



## Study of Silent Feature of Indian Constitution

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### ABSTRACT

The constitution is the set of law which describes the association of different entities with in a state, i.e. the executive, the legislature, and the judiciary. The constituent Assembly was composed as per the cabinet mission plan. Dr. Rajendra prasad was the chairman of the constituent Assembly, Dr B.R.Ambedkar was the chairman of the Drafting committee. The constituent Assembly prepared the constitution in two years eleven months and eighteen days. In its original form, the constitution had 395 Articles and & 12 schedules. This Constitution was enforced from 26 January 1950.That's why we celebrate republic day every year on this day. The constitution India has been successfully guiding the path and progress of India. Each and every institution functions according to certain basic rules.

### INTRODUCTION

“Constitution is not a mere lawyers’ document, it is a vehicle of Life, and its spirit is always the spirit of Age.”- B.R. Ambedkar . The word ‘Constitution’ is of French origin which is generally used for regulation and orders. The Constitution of any country is the fundamental law of the land with greater authority and sanctity. It not only describes the basic principles of the State, the structures and processes of governance and the fundamental rights of citizens but also envisions a path of growth and development for a nation. After India attained freedom, the dream of the Constitution makers was to evolve such a viable model of governance that would best serve the nation keeping the primacy of the people as central. This talk aims to present an overview on Indian constitution. The constitution of India is a very dynamic creation of our lawmakers. The constitution of India also known as supreme law of the country and every citizen of our country has to abide by the constitution. The Indian constitution has a lot of salient features which makes it special. The law makers have taken all the factors into consideration and have tried to accommodation all the difference in our country. The constitution and various rights provided in the constitution acts as guardians to our citizens.



## **Longhiest constitution in the world**

Indian constitution adopted by the constituent Assembly on November 2, 1949 is the lengthiest constitution originally containing 395 Articles, divided into 22 parts and 12 schedules. It is described as 'elephant size' constitution. If we compare it with the constitutions of other developed countries, U.K does not have any constitution in written form and in the U.S constitution, there are only 7 articles. Since the year 1950, the Indian constitution has undergone many changes and amendments with many additional articles added to it. Recently the constitution of India, with its preamble and 470 articles grouped into 25 parts, is the lengthiest constitution in the entire world, with 12 schedules and, the constitution has been amended 104 times – the latest of which became effective.

The length of the constitution is because of several factors-

- a. It incorporate the experiences of all leading constitution
- b. it prescribe constitution for the union as well as for the state
- c. It incorporate detail provision regarding centre state relation
- d. It includes justifiable and non justifiable right
- e. It contain special provision to meet regional problem

## **Drawn from various source**

The Indian Constitution was framed from multiple sources including the 1935 Government of Indian Act and Other countries Constitution. In addition to these, the constitution of Canada, Australia Germany, the U.S.S.R. and France also adopted various provisions. Though it is borrowed, the Indian constitution with some modification to suit Indian needs and Requirements.

## **Preamble of the constitution**

The preamble consists of the ideas, objectives and basic principles of the Constitution .The silent features of the Constitution have developed directly and indirectly from these objectives which flow from the preamble. It asserts India to be sovereign ,socialist secular, democratic, Republic and a welfare state committed to secure justice, Liberty, Equality for the people and for promoting fraternity, dignity the individual and unity and integrity of the nation .The preamble is the nature of Indian state and the objective it is committed to secure for the people.

## **Sovereignty resides in the people**

India is a free independence country .India is no more under the domination of any foreign country and any external force cannot influence its decision. India is a member of commonwealth nation but its membership does not affect



the sovereignty of India. The introduction of the constitution declares that the constitution of India was adopted and enacted by the people of India and they are the custodian of Republic.

## **Democratic System**

India has representative and responsible government. Democracy has been introduced with view to realize the political, economic, social democracy. The authority of the government rest upon the sovereignty of the people. The people enjoy equal political rights, free fair and regular election is held for electing government.

## **Republic**

It means that the head of state, president, will be periodically elected by the people. The preamble declares India to be a republic. India is not a ruled by a monarch or a nominated had of state. India has a 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

## **Secularism**

In no other country of the world so many religion co-exist as in India .In view of such diversity the constitution guarantees complete freedom religion to all. The citizen of a country is free to follow any religion and they enjoy equal right without any distinction of caste, creed, religion or sex .The state does not discriminate against any one on the ground office religion, nor can the state compile anybody to pay taxes for the support of particular religion. Everybody is equal entitle to freedom of conscience and the right freely to profess, practice and propagate religion. The constitution regards religion as a private affair individual and prohibits the state from interfering with it. The constitution also grants various culture rights to minorities.

## **Single integrated State with Single Citizenship:**

India is the single Independence and sovereign integrated state. All citizens enjoy a common uniform citizenship. They are entitled to equal right and freedoms, and equal protection of the equal protection of the state.

## **Parliamentary form of Government**

The constitution of India establishes parliamentary form of government both at the centre and the states. In a parliamentary form of government, Rule of the majority party, the Prime Minister and council of Ministers are responsible for all their actions to the government, particularly to the Lower house, Lok Sabha. The parliament keep control on executives by various means i.e. by asking questions by no confidence motion etc. Also in parliamentary system there are two types of head; one is nominal and one is real. In India president is nominal and Prime Minister at the centre and Chief Minister at the state level are the heads of the government at respective levels.

## **Combination of rigidity and flexibility**

The Indian constitution is best known in the entire world for keeping the perfect balance between rigidity and flexibility. The Indian constitution provides the amendment provision in its article 368. The article 368 states that



some amendments can be made only by securing a special majority of both the houses of parliament. By special majority, it means 2/3<sup>rd</sup> majority of the total members of each house. There are some more provisions which can be amended with the special majority of members of parliament plus with the ratification of at least 50% of the total states.

The above points clarify that, for amending the Indian constitution a simple notification is not enough, but it requires the wide majority of members of both the houses. However, apart from these points, there are instances in the past and maybe in the future where amendments have also been done through the ordinary legislative process. These ordinary amendments fall outside the purview of article 368.

### **Fundamental Rights & Fundamental Duties**

The fundamental Right is guaranteed by the constitution to all its citizens through part III of the constitution. It guarantees Right to Equality, Right to freedom, Freedom of religion, Right against Exploitation, Educational and Cultural right and Right to constitutional Remedies. One can approach the Supreme Court directly in case of violation of Fundamental Rights. There are certain restrictions on fundamental rights in the interests of public order, the sovereignty and integrity of India, public decency, morality etc. Article 51 the Constitution (42<sup>nd</sup> Amendment Act, 1976) has introduced a Code of the “Fundamental Duties” for Citizens. In 2002, one more duty was added to it. The Fundamental duties are intended to serve as a constant reminder to every citizen that while the Constitution has specifically conferred on them certain fundamental rights, it also requires the citizens to observe certain basic norms of democratic conduct and democratic behaviors.

### **Directive Principles of the stat Policy**

Part IV of the constitution deals with Economic and cultural Rights however, they are not justifiable in the court of law. The idea of a ‘welfare state’ envisaged in our constitution can only is achieved if the states try to implement them with a high sense of moral duty. Directive principles were added in the constitution for making India a welfare state. This is why Dr. B R Ambedkar has called Directive Principles as the ‘Novel Feature’ of Indian constitution. These are very fundamental aspects for any country’s governance. These principles are in the nature of directives to the government to implement them to maintain social and economic democracy in the country.

### **Federal System with Unitary Features (Quasi- federal in nature)**

Federal System with Unitary the Indian Constitution includes all the federal characteristics of governance such as dual government system (center and state), division of powers between the three state organs (executive, Judiciary and legislature), constitutional supremacy, independent judiciary and bicameralism (lower and upper house). Nevertheless, the Indian Constitution is unique in that it includes many unitary features such as a strong centre, all India services common to the center and the states, emergency provisions that can transform the Constitution into a unitary one if necessary, appointment of governors by the president on the advice of the center, etc. Indeed, Article 1 clearly states that India is a ‘Union of States’ rather than a federation of states. In India, the states did not come



together to form the centre (or union) like in the case of USA which is the purest form of a federation. Rather for administrative convince it is the centre that created the states. Article 3 of the Indian constitution makes parliament the sole authority to create new states clearly indicating that the Indian constitution is of a unitary nature with certain federal characteristics. Scholars describe India as a 'Quasi- Federation' (K.C. Wheare) or as 'a federation with a unitary bias, or even as 'a Unitarian federation

### **Adult Suffrage**

All adult citizens above 18 are given the right to vote. There are no separate electorates for people belonging to different communities. Thus in India there is Universal Adult Franchise without Communal Representation. All men and Women enjoy an equal right to vote. All registered voters get the opportunity to vote in elections.

### **Independent as well as integrated judiciary system**

It is necessary to secure the philosophical foundation of the rule of law and democracy. The constitution has made judiciary independent from legislature and executive. Judges are free from the interference of other organs of the government, so that judge can give judgment without fear and favour .The Indian judiciary is independent as per the norms of separation of powers. The feature that goes with the independence of judiciary are direct appointment by the president, give decent salaries and perks ,judge cannot be removed simplify by executive. Secondly, the constitution has ensured complete independence of judiciary in the matters of administration and finance. 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 were under the high courts. In the united state of America, there are two tier judicial systems. But in India, there is a single integrated system of judicially where the Supreme Court is the supreme authority to make decisions. In India judges of the Supreme Court and high court are appointed through the collegiums system. If there is need to remove any judge, the procedure of impeachment has to be followed. Salaries and pension of Supreme Court judges are paid from the consolidated fund of India. After retirement supreme court judge are banned from practice

### **Judicial review**

Its means the power of the course to declare any law passed by the legislature and any act of executive as void, if it violates any provision of the constitution. It emphasizes supremacy of judiciary. It operates as defender of fundamental rights of Indian citizen and guardian of the constitution.

### **Amending the constitution**

Amending the constitution of India is the procedure of making modification to the nation fundamental law or supreme law. The procedure of amendment in the constitution is laid down in part xx (article 368) of the constitution of India. This procedure guarantees the sanctity of the constitution of India and keeps a check on uninformed power of the parliament of India.



## **Basic structure doctrine**

The basic structure doctrine is an Indian judicial norms that the constitution of India has certain basic features that cannot be changed or destroyed through amendment by the parliament. The basic features of the constitution have not been openly defined by the judiciary. At least 20 features have been described as “basics” or “essential” by the court in numerous cases, and have been incorporated in the basic structure.

## **Independent bodies:**

Constitution has setup various Independent bodies and visited them with power to insure the constitutional provisions e.g. Election commissions, CAG, Finance commissions these Institutions have been provided with security of tenure fixed service condition etc.

## **Emergency provision:**

Indian constitution contains elaborate provision to deal with those challenges that pose a threat to the country security and unity.

## **Three-tier Government:**

Through 73 and 74 amendment act we have rural and urban local bodies as an additional constitutional tiers of the government structures this section fulfill the dream of Gandhiji to see a self functioning village in India.

## **Balance between parliament and judicial supremacy:**

A fine balance has been struck between parliamentary sovereignty and judicial supremacy by the Indian constitution. The supreme court is vacuumed by the Article 13,32,136 with the power of judicial review. By its power of judicial review it can strike down any parliamentary law as unconstitutional on the other hand the parliament being representative of the people will has the authorities to make the laws and it can also amend the major part of the constitution through its power under Article 368.

## **Conclusion**

The constitution of India is one of the most remarkable constitution in the world. With all these features, the Indian constitution is a best suited to the Indian environment the constitution helping India to organize and run her government and administrations in an effective way both in times of peace and war. Mahatma Gandhi had visualized the new Constitution of India in terms of universal values applied to the specific and special conditions of India. As early as in 1931, Gandhiji had written: “I shall strive for a Constitution which will release India from thralldom and patronage. I shall work for an India in which the poorest shall feel that it is their country in whose making they have an effective voice: an India in which there is no high class or low class of people, an India in which all communities shall live in perfect harmony. There can be no room in such an India for the curse of untouchability. We shall be at peace with the rest of the world neither exploiting nor exploited.... This is the India of my dreams for which I shall struggle”.



The Constitution empowers the people as much as the people empower the Constitution. The framers of Indian Constitution very well realised that a Constitution, no matter how well written and how detailed, would have little meaning without the right people to implement it and to live by its values. And in this, they placed their faith in generations that would follow. We have every right to feel proud today, as our Constitution is recognised across the world for democratic and secular values as well as for establishing an inclusive social order.

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