall against abuse of authority by organs of govt. and has promoted freedom and liberty. The fundamental laws in India play a similar role and promote rule of law.

1978- Notable development- the Supreme Court has declared that Fundamental Rights can even be implied over and above those which have been expressly stated in the Constitution. The court has been able to imply several fundamental rights out of the ones stated in the constitution.

The range and coverage of fundamental rights will go on expanding as a result of judicial interpretation of the constitution. This process will help India as it is a developing socio-economic society.

## **11) Judiciary**

The constitution gives a dignified and crucial position to the judiciary. Well- regulated judicial machinery has been introduced in the country with Supreme Court at the top because its jurisdiction is very broad. It is the ultimate arbiter in all constitutional matters and enjoys an advisory jurisdiction. It can hear appeals from any court and can issue writs for enforcing fundamental rights. The Supreme Court of India has wider powers than the highest court in any other federation.

Each state has a high court which has wide jurisdiction as it is an important instrument of justice. Their most significant aspect of their jurisdiction is the power to issue writs. The writ-jurisdiction of the High Courts is used frequently to enforce Fundamental Rights.

Both the Indian and American constitution are federal in nature, the U.S. judicial system has a dual system of courts, a federal judiciary with the Supreme Court at the top along with a separate and parallel judicial system in each State, whereas the Indian judicial system has a unified system of courts in which The Supreme Court, the High Courts and the Lower Courts constitute a single, unified, judiciary having jurisdiction over all cases arising under any law whether enacted by Parliament or a State Legislature.

Unified judicial system avoids confusing jurisdictional conflicts between the two parallel judicial systems such as arise in the U.S.A. and thus India has the advantage of simplicity. The dual system is cumbersome, expensive and presents difficulties that the other federal system does not experience.

The judiciary in India has to dispense justice not only between one person and another, but also between one citizen and state. The judiciary interprets the Constitution and acts as its guardian by

keeping all authorities—legislative, executive, administrative, judicial and quasi- judicial—within bounds. It also supervises the administrative process in the country and also settles inter-governmental disputes.

The judiciary has power to protect people’s Fundamental Rights from any undue encroachment by any organ of the government. The Supreme Court also acts as the protector of fundamental rights of the people. It has shown judicial creativity while interpreting fundamental rights. The courts accept that they have to play a law- creative role.

To enable SC and HC to discharge their functions impartially, the constitution contains provisions to safeguard judicial independence. The Judges of these Courts are appointed by the Central Executive.

Once appointed, the Judges hold office till they reach the age of superannuation as fixed by the Constitution and, thus, their tenure is independent of the will of the executive. A special procedure has been laid down for removing the Judges on the ground of incapacity or misbehavior. The constitution establishes an independent judiciary and they have the power of judicial review. This power helps in establishing a govt. that functions within the law. Judicial review is one of the most basic features of the Indian constitution.

## **12) Federal Constitution**

India’s constitution is of the federal type which establishes a two-tier governmental system. Central govt. at level 1 and state govt. at level 2. The constitution marks off a sphere for both levels by making a scheme for distribution of legislative, administrative and financial powers between the center and state. A govt. must function inside that sphere and cannot encroach into another sphere.

India is a member of the family of federations. Other members are U.S.A., Canada and Australia. The Indian federalism was designed after a careful study of other trends in these federations. Thus, it has both advantages and disadvantages of the federal system, such as weaknesses of rigidity and legalism. Therefore, it does not follow strictly the conventional federal pattern.

The Indian federalism adopts some of the techniques developed in other federations and breaks new grounds and develops techniques of its own. Thus, this system has distinctive features of its own.

The words “federation” and “union” were used by drafting committee of the constituent assembly to indicate two things

- A) That the Indian Union is not the result of an agreement by the states
- B) The component states; have no freedom to secede from it.

Though country and the people are divided for convenience of administration and good governance, the country as a whole and the people live under a single empire derived from a single source.

The Central Government has a large sphere of action and thus plays a more dominant role than the States. Both the center and the states have many common interests and the emergency provisions provide a simple way of transforming the normal federal fabric into an almost unitary system so as to meet national emergencies effectively.

Sometimes parliament becomes competent to legislate in the executive state field and the process of amending the constitution is not very rigid. India’s federalism is a flexible mechanism and the constitution makes several techniques to promote inter-governmental co-operation. India is an example of co-operative federalism.

India is a dual polity but has only one Indian citizenship and there is no state citizenship. This is different from American dual citizenship- citizenship of USA and that of each state. This creates a problem because the courts may sometimes favor their own citizens on matters like right to hold public office, to vote, to become a doctor or lawyer, etc. India has overcome this problem and every Indian has equal political and civil rights no matter in which state he resides.

Every state in USA can draft its own constitution within its competence, but not in India. In India there is a constitution that covers both the center and state and both must work under it and neither can get out of it. India maintains uniformity in civil and criminal laws but in other federations, duality of govt. produces variety of laws that accommodate the laws to local needs but beyond a certain point it becomes confusing.

## **CONCLUSION**

After a brief reading of the Indian constitution, in conclusion it can be said that the framers of our constitution had a clear goal in mind and despite critics calling it a heavily borrowed constitution, they judiciously learned from other countries' mistakes and accomplishments, took that principle and modified it to better suit the needs of Indians. It is a uniquely drawn document from various sources which is liberal in nature, as it gives us a unique blend of rigidity and flexibility when it comes to amending the constitution, implementing new laws, using various doctrines to amend or remove outdated provisions, voting, and a lot more.