

POLITY PART-II

SAILENT FEATURES OF INDIAN CONSTITUTION

The constitution of India is supreme law of land. It is a document through which government system works. It is unique in its content and spirit. The constitution of India has borrowed many features from different constitution of the world, but it has several features which distinguish it from the constitutions of other countries.

The salient features of Indian constitution are as follows:

1. Longest Written Constitution- It is longest of all the written constitutions of the world. Originally it contained a Preamble, 395 Articles divided into 22 Parts and 8 Schedules but Now Constitution of India has 448 articles in 25 parts and 12 schedules. The factors which influenced size of Indian constitution are:

- The vastness and diversity of our country
- The influence of Government of India act 1935
- A common constitution for both center and state except Jammu and Kashmir.
- Dominance of legal luminaries in the constituent assembly

2. Balance between Rigidity and Flexibility- A rigid constitution is one which requires special procedure for amendment and a flexible constitution is one which allows amendment of constitution as ordinary laws. The Indian constitution is neither rigid nor flexible, it provide two type of amendments under Article 368 :

- It can be amended by a special majority of Parliament i.e two third majority of the members of each House present and voting and a majority of more than 50 percent of total members of each house.
- It can be amended by a special majority of parliament and with ratification by half of the total states. It is used in constitutional amendment bill which affects federalism.

Constitution can be amended by simple majority (50% of the members present and voting.) but it doesn't come under the under the article 368.

3. Borrowed from various sources- The constitution of India borrowed different provisions from constitution of various countries and Government of India act 1935. The most profound influence and material source of the constitution is the Government of India act 1935.

Following are the borrowed features of constitution from different countries.

From U.K.	<ul style="list-style-type: none"> • Cabinet System of Ministers • Parliamentary Type of Govt. • Bicameral Parliament • Council of Ministers responsible to
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	<p>Low House</p> <ul style="list-style-type: none"> • Speaker in Lok Sabha
From U.S.	<ul style="list-style-type: none"> • Written Constitution • Fundamental Rights • Supreme Court • Independence of Judiciary and judicial review • Preamble • Removal of Supreme court and High court Judges
From USSR	<ul style="list-style-type: none"> • Fundamental Duties • Five year Plan
From AUSTRALIA	<ul style="list-style-type: none"> • Concurrent list • Language of the preamble • Provision regarding trade, commerce and intercourse
From JAPAN	<ul style="list-style-type: none"> • Law on which the Supreme Court function
From CANADA	<ul style="list-style-type: none"> • Scheme of federation with a strong Centre • Distribution of powers between Centre and the states and placing Residuary Powers with the Centre
From IRELAND	<ul style="list-style-type: none"> • Concept of Directive Principles of States Policy(Ireland borrowed it from SPAIN) • Nomination of members in the Rajya Sabha by the President

4. Parliamentary Form of Government-The Constitution of India gives preference to Parliamentary form of Government from the presidential form of Government. The parliamentary form of Government is based on principle of Cooperation and co-ordination between Legislative and Executive while Presidential system is a system of government where an executive branch is led by a president who serves as both head of state and head of government.

The features of parliamentary government in India are:

- Presence of nominal and real executives
- Majority party rule
- Collective responsibility of the executive to the legislature
- Membership of the ministers in the legislature

The parliamentary system of government in India though largely based on the British parliamentary system has following differences -



1. India has a republican system in place of British monarchical system.
2. The Head of the State in India (that is, President) is elected, while the Head of the State in Britain (that is, King or Queen) enjoys a hereditary position.
3. The British system is based on the doctrine of the sovereignty of Parliament. The Parliament is not supreme in India and enjoys limited and restricted powers due to a written Constitution, federal system, judicial review and fundamental rights.
4. In India, the prime minister may be a member of any of the two Houses of Parliament. (Indira Gandhi (1966), Deve Gowda (1996), and Manmohan Singh (2004), were members of the Rajya Sabha).
5. Usually, the members of Parliament alone are appointed as ministers in Britain. In India, a person who is not a Member of Parliament can also be appointed as minister, but for a maximum period of 6 months.
6. 'Shadow cabinet' is a unique institution of the British cabinet system. It is formed by the opposition party to balance the ruling cabinet and to prepare its members for future ministerial office. India doesn't have such institution.

5. A Federation with strong centralized tendency-

The most remarkable feature of Indian constitution is that being a federal constitution it acquires a unitary character. Indian constitution is described as 'federal in form but unitary in spirit'. It is called 'Quasi-Federal' by K.C Wheare and co-operative federalism by Granville Austin. The term Federation is not used in Indian constitution.

6. Independent Judiciary-

Indian constitution established a judicial system that is integrated as well as Independent. The constitution has made the following provisions to ensure independence of judiciary.

- Security of Tenure: - The judges of the Supreme Court have security of President by adopting the set procedure laid down in the constitution.
- Salary of Judges fixed not subject to vote of Legislature: - The salary and allowances of the judges of the Supreme Court are fixed by the constitution and being paid from Consolidated Fund of India. Salary cannot be altered.
- Parliament can extend but cannot curtail the jurisdiction and power of the Supreme Court
- No discussion on the conduct of Judges can take place in Parliament and State Legislature.

7. Universal Adult suffrage-

- Under the Indian constitution every citizen above 18 years has been given the right to elect their representative.
- Adult franchise means that the right to vote should be given to all adult citizens without the discrimination of caste, class, color, religion or sex.

8. Fundamental Right-

Indian constitution guarantees six fundamental rights to all the citizens of India. It is in the Part-III of constitution.

- Right to Equality(Article 14-18)
- Right to freedom (Article 19-22)
- Right against Exploitation(Article 23-24)
- Right to Freedom of Religion(Article 25-28)
- Cultural and Educational Right (Article 29-30)
- Right to constitutional Remedies(Article 32)

Fundamental rights are not absolute and subject to reasonable restrictions. They can be suspended during the National Emergency except the right guaranteed by Article 20 and 21.

9. Directive Principles of State Policy-

Directive principles of state policy are incorporated in the part IV of the Indian constitution. They are meant for promoting the ideal of social and economic democracy. These are the guiding principles for states to establish a welfare state in India. Directive principles are non - justiciable in nature it means that they are not enforceable by the court on their violation.

10. Fundamental Duties-

The constitution (42nd Amendment) Act, 1976 has introduced "Fundamental Duties" for citizens on the recommendation of Swaran singh committee. The 86th constitutional amendment act 2002 added one more fundamental duty. The part IV-A of the constitution consist of eleven Fundamental duties.

11. Secular state-

The Constitution of India stands for a secular state. Hence, it does not uphold any particular religion as the official religion of the Indian State. The 42nd amendment to the Constitution of India inserted the word "secular" into the preamble thus making India a "secular" Republic. In Indian constitution fundamental rights guarantee a freedom of worship and religion as well as outlaw discrimination on the ground of religion.

12. Single Citizenship-

The Constitution of India has established a single and uniform citizenship for the whole of the country. It implies that all Indian citizens owe allegiance to the Indian Union excepting in few cases like tribal areas and Jammu and Kashmir. In a federal State like the United States of America there is dual citizenship it means that a citizen in a United States of America owes firstly allegiance to the states and secondly to the union.

13. Emergency Provisions-

The term emergency may be defined as "circumstances arising suddenly that calls for immediate action by the public authorities under the powers especially granted to them". The reason behind these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the



Constitution. It converts the federal structure into a unitary one without a formal amendment of the Constitution.

There are three types of emergencies under the Indian Constitution namely-

- (a) **National Emergency (Article - 352)**
- (b) **Failure of constitutional machinery in states (Article -356)**
- (c) **Financial Emergency (Article-360)**

14. Local Self Government-

Local Governance in India has been formalized under the Panchayati Raj System since 1992 by adding a new Part IX-A. The Panchayati Raj system is a three-tier system with elected bodies at the village, taluk and district levels. In 1992, the 73rd and 74th constitutional amendments were passed by the Parliament.

- The 73rd Amendment is about Rural Local Governments (which are also known as Panchayati Raj Institutions)
- The 74th amendment made the provisions relating to Urban Local Governments (Nagarpalikas)

15. Independent Bodies -

Indian constitution provides certain Independent local bodies for the smooth working of Democratic system of Government in India. These Bodies are:

(a) **Election commission:** The Election Commission of India is an autonomous constitutional authority responsible for administering election processes in India. It administers elections to the Lok Sabha, Rajya Sabha, state Legislative Assemblies in India, and the offices of the President and Vice President in the country. The Election Commission operates under the authority of Constitution per Article 324.

(b) **Comptroller and Audit-General of India:** It audits the account of the central and state governments. It is mentioned in the Constitution of India under Article 148 - 151. He is appointed by President of India by warrant under his hand for period of 6 years or up to age of 65 years, whichever earlier.

(c) **Union public service commission:** It is to conduct examination for recruitment of All India services and other higher central services. The Article 315 to 323 of the Constitution deals with the appointment of UPSC members, powers and functions of the UPSC.

(d) **State public service commission:** A State Public Service Commission performs all those functions in respect of the state services as the UPSC does in relation to the Central service. The functions of State public service commission are:

- It conducts examinations for appointments to the services of the state.
- It advice governor on disciplinary matters

- The State Public Service Commission annually, presents a report on its performance to the governor.

