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**CONSTITUTION OF INDIA**

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## 1. SALIENT FEATURES OF THE CONSTITUTION

**CONSTITUTION :-** Constitution means a document having special legal sanctity, which sets out the framework and principal functions of the Government.

There are various forms of Government prevalent across the world. Constitution of a country gives idea about the basic structure of the political system under which its people are to be governed.

Indian constitution is almost borrowed from every country of the world, so it has unique features that distinguish it from the constitutions of other countries. The framers of our constitution studied other constitutions, selected their valuable features and put them with necessary modifications in our constitution. Indian constitution is not a borrowed constitution, though it has been influenced by other constitutions.

**1. Longest and Written Constitution:-** Indian Constitution is very comprehensive, elaborate and detailed document therefore It is the longest of all the written constitutions of the world. Constitutions of most countries came into existence as a result of conscious decision to have such a document.

There are two types of constitutions in the world.

1. **Written constitution- American constitution**, which are provide institutional arrangements and procedure.
2. **Unwritten - British constitution**, it comprises the constitutional conventions that act as precedents for the working of institutions and other document such as the statutes and Acts of Parliament.

This is an example of the most flexible form of constitution.

### INDIAN INDEPENDENCE ACT OF 1947

- Till 1947, the Government of India functioned under the provisions of the 1919 Act only, the provisions of 1935 act relating to Federation and Dyarchy were never implemented.
- The executive Council provided by the 1919 act continued to advice the Governor- General till 1947
- It declared India as an Independent and Sovereign State
- Established responsible Governments at both the centre and the provinces
- Designated the Governor-General of India and the Provincial Governor as the constitutional Head(Nominal Heads)
- It assigned dual functions (Constituent and legislative) to the constituent Assembly and declared this dominion legislature as a sovereign body

**Originally:-** 395 Articles, XXII Parts and 8 Schedule (26 November 1949 adopt and enact, 26 January 1950 enforce)

**At Present:-** 450+ Articles, XXV Parts and 12 Schedule

There are some factors that have contributed to the big size of our constitution.

- (a) The constitutional makers put everything in long winded and in lucid manner.
- (b) Geographical factor, that is, the vastness of the country and its diversity.
- (c) In other federations, there are two constitutions: one for the federation and the other for the states. In India, the states do not have separate constitutions. The powers of states along with the powers of the federation have been stated in one constitution.

- (c) The Government of India Act, 1935 was in operation when India got independence. Our leaders were familiar with this Act. They borrowed heavily from this lengthy Act while framing our constitution.
- (d) India is a country of great diversity. It is a country of several minorities; it has many languages, castes, races and religions. The problems and interests of these different groups have found place in the constitution.
- (e) Good features of other constitutions have been included, with necessary modifications, in our constitution. For example, we have brought the 'bill of rights' from the American constitution, parliamentary system of government from the British constitution and Directive Principles of State Policy from the Irish constitution. While including these elements of other constitutions in our constitution Ambedkar said the framers of our constitution tried to remove their faults and suit them to our conditions.
- (f) Many members of the Constituent Assembly were "lawyer-politicians". They have made the constitution not only long, but also extremely complicated.
- (g) Dominance of legal luminaries in the Constituent Assembly.

Ivora Jennings has described our constitution as a 'lawyer's paradise'.

Jennings says that a constitution should be intelligible to common people, but they fail to clearly understand the Indian constitution which is very complex. Every article of this constitution can be interpreted by the higher judiciary, and lawyers, while interpreting, different articles, further complicate the constitution.

**2. DRAWN FROM DIFFERENT SOURCES:-** Critics of the Constitution have described it as a 'bag of borrowings, or as, 'a glorified edition of the Act of 1935' or as 'a hotch-potch of elements drawn from various sources'. But such criticism is baseless. In fact, our constitution-framers wanted to have the best from various constitutions and then to mould it according to Indian lot from the India Act of conditions. The Constitution derives a 1935. "Both in language and substance" remarks Prof. Srinivasan, almost two-thirds of the it is a close copy of the Act of 1935 constitution owes its origin to this Act with modifications in the context of the new conditions obtainable in the country" However, is not merely a glorified and enlarged edition of the Act of 1935. It has been modified to suit our needs.

### BORROWED FEATURES OF CONSTITUTION

Following are the borrowed features of constitution from different countries.

From Government of India Act 1935	<ul style="list-style-type: none"> <li>• Federal Scheme</li> <li>• Office of Governor</li> <li>• Judiciary</li> <li>• Public Service Commission</li> <li>• Emergency provisions and administrative details</li> </ul>
From U.K.	<ul style="list-style-type: none"> <li>• Nominal Head President (like Queen)</li> <li>• Cabinet System of Ministers</li> <li>• Post of PM</li> <li>• Parliamentary Type of Govt.</li> <li>• Bicameral Parliament</li> <li>• Lower House more powerful</li> <li>• Legislative procedure</li> <li>• Prerogative* writs</li> </ul>

	<ul style="list-style-type: none"> <li>• Council of Ministers responsible to Lower House</li> <li>• Speaker in Lok Sabha</li> <li>• Rule of Law</li> </ul>
From U.S.	<ul style="list-style-type: none"> <li>• Written Constitution</li> <li>• Executive head of state known as President and his being the Supreme Commander of the Armed Forces</li> <li>• Impeachment of president</li> <li>• Post of the Vice- President and act as the ex-officio Chairman of Rajya Sabha</li> <li>• Fundamental Rights</li> <li>• Supreme Court</li> <li>• Provision of States</li> <li>• Independence of Judiciary and judicial review</li> <li>• Preamble</li> <li>• Removal of Supreme court and High court Judges</li> </ul>
From USSR	<ul style="list-style-type: none"> <li>• Fundamental Duties</li> <li>• Ideal of justice (social, economic and political)</li> <li>• Five year Plan</li> </ul>
From AUSTRALIA	<ul style="list-style-type: none"> <li>• Concurrent list</li> <li>• Language of the preamble</li> <li>• Joint sitting of the two houses of Parliament</li> <li>• Provision regarding trade, commerce and intercourse</li> </ul>
From JAPAN	<ul style="list-style-type: none"> <li>• Law on which the Supreme Court function, procedure established by law</li> </ul>
From WEIMAR CONSTITUTION OF GERMANY	<ul style="list-style-type: none"> <li>• Suspension of Fundamental Rights during the emergency</li> </ul>
From CANADA	<ul style="list-style-type: none"> <li>• Scheme of federation with a strong centre</li> <li>• Distribution of powers between centre and the states and placing. Residuary Powers with the centre</li> <li>• Advisory jurisdiction of the supreme court.</li> </ul>
From IRELAND	<ul style="list-style-type: none"> <li>• Concept of Directive Principles of States Policy (Ireland borrowed it from SPAIN)</li> <li>• Method of election of President</li> <li>• Nomination of members in the Rajya Sabha by the President</li> </ul>

**3. A FEDERAL POLITY WITH A UNITARY BIAS:-** In **federal set-up** there has been a two government division of powers between the Centre and the States, written constitution, supremacy of constitution, rigidity of the constitution, independent judiciary and bi-cameralism. There are Central List, State List, Concurrent List and

then some residuary powers given upon the centre. The residuary power to make laws on subjects that are not mentioned in any of the lists, like the cyber laws, rest completely with the Centre.

However, the Indian constitution also contains a larger no. of unitary or **non-federal features** viz. A strong centre a single constitution, single citizenship, flexibility of the constitution integrated judiciary appointment of the state Governor by the centre, All India Services, Emergency provisions and so on.

Moreover, the term federation has nowhere been used in the constitution. Article 1, on the other hand, describes India as a 'India that is Bharat, Union of states' Which implies two things; 1, Indian federation is not the result of an agreement by the states and to, no state has the right to secede the federation.

**4. MORE FLEXIBLE THAN RIGID:-** Constitution are also classified into rigid and flexible. A rigid is one that requires a **special procedure** for its Amendment, The amendment of only a few of the provisions of the Constitution requires ratification by the State Legislatures and even then ratification by only 1/2 of them would suffice (while the American Constitution requires ratification by 3/4 of the States). The flexibility of our Constitution is illustrated by the fact that since its working, it has been amended 100 times (till July 2017). The Constitution of **India is neither rigid nor flexible but a synthesis of both**. Article 368 provides for two types of amendment.

(a) some provisions can be amended by special majority of the parliament.

(b) Some other provision can be amended by a special majority of the parliament and with the ratification by half of the total states.

At the same, some provisions of the constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. Notably therefore amendments do not come under article 368, shows that Indian Constitution is flexible as well.

**5. SINGLE CITIZENSHIP:-** In a federation there is usually dual citizenship. A citizen belongs to the state in which he is born and also enjoys the citizenship rights of the federation. This is on the basic principle that the states in a federation are of course units but do not, at the same time, give up their individual entity. But in India there is only one citizenship. Citizens belong to the Indian Union and not to any state

**6. BALANCE BETWEEN JUDICIAL SUPREMACY AND POWER SOVEREIGNTY:-** An independent Judiciary with

of judicial review is a prominent feature of our Constitution. The harmonisation which our Constitution has effected between Parliamentary sovereignty and a written Constitution with a provision for judicial review, is a unique

framers of our Constitution. The Indian Constitution adopts the via media between the American system of Judicial Supremacy and the English principle of Parliamentary supremacy by endowing the Judiciary with the power of declaring

unconstitutional if it is beyond the competence of the Legislature according to the distribution of powers provided by

the Constitution, or if it is in contravention of the fundamental rights guaranteed by the Constitution.

**7. UNIVERSAL ADULT FRANCHISE:-** The introduction of adult suffrage without qualifications of any kind was the boldest step taken by the Constitution-makers and it was an act of faith they had placed in the common man. Article 326 of the Constitution provides that the election to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage.

Every person who is a citizen of India and who is not otherwise disqualified is entitled to be registered as a voter in any such election. Adult suffrage is an acceptance of the fullest implication of democracy.

**8. SECULAR STATE:-** A multi-religious nation like India has to be a secular state. The word “Secular” was missing in our Constitution till the 42nd Amendment of the Constitution was passed. Secularism in India does not mean an irreligious or an anti-religious state.

It only means: (i) there is no official religion for India and the Parliament has no right of imposing a particular religion as an official religion, (ii) It also means that all citizens, irrespective of their religious beliefs, are to be considered and treated as equal and (iii) no discrimination is to be shown by the State against any person on account of his/her religion either for participation in political affairs or entry into government service or admission into educational institutions.

**9.FUNDAMENTAL RIGHTS:-** The Fundamental Rights are guaranteed to the individuals by our constitution. These are enumerated in Part III of the constitution. These rights are fundamental because they are basic to the moral and spiritual development of the individual and these rights cannot be easily abridged by the parliament. Now the citizen enjoys six fundamental rights, originally there were seven fundamental rights. One of them was taken away from Part III of the constitution by the Forty-fourth Amendment Act, 1978. As a result, the Right to Property is no longer a fundamental right. Since 1978, it has become a legal right.

An individual can now own property; he can enjoy it or dispose of it. But when the government takes it away, he cannot go for a writ challenging the validity of the government's action.

***The six fundamental rights are - (1) Right to Equality, (2) Right to Freedom, (3) Right against Exploitation, (4) Right to Freedom of Religion, (5) Cultural and Educational Rights and (6) Right to Constitutional Remedies. The Fundamental Rights are subject to some restrictions.***

The idea of fundamental rights has been borrowed from the American Constitution.

Any citizen of India can seek the help of High Court or Supreme Court of India if any of his fundamental rights is undermined by the government or any institution or any other government. The fundamental rights, granted to the citizen, cannot be amended in the normal manner. They can be amended with two-third majority in each house of the Parliament.

**10. FUNDAMENTAL DUTIES:-** Fundamental Duties did not form part of the constitution. Ten Fundamental Duties were inserted in **Part IV A** of the constitution 42nd Amendment Act, 1976 with the recommendation of **Swaran Singh Committee**. Some of the important Fundamental Duties are:

(1) To abide by the constitution and respect the ideals and institutions, the national flag and the national anthem; (2) To uphold and protect the sovereignty, unity and integrity of India; (3) To defend the country and render national service; (4) To protect and improve the natural environment; (5) To safeguard public property and to abjure violence.

A new Article - **Article 51-A** enumerates ten Fundamental Duties. These duties are assigned only to citizens and not to aliens. These duties are not justifiable, but, in case of conflict, they will prevail over Fundamental Rights.

**11. DIRECTIVE PRINCIPLES FOR A WELFARE STATE:-** These are well-prepared guidelines available to the government that can become fundamental for the governance of the country. The objective of the Constitution-makers was to draft a Constitution with social and economic justice accompanied by equality that underlie a welfare state model.

The basic aim of a Welfare State was clearly foreshadowed in the Preamble to the Constitution, and virtually in the Part IV of the constitution containing the Directive Principles of State Policy.

The essence of justice is the attainment of happiness and good for all, as distinguished from the happiness and good of individuals or even for the majority of them. Justice in this sense cannot be secured unless there is a society of equals in status and opportunity.

Equality of status and opportunity are not available unless all sections of the people are equally in a position and circumstances to benefit from the social order that prevails. The Constitution of India not only prohibits discrimination on grounds of birth, sex, religion, caste and creed, but also adequately provides for the promotion of the interests of the Backward Classes and areas.

It seeks to remove all inequalities created by inequalities in the possession of wealth and opportunity, race, gender, caste and religion by providing just and humane conditions of work, maternity relief, leisure and cultural opportunity to every individual, prevention of exploitation in labour and industry, free education for all and the like.

**12. EMERGENCY PROVISIONS:-** Article 352, 356 and 360 of the Constitution provide the provisions for emergency. According to these provisions when the Head of the State is dissatisfied with the administration of the country or a part thereof, in accordance with the normal procedure laid down in the Constitution, (s)he can declare emergency and take the administration of the country or a part thereof, in his/her own hands.

Declaration of emergency has far-reaching effects. With such a declaration if fundamental rights are abrogated, the court of law can refuse to listen to the petitions for the enforcement of these rights.

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