



THE CONSTITUTION OF INDIA – ITS NATURE

A Constitution is a set of laws and rules, setting up the machinery of the government of a State which defines and determines the relations between the different institutions and areas of the government, the executive, the legislature and the judiciary, the central, the regional and the local governments. Every Constitution aims to build up a governmental structure based upon certain basic and well established principles. Although some of these principles are common to most of the Constitutions, there are others which vary from Constitution to Constitution. The Constitution of India is not an exception to this rule and it has its own basic principles.

The Constitution of India is the supreme law of the land. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government and spells out the fundamental rights, directive principles and duties of the citizens. It is the largest written

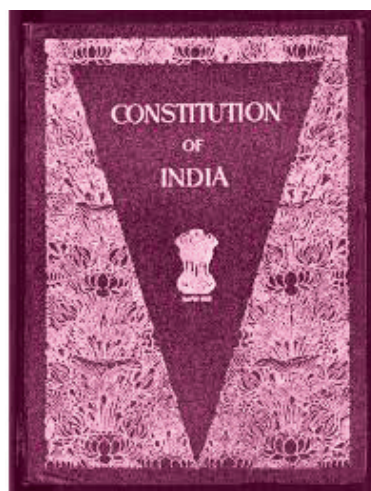


Figure 17.1 The Constitution of India

MODULE - 5

The Constitution of
India-I



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The Constitution of India – its Nature

Constitution of any sovereign country in the world, containing more than 395 Articles and divided into 24 parts and 12 schedules passed and adopted by the Constituent Assembly on 26th November, 1949. It came into effect on 26th January, 1950. The Constitution declares the Union of India a Sovereign, Socialist, Secular, Democratic Republic, assuring its citizens of Justice, Equality and Liberty and endeavors to promote Fraternity among them all.



OBJECTIVES

After studying this lesson you will be able to:

- understand the nature of the Indian Constitution;
- describe the composition of the Constituent Assembly and the role of the Drafting Committee as well as the objectives of the Constitution;
- appreciate the importance of the ‘Preamble’ of the Constitution of India;
- describe the main characteristics of the Constitution of India;
- distinguish between the written and the unwritten Constitution; and
- Identify the Federal and Unitary character of Indian Constitution.

17.1 THE NATURE OF THE INDIAN STATE

The main characteristics of the Indian State are following which highlight the nature of the State itself:

- (i) **Liberal – Democratic State:** The model of a liberal – democratic State signifies a political system in which democracy or ‘the rule of Law’ prevails to make the regime ‘legitimate’ in the real sense of the term. The machinery of government is run by the chosen representatives of the people who are accountable to them for their policies and actions. The liberal democratic State is based on the assumption that the government is not an end in itself but a means for the realisation of the greatest good of the greatest numbers. Besides, the authority of the government is not absolute but limited by the laws.

All this brings us to the point that India stands for the preservation of the entire paraphernalia of a Liberal – Democratic State. It has been correctly asserted that the Constitution facilitates for adult franchise, periodic, elections, representative and responsible government, independent judiciary, rule of law and separation of powers.

- (ii) **Federal State:** Mahatma Gandhi talked about decentralisation of powers of the State in the Indian context. All the powers of economic development and social change are vested in the State. The State has been bestowed with vast powers in the field of agriculture as well as industrial development. In the words of Rajni Kothari, ‘the ideology of a stronger and centralised State and the cult of personality have brought the country close to a centralised State’.
- (iii) **A Welfare State:** The framers of the Indian Constitution incorporated many provisions to make India a Welfare State. The basic aims of a Welfare State were clearly included in the Preamble to the Constitution, and virtually in all provisions contained in Part IV of the Constitution, containing the Directive Principles of State Policy. Article 38 states : “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life.”
- (iv) **Caste-ridden Society:** A system of hierarchical social organisation was evolved and practiced by our ancestors from the beginning of the early civilisation, which is the basic foundation of India’s social structure. The institution of caste determines a person’s place right from the day he/she is born, and inherits his occupation from his father and, in turn, passes it on to his descendants. What is significant about the caste system is that castes are forced not only among the Hindus, but also to some extent among the Indian Muslims, Christians, Sikhs, Jains and Jews etc.
- (v) **Multi-religious Society:** There is no homogeneity on the basis of religion. The Indian population is divided into Hindus, Muslims, Buddhist, Parsi and Christians. It is a fact that there is not a single community which is not diverse. Even the personal laws are not uniform.

Besides these social, cultural, religious and racial diversities, India remains a largely unified society. It is surprising that beneath the bewildering diversity of religion, language and customs of this vast country, the underlying unity is remarkable. India is a political entity, every part of which is governed by the same Constitution.



INTEXT QUESTIONS 17.1

1. What is meant by a Welfare State?
2. Mention any two characteristics of the Indian State.



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**Notes****17.2 THE CONSTITUENT ASSEMBLY**

A Constituent Assembly was constituted for formulating or adopting a new Constitution. The concept of a Constituent Assembly implies the right of people to determine their own future and decide the nature and type of policy under which they would like to live.

The enormous task of drafting India's Constitution was taken up by the will of the Indian people. The Constitution for India was drafted during the years from December 1946 to November 1949. During this period, it held eleven sessions and performed real work for 165 days. The historic document – free India's Constitution was passed and adopted by the Assembly on November 26, 1949 and it came into force on January 26, 1950.

In all, the Constituent Assembly was to have 389 members. As many as 296 of them were to be elected from British India and 93 were to be representatives of the native states. The members of the Constituent Assembly were indirectly elected by the members of the then existing Provincial Assemblies. In addition members were also nominated by the princely states. For elected members seats were reserved on communal basis. India was one and undivided when the Constituent Assembly was constituted. However, at the time of independence the Muslim League boycotted the Assembly. As a result, members representing the areas included in Pakistan ceased to be members of India's Constituent Assembly. Hence, out of 296 elected members only 229 remained as on 31st December 1947. The Constituent Assembly was dominated by members belonging to Congress. Within the Congress, mostly all the leaders of the freedom movement were members of the Assembly. Out of the 229 members of the Constituent Assembly 192 belonged to Congress, 29 to Muslim League, 1 Akali and seven were independent members.

The First meeting of the Constituent Assembly was presided over by Dr. Sachidanand. Later Dr. Rajendra Prasad was elected the President of Constituent Assembly. The members of the Constituent Assembly were not selected purely on party basis, but were drawn from all walks of life and represented almost every section of the Indian population. The moving spirit of the Assembly was Jawaharlal Nehru, the first Prime Ministers of Free India. In the opinion of Subhash Kashyap, "While Nehru fashioned its structure and shape, most significantly, Nehru gave to the Constitution of India its spirit and soul, its philosophy and its vision".

17.2.1 Committees of the Constituent Assembly

The Constituent Assembly had a total of more than fifteen Committees, prominent of which were : the Drafting Committee, the Union Power Committee,

the Union Constitution Committee, the Advisory Committee on Minorities and Fundamental Rights, the Committee on Chief Commissioner's Provinces, the Committee on Financial Provisions of the Union Constitution and the Advisory Committee on Tribal Areas. These Committees submitted their reports between April – August, 1948 which were considered by the Constituent Assembly. On the basis of these decisions, the final shape and form was given by Dr. B. R. Ambedkar and his colleagues in the Drafting Committee.

The Constituent Assembly appointed a Drafting Committee on 29th August, 1947 to consider the Draft Constitution. Dr. B. R. Ambedkar was appointed its Chairman and was assisted by some other members. The Drafting Committee under the Chairmanship of Dr. B. R. Ambedkar embodied the decisions of the Constituent Assembly with alternative and additional proposals in the form of a 'Draft Constitution of India' was first published in February 1948. The Draft Committee took less than six months to prepare the Draft.



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INTEXT QUESTIONS 17.2

Fill in the blanks.

1. The chairman of Drafting Committee was
(Pt. Jawaharlal Nehru/Dr. Rajendra Prasad/Dr. Ambedkar)
2. The chairman of the Constituent Assembly was
(Dr. Rajendra Prasad/Dr. B. R. Ambedkar)

17.3 OBJECTIVES OF THE CONSTITUTION

Quite a good number of political thinkers are of the opinion that the Constitution of independent India was framed in the background of about two hundred years of the colonial rule, a mass based freedom struggle, the national movement, partition of the country and spread of communal violence. The framers of the Constitution were concerned about the aspirations of the people, integrity and unity of the country and establishment of a democratic society. Different members of the Constituent Assembly held different ideological views. Some of them were inclined to socialist principles, still others laid emphasis on Gandhian thinking. Most of them agreed to give India a 'Constitution' which will fulfill the cherished ideals of the people.

As a result, conscious efforts were made to have consensus on different issues and principles to avoid disagreements and conflicts. This consensus came out in the form of the 'Objective Resolution' moved by Pandit Jawaharlal Nehru in the Constituent Assembly on 17 December, 1946 which was almost

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unanimously adopted on January 22, 1949. In the light of these ‘Objectives’ the Constituent Assembly completed its task by November 26, 1949. The Constitution was enforced with effect from January 26, 1950. From this auspicious day India became a Republic. Exactly twenty years before the first independence day was celebrated on January 26, 1930 as decided by the Lahore Session of the Congress on December 1929. Hence, January 26, was decided as the day to enforce the Constitution of India. Pandit Jawaharlal Nehru commenting on the aforesaid Resolution said: ‘Objective Resolution’ is something more than a resolution. It is a declaration, a firm resolve, a pledge, an undertaking and for all of us a dedication.

**INTEXT QUESTIONS 17.3**

1. “The Objective Resolution was moved by Pt. Jawaharlal Nehru on 17th Dec. 1946.” (True/False)
2. “Maintaining the Integrity and Unity of the country was one of the main objective of the framers of the Indian Constitution.” (True/False)

17.4 THE PREAMBLE OF THE INDIAN CONSTITUTION AND ITS IMPORTANCE

The Preamble to a Constitution is expected to embody the fundamental values and the philosophy on which the Constitution is based and the aims and objectives the founding fathers enjoined to strive to achieve. In other words Preamble is a preliminary or introductory statement in speech or writing. It has been rightly stated that ‘Preamble’ is like an introduction or preface of a book. It explains the purposes and objectives with which the document has been written. As such the ‘Preamble’ provides the guidelines of the Constitution.

17.4.1 Preamble

We, the people of India, having solemnly resolved to Constitute India into a ‘Sovereign, Socialist, Secular, Democratic Republic’ and to secure to all its citizens : Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation; in our Constituent Assembly this twenty – sixth day of November, 1949 do hereby adopt, enact and give to ourselves this Constitution.

The 'Preamble', in brief, explains the objectives of the Constitution in two ways: One, about the structure of the governance and the other, about the ideals to be achieved in independent India. It is because of this, the Preamble is considered to be the key of the Constitution. A motion was adopted by the Assembly that 'the Preamble stands a part of the Constitution'. It would be pertinent to look at what do these objectives mean and how have these been reflected in the Constitution.

The opening and closing words of the Preamble, "We the people of India, adopt, enact and give to ourselves this Constitution" convey that the Constitution emanated from the people and the sovereignty under the Constitution was in the people.

The type of government assured to the people of India by the Constitution was described in the Preamble as Sovereign, Socialist, Secular, Democratic Republic.

'Sovereignty' is one of the foremost element of any independent State. It means absolute independence i.e. a government which is not controlled by any other power: internal or external. A country cannot have its own Constitution without being sovereign. Hence, India is a sovereign country. It is free from external control. It can frame its own policies as well as it is free to formulate its own foreign policy.

The word **'Socialist'** was not there in the Preamble in the Constitution originally. It was added by the 42nd Amendment in 1976. The term 'Socialist' is somewhat controversial as it means different things to different persons. In our Constitution it has been used in the context of economic planning. The use of the word 'Socialist' implied acceptance of the State's major role in economy. It also means commitment to attain the ideals such as removal of inequalities, provision of minimum basic needs to all, equal pay for equal work, avoidance of concentration of wealth and means of production in a few hands. Combining the ideals of political, social and economic democracy with that of equality and fraternity, the Preamble aims to establish what Mahatma Gandhi described as "The Indian of my dreams ... an India, in which the poorest shall feel that it is their country in whose making they have an effective voice ... an India in which all communities shall live in perfect harmony ... where women will enjoy the same rights as men"

The unity and fraternity of the people of India, professing a numbers of faiths has been sought to be achieved by enshrining the ideal of a **'Secular State'**, which means that the State protects all religions equally and does not uphold any religion as the State religion. In other words 'India is neither religious, nor irreligious nor anti-religious.' It implies that in India there will be no 'State



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religion’ - the State will not support any particular religion out of the public fund. It highlights that the State shall have no religion of its own. All persons shall be equally entitled to freedom of conscience and the right to profess, practise and propagate any religion of his/her choice. This has two implications (a) every individual is free to believe in, and practise, any religion he/she belongs to and (b) State will not discriminate against any individual or group on the basis of religion.

The term ‘**Democratic**’ is very comprehensive. In a narrow political sense, it refers only to the form of government, a representative and responsible system under which those who administer the affairs of the State are chosen by the electorate and accountable to them. However, in the broadest sense, it embraces in addition to political democracy also social and economic democracy. The last line of the Preamble says “.... hereby adopt, enact and give to ourselves this Constitution”. In fact, the democratic principles of the country flow from the last line of the Preamble. Democracy is generally known as a government of the people, by the people and for the people.

The term ‘**Republic**’ implies ‘an elected Head of the State’. A democratic State may have an elected or a hereditary head. The British monarch, a hereditary ruler, is no hindrance to the latter type. There, the monarch, a hereditary ruler is no hindrance to democratic government as the real rules of the State are in the hands of the representative of the electorate. Under a Republic form, on the contrary, the Head of the State, single or collective, is always elected for a prescribed period. For example in U.S.A., the Head of the State and Chief Executive (the President) is elected for a period of four years. Similarly, in Switzerland, a collegium of seven members is elected for a term of four years to constitute the executive.

The Preamble proceeds further to define the objectives of the Indian political system. There are four objectives : **Justice, Liberty, Equality and Fraternity**. It has correctly been said that the struggle for freedom was not only against the British rule but also was to usher in an era of restoring the dignity of men and women, removal of poverty and to end all types of exploitation. Such strong motivations and cherished ideals had prompted the framers to lay emphasis on the provisions of the aforesaid four objectives.

Justice implies a harmonious reconciliation of individual conduct with the general welfare of society. The essence of justice is the attainment of the common good. It embraces, as the Preamble proclaims, the entire social, economic and political spheres of human activity. In other words justice promises to give people what they are entitled to in terms of basic necessities or rights to food, clothing, housing, participation in the decision making and living with dignity

as human beings. The Preamble not only covers various dimensions of justice but also grants the political justice in the form of ‘**universal adult franchise**’ or ‘representative form of democracy’.

Liberty: The term is used in the ‘Preamble’ not only in a merely negative sense but in a positive sense also. It signifies not only the absence of any arbitrary restraint on the freedom of individual actions but also the creation of conditions which provide the essential ingredients necessary for the fullest development of the personality of the individual. The ‘Preamble’ lays emphasis on liberty of thought and expression which have been granted in the Constitution through the Fundamental Rights.

In fact, liberty and equality are complementary to each other. Equality does not mean that all human beings are equal mentally and physically. On the other hand, it signifies equality of status, and equality of opportunity. The equality of status is provided by prohibition of artificial restriction on the ground of religion, race, caste, colour, place of residence etc. It is supplemented by the prohibition of untouchability and by the abolition of titles. At the same time, equality of opportunity is provided by the guarantee of rule of law signifying equality before law and non- discrimination in matters of public employment.

The ‘**Preamble**’ emphasises the objective of **Fraternity** in order to ensure the dignity of the individual and the unity of the nation both. Fraternity is understood as a spirit of brotherhood, the promotion of which is absolutely essential in our country which is composed of various races and religions.’ Regarding ‘dignity of the individual’ K.M. Munshi said “It is an instrument not only of ensuring and maintaining democratic set up vehemently but it also recognizes that personality of every individual is sacred.” Similarly the words ‘Unity and Integrity’ “have to prevent tendencies of regionalism, provincialism, linguism, communalism and secessionist and separate activities” more and more so that the dream of the national integration on the lines of enlightened secularism is achieved.

The **Constitution** of a country, in simple terms, is a collection of the legal rules providing the framework for the governance of the country. It reflects the dominant beliefs and interests or some compromise between conflicting beliefs and interests, which are characteristics of the society at the time it was framed and adopted. It is a fact that no Constitution is perfect and the Constitution of India is no exception to this general rule. However, it goes to the credit of India that the wage for constitutional government was so deep-rooted that India devised a Constitution of its own within three years after achieving the political independence. The Constitution India adopted was intended to be not merely a mean of establishing a governmental machinery but also an effective instrument



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for orderly social change. The strength and stability of a Constitution depends largely on its ability to sustain a healthy and peaceful social system and when the occasion demands, facilitate the peaceful transformation of its economic and social orders. From this point of view the Constitution has not even a single ideal which even its severest critic would characterise as outmoded or reactionary. Its basic objective is to establish a Democratic, Socialist, Secular Republic with a view to secure Justice, Liberty, Equality and Fraternity to all its citizens.

**INTEXT QUESTIONS 17.4**

Fill in the Blanks:

- (a) The Preamble contains the of the Constitution.
(characteristics/objectives)
- (b) The Preamble of the Constitution described India
(Unitary State, Sovereign, Socialist, Secular, Democratic State)
- (c) The word 'Socialist' and Secular were added in the Preamble by
..... Constitutional Amendment. (42nd/46th)

17.5 SALIENT FEATURES OF THE CONSTITUTION

If we look at the various Constitutions of the world, we would come across a variety of features of these Constitutions. Broadly speaking these Constitutions are classified on the basis of the political systems which are adopted by them. Modern political systems are of four categories on four different bases. Firstly there are democratic and authoritarian governments – the classification being based on extent of popular participation and extent of autonomy of the system. Second is based on legislature – executive relationship in a democratic polity. We distinguish them as Parliamentary and Presidential political system. Third, political system is classified between federal and unitary on the basis of geographical distribution of powers. Finally, depending on the economic structure, we classify political systems as capitalist and socialist governments.

In addition to the above, there is another classification popularly known as having written and unwritten Constitution. In most of the political systems the Constitutions are written one. It is only in Britain that the Constitution is categorised as unwritten. There had been a controversy in respect of Constitution of England. Some thinkers are of the opinion that there is no Constitution in England as such whereas some other say that it has the oldest Constitution in the world.

These observations are the result of different interpretations of the single document, written and enacted at a particular time, embodying the fundamental

special sanctity. Such a Constitution may be drawn up either by a convention or Assembly abated for that purpose, or may be promulgated by a monarch or a dictator. Bush Paine and Tocqueville had their eyes fixed on form rather than on substance. Prof Dicey tries to remove the confusion and defines the ‘Constitutions’ as the British understand it, as the sum total of “rules which directly or indirectly affect the distribution or the exercise of a sovereign power in the State.”

To sum up, there is a Constitution in England which was never enacted and is not written. It is the result of gradual evolution of political institution over the centuries and is based on evolution of conventions, which can be modified either by fresh conventions or by laws of the sovereign Parliament ‘It is a child of wisdom and chance, whose powers have been some times guided by accident and sometimes by high design.’

Written Constitution

Unlike the Constitution of England, Constitutions of the United States of America, Canada, France, India are written Constitutions, though these differ from each other in one way or the other. The Constitution of India has the distinction of being the lengthiest and detailed Constitutional document the world has so far produced. It has been the endeavors of the framers of the Constitution to provide for the solutions of all the problems of administration and government of the country. Even those matters which are subjects of convention in others countries have been put down in black and white in the Constitution of India. The Constitution of U.S.A. comprises only seven Articles, the Australian has 128 Articles and the Canadian contains 147 Articles. In order to prepare such a voluminous Constitution, the founding fathers of the Indian Constitution time consumed 2 years, 11 months and 18 days. It is sometimes asked why the framers of Indian Constitution deemed it necessary to draw up such a ponderous constitutional document and ignored what Sir Ivor Jennings has described as the golden rule for all constitution makers, viz., “never to put in anything that can be safely left out.” The answer as Sir Ivor Jennings has himself pointed out is, that the great volume of the Indian Constitution is largely a legacy of the past.

For a federation it is essential that its Constitution should be a written one so that both the units, the States and the Centre can refer to it as and when the need be. Accordingly, the Constituent Assembly prepared a written constitution containing 395 Articles and 12 Schedules Hence, it is the most elaborate Constitution of the world and it took almost three years in completing it.



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**Notes****Partly Rigid and Partly Flexible**

Another feature of Indian Constitution which separates it from other constitutions of the world is that it is partly rigid and partly flexible. The procedure laid down by the Constitution for its amendment is neither very easy, as in England nor very rigid as in the United States. In England, which has no written Constitution, there is no difference between an ordinary law and a constitutional law. The constitutional law can be amended exactly in the same manner in which ordinary legislation is passed or amended. In the United States, however, the method of constitutional amendment is highly rigid. It can be carried out only with the agreement of the two third majority of the Congress i.e. the legislative body or the Parliament and its subsequent ratification by at least three fourth of the states. The Constitution of India strikes a golden mean, thereby avoiding the flexibility of the British Constitution and the extreme rigidity of the American Constitution.

In India, only the amendment of a few of the provisions of the Constitution require ratification by the State Legislatures and even that ratification by only $\frac{1}{2}$ of them would suffice (while the American Constitution requires ratification by $\frac{3}{4}$ of the states). The rest of the Constitution may be amended by a special majority of the Union Parliament i.e. a majority of not less than $\frac{2}{3}$ of the members of each House present and voting, which again must be a majority of the total membership of the House.

Besides the above mentioned methods, Parliament has been given the powers to alter or modify the provisions of the Constitution by a simple majority as is required for general legislation, by laying down in the Constitution that such changes shall not be deemed to be ‘amendments’ of the Constitution. It is important to note that in more than 62 years, a number of constitutional amendments have been passed. This indicates that Indian Constitution is flexible. However, it should be remembered that the basic structure of our Constitution can not be amended.

Federal System with Unitary Bias

A prominent characteristic of our Constitution is a Federal System with the Unitary base. In others words, though normally the system is federal, the Constitution enables the federation to transform into a Unitary State.

Federalism is a modern concept. Its theory and practice in modern times is not older than American federation which came into existence in 1787. In a federal set up there are two tiers of government with well defined powers and functions. In such a system the Central government and the governments of the units act within a well defined sphere, coordinate with each other and at the same time

act independently. The federal polity, in other words, provides a constitutional device for bringing unity in diversity and for the achievement of common national goals.

17.6 FEDERAL FEATURES

The Indian federal system of today has such characteristics which are essential for the federal polity. The main federal features of the Indian Constitution are as follows :

A. Written and Rigid Constitution

An essential characteristic of a federation is that the Constitution should not only be written but it should be rigid also. This rigidity is specially desired by the federating units so that the Centre subsequently does not change the list of subjects to suit its convenience. In other words, it cannot be changed easily. All the provisions of the Constitution concerning Union-States relations can be amended only by the joint action of the State Legislature and the Union Parliament. Such provisions can be amended only if the amendment is passed by 2/3 majority of the members present and voting in the Parliament (which must also constitute the absolute majority of the total membership) and ratified by at least one half of the States.

B. Supremacy of the Constitution

In a federation, the Constitution should be supreme both for the Centre as well as the federating units. The Constitution is the supreme law of the land and the laws passed by the Union or the State governments must conform to the Constitution. Accordingly, India's Constitution is also supreme and not the handmade of either the Centre or of the States. If for any reason any organ of the State violates any provision of the Constitution; the courts of law are there to ensure that the dignity of the Constitution is upheld at all costs.

C. Division of Powers

In a federation there should be clear division of powers so that the units and the Centre are required to enact and legislate within their sphere of activity and none violates its limites and tries to encroach upon the functions of others. This requisite is evident in our Constitution. The Seventh Schedule contains three Legislative Lists, viz Union List, Sate List and Concurrent List.

The Union Lists consists of 97 subjects, the more important of which are defence, foreign affairs, post and telegraph, currency etc. The State List has 66 subjects including – jails, police, administration of justice, public health, agriculture etc.



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The Concurrent List embraced 47 subjects including criminal law, marriage, divorce, bankruptcy, trade unions, electricity, economic, social planning and education etc. The Union government enjoys legislative powers to legislate on the subjects mentioned in the Union List. The state governments have full authority to legislate on the subjects of the State List. Both the Centre and the States can legislate on the subjects mentioned in the concurrent list such as education, stamp duty, drugs and poisonous substances, newspapers etc. However, in case of a conflict between the Union and the State law relating to the same subject, the Union law prevails over the State law. Besides, the power to legislate on all those subjects which are not included in any of the three lists are known as 'Residuary Subjects'. These rest with the Union government.

D. Independence of Judiciary and Provision of Supreme Court

For a federation, it is essential that the judiciary should be independent there must be provision of Supreme Court to settle federal disputes. It should be custodian of the Constitution. If any law contravenes any provision of the Constitution, the apex court i.e. the Supreme Court of India can declare it as null and void or unconstitutional. In order to ensure the impartiality of the judiciary, the Chief Justice or the judges can not be removed by the executive nor their salaries can be curtailed by the Parliament.

E. Bicameral Legislature

A bicameral system is considered necessary for a federation. In the Upper House i.e. Council of States, representation is given to the States. In the House of the People or Lok Sabha, the elected members represent the people. The members of Rajya Sabha are elected by the State Legislative Assemblies, but unlike the Senate of the United States (wherein all the 50 States big or small, only two senators are elected), equal representation is not given to 28 States in India.

**INTEXT QUESTIONS 17.5 AND 17.6**

1. Mention any four characteristics of the Indian Constitution.
2. How many Articles are there in the Constitution of India?
3. State any two federal features of the Constitution of India.

17.7 UNITARY FEATURES

Looking at these features, political thinkers are of the opinion that India has a federal set up. The framers of the Indian Constitution have a different view

point. They opinion that Indian federation is actually not a true federation as there are certain non-federal features, hence India is federal in form but unitary in spirit. Hence, it would be proper to examine the unitary characteristics of the Indian Union :

A. A Strong Centre

From the division of powers one can make out that the State governments are government of limited and enumerated powers. As against this, the Union government under certain circumstances has power over the State governments and also the control over the residuary subjects.

B. Single Constitution for the Union and the States

Normally, under a federal set up, the States have their own Constitutions i.e. separate from that of the Union. Such is the case in the United States. On the contrary there is only one Constitution for the Union and the states and there is no separate Constitution for the States in India.

C. Single Unified and Integrated System of Judiciary

The States of the United States have their own judicial system independent and uncoordinated with the federal judiciary. Australia also has more or less the same pattern. But in India the Supreme Court and the High Courts form a single integrated judicial system. The civil and the criminal law are codified and are applicable to the entire country.

D. Common All India Services

The Indian Constitution has certain special provisions to ensure the uniformity of the administrative system and to maintain minimum common administrative standards without impairing the federal principle. For this purposes a provision has been made for common all Indian Services.

E. Appointment of the Governor by the President

The Head of the State, the Governor, is not elected like the Governors of American States. In India, they are appointed by the President, They hold the office during his/her pleasure. The President can transfer him/her from one state to another state, On certain occasions he/she can be asked to look after one or more states. This enables the Union government to exercise control over the State administration.



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**Notes****INTEXT QUESTIONS 17.7**

1. State any two unitary features of the Indian Constitution.
2. “The Indian Constitution is federal in nature with unitary bias” Is this statement True or False?

17.8 CRITICAL ANALYSIS OF INDIAN FEDERALISM

The founding fathers of the Indian Constitution were deeply concerned about ensuring the unity and integrity of the country. They were aware of the forces of disruption and disunity working within the country. These changes, at the time of independence, could be handled only by a strong government at the Centre. Hence, the framers of the Constitution assigned a predominate role to the Centre. At the same time they made provisions for the establishment of a co-operative federalism. It is also a fact that during the working of the last six decades, the relations between the Centre and the States have not always been cordial.

It may be noted that unity and diversity are very well co-ordinated in federal system. The units of a federation enjoy political and economic autonomy in their internal administration. It is a fact that federation is based on the principle decentralisation. It implements the idea that the government should be nearer the people so that they can reach it. Local problems can be more easily solved by the local and regional government, rather than one over – burdened central government. Division of powers leads to greater efficiency. Stability is better maintained in the federal system.

On the other hand, federal government has certain shortcomings also. Different political parties in power at the Centre and in some of the States, the possibility of political clashes is increased. No doubt, federalism is certainly an expensive system. Herman Finer correctly opined, “It is financially expensive since there is a lot of duplication of administrative machinery and procedure. It is wasteful of time and energy, and that it depends much on negotiations, political and administrative, to secure uniformity of law and proper administrative fulfillment.” In India, after every crisis, the centre has emerged more powerful than before, which shows that crisis can be better solved by a powerful central government. This proves the weakness of federalism and strength of the unitary government. However, despite certain shortcomings, the federal government appears a better and fair alternative.

While summing up, one seems to be agreeing with Durga Das Basu that India is neither purely federal nor purely unitary but is a combination of both. It is a Union or Composite State of a novel type. Political thinkers have stated that

the Central government has, in fact, such extraordinary authority that India is not more than a ‘quasi – federal’ at best, or that if it is a federation at all, it has many unitary features. In the words of G. N. Joshi, “These, then, are some of the special features of the Indian Union. It both resembles and differs from other federations. It may correctly be described as a ‘Quasi – Federation’ with many elements of unitarity.”



Notes



INTEXT QUESTIONS 17.8

1. “India is neither purely federal nor purely unitary, but is a combination of both”
(True/False)
2. “India can be correctly be described as Quasi– Federation with many elements of unitarity.”
(True/False)



WHAT YOU HAVE LEARNT

A Constitution symbolises independence and sovereignty of a country. The framing of the Constitution of India was completed on November 26, 1949 when the Constituent Assembly formally adopted the new Constitution. The Constitution came into force with effect from January 26, 1950.

The Constitution regains with Preamble which declare India Sovereign, Socialist, Secular, Democratic, Republic. The Preamble also maintains the goals of securing justice, liberty and equality for all its citizens and promotion of Nation’s unity and integrity on the basis of fraternity among the people assuming the dignity of the individual.

The Constitution of India has several distinctive features. It is the lengthiest written Constitution in the world and it is a combination of rigidity and flexibility. The Constitution provides for a quasi-federal set up with a strong center. There is a class division of powers between the Center and the States. There is an independent single unified system of judiciary. The Supreme Court of India is the apex court of India. There are certain unitary features in the Indian Constitution such as Single Constitution, Single Citizenship, All India Services and the distribution of power in favour of the Center. India has a Parliamentary form of government headed by the Prime Minister who is responsible to the Parliament both individually and collectively.



TERMINAL QUESTIONS

1. What is the importance of the Preamble to the Constitution?
2. What are the essential characteristics of a Federal State?

MODULE - 5

The Constitution of
India-I



Notes

The Constitution of India – its Nature

3. Explain the meaning and relevance of secularism in Indian Context.
4. Explain the significance of 'Supremacy of the Constitution'.
5. Explain briefly 'India as a Federal State'.
6. Write short notes on:
 - (a) Supremacy and Independence of Judiciary
 - (b) India as a Welfare State.
 - (c) Role of the Constituent Assembly.



ANSWER TO INTEXT QUESTIONS

17.1

1. A Welfare State can be described a State which does maximum good of the maximum people.
2. (i) Democratic Republic State
(ii) Secular State

17.2

1. Dr. B. R. Ambedkar
2. Dr. Rajendra Prasad

17.3

1. True
2. True

17.4

- (a) Objectives
- (b) Sovereign, Socialist, Secular, Democratic, Republic.
- (c) 42nd Constitutional Amendment

17.5 and 17.6

1. (a) Written Constitution
(b) Partly rigid and partly flexible
(c) Supremacy of the Constitution
(d) Supremacy and independence of judiciary
2. 395

3. (i) Division of Powers.
(ii) Written Constitution.

17.7

1. (i) Single unified and integrated system of judiciary.
(ii) Single Constitution for the Union and the States.
2. True

17.8

1. True
2. True



Notes