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Constitution –I

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Introduction

The fundamental law of the land in India is Constitution which prescribes the institution of the state and the government. It also prescribes powers and responsibilities of the various instrumentalities of the state. It imposes limitations upon the state and regulates the relations between the state and its population. It also embodies, and even strives to construct, a common national, political and constitutional identity for the people it covers.

The framing of the Indian Constitution

The Indian Independence Act, 1947 made the Constituent Assembly, already elected in 1946, a sovereign body free from all limitations. In its first meeting, after the election of its interim President and settling basic rules for the transaction of business, on 13th December 1946, the following objective resolution was moved for the Constitution:

- 1) To proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
- 2) Wherein the said territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
- 3) Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess

and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting there from; and

- 4) Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
- 5) Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and political morality; and
- 6) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
- 7) Whereby shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilized nations; and
- 8) This ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

Later the Resolution besides getting reflected in the entire Constitution acquired special prominence in its Preamble after going through the process of the rest of the provisions of the Constitution.

For the efficient and effective conduct of its business the Assembly appointed several committees, out of which Drafting Committee chaired by Dr. Ambedkar undertook the task of drafting the Constitution and steering it through the Assembly for its adoption on 26th November 1949. A few of the provisions of the Constitution came into effect on that day, while the rest of the Constitution came to effect on 26th January 1950 which is also specified as the day of commencement of the Constitution.

Salient Features of the Constitution of India

Introduction

The Constitution of India is a unique constitution. It is the largest written liberal democratic constitution of the world. It provides for a mixture of federalism and Unitarianism, and flexibility and with rigidity. Since its inauguration on 26th January 1950, the Constitution India has been successfully guiding the path and progress of India.

The salient features of the Constitution of India can be discussed as follows:

Written and Detailed Constitution:

The Constitution is a wholly written document which incorporates the constitutional law of India. It was fully debated and duly enacted by the Constitution Assembly of India. It took the Assembly 2 years, 11 months and 18 days to write and enact the Constitution.

Indian Constitution is a very detailed constitution. It consists of 395 Articles divided into 22 Parts with 12 Schedules and 94 constitutional amendments. It is a constitution of both the Centre and states of Indian Union It are indeed much bigger than the US Constitution which has only 7 Articles and the French Constitution with its 89 Articles.

Self-made and Enacted Constitution:

Indian Constitution is a constitution made by the people of India acting through their duly elected and representative body—the Constituent Assembly that was organised in December 1946. Its first session was held on 9th December, 1946. It passed the Objectives Resolution on 22 January, 1947.

Thereafter, it initiated the process of constitution-making in the right earnest and was in a position to finally pass and adopt the constitution on 26th November, 1949. The constitution became fully operational with effect from 26th January 1950. We celebrate this day as our Republic Day. The Constitution of India is thus a self-made and duly enacted constitution.

Preamble of the Constitution:

The Preamble to the Constitution of India is a well drafted document which states the philosophy of the constitution. It declares India to be a Sovereign Socialist Secular Democratic Republic and a welfare state committed to secure justice, liberty and equality for the people and for promoting fraternity, dignity the individual, and unity and integrity of the nation. The Preamble is the key to the constitution. It states in nutshell the nature of Indian state and the objectives it is committed to secure for the people.

The Preamble does not grant any power but it gives a direction and purpose to the Constitution. It outlines the objectives of the whole Constitution. The Preamble contains the fundamentals of the Constitution. It serves several important purposes, as for example:

- (1) It contains the enacting clause which brings the Constitution into force.
- (2) It declares the great rights and freedoms which the people of India intended to secure to all its citizens.
- (3) It declares the basic type of government and polity which is sought to be established in the country.
- (4) It throws light on the source of the Constitution, viz, The People of India.

Ordinarily, Preamble is not regarded as a part of the statute, and, therefore, at one time, it was thought that The Preamble does not form part of the Constitution (*In re Berubari Union and Exchange of Enclaves*, AIR 1960 SC 845 (1960) 3 SCR 250). But that view is no longer extant. The majority of the Judges constituting the Bench in *Kesavananda* have laid down that the Preamble does form part of the Constitution. These Judges have bestowed great respect on the Preamble to the Constitution. For example, SIKRI, C.J., has observed in *Kesavananda Bharati v. Union of India* AIR 1973 SC 1461 at 1506 (1973) 4 SCC 225.

India is a Democratic Socialist State:

Although, right from the beginning the Indian Constitution fully reflected the spirit of democratic socialism, it was only in 1976 that the Preamble was amended to include the term 'Socialism'. It is now regarded as a prime feature of Indian state. India is committed to secure social, economic and political justice for its entire people by ending all forms of exploitation and by securing equitable distribution of income, resources and wealth. This is to be secured by peaceful, constitutional and democratic means.

India is a Secular State:

India gives special status to no religion. There is no such thing as a state religion of India. This makes it different from theocratic states like the Islamic Republic of Pakistan or other Islamic countries. Further, Indian secularism guarantees equal freedom to all religions. The Constitution grants the Right to Religious Freedom to all the citizens.

India is a Democratic State:

The Constitution of India provides for a democratic system. The authority of the government rests upon the sovereignty of the people. The people enjoy equal political rights. On the basis of these rights, the people freely participate in the process of politics. They elect their government.

Free fair and regular elections are held for electing governments. For all its activities, the government of India is responsible before the people. The people can change their government through elections. No government can remain in power which does not enjoy the confidence of the people. India is world's largest working democracy.

India is a Republic:

The Preamble declares India to be a Republic. India is not ruled by a monarch or a nominated head of state. India has an elected head of state (President of India) who wields power for a fixed term of 5 years. After every 5 years, the people of India indirectly elect their President.

India is a Union of States:

Article I of the Constitution declares, that “India that is Bharat is a Union of States.” The term ‘Union of State’ shows two important facts:

(i) That Indian Union is not the result of voluntary agreement among sovereign states, and

(ii) that states of India do not enjoy the right to secede from the Union. Indian Union has now 28 States and 7 Union Territories.

Mixture of Federalism and Unitarianism:

While describing India as a Union of States, the Constitution provides for a federal structure with a unitary spirit. Scholars describe India as a 'Quasi-Federation' (K.C. Wheare) or as 'a federation with a unitary bias, or even as 'a Unitarian federation.'

Like a federation, the Constitution of India provides for:

- (i) A division of powers between the centre and states,
- (ii) A written, rigid and supreme constitution,
- (iii) Independent judiciary with the power to decide centre-state disputes and
- (iv) Dual administration i.e. central and state administrations. However, by providing a very strong centre, a common constitution, single citizenship, emergency provisions, and common election commission, common all India services etc. the Constitution clearly reflects its unitary spirit.

India is a federation with some Unitarian features. This mixture of federalism-Unitarianism has been done keeping in view both the pluralistic nature of society and the presence of regional diversities, as well as due to the need for securing unity and integrity of the nation.

Mixture of Rigidity and Flexibility:

The Constitution of India is rigid in parts. Some of its provisions can be amended in a difficult way while others can be amended very easily. In some cases, the Union Parliament can amend some parts of the Constitution by passing a simple law.

Article 368, of the Constitution provides for two special methods of amendment:

(i) Most of the provisions of the Constitution can be amended by the Union Parliament by passing an Amendment Bill by a majority of total membership and 2/3rd majority of members present and voting in each of its two Houses.

(ii) For the amendment of some specified parts, a very rigid method has been provided. Under it, first the Union Parliament passes the Amendment Bill by a majority of total membership and 2/3rd majority of members present and voting in each house , and then it goes to the State Legislatures for ratification. The Amendment gets passed only when it is approved by not less than one half of the several states of the Union.

Thus the Constitution of India is partly rigid and partly flexible.

Fundamental Rights:

Under its Part III (Articles 12-35), the Constitution of India grants and guarantees Fundamental Rights to its citizens. It is called the Indian Bill of Rights. Initially, 7 Fundamental Rights were granted but after the deletion of the Right to Property from the list of Fundamental Rights (44th Amendment Act 1979) their number came down to six.

The Six Fundamental Rights are:

(i) Right to Equality:

It provides for Equality before Law, End of Discrimination, Equality of Opportunity, and Abolition of untouchability and Abolition of Titles.

(ii) Right to Freedom:

It incorporates six fundamental freedoms -freedoms of speech and expression, freedom to form associations, freedom to assemble peaceably without arms, freedom to move freely in India, freedom of residence in any part, and freedom of adopting any profession or trade or occupation. It ensures personal freedom and protection in respect of conviction for certain offences.

The Constitution lays down that the freedom of life and liberty cannot be limited or denied except in accordance with the procedure established by law. Now under Art 21A Right to Education for the children between the ages of 6-14 years has been granted. Art. 22 guarantees protection against arbitrary arrest and detention.

(iii) Right against Exploitation:

This Fundamental Right prohibits sale and purchase of human beings, forced labour (begaar) and employment of children in hazardous jobs and factories.

(iv) Right to Freedom of Religion:

The grant of this right involves the freedom of conscience, religion and worship. Any person can follow any religion. It gives to all religions freedom to establish and maintain their religious institutions. No person can be compelled to pay any tax for the propagation of any religion. The state cannot levy a tax for any religion and constitution prohibits the imparting of religious instructions in schools and colleges.

(v) Cultural and Educational Rights:

Under this category the Constitution guarantees the rights of the minorities to maintain and develop their languages and cultures. It also confers upon them the right to establish, maintain and administer their educational institutions.

(vi) Right to Constitutional Remedies (Art. 32):

This fundamental right is the soul of the entire Bill of Rights. It provides for the enforcement and protection of Fundamental Rights by the courts. It empowers the Supreme Court and High Courts to issue writs for the enforcement of these rights.

National Human Rights Commission (NHRC) and State Human Rights Commission and Protection of Human Rights:

With a view to protect the human rights of all the people the Protection of Human Rights Act, 1993 was passed by the Union Parliament. Under it the National Human Rights Commission was established. It is headed by a former Chief Justice of India. It acts as an independent commission with a status of a civil court. It works for preventing the violations of human rights of the people.

Its cases of proved violations of human rights, the NHRC can order the grant of compensation to the victims. Several State, Human Rights Commission are also working for the protection of Human Rights. India is fully committed to protect the human rights of all the people of the world.

Fundamental Duties of the Citizens:

In its Part IVA (Article 51 A) the Constitution describes the following Fundamental Duties of a citizen:

1. Respect for the Constitution, the national flag and the national anthem;
2. Cherish the noble ideals of the freedom struggle;
3. Uphold and protect the sovereignty, unity and integrity of India;
4. Defend the country and render national service when called;
5. Promote the common brotherhood of all the people of India and renounce any practice derogatory to the dignity of women;
6. Preserve the rich heritage of the nation's composite culture;
7. Project the natural environment and have compassion for living creatures;
8. Develop scientific temper, humanism and spirit of inquiry and reform;
9. Safeguard public property and abjure violence; and
10. Strive for excellence in all individual and collective activity.
11. Duty of the parents to send their children to schools for getting education.

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

Directive Principles of State Policy:

Part IV of the Constitution dealing with the 'Directive Principles of State Policy' provides one of the most striking features of the Indian Constitution. The Directive Principles are instructions to the state for securing socio-

economic developmental objectives through its policies. These are to be implemented by both the Union for the States.

For example, Directive Principles direct the state to ensure for the people adequate means of livelihood, fairer distribution of wealth, equal pay for equal work, protection of children, women, labour and youth, old age pension, social security, local self-government, protection of the interests of the weaker sections of society; promotion of cottage industries, rural development, international 'peace friendship and co-operation with other states etc. The aim of Part IV is to secure and strengthen socio-economic democracy in India.

Bi-Cameral Union Parliament:

The Constitution provides for a Bicameral Legislature at the Union level and names it as the Union Parliament. Its two Houses are: The Lok Sabha and the Rajya Sabha. The Lok Sabha is the lower, popular, directly elected house of the Parliament. It represents the people of India.

Its maximum strength stands fixed at 550. Presently Lok Sabha has 545 members. The people of each state elect representatives in proportion to their population. Orissa has 21 seats out of which some seats are reserved for the people belonging to SCs and STs.

Members of the Lok Sabha are directly elected by the people of India. All men and women of 18 years or above of age whose names are registered in the voters lists vote in elections for electing the members of Lok Sabha .Every voter of 25 years or above of age is eligible to contest elections to

the Lok Sabha. The tenure of the Lok Sabha is 5 years. But the President acting under the advice of Prime Minister can dissolve it earlier also.

The Rajya Sabha is the upper and, indirectly elected second House of Parliament. It represents the states of the Indian union. Its maximum membership can be 250. Presently, the Rajya Sabha has 245 members. Out of these 233 members are elected by all the State Legislative Assemblies and 12 are nominated by the President from amongst eminent persons from the fields of Art, Science and Literature. Rajya Sabha is a quasi-permanent house. Its 1/3rd members retire after every two years. Each member has a tenure of six years. Orissa has 10 seats in the Rajya Sabha.

Of the two houses, of Parliament, the Lok Sabha is a more powerful House. It alone has financial powers. The Union Council of Ministers is collectively responsible before the Lok Sabha. However, the Rajya Sabha is neither as powerless as the British House of Lords and nor the Lok Sabha is as powerful as the British House of Commons.

Parliamentary System:

The Constitution of India provides for a parliamentary system of government at the Centre as well as in every state of the Union. The President of India is the constitutional head of state with nominal powers. The Union Council of Ministers headed by the Prime Minister is the real executive. Ministers are essentially the members of the Union Parliament.

For all its policies and decisions the Council of Ministers is collectively responsible before the Lok Sabha. The Lok Sabha can remove the Ministry

by passing a vote of no-confidence. The Cabinet, in fact the Prime Minister has the power to get the Lok Sabha dissolved by the President. On similar lines a parliamentary government is also at work in each state.

Adult-Suffrage:

Another feature of the Constitution is that it provides for universal adult suffrage. All men and women enjoy an equal right to vote. Each adult man and woman above the age of 18 years has the right to vote. All registered voters get the opportunity to vote in elections.

Single integrated State with Single Citizenship:

India is the single Independent and Sovereign integrated state. Presently it has 28 states and 7 Union Territories. All citizens enjoy a common uniform citizenship. They are entitled to equal rights and freedoms, and equal protection of the state.”

Single Integrated Judiciary:

The Constitution provides for a single integrated judicial system common for the Union and the states. The Supreme Court of India works at the apex level, High Courts at the state level and other courts work under the High Courts.

There are 21 State High Courts working in all parts of India. Orissa High Court has been in existence since 1948 and it is located at Cuttack. The Supreme Court is the highest court of the land. It controls and runs the judicial administration of India.

Independence of Judiciary:

The Indian Constitution makes judiciary truly independent. It is clear from the following facts:

(a) Judges are appointed by the President,

(b) Only persons with high legal qualifications and experience are appointed as judges,

(c) Judges of the Supreme Court cannot be removed from office except through an extremely difficult process of implement.

(d) The salaries of the judges are very high,

(e) The Supreme Court has its own staff. Indian judiciary has an autonomous organisation and status. It works as an independent and powerful judiciary.

Judicial Review:

The Constitution is the supreme law of the land. The Supreme Court acts as the guardian protector and interpreter of the Constitution. It is also the guardian of the Fundamental Rights of the people. For this purpose it exercises the power of judicial review. By it, the Supreme Court determines the constitutional validity of all laws made by the legislatures. It can reject any law which is found to be unconstitutional.

Judicial Activism:

Currently, Indian judiciary has been becoming more and more active towards the performance of its social obligations. Through Public Interest Litigation system (PIL) as well as through a more active exercise of its powers, the Indian judiciary has been now very actively trying to secure all

public demands and needs due to them under the laws and policies of the state.

Emergency Provisions:

The Constitution of India contains special provisions for dealing with emergencies.

It recognizes three types of possible emergencies:

(1) National Emergency (Article 352) an emergency resulting from war or external aggression or threat of external aggressions against India or from armed rebellion within India or in any of its part;

(2) Constitutional Emergency in a State (Article 356) an emergency resulting from the failure of constitutional machinery in any state; or some states and

(3) Financial Emergency (Article 360) an emergency resulting from a threat to financial stability of India.

The President of India has been empowered to take appropriate steps for dealing with these emergencies. During the period of an emergency, the powers of the President, actually of the PM and the Union Council of Ministers Cabinet increase tremendously. President can take all steps deemed essential for meeting an emergency. These are called emergency powers of the President.

Special Provisions relating to Scheduled Castes and Scheduled Tribes:

With a view to protect the interests of people belonging to Scheduled Castes and Scheduled Tribes, the Constitution lays down certain special provisions. It provides for reservation of seats in the legislatures for the people belonging to Scheduled Castes and Scheduled Tribes. President can nominate in Lok Sabha not more than two members of the Anglo-Indian Community in case he is of the opinion that this community is not adequately represented in the House.

Reservation of some jobs for the people belonging to SCs, STs and OBCs has also been in operation. The reservation system has been now extended upto the year 2020. Presently, a bill for granting 33% reservation of legislative seats for women is in the process of getting enacted into law. Reservation system is also in existence in the Panchayats and Municipal Councils.

Provisions regarding Language:

The Constitution lays down special provisions for defining the Language of the Union, Regional Languages and Language of the Supreme Court and High Courts. It states that the official language of the Union shall be Hindi in Devnagri script. But along with this, it also provides for the continuance of English language. A state legislature can adopt the language of the province as its official language.

English continues to be the language of the Supreme Court and the High Courts. The Constitution gives a directive to the Union to develop Hindi and popularise its use. In its Eighth Schedule, the Constitution recognises 22 modern Indian Languages — Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Oriya, Punjabi, Nepali, Manipuri,

Konkani, Sanskrit, Sindhi, Tamil, Telgu, Urdu, Bodo, Dogri, Maithli and Santhali.

A Constitution Drawn from several Sources:

In formulating the Constitution of India, the founding fathers used several sources. The values and ideals of the national movement guided their path. The national movement influenced them to adopt secularism as the ideal. Some provisions of Government of India Act 1935 were used by them and several features of foreign constitutions influenced them, and were adopted by them.

In adopting parliamentary system and bicameralism, the British Constitution influenced them. The US Constitution influenced them in favour of republicanism, independence of judiciary, judicial review and bill of rights. The progress of the (former) USSR after the 1917 Socialist Revolution influenced them to adopt socialism as a goal. Likewise, they were influenced by the constitutions of Canada, Australia, Weimar Republic (Germany) and Ireland.

With all these features, the Indian Constitution is a constitution best suited to the Indian environment. The Constitution has been helping India to organise and run her government and administration in an effective way both in times of peace and war. The basic structure of the Constitution i.e. its most fundamental features can be described as: Preamble, Fundamental Rights, Directive Principles, Secularism, Federalism, Republicanism, Independence of Judiciary, Rule of Law, and Liberal Democracy.

