

**B.A.LL.B. V Semester**  
**Constitutional Law of India-I**  
**BL-5003**  
**Nature and Salient Features of the Indian Constitution**

**What is Constitution?**

It is in short, a rule of book of a nation, codifying rule of law. Constitution is a legal document having a special legal sanctity, which sets out the framework and the principal functions of the organs of the government of a state, and declares the principles governing the operation of those organs.<sup>1</sup> Like every other Constitution, the Indian Constitution also seeks to establish the fundamental organs of government and administration, lays down their structure, composition, powers and principal functions, defines the inter-relationship of one organ with another, and regulates the relationship between the citizen and the state, more particularly the political relationship. The states have reasserted certain principles of law through written Constitutions.

As a democratic Constitution, the Indian masterpiece also reflects the fundamental political values in substantive ways by guaranteeing Fundamental Rights to the citizens, and in procedural ways by providing remedies. It mirrors basic values about who shall govern, and in what direction. Constitution means the structure of a body, organism or organization, or we can also say, what constitutes it or what it consists of. Because the nation is one of the biggest in the world with most of varieties of the people and the cultures, India needs an expressly written code of governance, more specifically when the people chose to have different institutes, estates, mechanisms and levels of sovereignty. And thus we have the longest written constitution, which is one of the essential features of democratic federation.

**What is Constitutionalism?**

One needs to know the 'Constitutionalism' and "Constitutional Law" before understanding the philosophy of Constitution of India. Having a Constitution itself is not Constitutionalism. Even a dictator could create a rulebook calling it Constitution, which never meant that such a dictator

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<sup>1</sup>Wade and Phillips, Constitutional Law , London Press, 1965, 14th Edn. P 1

had any faith in Constitutionalism. Recognizing the need for governance, the Constitutionalism equally emphasizes the necessity of restricting those powers.

The Constitutional law means the rule, which regulates the structure of the principal organs of the Government and their relationship to each other, and determines their principal functions. The rules consist both of legal rules enacted or accepted as binding by all who are concerned in Government. All the Constitutions are the heirs of the past as well as the testators of the future.<sup>2</sup> Constitution of Indian Republic is not the product of a political revolution but of the research and deliberations of a body of eminent representatives of the people who sought to improve the existing system of administration.<sup>3</sup>

### **Indian constitution is a federal constitution:**

K.C. Wheare defines federal government as an association of states, which has been formed for certain common purposes, but in which the member states retain a large measure of their original independence. A federal government exists when the powers of the government for a community are divided substantially according to a principle that there is a single independent authority for the whole area in respect of some matters and there are independent regional authorities for other matters, each set of authorities being co-ordinate to and subordinate to the others within its own sphere. The framers of the Indian Constitution attempted to avoid the difficulties faced by the federal Constitutions of U.S.A, Canada and Australia and incorporate certain unique features in the working of the Indian Constitution. Thus, our Constitution contains certain novel provisions suited to the Indian conditions. The doubt which emerges about the federal nature of the Indian Constitution is the powers of intervention in the affairs of the states given to the Central Government by the Constitution According to Wheare, in practice the Constitution of India is quasi-federal in nature and not strictly federal. Sir Ivor Jennings was of the view that India has a federation with a strong centralizing policy. In the words of D.D.Basu The Constitution of India is neither purely federal nor unitary, but is a combination of both. It is a union or a composite of novel they.

The Indian Constitution is not only regarded as Federal or Unitary in the strict sense of the terms. It is often defined to be quasi-federal in nature also. Throughout the Constitution, emphasis is

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<sup>2</sup> Jennings, Some Characteristics of the Indian Constitution, Oxford University Press, 1953, p. 56

<sup>3</sup>Basu DD, Introduction to the Constitution of India, Lexis Nexis, 3rd Edn. 1946, p. 03.

laid on the fact that India is a single united nation. India is described as a Union of States and is constituted into a sovereign, secular, socialist, democratic republic.

As opposed to this is the opinion of some scholars who regard the Indian Constitution to be unitary in nature. It has been argued that the Indian Constitution does not satisfy certain essential tests of federalism, namely- the right of the units to make their own Constitution and provision of double citizenship. Further, in the three-fold distribution of powers, the most important subjects have been included in the Union list, which is the longest of the three lists containing 97 items. Even regarding the Concurrent list, Parliament enjoys an overriding authority over the State Legislatures. Article 253 empowers the Union Parliament to make laws implementing any treaty, agreement or convention with another country or any decision made at any international conference, association, or other body.

Some of the other Constitutional provisions, which are often quoted in favor of the Unitary status of the Indian Constitution are- emergency powers of the president to declare national emergency or declaring emergency in a state in the event of failure of Constitutional machinery, the appointment of governors, unification of judiciary and the dependence of the States on the Centre for finance. The power of the Union to alter the names and territory of the states, to carry out Constitutional amendments and to affect co-ordination among the States and settle their mutual disputes is also regarded as an indicator of the unitary character of the Indian Constitution.

It should be remembered that the aforementioned provisions in the Constitution are aimed at establishing a working balance between the requirements of national unity and autonomy of the States.<sup>4</sup>

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<sup>4</sup><http://www.legalservicesindia.com/article/154/Nature-of-Indian-Constitution.html> visited on 25/9/2020 time 11:20 AM

## **Nature and Characteristics of Indian Federalism:**

Ivo D. Duchacek has drawn a model to explain the nature and characteristics of the Indian Federalism, and analysed the links between two spheres of seemingly exclusive jurisdiction. He classified these links under two broad categories. They are (I) the Constitutional overlaps and (II) Extra Constitutional overlaps.<sup>5</sup>

### **Constitutional overlaps:**

1. The 'Elastic Clause'
2. Constitutional authorization for federal supervision of local execution of national laws.
3. The right to insure the republican or democratic form of government.
4. Emergency powers in case of invasion or insurrection.
5. War and foreign policy powers.
6. Concurrent powers.
7. Dependence of the central authority on the State government, in such things as state control of national elections, control over the upper chamber, and local administration of national programs. Dependence of the Central Authority on the components also includes the possibility of blackmail, implied in the Constitutional grant of the right of secession.<sup>6</sup>

### **Extra Constitutional Overlaps:**

A) Economic and social imperatives such as economic planning, technological innovation (atomic energy, computers, and other costly projects calling for national financing and controls), Social Welfare Programmes and the growth of large national organizations that cut across the territorial divisions, such as manufacturing corporations, insurance companies, banks, labour and farm organizations and mass media. They all challenge the intra-federal boundaries ("the worst inanities" as Morton Grodzins called the boundaries of American States) that had been drawn in earlier eras and that cannot be justified on any grounds of rational efficiency. Planning

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<sup>5</sup> Ivo D Duchacek, Comparative Federalism, Holt, Rinehart and Winston, inc, New York, 1970, p 278-279.

Commission and National Development Council are extra constitutional bodies which eroded the powers of the states. The projects like atomic energy and other costly enterprises have to be funded by the center and regulated by it. Railways, Airways, waterways, Public Corporations and companies, Banks, Insurance companies, mass media organizations like AIR and Doordarshan are under the control of central authority. But the privatization of these institutions have reduced the control of the Union authority over it and private persons are playing key role by manipulating these organizations<sup>7</sup>

B) Population shifts, especially the growth of big cities, the emergence of new regional territorial communities regardless of state boundaries, or emergence of new territorial communities within the existing state boundaries. Interstate travel and migration of people from one state to another state created multi-linguistic groups all over the country. Because of this states formed on the basis of language has lost their significance to some extent.

C) External pressures (threats and opportunities) that result in further extension of the federal powers. Three wars that India fought after independence increased the power of the center. Central authority and command over external affairs and relations with neighbours, increase the importance and power of the Union Government.<sup>8</sup>

### **Salient Features**

The basic philosophy of our Constitution is summed up in the Preamble, which declares India to be a Sovereign Socialist Secular Democratic Republic.

1. Largest Written Constitution: -- It is a written constitution containing as many as 395 Articles and 9 schedules, originally. It is the bulkiest and the largest one in the world.
2. Sovereign Socialist, Secular Democratic Republic: -- According to Preamble, India is a Sovereign, Socialist, Secular, Democratic Republic. The word Sovereign emphasises that India is no more dependent upon any outside authority. The term "Socialist" has been inserted in the Preamble by the Constitution 42nd Amendment Act, 1976. In general, it means some form of ownership of the means of production and distribution by the State.

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<sup>7</sup> Ronald Watts, *New Federations: Experiments in the Commonwealth*, Oxford Clarendon Press, 1966 p. 112

<sup>8</sup> Ursula K Hicks, *Federalism: Failure and Success* New York Oxford University Press, 1978, p 144.

India has chosen mixed economy and now drifting towards privatisation.<sup>9</sup> The term Secularism means a State which has no religion of its own as a recognised religion of State.

3. Parliamentary form of Government: -- Both at the Centre and States, the Constitution established a parliamentary form of Government. The British model has been adopted in toto, in this regard. The essence of the parliamentary form of Government is its responsibility to the legislature. The Council of Ministers is collectively responsible to the Lower House i.e., Lok Sabha. In States the Council of Ministers is responsible to Legislature, and therefore it is called responsible Government.
4. Partly Rigid and Partly Flexible: -- The Constitution of India is partly rigid and partly flexible. There are certain provisions which can be amended by a simple majority in Parliament, while there are certain other provisions whose amendment requires not only a special majority in Parliament but also ratification by at least one half of the State Legislatures. A written constitution is generally said to be rigid. But the Indian Constitution despite being a written one is not rigid and it is sufficiently flexible.
5. Fundamental Rights: -- The incorporation of a formal declaration of Fundamental Rights in Part III of the Constitution is deemed to be a distinguishing feature of a democratic State. These rights impose limitations on the powers of the State. The State cannot take away or abridge these Fundamental Rights of the citizen guaranteed by the Constitution. If it passes such a law it may be declared as unconstitutional by the Courts.
6. Directive Principles of State Policy: -- The Directive Principles of State Policy contained in Part IV set out the aims and objectives to be taken up by the States in the governance of the country. Unlike the Fundamental Rights, these rights are not justiciable. Though by their vary nature they are not justiciable in the Court of law, yet the State Authorities have to answer for them to the electorate at the time of election.<sup>10</sup>
7. Fundamental Duties: -- The Constitution (42nd Amendment Act, 1976) has introduced a Code of ten "Fundamental Duties" for Citizens. 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

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<sup>9</sup> Khanna, H R, Making of India's Constitution, Eastern Book Company 2<sup>nd</sup> Ed., p 20-22.

certain basic norms of democratic conduct and democratic behaviours. These duties, like the Directive Principles of State Policy cannot be judicially enforced. However they remind the responsible citizen what Constitution expects from them.

8. An Independent Judiciary :-- After a thorough deliberation in the Constituent Assembly, the founding fathers created an independent judiciary with a power of Judicial Review as the custodian of the fundamental rights of the citizen. It plays a significant role in determining the limits of power of the Centre and States. Single independent judiciary to interpret the Union and State Laws, vibrant judicial review of executive and legislative action are other basic features of the Indian Constitution which secure the philosophical foundations of the rule of law and democracy. The judiciary is the only resort for a citizen to enforce the constitutional provisions and secure the rights.
9. Single Citizenship:-- Though the Constitution envisaged a dual polity i.e., Centre and States, it provides for a single citizenship for the whole of India. The American Constitution provides for dual citizenship i.e., the citizen of USA and a State citizenship. Every Indian has a citizenship 30 throughout the country with same rights. Recently Indian citizenship is given to the non-resident Indians permitting them to retain the foreign citizenship.

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