

## Unit-I

# Constitution of India

### 1. Salient Features of Indian Constitution

**"I feel that the constitution is workable; it is flexible and it is strong enough to hold the country together both in peace and war time. Indeed, if I may say so, if things go wrong under the new constitution, the reason will not be that we had a bad constitution. What we will have to say is that Man was vile."**

**-Dr. B.R. Ambedkar**

The Constitution and political system of any country reflect a consolidated philosophy of beliefs, basic eternal values and principles of that country. In fact, the Constitution defines all aspects of the political system that a country has and more importantly, it reflects certain values that form the core of that political system. These values guide not only the government, but also the citizens and the society at large. Constitution includes in it fundamental and entrenched rules governing the conduct of an organization or nation state, and establishing its concept, character, and structure. It is usually a document, general in nature and embodying the aspirations and values of the people of a country. The constitution makers of India have built the Constitution by keeping in mind the historical, social, religious and political conditions of our country. Their goal was to establish a philanthropic state, to fulfill the objectives of the constitution as enshrined in the ideals of the preamble of the Constitution. The Constitution is the result of the historical experiences and the circumstances of our country. The framers brought to their deliberations a coherent philosophy about

the ends and means of the government. This philosophy, sometimes implicit and sometimes made explicit, guided their deliberations and informed the choices they made among competing solutions to pressing problems. Our constitution has its own specificities which separate it from other constitutions of the world. This is proof of the wisdom and vision of the Constitution makers that they have incorporated the best features of the important constitutions of the world. They have made their choices to make desired changes as per the requirements of Indian conditions to make it a vibrant constitution. The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens. It directs the government system to actively work and administer the system. It is the longest written legal document of any sovereign country. It was prepared by a Constituent Assembly in 02 years 11 months and 18 days. Dr. B R. Ambedkar, the chairman of the Drafting

Committee, is widely considered to be its chief architect. The Preamble indicates the basic Structure of the Constitution which cannot be changed in any case or situation. Our Constitution is an embodiment of those ideals, which guarantees freedom, equality and the justice to all its citizens and is fully committed to democracy. The deliberations of the Indian Constitution are basically an extension of the principles and norms interpreted in its Preamble. It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but, by a constituent assembly, and adopted by its people, with a declaration in its preamble. Parliament cannot override the constitution. The salient features of the Indian Constitution are basically an extension of the principles and ideals interpreted in its preamble. The Constitution of India is a unique document. It is the largest written liberal democratic constitution of the world. It provides for a mixture of Federalism and Unitarianism. It is fusion of flexibility and rigidity. The Republic of India is governed in terms of the Constitution of India which was adopted by the Constituent Assembly on 26th November, 1949 and came into force on 26th January, 1950. Since then, it has continued its journey, successfully guiding the path and progress of India.

## 1.1 Salient Features of Indian Constitution-

### 1. Sovereign Constitution-

The Constitution of India is based on the principle of popular sovereignty i.e. it is made by the people of India. According to preamble, the constitution of India has been pursuance of the solemn resolution of the people of India to constitute India into a '**Sovereign Democratic Republic**', and to secure well defined objects set forth in the preamble. Sovereignty denotes supreme and ultimate power. Being sovereign means having complete political freedom and being the supreme authority. It implies that India is internally all powerful and externally free. It is free to determine for itself without any external interference (either by any country or individual) and nobody is there

within to challenge its authority. The final authority lies with the people. The people of India adopted, enacted and spirited this Constitution with their own will. It has not been imposed by any other authority.

### 2. Preamble-

The fundamental objectives and goals of the Indian Constitution are embodied in the Preamble of the Constitution. Dr. K.M. Munshi called it a political horoscope. A horoscope is used to forecast a person's future. Similarly, the Preamble states the objectives of the Constitution. It tells about the goals that have to be attained in the future. It states that India should be a sovereign, socialist, secular, democratic republic. It suggests that the ideals of justice, liberty, equality, and fraternity should be achieved. Given its importance, it is also called the soul of the Constitution. At the beginning of the preamble, 'We the people of India' indicates that the final sovereign power is rooted in the people of India. This is the main feature of the Constitution.

### 3. World's Largest Constitution-

The Constitution of USA has 7Articles, the Constitution of Canada has 147 Articles, the Constitution of Australia has 128 Articles and the Constitution of South Africa has 153 Articles. Our constitution is a broad and detailed constitution in the world which consists of 395 Articles divided into 22 Parts with 12 Schedules and 5 Appendices. Our federation is a '**Union of States**', in which the relations between the Centre and the states have been described in a detailed manner. One of its chapters is exclusively dedicated to cover the directive principles of the state policy. This is its unique feature and no other country of the world has attempted to include such principles in their constitutions. As of January 2018, there have been 123 Amendment Bills and 101 Amendment acts to the Constitution of India since it was first enacted in 1950. This continuous process of amendments has made our constitution vast. On the vastness of the Indian constitution, Hari Vishnu Kamath has said that- "*We are proud of the fact that our constitution is the largest constitution in the world.*"

#### 4. Written and enacted Constitution-

It is a wholly written document which incorporates the constitutional law of India and was prepared by the Constituent Assembly of India. It took the Constituent Assembly 2 years, 11 months and 18 days to write and enact the Constitution. It was fully debated and duly enacted by the Constitution Assembly of India. Despite its having been a detailed constitution, it has full scope for amendment and change as per the conditions and requirements of the country. It has been amended 101 times till date.

#### 5. Parliamentary form of Government-

According to Dr. B.R. Ambedkar, *"The evaluation of the responsibility of governance in the parliamentary system is not only done after a certain time, but it is also done on daily basis."*

The Constitution of India provides for a parliamentary system of government at the Centre as well as in every state of the Union. It is based on the *Westminster model* of democracy practiced and planted by the British in the Indian political system. It is the system of government in which there exists an intimate relationship between the executive and the legislative departments, and the stability and efficacy of the executive department depend on the legislature. In this system executive group is collectively responsible for executive management. The President of India is a constitutional head of the state and enjoys the dignity and prestige linked to his position. The actual powers are used by the Cabinet with prime minister as its head. The Union Council of Ministers headed by the Prime Minister is the real executive. Ministers are essentially the members of the Union Parliament. For all its policies and decisions the Council of Ministers is collectively responsible before the Lok Sabha. The Lok Sabha can remove the Ministry by passing a vote of no-confidence. The Cabinet, in fact the Prime Minister has the power to get the Lok Sabha dissolved by the President. The Constitution of India provides for a parliamentary system of government at the Centre as well as in every state of the Union. In the states, the Governor is the constitutional head.

#### 6. Fundamental Rights and Duties-

##### *Fundamental Rights:*

Part III (Articles 12-35) of the Constitution of India grants and guarantees Fundamental Rights to its citizens. Initially, 7 Fundamental Rights were granted by the framers of the constitution but after the deletion of the Right to Property from the list of Fundamental Rights (44th Amendment Act, 1979) their number has come down to six. The Six Fundamental Rights are:

- i. **Right to Equality:** It provides for Equality before Law, End of Discrimination, Equality of Opportunity, and Abolition of untouchability and Abolition of Titles.
- ii. **Right to Freedom:** It incorporates six fundamental freedoms -freedom of speech and expression, freedom to form associations, freedom to assemble peaceably without arms, freedom to move freely in India, freedom of residence in any part, and freedom of adopting any profession or trade or occupation. It ensures personal freedom and protection in respect of conviction for certain offences. The Constitution lays down that the freedom of life and liberty cannot be limited or denied except in accordance with the procedure established by law. Citizens can seek refuge in the court when these rights are abrogated.
- iii. **Right against Exploitation:** This Fundamental Right prohibits human trafficking (sale and purchase of human beings), forced labor (beggar) and employment of children in hazardous jobs and in factories.
- iv. **Right to Freedom of Religion:** The grant of this right involves the freedom of conscience, religion and worship. Any person can follow any religion. It gives to all religions freedom to establish and maintain their religious institutions. No person can be compelled to pay any tax for the propagation of any religion. The state cannot levy a tax for any religion and constitution prohibits the imparting of religious instructions in schools and colleges.

- v. **Cultural and Educational Rights:** Under this category the Constitution guarantees the rights of the minorities to maintain and develop their languages and cultures. It also confers upon them the right to establish, maintain and administer their educational institutions. Through the 86th Constitutional Amendment (December 2002) Act, which was passed in Parliament in July 2009 and implemented on 1st April, 2010, the Right to Education (elementary) has been included in the constitution as the fundamental right. Now after Article 21, a new Article 21 (A) has been added, according to which it is the responsibility of the State to arrange for free and compulsory education to all the children between age of 06 to 14 years. Art. 22 guarantees protection against arbitrary arrest and detention.
- vi. **Right to Constitutional Remedies** (Art. 32): This fundamental right is the soul of the entire Bill of Rights. It provides for the enforcement and protection of Fundamental Rights by the courts. It empowers the Supreme Court and High Courts to issue writs for the enforcement of these rights.

According to MC Chagla- *“provision of an independent court entrusted with the task of protecting the rights of the citizens in the Indian Constitution is an arrangement on which any civilized country can boast of.”*

### **Fundamental Duties:**

Ten Fundamental Duties were added in Part-IV of the Constitution under Article 51-A in the year 1976 through the 42nd Constitutional Amendment. However, whereas **Fundamental Rights are justifiable**, the **Fundamental Duties are non-justifiable**. It means that the violation of fundamental duties, i.e. the non-performance of these duties by citizens is not punishable. The following ten duties have been listed in the Constitution of India which are as under:

- (i) to abide by the Constitution and respect its

ideals and the institutions, the National Flag, 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; (v) to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women; (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 wildlife; (viii) to develop the scientific temper, humanism and the spirit of inquiry and reform; (ix) to safeguard public property and not to use violence; and (x) to serve towards excellence in all spheres of individual and collective activity. Besides above duties, a new duty has been added after the passage of Right to Education Act, 2009. *“A parent or guardian has to provide opportunities for the education of his child/ward between the age of six and fourteen years.”*

**The Fundamental Duties are, however, not enforceable by the courts.**

### **7. Directive Principles of State Policy-**

Part IV of the Constitution lays down certain Directive Principles of State Policy, which though **not justiciable**, are **'fundamental in governance of the country'**, and it is the duty of the State to apply these principles in making laws. These lay down that the State shall strive to promote the welfare of people by securing and protecting as effectively as it may, a social order, in which justice-social, economic and political-shall form in all institutions of national life. The State shall direct its policy in such a manner as to secure the right of all men and women to an adequate means of livelihood, equal pay for equal work and within limits of its economic capacity and development, to make effective provision for securing the right to work, education and to public assistance in the event of unemployment, old age, sickness and disablement or other cases of undeserved want. The State shall also endeavor to secure to workers a living wage,

humane conditions of work, a decent standard of life, and full involvement of workers in management of industries. In the economic sphere, the State is to direct its policy in such a manner as to secure distribution of ownership and control of material resources of community to serve the common good, and to ensure that operation of economic system does not result in concentration of wealth and means of production to common detriment.

### 8. Socialist state -

Although, the Constitution of India fully reflected the spirit of democratic socialism right from the beginning, but it was only in 1976 that the Preamble was amended under 42th Constitutional Amendment Act to include the word '**Socialist**'. The term 'Socialist' was not used in the 'preamble' of the original constitution of India. It shows that our constitution is committed to secure social, economic and political justice for its entire people by ending all forms of exploitation and by securing equitable distribution of income, resources and wealth. This is to be secured by peaceful, constitutional and democratic means. It is now regarded as a prime feature of Indian state.

### 9. Adult franchise-

The Constitution of India establishes political equality in India through the method of **universal adult franchise** which functions on the basis of '**one person one vote**'. In the constitution of our country, every citizen of the age of 18 or above is entitled to vote in the elections, irrespective of caste, sex, race, religion or status. Although in the original constitution this age limit was fixed at 21 and above, but by the 61st Constitutional Amendment Act the age limit has been reduced from 21 years to 18 years.

### 10. Secular State-

The Article 25 states that every individual is "**equally entitled to freedom of conscience**" and has the right "**to profess, practice and propagate religion**" of one's choice. Practicing religion or the act of propagating it should not, however, affect the "**public order, morality and health.**" The Article

does not put any restriction on the government when it comes to making any law to regulate "**economic, financial, political or other secular**" activities, which may be associated with religious practice. It is through several provisions that the Constitution of India upholds the spirit of secularism. The relevance of this legislation can be gauged only when one understands the importance of preserving the pluralistic ethos of the country and the idea of harmonious coexistence of different religions. With the 42nd Amendment of the Constitution of India enacted in 1976, the Preamble to the Constitution asserted that India is a '**secular**' state. However, neither India's constitution nor its laws define the relationship between religion and state. The laws implicitly require the state and its institutions to recognize and accept all religions, enforce parliamentary laws instead of religious laws, and respect pluralism. **India does not have an official state religion. No citizen can be discriminated on the basis of religion.** A secular state is neither religious nor irreligious, or anti-religious. Rather it is quite neutral in matters of religion. But in India, there is not a separation between state and religion as in western model. The constitution in India authorises state for value based interference in religious matters to eradicate the social evils in various religions. Renowned political scientist Rajeev Bhargava has underline it as 'Doctrine of Principled Distance'.

### 11. Distinguished Document-

The constitution of India is an extraordinary document in itself. It is evidence of the intelligentsia, wisdom and vision of the constitution makers. Inclusion of fundamental values and the highest expectations of people in the constitution make it a unique document. South Africa while making its own constitution has used it as a paradigm or as an ideal. The sovereign, democratic and secular character of the polity, rule of law, independence of the judiciary, fundamental rights of citizens etc. are some of the essential features of the Constitution that have made it a distinguished document.

## 12. Remarkable Fusion of Unitary and Federal Elements-

The constitution of India has components of both federal and unitary constitution. Article 1 of the Constitution declares, that “**India that is Bharat is a Union of States.**” The term '**Union of State**' shows that Indian Union is not the result of voluntary agreement among sovereign states, and that states of India do not enjoy the right to secede from the Union. The unitary nature of the Indian constitution can be stated through various facts. Many provisions of the Constitution make the Center stronger than the states. In case of a conflict between the two legislatures over a matter in the Concurrent List, the will of the Parliament prevails. The laws made by the State legislatures whether anterior to or posterior to the Union Laws give way to the latter and to the extent of the inconsistency are void. The exhaustive list of Union subjects and the prevalence of the will of the Parliament over the state legislature regarding the subjects in the concurrent list, reflects the tendency of making the Centre comparatively stronger. Moreover, this demarcation apart, the Parliament is empowered to make laws regarding any matter of any territory not included in a state list. It can also make laws with extra territorial operation. Moreover, residuary powers (vested in the center), emergency provisions, single citizenship, appointment of governor, All India Services, economic dependence of states on the center, single constitution (except the state of Jammu and Kashmir) and the right to reorganization of the states (except the state of Jammu and Kashmir) make center more powerful than the states. The state governments are ruled by the central government when it comes to the derivation of powers, the **states do not have separate constitutions** of their own. It is indeed difficult to put the Indian Constitution in the category of federations, even though it had all the main ingredients of a federation. It is, in fact, a new contrivance designed to meet the special requirements of Indian society. The framers of the Constitution have modified the true nature of Indian federalism by incorporating certain non-federal

features in the Constitution as well. However, the states have been assigned autonomy within their area of jurisdiction and operation. This has lent support to the contention that the Indian Constitution is **federal in form but unitary in spirit**. Presently, Indian Union has 29 States and 7 Union Territories.

## 13. Independent Judiciary-

An independent judiciary is a backbone of any federation. The judiciary in India is independent and impartial. It is an integrated judiciary with the Supreme Court at the apex of the hierarchy. The High Court stands in its middle, and the lower courts are located at its bottom. Many provisions have been made in the Constitution of India to uphold the supremacy of the constitution, to protect the fundamental rights and also the democracy. The judges of Supreme and High Courts are appointed by the President of India and they can be **removed by an impeachment** in Parliament. The Supreme Court of India has the power of **Judicial Review**. The power of judicial review has in itself the concept of separation of powers an essential component of the rule of law, which is a basic feature of the Indian Constitution. Every State action has to be tested on the anvil of rule of law and that exercise is performed, when occasion arises by the reason of a doubt raised in that behalf, by the courts. The power of Judicial Review is incorporated in Articles 226 and 227 of the Constitution in so far as the High Courts are concerned. In regard to the Supreme Court Articles 32 and 136 of the Constitution, the judiciary in India has come to control by judicial review every aspect of governmental and public functions. The Supreme Court of India can declare any law **ultra-vires** if it violates natural justice. They have the power to declare acts of legislatures and actions of the Executive **ultra-vires** if such acts or actions are found to be in conflict with the provisions of the constitution. To protect the fundamental rights of the citizens, writs such as **Habeas Corpus** and **Quo Warranto** etc. can be invoked. All these provisions are made with an aim to achieve judicial independence in India.

#### 14. Combination of Rigidity & Flexibility-

Based upon the provisions made for its amendment, a constitution can be flexible or rigid or a mixture of both. A *flexible* Constitution is one that can be *changed by ordinary lawmaking process* and the one which requires a *special procedure for amendment* is called *rigid*. The Indian Constitution is a mixture of rigidity and flexibility. A constitution is required to be amended with the change in the requirements and the circumstances of any country. Article 368 of Constitution of India exclusively deals with the amendment of the Constitution. Since India is multilingual, multicultural and multiethnic, hence some amount of rigidity is necessary to maintain the federation in a wholesome manner. Parliamentary system of government, rule of law and legislative procedure in India follow the lines of British constitution. The Preamble and the Supreme Court have been designed as per the U.S. model. Indian Constitution is a unique agreement of both the theory of fundamental law of the US constitution and the theory of Parliamentary sovereignty of the unwritten constitution of the UK. It has taken the element of rigidity from the constitution of the United States and the flexibility from the constitution of the UK. For amendment of *federal provisions*  $\frac{2}{3}$ rd majorities in both houses of the parliament and ratification by *at least half of the States* is required. The procedure is hard and it is in the interest of the nation which is so vast and diverse. The constitution can be amended in three ways-

(i) *Amendment by simple majority of the parliament*-In some parts of the Constitution amendments are made by the simple majority of the two Houses of Parliament, such as admission or establishment of new states, formation of new states and alteration of areas, boundaries or names of existing states, abolition or creation of legislative councils in states, making the union territories, the salary of Members of Parliament etc.

(ii) *Amendment by special majority of the parliament*-The majority of the provisions in the Constitution need to be amended by a special

majority of the Parliament, that is, a majority (that is, more than 50 per cent) of the total membership of each House and a majority of  $\frac{2}{3}$ rd of the members of each House present and voting as mentioned in Article 368. The expression 'total membership' means the total number of members comprising the House irrespective of fact whether there are vacancies or absentees. The fundamental rights, directive principles of state policy, special provisions for SC/ST and all other provisions which are not covered by the first and third categories are amended by special majority of the parliament.

(iii) *Amendment by special majority of the parliament and the ratification of half of the state legislatures*-Those provisions of the Constitution which are related to the federal structure of the polity can be amended by *a special majority* of the *Parliament* and also with the *consent of half of the state legislatures* by *a simple majority*. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. This complex procedure is adopted to amend the provisions related to election to the President and its manner; extent of the executive power of the Union and the states; Supreme Court and High Courts etc. These are examples of a rigid constitution.

Amendment procedures mentioned above are evident of the fact that constitution of India is a fine blend of rigidity and flexibility. In the words of **Prof.K.C Wheare**, "*the Constitution of India establishes a good balance between the rigid and flexible.*"

#### 15. Harmony between Judicial Review & Parliamentary Supremacy-

The Constitution of India has adapted a middle path between Judicial Supremacy (of United States) and Parliamentary Supremacy (of UK). In fact, both parliament and the judiciary should not exceed their limits as defined by the constitution of India, so that harmony can be maintained between the legislature and judiciary. At the same time, Judiciary is given

the power of declaring a law unconstitutional (*ultra vires*) if it is perceived to be going beyond the competence of the legislature as per distribution of powers enshrined in the Constitution of India. Our Constitutional forefathers have envisaged a close and harmonious relationship between highest Judiciary and the Parliament. In India, the constitutional supremacy was explicitly echoed in the *Minerva Mills* case whereby the Supreme Court held that “*government, legislature, executive and judiciary are all bound by the Constitution, and nobody is above or beyond the Constitution.*” Every law made by the parliament is subject to interpretation by Supreme Court in the light of ideals and objectives of the constitution and if they go beyond or above that, they can be held null and void.

#### 16. Advocate of World Peace-

**Article 51** of the Indian Constitution (Part IV-Directive Principles of State Policy) is based on the ancient Indian philosophy of “*Vasudhaiv Kutumbakam*”, which means that the entire world is but one family and the mankind its citizens. Each citizen of India, who owes allegiance to the Constitution, is individually (and with other citizens) duty-bound to make an earnest endeavor to promote the ideals of *Vasudhaiv Kutumbakam*. According to **Article 51(Promotion of international peace and security)** the State shall endeavor to (a) promote international peace and security; (b) maintain just and honorable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and (d) encourage settlement of international disputes by arbitration. India neither interferes in any other country's territorial boundaries and internal affairs nor does it tolerate any other country's interference in its territorial boundaries. The Government of India has adopted the policy of *Panchsheel* and *Non-Alignment* according to this sentiment. **Article 51** and *Vasudhaiv Kutumbakam* embody India's quest for world peace.

#### 17. Emergency Provisions-

The part 18 of Indian constitution deals with the emergency provisions. According to **Article 352(External aggression)** if the president is satisfied that a grave emergency exists whereby the security of India or any part of the territory of India is threatened by war or external aggression or armed rebellion, he may proclaim an emergency. This emergency may be with respect to whole or part of India. The **Article 352** puts certain conditions -The proclamation or formal declaration of emergency can be revoked by further proclamation. The proclamation of a war emergency cannot be made by the president unless the Union cabinet gives him in written that such proclamation should be made. If a proclamation is **NOT** revoked subsequently, it should be laid before the parliament. The both houses of parliament must approve such proclamation within two months. If the parliament does not approve the proclamation, it will become ineffective. It may be that at the time of the proclamation, the house of people has been dissolved or its dissolution takes place within the period of two months after the proclamation. In these cases, the proclamation shall be laid before Rajya Sabha. If Rajya Sabha passes it, it must be approved by Lok Sabha **within the 30 days of the new meeting of the Lok Sabha**. However, if Rajya Sabha itself does not pass the proclamation, the proclamation would cease to be valid.

According to **Article 356 (Failure of constitutional machinery in the State)**. If the president is satisfied on receipt of a report from the governor or otherwise that a situation has arisen in which the Government in a state cannot be carried in accordance with the provisions of the Constitution, he / she is empowered to proclaim an emergency. The result would be that: President may assume to himself all or any of the functions of the state or he may vest all or any of those functions in the Governor or any other such authority. President may declare that powers of the state legislatures shall be exercisable by the parliament. President may make any other incidental or consequential provisions