Basic Features

The constitution is supposed to have a basic structure which cannot be altered. This was spelt out by the full bench of the Supreme Court in 1973 in the majority judgement in the Kesavananda Bharati case.[1]

In the words of D.D. Basu, the judgement laid down that 'there are certain basic features of the Constitution of India, which cannot be altered in exercise of the power to amend it, under Article 368. If, therefore, a Constitution Amendment Act seeks to alter the basic structure or framework of the Constitution, the Court would be entitled to annul it on the ground of *ultra vires,* because the word "amend", in Article 368, means only changes other than altering the very structure of the Constitution, which would be tantamount to making a new Constitution.'[2] According to Justice S.M. Sikri, these basic features were the supremacy of the constitution, the republican and democratic form of government, the secular character of the constitution, the separation of powers between the legislature, executive and the judiciary and the federal structure. Some of the other features listed were the principles of free and fair elections,[3] the rule of law, the objectives specified in the Preamble, judicial review, freedom and dignity of the individual, unity and integrity of the nation, the principle of equality, the concept of social and economic justice, the balance between the Fundamental Rights and Directive Principles, the independence of the judiciary, and effective access to justice.[4]

The 42nd Amendment (1976) made during the Emergency under Indira Gandhi declared that 'there shall be no limitation' on the amending powers of parliament, and that no constitution amendment act could be 'called in question in any court on any ground'. But the Supreme Court in *Minerva Mills* v. *Union of India*[5] reaffirmed the applicability of the doctrine of basic structure by holding that 'judicial review' is a basic feature which cannot be taken away even by amending the constitution. The present position is that the court can declare *ultra vires* any amendment to the constitution if it believes that it would affect or alter any of the basic features of the constitution. 'Thus, substantive limitation founded on the doctrine of "basic features" has been introduced into our Constitution by judicial innovation.'[6]

While there has been some difference of opinion among judges about the contents of the list of basic features, there is consensus on the doctrine of 'basic features' or 'basic structure', and it can be used to check any attempts to subvert the constitution through parliamentary majorities.

Federal Structure or Unitary

The Indian constitution does not fit into any rigid definition of federal or unitary. To quote

Austin:[7]

> The political structure of the Indian Constitution is so unusual that it is impossible to describe it briefly. Characterisations such as 'quasi-federal' and 'statutory decentralisation' are interesting, but not particularly illuminating. The members of the Assembly themselves refused to adhere to any theory or dogma about federalism. India had unique problems, they believed, problems that had not 'confronted other federations in history'. These could not be solved by recourse to theory because federalism was 'not a definite concept' and lacked a 'stable meaning'. Therefore, Assembly members, drawing on the experience of the great federations like the United States, Canada, Switzerland, and Australia, pursued 'the policy of pick and choose to see (what) would suit (them) best, (what) would suit the genius of the nation best . . . This process produced . . . a new kind of federalism to meet India's peculiar needs.'

The Assembly was perhaps the first constituent body to embrace from the start what A.M. Birch and others have called 'cooperative federalism'. It is characterized by increasing interdependence of federal and regional governments without destroying the principle of federalism.[8] (Interestingly, the concept of cooperative federalism was reintroduced into the political vocabulary by P. Chidambaram, when he was the Finance Minister in the United Front government in 1996–98.)

The decision of the Constituent Assembly to have a federal constitution with a strong Centre was occasioned also by the circumstances in which it was taken. A strong central government was necessary for handling the situation arising out of the communal riots that preceded and accompanied Partition, for meeting the food crisis, for settling the refugees, for maintaining national unity and for promoting social and economic development, which had been thwarted under colonial rule.

However, in the initial months of its existence, before Partition became an accepted fact, the Constituent Assembly did not express itself in favour of a strong central government. The Union Powers Committee of the Assembly, headed by Nehru, had in its first report provided for a very weak central government. But once the decision on Partition was taken and announced on 3 June 1947, the Constituent Assembly considered itself free of the restraints imposed by the Cabinet Mission Plan of 1946, and moved quickly in the direction of a federation with a strong Centre.

Dr B.R. Ambedkar, while introducing the Draft Constitution, explained why the term 'Union of States' was preferred over 'Federation of States':[9]

> The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation and that the federation not being the result of an agreement, no state has the right to secede from it. The federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single

people living under a single imperium derived from a single source.

Indian federalism has certain distinctive features. For example, unlike the US, where a person is a citizen of the US, as well as of the state in which he or she resides, in India there is only Indian citizenship.

The constitution has also tried to minimize conflict between the Union and the states by clearly specifying the legislative powers of each. It contains three lists of subjects. The subjects listed in the Union List can only be legislated upon by the Union parliament, the ones in the State List only by the state legislatures, and those in the Concurrent List come within the purview of both, but in case of a conflict between Union and state legislation, the Union law will prevail.

While it is true that the overwhelming financial power of the Union and the dependence of the states upon the Union for grants-in-aid for discharging their functions places limits on federalism, nevertheless it would be an exaggeration to maintain, as some analysts do, that federalism has withered away in the actual working of the constitution. The most conclusive evidence of the survival of the federal system perhaps is to be found in the coexistence of state governments with sharply divergent ideological complexions: the Left Front and United Front governments in Kerala, West Bengal and Tripura, Dravida Munnetra Kazhagam (DMK) and All India Anna Dravida Munnetra Kazhagam (AIADMK) in Tamil Nadu, Telugu Desam in Andhra Pradesh, Janata Dal governments in Gujarat and Karnataka, Bharatiya Janata Party (BJP) in U.P., Madhya Pradesh, Rajasthan, Gujarat and Himachal, etc., with a Congress or Janata Dal or United Front or BJP government at the Centre. Agitations for formation of new states and demands, often successful, for more financial powers to the states, also testify that the federal impulse is alive. The Left Front government in West Bengal created history on 18 June 1998 by questioning the right of the BJP-led government at the Centre to send a fact-finding team to assess the state's law and order situation, citing that law and order is a State subject. The Communalist Party India (Marxist) (CPM) government clearly found the federal principle a useful weapon of defence in the face of BJP's attempt at applying political pressure in response to its ally, the Trinamul Congress. It also demonstrates that constitutional arguments are often occasioned by political contests and not by constitutional anomalies and further that the balance between the federal and unitary features of the constitution at every point in time is a function as much of the political balance of forces in the country as it is of constitutional developments, court judgements and the like.

It would then perhaps be fair to conclude with D.D. Basu, a leading authority on the Indian constitution, that it introduces a system 'which is to normally work as a federal system, but there are provisions to convert it into a unitary or quasi-federal system under specified exceptional circumstances'.[10] It is perhaps this flexibility, which is usually missing in purely federal constitutions, that has enabled the constitutional framework to accommodate the wide variety of Centre–state relationships encountered in the years since independence.

Institutions of Governance and their Working

The President

The executive power is vested by the constitution in the President of India but in the words of Ambedkar, he is a constitutional head who 'occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the nation but does not rule the nation.'[11] The head of the executive is in fact the prime minister at the head of the council of ministers which is responsible to parliament. India's parliamentary form of government bears the closest resemblance to the British system, with the difference of course that India has no hereditary monarchy but an elected President as its symbolic head of state. The alternative of a Presidential form of government of the American type was rejected by the framers of the constitution as unsuited to Indian conditions.

The Indian constitution thus formally confers an enormous range of powers on the President, but these are to be exercised in accordance with the advice of the cabinet. But the President is by no means a figurehead and the political situation may provide many occasions for an activist President. This tension between his formal and real powers has been visible from the time of the first President, Dr Rajendra Prasad. Having serious reservations about the Hindu Code Bill, he tried to argue in September 1951 that the President had a greater role to play. Nehru promptly sought the opinion of Alladi Krishnaswamy Ayyar, the constitutional expert, in Madras and M.C. Setalvad, the Attorney-General. Fortunately for Indian democracy, both the experts were categorical that acceptance of President Rajendra Prasad's arguments would upset the whole constitutional structure and could lead to the President assuming dictatorial powers. Rajendra Prasad was thus persuaded to exercise a more limited role in keeping with his own earlier hope expressed in the Constituent Assembly debates that 'the convention under which in England the King acts always on the advice of his Ministers will be established in this country also and the President . . . will become a constitutional President in all matters'.[12]

The danger of a President actually using his powers is least likely when a single party commands a clear majority. But the potential for presidential activism occurs in the event of fractured electoral verdicts or splits in the ruling party, leading to unstable coalition governments. The first time this happened was in 1979 when the Janata government led by Morarji Desai fell because of a split in the ruling party. The President, Neelam Sanjiva Reddy, used his discretion in refusing Morarji Desai's request to form a new government, asking Charan Singh to prove his majority by seeking a vote of confidence by a fixed date and consulting other party leaders before accepting the new prime minister, Charan Singh's advice to dissolve the Lok Sabha. President Venkataraman acted in a similar fashion when he invited Chandra Shekhar to form the government after the resignation of V.P. Singh in November 1990. He took a whole week to accept Chandra Shekhar's advice to dissolve the Lok Sabha in March 1991 and even played around with the idea of a National Government with himself at its head.

In recent years, these worries about the President's role have intensified because of the fact that the last time any party secured a clear majority in the national elections was in 1984–85 when Rajiv Gandhi came to power after Indira Gandhi's assassination. The elections of 1989, 1991, 1996 and 1998 all created ample opportunities and need for presidential intervention. For example, in March 1998, after the election results showed that when the BJP staked its claim to form the government on the ground that it was the single largest party and had enough support

from other parties to win the confidence vote in the Lok Sabha, President K.R. Narayanan insisted that Atal Bihari Vajpayee, the leader of the BJP, furnish proof in writing that his party did indeed enjoy the support of its allies. This resulted in an embarrassing wait of a few days for the prospective prime minister because one of his critical allies, J. Jayalalithaa of the AIADMK (whose desertion finally led to the collapse of the BJP government in April 1999) had many 'second thoughts' and drove hard bargains in well-advertised secret meetings before finally consenting to send the crucial missive extending the AIADMK's support to the BJP. The President's role was critical in the entire episode. He could have refused to wait endlessly for the letter of support and invited the leader of the next largest party or group, thus denying the BJP's claims which were in any case based on a wafer-thin majority. It is evident then that unstable or ambiguous political situations provide room for exercise of presidential discretion and hence potential abuse or misuse of powers.

However, even in otherwise stable situations, it has happened that presidents have, on occasion, either because of personal ambition or out of a sense of duty to the constitution, exercised discretionary power. The most vivid example is that of President Zail Singh, who was the first to use the President's power to return a bill to parliament. He also wrote at the same time to the prime minister that he was not being kept informed of important developments and this was preventing him from performing his constitutional duty of ensuring that the government was being run in accordance with the letter and spirit of the constitution. There was much speculation that he might actually dismiss the prime minister. Later in the same year, 1987, when the Bofors scandal about kickbacks in defence purchases broke, it seems that Zail Singh did actually discuss with political leaders of many hues the possibility of dismissing Rajiv Gandhi as prime minister. In the end, none of it ensued, but it is clear that the potential for the President stepping outside the conventional limits of his powers exists even when a prime minister enjoys majority support in parliament. It is to be remembered that the Congress under Rajiv Gandhi had the largest majority ever in the Lok Sabha.

Another area of debate relates to the President's role in the dismissal of state governments and imposition of President's Rule. February 1998, in the midst of the Lok Sabha elections, the governor of U.P., Romesh Bhandari, dismissed the BJP-led government of Kalyan Singh and swore in another man as chief minister. The High Court reinstated Kalyan Singh and the governor sent a report to the Centre recommending dissolution of the Assembly and imposition of President's Rule. The cabinet, after long deliberation, accepted the governor's report and prime minister I.K. Gujral recommended it to the President. But President Narayanan returned it for reconsideration to the cabinet, in a clear expression of disagreement. The governor of Uttar Pradesh accordingly resigned and Kalyan Singh continued as chief minister of Uttar Pradesh with his ragtag coalition of defectors, criminals, and others.

President Narayanan clearly had to exercise a difficult choice here. There were claims and counter-claims about the extent of support enjoyed by the Kalyan Singh ministry, there were defections and return-defections and allegations of monetary and other inducements. Nonetheless, the President decided that since the U.P. ministry had demonstrated its majority support, however unfairly acquired, on the floor of the house, he had no right to dismiss it. His

critics argue that demonstration of majority support is not the only criterion on which to decide whether the constitutional machinery in a state has broken down and support achieved through intimidation or inducement can be questioned.

It is to be noted that the 44th Amendment has given him the authority to ask the council of ministers to reconsider its advice, but if the council reiterates its position, the President must accept the advice. But, as seen in the case of President Narayanan and the U.P. issue, the President's sending back the advice for reconsideration is taken very seriously and is unlikely to be ignored.

In other areas, the powers of the President are quite clearly defined. When a bill is presented to him, under Article 111, he may withhold his assent and, if he desires, return it to parliament for reconsideration. If both houses again pass it and send it back to him, he is obliged to give his assent. In the case of money bills, however, he has no discretion. In any case, he has no absolute power of veto.

The 44th Amendment in 1978 also made it explicit that the President can declare an Emergency only after receiving in writing the decision of the cabinet advising him to make the proclamation. During the period of Emergency as well, he is to act on the advice of the cabinet. It is very clear that almost all his powers, including those of appointing various high functionaries such as judges of the higher courts, governors, ambassadors, the Attorney-General, the Comptroller and Auditor-General of India, etc., are to be exercised on the advice of the cabinet. The same is true of his powers as Supreme Commander of the armed forces, and of his powers to issue ordinances when parliament is not in session.

The President is elected for five years, is eligible for re-election, and can be removed through impeachment for violation of the constitution. He is elected by elected members of both houses of parliament and of state legislative assemblies by a method of proportional representation through single transferable vote. Each Member of Parliament (MP) or Member of Legislative Assembly (MLA) has a single transferable vote, with a value corresponding to the population represented by him.

The Vice-President

If the President dies in office, or is unable to perform his duties because of absence, illness or any other cause, or is removed or resigns, the Vice-President is enjoined upon by Article 65 to act as the President. This has happened on two occasions when Presidents— Dr Zakir Hussain and Fakhruddin Ali Ahmed—died in office and Vice-Presidents V.V. Giri and B.D. Jatti had to step in. For this reason, the choice of Vice-President has to be made with great care. In normal times, the main function of the Vice-President, who is elected for five years by both houses of parliament, but is not a member of any legislature, is to act as the chairperson of the Rajya Sabha.

The Council of Ministers and the Prime Minister

The real executive power vests under the constitution in the council of ministers headed by the prime minister. The President appoints as prime minister the leader of the party that has a majority in the Lok Sabha or, if no party has a clear majority, a person who has the confidence of the majority of the members of the Lok Sabha. Other ministers are selected by the prime

minister and appointed by the President. Ministers may be appointed without being members of parliament, but they must become members of any one house either by election or nomination within six months. The council of ministers is collectively responsible to the Lok Sabha and has to resign as soon as it loses the confidence of the Lok Sabha.

The prime minister is, in Nehru's words, the 'linchpin of Government'. Almost all the powers formally vested in the President are in fact exercised by the prime minister, who is the link between the President, the cabinet, and the parliament. The position of the prime minister in India has acquired its pre-eminence at least partly from the fact that the first prime minister, Jawaharlal Nehru, who retained his office for almost seventeen years, had such enormous prestige and influence that some of it rubbed off on to the office itself. Indira Gandhi was also so powerful after her election victory and the Bangladesh war in 1971 that the prime minister's position within the political system acquired enormous weight. The prime minister has full powers to choose ministers as well as recommend their dismissal. This gives the prime minister enormous powers of patronage.

The constitution does not mention different categories of ministers such as cabinet ministers, ministers of state and deputy ministers, except in Article 352 where the cabinet is defined as the council consisting of ministers of cabinet rank. In effect, however, the cabinet rank ministers who meet regularly in cabinet meetings chaired by the prime minister, are the most important as all important decisions are taken in cabinet meetings.

The constitution does not allow the possibility of breakdown of constitutional machinery and direct President's Rule at the Centre as it does in the states. There must always be a council of ministers. Even when a vote of no-confidence is passed and the council of ministers resign, they are asked by the President to continue till the new one is in place.

A new constitutional controversy arose with the refusal of the BJP-led government, which was voted out of office on 17 April 1999, to act in the spirit of a caretaker as had been the convention. Despite protests by Opposition parties, the government rejected any notion of caretaker status with the argument that there was no such provision in the constitution. However, it is arguable that this stance ignored well-established practice and was self-serving. The Chief Election Commissioner's advice to the government that it should act keeping in mind that the country was already in election mode even though the statutory period of restraint had not yet begun also fell on deaf years. (Though the Lok Sabha was dissolved in April 1999, fresh elections were delayed till September and October due to the monsoon and revision of electoral rolls.) The government at one stroke transferred eight secretary-level (the highest rank in the bureaucracy) officials, including the Home Secretary, who is responsible for law and order, on 3 May 1999, after the Lok Sabha had been dissolved. This, despite the fact that one of the most important conventions evolved for ensuring fair elections is that officials are not transferred once elections are announced. Sadly, the letter of the constitution was used to defy constitutional practice.

The Parliament

The Indian parliament has two houses—the upper house being called the Rajya Sabha or the Council of States and the lower house the Lok Sabha or the House of the People. The Rajya Sabha

has 250 members, of whom 238 are elected by elected members of the state legislative assemblies or Vidhan Sabhas via a system of proportional representation by means of single transferable vote, while another 12 are nominated by the President, on the advice of the government, to represent different fields such as education, social work, media, sports, etc. Every two years, one-third of the members of the Rajya Sabha retire; but individual members' terms are for six years, so that the Rajya Sabha is a permanent body. The Vice-President of India is the chairperson and a deputy chairperson is elected by Rajya Sabha members from amongst themselves.

The Lok Sabha is directly elected by the people for five years. It may be dissolved before its term is over. In case an Emergency is in force, the Lok Sabha can extend its term for one year at a time but not beyond six months after the Emergency has ended. In practice, only once has the Lok Sabha's term been extended for a year in 1976 when prime minister Indira Gandhi had declared the Emergency.

All Indian citizens, eighteen or above, are eligible to vote. The winning candidate is the one that is first past the post, that is, the one who gets the maximum number of votes. There is no rule that the winner must get at least 50 per cent of the votes, as is the practice in many other countries, though many thoughtful observers have been urging that this system is adopted to ensure the representative nature of the candidate elected and encourage candidates to look beyond vote-banks to wider sections of voters. There is no proportional representation.

Constituencies are territorial and single-member, and divided among states roughly in proportion to the population. A certain number are reserved for Scheduled Tribes and Scheduled Castes in proportion to their population in that particular state. This means that if, say, in Andhra Pradesh, 40 per cent of the population is Scheduled Castes and 10 per cent Scheduled Tribes, then in 40 per cent of Lok Sabha seats in Andhra Pradesh only Scheduled Caste candidates can contest and in another 10 per cent only Scheduled Tribe candidates can contest. All the voters residing in that constituency would elect these candidates—there are no separate electorates as there were before independence.

In recent years, pressure has built up for reservation of one-third of constituencies for women and a bill on those lines was also introduced in parliament in 1998, but it remains caught up in the web of claims and counter-claims of caste and religious groups who are demanding reservation within reservation, on the ground that else only upper-caste, elite, Hindu women will corner the seats reserved for women. Whatever the final outcome, the controversy has demonstrated clearly the self-propelling dynamic of the principle of reservation.

However desirable the objective, once the principle is accepted, it is virtually impossible to prevent further claims to the same benefits by other groups. The practice of reservation has also shown that it is almost impossible to reverse. The constitution had envisaged reservations as a short-term measure lasting ten years; no government has ever seriously considered not extending them every ten years, and it is now nearly fifty years! On the contrary, demands for and acceptance of reservation have only increased. Even the question— whether reservation, which per se perpetuates certain group identities, can become a barrier to the concept of citizenship as embodied in the constitution—is difficult to ask in the prevailing political climate. Disadvantaged

groups, and certainly their leaders, are easily convinced that reservation is the panacea for all ills, perhaps because it enables rapid upward mobility for some visible and vocal sections of the groups or because a bird in hand is considered to be better than the invisible one in the bush of the future.

The maximum number of seats in the Lok Sabha is 552. Of these, 550 represent territorial constituencies, and two go to nominated members from the Anglo-Indian community. Members must be at least twenty-five years of age. The Lok Sabha is chaired by the speaker, and in his absence by the deputy speaker, both of whom are elected by members from amongst themselves. By convention, the speaker's post goes to the majority party and the deputy speaker's to the Opposition. But again, in recent years, fractured verdicts, unstable coalitions, claims of rival groups within and outside the government, have upset established conventions. There were fairly well-established conventions that the election of the speaker and deputy speaker would be kept free of contest to assure their non-partisan image and the speaker should be a person of considerable ability and influence capable of asserting his authority in the house. But in 1998, the BJP-led government first backed out of a promise to support a Congress nominee, P.A. Sangma, as a consensus candidate and then had elected an unknown face, Balayogi, to please its alliance partner, the Telugu Desam party. This was unfortunate, for the constitution entrusts great responsibility to the speaker: within and in all matters relating to the Lok Sabha, the speaker's word is final.

The parliament has extensive legislative powers and bills may be introduced in any house. To become law, bills must be passed by both houses, and then receive presidential assent. The President may, however, send the bills back to parliament or the government for reconsideration. If they are passed again, the President cannot withhold assent. Money-bills, however, must be introduced first in the Lok Sabha, and on the President's recommendation. They go to the Rajya Sabha, and if not returned with suggestions in fourteen days, are taken as passed. Recommendations of the Rajya Sabha may or may not be accepted by the Lok Sabha in the case of money-bills.

The constitution thus clearly envisaged parliament as an institution with great dignity and accorded privileges to its members commensurate with that position. Unfortunately, in recent years, the conduct of some members and parties who have disturbed even the President's address, indulged in unnecessary walkouts, shouting, even physical scuffles, has lowered the dignity of the parliament and delayed necessary legislative business. This has led to a popular disgust with members of parliament and a common feeling that parliament is just a big waste of taxpayers' money.

The Government in the States and Union Territories

The constitution lays down that the system of government at the state level shall also be based on the parliamentary model with the chief minister and his council of ministers exercising effective executive power while being responsible to the state legislature. The governor is meant to be a constitutional head like the President but with the very important difference that if the constitutional machinery breaks down and President's Rule under Article 356 is imposed, then the governor as the President's representative becomes the effective executive and runs the state with

the help of advisers appointed by the union government.

The expectation at the time of the framing of the constitution was that governors would be 'people from outside—eminent people, sometimes people who have not taken too great a part in politics . . . an eminent educationist or a person eminent in other walks of life'.[14] But this hope has been largely belied. Governors have over the years tended more and more to be active politicians, many of whom have returned to full-time politics (if they at all gave it up as governors!) once their terms are over. They have tended to carry out the directives of the party in power in New Delhi or the one that appointed them and have sometimes even become active conspirators in murky provincial toppling games. All parties are guilty of having furthered this trend of appointing pliant governors. The convention of consulting state chief ministers before appointing governors has also lapsed though demands for its revival are growing.

There are numerous examples of misuse of governors' discretionary powers but the most notorious ones are the following. On 2 July 1984, Farooq Abdullah, the chief minister of Jammu and Kashmir, asked the governor, Jagmohan, to immediately call a session of the legislative assembly. He wanted to test his majority on the floor of the house as twelve members had deserted his party. The governor, however, dismissed his ministry from office and installed a new man, G.M. Shah, as chief minister. Abdullah campaigned against his dismissal all over the country. The incident was also cited as proof of the union government's infringement of the autonomy of the state and was thus a handy tool for stoking secessionist fires.

In a similar fashion, in Andhra Pradesh, the governor, Ram Lal, instead of summoning the Assembly as desired by the chief minister, N.T. Rama Rao (whose Telugu Desam Party had suffered a split), so that he could test his majority on the floor of the house, dismissed the chief minister on 16 August 1984. N.T. Rama Rao had asked for only two days to prove his majority; his successor was given thirty days by the governor but still could not muster the strength. Indira Gandhi made a public statement that she had no prior knowledge of governor Ram Lal's action, got him to resign, sent Shankar Dayal Sharma as the governor, and N.T. Rama Rao was again invited to form the government. In this process, however, the dignity of the governor's office suffered a severe blow.

All states have legislative assemblies, which consist of not more than 500 and not less than 60 members. A few states also have second chambers or legislative councils. States have exclusive right to legislate on items in the State List. They can also legislate on items in the Concurrent List but if there is a law passed by the parliament which is different from that passed by the state legislature, then the Union law stands.

There are also seven areas known as Union Territories, which are directly administered by lieutenant-governors appointed by the President. These territories can also have a legislature and a council of ministers, as in the case of Delhi and Pondicherry but their powers are more restricted than those of their counterparts in the states.

Local Government

The constitution did not contain provisions for the exact form that local government institutions were to take, but the Directive Principles specifically laid down that the states should take steps to

organize village panchayats and endow them to function as units of self-government (Article 40). This was to allow the states the flexibility to devise forms most suited to their needs. Besides, the legacy of the freedom struggle, and especially of Gandhiji himself, who had made panchayats a part of his political programme since the Non-Cooperation movement of 1920–22, made it imperative that local self-governing bodies be set up.

However, not much progress was made in the early 1950s. The central government had concentrated its efforts for local development on the Community Development programme, which took a block of about 100 villages as a unit for promoting developmental activities with the help of village-level workers, social workers, agricultural experts, newly appointed development officials, etc. Very high hopes had been pinned on the success of this effort, and when it became apparent that it was not making much headway, a high-level committee chaired by Balwantrai Mehta, a veteran Gandhian, was asked in 1956 to make recommendations for its improvement. The Mehta Committee diagnosed the lack of democratic local bodies with real powers as the major cause of the failure of the Community Development programme. The remedy suggested was the setting up of Panchayati Raj (PR) by instituting three levels of representative bodies. The gram panchayat at the village level was to be directly elected by all adult residents of the village, and the panchayat samiti at the block level and zilla parishad at the district level were to consist of members indirectly elected from the tier below as well as cooperative movement officials, parliamentarians and others coopted to the body.

Between 1959 and 1962, state governments in all parts of the country introduced Panchayati Raj legislation. Over the years, however, the functioning of Panchayati Raj was not up to expectations, for various reasons. State governments, whose duty it was, did not often hold local elections on time, sometimes for many years at a time, if they feared an unfavourable result. Panchayats did not have enough resources to be innovative and independent. Local bigwigs dominated panchayats and cornered benefits. A number of committees made extensive studies and gave valuable suggestions—the Asoka Mehta Committee, 1978, the G.V.K. Rao Committee, 1985, and the L.M. Singhvi Committee, 1986.

A new initiative was taken under the leadership of Rajiv Gandhi in 1988, when a committee headed by P.K. Thungon recommended that Panchayati Raj bodies should be constitutionally recognized and the constitution should have a provision to ensure timely and regular election to these bodies and their term should be five years. In 1989, the Constitution 64th Amendment Bill was introduced in parliament. The Congress did not, unfortunately, have a majority in the Rajya Sabha, and Opposition parties, suspicious of Congress intentions that this was a new device for curbing the powers of the states, blocked its passage and prevented a good measure from becoming law. That there was no principled objection in mind became clear when the National Front government of V.P. Singh introduced the same bill with minor changes within a year of the old one being blocked. History has its ironies: V.P. Singh's government collapsed before the bills could be passed and it fell to the Congress's lot to finally see through the constitution 73rd and 74th Amendment Bills in 1993.

The 73rd Amendment provides for an elaborate system of establishing panchayats as units of self-government. For the first time in the constitutional history of India, the constitution of

panchayats, the duration of their term, their membership, the constitution of a finance commission to review their financial position is detailed. It also adds a new schedule to the Constitution, the Eleventh Schedule, which lists 29 subjects which are to be handled by the panchayats. With this amendment, Panchayati Raj institutions are as much a part of the structure of constitutional government in India as the Lok Sabha. The 74th Amendment does the same for the municipalities.

The Judiciary

Articles 124–147 and 214–237 of the constitution lay down the entire framework of the system of justice in India. The judiciary is to be the upholder of the constitution, after all, and no detail is too small for ensuring its independence and effectivity. The method of appointment, the years of service, qualifying conditions, powers of each court, size of the bench, pay and perquisites, and much more, are all specified in the constitution.

The Indian judicial system consists of a single hierarchy of courts with the Supreme Court at its apex. Before the Supreme Court came into being in January 1950, India had a Federal Court and further appeals lay with the Judicial Committee of the Privy Council in Britain. The jurisdiction of the Privy Council was abolished in October 1949 and the Federal Court was replaced by the Supreme Court of India in January 1950.

The Supreme Court consists of a chief justice and twenty-five other judges (seven in 1950, gradually increased by 1986 to twenty-five) appointed by the President after consultation with such of the judges of the Supreme Court and the High Courts as may be thought necessary. They hold office till the age of sixty-five. In the case of appointment of judges other than the chief justice, the chief justice shall always be consulted (Article 124). By convention, the chief justice is always the seniormost judge of the Supreme Court. In 1973 and again in 1976, this convention was flouted by Indira Gandhi when the seniormost judges (three in 1973 and one in 1976) were superseded. This action was roundly condemned as an attack on the independence of the judiciary and no government since has dared to repeat the act.

The only way a Supreme Court judge can be removed from office is if each house of parliament supported by a majority of the house as well as two-thirds of those present and voting pass a resolution in the same session and present an address to the President asking for removal on the ground of proven misbehaviour or incapacity [Article 124(4)]. To further ensure the independence of judges, there is a bar on their pleading before any court or authority in India after retirement [Article 124(7)].

The Supreme Court has original jurisdiction in appeals or writs relating to enforcement of Fundamental Rights, that is, a person can straightaway appeal to the Supreme Court without going through the normal layers of the judicial hierarchy (Article 32). The Supreme Court has original jurisdiction also in all disputes between the Union and states as well as between states. It can transfer cases from lower courts to itself. It has appellate jurisdiction in constitutional, civil and criminal cases. It has also sanctioned the practice of public interest litigation wherein a person or an organization can appeal, to the highest court, even by means of an ordinary postcard, on an issue that does not affect him or her directly but about which there is reason for concern as a

citizen. A more recent trend is of 'judicial activism' by which is meant judges intervening to force executive authorities to perform their duties such as collecting garbage, placing controls on vehicular pollution, etc. While there has been some, even justified, criticism of this trend, it must be admitted that the judiciary was seen as the last refuge by a frustrated public unable to make its voice heard in other ways. The judiciary was effective precisely because of the power given to it by the constitution that all authorities must implement its decisions and orders.

The Supreme Court has played a major role in interpreting the constitution, especially with regard to the changing relationship between Fundamental Rights and Directive Principles, as discussed above. While it is limited in its powers in comparison to the US Supreme Court when it comes to declaring any law unconstitutional, since it does not have the clause of 'due process of law' or standards of natural justice, it has made up by evolving the doctrine of 'Basic Features', on the basis of which even an amendment to the constitution can be declared invalid if it is destructive of the 'Basic Features' of the constitution. It seems that Alladi Krishnaswami Ayyar, a leading member of the drafting committee of the Indian constitution, was right in his prediction that:[15]

> the future evolution of the Indian Constitution will thus depend to a large extent upon the Supreme Court and the direction given to it by that Court. While its function may be one of interpreting the Constitution, it cannot . . . ignore the social, economic and political tendencies of the times . . . On certain occasions it may appear to strengthen the union at the expense of the units and at another time it may appear to champion the cause of provincial autonomy and regionalism. On one occasion it may appear to favour individual liberty as against social or state control and another time, it may appear to favour social or state control. It is the great tribunal which has to draw the line between liberty and social control.

The High Courts in the states have powers over all the subordinate courts in their jurisdiction. Their power to issue writs or orders is wider than that of the Supreme Court as it is not restricted to cases of violation of Fundamental Rights. The High Courts have chief justices at their head and other judges as required. Their mode of appointment is similar to that of Supreme Court judges. Just as the law declared by the Supreme Court is binding on all courts in India, a law declared by a High Court is binding on all courts of that state.

The subordinate courts in each state are directly under the control of the High Court. District judges are appointed by the governor in consultation with the High Court. The lower judiciary is recruited via examinations from among those who have at least three years' experience at the Bar. Sadly, corruption is quite common at the lower levels, but happily still not common, though not unknown, at the High Court level, and rare, if not absent, in the Supreme Court. A major problem is the enormous backlog of cases and it can often take ten or even twenty years for a case to be decided. Litigation is expensive and time-consuming; as a result common people hesitate to take recourse to the courts. The judiciary is also hemmed in by a plethora of outdated laws, some more than a hundred years old. There is an urgent need for judicial reform but though subsequent chief justices of the Supreme Court have promised reform, yet not much has actually moved on the ground.

The Administrative Services

At independence, India inherited as part of the colonial legacy, an administrative structure that had been the major instrument of colonial power and perhaps the chief instrument of co-option of 'natives', from the brilliant scions of princely and zamindari families who joined the Indian Civil Service (ICS) to the Matric Fail son of the poor Brahmin priest who was happy to become a peon. British rule was bureaucratic rule, and that was what was most wrong with it. The chief culprits were the members of the ICS, a small elite group of overpaid, insensitive, mostly British men—so the nationalist argument had run *ad nauseum* before independence. Then why were the ICS given constitutional guarantees and the administrative structure left largely untouched after independence? The major reason lies in the circumstances that attended independence; Partition, transfers of population unprecedented in known history, integration of some 300 princely states, war in Kashmir, the assassination of Gandhiji. The one island of stability, of predictability, appeared to be the administrative structure. Most of the British members of the ICS had left, the few that remained were pro-India. The Indian members of the ICS, very few in number, made it clear that they were more than willing to hitch their wagons to the new regime, some out of nationalism, others as good bureaucrats whose dharma is to carry out the orders of their superiors. Perhaps national leaders had no reply to the entreaty of Sir Uma Shanker Bajpai, an outstanding ICS officer, who said with irrefutable logic: 'If I could serve so well a foreign power, how much better will I serve my own countrymen?' The ICS was therefore replaced by the Indian Administrative Service (IAS) and the pre-independence structure of all-India services, provincial or state services and central or Union government services was retained.

The constitution in 'Part XIV: Services under the Union and the States' while laying down that Union and state legislation would detail the rules for recruitment and conditions of service for Union and State services respectively, simultaneously provided constitutional guarantees against arbitrary dismissal. The constitution (Article 315) also ensures fairness in recruitment by providing for independent public service commissions (for the Union and for each state). The members of the commissions are appointed for a term of six years by the President or the governor and at least half must be civil servants with at least ten years' service. The commissions are entrusted with the task of conducting examinations for recruitment to the services and have to be consulted on all matters relating to the method of recruitment, appointment, promotion and transfer of as well as disciplinary action against civil servants.

The constitution mentions only two all-India services that were in existence at that time: the IAS and the Indian Police Service (IPS), but it provided for more by giving the power to the Rajya Sabha to resolve by a two-thirds majority to establish new all-India services. The Indian Forest Service and the Indian Engineering Service are two services set up under this constitutional provision. The all-India services have been a significant force for national integration, for typically half the cadre of each state must come from outside it. Further, each officer spends the first few years at the district or sub-district level, then some at the state level, followed by a stint at the Centre, then usually back to the state and so on, thus acquiring familiarity with all levels of administration and intimate knowledge of the work culture, strengths and weaknesses of each. The central services also perform a unifying role in that their recruitment base is the country as a

whole. Officers of the Audit and Accounts Service, or Railway or Customs can be and are posted in different parts of the country even though they will work in central government offices and not in state government offices as in the case of IAS or IPS. Provincial or state service officers are posted within the state, unless they are on deputation or get promoted via internal examinations.

The constitutional safeguards were intended to encourage independence and integrity in the bureaucracy. No doubt this has ensured, there are any number of upright civil servants who have been able to resist unwelcome political pressures because of the security provided by constitutional guarantees of security of tenure. But total security has to some extent also encouraged sloth, lack of initiative and even corruption. It is so difficult to dismiss a civil servant that even gross cases of corruption are ignored because the results are not likely to be commensurate with the effort.

Politicians are also much to blame, as they often encourage or even pressurize officials to perform favours for themselves and their associates in return for monetary or other rewards. The period during the Emergency (1975–77), followed by the Janata government (1977–79), was probably the watershed in the history of the Indian bureaucracy. Mrs Gandhi had pushed the notion of a 'committed' bureaucracy, albeit with the proviso that the commitment expected was to the Directive Principles. In practice, especially with the ascendancy of Sanjay Gandhi, this tended to degenerate into commitment to a person. Those who showed 'commitment' were rewarded and those who did not were punished. With Janata coming to power in 1977, the pendulum swung all the way back. 'Victims' of the Emergency were rewarded with high posts and 'committed' officers sent into the wilderness to cool their heels. Subsequent regimes at the national level have mercifully not indulged in such visible, large-scale, playing of favourites though the slow process of the increasing politician–official nexus continues apace with caste-based parties such as the Bahujan Samaj Party (BSP) or Laloo Prasad Yadav's Janata Dal adding a new dimension by favouring officials belonging to the castes on which their electoral base rests. At the national level, the BJP's action, after it had lost the vote of confidence in April 1999, of wholesale transfers of senior officials, obviously with an eye to the impending elections, is a disturbing trend.

Conclusion

> India would do as she had done for centuries: take what she desired from other cultures and bend it to her needs. —Granville Austin[16]

The framers of the Indian constitution had borrowed freely and unabashedly from other constitutions, confident that the soil had been prepared sufficiently for exotic plants and the more homegrown ones to take root. The wisdom of the US constitution and its Supreme Court, the innovations of the Irish constitution, the time-tested conventions of the British Parliament, the administrative minutae of the Government of India Act, 1935, and much else, especially the essence of their own people's struggle for freedom— all went into the design and content of the Indian constitution. There were many sceptics who wondered whether India could actually deliver on the freedoms she promised.

In retrospect, it may be said that the Indian constitution has not disappointed its architects, though it may have let down the sceptics. First and foremost, the institutions created by it for fashioning a democratic structure have survived and evolved to meet the changing needs. Despite stresses and strains, perhaps inevitable in a situation of rapid transition, the basic framework of responsible government, with the necessary balance between elected legislatures, functional executives, and vigilant judiciary, has acquired a legitimacy that would be difficult to erode. Notwithstanding rarified academic debates about whether Indian democracy is formal or substantive, Indians have accepted the democracy enshrined in their constitution as real enough. They are not wrong in doing so, for when they look around at their neighbours in Asia and Africa, and even at faraway Latin America, and at the troubled peoples of the erstwhile socialist world in eastern Europe, they know the worth of what they have.

The constitution has also been remarkably successful in providing a framework for protection of the Fundamental Rights of freedom of speech and expression, including the freedom of the Press, freedom of association, including the right to join political parties of one's choice and form trade unions, etc. Courts have acted as guardians of citizens' interests against encroachment by the state as well as private organizations and individuals. Courts have also been creative in expanding the meaning and scope of rights. For example, the right to life in Article 21 was expanded to include the right to livelihood in the judgement of the Supreme Court in *Olga Tellis* v. *Bombay Municipal Corporation*, popularly known as the 'Pavement Dwellers' Case'.[17] The right to personal liberty guaranteed in Article 21 has been interpreted to mean that a poor person cannot be imprisoned for not paying his debts. This is not to say that these rights are not violated, often with impunity, but that the institutional mechanism for their redressal exists and can be leveraged, and that the movement has been in the direction of expanding the scope of rights in the direction of a more just and caring society.

The constitution has proved sufficiently flexible in the matter of amending itself. Article 368 which contains the provisions for amendment of the constitution specifies that an amendment bill can be introduced in either house of parliament and must be passed by a clear majority with two-thirds of members present and voting. However, in the case of amendments in Article 368 itself or in articles dealing with the election of the President, the extent of the executive powers of the Union and the state governments, the judiciary, the distribution of powers, and the representation of the states in parliament, the amendment bill must also be passed by the legislatures of at least half the states. This has ensured that while amendments are not so difficult that the letter of the constitution becomes a barrier to social change, yet it is not possible to make changes unless a real consensus has been built up. Again, while Article 368 does not exclude any part of the constitution from the scope of amending provisions, the Supreme Court has in effect placed limits on the amending powers by means of the doctrine of 'Basic Structure' or 'Basic Features' of the constitution. While it is possible to argue that this is not envisaged in the constitution itself, yet it cannot be denied that the doctrine may well act as a healthy check on the ambitions of amendment-happy governments with big majorities.

Many suggestions have emanated from diverse sources over the years about changes required to be made in the constitution. Some want introduction of the Presidential system, others want

proportional representation in place of or in addition to the first-past-the-post system, still others want that winning candidates should have to secure at least 50 per cent of votes, as in many other countries. A relatively recent addition is the proposal that a vote of no-confidence which brings down a government should include a vote of confidence in an alternative government—a proposal clearly inspired by rapid changes in governments and resultant fears of instability. Despite considerable opposition, the BJP-led NDA government appointed a Constitution Review Commission in 2000. The overall feeling is that most parties and most people, even when they seek important changes, are quite content to seek these within the given structure of the constitution. We cannot lay our failures at the door of the constitution; where there are failures, as indeed there are many, it is not the constitution that has failed us, it is we who have failed the constitution. As Rajendra Prasad said at the time of the framing of the constitution, a constitution can only be as good as the people who work it.

It is also significant that even those commentators who are very sharply critical of the Indian political system, and pessimistic about its future prospects, have little criticism to offer of the constitution. It is necessary to emphasize that at a time when most other institutions of governance have suffered greater or lesser erosion of legitimacy, the constitution has continued to command respect. This is not a small gain for a country with such diversity and complexity. In the turbulent times that perhaps await us in the new millennium, the constitution may well be a much-needed anchor of support. Its unambiguous commitment to a democratic, secular, egalitarian and civil libertarian society should help greatly in keeping the ship of the state tied firmly to its moorings.