

## Chapter – 3

### Salient features and characteristics of the Constitution of India

#### 3.1 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 unitarism, and flexibility with rigidity. Since its inauguration on 26th January 1950, the Constitution of India has been successfully guiding the path and progress of India. The salient features of the Constitution of India can be discussed as follows:

#### 3.2 Constitution

- -The Constitution is a wholly written document that 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 448 Articles divided into 25 Parts with 12 Schedules. It is a constitution of both the Centre and states of the Indian Union.
- It is indeed much bigger than the US Constitution which has only 7 Articles and the French Constitution with its 89 Articles.

#### 3.3 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 organized in December 1946.
- Its first session was held on 9 December 1946.
- -It passed the Objectives Resolution on 22nd 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 26 November 1949.
- The constitution became fully operational with effect from 26 January 1950.
- We celebrate this day as our Republic Day The constitution of India is thus a self-made and duly enacted constitution.

#### 3.4 The 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 the Indian state and the objectives it is committed to secure for the people.

3.5 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 the 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.

3.6 India is a Secular State

- India gives special status to no religion.
- 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.

3.7 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.
- 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 the world's largest working democracy.

3.8 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.

3.9 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:
  - That Indian Union is not the result of voluntary agreement among sovereign states; and
  - That states of India do not enjoy the right to secede from the Union. Indian Union has now 28 States and 7 Union Territories.

### 3.10 OA 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' or as 'a federation with a unitary bias, or even as 'a Unitarian federation.
- Like a federation, the Constitution of India provides for:
  - I wrote, rigid and supreme constitution,
  - Independent judiciary with the power to decide center-state disputes and
- Dual administration i.e. central and state administrations. However, by providing a very strong center, a common constitution, single citizenship, emergency provisions, common election commission, common allIndia 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 seeming unity and integrity of the nation.

### 3.11 A 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:
- Most of the provisions of the Constitution can be amended by the Union Parliament by passing allAmendment Bill by most of the total membership and 2/3rd majority of members present and voting in each of its two Houses.
- 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 most of the total membership and 2/3rd majority of members present and voting in each house and hence 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.

### 3.12 Fundamental Rights

- Under itsPartIII(Articles12 to35),theConstitutionofIndiagrantsandguarantees 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 (44thAmendment Act 1979) their number came down to six.
- The Six Fundamental Rights are: Right to Equality - Articles 14-18
- It provides for Equality before law, End of Discrimination, Equality of Opportunity, Abolition of untouchability and Abolition of Titles.

- Right to Freedom - Articles 19- 22. It incorporates six fundamental freedoms
  - freedoms of speech and expression,
  - freedom to move freely in India,
  - freedom of residence in any part, and
  - freedom of adopting any profession or trade or occupation.
  - freedom to form associations,
  - freedom to assemble peaceably without arms,
- It ensures personal freedom and protection in respect of conviction for certain offenses.
- 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 article 21A Right to Education for the children between the ages of 6-14 years has been granted.
- Article 22 guarantees protection against arbitrary arrest and detention.
- Right against Exploitation - Articles 23 & 24
  - This Fundamental Right prohibits the sale and purchase of human beings, forced labour (beggar) and the employment of children in hazardous jobs and factories.
- Right to Freedom of Religion - Articles 23-28
  - The grant of this right involves the freedom of conscience, religion, and worship.
  - Any person can follow any religion. It gives all religions the 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 the constitution prohibits the imparting of religious instructions in schools and colleges.
- Cultural and Educational Rights - Article 29-30
  - 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.
- Right to Constitutional Remedies Article 32
  - This fundamental right is the soul's entire Bill 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.
- Fundamental Duties

According to Article 51 A, it shall be the duty of every citizen of India:

1. to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem
2. to cherish and follow the noble ideals that inspired the national struggle for freedom;
3. to uphold and protect the sovereignty, unity, and integrity of India;
4. to defend the country and render national service when called upon to do so;
5. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;

6. to value and preserve the rich heritage of the country's composite culture;
7. to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures;
8. to develop the scientific temper, humanism and the spirit of inquiry and reform;
9. to safeguard public property and to avoid violence
10. to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
11. to provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

- Emergency Provision
- Article 352 Announcement of a national emergency
- Article 356 Provisions for the occasion of the failure of the constitutional system of states
- Article 360 Provisions regarding the financial crisis
- Emergency provisions are provided under Articles 352 to 360 of Part VII of the Indian Constitution. The provision of this crisis is considered a distinctive feature of the Indian Constitution. Because it can protect the country. The central government has unique powers in times of crisis.