

## INDIAN POLITY

The constitution of country is a basic legal document which lays down the fundamental laws of governance. It establishes a particular type of polity suitable to the needs and environments of a country. This polity provides the basic structure under which various organs of governance are laid out. The constitution also establishes the three organs of the state namely, the judiciary, executive and the legislature. The interrelationship among these three organs is also defined in the constitution. The jurisdictions of these three organs also clearly demarcated by the constitution itself. Finally, it is the constitution which defines the relationship between the state and its citizens.

**Constitutions can be broadly classified as following:**

- A. Unitary Constitution** – This type of constitution establishes a single, central organ of government without dividing powers between too separate entities. For example, the British constitution is a unitary constitution which recognizes only one central organ, i.e., the British parliament and the central government. In England we have no state type legislatures or governments. There may be other legislative and executive authorities under a unitary constitution but enjoy only delegated powers and not constitutionally granted powers.
- B. Federal Constitution** – This type of constitution is based on power sharing between two district entities namely, the federal or the union government and the state governments. These two levels of government enjoy coordinate authority and none is inferior to each other as both derive their respective authorities directly from the constitution. Countries with large population, geographical size, social, cultural and linguistic diversities generally adopt federal form of constitution to allow autonomy of governance to the constituent states. For example, the US, Indian, Canadian, Australian constitutions are federal constitutions.
- C. Written Constitution** – A written constitution is one which is subjected to systematic presentation in black & white. Thus a written constitution has to be prepared by the body called the *Constituent Assembly* which is elected by the people for whom the constitution is being written. The federal constitutions are generally written ones because they involve two partners, viz., the union and the states. A written constitution is thus, quite clear and above doubt and dispute.
- D. Unwritten Constitution** – An unwritten constitution, unlike a written one, is not committed to systematic writing by a particular constituent assembly. It is based on evolution of a number of customs, usages, parliamentary acts and traditions. For example, the British constitution has evolved on the basis of all these over a period of many centuries.

### Making of the Indian Constitution

The idea of a Constituent Assembly for India was put forward for the first time by M. N. Roy, a pioneer of communist movement in India and an advocate of radical democratism. In 1935, the Indian National Congress (INC), for the first time, officially demanded a Constituent Assembly to frame the Constitution of India. In 1938, Jawaharlal Nehru, on behalf of the INC declared that ‘the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise’.

The demand was finally accepted in principle by the British Government in what is known as the ‘August Offer’ of 1940. In 1942, Sir Stafford Cripps, a member of the cabinet, came to India with a draft proposal of the British Government on the framing of an independent Constitution to be adopted after the World War II. The

Cripps Proposals were rejected by the Muslim League which wanted India to be divided into two autonomous states with two separate Constituent Assemblies. Finally, a Cabinet Mission was sent to India. While it rejected the idea of two Constituent Assemblies, it put forth a scheme for the Constituent Assembly which more or less satisfied the Muslim League.

### Composition of the Constituent Assembly

The Constituent Assembly was constituted in November 1946 under the scheme formulated by the Cabinet Mission Plan. The features of the scheme were:

1. The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States. Out of 296 seats allotted to the British India, 292 members were to be drawn from the eleven governors' provinces and four from the four chief commissioners' provinces, one from each.
2. Each province and princely state (or group of states in case of small states) were to be allotted seats in proportion to their respective population. Roughly, one seat was to be, allotted for every million population.
3. Seats allocated to each British province were to be decided among the three principal communities—Muslims, Sikhs and general (all except Muslims and Sikhs), in proportion to their population.
4. The representatives of each community were to be elected by members of that community in the provincial legislative assembly and voting was to be by the method of proportional representation by means of single transferable vote.
5. The representatives of princely states were to be nominated by the heads of the princely states.

It is thus clear that the Constituent Assembly was to be a partly elected and partly nominated body. Moreover, the members were to be indirectly elected by the members of the provincial assemblies, who themselves were elected on a limited franchise.

### Committees of the Constituent Assembly

The Constituent Assembly appointed a number of committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees. The names of these committees and their chairman are given below:

#### *Major Committees*

1. Union Powers Committee – Jawaharlal Nehru
2. Union Constitution Committee – Jawaharlal Nehru
3. Provincial Constitution Committee – Sardar Patel
4. Drafting Committee – Dr. B.R. Ambedkar
5. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas Sardar Patel.  
This committee had the following sub-committees:
  - (a) Fundamental Rights Sub-Committee – J.B. Kripalani
  - (b) Minorities Sub-Committee – H.C. Mukherjee

- (c) North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub- Committee – Gopinath Bardoloi
- (d) Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee – A.V. Thakkar
- 6. Rules of Procedure Committee – Dr. Rajendra Prasad
- 7. States Committee (Committee for Negotiating with States) – Jawaharlal Nehru
- 8. Steering Committee – Dr. Rajendra Prasad

#### **Minor Committees**

- 1. Committee on the Functions of the Constituent Assembly – G.V. Mavalankar
- 2. Order of Business Committee – Dr. K.M. Munshi
- 3. House Committee – B. Pattabhi Sitaramayya
- 4. Ad-hoc Committee on the National Flag – Dr. Rajendra Prasad
- 5. Special Committee to Examine the Draft Constitution – Alladi Krishnaswamy Ayyar
- 6. Credentials Committee – Alladi Krishnaswamy Ayyar
- 7. Finance and Staff Committee – Dr. Rajendra Prasad.
- 8. Hindi Translation Committee
- 9. Urdu Translation Committee
- 10. Press Gallery Committee
- 11. Committee to Examine the Effect of Indian Independence Act of 1947
- 12. Committee on Chief Commissioners' Provinces – B. Pattabhi Sitaramayya.
- 13. Commission on Linguistic Provinces
- 14. Expert Committee on Financial Provisions
- 15. *Ad-hoc* Committee on the Supreme Court – S. Varadachariar.

#### **Drafting Committee**

Among all the committees of the Constituent Assembly, the most important committee was the Drafting Committee set up on August 29, 1947. It was this committee that was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members. They were:

- 1. Dr B R Ambedkar (*Chairman*)
- 2. N Gopalswamy Ayyangar
- 3. Alladi Krishnaswamy Ayyar
- 4. Dr. K M Munshi
- 5. Syed Mohammad Saadullah

6. N Madhava Rau (He replaced B L Mitter who resigned due to ill-health)
7. T T Krishnamachari (He replaced D P Khaitan who died in 1948)

The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was published in February 1948. The people of India were given eight months to discuss the draft and propose amendments. In the light of the public comments, criticisms and suggestions, the Drafting Committee prepared a second draft, which was published in October 1948. The Drafting Committee took less than six months to prepare its draft. In all it sat only for 141 days.

### Enactment of the Constitution

Dr B R Ambedkar introduced the final draft of the Constitution in the Assembly on November 4, 1948 (first reading). The Assembly had a general discussion on it for five days (till November 9, 1948).

The second reading (clause by clause consideration) started on November 15, 1948 and ended on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly.

The third reading of the draft started on November 14, 1949. Dr B R Ambedkar moved a motion—‘the Constitution as settled by the Assembly be passed’. The motion on Draft Constitution was declared as passed on November 26, 1949, and received the signatures of the members and the president. Out of a total 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution. This is also the date mentioned in the Preamble as the date on which the people of India in the Constituent Assembly adopted, enacted and gave to themselves this Constitution.

**The Constitution as adopted on November 26, 1949, contained a Preamble, 395 Articles and 8 Schedules.**

## Sources of Indian Constitution

The sources of Indian Constitution include the imaginative aspirations of the nationalist leaders, the actual working of the Government of India Act, 1935, and the experience gained from the actual working of some of the Constitutions of important countries of the world. Moreover, its sources include not only the sources upon which the founding fathers of our Constitution drew but also the developmental sources such as the judicial decisions, constitutional amendments, constitutional practices and so on. The sources of the Indian Constitution can thus be divided into the following two categories:

### 1. Seminal Sources

- a. **Constituent Assembly Debates:** Constituent Assembly was constituted under the Cabinet Mission Plan to frame the Indian Constitution. Its members included distinguished lawyers, intellectuals and patriots who took two years, eleven months and eighteen days to prepare the Constitution. During the course of this period, debates on all the aspects of the Constitution were held in a free and fair manner. These debates produced an intelligent opinion in the light of which every word of the Constitution was screened carefully and intelligently.
- b. **Reports of Committees of the Constituent Assembly:** The Constituent Assembly appointed various types of committees to make reports on different aspects. Some of the most important committees included Union Powers Committees, Union Constitution Committee, Provincial Constitution Committee, etc. Advisory Committee on the rights of citizens, minorities and tribal and excluded areas *ad hoc* Committee regarding the Supreme Court Committee on financial relations between the Union and States. The reports

of these committees were thoroughly discussed in the Drafting Committee. It was on the basis of the reports made by such committees that the draft of the Constitution was prepared.

- c. **Nehru Report:** The British Government had announced the formation of the Simon Commission for making a report on the working of the Government of India Act, 1919 and suggest constitutional measures required for the efficient administration of Indian. The Congress decided to boycott this Commission because no Indian was taken on it. Instead it announced the formation of a committee under the leadership of Motilal Nehru to make recommendations about the desired constitutional set up for India. The Committee made certain recommendations which are known as the Nehru Report. The main Clauses of this Report were : (i) grant of Empire; (ii) Creation of a federal structure for India (iii) bicameralism at the Centre; (iv) Parliamentary and responsible Government in Provinces; (v) guarantee of Fundamental Right; and (vi) establishment of Supreme Court as the final court of appeal.
- d. **Lahore Session of the Congress:** The Congress at its Lahore session held in 1929 resolved to make India a Republic.
- e. **Objectives Resolution:** Jawharlal Lal Nehru moved in the Constituent Assembly the Objectives Resolution embodying the aspirations of nationalist India. The Objectives Resolution clearly spelled out making India a sovereign republic where the ultimate supreme power should be vested with the people. It stated that the people would get social, economic and political justice, liberties of all types and equality. Upliftment of the backward people and areas would be ensured and the structure of the country would be federal.
- f. **Government of India Act 1935:** At the time the Constitution for free India was being framed, India was governed by the Government of India Act, 1935. The Indian Constitution has been influenced by the Government of India Act, 1935 on the following points:
  - I. Federal set-up;
  - II. Distribution of powers in three lists;
  - III. Provincial autonomy;
  - IV. Office of the Governor;
  - V. Bicameral legislature;
  - VI. President's or Governor's power to issue ordinances; and
  - VII. Structure of the Supreme Court.

## 2. External Sources:

The Constitution of India is regarded as a bag of borrowing from the various working Constitutions. It has included features from other sources as:

- a. **Irish Constitution** – Directive principles have been derived from the Irish constitution.
- b. **British Constitution** – Parliamentary form of government with a cabinet system having accountability to the lower House and parliamentary privileges have been taken from the British constitution.
- c. **US Constitution** – Fundamental rights, the Supreme Court, the post of Vice-President have been taken from the US constitution.
- d. **Canadian Constitution** – The Federal system, union-state relations and distribution of powers between the union and the states are taken from the Canadian constitution.

- e. **Australian Constitution** – The concurrent list, provision of trade, commerce, have been derived from the Australian constitution.
- f. **German (Weimer) Constitution** – The emergency provisions are taken from the German constitution.

### 3. Developmental Sources

Indian Constitution is not a static document. It has grown with the changing needs. Thus amendments, judicial decisions, political practices, parliamentary statutes, rules, regulations and ordinances are the developmental sources of the Constitution.

- **Amendments of the Constitution:** During the course of 60 years the Constitution has been amended about 94 times and a few other amendments are in the pipeline. In this way, the present shape of the Constitution is quite different from the original document. The 42nd Amendment made it clear that the Indian Constitution is more flexible than rigid. This Amendment is often termed as ‘the mini Constitution of India’ due to enormous changes it effected to the Indian Constitution.
- **Judicial Decisions:** The judicial decisions given by the Supreme Court on important issues have added new dimensions to the Constitution. It is in the light of such decisions that further constitutional amendments are made in the Constitution. Some of the most important judicial decisions are:
  - (i) Gopalan vs. State of Madras;
  - (ii) State of Madras vs. Champakam;
  - (iii) Golak Nath vs. State of Punjab; and
  - (iv) Keshavanand Bharti vs. Kerala State.
- **Parliamentary Statutes:** Parliament has also made various statues for furnishing details of the various Articles contained in the Constitution. It is the Constitution which itself empowers the Parliament to enact laws on certain Articles for details. These statues are considered as constitutional laws. Without their existence, a detailed study of the Constitution is not possible.
- **Commentaries of Constitutional Experts:** While interpreting the Constitution, the views of the distinguished constitutional experts, whether Indian or foreign, enjoy special importance. The most notable constitutional experts are Jennings, Gledhill, Alexandrowit, D.D. Basu, Palkhiwala, V.N. Shukla, etc. Their views are not given legal recognition but due regard is paid to them by the judges. Moreover, true significance of any provision of the Constitution can be understood in the light of their views.
- **Rules, Regulations, Ordinances, etc.:** Each House of the Parliament is empowered to make rules for its efficient working. The President has also got the right to make rules for fixing the constitutional subjects. President of India is also empowered to make rules with respect to the condition of services of the members of the Union Public Service Commission. He can also frame rules to establish peace and efficient administration of the Union Territories. Above all, the President has also the power to issue ordinances when Parliament is not in session. All these rules, regulations and ordinances serve as sources of the Constitution.
- **Constitutional Practices:** Although the Constitution of India is the most detailed in the world, still certain practices independent of the Constitution have developed in India.



*A few examples of such a practice can be enumerated as follows:*

- I. The Central Government takes before hand the advice of the State Government in the appointment of its Governor.
- II. Governor can be recalled by the Central Government on the advice of the State Government concerned.
- III. Governor should not belong to the state to which he is appointed.
- IV. One of the judges of the Supreme Court must belong to the minority community.
- V. The senior most judge of the Supreme Court should be appointed as the Chief Justice of India.
- VI. The leader of the majority party in Lok sabha is appointed as the Prime Minister.

## Salient Features of the Indian Constitution

The constitution of India is an elaborate document which is considered the lengthiest constitution of the world. Originally it contained 395 Articles divided into 22 parts and 8 Schedules. At present it contains 448 Articles and 12 Schedules as a result of 93 amendments effected in the constitution since 1950.

**The following are the salient features of the Constitution of India.**

### 1. Longest written constitution

Indian Constitution can be called the largest written constitution in the world because of its contents. In its original form, it consisted of 395 Articles and 8 Schedules to which additions have been made through subsequent amendments. At present it contains 395 Articles and 12 Schedules, and more than 80 amendments. There are various factors responsible for the long size of the constitution. One major factor was that the framers of the constitution borrowed provisions from several sources and several other constitutions of the world.

They have followed and reproduced the Government of India Act 1935 in providing matters of administrative detail. Secondly, it was necessary to make provisions for peculiar problems of India like scheduled castes, scheduled tribes and backward regions. Thirdly, provisions were made for elaborate centre-state relations in all aspects of their administrative and other activities. Fourthly, the size of the constitution became bulky, as provisions regarding the state administration were also included. Further, a detail list of individual rights, directive principles of state policy and the details of administration procedure were laid down to make the Constitution clear and unambiguous for the ordinary citizen. Thus, the Constitution of India became an exhaustive and lengthy one.

### 2. Partly Rigid and Partly Flexible

The Constitution of India is neither purely rigid nor purely flexible. There is a harmonious blend of rigidity and flexibility. Some parts of the Constitution can be amended by the ordinary law-making process by Parliament. Certain provisions can be amended, only when a Bill for that purpose is passed in each house of Parliament by a majority of the total membership of that house and by a majority of not less than two-third of the members of that house present and voting. Then there are certain other provisions which can be amended by the second method described above and are ratified by the legislatures of not less than one-half of the states before being presented to the President for his assent. It must also be noted that the power to initiate bills for amendment lies in Parliament alone, and not in the state legislatures.

Pundit Nehru expressed in the Constituent Assembly, "While we want the Constitution to be as solid and permanent as we can make it, there is no permanence in Constitution. There should be certain flexibility. If

you make anything rigid and permanent, you stop the nation's growth, the growth of a living, vital organic people.”

### 3. A Democratic Republic

India is a democratic republic. It means that sovereignty rests with the people of India. They govern themselves through their representatives elected on the basis of universal adult franchise. The President of India, the highest official of the state is elected for a fixed term. Although, India is a sovereign republic, yet it continues to be a member of the Commonwealth of Nations with the British Monarch as its head. Her membership of the Commonwealth does not compromise her position as a sovereign republic. The commonwealth is an association of free and independent nations. The British Monarch is only a symbolic head of that association.

### 4. Parliamentary System of Government

India has adopted the Parliamentary system as found in Britain. In this system, the executive is responsible to the legislature, and remains in power only as long as it enjoys the confidence of the legislature. The President of India, who remains in office for five years is the nominal, titular or constitutional head. The Union Council of Ministers with the Prime Minister as its head is drawn from the legislature. It is collectively responsible to the House of People (Lok Sabha), and has to resign as soon as it loses the confidence of that house. The President, the nominal executive shall exercise his powers according to the advice of the Union Council of Ministers, the real executive. In the states also, the government is Parliamentary in nature.

### 5. A Federation

Article 1 of the Constitution of India says: - “India, that is Bharat shall be a Union of States.” Though the word ‘Federation’ is not used, the government is federal. A state is federal when (a) there are two sets of governments and there is distribution of powers between the two, (b) there is a written constitution, which is the supreme law of the land and (c) there is an independent judiciary to interpret the constitution and settle disputes between the centre and the states. All these features are present in India. There are two sets of government, one at the centre, the other at state level and the distribution of powers between them is quite detailed in our Constitution. The Constitution of India is written and is the supreme law of the land. At the apex of single integrated judicial system, stands the Supreme Court which is independent from the control of the executive and the legislature.

But in spite of all these essential features of a federation, Indian Constitution has an unmistakable unitary tendency. While other federations like U.S.A.A. provide for dual citizenship, the India Constitution provides for single citizenship. There is also a single integrated judiciary for the whole country. The provision of All India Services, like the Indian Administrative Service, the India Police Service, and Indian Forest Service prove another unitary feature. Members of these services are recruited by the Union Public Service Commission on an All-India basis. Because these services are controlled by Union Government and to some extent this constitutes a constraint on the autonomy of states.

A significant unitary feature is the Emergency provisions in the Indian constitution. During the time of emergency, the Union Government becomes most powerful and the Union Parliament acquires the power of making laws for the states. The Governor placed as the constitutional head of the state, acts as the agent of the centre and is intended to safeguard the interests of the centre. These provisions reveal the centralising tendency of our federation.

Prof: K.C. Wheare has rightly remarked that Indian Constitution provides, “a system of government which is quasi-federal, a unitary state with the subsidiary unitary features”. The framers of the constitution expressed clearly that there exists the harmony of federalism and the unitarism. Dr. Ambedkar said, “The political system



adopted in the Constitution could be both unitary as well as federal according to the requirement of time and circumstances”. We can say that India has a “Cooperative federalism” with central guidance and state compliance.

## 6. Fundamental Rights

“A state is known by the rights it maintains”, remarked Prof. H.J. Laski. The constitution of India affirms the basic principle that every individual is entitled to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental rights. Originally there were seven categories of rights, but now they are six in number. They are (i) Right to equality, (ii) Right to freedom, (iii) Right against exploitation, (iv) Right to freedom of Religion, v) Cultural and Educational rights and vi) Right to constitutional remedies. Right to property (Article-31) originally a fundamental right has been omitted by the 44th Amendment Act, 1978. It is now a legal right.

These fundamental rights are justiciable and the individual can move the higher judiciary, that is the Supreme Court or the High Courts, if there is an encroachment on any of these rights. The right to move straight to the Supreme Court for the enforcement of fundamental rights has been guaranteed under Article 32 (Right to Constitutional Remedies). However, fundamental rights in India are not absolute. Reasonable restrictions can be imposed keeping in view the security-requirements of the state.

## 7. Directive Principles of State Policy

A novel feature of the Constitution is that it contains a chapter on the Directive Principles of State Policy. These principles are in the nature of directives to the government to implement them for establishing social and economic democracy in the country.

It embodies important principles like adequate means to livelihood, equal pay for both men and women, distribution of wealth so as to subserve the common good, free and compulsory primary education, right to work, public assistance in case of old age, unemployment, sickness and disablement, the organisation of village Panchayats, special care to the economically backward sections of the people, etc. Most of these principles could help in making India a welfare state. Though not justiciable, these principles have been stated as; “fundamental in the governance of the country”.

## 8. Fundamental Duties

A new part IV (A) after the Directive Principles of State Policy was incorporated in the constitution by the 42nd Amendment, 1976 for fundamental duties. These duties are:

- i) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- ii) To cherish and follow the noble ideals, which inspired our national struggle for freedom;
- iii) To uphold and protect the sovereignty, unity and integrity of India;
- iv) To defend the country and render national service when called upon to do so;
- v) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities, to renounce practices derogatory to the dignity of woman;
- vi) To value and preserve the rich heritage of our composite culture;
- vii) To protect and improve the natural environments including forests, lakes, rivers and wild life and to have compassion for living creatures;

- viii) To develop scientific temper, humanism and the spirit of inquiry and reform;
- ix) To safeguard public property and to abjure violence;
- x) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

The purpose of incorporating these duties in the Constitution is just to remind the people that while enjoying their right as citizens, should also perform their duties for rights and duties are correlative.

## 9. Secular State

A secular state is neither religious nor irreligious, or anti-religious. Rather it is quite neutral in matters of religion. India being a land of many religions, the founding fathers of the Constitution thought it to be proper to make it a secular state. India is a secular state, because it makes no discrimination between individuals on the basis of religion. Neither it encourages nor discourages any religion. On the contrary, right to freedom of religion is ensured in the Constitution and people belonging to any religious group have the right to profess, practice or propagate any religion they like.

## 10. An Independent Judiciary

The judiciary occupies an important place in our Constitution and it is also made independent of the legislature and the executive. The Supreme Court of India stands at the apex of single integrated judicial system. It acts as protector of fundamental rights of Indian citizens and guardian of the Constitution. If any law passed by the legislature or action taken by the executive contravenes the provisions of the Constitution, they can be declared as null and void by the Supreme Court. Thus, it has the power of judicial review. But judicial review in India constitutes a middle path between the American judicial supremacy in one hand and British Parliamentary supremacy on the other.

## 11. Single Citizenship

The Constitution of India recognises only single citizenship. In the United States, there is provision of dual citizenship. In India, we are citizens of India only, not of the respective states to which we belong. This provision would help in promoting unity and integrity of the nation.

*The following factors account for the bulkiness of our constitution.*

- (a) *The constitution of India unlike the constitution of the USA and Australia, embodies provisions relating to both union and state governments.*
- (b) *Provisions for the tribal and the scheduled areas are also incorporated in the constitution.*
- (c) *Special provisions are made for certain backward classes of people like SCs, STs, OBCs and minorities.*
- (d) *Many provisions had been included in the nature of transitional provisions like provisions for the state of J & K.*
- (e) *The constitution embodies a list of fundamental rights and a number of directive principles of state policy. The fundamental rights incorporated in the constitution are not absolute in nature, but are subject to the limitations which are expressly defined by the constitution itself.*
- (f) *A good number of provisions have been included to avoid some of the difficulties which were experienced in the working of other constitutions.*

- (g) *Detailed provisions relating to the working of various institutions set up under the constitution have been included mainly with a view to avoiding difficulties which a newly born democratic republic might have experienced in working the constitution efficiently.*
- (h) *Detailed provisions with respect to the exercise of executive and administrative powers are laid down because the constitution makers were not sure about the strength of democracy and its capacity to effectively regulate powers.*

## Parliamentary form of Government

Following the British Westminster model, we have adopted parliamentary form of government both in the centre and the states. However, we have made two departures from the British model. One Britain is monarchy while India is a republic and two. Britain has a unitary form of government while India has a federal form of parliamentary government. The following factors led to adopt the parliamentary system:

- It is a system with which India had grown familiar with during the British Rule
- It can provide effective leadership during emergencies.
- It is based on fusion between the executive and legislature and thereby ensures harmonious relationship between the two.
- It provides for accountability of the government to the legislature;
- It ensures representation of all sections of people both in legislature and government.

### Essentials of Parliamentary Form of Government

- Presence of nominal executive (i.e., the President) who acts only on the advice of the cabinet
- A cabinet form of government led by the Prime Minister which has the support of the majority in the legislature.
- The Prime Minister's dominant position in the cabinet
- Collective responsibility of the council of ministers to the Lok Sabha.

### *Parliamentary vs. Presidential form of Government*

*Of late, there has been a debate over the form of government of India. It has been argued that going by the past experience, the parliamentary form of government, as it operates in India has failed to deliver the goods. Therefore, there is a strong case for switching over to the presidential form of government. This debate between the two systems of government is rooted in the unstable governments both in the centre as well as states due to lack of majority of a single party in a coalition era. It is argued that a presidential form of government can provide stability which is a must for development and good governance.*

#### *The Main Characteristics of the Presidential Type of Government:*

- The President is the head of the States and also the head of the Government. He is not only the head of the political system but also of the national life. He is the real executive and not merely nominal executive. The powers vested in him are in practice actually exercised by him.*
- All executive powers are vested in the President. The cabinet appointed by President is merely to advise him. He is not bound by their advice. He may obtain their advice and yet may choose to act on his own his own judgment.*

- c) *The President is elected directly by the people who constitute the electorate. The term of the office of the President is not dependent on the will of the legislature. The legislature does not elect the President and the legislature cannot seek to oust him from office.*
- d) *The President and the members of the cabinet are not members of legislature. The President has no power to dissolve the legislature before the expiry of its term. The legislature cannot terminate the term of the President except by way of impeachment. In this way the President and the legislature are elected for fixed terms and are independent from each other.*

*Advantage of Presidential Form of Government: The advantages of Presidential systems are:*

- a) *Stability – In a Presidential form of government, the President remains in office for a fixed term and is not dependent on the legislature for continuing in office. This provides stability to government.*
- b) *Faster decision making- All executive powers are vested in one individual who is the President. In times of war or emergency or any other national crisis, he can arrive at a decision quickly. He does not have to apply his energy in obtaining consent of his cabinet.*
- c) *Role of experts- The President is free to select such person as he may deem proper to be his advisors. He may select experts to head several departments. These heads would constitute his cabinet. In a parliamentary form, the ministers are appointed not because of their administrative ability or expertise in a particular area but on the grounds of political expediency.*
- d) *Party divisions are not prominent - After assuming office, the President is accepted as a leader of the nation and not merely of a party. He views each problem as national problem and not from a party angle. This provides greater unity and cohesion to the nation. In a parliamentary form of government, the party divisions are never eliminated. The Prime Minister always identifies himself as belonging to a particular party.*
- e) *Separation of legislative and executive powers – Presidential form of Government is based on the doctrine of separation of powers and provides for checks and balances to keep the different organs within their allotted areas. This provides better protection to liberty. In a parliamentary form, the legislative and executive powers are concentrated in the Council of Ministers headed by the Prime Minister, which may sometime pose a threat to human rights.*

*Drawbacks of the Presidential Form of Government : In a presidential form of government, the only person who is responsible for thinking and planning for the whole nation is the President. This concentration of power sometimes paves the way for dictatorship. Collective leadership has built-in capability of correcting itself. This is lacking in the Presidential form.*

*The President may have to deal with a legislature, which may not be very friendly and accommodating. In the Parliamentary form of government, the policies laid down by the Prime Minister are to be followed by the legislature. If the Parliament rejects the policy the result would be either a new Prime Minister or a new Parliament. In the Presidential form of government, the legislature is not the rubber stamp of the presidential policies.*

*The President has to make effort to persuade the legislature to follow his line. The tension and differences between the President and legislature is a source of weakness.*

*In the Presidential system the assessment of responsibility is periodic. The people may review it only when the election of a new President is due. In the parliamentary form the assessment is on a daily basis because the Government has to justify its action before the legislature in every session.*

*Basically the debate between the parliamentary & presidential forms of government is a debate between accountability and stability. No doubt the Presidential form of government can provide more stability than the parliamentary form of government in India in its present form. But it is accountability which is more important than stability. With all its stability, the presidential form is not an accountable form of government. It can lead to dictatorship in a country like India. Therefore, even with its inherent defects, the parliamentary form of government is still more suitable for India. What is more important is not the form of government but how we run that system.*

## Federalism in India

There is no universally agreed definition of a federation. The constitution of the U.S.A is taken as an ideal example of a federal constitution. However, all federal constitution are not and need not be the replica of each other.

Essentially, a federation and its types are rooted in the needs and situations of a country.

The basic principle of a federation is that the legislative and executive authority is shared between the centre and the States not by any law to be made by the centre but by the constitution itself. In other words, the chief feature of federalism is the demarcation of legislative and executive authority between the centre and the units of the constitution.

**Main Characteristics of a Federalism:** A federal constitution generally possesses the following characteristics:

1. **Dual or Two Sets of Governments:** In unitary constitutions, there is only one government namely the National Government. On the other hand, in a federation, two sets of government exist namely, the federal government and the government of each constituent State. These two governments derive their powers from the same source (the constitution) and are controlled not by the other but by the constitution itself. However, they do not work in isolation but in active cooperation with each other.
2. **Distribution of Powers:** A federal constitution is always based on the distribution of legislative powers between the federal and State legislatures. This is to clearly demarcate their respective jurisdictions.
3. **Written Constitution:** In order to make the distribution clear and permanent, a federal constitution must be reduced to writing. An unwritten constitution may generate uncertainty leading to dissatisfaction among the constituent units.
4. **Supremacy of the Constitution:** Constitution is regarded as the supreme law of the land which none of the units (i.e. the Union and the States) has the authority to override.
5. **Rigidity:** A federal constitution has always of fair amount of in-built rigidity. Rigidity implies a difficult amendment process. Since a federal constitution involves two partners, any amendment made in the constitution may adversely affect any of its partners. But the element of rigidity differs from constitution to constitution. For example, the U.S.A constitution is quite rigid and its amendment requires two-thirds majority in both Houses of the Congress as well as ratification by at least three-fourth of the States. The Indian constitution, compared to the U.S.A Constitution is less rigid. Our Parliament can amend the constitution by a simple (in some cases) as well as a two-thirds majority. In specific cases, the amendment has to be ratified by at least half of the State legislatures.
6. **Authority of Courts:** In a federation, there is a possibility of a State encroaching upon the field of another State. There is also the possibility of the union trespassing on the rights of one or more States, as also the State exercising the functions of the union. To take care of such contingencies a federation contemplates



an independent judicial body, which decides the rights of the units and keeps them confined within their limits. The courts have the last word in regard to questions involving the interpretation of the constitution.

The above characteristic features of a federal constitution are present in our constitution. Our constitution is a written document, which establishes a dual polity. The powers of the union and the States are plenary within the boundaries defined by the constitution. The constitution is endowed with supremacy. To guard the division of legislative and administrative powers between the two sets of government the constitution has set up the Supreme Court.

### **Distinctive Features of Indian Federalism:**

Although the core federal features as mentioned above are all present in our constitution, yet, there are certain provisions contained in the constitution which may be called Indian modification of the federal principle. These modifications are mentioned below:

- **One constitution for both the Union and the States-** Though Indian constitution is a federal one it has a single constitution common to both the union and the states. It is in contrast to the U.S.A federation where there are two types of constitutions one for the USA as a whole and a separate constitution for each State.

In India, the Act of 1935 created autonomous units and forged them into a federation. Both were created by the same Act. It was not the result of any contract. Our constitution has been framed by the people of India and not by the States. It is not the result of an agreement. Thus the constituent assembly enacted only one constitution for the union as well as the States.

- **Single Citizenship:** India like Canada has provision of single citizenship in its constitution. In contrast to this, in USA and Australia there is dual citizenship – national as well as State. Thus, in America an American is a citizen not only of a State in which he resides but also of the U.S.A. He owes allegiance to two governments and is subject to both. In India, there is no dual citizenship.
- **State not Indestructible:** The U.S.A Supreme Court has described the U.S.A polity as an *indestructible union composed of indestructible States*. It means that (i) the union cannot be destroyed by secession. No State possesses the right to separate itself from the federation and (ii) the federal government has no power to diminish or increase the number of States or their territory. It may be done only with the concurrence of the State concerned. The Australian union is also indissoluble and to alter the boundaries of a State a referendum is required.

In India, the union is indestructible but the States are destructible. No State can secede from the union in India. The union may alter the boundaries of any State, create a new State by separation or merger of two or more States. It may change the name of any State. The union has a free hand in abolishing and forming the States. Thus, Hyderabad and Madhya Bharat were abolished. Assam was divided and Mizoram, Arunachal Pradesh, Meghalaya, etc. were carved out of it. Bhopal and Ajmer were merged in their respective continuous States. In the year 2000 three new States, viz., Uttaranchal, Jharkhand and Chhattisgarh were formed.

The process of territorial change can be brought by simple legislation and does not require special majority in the parliament or consent of the State concerned. Such laws are passed by Parliament like an ordinary bill and are not to be treated as amendment of the constitution. In India, the states have no right to territorial integrity.

- **Legislative Supremacy of the Union:** The distribution of legislative power is done by arts. 245 and 246 read with the seventh schedule. The schedule has 3 lists; the union list (99 entries), the State list and the



concurrent list. All residuary powers are vested in the union. If the central legislature enacts a law on any subject mentioned in the concurrent list, the States are debarred from entering that field to the extent it is occupied by the centre. In case a subject is not enumerated in any of the lists, the power to legislate on that subject belongs to the centre. This is known as residuary power. Thus the union parliament has predominant power of legislation.

Moreover, under the following circumstances Parliament can legislate on the State list:

- (1) If the Rajya Sabha passes a resolution under Art. 249 with 2/3<sup>rd</sup> majority authorizing Parliament to make laws on the state list in national interest. However, such a law can continue only for the year but may be extended with subsequent resolutions of Rajya Sabha.
- (2) During the proclamation of Emergency (under Art. 352) Parliament can make laws with respect to any entry in the State list (Art. 250)
- (3) If the legislatures of two or more States so request by resolution, Parliament can pass a law in relation to any matter included in the State list. Such law may also be adopted by any other State (Art. 252).
- (4) Parliament may enact a law to give effect to international treaties and conventions, etc. even though the subject may fall in the State list (Art.253).
- (5) If President's Rule is imposed in any State under Art. 356 the Parliament gets the power to exercise the legislative powers of the State. A law made by Parliament or by the President, where authority has been conferred by parliament on the President, continues to be in force until altered, or repealed by the State legislature (Art.357).

**Union's Power to give directions to the States:** The Union has the power to issue directions to a State to ensure compliance with the Union laws (Art.256). Non-compliance with such directions can lead to the imposition of the President's Rule (Art. 365).

- **Appointment of Governor:** The Governor of a State is appointed by the President and holds office during his pleasure. He is not responsible to the State. This is a non-federal practice in the Indian constitution.
- **During Financial Emergency:** Where a financial emergency has been proclaimed under Art. 360 the power of the Centre enlarges. It may even issue directions requiring all Money Bills to be reserved for the consideration of the President.
- **Control of All India Services:** The All India Services are created by the Centre which alone has the power to regulate the recruitment and conditions of service of the persons appointed to the service. Thus the centre exercises the ultimate control over the All India Services.
- **Appointment of High Court Judges:** Judges of a State High Court are appointed by the President in consultation with the Governor of the State and some other functionaries.
- **No Equality of State Representation:** An essential feature of American federation is the equality of representation of the States in its upper House, i.e., the Senate irrespective of their population or size. However, the federal principle of equality of representation of States in Rajya Sabha which is the upper House of the Parliament is not followed in India. Here, States are represented in the Rajya Sabha according to their population.

Along with this there are some unitary features in Indian Constitution. They may be enlisted as below:

1. Right of the Governor to reserve a Bill for Presidential assent;
2. Role and functions of the State Governors;
3. Emergency provisions of the Constitution regarding proclamation of national emergency, financial emergency and President's rule;
4. Provisions of the Constitution enabling Parliament to legislate for the States;
5. Uniform All-India Services;
6. Single and uniform citizenship;
7. Uniform and integrated judicial system; and
8. Constitutional scheme of distribution of legislative, administrative and financial powers between the Union and the States also has a strong unitary bias.

## The Preamble

The preamble of a constitution is like a preface, which very concisely highlights the main features of the constitution. It states the aims & objectives of the constitution and establishes its main purposes. It also has an enacting clause which declares the date of commencement of the constitution. The objective resolution moved by Nehru on 13<sup>th</sup> December, 1946 in the constituent assembly became the basis for the preamble. The preamble is like a mirror which reflects the true face of the constitution. It also acts as a reference point to understand and appreciate the true meaning of the different constitutional provisions.

### Purpose of the Preamble

The framers of the Constitution of India set out two purposes in the preamble.

1. First, to constitute India into a Sovereign Democratic Republic. It is a Republic because the head of the State is not a hereditary monarch. It is Democratic because the Constitution rests on the people's will, and the institutions set up under it shall seek to give effect to democratic principles. It is Sovereign because the Constitution does not recognise the legal supremacy of another country over India. Her membership of the Commonwealth of the Nations is not inconsistent with her independent and sovereign status. The words 'socialist' and 'secular' were added in the Preamble by the Forty-second Amendment. The addition of 'socialist' indicates the incorporation of the philosophy of 'socialism' in the Constitution which aims at elimination of inequality in income and status and standards of life and may enable the courts to lean more and more in favour of nationalisation and State ownership of an industry. It is yet to be seen how the new economic policy adopted by the Narsimha Rao Government since 1991 oriented towards free market and privatisation is to be viewed in the courts. The word 'secular' simply recognises the concept of secularism as manifested in the guarantee of freedom of religion as a fundamental right in the Constitution.
2. Second, to secure to citizens justice - social, economic, and political; liberty of thought, expression, faith, and worship; equality of status and opportunity; and to promote among the people of India fraternity, assuring dignity of the individual and the unity and integrity of the nation. Although the expressions, 'justice', 'liberty', 'equality', and 'fraternity', may not be susceptible to exact definitions, yet they are not mere platitudes. They are given content by the enacting provisions of the Constitution particularly by Part III of the Fundamental Rights and Part IV, the Directive Principles of State Policy.

### Whether Preamble is a part of the Constitution or not?

Initially, the Supreme Court in the *Berubari case*, 1965, held that the preamble is not a part of the Constitution because it is not a source of any power or authority. But, in the *Keshwanand Bharti case* 1973, the Supreme Court held that the preamble is not only a part of the Constitution but a very importance part of it. Though it may not be a source of power or authority yet, it is in the light of the preamble that the true genius of the Constitution emerges. It serves as an important guide to interpret the true spirit of the Constitution.

### Whether Preamble can be amended or not?

The Supreme Court, in the *Keshwanand Bharti case*, has held that the Preamble is a basic feature of the Constitution and it cannot be amended in such a manner that it destroys the basic features. In other words, Preamble may be amended but not in a manner that would destroy the basic feature of the constitution. In fact, Preamble has been amended by 42<sup>nd</sup> amendment 1976 whereby three words viz, socialist, secular and integrity were added.

### Text of the 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 values expressed in the Preamble are sovereignty, socialism, secularism, democracy, republican character, justice, liberty, equality, fraternity, human dignity and the unity and integrity of the Nation. In addition to them, our Constitution promotes respect for diversity and minority rights, accommodates regional and political assertions through federalism and fosters international peace and cooperation.

### Sovereignty

By declaring us as a sovereign entity, Preamble emphasizes complete political freedom. It implies that our state is internally powerful and externally free. She is free to determine for herself without any external interference. There is none within her to challenge her authority. Only this attribute of sovereignty has made her a member in the comity of nations. Without sovereignty she has no essence. If a state can not freely determine what it wants and how to achieve it, it loses the rationale to exist. Further, sovereignty gives the state the dignity of existence. It would not receive respect from within as well from outside if it does not possess the sovereign status. This suggests that sovereignty is one of the most important values of a state. Therefore, the government is duty bound to defend its sovereignty by preventing any kind of threat to it coming from any entity and direction. Though, our Constitution does not specify where the sovereign authority lies but by mentioning the source of our Constitution as - We the people of India - it announces to the world that the ultimate sovereignty rests with the people of India as a whole.

## Socialist

The word socialist was added to the Preamble by the 42nd amendment act of 1976. It stands to end all forms of exploitation in all spheres of our existence. Our Constitution directs the state to ensure a planned and coordinated social advancement in all fields while preventing concentration of wealth and power in few hands. Our Constitution supports land reforms, promotes the well-being of working class and advocates for social control of all important natural resources and means of production for the wellbeing of all sections. To ensure a basic minimum to all has been the crux of many of our public policies today. Government of India has adopted mixed economy, introduced five year plans and has framed many such laws to achieve the value of socialism in a democratic set up.

## Secularism

India is a home to almost all major religions in the world. The ideal of secularism in Indian context implies that our country is not guided by any religion or any religious considerations. It allows all its citizens to profess, preach and practice any religion of their liking. Articles from 25 to 28 ensure freedom of religion to all its citizens. Constitution strictly prohibits any discrimination on the ground of religion. All minority communities are granted the right to conserve their distinctive culture and the right to administer their educational institutions.

## Democracy

We have adopted parliamentary democracy to ensure a responsible and stable government. As a form of government it derives its authority from the will of the people. The people elect the rulers of the country and the latter remain accountable to the people. The people of India elect their governments at all levels (Union, State and local) by a system of universal adult franchise; popularly known as - 'One man one vote'. Elections are held periodically to ensure the approval of the people to the governments at different levels. All the citizens without any discrimination on the basis of caste, creed, colour, sex, religion or education are allowed freedom of speech, thought and expression and also association. Democracy contributes to stability in the society and it secures peaceful change of rulers. It allows dissent and encourages tolerance. It rules by persuasion, not by coercion. It stands for a constitutional government, rule of law, inalienable rights of citizens, independence of judiciary, free and fair elections and freedom of press, etc.

## Republic

As opposed to a monarchy, our Constitution prefers to remain a republic. The office of the head of the state is elective.

## Justice

The fathers of our Constitution knew that political freedom would not automatically solve the socio-economic problems which have been deep rooted. Therefore, they stressed that the positive constructive aspect of political freedom has to be instrumental in the creation of a new social order, based on the doctrine of socio-economic justice. The message of socio-economic justice mentioned in the preamble to our Constitution has been translated into several articles enshrined in part-III and part- IV of the Constitution. A number of practical measures have been taken over the years to create more favourable social conditions for the millions of downtrodden. These include several developmental policies to provide safeguard to minorities, backward, depressed and tribal people. Our constitution abolishes untouchability; prohibits exploitation of the women, children and the weak and advocates for reservation to raise the standard of the people oppressed over ages. Whenever our government undertakes any developmental project it always adds a human face to it.

## Liberty

The blessings of freedom have been preserved and ensured to our citizens through a set of Fundamental Rights. It was well understood by the fathers of our Constitution that the ideal of democracy was unattainable without the presence of certain minimal rights which are essential for a free and civilized existence. Therefore, the Preamble mentions these essential individual rights such as freedom of thought, expression, belief, faith and worship which are assured to every member of the community against all the authorities of States by Part-III of the Constitution.

## Equality

Every citizen of India is entitled to equality before law and equal protection of law.

## Fraternity

Fraternity stands for the spirit of common brotherhood. In the absence of that, a plural society like India stands divided. Therefore, to give meaning to all the ideals like justice, liberty and equality our Constitution gives ample stress on fraternity. Democracy has been given the responsibility to generate this spirit of brotherhood amongst all sections of people. This has been the foremost objective to be achieved in a country composed of so many races, religions, languages and cultures. Article-51A(e) therefore, declares it as a duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities. Article 51A(f) further asks each citizen to value and preserve the rich heritage of our composite culture.

## Dignity of the individual

Fraternity and dignity of the individuals have a close link. Fraternity is only achievable when the dignity of the individual will be secured and promoted. Therefore, the founding fathers of our Constitution attached supreme importance to it. Our Constitution therefore directs the state through the Directives enshrined in the Part-IV of our Constitution to ensure the development of the quality of life to all sections of people. Our Constitution acknowledges that all citizens, men and women equally, have the right to an adequate means of livelihood (Art.-39 a) and just and humane conditions of work (Art.-42). Article-17 has abolished the practice of untouchability by declaring it as a punishable offence. Our Constitution too directs the state to take steps to put an end to exploitation and poverty.

## Unity and integrity of the Nation

To maintain the independence of the country intact and enduring, unity and integrity of the nation is very essential. Therefore, the stress has been given on the ideal of fraternity which would foster unity amongst the inhabitants. Without a spirit of brotherhood amongst the people the ideals of unity and integration of people and nation seem unattainable. Our Constitution expects from all the citizens of India to uphold and protect the unity and integrity of India as a matter of duty.