
UNIT 2 SALIENT FEATURES OF THE CONSTITUTION OF INDIA

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2.0 OBJECTIVES

This unit is intended to acquaint you with the salient features of the Constitution of India. After going through this unit, you should be able to:

- explain the basic philosophy of the Constitution as enshrined in its Preamble;
- trace the features of the centralised Federal System of India;
- describe the Fundamental Rights, Directive Principles and Fundamental Duties;
- discuss the nature and structure of the Legislature, the Executive and the Judiciary at the Union and the State levels;
- explain the relations between the Union and the States;
- describe the special provisions of the Constitution relating to the welfare of the socially disadvantaged social groups, and
- state the process of amending the Constitution.

2.1 INTRODUCTION

In the earlier unit you were exposed to the whole concept of freedom of speech and expression, and media responsibility. In this unit, we shall discuss how these concepts find their place in the Constitution and draw strength from it. For all the media persons

an understanding of the basic tenets of the Constitution is necessary, because they come into contact with it regularly in the performance of their duties and functions. In the next unit, i.e. Unit 3, we shall discuss press laws.

Activity 1

In this unit, we shall consider various important features of our constitution. Before we proceed further, let us engage ourselves in a small activity. Given below is a set of questions or a questionnaire. First, make copies of the questionnaire and distribute them among your family members. You may help your family members to fill in the questionnaire. Collect the copies of the questionnaires, tabulate and summarize the data. This exercise will help you to discover the perception/knowledge people have about the constitution.

Questionnaire

- A) Please tick (✓) against each of the following statements to express your opinion.
- 1) The constitution of India was written by the British and handed down to Pt. Jawaharlal Nehru.
[] True [] False
 - 2) In India the President is more powerful than the Prime Minister.
[] True [] False
 - 3) Chief Ministers are appointed by the Prime Minister.
[] True [] False
- B) Have you ever read the Preamble of the Indian Constitution?
[] Yes [] No.
- C) Can the Indian Constitution be amended?
[] Yes [] No.

2.2 BACKGROUND

The Constitution of India was adopted by the Constituent Assembly on 26th November, 1949. The framers of the 1949 Constitution considered the best features of the constitutions of other countries. They modified them to avoid the weaknesses and adopted those features which best suited Indian conditions and needs. However, many of the original features of the 1949 Constitution have since been modified by successive Amendments.

The Constitution has the distinction of being the most lengthy and detailed. Its extraordinary bulk is due to several reasons—the vastness of the country and the peculiar socio-economic and political problems that it faces. For a proper understanding of the Indian State and polity, one should know and appreciate the salient features of the Constitution. An attempt is made in this unit to briefly describe the outstanding features of the Indian Constitution.

2.3 PREAMBLE

The Constitution of India begins with a preamble which embodies its basic objectives or main purposes. According to K. Subba Rao, former Chief Justice of India, the preamble contains in a nutshell the Constitution's ideals and aspirations. The preamble of the Constitution reads as follows:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR AND DEMOCRATIC REPUBLIC, and to secure to all its citizens :

JUSTICE, social, economic and political;
LIBERTY of thought, expression, faith, belief 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 words "Socialist, Secular" were not in the original preamble. The Forty Second Amendment to the Constitution added these words after the word "sovereign".

Going through the preamble, we can clearly see three main items of information, namely, (1) the source of the Constitution; (2) a statement of its objectives; and (3) the date of its adoption.

The Preamble embodies the spirit of the Constitution, the determination of the Indian people to unite themselves in a common adventure of building up a new socialist, secular nation which will ensure the triumph of justice, liberty, equality and fraternity.

2.4 FEDERAL SYSTEM

Federalism is a system of division of political power between the central and the regional (state) governments so that each government within its own sphere, is independent of any other. There are various forms of federalism. Federalism in India, Canada, Australia and America is not the same. Each reflects a variation of federalism. Federalism in each country has its own characteristics depending upon its historical evolution.

The general trend until 1947 in India was to work out a federal system with a measure of autonomy for the provinces. This trend had to be modified by the time the Constituent Assembly met to draft a constitution for independent India, because of the major challenges in the form of large scale outbreak of communal violence, regional pulls and collapsing economy. The partition of the country finally made the constitution makers go for a federal setup with dominant unitary features.

Despite the fact that Article 1 of the Constitution speaks of a dual polity, due to the provision of single citizenship, single integrated judiciary, uniform civil and criminal law for all the federating States and a unified All-India Civil Service, India remains a unified polity. The Constitution gives general supremacy to the Union Parliament and Executive in all matters vis-a-vis the States (vide: Article 365) especially in the making of laws on items included in the State List, in the appointment and dismissal of Governors, in the dismissal of State Ministry, in the appointment of Judges to the States High Courts. Further, it gives the residual powers to the Union (vide: Articles 245-46, 249-54, 356) and assigns a larger share of the revenue and a greater fiscal authority to the Centre (vide: Part XII). There is inequality of status of the federating States (vide: Article 2, 370-373: and Parts VI—X). But more than this, it has given a legitimate handle in the form of Emergency powers (vide: Articles 352-360) to enable the Centre to transform a federal system into virtually a unitary system under three conditions: a) foreign aggression; b) threat of aggression of armed rebellion; c) breakdown of law and order. There is no right of succession for the States, on the principle that "union is indestructible".

The Union has also the authority to create new States, and adjust boundaries between the States, and generally restructure the Indian Union (vide: Articles 2-3). The President's rule in the States, and the most dramatic spell of internal emergency in the country between June 1975 and March 1977, underline the effective capacity of the Centre for dominating the federal polity. Both constitutionally and politically, India's federal system as originally conceived is of the Union-type, that is, a system in which the structural-functional balance is in favour of the Centre.

Since the late 1960s, when for the first time non-Congress parties formed governments in several States, the demand for more autonomy and freedom for States has been gaining momentum. Among the measures suggested were the changing of the present centralised federation into a co-operative and constructive federal polity by (i) territorial reorganisation of States on the criterion of providing to the States maximum homogeneity within and maximum identity without, (ii) amendment to the constitution for increasing the autonomy of the States, (iii) implementation of Panchayati Raj and Nagar Palika system, and (iv) building of a new federal-national consensus between parties, social activist groups and citizens.

2.5 FUNDAMENTAL RIGHTS

The Fundamental Rights and the Directive Principles of State Policy are the conscience of the Constitution. The founding fathers in their efforts to incorporate Fundamental Rights in the Constitution were greatly impressed by :

- 1) the Bill of Rights of the American Constitution
- 2) the French Declaration of the Rights of Man
- 3) the Irish Constitution of 1935
- 4) the post-war Constitutions of Japan and Burma
- 5) Universal Human Rights Charter of the UNO

Part III of the Constitution deals with Fundamental Rights. Articles 12 to 35 form part-III. Articles 31A, 31B, 31C, 31D, 32A, 39A, 43A and 48A were added to the original Articles at different points of time by amending the Constitution. Similarly, Articles 31, 31D, 32A, were deleted from the Constitution. The Articles can be divided into eight sections, the first of which contains certain general provisions applicable to all the rights enumerated, and each of the remaining seven sections deal with a different category of rights. They are :

- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Property
- Right to Constitutional Remedies

The right to freedom includes the right to free speech and expression, which has already been discussed in the last unit.



As a result of the 44th Amendment, Article 31 entitled "the Right to Property" was omitted from the Chapter on Fundamental Rights. At the same time 31A, BC, which are related to the Right to Property continue to find place. A new Article 300 A relating to Property Rights was added by the 44th Amendment under a separate Chapter in Part XII.

The Fundamental Rights place limitations not only on the Union Government but also on the States and on every authority that has got the power to make laws or has discretion vested in it. However, the rights are not absolute. The Constitution itself enumerates in each case the restrictions, exceptions, limitations and qualifications. One important feature of Fundamental Rights is the "right to constitutional remedies" which has been made to guarantee all the other rights. Under Article 32 the Supreme Court and High Courts are empowered to issue appropriate writs or orders as the occasion demands for the restoration of the enjoyment of a Fundamental Right that is violated. Article 226 deals with the writ jurisdiction of High Courts.

Check Your Progress 1

Note : i) Use the space given below for your answer.

ii) Check your answer with the model answer given at the end of this unit.

1) List all the Fundamental Rights that a citizen of India enjoys.

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2.6 DIRECTIVE PRINCIPLES OF STATE POLICY AND FUNDAMENTAL DUTIES

A novel feature of the Indian Constitution is the incorporation of Directive Principles of State Policy. The importance of the Directives is that they contain the positive obligations of the State towards its citizens. If the Fundamental Rights guarantee a political democracy in India, the Directive Principles ensure the eventual emergence of an economic and social democracy to sustain the former. The purpose of the Fundamental Rights is to create an equalitarian society, to free all citizens from coercion or restriction by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution to fulfil the basic needs of the common man and to change the structure of our society. Without faithfully implementing the Directive Principles, it is not possible to achieve the welfare state contemplated by the Constitution.

According to Y.V. Chandrachud, former Chief Justice of India, our Constitution aims at bringing about a synthesis between Fundamental Rights and the Directive Principles of State Policy, by giving to the former a place of place and to the latter a place of permanence. Together, not individually, they form the core of the Constitution.

The Articles dealing with Directive Principles cover a wide range of State activity embracing economic, social, legal, educational, administrative, cultural and international problems. Some of the important Directives are the following :

1) To secure and protect a social order which stands for the welfare of the people.
(Art. 38)

- 2) In particular, the State shall direct its policy towards securing :
 - a) adequate means of livelihood to all citizens ;
 - b) a proper distribution of the material resources of the community for the common good;
 - c) the prevention of concentration of wealth to the common detriment;
 - d) equal pay for equal work for both men and women;
 - e) the protection of the strength and health of workers and avoiding circumstances which force citizens to enter vocations unsuited to their age or strength; and
 - f) the protection of childhood and youth against exploitation of moral and material abandonment.
- 3) To provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. (Art. 39A).
- 4) To organize village panchayats as units of self-government. (Art.40).
- 5) To secure the right to work, education (Art. 40) and public assistance in cases of old age, sickness, etc., (Art. 41).
- 6) To ensure just and humane conditions of work and maternity relief. (Art. 42)
- 7) To secure work, a living wage, a decent standard of life, leisure and social and cultural opportunities for people, and in particular to promote cottage industries. (Art. 43).
- 8) To secure the participation of workers in the management of undertakings engaged in any industry. (Art. 43A).
- 9) To bring about the separation of the Judiciary from the Executive. (Art. 50).
- 10) To endeavour to secure :
 - a) the promotion of international peace and security;
 - b) the maintenance of just and honourable relations between nations;
 - c) respect for international law and treaty obligations in the dealings of organised people with one another, and
 - d) the settlement of international disputes by arbitration. (Art. 51)

Though it is the duty of the State to apply the Directive Principles in making laws, they are not justiciable under Article 37. It means that the courts have no power to enforce them. This is in contrast with the Fundamental rights which are justiciable and therefore enforceable by the courts of law. In spite of their non-justiciable character, Directive Principles are given due recognition in the making of laws and in their observance. In fact, the Constitution has been amended at times to give effect to the spirit and content of the Directive Principles.

2.6.1 Fundamental Duties

The Constitution prescribes the following Fundamental Duties for the citizens :

- a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem ;
- b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- c) to uphold and protect the sovereignty, unity and integrity of India;
- d) to defend the country and render national service when called upon to do so;
- e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- f) to value and preserve the rich heritage of our composite culture;

- g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- h) to develop the scientific temper, humanism and the spirit of inquiry and reform ;
- i) to safeguard public property and to abjure violence;
- j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to high levels of endeavour and achievement.

Check Your Progress 2

Note : i) Use the space given below for your answers.
ii) Check your answers with those given at the end of this unit.

1) What is the significance of Directive Principles of State Policy ?

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2) List some Fundamental Duties.

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2.7 UNION AND STATE LEGISLATURES

The Constitution of India has established a federal structure of government in the country in as much as there is a distribution of legislative, executive and financial powers between the Union and the States.

The Union of India as of today is composed of twenty-five States and seven Union Territories as specified in the first Schedule of the Constitution. The territory of the Union is divided amongst the States and the Union territories. A law made by a State Legislature can be applicable only in the territory of that State. The Union Parliament can make laws for the whole or any part of the territory of India.

The Constitution provides for a three-fold distribution of Legislative powers between the Union and the States. List I or the Union List contains 97 subjects over which Parliament has exclusive power to make laws. List II or the State List includes 66 entries over which State Legislatures have got exclusive power of legislation. List III or the Concurrent List contains 47 items on which both the Parliament and the State Legislatures can make laws. While in their own respective spheres as allotted by the Constitution, the Parliament as well as the State Legislatures enjoy complete autonomy, the scheme of distribution of powers emphasises the general predominance of Parliament in the Legislative field.

Even in the spheres exclusively reserved for the States, the Parliament is authorised to legislate under certain circumstances, the Parliament also enjoys the power to legislate for implementing any treaty, agreement or convention with any country or any decision made at an international conference, association or other body on any subject, even if it falls in the State List.

The Parliament may enter the State List by invitation also. If two or more State Legislatures consider it desirable that any of the matters within their exclusive legislative competence, should be regulated by parliamentary legislation and pass resolutions to that effect, the Parliament can under-take the necessary legislation.

The Parliament of India consists of the President and the two Houses—the Rajya Sabha (Council of States) and the Lok Sabha (House of the People).

The two Houses of Parliament enjoy co-equal powers and status in all spheres except in financial matters and in regard to the responsibility of the Council of Ministers, which are exclusively in the domain of the Lok Sabha. Accordingly, the following limitations have been placed on the powers of the Rajya Sabha :

- i) A Money Bill cannot be introduced in the Rajya Sabha.
- ii) The Rajya Sabha has no power either to reject or amend a Money Bill. It can only make recommendations on the Money Bill. If such a Bill is not returned to the Lok Sabha within a period of fourteen days, the Bill shall be deemed to have been passed by both the Houses at the expiration of the said period in the form in which it was passed by the Lok Sabha.
- iii) Whether a particular Bill is a Money Bill or not is to be decided by the Speaker of the Lok Sabha.
- iv) The Rajya Sabha may discuss the Annual Financial Statement. It has no power to vote on the Demands for Grants.
- v) The Rajya Sabha has no power to pass a vote of no-confidence in the Council of Ministers.

It should not, however, be taken to mean that the Rajya Sabha is less important or has been given a secondary position in relation to the Lok Sabha. The powers of the Rajya Sabha are at par with those of the Lok Sabha in case of non-Money Bills. Every non-financial measure must be passed by both the Houses individually before it can become an Act. It has equal powers with the Lok Sabha in important matters.

The Parliament at present is more than a law making body. It has become more and more a multifunctional institution performing a variety of roles—many of these inter-related and often meshing into one another. This, however, is often not appreciated and disproportionate emphasis is laid only on one or two aspects of the working of the Parliament. The main functions of the Parliament are :

- Political and financial control (or Executive Responsibility) ;
- Surveillance of administration (or Administrative Accountability) ;
- Informational (Right to Information) ;
- Representational, grievance-ventilation, educational and advisory;
- Conflict-resolution and national integration;
- Constituent (Amending the Constitution);
- Leadership (Recruitment and Training).

The structure of the Legislature at the State level is almost similar to that of the Union Legislature. A major difference is that only a few states have two Houses while most of the States have a single House Legislature. At the State Level the Governor and the single/two Houses constitute the Legislature.

2.8 UNION AND STATE EXECUTIVES

The Constitution of India adopted the British model of cabinet system of responsible government in preference to other models of Presidential Executive and Collegiate Executive. Since India is a republic, the Constitution provides for a President of India and the executive power of the Union government is vested in him. The President is the nominated head of the Union Executive and the Prime Minister at the head of the Council of Ministers is the real Executive. Detailed provisions are made in the Constitution to see that the President does not arrogate to himself any real power. However, an opinion is that in dissolving the Parliament, the President may not act on the advice of the Prime Minister if he has lost majority support in the Lower House. The President is indirectly elected for a term of five years, and can be removed on the basis of impeachment proceedings brought against him by

Parliament. A provision is also made for the post of a Vice-President indirectly elected, who would serve as head of the State in the absence of President. The constitution lays down the qualification, method of elections and removal and powers and functions of the Vice President.

The Constitution prescribes that there shall be a Council of Ministers with the Prime Minister at the head to assist and advise the President. The President appoints the Prime Minister, and on the advice of the Prime Minister, the other Ministers are appointed. Generally, the President invites the leader of the majority party in Lok Sabha to form the government who chooses his other Council of Ministers. The President has to act in accordance with the advice of the Council of Ministers.

The Prime Minister occupies a key position in the government as well in the party at the national level. He symbolises the ruling power structure in the country.

The Executive in the States is organised on the same pattern as that of the Union Government. Hence, as in the Union, the government in the States is also organised on the parliamentary model. The Head of the State is called the Governor, who is the constitutional head of the State as the President is for the whole India. The chief executive of the State Government is called the Chief Minister who is the counterpart of the Prime Minister of India in the State. There is a Council of Ministers for each of the States as in the Union. The State Government is a true replica of the Union Government within the jurisdiction of each State; this helps the states to draw examples and inspiration from the working of the Union Government in almost every field of activity.

The executive power of the State is vested in the Governor who is appointed by the President and who holds office during the pleasure of the President. The vesting of the entire executive power of the State in the Governor shows that he occupies the same constitutional position within the State as the President does with respect to the Government of India.

The Supreme Court stands at the apex of India's judicial hierarchy with effective power to supervise and control the working of the entire system. Below the Supreme Courts are the High Courts, located in each State. Besides High Courts, we have District Courts and Subordinate Courts.

The Supreme Court's jurisdiction is of four kinds :

- 1) Original jurisdiction
- 2) Appellate jurisdiction
- 3) Advisory jurisdiction
- 4) Review jurisdiction

The Supreme Court has exclusive jurisdiction in a dispute between the Union and a State, or between one State and another, or between a group of states and other. It is also the guardian of the Fundamental Rights of the citizen.

2.9 JUDICIARY

Unlike many countries with federal Constitutions, India has a single judicial system. Explaining the nature of this system, Dr. B.R. Ambedkar said in the Constituent Assembly : "the Indian federation, though a dual polity, has no dual judiciary at all". The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remarks in all cases under the Constitutional law, the Civil law or the Criminal law. This is to eliminate all diversities in a remedial procedure.

Check Your Progress 3

- Note :
- i) Place a tick mark at the correct alternative.
 - ii) Check your answers with those given at the end of this unit.

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|---|-----|
| 1) Who is the real head of the Union Executive? | [] |
| a) President of India | [] |
| b) Prime Minister of India | [] |
| c) Speaker of the Lok Sabha | [] |
| 2) Who decides whether a particular Bill is a Money Bill or not | [] |
| a) Speaker of the Lok Sabha | [] |
| b) Chairman of the Rajya Sabha | [] |
| c) President of India | [] |
| 3) India at present has | [] |
| a) 26 States and 6 Union Territories | [] |
| b) 32 states | [] |
| c) only states no Union Territories | [] |
| 4) The states in India can make | [] |
| a) their own laws on entries in list-II | [] |
| b) no laws | [] |
| c) Laws only with the permission of the Union Government | [] |
| 5) The Rajya Sabha has limited power on | [] |
| a) money bill | [] |
| b) social bill | [] |
| c) educational bill | [] |

2.10 CENTRE-STATE RELATIONS

Though India is a Federal State, the word 'federal' does not occur in its Constitution. In the Constitution the term 'Union of States' has been used to indicate that (1) The Indian federation was not the result of an agreement by sovereign units to join it, (2) the country and the people were divided into different States for administrative convenience and State boundaries are changeable, and (3) the federation not being the result of an agreement, no state has a right to secede from it.

The Constitution prescribes separate areas of operation for the Union and the States. As mentioned earlier, to reduce overlapping of their areas of operation and interaction, the Constitution enumerates the power of the Central and State governments, under three lists : the Union List; the State List and the Concurrent List.

Besides, the residuary powers that are not mentioned in any of the lists belong to the central government. The distribution of powers, functions and areas of influence between the Centre and the States leads to a question of relationship between them in different areas of their association and interaction. The relationships between the Centre and the States can be classified into :

- Legislative Relations
- Administrative Relations
- Financial Relations
- Relations in Planning and Development
- Relations in Trade and Commerce

Of late, in all the above mentioned relations, different forms of conflict are arising. Several Committees and commissions studied the relations between the Union and the States and suggested various measures to maintain harmonious relations between the two levels of the government. Administrations Reforms Commission, Rajamannar Committee, Sarkaria Commission are some examples of the bodies which examined the relations. The Central government, on the recommendation of these bodies initiated several measures to maintain a harmonious balance between the Centre and the States within the framework of the Constitution.

2.11 PUBLIC SERVICES

The standard and efficiency of administration in any country depends ultimately on the calibre, training and integrity of the members of the Public Services. When the aim of a Constitution is the establishment of a Welfare State, it is evident that the functions of such a State will embrace a wide range of activities. The successful operation of these activities depends upon the availability of men of vision, ability, honesty and loyalty to handle Administrative apparatus of the State. The concern of the framers of the Constitution to ensure this, is clear from the provisions dealing with the Constitution and functions of the Public Services.



Part-XIV of the Constitution deals with services under the Union and the States. Article 309 empowers the Parliament and the State Legislature to regulate the recruitment and the conditions of service of the Public Services of the Union and the States respectively. Article 310 ensures that all members of the Defence Service or the Civil Services of the Union or of All India Service hold office during the pleasure of the President. Similarly, members of the State Services hold office during the pleasure of the Governor, Article 312 provides for the creation of All India Services, which are different from the Central and State Services. The All India Services (examples are IAS & IPS), by their very nature, are instruments of national integration and unity. Under Article 315, the Union and each of the States are required to have a Public Service Commission. Article 320 prescribes the functions of Public Service Commissions.

2.12 SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

A special feature of the Indian Constitution is that it makes special provisions for the development of socially disadvantaged groups of society. Part-XVI of the Constitution deals with these provisions. Articles 330 to 342 of this chapter make provisions for (1) reservation of seats for Scheduled Caste and Scheduled Tribe population and representation for the Anglo-Indians in the Lok Sabha and the State Assemblies, (2) claims of SC, ST and Anglo-Indians to services and posts, (3) special officer for SC & ST, (4) commissions to investigate the conditions of backward classes, and (5) control of the Union over the administration of Scheduled Areas and the welfare of the Scheduled Tribes.

Activity 2

Now that you have gone through almost the whole of this unit, engage yourself in the following activity :

You are aware of the power and position of the President, the Vice President, the Prime Minister etc. Make a chart and show the positions of the Legislature, Executive and Judiciary. You may use the space given below.

2.13 EMERGENCY PROVISIONS

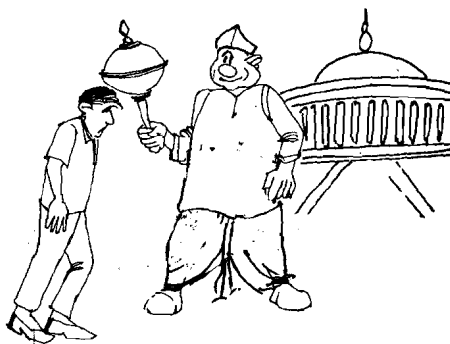
No part of the Constitution has been the subject of acrimonious attack by its critics than that dealing with the Emergency Provisions. The Constituent Assembly witnessed one of the most agitated scenes during the discussion of these provisions. Many prominent members of the Assembly opposed the inclusion of these provisions in the Constitution as they thought that they were inconsistent with the democratic provisions embodied elsewhere. The majority of the members however favoured the inclusion of these provisions as a precautionary measure against possible disruptive forces destroying the newly established Union.

Part-XVIII of the Constitution deals with the emergency powers of the President. The intension behind the emergency provisions is to safeguard the sovereignty, independence and integrity of the Union of India. For this purpose, the President is empowered to declare three types of emergencies namely (i) National emergency arising out of war, external aggression or armed rebellion, (ii) Emergency arising due to the breakdown of the constitutional machinery (President's rule in the States) and (iii) Financial emergency.

National emergency under Article 352 was proclaimed for the first time in 1962 when the Chinese aggression took place. There was a proclamation for the second time in 1971 during the Bangladesh War. On 26th June, 1975, for the third time, under Article 352, the President on the advice of the Prime Minister Mrs. Indira Gandhi proclaimed emergency in the name of grave danger to internal security. President's rule was imposed for the first time in 1951. Since then, it has been proclaimed in States for over 70 times. Third type of emergency has never been declared so far.

2.14 AMENDMENT OF THE CONSTITUTION

A constitution is a dynamic document. It should grow with a growing nation and should suit the changing needs and circumstances of a growing and changing people. Sometimes, under the impact of new, powerful, social and economic forces, the pattern of government will require major changes. If a constitution is very rigid and stands as a stumbling block to such desirable changes, It may, under extreme pressures, be destroyed.



Constitutional changes are nothing but a reflection of the needs of the nation that it serves. The Constitution should facilitate such changes smoothly and easily. These were the basic considerations that guided the framers of the Constitution in formulating the principles governing any amendment of the Constitution.

The major provisions for amendment of the Constitution are provided for in Article 368 of the Constitution itself. This Article has three components. First, it deals with the amending power, second it designates the body or bodies which can exercise that power and third, it establishes the form and manner in which an amendment of the Constitution can be put in effect.

Of the three ways of amending the Constitution two are laid in the amending article itself and the third is provided for at least in twenty two other articles. The amending article (Article 368) provides that an amendment bill can be introduced in either House of Parliament. If it is passed by a clear majority in each House with two-thirds of the members present and voting, and has the assent of the President, it becomes an amendment. The amendments to the Articles dealing with the election of the President, the extent of the Executive power of the Union and the State governments, the Judiciary, the distribution of powers (including the legislative Lists), and the representation of the States in Parliament must not only be passed by Parliament in the manner just described, but need also to be ratified by the legislatures of one half of the States.

Some provisions of the Constitution can be amended by a simple majority vote in Parliament, followed by Presidential assent.

It is significant that no provision of the Constitution is 'unamendable', but the basic features of the Constitution cannot be amended. The basic features of the Constitution constitute a new constitutional concept which had its origin in the majority judgement of the Supreme Court in the case of Kesavananda Bharti Vs. State of Kerala in 1973. What constitutes 'basic structure' did not clearly emerge from the majority judgement, but we can identify from it the following features as the important constituents of the basic structure of the constitution :

- Supremacy of the Constitution
- Sovereignty and Unity of India
- Democratic Character of Polity
- Republican Form of the Government
- Secular Character of the Constitution
- Separation of powers
- Federal Character of the Constitution
- Individual Freedom
- Equality of Status and Opportunity
- Rule of Law

Since the commencement of the Constitution in 1950, over 75 Constitutional Amendments have been effected to this date. All this has been done in exercise of the Parliament's constituent powers and often to meet unforeseen difficulties created and situations brought about as a result of the decisions of courts and their interpretations of constitutional provisions. Sometimes the amendments had become necessary to clarify the constitutional intent—the intention of the framers of the Constitution behind particular provisions—and to bring the text of the Constitution closer to the accepted national goals and objectives as understood by the Parliament.

Check Your Progress 4

- Note :
- i) Use the space given below for your answers.
 - ii) Check your answers with those given at the end of this unit.

1) What are the basic features of the Constitution?

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- 2) Tick the correct answers :
- a) The federal structure of India is based upon
 - 1. the Union of various sovereign states
 - 2. the Union of various units of the country
 - 3. the federation of sovereign states
 - b) The federal structure of India does
 - 1. Permit a state to **secede**
 - 2. not permit a state to secede
 - 3. permit a state to secede, if the majority of the people residing in it wishes so.
 - c) The employees of the State services are ultimately responsible to
 - 1. the Chief Minister
 - 2. the Governor
 - 3. the President
 - d) The 'Emergency Powers' are vested with the
 - 1. Prime Minister
 - 2. President
 - 3. Vice-President

2.15 LET US SUM UP

In this unit, we have briefly described the outstanding features of the Indian Constitution. We have started with the philosophy of the Constitution enshrined in the Preamble. The importance and utility of the Preamble was discussed. A description of India's federal system followed it. Thereafter the most vital part of the Constitution and its conscience — Fundamental Rights and Directive Principles — were explained. How they aim at political and social democracy in India was narrated. The three organs of the State — the Legislature, the Executive and the Judiciary — at the Union and the State levels were explained. The special provisions relating to the disadvantaged classes of Indian society were highlighted. The special features relating to Emergency Powers of the President of India and the process of amending the Constitution also found a place in this unit. The comparative study of our Constitution will reveal that it has certain prominent features which distinguish it from other constitutions. It is precisely these prominent features which have been summarised in this unit.

2.16 GLOSSARY

Presidential Executive System : A system of government in which the President of the country is the real executive, not the titular head of the State. The Presidential Executive System exists in the USA.

2.17 FURTHER READING

Basu, D.D. (1989) : *Introduction to the Constitution of India*, New Delhi : Prentice-Hall

Kothari, Rajni, (1987) : *State Against Democracy*, Delhi: Ajanta

Khan, Rasheeduddin (1992) : *Federal India : A design for Change*, New Delhi : Vikas.

2.18 CHECK YOUR PROGRESS : MODEL ANSWERS

Check Your Progress 1

- Right to Equality
- Right to Freedom
- Right against Exploitation
- Right to Freedom of Religion
- Cultural and Educational Rights
- Right to Property
- Right to Constitutional Remedies.

Check Your Progress 2

- 1) Directive Principles aim at the achievement of social democracy in India. They are to be given importance in law making and implementation. The Fundamental Rights and the Directive Principles together form the conscience of our Constitution.
- 2)
 - a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
 - b) to cherish and follow the noble ideals which inspired our national struggle for freedom; and
 - c) to uphold and protect the sovereignty, unity and integrity of India.

Check Your Progress 3

- 1) b
- 2) a
- 3) a
- 4) a
- 5) a

Check Your Progress 4

- 1) It emerged from the Supreme Court judgement in 1973 in the case of Kesavananda Bharti vs. State of Kerala.

The basic features of the Constitution are: Supremacy of the Constitution; Sovereignty and Unity of India; Democratic character of Polity; Republican form of Government; Secular character of the Constitution; Separation of powers; Federal character of the Constitution; Individual freedom; Equality of Status and opportunity and Rule of Law.

- 2)
 - a) 2
 - b) 2
 - c) 2
 - d) 2
 - e) 4