
UNIT 13 THE INDIAN CONSTITUTION

Structure

- 13.0 Objectives
- 13.1 Introduction
- 13.2 The Indian Constitution : Historical Background
- 13.3 Constituent Assembly and Drafting of the Constitution
 - 13.3.1 Composition
 - 13.3.2 A Critique
- 13.4 The Preamble
- 13.5 Basic Features of the Constitution
- 13.6 Amendments to the Constitution
- 13.7 Review of the Constitution
- 13.8 Let Us Sum Up
- 13.9 Key Words
- 13.10 Answers to Check Your Progress Exercises

13.0 OBJECTIVES

This Unit aims at **familiarising** you with the basic tenets of **the** Indian Constitution. After reading this Unit, you will be able to:

- discuss the **background** and genesis of the Indian Constitution;
- describe the **composition**, nature and working of the Constituent Assembly;
- bring out some of the important features of the Constitution such as the Fundamental Rights and Directive Principles of State Policy; and
- give an overview of the Constitution, especially in the light of recent attempts to comprehensively review it.

13.1 INTRODUCTION

In this Unit, you will be reading about the Constitution of India. To understand all that our Constitution stands for, you should first know as to what a Constitution means. Simply put, Constitution of a country is a summation of its fundamental aspirations, values, framework of governance and laws: usually in the form of a document (written Constitution). No other law, document etc., can supersede or go against the Constitution: otherwise, the judiciary exercising its power of **review** (judicial review) can strike them down as unconstitutional.

4 Constitution, by and large, is a written one (the **Indian** one for example). but it can be unwritten too (the **British** is the most well-known case). An unwritten Constitution is based on conventions and practices. By its very nature, it tends to be less rigid than a written Constitution and can, arguably, respond better to the changing needs of the time. To understand the Constitutional framework of a

country, it is essential to comprehend its historical background, major features, specific amendments and review provisions. This Unit will **try** to **familiarise** you with all these aspects.

13.2 THE INDIAN CONSTITUTION : HISTORICAL BACKGROUND

The Indian Constitution, the Preamble as well as the main body, reflect the legacy of the national movement for freedom. Its emphasis on pluralism, secularism, opposition to all **types/forms** of **discrimination**, provision of **equal** opportunities to all for self-development and many other similar concerns **epitomise** values that came to the forefront during the country's struggle for freedom against colonial rule. The anti-colonial leadership, especially its stalwarts M.K. **Gandhi** and Jawaharlal Nehru were the most visible symbols of the ideas and values that our Constitution eventually came to embody.

Mahatma Gandhi, as you would perhaps know, started his political **career** and public life protesting against the policies and practices of the colonial government in South Africa. He came to India in around 1915 and plunged into the fight against British colonialists. These experiences of combating colonialism **shaped** his world-view to a very great extent. He came to oppose discrimination of all **types/forms** and this strong **anti-discriminatory** stand of Gandhi is amply reflected in the Preamble as well as the main body of the Constitution. **Gandhi's** emphasis on **small** and cottage industries, his opposition to intoxicants (especially alcohol) are also reflected in our Constitution.

Mahatma **Gandhi's** declared political heir, **Jawaharlal** Nehru, was an internationalist in outlook and like Gandhi, opposed to colonialism and imperialism everywhere. He visualised an independent (non-aligned) foreign policy for free India and this is seen in the **Constitution** that was finally framed and later on, adopted in 1950. Nehru was also a strong votary of a secular, **plural** polity. This secularist, pluralistic vision of his is showcased well in the Constitution. As also, his emphasis on developing a scientific temper. This is because Nehru was vehemently opposed to obscurantism, superstitions and dogma of any kind. His leanings towards the Soviet model of planned economic development is reflected in the Constitution that adopted the socialist mixed economy as the future path of development.

The Indian leadership was also inspired by the American Declaration of Independence (1776), the French Declaration of the Rights of Man (1789), as well as the Constitution of the Irish Republic. The French revolutionary slogan of Liberty, Equality and Fraternity finds an echo in the Preamble of our Constitution. It should interest you to know that our Constitution has been in the making since the Indian Councils Act of 1861 and has also drawn upon the Indian Councils Act of 1892, the Morley-Minto Reforms of 1909, the Montague-Chelmsford Reforms of 1919, the Simon Commission **Report** of 1942 and the Indian Independence Act of 1947. The provisions in our Constitution for a parliamentary form of government, legislative councils, provincial autonomy and many other features are traceable to the above-mentioned Government Acts of British times. Thus, it should have by now become clear to you that the Indian Constitution has a rich historical background preceding its formulation.

- Note:** i) Use the space given below for your answers.
ii) Check your answers with those given at the end of the Unit.

1) Explain the meaning of Constitution.

.....
.....
.....

2) Trace the historical background of the Indian Constitution.

.....
.....
.....

13.3 CONSTITUENT ASSEMBLY AND DRAFTING OF THE CONSTITUTION

The Constitution that we have today is not the result of some disjointed, episodic exercises by some individuals. It has been, in fact, drafted and created by a body of learned people from different walks of life: specially constituted and convened for the explicit purpose of formulating free India's Constitution. This body was the Constituent Assembly, about which you will be reading in some detail in this section. It may interest you to know that the Constitutions of most of the countries have been drafted by such assemblies/bodies.

13.3.1 Composition

The Constituent Assembly was headed by Dr. Rajendra Prasad who later on became India's first President. Jawaharlal Nehru who became the first Prime Minister of free India was possibly the most prominent figure of the Assembly. Among the other famous names, the Assembly comprised luminaries like Dr. B.R. Ambedkar, Sardar Vallabh Bhai Patel, Pattabhi Sita Ram)ya and J.B. Kriplani. A good number of the members had strong legal backgrounds, which most definitely facilitated the task of Constitution-making. The total strength of the Assembly was 381. The membership of the Assembly was drawn from different political parties, most important of which were the Congress and the Muslim League. In addition, independent members, representatives from the Governor's Provinces and the Princely states were also present.

The core of the Constituent Assembly was the Drafting Committee which was chaired by Dr. B.R. Ambedkar. It should, therefore, not surprise you that Ambedkar is often described as the Father of India's depressed classes. He had an eminent professional background and legal expertise and was, thus, well-equipped to pilot the Constitution framing process and to deal with the various complexities inevitable in the Herculean task. Ambedkar's influence can be particularly seen in the special provisions for Scheduled Castes and Tribes (SCs and STs) that the Constitution came to incorporate.

Various provisions of the Constitution were debated at length in the several committees that were formed for the purpose. After extensive debates and

discussions, these provisions were presented to the Assembly for due consideration. Based on the deliberations in the Assembly, the Drafting Committee prepared the draft text of the Constitution. The final document, after amendments, was signed on November 26, 1949 and came into force two months later.

13.3.2 A Critique

The Constituent Assembly was a body of accomplished people which laboured assiduously to give to free India a Constitution that Indians would be proud of. Still the Assembly has been subjected to some criticisms. The main criticism against the Assembly spearheaded essentially by the Muslim League was that it was a Congress/Hindu dominated body. Because of this belief and conviction, the League never participated enthusiastically in the deliberation of the Constituent Assembly and eventually stayed away.

The Congress was led by Jawaharlal Nehru who was a democrat to the core. He made allowance for every opinion and never tried to bulldoze his or the Congress Party's position on various issues. Moreover, the chairman of the Constitution Drafting Committee, Dr. Ambedkar was also a democrat every inch of the way and permitted all members to have their say. The fact that the Constitution which was eventually framed took due cognisance of the aspirations of religious minorities belies the allegations of the Muslim League. The Assembly followed the principles of consensus and accommodation on matters coming up before it. The Constituent Assembly completed the task of Constitution-making within a period of three years, whereas several other countries took several years to have their first Constitution. Also, it goes to the credit of the Assembly that the Constitution of free India was never abrogated and a new one introduced.

13.4 THE PREAMBLE

The Preamble, or the beginning, of any Constitution is also known as its soul or spirit. So is the case with the Indian Constitution. Its Preamble sets out the tone and tenor of the entire Constitution. It declares India to be a sovereign, secular, democratic republic assuring liberty of thought, expression and belief to all its citizens, equality and justice to all the citizens. These words constitute the cornerstone of the Constitution. The main body of the Constitution is an evocation of the beliefs and ideals enshrined in the Preamble.

The exact text of the Preamble, which you should know, is given below:

"We the people of India, having solemnly resolved to constitute India into a 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 individuals and the unity and integrity of the Nation.

In our Constituent Assembly; this ~~went~~^{sixth} day of November 1949, do Hereby Adopt, Exact and Give to Ourselves This Constitution."

Note: 3 Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) Write a note on the composition and working of the Constituent Assembly that drafted the Indian Constitution.

.....
.....
.....

2) Write a short note on the Preamble of the Constitution.

.....
.....
.....

13.5 BASIC FEATURES OF THE CONSTITUTION

The Constitution of India is a lengthy, voluminous document that deals with various aspects of Statecraft. It is divided into several chapters and volumes that cover the nature of the polity, relations between the centre and the constituent units, powers and functions of various Constitutional bodies and so on. It is not possible to cover all the details in the limited scope of this Unit. However, we can certainly deliberate over the basic features of the Constitution. These features are:

(a) A Written Constitution; (b) Parliamentary Democracy; (c) Independence of the Judiciary; (d) Cooperative Federalism (e) Fundamental Rights and Duties; and (f) Directive Principles of the State Policy. Some of these features, Fundamental Rights and Directive Principles of State Policy, for instance, are important enough to deserve a special mention. These are, perhaps, a unique feature of our Constitution. Other Constitutions do not really have similar provisions.

Let us now examine each of the above features in some detail:

A Written Constitution

As pointed out in Section 13.1, ours is a written Constitution. In fact, the majority of the Constitutions in the world are written. The unwritten Constitution of the United Kingdom is a notable exception. As the very nomenclature indicates, the Constitution of our country is in the form of a written document. Our Constitution, though written is not rigid the way written Constitutions generally are. This is reflected in the number of times it has been amended since independence.

Parliamentary Democracy

As you have already read in this Unit, India is a parliamentary democracy based on the Westminster model of the United Kingdom. In such a framework, the head of the government is the Prime Minister who has a Council of Ministers to

coordinate with him and to assist him in the day-to-day task of the administration. The head of the State is the President (as in the case of India). **All** administration is carried on in his name, but he is a nominal (**figure** head or *de jure* sovereign) **executive**. The legislature, the executive and the judiciary are the three major organs of the government that interact with each other on the basis of the **principle** of fusion of powers.

Independence of the Judiciary

Judicial independence is another hallmark of our Constitution. The provisions of the Constitution have ensured that the judges are able to discharge their official duties without fear or favour. Basically, **there are** Constitutional guarantees governing their service conditions to the effect that they do not feel any pressure in their official functioning.

Cooperative Federalism

In the scheme of things, a federal state is one in which the powers (especially legislative) are divided between the central government and the governments of the constituent units. The USA is a prime example of a classic federal state where the **central/national** government in Washington D.C. has only a few overriding powers with the constituent governments enjoying full autonomy otherwise. In contrast, is a unitary state like the UK where the central government in London enjoys superseding powers over the composing units. **India's** is a mixed case, **i.e.**, it is neither a pure federal state nor an out and out unitary state. The Constitution of India actually declares it to be a Union of States (Article 1). In the Indian scheme of things, **there** is a list of subjects on which the central and state governments can **legislate** (Union List) and on which the state governments alone can legislate (State List). However, in case of any dispute, the law enacted by the central government prevails. Generally, the two sets of governments have acted in a spirit of cooperation, showcasing the inherent cooperative schemes laid down in the Constitution. Hence, the expression '**Cooperative Federalism**'.

Fundamental Rights and Duties

As already mentioned, Fundamental Rights are a very important **component** of our **Constitution**. In fact, they are probably a unique feature of our Constitution. You may note that the keenness and insistence of the founding fathers of our Constitution to include Fundamental Rights for all citizens were really shaped by their experiences of fighting the British colonialists. The framers of the Constitution had experienced first hand the crushing of liberties during different phases of subjugation by the British. They were determined that citizens of free India were not subjected to such experiences ever again. Hence, their strong emphasis on Fundamental Rights. The Constitution guarantees certain rights to its citizens considered fundamental for their well-being. These rights are enforceable by the courts of law (unlike the Directive Principles of State Policy). They are the bedrock of an Indian citizen's life, liberty and property. The various Fundamental Rights are:

(i) Right to Equality; (ii) Right to Freedom; (iii) Right Against Exploitation; (iv) **Right** to Religion; (v) Cultural and Educational Rights; and (vi) Right to **Constitutional** Remedies. The Right to Property was earlier a Fundamental Right, but was made a legal right through the 44th Constitutional Amendment Act. Thus, it is not a

Fundamental Right. In effect, what this means is that the property belonging to any person can be acquired by the government by paying appropriate compensation.

You should know that except during an emergency, Fundamental Rights cannot be suspended. But even in such a situation, Articles 20 and 21 remain in operation. These two Articles deserve a mention. Article 20 states that 'No person shall be punished on the basis of laws that are enacted after a crime has been committed (protection from ex-post facto laws), protection from being punished more than once for the same offence (protection from double jeopardy), and protection from standing trial against oneself' (protection from self-incrimination). Article 21 on the other hand, ensures protection of personal life and liberty'. What this basically means is that the state does not have 'the right to take away the life of a person, except through the procedure established by law'.

So much for Fundamental Rights. Now, coming to Fundamental Duties, they are another special feature of our country's Constitution. However, they are a rather late addition; they were not a part of the Constitution that free India adopted in 1950. These duties became a part of Constitutional framework after the mid-1970s. The concept of Fundamental Duties gained currency following the realisation that increasingly a large number of Indians had started to think and act as if they only had rights or claim to rights, but no corresponding duties/obligations towards each other/the country. Their mindset had led to increasing situations of 'social and civil anarchy. It was felt that it was time the citizens of free India were made to realise that the enjoyment of rights they took for granted was contingent upon the performance of certain duties. Hence, the concept of Fundamental Duties.

Some of the important Fundamental Duties are: protection of the territorial integrity and sovereignty of India, respect for the national flag, emblem, promotion of a clean environment etc. Failure to perform the various Fundamental Duties may invite punitive action as per the various provisions of law.

Directive Principles of State Policy

As the very nomenclature indicates, Directive Principles are guidelines to the government for just and effective governance. The Constitution lists a series of them; for instance, provision of equal pay for equal work, prohibition of all intoxicants, especially alcohol, promotion of small and cottage industries etc. Though the Directive Principles are not legally enforceable, this in no way means that they are unimportant. Over the years, in post-independent India, the government of the day has enacted suitable legislation based on various Directive Principles. So, we can say that over time, many of these Principles have become legally enforceable also.

It may interest you to know that the Directive Principles of State Policy are an influence of the Irish Constitution. The above, then are the basic features of our Constitution. These would give you a fairly good idea of the essence of the Constitution. We can now move on to the next Sections dealing with the Amendments to the Constitution.

Check Your Progress 3

Note: 3 Use the space given below for your answers.

- ii) Check your answers with those given at the end of the Unit.

1) Enumerate the basic features of the Indian Constitution.

.....
.....
.....

2) Write a note on Fundamental Rights and Fundamental Duties.

.....
.....
.....

13.6 AMENDMENTS TO THE CONSTITUTION

The framers of the Indian Constitution, in their wisdom and foresight, created as comprehensive a Constitution as was humanly possible. They visualised the likely situations/scenarios that would be faced by the rulers of independent India and tried to provide for mechanisms to deal with various contingencies. However, no document is foolproof and thus, after independence, depending on the exigencies of a situation, the Constitution has been amended. To the credit of the Constitution's founding fathers, they foresaw that situations might arise necessitating Constitutional Amendments and therefore, laid down an elaborate procedure for the same. Thus, in the last sixty years of independence, the Constitution has been amended a little around ninety times. The Amendments have covered a wide area of public and family laws, the policy of positive discrimination, environment protection and many other areas of concern for the citizens as well as the government. Fundamental Duties, about which you have read in the preceding section, were in fact added to the Constitution by the 42nd Constitutional Amendment Act of 1976.

Apart from the Constitutional Amendments enacted by the Central legislature of the country, viz., the Parliament, the Judiciary, especially the Supreme Court has made important announcements relating to the Constitution from time to time. Thus, in one of its most important judgements given in the early 1970s, it declared that the basic structure of the Constitution could not be changed. This was the famous **Kesavananda Bharati Case** (also known as the Fundamental Rights Case) of 1973. The Supreme Court gave the ruling that while the Parliament could amend the Fundamental Rights also, it was not competent to change the 'basic structure' or 'framework' of the Constitution. The significance of the doctrine of basic features lay in the fact that it expanded the scope of the power of Judicial Review. Constitutional Amendments and Judicial Pronouncements have, thus, been important milestones in the evolution of the Indian Constitution.

Check Your Progress 4

Note: i) Use the space given below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) What is the significance of the 42nd Constitutional Amendment Act of 1976?

.....

.....

.....

2) Bring out the importance of the Kesavanand Bharati Case.

.....

.....

.....

13.7 REVIEW 'OF THE CONSTITUTION

In recent times, there have been debates, discussions, talks and certain concrete efforts towards a review of the Constitution. There have been concerns voiced in various quarters that for the Indian State to be more responsive to its citizens' needs, the Constitution needs to be looked at afresh. There have been other motivations too. Thus, for a long time now, it has been argued in influential circles that India would progress faster if it switched over to a Presidential form of government (from the current Parliamentary set-up). Then, there have been innumerable and incessant debates on Article 356 of the Constitution which deals with the President's emergency powers. The controversy centres on the suitability or otherwise of imposing President's rule in a State where the Constitutional machinery has broken down (really or allegedly). Many have advocated doing away with the said Article altogether or appropriately modifying it.

A more current and controversial concern with far-reaching implications has been the desire of certain political formations subscribing to a particular political ideology to change the Constitution's secular, pluralist ethos to a narrow, sectarian one. It is important to mention here that one of the latest bodies constituted to review the working of the Constitution was the National Commission, established on January 27, 2003 with the then Chief Justice Venkatachaliah as its chairman.

The mandate of the Commission has been: The Commission shall examine, in the light of the last sixty years, as to how far the existing provisions of the Constitution are capable of responding to the needs of efficient, smooth and effective system of governance and socio-economic development of modern India and to recommend changes, if any, that are required to be made in the Constitution within the framework of Parliamentary Democracy without interfering with the basic structure of features of the Constitution.

The Commission identified ten areas for review and made 248 recommendations pertaining to them. However, the Commission's report did not result in any substantive political action. Largely, because of the apathy of the political class, as well as the vested interests involved. Thus, the Constitution as we know it today, has not changed in essence, The talk of a comprehensive Constitutional review has remained just that i.e., talk motivated by varying political agendas rather than any genuine desire for Constitutional fine tuning.

Check Your Progress 5

Note: *ij* Use the space given below for your answers.

ii) Check your answers with that given at the end of the Unit.

- 1) Write a short note on the Venkatchaliah Commission.

.....
.....
.....

13.8 LET US SUM UP

In this Unit, you have been given a basic idea of the Constitution of our country. You have been **familiarised** with the meaning of the word Constitution. You have learnt that the Indian Constitution has a rich historical background. You have also read about the Constituent Assembly, the special body specifically constituted to draft the Constitution. **The** influence and the role of India's anti-colonial leadership, M.K. **Gandhi** and **Jawaharlal Nehru** among others, in the **framing** of the Constitution would have become evident to you. The soul of our Constitution is its Preamble that emphasises the ideals of liberty, equality and justice. Fundamental Rights, Directive Principles of State Policy and Fundamental Duties are very important integrals of the Constitution. Our Constitution, though a written one, is not rigid. It has been amended from time to time in response to the various exigencies. In recent times, there has been a lot of debate and some action towards a major Constitutional review. However, this has not really got going because the intentions behind it **have been** dubious. This Unit discussed all these features for you in some **detail**.

13.9 KEY WORDS

- De jure Sovereign** : Rightful Sovereign or Supreme ruler.
- Judicial Review** : The power of the Supreme Court to declare any law or act of the government as **ultra vires** or null and void, if found to be unconstitutional or against the Rule of Law.

13.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress '1

Your answers should include the following points:

- 1) See Section 13.1
- 2) See Section 13.2

Check Your Progress 2

Your answers should include the following points:

- 1) . See Section 13.3

2) See Section 13.4

Check Your Progress 3

Your answer should include the following points:

- 1) See Section 13.5
- 2) See Section 13.5

Check Your Progress 4

Your answers should include the following points:

- 1) See Section 13.6
- 2) As above.

Check Your Progress 5

Your answer should include the following points:

- 1) See Section 13.7