

TNPSC GROUP I / II - PRELIMINARY INDIAN POLITY - WORKSHEET

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 and 74th 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 (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

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 longest 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 (2013), it consists of a Preamble, about 465 Articles (divided into 25 Parts) and 12 Schedules². The

various amendments carried out since 1951 have deleted about 20 Articles and one Part (VII) and added about 85 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.

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 .
- (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.

1. Till 2019, the erstwhile state of Jammu and Kashmir had its own constitution and thus enjoyed a special status by virtue of Article 370 of the constitution of India.
2. In 2019, this special status was abolished by a presidential order known as "The constitution (Application to Jammu and Kashmir) order, 2019".
3. This order superseded the earlier order known as "The constitution (Application to Jammu and Kashmir) order, 1954". The 2019 order extended all the provisions of the constitution of India to Jammu and Kashmir also.
4. Further, the Jammu and Kashmir reorganisation act, 2019 bifurcated the erstwhile state of Jammu and Kashmir into two separate union territories, namely, the union territory of Jammu & Kashmir and union territory of Ladakh.

2. Drawn From Various Sources

Nehru Report: Crafting India's Constitution Together -1928

1. **All Party Conference:** Moti Lal Nehru stated that the British government will adopt and execute the idea as soon as possible. Indians accepted this challenge, and an All-Party Conference was held in Bombay on May 19, 1928.
2. **Creating Constitution:** A group chaired by Motilal Nehru was formed to create a constitution. This was the Indians' first significant attempt to construct a constitutional foundation for the country.
3. **Member of Nehru Committee:** Motilal Nehru was a member of the Nehru Committee (Chairman) Nehru, Jawaharlal (Secretary) Ali Imam's Bose, Subash Chandra Sapru Madhav T B Aney, Srihari Singh, Mangal Mr Shuaib Qureshi G R Pradhan.

Nehru Report Provisions:

- Dominion Status to India
- Rejection Of Separate Electorates
- Main Provision
- Provision for Assembly
- Central Government
- Provincial Councils
- Protection of Minority and Religion

Karachi session, 1931

The session is significant, as the Karachi resolution of 1931 was to remain in essence the basic political and economic programme of the Indian National Congress in later years.

Resolutions at Karachi

Two resolutions were adopted

1. Fundamental Rights
2. National Economic Programme,

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 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.

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.

Sources of the Constitution at a Glance

| Sl. no | Sources | Features Borrowed |
|--------|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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. |

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|-----|----------------------------------------|-----------------------------------------------------------------------------------------------|
| 7. | Weimar Constitution of Germany | Suspension of Fundamental Rights during Emergency. |
| 8. | Soviet Constitution (USSR, now Russia) | Fundamental duties and the ideal of justice (social, 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. |

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, supremacy 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' 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).

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 fundamental rights to all the citizens. 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.

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* case¹² (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.

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 multi religious. Hence, the Indian Constitution embodies the positive concept of secularism, i.e., giving equal respect to all religions or protecting all religions equally.

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 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.

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.

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' 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.

- (a) National emergency on the ground of war or external aggression or armed rebellion¹⁶ (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 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 and a new Schedule 12 to the Constitution.

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