

Salient Features of the Indian Constitution (Part 2)

Indian Polity Class 3



Topics Covered

Framed by the People of India
Begins with a Preamble
Indian Constitution: Borrowed Features
Sovereignty of the People
Republican and Secular Polity
Fundamental Rights and Duties
Directive Principles of State Policy (DPSP)
Judicial Review
Universal Adult Franchise (UAF)
Hindi as Official Language

Unique Blend of Rigidity and Flexibility
Comprehensive Document
Parliamentary Democracy
Federal Form of Polity
Separation of Power
Independent and Impartial Judiciary
Welfare State
Affirmative Action
Emergency Provisions
Independent Agencies
Single Citizenship

SOURCES USED

- Class VII, Chapter 3, Old NCERT
- Class XI, Chapter 1, Old NCERT
- Class XI, Chapter 3, Old NCERT
- Class IX and X, Chapter 4, Old NCERT
- Class VIII, Chapter 1, New NCERT
- Class XI, Chapter 1, New NCERT

Chapter 3

INDIAN CONSTITUTION — PREAMBLE, SALIENT FEATURES AND INDIAN FEDERATION

Preamble to the Indian Constitution

The term preamble literally means preface, preliminary statement or introduction. The Preamble to the Indian Constitution deals with the aims and objectives, the targets and ideals; and the basis and foundations of the Indian Constitution.

for minorities; backward and tribal areas, and depressed and other classes. B.N.Rau, the constitutional advisor to the Constituent Assembly, prepared a draft of the Preamble based on this Resolution. The Drafting Committee considered this draft and after making some changes adopted it at the stages of the working of the Constituent Assembly so that it was in conformity with the constitutional provisions.

CHAPTER 4

The Constitution of India and its Salient Features

A Constitution is a fundamental legal document according to which the government of a country functions. It is the basic law which defines and delimits the main organs of government and their jurisdiction as well as the basic rights of the citizens. A Constitution, thus is superior to all other laws of the country and no law can be enacted which is not in conformity with the Constitution. Every government has to function in accordance with the laws written in the Constitution which are also called the basic laws of the land. These laws act as the source according to which the rules and regulations of governing a country are framed.

Importance of a Constitution in a democratic government is still more significant. A democratic government is one in which the citizens participate in the functioning of the government, directly or indirectly. It is a government in which the government's powers are limited and clearly spelled out. It is also a government under which citizen's rights are also given clearly. Now, how are these limits placed on the activity of the government as well as the citizens. This is done by what is called a Constitution.

A Constitution is considered the source of power and authority of a government. It lays down precisely what the powers of a particular organ of the government are, what things it can

or cannot do. The idea is to minimise confusion and conflict in the working of the various organs of the government. A Constitution is concerned with two aspects—the relation between different organs of government; and between the government and the citizens. More than anything else a Constitution is an instrument of controlling the abuse of power by the government. That is why the Constitution is a very important document.

The Constitution of India

The Constitution of India was prepared by the Constituent Assembly having members belonging to different communities and regions of India. Fortunately the Constituent Assembly had illustrious personalities like Dr Rajendra Prasad, Pandit Jawahar Lal Nehru, Dr B.R. Ambedkar, Sardar Vallabhbhai Patel, Maulana Abul Kalam Azad, Dr Shyama Prasad Mukerji, Sardar Baldev Singh, Mrs. Sarojini Naidu, etc. as its members.

The Constituent Assembly elected Dr Rajendra Prasad as its Chairman. Dr B.R. Ambedkar was appointed the Chairman of the Drafting Committee. The Constitution was passed by the Constituent Assembly on 26 November 1949 but was enforced on 26 January 1950. The Constitution of India has many salient features. We shall now study some of them.

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Chief Features of Our Constitution

LET US first learn about some basic features of our Constitution. The most important feature to keep in mind is the democratic government which our Constitution establishes in India.

We have seen in the first chapter how the people were involved in the making of the Constitution. The ultimate authority in our country rests with the people. The people of India have the right to vote. Through the vote they elect their representatives. Elections are held for the Lok Sabha every five years. Many political parties take part in the elections. In your area you must have seen how big public meetings are addressed by local and national leaders. You must have also observed big posters in which candidates

request the voters to cast their votes in their favour. Your school is closed on the election day. Even your school is converted into a polling-booth. Your parents and neighbours go to this polling-booth to cast their votes.

Find out in which year the last General Elections were held. Which political parties took part in the last Election?

In such elections the representatives are elected by the people. The elected representatives make the laws for the benefit of the people. These laws govern the people. And the people obey these laws. This is democracy. In democracy, the government is formed by the representatives of the people. If the people are not satisfied with the working of the government, they do not vote it to power in the next general election. Our Constitution sets up such a government in India.

Find out which members of your family cast their votes in the last General Elections. Why could you not cast your vote?

Our Constitution is the lengthiest constitution in the world. It contains about 90,000 words. But it is not unchangeable. In fact, in the Constitution

Directive Principles of State Policy (DPSP)

- No provision of DPSP was present in same manner in any prior constitution.
- The instrument of Instructions attached to Government of India Act, 1935 appears analogous to DPSP. But Aims and Objects are different. What is the meaning here?
- Due to issue of insufficient means, many socio and economic rights were made part of Directive Principles of State Policy.
- The Leaders of Indian National Movement divided fundamental rights into two parts
 - Rights that were granted immediately: Included in Part III; Fundamental Rights.
 - Rights that would be granted in the future if and when the government would be capable to do so: Included in Part IV; DPSP.
- Non Enforceable in the court of law.
- Nevertheless, fundamental principles of governance which the state has to follow.
- State means the Government and Parliament of India, the government and legislature of each of the States and all local or other authorities within the territory of India or under the control of Government of India.

Judicial Review

- Judiciary can do judicial review of
 - Acts of legislature (Union and States).
 - Activities of the Executive (Union and States).
- There was no such provision before the constitution came into force.
- Why Judicial Review?
 - Keeps the legislative and the executive branches of government under restraint.
 - Hence, these branches are not able to act in an arbitrary manner.

Universal Adult Franchise (UAF)

- Prior to the Constitution, there was Restricted Franchise.
- GOI, 1935: Granted the largest amount of Franchise – only 14% of the people got the right to vote.
- Even many countries of West have taken decades to grant UAF.
- A revolutionary step taken by the constituent assembly of India.
- Every Indian who has completed the age of 18 has the right to vote and participate in choosing the governments at different levels: central, State and Local Levels.

Hindi as Official Language

- Prior to the constitution, only English was recognised as the Official language of the Indian Union.
- Constitution recognises Hindi as official language as well.
- It also recognises many languages through the 8th schedule of the Indian constitution.

EIGHTH SCHEDULE [Articles 344(1) and 351]

Languages

1. Assamese.
2. Bengali.
- ¹[3. Bodo.
4. Dogri.]
- ²[5.] Gujarati.
- ³[6.] Hindi.
- ³[7.] Kannada.
- ³[8.] Kashmiri.
- ⁴[³[9.] Konkani.]
- ¹[10. Maithili.]
- ⁵[11.] Malayalam.
- ⁴[⁶[12.] Manipuri.]
- ⁶[13.] Marathi.
- ⁴[⁶[14.] Nepali.]
- ⁶[15.] ⁷[Odia].
- ⁶[16.] Punjabi.
- ⁶[17.] Sanskrit.

Unique Blend of Rigidity and Flexibility

- One of the lengthiest Constitution in the World. It contains more than 90,000 words.
- Not an unchangeable constitution.
- Constitution itself contains the procedure to amend the constitution.
- Amendment: A change made in a law or in the constitution by the Parliament.
- The purpose of amendments is to remove difficulties that arise from time to time.
- Prior to it, only British Parliament could amend the laws and constitution.

368. An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and he shall give his assent to the Bill if the President is satisfied that the Bill has been passed in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in —

(a) article 55, article 57, article 62 or article 63 or

Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(b) the representation of States in Parliament, or

(c) the provisions of this article,

the amendment shall not require to be passed by a majority of not less than two-thirds of the States specified in Parts A and B of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

Blending of Rigidity and Flexibility

Simple Majority in Parliament

- Some provisions could get amended by simple majority of two houses of Parliament.
- Technically not treated as an amendment in the constitution.
- Example: Change in the name of a State.

Absolute Majority in Parliament

- Absolute Majority of Parliament of the Total strength of the Two Houses.
- Two thirds majority of member present and voting.
- Example: All other matters leaving these two.

Absolute Majority in Parliament plus Ratification by States

- Absolute Majority of Parliament of the Total strength of the Two Houses.
- Two thirds majority of member present and voting.
- Ratification/additional support by the half of the states legislatures.
- Example: When a change in federal character is proposed.

Other Features

Comprehensive Document

- Has 395 Articles.
- 12 Schedules; originally there were only 8 schedules.
- Various Constitutional Amendment Acts added more schedules.
- Prior to it, the Government of India Act, 1935 was a comprehensive document having 321 sections and 10 schedules.

Parliamentary Democracy

- Prior to the Constitution, the Government of India Act, 1935 provided for provincial autonomy and parliamentary democracy.
- However, it was limited and had many restraints because of which parliamentary democracy could not evolve.
- The Indian Constitution provides for a full fledged parliamentary democracy.
- The Constitution establishes democratic government in India: Most Important Feature according to Old NCERT (Class VII, Chapter 3).
 - In democracy, the government is formed by the representative of the people.
 - Ultimate Authority Rests with the people of India.
 - They have the right to Vote.
 - Through Voting the People of India elect their representatives.
 - Elections are held for Lok Sabha every Five Years in which representative are elected by the people of India.
 - Elected representatives make laws that govern people. The purpose of law is to give benefit to people.

Continued...

- In this model of democracy: Parliament is supreme and represents the people.
- The Government is carried out in name of President and Governor in centre and states respectively.
- The Administration is actually carried by the Council of Ministers.
- The representatives control the executive and council of ministers is collectively responsible to them.
- Parliament is Bicameral.
- Each state has its own legislature which could be both unicameral or bicameral.

Federal Form of Polity

- **Federal System of Government:** A system in which political power is shared between the Centre and the state government. There are two sets of governments: one at the Centre and the other at the State level.
- The Panchayati Raj system is the third tier of government.
- Government of India Act, 1935 also provided for a Federal Form of Polity.
- But due to particular strong opposition from princely states it could not shape.
- **Two sets/levels of government:** Centre (National Level) and State. In a federal system, the government at the national level is, therefore called a federal government. In India, we call it the Union government, popularly known as the Central Government.
- **Why Federal?**
 - India is a big country.
 - Difficult to run the administration of the whole country from one centre.
 - Country has many languages and diverse cultures.

Continued...

- The state governments are not mere agents of or subordinate to federal government.
- In order to demarcate separate spheres, a written constitution is necessary in a federal setup.
- The constitution of India does not use the term ‘federal state’ rather states the India is a ‘Union of States’.
- The powers of the two governments: Union and State Governments are well defined in the constitution.

Division of Power between Central and State Governments: Three Different Lists: Union List (I), State List (II), Concurrent List (III)

Union List	State List	Concurrent List	Residue
<ul style="list-style-type: none"> • The Union government has under its authority those subjects which are of national importance over which it can make laws. • Defence of the Country, Foreign Affairs, Railways, post and telegraph, currency, banking, atomic energy etc. • 97 Items 	<ul style="list-style-type: none"> • The state government has under its authority subjects over which it can make laws. • Maintaining law and order, police, prisons, Agriculture, local government, public health, laws about land trade and commerce within states. • 66 Items 	<ul style="list-style-type: none"> • There is a third list known as concurrent list and both Union and state. • Subjects of common concern: both governments can make laws on subjects given in this list. • In case of conflict, the Union law prevails. • Criminal and civil procedure, marriage and divorce, education, economic planning, trade unions, electricity, newspapers etc; 47 Items. 	<ul style="list-style-type: none"> • Items not mentioned in any list. • The central government enjoys residuary powers.

Special Aspects about Indian Federal Polity: The Federal Government in India has a Unitary Bias

The central government has advantage over states: Division of power is advantageous to the Centre

The Union List has more subjects

Some of the more important powers are with the Centre

Centre enjoys residuary powers

Central government has more financial resources

Centre has more power in matters of concurrent list

Emergency Provisions: The polity runs practically as a Unitary State

Critics: Indian constitution is a Unitary constitution with some federal Features.

Separation of Power

- According to the Constitution, the three organs of the Government of India are the Legislature (elected representatives), the Executive (the group of people who implement the law and run the government), and the Judiciary (the system of courts).
- The Constitution prevents misuse of power by any organ by separating the powers of the organs from each other.
- Power distribution establishes a system of checks and balances between the organs.
- Aristotle: First Noted the distinction between three functions of the government: Legislature (Deliberative), Executive (Magistrative) and Judiciary (Judicial).

Continued...

- Roman writers like Cicero, Polybius praised Republican constitution of Rome because it balanced between the Senate (legislature), Consuls (executive) and Tribunes (Judiciary).
- Bodin (French, 16th century writer): First Modern Writer to demand separation of power.
- The theory of separation of power finally emerged from the writing of Montesquieu (1748: esprit de law).
- For Montesquieu: concentration of authority meant tyranny, and only a wise separation of distribution of powers could ensure individual liberty.
- Indian case is Unique.

Independent and Impartial Judiciary

- **Independent Supreme Court and Judiciary:** It is the protector of the rights of citizens and persons of India.
- A person can reach the court in case of violation of the rights.
- This court can give judgement against government as well.
- It shows the nature of independence of the supreme court of India.
- Independence ensures
 - That it is not influenced by the Executive.
 - That it plays an impartial role in case of dispute or conflict between the central and state governments.
 - Hence, it is essential for a federal polity.

Welfare State

- This type of State performs several types of functions for the welfare of the people.
- Constitution provides six fundamental rights to Indians.
- Fundamental Duties put responsibility upon citizens of India to discharge them with best of their capacity.
- DPSP: instructions given by constitution to Union and state governments for achieving a just society.
- Contains special provisions to protect and uplift the traditionally poor and socially deprived section of population: Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women.

Affirmative Action

- To improve the conditions of Weaker sections of society by reservation in the legislatures and government jobs.
- The Government of India Act, 1919, Indian Councils Act, 1909, and the Government of India Act, 1935 provided for reservation as well.

Emergency Provisions

Similar Provisions were present in GOI ACT, 1935

National Emergency	Failure of Constitutional Machinery in States	Financial Emergency
<ul style="list-style-type: none"> • Declared by the President • Satisfied that Security of India or any part is threatened • War, External Aggression, Armed Rebellion • Federal character of the constitution acquires Unitary character 	<ul style="list-style-type: none"> • President Feels Satisfied • It is not possible to carry on the governments of a state as per the constitution • President Rule is imposed • Executive Authority of State becomes subordinate to Union Executive • Legislative Authority of the State becomes subordinate to Parliament 	<ul style="list-style-type: none"> • Situation of financial instability of the nation or any part • President declares • Authorises President to issue directions to States regarding the way they have to manage financial affairs • Authorises President to reduce salaries, allowances etc. of office bearers who get them from Consolidated Fund of India • It includes those office bearer's salaries who are not subject to ordinary reduction

Independent Agencies

- For performing special functions.
- Election Commission
 - For conducting free and fair elections of the Union and State's legislatures, President and Vice President. Numerous suggestions have been given and steps have been taken to ensure election commission's independence.
- Comptroller and Auditor General of India
 - To keep a watch on finances and accounts of Union and States; independence is necessary and provisions have been made for the same.
- Union and State Public Service Commissions
 - For conducting examination and selecting candidates post interview to serve the high positions in bureaucracy.

Single Citizenship

- Citizenship is a privilege granted to every citizen of India.
- The persons who were born in India and are living in India, are the citizens of India.
- As citizens they have certain rights and responsibilities like right to vote is a right and to exercising this right properly is responsibility.
- People not born in India are known as Aliens and they don't possess same rights as citizen of India.

THANK YOU