

MODULE - 2

Aspects of the Constitution of India



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PREAMBLE AND THE SALIENT FEATURES OF THE CONSTITUTION OF INDIA

The Constitution of India was framed by a Constituent Assembly. This Assembly was an indirectly elected body. It had laid down certain ideals to be included in the Constitution. These ideals included commitment to democracy, guarantee to all the people of India-Justice, equality and freedom. It had also proclaimed that India will be a Sovereign Democratic Republic.

The Constitution of India begins with a Preamble. The Preamble contains the ideals, objectives and basic principles of the Constitution. The salient features of the Constitution have evolved directly and indirectly from these objectives which flow from the Preamble. In this lesson you will learn about the framing of the Constitution, its political philosophy as reflected in the Preamble and the salient features of the Constitution.



Objectives

After studying this lesson you will be able to :

- recognize the significance of the Constitution as the fundamental law of the land;
- describe the composition of the Constituent Assembly and the role of the Drafting Committee and the objectives of the Constituent Assembly;
- describe the Preamble to the Constitution and its relevance;
- identify the basic principles of Preamble and their reflection in the constitutional provisions;
- identify the main features of the Constitution of India;
- distinguish between a written and an unwritten, as well as a rigid and a flexible constitution;
- analyse the nature of the Indian Constitution;

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- establish the importance of Fundamental Rights, Fundamental Duties and Directive Principles of State policy; and
- recognize the special features that distinguish the Indian Constitution from other Constitutions of the world.

5.1 The Constitution

The Modern State is considered to be a state for the welfare of the people. It is therefore, suggested that it should have a government of a particular form with appropriate powers and functions.

The document containing laws and rules which determine and describe the form of the government, the relationship between the citizens and the government, is called a Constitution.

As such a constitution is concerned with two main aspects the relation between the different levels of government and between the government and the citizens.

A constitution is the basic fundamental law of a State. It lays down the objectives of the State which it has to achieve. It also provides for the constitutional framework that is, various structures and organs of the governments at different levels. In addition, it describes the rights and duties of the citizens. It is, therefore, considered to be the basis for the governance of the country both in terms of goals and objectives as also their structures and functions.

5.2 The Constituent Assembly

The Constitution of India was framed by the Constituent Assembly. The Assembly was constituted in 1946.

The members of the Constituent Assembly were indirectly elected by the members of the existing Provincial Assemblies. In addition, there were members nominated by the rulers of the Princely States. With Independence of India, the Constituent Assembly became a fully sovereign body.

The Constituent Assembly, following the partition of the country in 1947, consisted of 299 members as on 31st December 1947. Of these 229 members were elected by the provincial assemblies and the rest were nominated by the rulers of the princely states. Majority of the members in the Constituent Assembly belonged to the Congress party. All prominent leaders of the freedom movement were members of the Assembly.

Princely States During the British Rule there were about 560 areas which were not directly under the control of the British. These were Kingdoms or 'Riyasats' under Indian rulers or Princes. These were called 'Princely States'. To name a few, Kashmir, Patiala, Hyderabad, Mysore, Baroda were some of the princely states.

5.2.1 Working of the Constituent Assembly

The Constituent Assembly was chaired by the President of the Assembly Dr. Rajendra Prasad was elected as the President of the Assembly. The Assembly worked with the help of a large number of committees and sub-committees. The committees were of two

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types : (a) relating to matters concerning with procedures, and (b) concerning important issues. In addition there was an Advisory Committee primarily advised from outside. The most important committee was the Drafting Committee. Dr. B.R. Ambedkar was the Chairman of the Drafting Committee. The task of the Committee was to prepare the draft of the Constitution. The Constituent Assembly met for 166 days spread over a period of 2 years 11 months and 18 days. The procedure followed in the Assembly was Similar to that which is followed in legislature. You will study about the legislative procedure in detail in subsequent lesson on Parliament and the legislative Assemblies.



*Dr. Rajendra Prasad
President of Constituent
Assembly*



*Dr. B.R. Ambedkar, Chairman
of drafting committee of
constitution*

The leaders of the Constituent Assembly were conscious that the need of the hour was general agreement on different issues and principles. As a result, deliberate efforts were made to achieve consensus. While arriving at any decision, the aspirations of the people were uppermost in the minds of the members of the Assembly.



Intext Question 5.1

Tick out (✓) the correct response:

- The Constitution of a country provides the basis for
 - punishment of criminals
 - governance of the country
 - relationship between the citizens
 - trade relations with other countries.
- The Constituent Assembly of India was composed of the members :
 - nominated by the British Government.
 - nominated by political parties.
 - elected by Provincial Assemblies and nominees of the Princely States.
 - elected by people.
- The Constitution of India was drafted by the
 - Advisory Committee

- b) Secretariat of the Assembly
- c) President of the Assembly
- d) Drafting Committee

5.3 Objectives of The Constitution

The Constitution of independent India was framed in the background of about 200 years of colonial rule, a mass-based freedom struggle, the national movement, partition of the country and spread of communal violence. Therefore, the framers of the Constitution were concerned about the aspirations of the people, integrity and unity of the country and establishment of a democratic society. Amongst the members there were some who held different ideological views. There were others who were inclined to socialist principles, still others holding Gandhian thinking but nothing could act as any kind of impediment in the progress of the Assembly's work because all these members were of liberal ideas. Their main aim was to give India a 'Constitution' which will fulfill the cherished ideas and ideals of the people of this country.



Dr. Rajendra Prasad signing the new constitution

Conscious efforts were made to have consensus on different issues and principles and thereby avoid disagreement. The consensus came in the form of the 'Objectives Resolution' moved by Jawahar Lal Nehru in the Constituent Assembly on December 17, 1946 which was almost unanimously adopted on January 22, 1947. In the light of these 'Objectives' the Assembly completed its task by November 26, 1949. The constitution was enforced with effect from January 26, 1950. From that day India became a Republic. Exactly twenty years before the first independence day was celebrated on Jan. 26, 1930 as decided by the Lahore session of the Congress on Dec. 31, 1929. Hence, January 26, 1950 was decided as the day to enforce the constitution.

5.4 The Preamble

As you know that the Constitution of India commences with a Preamble. Let us find out



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what a 'Preamble' is. The Preamble is like an introduction or preface of a book. As an introduction, it is not a part of the contents but it explains the purposes and objectives with which the document has been written. So is the case with the 'Preamble' to the Indian Constitution. As such the 'Preamble' provides the guide lines of the Constitution.

THE CONSTITUTION OF INDIA

PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a ¹**[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC]** and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the

²[unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.**

1. Subs. by the Constitution (Forty second Amendment) Act, 1976, s. 2 for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 3-1-1977)
2. Subs. by s. 2. *ibid*, for "unity of the Nation" (w.e.f. 3-1-1977).

Preamble of Indian Constitution

The Preamble, in brief, explains the objectives of the Constitution in two ways: one, about the structure of the governance and the other, about the ideals to be achieved in independent India. It is because of this, the Preamble is considered to be the key of the Constitution. The objectives, which are laid down in the Preamble, are:

- i) Description of Indian State as Sovereign, Socialist, Secular, Democratic Republic. (Socialist, Secular added by 42nd Amendment, 1976).
- ii) Provision to all the citizens of India i.e.,
 - a) *Justice* social, economic and political
 - b) *Liberty* of thought, expression, belief, faith and worship
 - c) *Equality* of status and opportunity

- d) *Fraternity assuring dignity* of the individual and unity and integrity of the nation.

Let us see what these objectives mean and how have these been reflected in the Constitution?

5.5 Sovereign, Socialist, Secular, Democratic Republic

Sovereignty

Sovereignty is one of the foremost elements of any independent State. It means absolute independence, i.e., a government which is not controlled by any other power : internal or external. A country *cannot* have its own constitution without being sovereign. India is a sovereign country. It is free from external control. It can frame its policies. India is free to formulate its own foreign policy.

Socialist

The word socialist was not there in the Preamble of the Constitution in its original form. In 1976, the 42nd Amendment to the Constitution incorporated 'Socialist' and 'Secular', in the Preamble. The word 'Socialism' had been used in the context of economic planning. It signifies major role in the economy. It also means commitment to attain ideals like removal of inequalities, provision of minimum basic necessities to all, equal pay for equal work. When you read about the Directive Principles of the State Policy, you will see how these ideals have been incorporated as well as partly, implemented in the Constitution.

Secularism

In the context of secularism in India, it is said that 'India is neither religious, nor irreligious nor anti-religious.' Now what does this imply? It implies that in India there will be no 'State' religion – the 'State' will not support any particular religion out of public fund. This has two implications, a) every individual is free to believe in, and practice, any religion he/she belongs to, and, b) State will not discriminate against any individual or group on the basis of religion.

Democratic Republic

As you have noticed while reading the Preamble to the Constitution, that the Constitution belongs to the people of India. The last line of the Preamble says '.... Hereby Adopt, Enact And Give To Ourselves This Constitution'. In fact the Democratic principles of the country flow from this memorable last line of the Preamble. Democracy is generally known as government of the people, by the people and for the people. Effectively this means that the Government is elected by the people, it is responsible and accountable to the people. The democratic principles are highlighted with the provisions of universal adult franchise, elections, fundamental rights, and responsible government. These you will read in subsequent lessons.

The Preamble also declares India as a Republic. It means that the head of the State is the President who is indirectly elected and he is not a hereditary ruler as in case of the British Monarch. Under chapter of Union Executive you will read in detail about the election of the President of India.



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Intext Questions 5.2

1. Secularism in India means _____
(rejection of religion/respect for all the religions/respect for ones own religion).
2. Socialism in India means _____ (state ownership of all industries/
state's major role in economy/equal distribution of wealth).
3. India became a Republic on _____ (15 August, 1947, 26 November 1949/
26 January 1950).

5.6 Justice, Liberty and Equality

The struggle for freedom was not only against the British rule but their struggle should also usher in an era of restoring the dignity of men and women, removal of poverty and end to all types of exploitation. Such strong motivations and cherished ideals had prompted the framers to lay emphasis on the provisions of Justice, Liberty and Equality to all the citizens of India.

Justice

Justice promises to give people what they are entitled to in terms of basic rights to food, clothing, housing, participation in the decision-making and living with dignity as human beings. The Preamble covers all these dimensions of justice – social, economic and political. Besides, the granting of political justice in the form of universal adult franchise or the representative form of democracy. You will read socio-economic justice in next lessons.

Liberty

The Preamble also mentions about liberty of thought and expression. These freedoms have been guaranteed in the Constitution through the Fundamental Rights. Though freedom from want has not been guaranteed in the Fundamental Rights, certain directives to the State have been mentioned in the Directive Principles.

Equality

Equality is considered to be the essence of modern democratic ideology. The Constitution makers placed the ideals of equality in a place of pride in the Preamble. All kinds of inequality based on the concept of rulers and the ruled or on the basis of caste and gender, were to be eliminated. All citizens of India should be treated equally and extended equal protection of law without any discrimination based on caste, creed, birth, religion, sex etc. Similarly equality of opportunities implies that regardless of the socio-economic situations into which one is born, he/she will have the same chance as everybody else to develop his/her talents and choose means of livelihood.



Intext Questions 5.3

Fill in the blanks :

1. Justice means giving people what they _____. (are entitled to/ want)
2. The Constitution of India guarantees _____. (liberty of thought
and expression/freedom from want)



5.7 Fraternity, Dignity, Unity and Integrity

In the background of India's multi-lingual, multi-cultural and multi-religious society and keeping in view the partition of the country, the framers of the Constitution were very much concerned about the unity and integrity of our newly independent country. There was a need for harmonious co-existence among various religions, linguistic, cultural and economic groups. Inclusion of phrases like 'dignity of individuals', 'fraternity among people' and 'unity and integrity of the nation' in the Preamble highlight such a need.

Egalitarian: A society, which feels concerned for meeting the needs of all its members, is known as egalitarian society. An egalitarian state is expected to reduce inequalities among citizens and fulfill minimum requirements of all.

The Preamble has provided for a vision humane which is, democratic, secular and, therefore, egalitarian. Therefore, inspite of not being a part of the Constitution, the Preamble has always been given due respect and regard by the courts while interpreting the Constitution.

5.8 Salient Features of The Constitution

So far you have read about the Preamble to the Indian Constitution. In the subsequent paragraphs you are going to read about the salient features of the Indian Constitution which directly and indirectly flow from the Preamble, indicating the faith of framers in the ideals, objectives and goals as mentioned in our Constitution.

A Written Constitution

The Indian Constitution is mainly a written constitution. A written constitution is framed at a given time and comes into force or is adopted on a fixed date as a document. As you have already read that our constitution was framed over a period of 2 years, 11 months and 18 days, it was adopted on 26th November, 1949 and enforced on January 26, 1950. Certain conventions have gradually evolved over a period of time which have proved useful in the working of the constitution. The British Constitution is an example of unwritten constitution. It is to be noted though, that a written constitution is 'mainly' an enacted document, there could be bodies or institutions which may not be included in the constitution but form an important part of governance. In Indian context one can mention the Planning Commission. It is very important body for country's planning and development. But, the planning commission was set up in March 1950, not by an Act of Parliament, nor as a Part of the Constitution of India. It was set up by a cabinet resolution. The Indian constitution is the lengthiest in the world. The original constitution had 395 Articles and 8 Schedules, while, the constitution of USA has only 7 Articles.



Intext Question 5.4

Fill in the blanks :

- A Constitution is a body of _____ (rules, basic laws, principles).
- The Constitution of India was enforced on _____ (August 15, 1947, November 26, 1949, January 26, 1950)

- c) The original Indian Constitution consisted of _____ Articles. (495, 395, 295)
- d) The constitution of India was adopted by _____. (Constitution Assembly, Committee, State assembly)

A Combination of Rigidity and Flexibility

The Indian Constitution is a unique example of combination of rigidity and flexibility. A constitution may be called rigid or flexible on the basis of its amending procedure. In a rigid constitution, amendment of the constitution is not easy. The Constitutions of USA, Switzerland and Australia are considered rigid constitutions. While, the British Constitution is considered flexible because amendment procedure is easy and simple.

The Constitution of India provides for three categories of amendments. In the first category, amendment can be done by the two houses of Parliament simple majority of the members present and voting of before sending it for the President's assent. In the second category amendments require a special majority. Such an amendment can be passed by each House of Parliament by a majority of the total members of that House as well as by the 2/3rd majority of the members present and voting in each house of Parliament and send to the President for his assent which cannot be denied. In the third category besides the special majority mentioned in the second category, the same has to be approved also by at least 50% of the State legislatures. Thus, you see that the Indian Constitution provides for the type of amendments ranging from simple to most difficult procedure depending on the nature of the amendment.

Federal Polity

India has adopted a federal structure. In a federation there are two distinct levels of governments. There is one government for the whole country which is called the Union or Central Government. Also there is government for each Unit/State. The United States of America is a federation whereas the United Kingdom (Britain) has a unitary form of government. In a unitary structure there is only one government for the whole country and the power is centralised.

The Constitution of India does not use the term 'federal state'. It says that India is a 'Union of States'. There is a distribution of powers between the Union/Central Government and the State Governments. Since India is a federation, such distribution of functions becomes necessary. There are three lists of powers such as Union List, State List and the Concurrent List. These lists have been explained in Lesson 8 in detail. On the basis of this distribution, India may be called a federal system.

The supremacy of the judiciary is an essential feature of a federation so that the constitution could be interpreted impartially. In India, the Supreme Court has been established to guard the constitution. However, in case of Indian federalism, more powers have been given to the Union Government in administrative, legislative, financial and judicial matters. In fact, The Indian federal set up stands out with certain distinctive unitary features. The makers of our constitution while providing for two sets of government at the centre and in the states provided for division of powers favouring the Central Government, appointment of the Head of the State government by the Central Government, single unified judiciary, single citizenship indicate the unitary nature of our federalism. Therefore, it is said that India has a quasi-federal set up.



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Quasi Federal: It means a federal set up where despite having two clear sets of government – central and the states, more powers are given to the Central Government.

Parliamentary Democracy

India has a parliamentary form of democracy. This has been adopted from the British system. In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature. The cabinet is responsible to the latter. In fact the Cabinet holds office so long as it enjoys the confidence of the legislature. In this form of democracy, the Head of the State is nominal. In India, the President is the Head of the State. Constitutionally the President enjoys numerous powers but in practice the Council of Ministers headed by the Prime Minister, which really exercises these powers. The President acts on the advice of the Prime Minister and the Council of Ministers.

Fundamental Rights and Fundamental Duties

Every human being is entitled to enjoy certain rights which ensure good living. In a democracy all citizens enjoy equal rights. The Constitution of India guarantees those rights in the form of Fundamental Rights.

Fundamental Rights are one of the important features of the Indian Constitution. The Constitution provides for six Fundamental Rights about which you will read in the following lesson. Fundamental Rights are justiciable and are protected by the judiciary. In case of violation of any of these rights one can move to the court of law for their protection.

Fundamental Duties were added to our Constitution by the 42nd Amendment. It lays down a list of ten Fundamental Duties for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform.



Intext Questions 5.5

Fill in the blanks :

- India is a _____ State. (unitary, federal, quasi-federal)
- In a parliamentary democracy, the _____ enjoys the real power (people, president, cabinet).
- The fundamental rights are _____ (absolute, justiciable, unlimited).
- The fundamental duties were included by the _____ amendment (42nd, 44th, 46th).

Directive Principles of State Policy

The Directive Principles of State Policy which have been adopted from the Irish Constitution, is another unique feature of the Constitution of India. The Directive Principles were included in our Constitution in order to provide social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few. You will read about these Principles more elaborately in Lesson 7.



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India has a single integrated judicial system. The Supreme Court stands as the apex court of the judicial system. Below the Supreme Court are the High Courts. The High Courts control and supervise the lower courts. The Indian judiciary, thus, stands like a pyramid with the lower courts as the base, High Courts in the middle and the Supreme Court at the top.

Independence of Judiciary

Indian judiciary is independent and impartial. The Indian judiciary is free from the influence of the executive and the legislature. The judges are appointed on the basis of their qualifications and cannot be removed easily. You will read about the independence of the judiciary in detail in Lesson 12.

Single Citizenship

In a federal state usually the citizens enjoy double citizenship as is the case in the USA.

In India there is only single citizenship. It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chattisgarh to which he/she may belong to but remains a citizen of India. All the citizens of India can secure employment anywhere in the country and enjoy all the rights equally in all the parts of India.

Universal Adult Franchise

Indian democracy functions on the basis of 'one person one vote'. Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status. The Indian Constitution establishes political equality in India through the method of universal adult franchise.

Emergency Provisions

The Constitution makers also foresaw that there could be situations when the government could not be run as in ordinary times. To cope with such situations, the Constitution elaborates on emergency provisions. There are three types of emergency; a) emergency caused by war, external aggression or armed rebellion; b) emergency arising out of the failure of constitutional machinery in states; and c) financial emergency. About emergency provisions you will read in detail in Lesson 9.

**Intext Questions 5.6*****Fill in the blanks :***

- a) The United States of America has a system of _____ citizenship. (single, double, temporary)
- a) Single citizenship means _____ (a person is a citizen of his own state only, a person is a citizen of the whole country, a person is a citizen of his native place).
- b) The minimum age of voting in India is _____ (18 years, 21 years, 25 years).

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- c) Emergency provisions given in the Constitution can be imposed _____
(in normal times, abnormal times, any time).



What You Have Learnt

A Constitution symbolises independence of a country. Framework and structure for the governance of a free country are provided in the Constitution. The Constituent Assembly prepared the draft of the Constitution by keeping the 'Objectives Resolution' as the backdrop which reflected the aspirations of the people of India.

The framing of the Constitution was completed on November 26, 1949 when the Constituent Assembly formally adopted the new Constitution. The Constitution came into force with effect from January 26, 1950.

The Constitution begins with a Preamble which declares India to be a Sovereign, Socialist, Secular, Democratic, Republic. The Preamble also mentions the goals of securing justice, liberty and equality for all its citizens and promotion of national unity and integrity on the basis of fraternity among the people assuring dignity of the individual.

The Constitution of India has several distinctive features. It is the lengthiest Constitution in the world and it is a combination of rigidity and flexibility. The Constitution provides for a quasi-federal set up with a strong centre. There is a clear division of powers between the Centre and the States. The Supreme Court of India, is the apex court of India which will resolve the disputes between the centre and state or between the states.

India has a parliamentary democracy. The Council of Ministers headed by the Prime Minister enjoys the real powers and is responsible to the Parliament.

The Indian Constitution provides for Fundamental Rights which are justiciable. Ten Fundamental Duties have also been added to the Constitution. The Directive Principles of State Policy give a concrete shape to the welfare concept.



Terminal Exercises

1. What is the importance of the Preamble to the Constitution?
2. Explain the meaning and relevance of Secularism in Indian context.
3. What is the philosophy of the Indian Constitution?
4. Explain the significance of a written Constitution.
5. Distinguish between a rigid and flexible constitution.
6. Explain briefly India as a federal state.
7. Write brief notes on:
 - a) Independence of Judiciary
 - b) Integrated judicial system single integrated judicial system
 - c) Universal Adult Franchise

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Answers to Intext Questions

5.1

1. (b)
2. (c)
3. (d)

5.2

1. respect for all religions
2. states' major role in economy
3. January 26, 1950

5.3

1. are entitled to
2. liberty of thought and expression.

5.4

- a) Basic Laws
- b) January 26, 1950
- c) 395 Articals
- d) Constitution Assembly

5.5

- a. quasi - federal
- b. cabinet
- c. justifiable
- d. 42nd Amendment

5.6

- a. double
- b. a person is a citizen of the whole country
- c. 18 years
- d. abnormal times

Hints to Terminal Exercises

1. Refer to Section 5.4.
2. Refer to Section 5.5 (Secularism).
3. Refer to Section 5.8
4. Refer to section 5.9 (A written constitution)

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5. Refer to Section 5.9 (Combination of rigidity and flexibility).
6. Refer to Section 5.9 (Federal Polity).
7. (a) Refer to Section 5.10 (Independence of Judiciary)
(b) Refer to Section 5.10 (Single Independent Judicial System)
(c) Refer to Section 5.10 (Universal Adult Franchise)

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