



## Salient Features of the Constitution

### INTRODUCTION

The Indian Constitution is unique in its contents and spirit. Though borrowed from almost every constitution of the world, the constitution of India has several salient features that distinguish it from the constitutions of other countries.

It should be noted at the outset that a number of original features of the Constitution (as adopted in 1949) have undergone a substantial change, on account of several amendments, particularly 7th, 42nd, 44th, 73rd, 74th and 97th Amendments. In fact, the 42nd Amendment Act (1976) is known as ‘Mini-Constitution’ due to the important and large number of changes made by it in various parts of the Constitution. However, in the *Kesavananda Bharati* case<sup>1</sup> (1973), the Supreme Court ruled that the constituent power of Parliament under Article 368 does not enable it to alter the ‘basic structure’ of the Constitution.

### SALIENT FEATURES OF THE CONSTITUTION

The salient features of the Constitution, as it stands today, are as follows:

#### 1. Longest Written Constitution

Constitutions are classified into written, like the American Constitution, or unwritten, like the British Constitution. The Constitution of India is the lengthiest of all the written constitutions of the world. It is a very comprehensive, elaborate and detailed document.

Originally (1949), the Constitution contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. Presently (2016), it consists of a Preamble, about 465 Articles (divided into 25 Parts) and 12 Schedules<sup>2</sup>. The various amendments carried out since 1951 have deleted about 20 Articles and one Part (VII) and added about 90 Articles, four Parts (IVA, IXA, IXB and XIVA) and four Schedules (9, 10, 11 and 12). No other Constitution in the world has so many Articles and Schedules<sup>3</sup>.

Four factors have contributed to the elephantine size of our Constitution. They are:

- (a) Geographical factors, that is, the vastness of the country and its diversity.
- (b) Historical factors, e.g., the influence of the Government of India Act of 1935, which was bulky.
- (c) Single Constitution for both the Centre and the states except Jammu and Kashmir<sup>4</sup>.
- (d) Dominance of legal luminaries in the Constituent Assembly.

The Constitution contains not only the fundamental principles of governance but also detailed administrative provisions. Further, those matters which in other modern democratic countries have been left to the ordinary legislation or established political conventions have also been included in the constitutional document itself in India.

## **2. Drawn From Various Sources**

The Constitution of India has borrowed most of its provisions from the constitutions of various other countries as well as from the Government of India Act<sup>5</sup> of 1935. Dr B R Ambedkar proudly acclaimed that the Constitution of India has been framed after ‘ransacking all the known Constitutions of the World<sup>6</sup>’.

The structural part of the Constitution is, to a large extent, derived from the Government of India Act of 1935. The philosophical part of the Constitution

(the Fundamental Rights and the Directive Principles of State Policy) derive their inspiration from the American and Irish Constitutions respectively. The political part of the Constitution (the principle of Cabinet Government and the relations between the executive and the legislature) have been largely drawn from the British Constitution<sup>7</sup>.

The other provisions of the Constitution have been drawn from the constitutions of Canada, Australia, Germany, USSR (now Russia), France, South Africa, Japan, and so on<sup>8</sup>.

The most profound influence and material source of the Constitution is the Government of India Act, 1935. The Federal Scheme, Judiciary, Governors, emergency powers, the Public Service Commissions and most of the administrative details are drawn from this Act. More than half of the provisions of Constitution are identical to or bear a close resemblance to the Act of 1935<sup>9</sup>.

### **3. Blend of Rigidity and Flexibility**

Constitutions are also classified into rigid and flexible. A rigid Constitution is one that requires a special procedure for its amendment, as for example, the American Constitution. A flexible constitution, on the other hand, is one that can be amended in the same manner as the ordinary laws are made, as for example, the British Constitution.

The Constitution of India is neither rigid nor flexible but a synthesis of both. Article 368 provides for two types of amendments:

- (a) Some provisions can be amended by a special majority of the Parliament, i.e., a two-third majority of the members of each House present and voting, and a majority (that is, more than 50 per cent), of the total membership of each House.
- (b) Some other provisions can be amended by a special majority of the Parliament and with the ratification by half of the total states.

At the same time, some provisions of the Constitution can be amended by a simple majority of the Parliament in the manner of ordinary legislative process. Notably, these amendments do not come under Article 368.

## **4. Federal System with Unitary Bias**

The Constitution of India establishes a federal system of government. It contains all the usual features of a federation, viz., two government, division of powers, written Constitution, supermacy of Constitution, rigidity of Constitution, independent judiciary and bicameralism.

However, the Indian Constitution also contains a large number of unitary or non-federal features, viz., a strong Centre, single Constitution, single citizenship, flexibility of Constitution, integrated judiciary, appointment of 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 'Union of States' which implies two things: one, Indian Federation is not the result of an agreement by the states; and two, no state has the right to secede from the federation.

Hence, the Indian Constitution has been variously described as 'federal in form but unitary in spirit', 'quasi-federal' by K C Wheare, 'bargaining federalism' by Morris Jones, 'co-operative federalism' by Granville Austin, 'federation with a centralising tendency' by Ivor Jennings, and so on.

## **5. Parliamentary Form of Government**

The Constitution of India has opted for the British parliamentary System of Government rather than American Presidential System of Government. The parliamentary system is based on the principle of cooperation and co-ordination between the legislative and executive organs while the presidential system is based on the doctrine of separation of powers between the two organs.

The parliamentary system is also known as the 'Westminster'<sup>10</sup> model of government, responsible government and cabinet government. The Constitution establishes the parliamentary system not only at the Centre but also in the states. The features of parliamentary government in India are:

- (a) Presence of nominal and real executives;
- (b) Majority party rule,

- (c) Collective responsibility of the executive to the legislature,
- (d) Membership of the ministers in the legislature,
- (e) Leadership of the prime minister or the chief minister,
- (f) Dissolution of the lower House (Lok Sabha or Assembly).

Even though the Indian Parliamentary System is largely based on the British pattern, there are some fundamental differences between the two. For example, the Indian Parliament is not a sovereign body like the British Parliament. Further, the Indian State has an elected head (republic) while the British State has hereditary head (monarchy).

In a parliamentary system whether in India or Britain, the role of the Prime Minister has become so significant and crucial that the political scientists like to call it a 'Prime Ministerial Government'.

## **6. Synthesis of Parliamentary Sovereignty and Judicial Supremacy**

The doctrine of sovereignty of Parliament is associated with the British Parliament while the principle of judicial supremacy with that of the American Supreme Court.

Just as the Indian parliamentary system differs from the British system, the scope of judicial review power of the Supreme Court in India is narrower than that of what exists in US. This is because the American Constitution provides for 'due process of law' against that of 'procedure established by law' contained in the Indian Constitution (Article 21).

Therefore, the framers of the Indian Constitution have preferred a proper synthesis between the British principle of parliamentary sovereignty and the American principle of judicial supremacy. The Supreme Court, on the one hand, can declare the parliamentary laws as unconstitutional through its power of judicial review. The Parliament, on the other hand, can amend the major portion of the Constitution through its constituent power.

## **7. Integrated and Independent Judiciary**

The Indian Constitution establishes a judicial system that is integrated as well as independent.

The Supreme Court stands at the top of the integrated judicial system in the country. Below it, there are high courts at the state level. Under a high court, there is a hierarchy of subordinate courts, that is, district courts and other lower courts. This single system of courts enforces both the central laws as well as the state laws, unlike in USA, where the federal laws are enforced by the federal judiciary and the state laws are enforced by the state judiciary.

The Supreme Court is a federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and the guardian of the Constitution. Hence, the Constitution has made various provisions to ensure its independence—security of tenure of the judges, fixed service conditions for the judges, all the expenses of the Supreme Court charged on the Consolidated Fund of India, prohibition on discussion on the conduct of judges in the legislatures, ban on practice after retirement, power to punish for its contempt vested in the Supreme Court, separation of the judiciary from the executive, and so on.

## 8. Fundamental Rights

Part III of the Indian Constitution guarantees six<sup>11</sup> fundamental rights to all the citizens:

- (a) Right to Equality (Articles 14–18),
- (b) Right to Freedom (Articles 19–22),
- (c) Right against Exploitation (Articles 23–24),
- (d) Right to Freedom of Religion (Articles 25–28),
- (e) Cultural and Educational Rights (Articles 29–30), and
- (f) Right to Constitutional Remedies (Article 32).

The Fundamental Rights are meant for promoting the idea of political democracy. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature. They are justiciable in nature, that is, they are enforceable by the courts for their violation. The aggrieved person can directly go to the Supreme Court which can issue the writs of *habeas corpus*, *mandamus*, prohibition, *certiorari* and *quo warranto* for the restoration of his rights.

However, the Fundamental Rights are not absolute and subject to reasonable restrictions. Further, they are not sacrosanct and can be curtailed

or repealed by the Parliament through a constitutional amendment act. They can also be suspended during the operation of a National Emergency except the rights guaranteed by Articles 20 and 21.

## 9. Directive Principles of State Policy

According to Dr B R Ambedkar, the Directive Principles of State Policy is a ‘novel feature’ of the Indian Constitution. They are enumerated in Part IV of the Constitution. They can be classified into three broad categories—socialistic, Gandhian and liberal–intellectual.

The directive principles are meant for promoting the ideal of social and economic democracy. They seek to establish a ‘welfare state’ in India. However, unlike the Fundamental Rights, the directives are non-justiciable in nature, that is, they are not enforceable by the courts for their violation. Yet, the Constitution itself declares that ‘these principles are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws’. Hence, they impose a moral obligation on the state authorities for their application. But, the real force (sanction) behind them is political, that is, public opinion.

In the *Minerva Mills* case<sup>12</sup> (1980), the Supreme Court held that ‘the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles’.

## 10. Fundamental Duties

The original constitution did not provide for the fundamental duties of the citizens. These were added during the operation of internal emergency (1975–77) by the 42nd Constitutional Amendment Act of 1976 on the recommendation of the Swaran Singh Committee. The 86th Constitutional Amendment Act of 2002 added one more fundamental duty.

The Part IV-A of the Constitution (which consists of only one Article—51-A) specifies the eleven Fundamental Duties viz., to respect the Constitution, national flag and national anthem; to protect the sovereignty, unity and integrity of the country; to promote the spirit of common brotherhood amongst all the people; to preserve the rich heritage of our composite culture



and so on.

The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to their country, their society and to their fellow-citizens. However, like the Directive Principles, the duties are also non-justiciable in nature.

## **11. A Secular State**

The Constitution of India stands for a secular state. Hence, it does not uphold any particular religion as the official religion of the Indian State. The following provisions of the Constitution reveal the secular character of the Indian State:

- (a) The term 'secular' was added to the Preamble of the Indian Constitution by the 42nd Constitutional Amendment Act of 1976.
- (b) The Preamble secures to all citizens of India liberty of belief, faith and worship.
- (c) The State shall not deny to any person equality before the law or equal protection of the laws (Article 14).
- (d) The State shall not discriminate against any citizen on the ground of religion (Article 15).
- (e) Equality of opportunity for all citizens in matters of public employment (Article 16).
- (f) All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).
- (g) Every religious denomination or any of its section shall have the right to manage its religious affairs (Article 26).
- (h) No person shall be compelled to pay any taxes for the promotion of a particular religion (Article 27).
- (i) No religious instruction shall be provided in any educational institution maintained by the State (Article 28).
- (j) Any section of the citizens shall have the right to conserve its distinct language, script or culture (Article 29).
- (k) All minorities shall have the right to establish and administer educational institutions of their choice (Article 30).
- (l) The State shall endeavour to secure for all the citizens a Uniform Civil



Code (Article 44).

The Western concept of secularism connotes a complete separation between the religion (the church) and the state (the politics). This negative concept of secularism is inapplicable in the Indian situation where the society is multireligious. Hence, the Indian Constitution embodies the positive concept of secularism, i.e., giving equal respect to all religions or protecting all religions equally.

Moreover, the Constitution has also abolished the old system of communal representation<sup>13</sup>, that is, reservation of seats in the legislatures on the basis of religion. However, it provides for the temporary reservation of seats for the scheduled castes and scheduled tribes to ensure adequate representation to them.

## **12. Universal Adult Franchise**

The Indian Constitution adopts universal adult franchise as a basis of elections to the Lok Sabha and the state legislative assemblies. Every citizen who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth, and so on. The voting age was reduced to 18 years from 21 years in 1989 by the 61st Constitutional Amendment Act of 1988.

The introduction of universal adult franchise by the Constitution-makers was a bold experiment and highly remarkable in view of the vast size of the country, its huge population, high poverty, social inequality and overwhelming illiteracy.<sup>14</sup>

Universal adult franchise makes democracy broad-based, enhances the self-respect and prestige of the common people, upholds the principle of equality, enables minorities to protect their interests and opens up new hopes and vistas for weaker sections.

## **13. Single Citizenship**

Though the Indian Constitution is federal and envisages a dual polity (Centre and states), it provides for only a single citizenship, that is, the Indian citizenship.

In countries like USA, on the other hand, each person is not only a citizen of USA but also a citizen of the particular state to which he belongs. Thus, he owes allegiance to both and enjoys dual sets of rights—one conferred by the National government and another by the state government.

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them excepting in few cases like tribal areas, Jammu and Kashmir, and so on.

Despite the constitutional provision for a single citizenship and uniform rights for all the people, India has been witnessing the communal riots, class conflicts, caste wars, linguistic clashes and ethnic disputes. This means that the cherished goal of the Constitution-makers to build an united and integrated Indian nation has not been fully realised.

## **14. Independent Bodies**

The Indian Constitution not only provides for the legislative, executive and judicial organs of the government (Central and state) but also establishes certain independent bodies. They are envisaged by the Constitution as the bulwarks of the democratic system of Government in India. These are:

- (a) Election Commission to ensure free and fair elections to the Parliament, the state legislatures, the office of President of India and the office of Vice-president of India.
- (b) Comptroller and Auditor-General of India to audit the accounts of the Central and state governments. He acts as the guardian of public purse and comments on the legality and propriety of government expenditure.
- (c) Union Public Service Commission to conduct examinations for recruitment to all-India services<sup>15</sup> and higher Central services and to advise the President on disciplinary matters.
- (d) State Public Service Commission in every state to conduct examinations for recruitment to state services and to advise the governor on disciplinary matters.

The Constitution ensures the independence of these bodies through various provisions like security of tenure, fixed service conditions, expenses being charged on the Consolidated Fund of India, and so on.

## 15. Emergency Provisions

The Indian Constitution contains elaborate emergency provisions to enable the President to meet any extraordinary situation effectively. The rationality behind the incorporation of these provisions is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

The Constitution envisages three types of emergencies, namely:

- (a) National emergency on the ground of war or external aggression or armed rebellion<sup>16</sup> (Article 352);
- (b) State emergency (President's Rule) on the ground of failure of Constitutional machinery in the states (Article 356) or failure to comply with the directions of the Centre (Article 365); and
- (c) Financial emergency on the ground of threat to the financial stability or credit of India (Article 360).

During an emergency, the Central Government becomes all-powerful and the states go into the total control of the centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation of the political system from federal (during normal times) to unitary (during emergency) is a unique feature of the Indian Constitution.

## 16. Three-tier Government

Originally, the Indian Constitution, like any other federal constitution, provided for a dual polity and contained provisions with regard to the organisation and powers of the Centre and the states. Later, the 73rd and 74th Constitutional Amendment Acts (1992) have added a third-tier of government (i.e., local) which is not found in any other Constitution of the world.

The 73rd Amendment Act of 1992 gave constitutional recognition to the panchayats (rural local governments) by adding a new Part IX<sup>17</sup> and a new Schedule 11 to the Constitution. Similarly, the 74th Amendment Act of 1992 gave constitutional recognition to the municipalities (urban local governments) by adding a new Part IX-A<sup>18</sup> and a new Schedule 12 to the

Constitution.

**Table 3.1** *The Constitution of India at a Glance*

<i>Parts</i>	<i>Subject Matter</i>	<i>Articles Covered</i>
I	The Union and its territory	1 to 4
II	Citizenship	5 to 11
III	Fundamental Rights	12 to 35
IV	Directive Principles of State Policy	36 to 51
IV-A	Fundamental Duties	51-A
V	The Union Government	52 to 151
	Chapter I – The Executive	52 to 78
	Chapter II – Parliament	79 to 122
	Chapter III – Legislative Powers of President	123
	Chapter IV – The Union Judiciary	124 to 147
	Chapter V – Comptroller and Auditor-General of India	148 to 151
VI	The State Governments	152 to 237
	Chapter I – General	152
	Chapter II – The Executive	153 to 167
	Chapter III – The State Legislature	168 to 212
	Chapter IV – Legislative Powers of Governor	213
	Chapter V – The High Courts	214 to 232
	Chapter VI – Subordinate Courts	233 to 237
		238

VII	The States in Part B of the First Schedule (deleted)	(deleted)
VIII	The Union Territories	239 to 242
IX	The Panchayats	243 to 243-0
IX-A	The Municipalities	243-P to 243-ZG
IX-B	The Co-operative Societies	243-ZH to 243-ZT
X	The Scheduled and Tribal Areas	244 to 244-A
XI	Relations between the Union and the States	245 to 263
	Chapter I – Legislative Relations	245 to 255
	Chapter II – Administrative Relations	256 to 263
XII	Finance, Property, Contracts and Suits	264 to 300-A
	Chapter I – Finance	264 to 291
	Chapter II – Borrowing	292 to 293
	Chapter III – Property, Contracts, Rights, Liabilities, Obligations and Suits	294 to 300
	Chapter IV – Right to Property	300-A
XIII	Trade, Commerce and Intercourse within the Territory of India	301 to 307
XIV	Services under the Union and the States	308 to 323
	Chapter I – Services	308 to 314
	Chapter II – Public Service Commissions	315 to 323
		323-A to

XIV-A	Tribunals	323-B
XV	Elections	324 to 329-A
XVI	Special Provisions relating to Certain Classes	330 to 342
XVII	Official Language	343 to 351
	Chapter I – Language of the Union	343 to 344
	Chapter II – Regional Languages	345 to 347
	Chapter III—Language of the Supreme Court, High Courts, and so on	348 to 349
	Chapter IV—Special Directives	350 to 351
XVIII	Emergency Provisions	352 to 360
XIX	Miscellaneous	361 to 367
XX	Amendment of the Constitution	368
XXI	Temporary, Transitional and Special Provisions	369 to 392
XXII	Short title, Commencement, Authoritative Text in Hindi and Repeals	393 to 395

**Note:** Part VII (dealing with Part-B states) was deleted by the 7<sup>th</sup> Amendment Act (1956). On the other hand, both Part IV-A and Part XIV-A were added by the 42<sup>nd</sup> Amendment Act (1976), while Part IX-A was added by the 74<sup>th</sup> Amendment Act (1992), and Part IX-B was added by the 97<sup>th</sup> Amendment Act (2011).

**Table 3.2** *Important Articles of the Constitution at a Glance*

<i>Articles</i>	<i>Deals with</i>
<b>1</b>	Name and territory of the Union
<b>3</b>	Formation of new states and alteration of areas, boundaries or names of existing states

<b>13</b>	Laws inconsistent with or in derogation of the fundamental rights
<b>14</b>	Equality before law
<b>16</b>	Equality of opportunity in matters of public employment
<b>17</b>	Abolition of untouchability
<b>19</b>	Protection of certain rights regarding freedom of speech, etc.
<b>21</b>	Protection of life and personal liberty
<b>21A</b>	Right to elementary education
<b>25</b>	Freedom of conscience and free profession, practice and propagation of religion
<b>30</b>	Right of minorities to establish and administer educational institutions
<b>31C</b>	Saving of laws giving effect to certain directive principles
<b>32</b>	Remedies for enforcement of fundamental rights including writs
<b>38</b>	State to secure a social order for the promotion of welfare of the people
<b>40</b>	Organisation of village panchayats
<b>44</b>	Uniform civil code for the citizens
<b>45</b>	Provision for early childhood care and education to children below the age of 6 years.
<b>46</b>	Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections
<b>50</b>	Separation of judiciary from executive
<b>51</b>	Promotion of international peace and security
<b>51A</b>	Fundamental duties
<b>72</b>	Power of president to grant pardons, etc., and to suspend, remit or commute sentences in certain cases



<b>74</b>	Council of ministers to aid and advise the president
<b>78</b>	Duties of prime minister as respects the furnishing of information to the president, etc.
<b>110</b>	Definition of Money Bills
<b>112</b>	Annual financial statement (Budget)
<b>123</b>	Power of president to promulgate ordinances during recess of Parliament
<b>143</b>	Power of president to consult Supreme Court
<b>155</b>	Appointment of governor
<b>161</b>	Power of governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases
<b>163</b>	Council of ministers to aid and advise the governor
<b>167</b>	Duties of chief minister with regard to the furnishing of information to governor, etc.
<b>169</b>	Abolition or creation of legislative councils in states
<b>200</b>	Assent to bills by governor (including reservation for President)
<b>213</b>	Power of governor to promulgate ordinances during recess of the state legislature
<b>226</b>	Power of high courts to issue certain writs
<b>239AA</b>	Special provisions with respect to Delhi
<b>249</b>	Power of Parliament to legislate with respect to a matter in the State List in the national interest
<b>262</b>	Adjudication of disputes relating to waters of inter-state rivers or river valleys
<b>263</b>	Provisions with respect to an inter-state council
<b>265</b>	Taxes not to be imposed save by authority of law

<b>275</b>	Grants from the Union to certain states
<b>280</b>	Finance Commission
<b>300</b>	Suits and proceedings
<b>300A</b>	Persons not to be deprived of property save by authority of law (Right to property)
<b>311</b>	Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a state.
<b>312</b>	All-India Services
<b>315</b>	Public service commissions for the Union and for the states
<b>320</b>	Functions of Public service commissions
<b>323-A</b>	Administrative tribunals
<b>324</b>	Superintendence, direction and control of elections to be vested in an Election Commission
<b>330</b>	Reservation of seats for scheduled castes and scheduled tribes in the House of the People
<b>335</b>	Claims of scheduled castes and scheduled tribes to services and posts
<b>352</b>	Proclamation of Emergency (National Emergency)
<b>356</b>	Provisions in case of failure of constitutional machinery in states (President's Rule)
<b>360</b>	Provisions as to financial emergency.
<b>365</b>	Effect of failure to comply with, or to give effect to, directions given by the Union (President's Rule)
<b>368</b>	Power of Parliament to amend the Constitution and procedure therefor
<b>370</b>	Temporary provisions with respect to the state of Jammu and

**Table 3.3** *Schedules of the Constitution at a Glance*

<b>Numbers</b>	<b>Subject Matter</b>	<b>Articles Covered</b>
<b>First Schedule</b>	1. Names of the States and their territorial jurisdiction.	1 and 4
	2. Names of the Union Territories and their extent.	
<b>Second Schedule</b>	Provisions relating to the emoluments, allowances, privileges and so on of:	59, 65, 75, 97, 125, 148, 158, 164, 186 & 221
	1. The President of India	
	2. The Governors of States	
	3. The Speaker and the Deputy Speaker of the Lok Sabha	
	4. The Chairman and the Deputy Chairman of the Rajya Sabha	
	5. The Speaker and the Deputy Speaker of the Legislative Assembly in the states	
	6. The Chairman and the Deputy Chairman of the Legislative Council in the states	
	7. The Judges of the Supreme Court	
	8. The Judges of the High Courts	

9. The Comptroller and Auditor-General of India		
<b>Third Schedule</b>	Forms of Oaths or Affirmations for:	75, 84, 99, 124, 146, 173, 188 and 219
	1. The Union ministers	
	2. The candidates for election to the Parliament	
	3. The members of Parliament	
	4. The judges of the Supreme Court	
	5. The Comptroller and Auditor-General of India	
	6. The state ministers	
	7. The candidates for election to the state legislature	
	8. The members of the state legislature	
	9. The judges of the High Courts	
<b>Fourth Schedule</b>	Allocation of seats in the Rajya Sabha to the states and the union territories.	4 and 80
<b>Fifth Schedule</b>	Provisions relating to the administration and control of scheduled areas and scheduled tribes.	244
<b>Sixth Schedule</b>	Provisions relating to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.	244 and 275
<b>Seventh Schedule</b>	Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List). Presently, the Union List contains 100 subjects (originally 97), the state list contains 61 subjects (originally 66) and the concurrent list contains 52 subjects (originally 47).	246

<b>Eighth Schedule</b>	Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages. They are: Assamese, Bengali, Bodo, Dogri (Dongri), Gujarati, Hindi, Kannada, Kashmiri, Konkani, Mathili (Maithili), Malayalam, Manipuri, Marathi, Nepali, Odia, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu and Urdu. Sindhi was added by the 21 <sup>st</sup> Amendment Act of 1967; Konkani, Manipuri and Nepali were added by the 71 <sup>st</sup> Amendment Act of 1992; and Bodo, Dongri, Maithili and Santhali were added by the 92 <sup>nd</sup> Amendment Act of 2003. Oriya was renamed as 'Odia' by the 96 <sup>th</sup> Amendment Act of 2011.	344 and 351
<b>Ninth Schedule</b>	Acts and Regulations (originally 13 but presently 282) <sup>19</sup> of the state legislatures dealing with land reforms and abolition of the zamindari system and of the Parliament dealing with other matters. This schedule was added by the 1 <sup>st</sup> Amendment (1951) to protect the laws included in it from judicial scrutiny on the ground of violation of fundamental rights. However, in 2007, the Supreme Court ruled that the laws included in this schedule after April 24, 1973, are now open to judicial review.	31-B
<b>Tenth Schedule</b>	Provisions relating to disqualification of the members of Parliament and State Legislatures on the ground of defection. This schedule was added by the 52 <sup>nd</sup> Amendment Act of 1985, also known as Anti-defection Law.	102 and 191
<b>Eleventh Schedule</b>	Specifies the powers, authority and responsibilities of Panchayats. It has 29 matters. This schedule was added by the 73 <sup>rd</sup> Amendment Act of 1992.	243-G
	Specifies the powers, authority and responsibilities of	

<b>Twelfth Schedule</b>	Municipalities. It has 18 matters. This schedule was added by the 74 <sup>th</sup> Amendment Act of 1992.	243-W
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**Table 3.4** *Sources of the Constitution at a Glance*

	<b><i>Sources</i></b>	<b><i>Features Borrowed</i></b>
1.	Government of India Act of 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
2.	British Constitution	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
3.	US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.
4.	Irish Constitution	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
5.	Canadian Constitution	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
6.	Australian Constitution	Concurrent List, freedom of trade, commerce and intercourse, and joint sitting of the two Houses of Parliament.
7.	Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency.
	Soviet Constitution	Fundamental duties and the ideal of justice (social,

8.	(USSR, now Russia)	economic and political) in the Preamble.
9.	French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
10.	South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha.
11.	Japanese Constitution	Procedure established by Law.

## 17. Co-operative Societies

The 97<sup>th</sup> Constitutional Amendment Act of 2011 gave a constitutional status and protection to co-operative societies. In this context, it made the following three changes in the Constitution:

1. It made the right to form co-operative societies a fundamental right (Article 19).
2. It included a new Directive Principle of State Policy on promotion of co-operative societies (Article 43-B).
3. It added a new Part IX-B in the Constitution which is entitled as “The Co-operative Societies” (Articles 243-ZH to 243-ZT).

The new Part IX-B contains various provisions to ensure that the co-operative societies in the country function in a democratic, professional, autonomous and economically sound manner. It empowers the Parliament in respect of multi-state cooperative societies and the state legislatures in respect of other co-operative societies to make the appropriate law.

## CRITICISM OF THE CONSTITUTION

The Constitution of India as framed and adopted by the Constituent Assembly of India has been criticized on the following grounds:

### 1. *A Borrowed Constitution*



The critics opined that the Indian Constitution contains nothing new and original. They described it as a ‘borrowed constitution’ or a ‘bag of borrowings’ or a ‘hotch-potch constitution’ or a ‘patchwork’ of several documents of the world constitutions. However, this criticism is unfair and illogical. This is because, the framers of the constitution made necessary modifications in the features borrowed from other constitutions for their suitability to the Indian conditions, at the same time avoiding their faults.

While answering the above criticism in the Constituent Assembly, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee, said : “One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their constitutions to writing. What the scope of a constitution should be has long been settled. Similarly, what are the fundamentals of a constitution are recognized all over the world. Given these facts, all constitutions in their main provisions must look similar. The only new things, if there can be any, in a constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the constitutions of other countries is based, I am sure, on an inadequate study of the Constitution”.<sup>20</sup>

## ***2. A Carbon Copy of the 1935 Act***

The critics said that the framers of the constitution have included a large number of the provisions of the Government of India Act of 1935 into the Constitution of India. Hence, they called the constitution as a “Carbon Copy of the 1935 Act” or an “amended version of the 1935 Act”. For example, N. Srinivasan observed that the Indian Constitution is “both in language and substance a close copy of the Act of 1935”. Similarly, Sir Ivor Jennings, a British Constitutionalist, said that “the constitution derives directly from the Government of India Act of 1935 from which, in fact, many of its provisions are copied almost textually”.

Further, P.R. Deshmukh, a member of the Constituent Assembly, commented that “the constitution is essentially the Government of India Act

of 1935 with only adult franchise added”.

The same Dr. B.R. Ambedkar answered the above criticism in the Constituent Assembly in the following way : “As to the accusation that the Draft Constitution has reproduced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration”.<sup>21</sup>

### ***3. Un-Indian or Anti-Indian***

According to the critics, the Indian Constitution is ‘un-Indian’ or ‘anti-Indian’ because it does not reflect the political traditions and the spirit of India. They said that the foreign nature of the Constitution makes it unsuitable to the Indian situation or unworkable in India. In this context, K. Hanumanthaiya, a member of the Constituent Assembly, commented : “We wanted the music of Veena or Sitar, but here we have the music of an English band. That was because our constitution-makers were educated that way”.<sup>22</sup> Similarly, Lokanath Misra, another member of the Constituent Assembly, criticized the constitution as a “slavish imitation of the west, much more – a slavish surrender to the west”.<sup>23</sup> Further, Lakshminarayan Sahu, also a member of the Constituent Assembly, observed : “The ideals on which this draft constitution is framed have no manifest relation to the fundamental spirit of India. This constitution would not prove suitable and would break down soon after being brought into operation”.<sup>24</sup>

### ***4. An Un-Gandhian Constitution***

According to the critics, the Indian Constitution is Un-Gandhian because it does not contain the philosophy and ideals of Mahatma Gandhi, the father of the Indian Nation. They opined that the Constitution should have been raised and built upon village panchayats and district panchayats. In this context, the same member of the Constituent Assembly, K. Hanumanthaiya, said: “That is exactly the kind of Constitution Mahatma Gandhi did not want and did not envisage”.<sup>25</sup> T. Prakasam, another member of the Constituent Assembly,

attributed this lapse to Ambedkar's non-participation in the Gandhian movement and the antagonism towards Gandhian ideas.<sup>26</sup>

## ***5. Elephantine Size***

The critics stated that the Indian Constitution is too bulky and too detailed and contains some unnecessary elements. Sir Ivor Jennings, a British Constitutionalist, observed that the provisions borrowed were not always well-selected and that the constitution, generally speaking, was too long and complicated.<sup>27</sup>

In this context, H.V. Kamath, a member of the Constituent Assembly, commented : “The emblem and the crest that we have selected for our assembly is an elephant. It is perhaps in consonance with that our constitution too is the bulkiest that the world has produced”.<sup>28</sup> He also said : “I am sure, the House does not agree that we should make the Constitution an elephantine one”.<sup>29</sup>

## **6. Paradise of the Lawyers**

According to the critics, the Indian Constitution is too legalistic and very complicated. They opined that the legal language and phraseology adopted in the constitution makes it a complex document. The same Sir Ivor Jennings called it a “lawyer's paradise”.

In this context, H.K. Maheswari, a member of the Constituent Assembly, observed : “The draft tends to make people more litigious, more inclined to go to law courts, less truthful and less likely to follow the methods of truth and non-violence. If I may say so, the Draft is really a lawyer's paradise. It opens up vast avenues of litigation and will give our able and ingenious lawyers plenty of work to do”.<sup>30</sup>

Similarly, P.R. Deshmukh, another member of the Constituent Assembly, said : “I should, however, like to say that the draft of the articles that have been brought before the House by Dr. Ambedkar seems to my mind to be far too ponderous like the ponderous tomes of a law manual. A document dealing with a constitution hardly uses so much of padding and so much of verbiage. Perhaps it is difficult for them to compose a document which

should be, to my mind, not a law manual but a socio-political document, a vibrating, pulsating and life-giving document. But to our misfortune, that was not to be, and we have been burdened with so much of words, words and words which could have been very easily eliminated.<sup>31</sup>

## NOTES AND REFERENCES

1. *Kesavananda Bharati v. State of Kerala*, (1973)
2. For details on Parts, important Articles and Schedules, see Tables 3.1, 3.2 and 3.3 at the end of this chapter.
3. The American Constitution originally consisted of only 7 Articles, the Australian 128, the Chinese 138, and the Canadian 147.
4. The State of Jammu and Kashmir has its own Constitution and thus, enjoys a special status by virtue of Article 370 of the Constitution of India.
5. About 250 provisions of the 1935 Act have been included in the Constitution.
6. *Constituent Assembly Debates*, Volume VII, P. 35–38.
7. P M Bakshi, *The Constitution of India*, Universal, Fifth Edition, 2002, P. 4.
8. See Table 3.4 at the end of this chapter.
9. Brij Kishore Sharma, Introduction to the Constitution of India, Seventh Edition, 2015, PHI Learning Private Limited, P.42.
10. Westminster is a place in London where the British Parliament is located. It is often used as a symbol/synonym of the British Parliament.
11. Originally, the Constitution provided for seven Fundamental Rights. However, the Right to Property (Article 31) was deleted from the list of Fundamental Rights by the 44th Amendment Act of 1978. It is made a legal right under Article 300-A in Part XII of the constitution.
12. *Minerva Mills v. Union of India*, (1980).
13. The 1909, 1919, and 1935 Acts provided for communal representation.
14. Even in the western countries, the right to vote was extended only gradually. For example, USA gave franchise to women in 1920, Britain in 1928, USSR (now Russia) in 1936, France in 1945, Italy in 1948 and Switzerland in 1971.
15. At present, there are three All-India services, namely Indian

Administrative Service (IAS), Indian Police Service (IPS) and Indian Forest Service (IFS). In 1947, Indian Civil Service (ICS) was replaced by IAS and the Indian Police (IP) was replaced by IPS and were recognised by the Constitution as All-India Services. In 1963, IFS was created and it came into existence in 1966.

16. The 44th Amendment Act (1978) has replaced the original term 'internal disturbance' by the new term 'armed rebellion'.
17. Part IX of the Constitution provides for a three-tier system of panchayati raj in every state, that is, panchayats at the village, intermediate and district levels.
18. Part IX-A of the Constitution provides for three types of municipalities in every state, that is, nagar panchayat for a transitional area, municipal council for a smaller urban area and municipal corporation for a larger urban area.
19. Though the last entry is numbered 284, the actual total number is 282. This is because, three entries (87,92 and 130) have been deleted and one entry is numbered as 257-A.
20. Constituent Assembly Debates, Volume VII, pp.35-38.
21. *Ibid.*
22. Constituent Assembly Debates, Volume XI, P.616.
23. Constituent Assembly Debates, Volume VII, P.242.
24. Constituent Assembly Debates, Volume XI, P.613.
25. Constituent Assembly Debates, Volume XI, P.617.
26. Constituent Assembly Debates, Volume VII, P.387.
27. Ivor Jennings, Some Characteristics of the Indian Constitution, Oxford University Press, Madras, 1953, PP.9-16.
28. Constituent Assembly Debates, Volume VII, P.1042.
29. Constituent Assembly Debates, Volume VIII, P.127.
30. Constituent Assembly Debates, Volume VII, P.293.
31. Constituent Assembly Debates, Volume IX, P.613.