

Constitution of India: characteristics of the Indian constitution, with special emphasis on federal structure and forms of Government

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Abstract :

The invention of the internet has revolutionized our lives, lifestyles and has also changed the concept of doing business in the form of “online”. This rapidly increasing internet user base has given birth to the concept “e-commerce” which is an online based business model where people can sell and buy products and services using electronic means in the form viz. electronic fund transfer services, electronic data interchange, internet marketing, data collection system etc. The drastic usage of e-commerce with so many advantages has disadvantages too giving use to cyber/e-commerce crimes too as a result emergence of laws in this field giving legal recognition to e-commerce viz. UNICITRAL Model Law, IT Act, FDI guidelines by DIPP, etc. Thus this paper discusses more details on the concept of e-commerce and laws on it.

Key words : e-commerce, IT Act 2000, e-business, cyber consumer, UNICITRAL Model Law, EDI, EFT

India got independence on 15th August 1947. We were being governed by Govt. of India Act 1919 and 1935. India needed an independent constitution. The process to frame Indian constitution started in 1947 and it was implemented on 26th Jan 1950.

India is a large country and for the purpose of governance the same has been divided into 26 states. The main aim of the framers of the constitution was to give democratic powers to the states for establishing a powerful country. The Indian constitution can be understood on the basis of following salient features:

1. The Longest Constitution in the world

The Indian constitution is the longest and the most detailed of all the written constitutions in the world while ¹the American constitution originally consisted of 7 Articles.

The Australian constitution 128 Articles

The Canadian constitution 147 Articles

The Indian constitution originally consisted of 395 Articles divided into 22 parts and 8 schedules. At present, though still, the last numbered Article is 395 and the last numbered part is 22, yet the actual Articles are 460 in number and 25 parts at present and the schedules are 12 in number at present¹.

It has borrowed from all other constitutions their best features. Thus it has adopted:

- Fundamental Rights from the American constitution,
- The Directive Principles of State Policy from the Irish constitution
- Parliamentary form of Government and cabinet system from the British constitution.

It is because of this that the bulk of the Indian constitution has increased considerably.

The Indian constitution lays down the structure not only of the Central Government but also of the States. The American constitution leaves the states to draw up their own constitution.

The vastness of the country and peculiar problems relating to the language have added to the bulk of the constitution.

The Indian constitution contains a long list of Fundamental Rights for its citizens and also a number of Directive Principles. ²The 42nd Amendment has added a new chapter dealing with Fundamental Duties of the citizens².

2. Establishment of a Sovereign, Socialist, Secular, Democratic, Republic

The preamble of the constitution declares India to be a Sovereign, Socialist, Secular, Democratic, Republic.

The word 'Sovereign' emphasis that India is no more dependent upon any outside authority. It means that both internally and externally India is sovereign. Its membership of the commonwealth of Nations and that of the United Nations Organizations do not restrict her sovereignty.

³The term 'Socialist' has been inserted in the Preamble by the constitution 42nd Amendment Act, 1976³. This concept was already implicit in the constitution. The amendment merely spells out clearly this concept in the Preamble. The word 'Socialism' is used in democratic as well as socialistic constitution.

The term 'Secularism' means a state which has no religion of its own as recognized religion of state. It treats all religions equally. In a secular state, the state regulates the relation between man and man.

The term 'Democratic' indicates that the constitution has established a form of Government which gets its authority from the will of the people. The rulers are elected by the people and are responsible to them.

The term 'Republic' signifies that there shall be an elected head of the state who will be the chief executive head. The President of India, unlike the British King, is not a hereditary monarch but an elected person chosen for a limited period. It is an essential ingredient of a Republic.

3. Parliamentary form of Government

The Indian constitution establishes a parliamentary form of government in India both at the centre and in the states as distinguished from the presidential form of the government in America. The essential characteristics of parliamentary form of government are the following:

- a) The Head of the state, i.e., the President is the nominal and constitutional head but the real executive power is vested in the Council of Ministers, whose head is the Prime Minister.
- b) The council of Ministers is collectively responsible to the Lok Sabha.
- c) The members of the council of Ministers are the elected members of the Legislatures directly by the people. On the other hand in the presidential form of government, the Head of the State, i.e., the President, is the real executive directly elected by the people and responsible to the people.

A Debate on Parliamentary vs Presidential System

For the last two decades, a debate has been going on in the country whether the present parliament system should be continued or should be replaced with the Presidential system under which the President, elected directly by the people, or a fixed term will function as the nation's executive unhampered by the legislature in taking administrative decisions. People gave different views for both the systems.

At the outset it has to be made clear that the framers of the constitution preferred the parliamentary system of government mainly for two reasons:

- I. The system was already in existence in India and people were well acquainted with it.
- II. It provides for accountability of ministers to the Legislature.

Yet the happenings during the last two decades clearly demonstrate that the parliamentary forms of government have almost failed.

4. Fundamental Rights

The constitution of India contains a long list of Fundamental Rights of citizens. These rights are necessary for the development of an individual's personality. The Legislature and the Executive cannot take away these rights. If the Legislature passes a law taking away or abridging a Fundamental Right, such law may be declared unconstitutional by the courts. These rights are, however, not absolute rights. They are restricted rights and can be restricted, abridged and taken away when it is necessary in the public interest.

5. Directive Principles of State Policy

⁴The Directive Principles of State Policy contained in Part IV of the constitution set out the aims and objectives to be followed by the state in the governance of the country⁴. Although they are not justifiable in the courts of law, yet they are very important and fundamental in the governance of the country. No government can ignore them. There is a political sanction behind them.

6. Mixture of Rigidity with Flexibility

A rigid constitution is one which requires a special procedure for amendment of its provisions while in a flexible constitution, the provisions of the constitution can be amended by an ordinary legislature process.

A written constitution is generally said to be rigid. The Indian constitution, though written, is sufficiently flexible. It is only a few provisions of the constitution which can be amended by the special procedures, i.e. requiring the consent of the half of the state legislatures. The majority of the provisions can be amended by the Parliament by an ordinary legislature process. The fact that ⁵Indian constitution has been amended 97 times in 62 years is the proof of its flexibility⁵.

7. A Federation with strong centralizing tendency

Indian constitution is federal in form. It borrows from the Government of India Act 1935 but it is more democratic than 1935 Act. Constitution has federal system as Distribution of Power, Supremacy of constitution, written constitution, Rigidity, etc. But the most remarkable feature of the Indian constitution is that being a federal constitution it acquires a unitary character during the time of emergency.

During the proclamation of emergency the normal distribution of powers between the centre and the states undergoes a vital change.

The Union Parliament is empowered to legislate on any subjects mentioned in the state list.

The Financial Arrangements between the centre and the states can also be allured by the Union Government. Thus during the proclamation of emergency all powers are centralized in the Union Government and constitution acquires a unitary character. This combination of federal and unitary system is a unique feature of the Indian constitution.

8. Adult Suffrage

⁶Under the Indian constitution, every person who is citizen of India and who has attained the age of 18 years is entitled to vote in Parliamentary and State Legislature Assembly elections for electing representatives⁶. There is no discrimination in this respect on grounds of sex, caste, religion, property, etc.

9. An Independent Judiciary

An Independent and impartial judiciary is essential for the success of any democratic system. The Indian constitution provides for the establishment of an independent judiciary so that the various rights guaranteed to the citizens of the country can be protected from the arbitrary and unlawful legislative and executive interference.

10. A Secular State

⁷A secular state has no religion of its own as recognized religion state⁷. It treats all religions equally. The Preamble declares the resolve of the people of India to secure to all its citizens “liberty ofbelief, faith and worship”.

⁸Articles 25 to 28 of the constitution give concrete shape to this concept of secularism⁸.

11. Single Citizenship

Though the constitution of India is federal and provides for dual polity, i.e., Centre and States, but it provides for a single citizenship for the whole of India. The American constitution provides for dual citizenship, i.e., the citizenship of America and State citizenship. On the other hand, there is only one citizenship in India, i.e., the citizenship of India. There is no State citizenship. Every Indian is the citizen of India and enjoys the same rights of citizenship no matter in what state he resides.

12. Fundamental Duties

⁹The Constitution (42nd Amendment) Act, 1976, chapter IV-A introduced a code of ten “Fundamental Duties” for citizens⁹. The Fundamental Duties are indeed 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 certain basic norms of democratic conduct and democratic behaviours.

Indian constitution is unique in its nature. As India is a vast country, having different caste, culture and religion. Therefore, to fulfill the need of the Indian people and to protect their pride of the country, the framers of the constitution thus created our vast and largest constitution.

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