

SALIENT FEATURES OF THE INDIAN CONSTITUTION

5.1 INTRODUCTION

You have already read in the previous lesson about the making of the Constitution of India, its Preamble and the political philosophy. We know that State, like any other organization, requires a set of laws to govern itself. A constitution is a body of laws that determines the nature of the State. It is a fundamental document according to which the government of the State functions. A constitution is, thus, the basic law which defines and delimits the powers of various organs of the government. It also enumerates the basic rights of the citizens.

The Constituent Assembly spent 2 years, 11 months and 18 days to frame the constitution and adopted the draft on 26 November 1949 but the Constitution of India was enforced on 26 January, 1950. The Constitution makers of India borrowed various ideas from the Constitutions of different countries. Thus, the Constitution of India is unique in many ways with several special features.

5.2 OBJECTIVES

After studying this lesson, you will be able to :

- (i) identify the main features of the Constitution of India;
- (ii) distinguish between a written and an unwritten Constitution;
- (iii) differentiate between a rigid and a flexible Constitution;
- (iv) identify the nature of the Indian Constitution
- (v) establish the importance of fundamental rights and fundamental duties;
- (vi) appreciate the special features that distinguish the Indian Constitution from other Constitutions of the world.

5.3 WRITTEN CONSTITUTION

A constitution may be written or unwritten. A written constitution is always enacted while an unwritten Constitution is evolved. A written constitution is one which is framed at a given time and comes into force on a fixed date. For example, the Constitution of India was adopted and enforced by our country on 26 January 1950. An unwritten constitution, on the other hand, is a result of evolution. It is given by history. It is never framed by any Constituent Assembly. It is based on conventions, customs and statutes that grow over the centuries. The British Constitution is the best example of an evolved and unwritten constitution.

The Indian Constitution is the lengthiest written Constitution in the world. It has 395 Articles and 12 Schedules. As against this constitution, the Constitution of the United States of America has only 7 Articles. The strength of a written or enacted constitution is that it is clear and definite. When the constitution is in the form of a document, people have a clear understanding about the powers of the government. In a written constitution, the rights of the people are secure. In a federal State like India, there are two sets of governments — Union Government and State Governments. The written constitution mentions clearly the division of powers between the Union and the States.

The weakness of a written constitution is, that it fails to adapt itself to changing conditions easily. Generally, the process of amending or changing a written constitution is comparatively complex. It is generally said that written constitution is helpful in providing better government, but this viewpoint can also be disputed. For example, England is a well-administered country though its constitution is mostly unwritten.

INTEXT QUESTION 5.1

Fill in the blanks with appropriate words given in the brackets:

- A constitution is a body of _____ (rules, laws, principles).
- The Constitution of India was adopted by _____ (Constituent Assembly, Committee, State Assembly).
- The Indian Constitution consists _____ Articles. (495, 395, 295)
- There are _____ schedules in the Indian constitution. (15, 12, 9).
- The Constitution of India was enforced on _____ (15th August, 1947, 26th November, 1949, 26th January 1950).

5.4 A COMBINATION OF RIGIDITY AND FLEXIBILITY

A constitution may be called rigid or flexible on the basis of the amending procedure. This amendment procedure can be difficult or easy. It means that a rigid constitution is one which cannot be amended easily. In other words, the constitution cannot be amended by a simple majority. It requires a special procedure where, a special majority is needed for amendment. The Constitutions of the United States of America, Switzerland and Australia are considered as rigid constitutions.

On the contrary, a flexible constitution is one which can be amended easily by an ordinary legislative process. It can be amended without any special procedure. For example, the Constitution of England is flexible because any provision of the British Constitution

can be changed by an act of Parliament. The strength of a rigid constitution is that it is a guarantee against hasty changes. It is stable, whereas a flexible constitution is unstable. Moreover, the fundamental rights of the people and the interests of the minorities are more secure under a rigid constitution. A flexible constitution, however, is considered progressive in nature and helpful in the development of the nation as it changes easily and adapts to the changing circumstances. A rigid constitution, on the other hand, may not be easily changed according to the changing conditions.

The Indian Constitution is a unique example of combination of rigidity and flexibility. In our constitution there are three methods of amendment. Some of the Articles of the Constitution can be amended by a special majority of Parliament and some provisions can be amended only after ratification by legislatures of not less than half of the States with a special majority.

In federations some rigidity is considered necessary, so that the powers of the States may not be tampered with. Similarly, the State will not be able to take away even the Fundamental Rights of citizens of the India.

INTEXT QUESTIONS 5.2

Which of the following statements are true and which are false:

- (a) The Constitution of India is based on conventions and customs.
- (b) A written constitution is always enacted.
- (c) The Swiss Constitution is a flexible constitution.
- (d) In a rigid Constitution, the amending procedure is very easy.
- (e) The Constitution of India is a combination of rigidity and flexibility.

5.5 FEDERAL POLITY

A State may be either federal or unitary. An example of a federal State is the United States of America and the example of a unitary State is the United Kingdom. In a unitary system, there is only one government for the whole country. In a federal system, the State is divided into various units. There is one government for the whole country called the Union or Central government. Also, there is a government for each of the Units or States. There is a distribution of powers between the Centre and the State governments. Distribution of power is necessary, because, without it, a federation cannot exist. In India, there are three lists of powers such as Union List, State List and the Concurrent List. These lists have been explained in detail in Lesson 8.

In a federal system, the constitution is generally rigid and supreme. This supremacy of the constitution forces every one to abide by it

The supremacy of judiciary is an essential feature of a federation, so that the constitution could be interpreted impartially. In India, the Supreme Court has been established to guard the Constitution. However, in case of Indian Federalism, more power is given to the Union Government as regards administrative legislative, financial & judicial matters are concerned. Certain unitary features such as: a flexibility of the Constitution, division of powers favouring the Central Government, appointment of Heads of

State Governments by the Central Government, single unified judiciary, etc. further substantiates the unitary nature at our federalism where the states autonomy is limited. Therefore, this quasi federal set-up is a unique feature of the Indian Constitution.

5.6 PARLIAMENTARY DEMOCRACY

The Constitution of India provides for a parliamentary form of democracy. This system has been borrowed from the British system. In a parliamentary democracy, there is a close relationship between the legislature and the executive. Hence the cabinet is selected from among the members of legislature as well as it is responsible to it. In other words, it holds office so long as it enjoys the confidence of the legislature.

In this form of democracy, the head of the State is nominal. In India, the President is the head of the State. Constitutionally, he enjoys many powers but in practice he does not exercise these powers. It is the Council of Ministers headed by the Prime Minister, which really exercises these powers.

5.7 FUNDAMENTAL RIGHTS AND DUTIES

Fundamental rights and duties are one of the important features of the Indian Constitution. We were denied most of the civil and political rights by the British, hence, one of the important aspirations of the people of India was that they should have some basic rights, i.e. right to freedom, right to equality, etc. The Indian Constitution provides several fundamental rights. These rights include Right to Equality, Right to freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Right to Constitutional Remedies.

These Fundamental Rights are justiciable and are protected by the court. In case of violation of any of these rights one can move to the court of law and secure them. But the Fundamental Rights are not absolute or unlimited. In the Lesson 6 you will learn about the Fundamental Rights in detail.

Fundamental Duties were added to our Constitution through the 42nd Amendment. It lays down a list of ten fundamental duties for all the citizens of India. While the rights are guarantees given to the people and the State is bound to protect them, the duties are obligations, which every citizen is expected to perform. The duties are non-justiciable and their violation is, therefore, not punishable. (About these duties you will read in detail in Lesson 7)

INTEXT QUESTIONS 5.3

Fill in the blanks with appropriate words given in the brackets:-

- (a) India is a _____ State. (unitary, federal, quasi-federal)
 - (b) In a parliamentary democracy the _____ enjoys the real power. (people, president, cabinet)
 - (c) The Fundamental Rights are the _____ (absolute; justiciable; unlimited)
 - (d) The Fundamental Duties were included through the _____ amendment. (42nd; 44th; 46th)
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5.8 DIRECTIVE PRINCIPLES OF STATE POLICY

Directive Principles of State Policy is another unique feature of our Constitution. The founding fathers of our Constitution borrowed the ideas from the Irish Constitution. Most of the socio-economic rights of the people which the founding fathers wanted to add in Chapter III but could not include them because of economic constraints. They have thus been included under these Principles. The Directive Principles were included in our Constitution in order to provide economic justice and to avoid concentration of wealth in the hands of a few people.

The Directive Principles are instructions given by the Constitution to all the governments in the country. The governments, whether the Union or the States, are expected to frame their policies in accordance with these Directive Principles. The aim of the Directive Principles is to establish a Welfare State in India. They are, however, not binding on the governments, but they are fundamental in the governance of the country. Therefore, the government cannot ignore them. They are the Directives to the future governments to incorporate them in the decisions and policies to be formulated by them. You will read in detail about them in Lesson 7.

5.9 SINGLE INTEGRATED JUDICIAL SYSTEM

India has a single integrated judicial system. The Supreme Court and the High Courts form a single integrated judicial structure with jurisdiction over all laws. It means jurisdiction over the union, State, civil, criminal or constitutional laws. Unlike the judicial system of the United States, we do not have separate federal and State courts. The entire judiciary is one hierarchy of courts. The judges of the Supreme Court are appointed from among the experienced judges of the High Courts. Similarly, a good number of judges of the High Courts are appointed from among the experienced judges of the lower courts. There is a provision of transfer of the judges from one High Court to another within the country. The High Courts have right of supervision on the lower courts. Similarly, the Supreme Court may give any direction to the High Courts. As the Supreme Court stands at the apex of the Indian judicial system, its word is the final law of the land. Thus, Indian judiciary is fully integrated. You will read in detail about the Indian judicial system in Lesson 14.

5.10 INDEPENDENCE OF JUDICIARY

In addition to the single integrated judiciary, another important feature of the Indian Constitution is the provision of an independent judiciary. The Indian judiciary is free from the influence of the executive and the legislature. The judges are appointed on the basis of their qualifications and cannot be removed easily. Their salaries and allowances are protected. They are paid adequate salaries. The judiciary has to interpret the Constitution, safeguard the Constitution, protect the Fundamental Rights and settle the disputes between the Union and the States.

INTEXT QUESTIONS 5.4

Choose the right answer:

- (1) The Directive Principles are instructions given by the Constitution to

- (i) all the governments in the country.
 - (ii) all the people of India.
 - (iii) all the members of Parliament
- (b) The Supreme Court of India has jurisdiction over :
- (i) criminal laws only
 - (ii) civil laws only
 - (iii) all constitutional laws
- c The judges of the Supreme Court are appointed from among
- (i) the experienced judges of the lower courts.
 - (ii) the experienced judges of the upper courts.
 - (iii) the experienced judges of the high courts.
- (d) The Fundamental Rights are protected by
- (i) Constitution
 - (ii) Judiciary
 - (iii) Parliament.
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5.11 SINGLE CITIZENSHIP

In a federal State, usually double citizenship is given to the citizens. For example, in the United States of America every person is a citizen of his or her State and also of the United States of America. Thus, a person can get employment either under the federal government or under the government of his own State only. In India, we have adopted single citizenship. It means that every Indian is a citizen of India, irrespective of the place of his residence. He or she is not a citizen of the constituent State like Uttar Pradesh, Haryana, Punjab, etc. to which he or she belongs. All the citizens of India can secure employment anywhere in the country and they enjoy all the rights equally in all parts of India.

5.12 UNIVERSAL ADULT FRANCHISE

Indian democracy is the biggest in the world wherein we have adopted a government of the people for the people and by the people. The citizens elect their representatives for the legislative branch of the government. Every citizen of India who is 18 years of age or above is entitled to vote in these elections irrespective of, caste, sex, race, religion and status. Without the universal adult franchise, democracy is meaningless. Even in the advanced democracies of the western world, the right to vote was extended to all adults only gradually. Every person has the right to only one vote. Thus the Indian Constitution, through universal adult franchise, establishes political equality in India

INTEXT QUESTIONS 5.5

Fill in the blanks with appropriate words given in the brackets:

- (a) The United States of America has a system of _____ citizenship
(single, double, temporary)
- (b) Single citizenship means _____ a person is a citizen of his own State only a
person is a citizen of the whole union. a person is a citizen of his native place)
- (c) The minimum voting age in India is _____
(18 years, 21 years, 25 years)

WHAT YOU HAVE LEARNT

After studying the salient features of the Indian Constitution, one can say that it has certain features which distinguish it from other constitutions. For example, the Indian Constitution is the lengthiest written constitution in the world. It has 395 Articles and 12 Schedules. Besides, the Indian Constitution is a combination of rigidity and flexibility. Some of the provisions of our Constitution cannot be amended easily and it requires a special majority for amendment. On the other hand, certain other provisions can be amended by the simple majority only. Another important feature of the Constitution of India is its federal set-up. In India, the Constitution is supreme. There is a clear division of powers between the Union government and the State governments. The Supreme Court of India protects the Constitution.

Constitution of India provides for a parliamentary form of democracy. There is a close relationship between the Legislature and the Executive. There is a Council of Ministers headed by Prime Minister who enjoys the real powers, and is responsible to the Parliament. The Indian Constitution provides a number of fundamental rights. These rights are justifiable. These rights are protected by the Supreme Court and the High Courts. In case of violation of any of these rights, one can move to the courts. Later on, fundamental duties for all the citizens of India were also included in our Constitution. These duties are non-justifiable but every citizen is expected to follow them. Similarly, the Directive Principles of State Policy were also included in our Constitution. These principles are instructions given by the Constitution to all the governments in the country. The governments are expected to frame their policies in accordance with these Directive Principles.

India has a single integrated judicial system. The Supreme Court and the High Courts form a single integrated judicial structure with jurisdiction over all laws. The entire judiciary is one hierarchy of courts. The Indian judiciary is free from the influence of the executive and the legislature. The judiciary has duty to interpret the Constitution, safeguard the constitution, protect the Fundamental Rights and settle the disputes between the Union and the States.

In India, we have single citizenship. It means that every Indian is a citizen of India. The citizens who are 18 years of age or above are entitled to vote in the elections.

TERMINAL EXERCISES

1. Discuss briefly about a written constitution.
2. Distinguish between a rigid and a flexible constitution.
3. Explain briefly India as a federal State.
4. What is the relationship between the Fundamental Rights and the Fundamental Duties?

5. Write a brief note on the following
- (a) Independence of Judiciary
 - (b) Single integrated judicial system
 - (c) Universal Adult Franchise

ANSWERS TO INTEXT QUESTIONS

- 5.1 (a) Laws
(b) Constituent Assembly
395 Articles
(c) Schedules
(d) January 1950
- 5.2 (a) False
(b) True
(c) False
(d) False
(e) True
- 5.3 (a) quasi-judicial
(b) cabinet
(c) justiciable
(d) 42nd amendment
- 5.4 (a) (i)
(b) (ii)
(c) (iii)
(d) (ii)
- 5.5 (a) double
(b) a person is a citizen of the whole union
(c) 8 years

HINTS TO TERMINAL EXERCISES

1. Refer to 5.3
2. Refer to 5.4
3. Refer to 5.5
Refer to 5.7
5. Refer to (a) 5.10 (b) 5.9 (c) 5.12