

# UNIT - I

## Salient Features of Indian Constitution & Federalism

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# **SAILENT FEATURES OF INDIAN CONSTITUTIONS**

## **OUTLINE**

**UNIQUE FEATURES**

**OTHER FEATURES**

**FEDERAL SYSTEM OF GOVERNMENT**

**CONCLUSION**

**The Salient features of the Indian Constitution are of 2 types:**

- i. There are some features which are unique to this constitution: no previous constitution possessed them.
- ii. Others are which, though not peculiar, still important characteristics are.

### **Salient Features of Indian Constitution: i.e. Unique Features:**

1. Framed by the People of India: This Constitution has been framed by the representatives of the people of India through a Constituent Assembly. Working on behalf of the people of India.
2. Derived from various Sources: It is a unique document, as the provision of which have been derived from various sources. Our constitution makers were inspired to draft the provisions regarding Fundamental Rights & Supreme Court from U.S.A., DPSP from Ireland, Emergency provisions from Germany, Fundamental duties from Russia, Distribution of legislative powers from Canada and Government of India Act, 1935.
3. Sovereignty of People: The constitution declares the people of India to be the sovereign (supreme authority). It implies that people of India are not subordinate to any other external agency.
4. Republican Government: The constitution provides for the republican form of Government for India.
5. Secular Polity: The constitution provides for secular polity for India. The substances of secularism can be deduced from various provisions of the constitutions. It has been used in

the sense of absence of discrimination on the grounds of religion & equal respect for all religions (Articles 14, 15, 16, 25-28).

6. Fundamental Rights & Duties: The constitution provides for Fundamental rights and fundamental duties of the citizens of India. Inclusion of fundamental rights was always demanded by the leaders of Indian National Movement in the constitution. Provisions for Fundamental duties (Part – IV A Art. 51A) was inserted in the constitution through 42<sup>nd</sup> Amendment Act, 1976.
7. Directive Principles of State Policy: The constitution provides for DPSP in Part-IV of constitution.
8. Judicial Review: The constitution provides for the judicial review of the Acts of legislature (both Union & State) & the activities of the executives (Union & States). Prior to it there was no such provision. This keeps the legislative and executives branches of Government (Arts. 13, 32, 226) under restraint.
9. Universal Adult Franchise: It provides for universal adult Franchise Prior to it, all the constitutions provided for restricted franchise (Article 326).
10. Unique Blend of Rigidity & flexibility: The constitution provides an amending procedure. Prior to it, there was no provision for an amendment of the prevalent constitution. The British Parliament alone was entitled to do it. The procedure for amending the constitution is a unique blend of rigidity & flexibility.

### **Other Features:**

1. Comprehensive Document: It is the lengthiest constitution. A comprehensive document having about 450 Articles & 12 schedules.
2. Parliamentary form of Government: It provides for a full-fledged democracy. In a parliamentary democracy election are held at regular intervals for choosing the representatives of the people who control the executives & the council of Minister is collectively responsible to them [Article 75 (3)].
3. Federal Form of Polity” It provides for federal form of Polity. There are critics who are dissatisfied with it as it is fully loaded with strong centralizing tendencies. In fact, some

critics call it a Unitary Constitution with some federal features rather than a Federal Constitution with strong unitary tendencies.

4. Emergency Provisions: The Constitution makes the provision for national emergency, failure of constitutional machinery and financial emergency. (Articles 352-360 Part XVIII). In the situation of National Emergency, the federal character of the constitution takes the shape of a unitary constitution.

Nature of any constitution depends upon the type of Government type of Polity and the relation which union has with its unit's constitution can be unitary or it can be federal.

### **Salient features make Indian Constitution distinct from other constitutions:**

- i) Written or unwritten constitution: Constitution may be written like the U.S. Constitution or unwritten Constitution based on conventions like British Constitution.
- ii) Rigid or Flexible: Constitution may be called rigid or flexible on the ground of the amending procedure being difficult or easy. Federal constitutions are usually rigid because of their difficult amending processes.
- iii) Federal & Unitary: Example of Federal Constitution is U.S. Constitution & example of unitary constitution is U.K. constitution.

## FEDERALISM

Unitary Constitution means the power of governance is centralized in one government (central government) i.e. unitary type of govt. But where the powers are divided between two kinds of government i.e. union and State, then that is called Federal Constitution.

In Unitary Constitution all powers are vested in central government. to which the authorities in the units are subordinate & function as the agents of the central govt. & exercise authority by delegation from the center. Whereas in Federal Constitution, there must be a rigid written constitution, it must be supreme & it must specifically divide powers between the federal government & the government of the unit. Also, there must be independent judiciary as the arbiter of any dispute between the union & the states.

Unitary Constitution means the power of governance is centralized in one government (central government) i.e. unitary type of govt. But where the powers are divided between two kinds of government i.e. union and State, then that is called federal Constitution.

**Prof. K.C. Wheare** described the Constitution of Indian as “quasi-federal”. If the field of governance is divided between the federal and state government and neither is subordinate to the other but are coordinate & independent within the sphere allotted to them, then this agreement represents the federal principle.

**A.V. Dicey**: Says federalism means distribution of powers of a state among the number of coordinate bodies originating & controlled by the constitution.

**Ivor Jennings** opines that India is a Federation with a strong centralizing tendency.

**Granville Austin** called Indian federalism as a “Cooperative Federation”.

**Alexan drowicz** says that Indian Constitution is a federation sui generis.

**Raja Mannar Committee** has characterized Indian constitution as federal one but suggested the amendment of certain features which have unitary trend.

## **Federal features of Indian Constitution:**

1. **Division of Power:** There should be clear cut division of power between the central government and the state governments i.e. every federal constitution has dual government. This dual government originates from the constitution and is controlled by the constitution.
2. **Written constitution:** It must be done by a common agreement in writing. The source of power of both the Federal and the state government is written constitution. It is binding on both sets of government.
3. **Rigidity of the Constitution:** The procedure of amending the constitution regarding the federal principle is rigid. It can't be changed unilaterally either by the federal or State Government. Here rigidity of constitution refers power of amending those provisions which relates to division of power not given to any one set of government. It can't be done unilaterally. It has to be passed by dual majority & ratification of not less than half of states.
4. **Supremacy of the Constitution:** The constitution is supreme. This means all the authorities of the union & states such as legislature, executive and judiciary are subject to the authority of the constitution.
5. **Impartial & Independent Judiciary:** There should be an impartial judiciary to decide dispute between different government (i.e. Federal and state, state and state) and give interpretations of the constitution in case of any dispute.

Indian Constitution possesses these characteristics as there are clear cut divisions of power between the Union & States under chapter 7 of Part XI and 7<sup>th</sup> schedule. 7<sup>th</sup> schedule of the constitution provides for three lists.

- ✓ Union list (originally 97 subjects) (Now 100).
- ✓ State lists (originally 66 subjects) (Now 61).
- ✓ The concurrent list (originally 47 subjects) (Now 52).

But in cases of conflict between the two, law of the union prevails.

It is thus clear that Indian Constitution possessed all the essential characteristics of a federal polity. Even after that some jurist characterizes it as not federal.

### ➤ Opinion of the Apex Court:

The attitude of Supreme Court towards the federal position of the constitution has been rather two-fold. In contest between a govt. & individual the court has invariably given an expansive interpretation to the govt's legislative power and had upheld the law and has taken the view that Indian constitution is federal. And in the contest between the center and a state, the court has shown strong predilection the federal aspects of the constitution and has need that it is not strictly federal or federal.

In **State of West Bengal v. Union of India [AIR 1963 SC 1241]** Supreme Court projected the traditional view of federalism & characterized Indian constitution as not truly federal.

In **State of Rajasthan v. UOI [AIR 1977 SC 1361]** C.J. Beg says in a sense, therefore, the Indian union is Federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country. Which has to be nationally integrated, politically and economically coordinated and socially, intellectually and spiritually uplifted?

**H.M. Seervai** said that Indian constitution is undisputedly federal.

#### **The View that it is not federal:**

No doubt that the essential characteristics of a federal constitution are present in the Indian Constitution. It is claimed that the constitution does not embody the federal principles because the Centre can in certain contingencies encroach upon the field reserved for the states. The power of intervention given to the center is inconsistent with federal system as it places the states in a subordinate position.

### ➤ Modification of strict federal features:

In the following matters, the constitution contains a modification of the strict application of the federal principle.

- a) Parliament can by unilateral action increase or diminish the area of any state or alter the boundaries of any state or alter the name of any state (Article 3). The states do not have a separate constitution by themselves.
- b) The distribution of power heavily tilts in favor of the union. The union list comprises the largest number of items. In concurrent list also, the center supersedes the powers of the states.
- c) Even in the state list the constitution permits the union legislature to enact a law if the upper house of parliament passes a resolution supported by not less than two thirds of the members present and voting, that it is necessary or expedient in the national interest that parliament should make a law with respect to any matter enumerated in state list, it would be competent for the parliament to make laws for the states with respect to that matter to be operative for such period, not exceeding one year as may be specified therein. The operation of such legislation can be extended for an additional period of one year at a time by resolution of Rajya Sabha passed in the same manner as the first resolution (**Article 249**).
- d) Not only this, laws passed by the state legislature on a subject on the state list may be reserved for consideration of the President by the Governor; some of them have to be specifically reserved and some of them can not be even introduced or moved in the state legislature without the previous sanction of the President. [**Arts. 200 proviso 2, 201, 288 (2)**]
- e) The Union government is empowered to issue administrative directions to the states in relation to certain matters (such as to ensure compliances with the laws made by parliament or such as not to impede or prejudice the exercise of the executive powers of the union). The directions are binding on the states.
- f) The Governors of the states are appointed by President (**Article 155**) and they hold their office during his pleasure (**Article 156**) & to the extent they exercise their powers in their discretion, are answerable to him.
- g) The constitution has distributed the financial resources in such a way that states have to seek grants from the Union government.
- h) During the period of emergency (declared under Art. 352 of the constitution) the Union parliament can make laws in relation to matters in the state list (**Article 250**) give directions to states as to how they should exercise their authority in matters which are within their

charge, empower the union officer to executed matters in State list & suspend the financial provisions of the constitution.

- i) In case of failure of constitutional machinery in a State (Under **Article 356** of the constitution) the President can assume all the functions of the government of the state, including the powers of the State, including the powers of the high court he can also authorized the parliament to exercise the powers of the state legislature.
- j) Similarly, in case of financial emergency (declared under Art 360 of the constitution) he can issue necessary direction, including orders for the reduction of salaries & allowances of public servants belonging to the union and the states. All money bills passed by the states legislature during such an emergency are also subject to the control of the union.

The above descriptions make it clear that the constitution makers intended to make the Centre very strong. During emergency the Federal Polity virtually becomes unitary in character. The questions then arise as to why the constitution makers were reluctant to accept the norms of federal principle. The reasons are following:

- ✓ At the time of independence, Indian nationalism inspired the people. They had a strong desire of 'United India'. That is why in Indian Constitution India is 'Union of States' (written in the very first article of the constitution).
- ✓ The past history conclusively established that in the absence of a strong central govt. the country soon disintegrates.

There is general trend in favor of centralization in almost all the federations in the world. The view taken here is that the nature of our constitution is federal and that none of the terms of the constitution violate the essential of a federal polity. The reasons are:

- ✓ Indian constitution can't be regarded as unitary, because there is division of powers between the Centre and the States and
- ✓ The division of powers made in the Constitution is binding on the Centre, as it cannot by its own will alter the provisions delimiting its authority in relation to the states. In a Unitary Constitution there is concentration instead of division of power.

For the same reasons government is not devolutionary in character. The states are not agents of the union government.

### **Unitary features of Indian Constitution:**

Indian constitution is unitary biased. Modification of Indian federalism shows that Constitution is biased towards Union. Our Constitution differs from typical federal system. It has several distinctive features. These are:

1. **Appointment of Governor** by the Centre (Article 155).
2. **Flexibility of Constitution:** The process of amendment of the constitution is less rigid than what is found in other federal constitution i.e. by simple majority.
3. **Formation of Nation:** In India Union is not the result of any agreement between the states.
4. **Position of state in Federal System:** In India Residuary power is given to Union & not to state. American system the states have right to make their own constitutions. But in India “The Constitution of the Union & of the states is a single frame work from which neither can get out & within which they must work.
5. **No territorial integrity: (Article 3):** In India Federation India is “indestructible union of destructible states”. (Boundaries of states can be altered). But in American system both can't be destroyed. America is indestructible union of indestructible states.
6. **No right to equality of representation in council of States:** There is no theory of equality of states there is unequal representation of different number of members from different states in council of states.
7. **Nature of Polity:** In India unity in basic matter is maintained. In American constitution there is division of everything essential to sovereignty. They have dual polity, dual citizenship and dual sets of courts. But in India there is no dual citizenship but dual polity with single citizenship. There is Indian citizenship and no state citizenship.
8. **Integrated Judiciary:** In our constitution the High Court & the Supreme Court form part of a single integrated judiciary and they decide all cases arising under various laws – Union, States, constitutional, civil & criminal.

9. **All India Services:** To maintain uniformity in administration the constitution provides that there shall be all India services including judicial services, recruited on all India basis which shall be common to the Union and the states. Example - Common and centralized Election Commission (Art. 324), CAG. (Article 148).

10. **Veto over State Bills:** Art. 201 & 202 where governor, is required to refer the bills to President.

11. **Power of Parliament to legislate on exclusive state subjects under certain circumstances.**

- ✓ When the subject in state list is of National importance. (Art. 249)
- ✓ When the president has proclaimed emergency (Art. 250)
- ✓ If the state consent to such exercise of power by parliament. (Art. 252)
- ✓ International agreements are to be affected. (Art. 253)

**In Emergencies** the Constitution can become Unitary but in Normal times, the constitution is framed to work as a federal system but in times of war and other national emergencies it is designed to work as if it were unitary.

**Dr. Ambedkar said:** “All federal system, including the American, are placed in a tight mold of federalism. No matter what the circumstances, it can not change its form and shape. It can never be unitary. On the other hand, the Draft Constitution can be both unitary as well as federal according to the requirements of time & circumstances.

Emergency Provisions are the merit of Indian constitution. They do not modify the federal nature of constitution but they show the flexibility of Indian constitution. They are exceptional features which are to be applied in exceptional situation. They are held as constituting a major deviation from pure federalism.

They are designed for temporary use only; by their very nature they cannot be of normal occurrence. Because, in an emergency the behavior of each Federal Constitution is very different from that in peace time. Our constitution empowers the central Govt. to deal with an emergency instead of leaving it to depend on judicial interpretation.

Article 352 is to be invoked only when its need is demonstrable. Art. 356 are meant to be used only when constitutional machinery is not functioning properly in a state, which is not a normal situation but an exceptional one.

Article 252 denotes flexibility woven in the fabric of Indian Federalism. The scheme of distribution of power between the center and state become somewhat less rigid because of Article 252 comes into picture as center can't take over the state matter without the co-operation initiative of state.

Only under Article 249, the center acts unilaterally as the matter is of National Importance.

**Minimizes Rigidity & Legalism:** Federation is said to be a weak form of government because of two reasons i.e. Rigidity & Legalism. A federal constitution is a written constitution & a written constitution is invariably a rigid constitution. It can't be changed by ordinary process of legislation.

**Legalism is inherent in federal polity.** A federal constitution makes a demarcation of powers of the Federal and state government; any invasion of the central Government in the field of states and vice versa is a breach of constitution Legalism in a federal constitution means necessary predominance given to the judiciary by making it arbiter of the validity of the laws enacted by federal or state legislatures.

**State and Union are not rival:** Indian constitution does not set up states as rival to one another or to the Union. Each is intended to work harmoniously in its own sphere without impediment by other, with an overriding power of the Union where it is necessary in the public interest. It has nice balance of jurisdiction.

### ➤ Other distinct Features:

The use of word union and not federation is due to reason that India is not an outcome of any agreement between states but an autonomous unit.

**Conclusion:** After considering all the points it is to be concluded that merely because the center enjoys predominance over the states to some extent, the Indian Constitution does not cease to be federal. As federal form of government has no fixed connotation. No two federal constitutions are alike. Each Federal Government has its own distinct characteristics.

One basic feature of federation is however, that there is division of power between the center & the units by the constitution itself. If it is the essence of federalism that existence of center & a state, division of power between them, sanctioned by constitution then these elements are present in Indian Constitution.

The Indian Federalism seeks to reconcile the imperatives of a strong center with the need for State autonomy. The Supreme Court said that Indian Constitution is Federal in the following cases.

- Atiabari Tea Co. Ltd. v. State of Assam [AIR 1961 SC 232].
- Automobile Transport v. State of Rajasthan [AIR 1962 SC 1406].

**Dr. Ambedkar** said in the constituent Assembly- The federal scheme introduced by our constitution introduces the system which is to normally work as federal system but there are provisions for converting into unitary & quasi federal system under specified exceptional circumstances.

But as Indian Constitution does not follow the method of prescribed by American constitution it is considered ad federation sui-Generis by **D.D. Basu** because it does not fit into the strict mould of American federation.

Though Indian Constitution is heavily biased towards union but the reason is that our constitution framers did not adopt a doctrinaire approach but adopted a functional approach & devised a system in tune with the peculiar needs, traditions & aspirations of the Indian people.

The framers of the constitution sought to ensure its vitality as well as its adaptability to the changing needs of a dynamic society.

In our Indian constitution there is clear distribution of power between the center and the state, the states have been assigned exclusive jurisdiction which gives them an identity and an independent & viable status.

However, centralizing theme, which runs through the entire constitution of India, has been the theme noticeable also in other acknowledged Federations e.g. U.S.A., Canada.

The shift towards, centralization is indicative of the transformations in the traditional concept of federation. The Indian Federation has simply recognized this transformation and adapted itself to fall in line with the same theme. Whereas in other constitutions it is inferred.