



An Associate of IMS (Institute of Mathematical Sciences)

GENERAL STUDIES

(Pre-cum-Main)

INDIAN POLITY

SET-1

(Constitutional Development)

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POLITY

Constitutional Development

1. THE HISTORICAL BACKGROUND

Utility of a Historical Retrospect:

The very fact that the constitution of the Indian Republic is the product not of a political revolution but of the research and deliberations of a body of eminent representatives of the people who sought to improve upon the existing system of administration.

Government of India Act, 1858:

For our present purposes we need not go beyond the year 1858 when the British Crown assumed sovereignty over India from the East India Company, and Parliament enacted the first statute for the governance of India under the direct rule of the British Government, — The Government of India Act, 1858. By this Act, the powers of the Crown were to be exercised by the Secretary of State for India assisted by a Council of fifteen members. The Council was composed exclusively of people from England, some of whom were nominees of the Crown while others were the representatives of the Directors of the East India Company. The Secretary of State, who was responsible to the British Parliament, governed India through the Governor-General, assisted by an Executive Council, which consisted of high officials of the Government.

Indian Councils Act, 1861:

The Indian Councils Act of 1861 introduced a grain of popular element insofar as it provided that the Governor-General's Executive Council, which was so long composed exclusively of officials, should include certain additional non-official members.

Indian Councils Act, 1892:

Two improvements upon the preceding state of affairs as regards the Indian and Provincial Legislative Councils were introduced by the Indian Councils Act, 1892, namely that (a) though the majority of official members were retained, the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils, while the non-official members of the Provincial Councils were to be nominated by certain local bodies such as universities, district boards, municipalities; (b) the councils were to have the power of discussing the annual statement of revenue and expenditure, i.e., the Budget and of addressing questions to the Executive.

Morley-Minto reforms and the Indian Councils Act, 1909:

The first attempt at introducing a representative and popular element was made by the Morley-Minto Reforms, known by the names of the then Secretary of State for India (Lord Morley) and the Viceroy (Lord Minto), which were implemented by the Indian Councils Act, 1909.

The changes relating to the Provincial Legislative Councils were, of course, more advanced. The size of these Councils was enlarged by including elected non-official members so that the official majority was gone. An element of election was also introduced in the Legislative Council at the Centre but the official majority there was maintained.

The deliberative functions of the Legislative Councils were also increased by this Act by giving them the opportunity of influencing the policy of the administration by moving resolutions on the Budget, and on any matter of public interest, save certain specified subjects, such as the Armed Forces, Foreign Affairs and the Indian States.

On the other hand, the positive vice of the system of election introduced by the Act of 1909 was that it provided, for the first time, for separate representation of the Muslim community and thus sowed the seeds of separatism.

Montagu-Chelmsford Report and the Government of India Act, 1919:

The next landmark in constitutional development of India is the Montagu-Chelmsford Report which led to the enactment of the Government of India Act, 1919. It was, in fact, an amending Act, but the amendments introduced substantive changes into the existing system.

Simon Commission or Statutory Commission

The genesis of the commission is traced to the Act of 1919. It provided for the appointment of a statutory commission, after the expiry of 10 years from the passing of the Act; to inquire and report on the condition of India under the New constitution. Accordingly the Prime Minister Baldwin announced on 8th November 1927 (2 years before the schedule) the appointment of the statutory commission under the chairmanship of Sir John Simon. The commission had (7 members including chairman) and all of them were British. There was immediate reaction to this, An all white commission was hurtful to the Indians and met with universal boycott. The Simon Commission had to face hostile demonstrators with black flags asking it to go back wherever it went. In one such demonstration the great leader Lala Lajpat Rai was injured in a Lathi Charge and ultimately died.

Report of the Simon Commission:

The Report of the Simon Commission was published in May 1930. It recommended representative government for the provinces but deferred it for the centre indefinitely. It wanted India to be a federation of British India and Princely states. Separate electorates were continued for the Muslims. The depressed classes were given reserved seats in joint electorates. Franchise in Provincial legislatures was to be widened. **Dyarchy** was to be abolished.

Main features of the system introduced by the Government of India Act, 1935

- (a) Federation and Provincial Autonomy. While under all the previous Government of India Acts, the government of India was unitary, the Act of 1935 prescribed a federation, taking the Provinces and the Indian States as unity. The Act divided legislative powers between the Provincial and Central Legislatures, and within its defined sphere, the Provinces were no longer delegates of the Central Government, but were autonomous units of administration.
- (b) The executive authority of the Centre was vested in the Governor-General (on behalf of the Crown), whose functions were divided into two groups—
 - (i) The administration of defence, external affairs, internal affairs, and of tribal areas, was to be made by the Governor-General in his discretion with the help of 'counsellors', appointed by him, who were not responsible to the Legislature.
 - (ii) With regard to matters other than the above reserved subjects, the Governor-General was to act on the advice of a 'Council of Ministers' who were responsible to the Legislature. But even in regard to this latter sphere, the Governor-General might act contrary to the advice so tendered by the ministers if any of his 'special responsibility' was involved. As regards the special responsibilities, the Governor-General was to act under the control and directions of the Secretary of State.
- (c) The Legislature. The Central Legislature was bi-cameral, consisting of the Federal Assembly and the Council of State.
- (d) Distribution of legislative powers between the centre and the provinces. Though the Indian States did not join the Federation, the federal provisions of the Government of India Act, 1935, were in fact applied as between the Central Government and the Provinces.

The Cripps Mission

Two years after the Second World War started, a dramatic change in the British attitude taken place. This was due to two reasons. First, the British forces had suffered disastrous defeats in different theatre of war. Secondly the international situation become so unfavourable to Britain with Japan almost at doorstep of the Indian Empire, that she had to seek the support of the popular forces in India. With this end in view, Sir Stafford Cripps, Lord Privy seal and member of British Government, was sent to India for special Mission for finding a "just and final" solution of the Indian political problem.

The Cripps Mission envisaged complete transfer of power to Indians after the war, and partial transfer during the war. In return to this Britain wanted the Indian leaders to support and work wholeheartedly for the prosecution of the war. The INC declined the "Cripps offers".

It declared that the essential condition was the freedom of India without the realisation of which the hearts of millions of Indian couldn't be illuminated, war could they be moved into action.

Wavell Plans

In 1943, Lord Wavell who had succeeded Linlithgow as Governor General, made an attempt to resolve the deadlock in India. He went to England for consultations in March 1945. The result of Governor's consultations was soon revealed. He broadcast to the people of India the proposals of the British Government to Mr. Amery, he was the Secretary of state for India. On 14th June made a similar statement in the House of commons: "The offer of March 1942 stands in its entirety without change and qualification." He also proposed the renovation of the Governor General's executive council pending the preparation of a new constitution. With the expectation of the Governor-General and he commander-in-chief all other member of the Executive council would be nominated from amongst leaders of Indian Political life.

A conference of representative chosen by the Viceroy was to be convened with a view to obtaining from the leaders of the various parties a joint list, or failing it, separate lists of worthy people to constitute the new Executive Council". It was also expected "that provincial ministers in Section 93 Province would resume office and that there would be coalition."

The Congress Working committee members were let out of jail. Their high hopes prevailed on all sides as invitations for the planned Simla conference went out to the leaders including Gandhiji. The conference was adjourned after three days of discussion and the meeting was held on June 25, 1945. Mr. Jinnah had a short interview with the Viceroy on 11th July in this interview he seems to have made it clear to the latter that the league, wishing to be regarded as the sole representative of Indian Muslims. That was firmly opposed to the inclusion of any long league Muslims in the Viceroy's list. But the Viceroy could not agree to this point of view. Lord Wavell wound up the Conference by declaring a failure of the talks.

The responsibilities for the failure lies partly on Lord Wavell himself and partly on Mr. Jinnah. Mr. Jinnah said that at a press conference.

Cabinet Mission Plan

The Cabinet Mission consisted of three members of the British Government Sir Stafford Cripps, Lord Pethick Lawrence and Mr. A.V. Alexander. From the third week of March to the Middle of June 1945 the three British Ministers had a series of conferences with all the important political leaders of India representing every important party. Towards the end of their stay in India they announced their plan regarding the future political set-up of India, known as the Cabinet Mission Plan. The Plan, while rejecting the demand of the All India Muslim League for partition of the country and establishment of a fully sovereign Pakistan, envisaged a confederation consisting of three groups of autonomous states vesting the powers of the three departments—Defence, External Affairs and Communications in a Central Government and all the remaining powers with the groups themselves. Each of the groups was free to have a separate constitution of its own choice, thus giving ample scope for both the leading religious groups, Hindus and Muslims, to live unitedly but, at the same time, to enjoy complete autonomy in areas where they were in a majority. The Plan had two parts, namely, a long-term programme and a short-term one. While the former was concerned with the future political set-up on a permanent basis, the latter was intended to establish an immediate Indian interim Government.

The Muslim League accepted both parts of the Plan while the Indian National Congress decided that it would unreservedly accept only the long-term programme. As a result, later on, the Muslim League rejected the Plan as a whole and declared that it would resort to direct action to achieve its own demands. Meanwhile, elections in the British Indian Provinces were completed and the Provincial autonomy scheme of the Constitution Act of 1935 was given effect to by forming popular Ministries in all the Provinces. But the question of forming an interim Cabinet at the Centre still remained unsolved. As a temporary measure, a Caretaker Government of senior Civil Service officials was formed by the Governor-General towards the end of June 1946.

Changes introduced by the Indian Independence Act, 1947

The changes introduced by this Act into the structure of government pending the drawing up of a constitution for independent India by Constituent Assembly, should be pointed out in the present context, so as to offer a correct and comprehensive picture of the background against which the Constitution was made.

The following were the main results of such adaptations:

- (a) **Abolition of the Sovereignty and Responsibility of the British Parliament:** It said that with effect from the 15th August, 1947 (referred to as the 'appointed day'), India ceased to be a Dependency and the suzerainty of the British Crown over the Indian States and the treaty relations with Tribal Areas also lapsed from the date.

The responsibility of the British Government and Parliament for administration of India having ceased, the office of the Secretary of State for India was abolished.

- (b) **The Crown no longer the source of authority:** So long as India remained a Dependency of the British Crown, the Government of India was carried on in the name of His Majesty. Under the Act of 1935, the Crown came into further prominence owing to the scheme of the Act being federal, and all the units of the federation, including the Provinces, drew their authority direct from the Crown. But under the Independence Act, 1947, neither of the two Dominions of India and Pakistan derived its authority from the British Isles.

- (c) **The Governor-General and Provincial Governors to act as constitutional heads:** The Governors-General of the two Dominions became the constitutional heads of the two new Dominions as in the case of the other Dominions. This was, in fact, a necessary corollary from 'Dominion Status' which had been denied to India by the Government of India Act, 1935, but conceded by the Indian Independence Act, 1947.

- (d) **Sovereignty of the Dominion Legislature:** The Central Legislature of India, composed of the Legislative Assembly and the Council of States, ceased to exist on August 14, 1947. From the 'appointed day' and until the Constituent Assemblies of the two Dominions were able to frame their new Constitutions and new Legislatures were constituted there under, — it was the Constituent Assembly itself, which was to function also as the Central Legislature of the Dominion to which it belonged. In other words, the Constituent Assembly of either Dominion (until it itself desired otherwise), was to have a dual function, constituent as well as legislative.

The sovereignty of the Dominion Legislature was complete and no sanction of the governor-General would henceforth be required to legislate on any matter, and there was to be no repugnancy by reason of contravention of any Imperial law.

2. MAKING OF INDIAN CONSTITUTION

The present constitution of India was framed by an elected constituent assembly and was formally adopted on 26 November, 1949. It came into force on 26 January 1950 – as desired by the Father of Nation, Mahatma Gandhi. The constituent Assembly was set-up under the framework of cabinet mission (1946) for drafting the constituent assembly was set up under the framework of cabinet for Independent India. It was a large representative body having 385 members of which 292 were elected by the elected members of the Provincial legislative Assemblies while 93 members were nominated by the princely states. But when the Muslim league withdrawn its members from the constituent assembly for Pakistan on July 16, 1947, the membership of the constituent assembly of India was reduced to 299, out of which 229 represented the provinces and 70 were nominated by the princely states.

The first meeting of the constituent assembly had taken place on December 9, 1946 with Dr. Sachidanand Sinha as its interim President. Subsequently Dr. Rajendra Prasad was elected as its president on 11th December, 1946. To cope with the wide range of specialized tasks the constituent assembly formed major committees to outline the purposed constitution such as: Committee on Union constitution, Union power committee (both headed by Jawahar Lal Nehru) committee on fundamental rights advisory committee (both headed by Sardar Vallabhbhai Patel), Committee on Concession to Minorities, Committee on the Supreme Court and the High Court etc. All these committees submitted their reports which bore the responsibility of drafting the constitutional document during the recess of

the constituent Assembly from July 1947 – September 1948 – was formed on August 29, 1947 under the chairmanship of Dr. B.R. Ambedkar and included two distinguished jurists and lawyer A.K. Ayyar and K.M. Munshi. The Drafting committee prepared the draft constitution which came out in the open in February 1948 to elicit the public opinion and reaction to it. The constituent assembly next met in November 1948 when the provisions of the draft constitution were considered and discussed in detail with the completion of all those procedural formalities of consideration and deliberations over the draft constitution, it finally receive the signature of the president of the constituent assembly on 26th November, 1949. When it was declared as past and adopted. The last session of the assembly was held on January 24, 1950 which unanimously elected Dr. Rajendra Prasad as the president of India. In all 284 members of the Assembly signed the official copies of Indian constitution which came into effect on January 26, 1950 known and celebrated as the Republic Day of India.

The Guidelines Laid for Framing the Constitution

- (1) To foster unity of the Nation and to ensure its economics and political security to have a written constitution and to proclaimed India as sovereign, Democratic republic.
- (2) To have Federal forms of Government with the distribution of powers between the centres and states.
- (3) To provide adequate safeguards for minorities, backward and tribal areas and depressed and other backward classes.
- (4) To attain rightful and honoured place in the world and make willing contribution to the promotion of world peace and the welfare of mankind.

Different Source of Indian Constitution

The Architect of the Indian Constitution went through all the then existing major constitution of the world before drafting their own and as Dr. Ambedkar observed, they tried to accommodate the best possible and time tested features of each of them to the requirement of the country. Therefore the constitution of India is often described as a “bag of borrowings” as it freely drew from the constitutions of various other countries and the GoI Act 1935,

Govt. of India Act 1935

The Federal scheme, Office of Governor, Power of Federal Judiciary, Emergency Powers, Public Service Commission.

Britain

Law making procedures, Rule of law provision for single citizenship, Parliamentary system of Govt. office of the CAG, Parliamentary privileges.

Constitution of USA

Independence of Judiciary, Judicial Review, Fundamental Rights, Removal of Supreme Court and High Court judges, Preamble and function of Vice-President.

Constitution of Canada

Federation with strong centre, to provide residuary powers with the centre advisory jurisdiction of Supreme Court.

Constitution of Ireland

Directive Principles of state policy, method of Presidential elections, and the Nomination of members to Rajya Sabha by the President.

Weimer Constitution of Germany

Provisions concerning the suspension of Fundamental Rights during emergency.

Constitution of Australia

Idea of Concurrent List

Constitution of South Africa

Amendment with 2/3 majority in parliament and election of members of Rajya Sabha on proportional voting.

3. NATURE OF THE CONSTITUTION

Is the Indian constitution federal, unitary or quasi-federal? The members of the constituent assembly of India called it federal. But there are jurist who dispute this title. It is therefore, imperative to ascertain. What is a federal constitution and what are its essential characteristics? However, the answer to this question is compounded by the fact that there is no agreed definition of a federal states and its customary with scholars on the subject to start with the model of the United states, the oldest (1787) of all federal constitutions in the world and to exclude any system that does not conform to that model from the nomen-culture of federation. But it is generally agreed that whether a state is federal or unitary is one of degrees and whether it is a federation or not depends upon the member of federal features it possesses.

A federation has well-established dual polity or dual govt viz., the Federal Government and the state governments which are not subordinate to one another but coordinates bodies that are independent within their respective allotted spheres. Therefore the existing of co-ordinate authorities independent of each other is the foundation of the Federal principle. A constitution which embodies a federal system is said to posses the following five characteristics:

(1) Distribution of Powers: An essential feature of federal constitution is the distribution of powers between the central government and the governments of the several units (provincial governments) forming the federation. Federation means the distribution of the power of the state among a number of co-ordinate bodies each originating from and controlled by the constitution.

(2) Supremacy of the Constitution: This means that the constitution should be binding on the federal and states governments. Neither of the two governments should be in a position to override the provisions of the constitution relating to the powers and status which each is to enjoy. This means that the constitution should be binding on the federal and state governments. Neither of the two governments should be in a position to override the provision of the constitution which don't relate to the relationship between centre and the units need not be supreme.

(3) Written Constitution: The constitution must necessarily be a written document. It will be practically impossible to maintain the supremacy of the constitution, unless the forms of the constitution have been reduced into writing.

(4) Rigidity: This feature is a corollary to the supremacy of the constitution. Here rigidity doesn't means the constitution is un-amendable or not subject to change. It simply means that the power of amending the provisions of the constitution which regulates the status and powers of Federal and state govt. should to be confined exclusively either to the federal or state governments but must be a joint act of both. As regards the provisions of the constitution that are not concerned with the federal system there is no need to maintain the same rigidity.

(5) Independent and impartial authority of courts: The legal supremacy of the constitution which is an essential feature of a federal state, makes it necessary that there must be an authority above both, the federal govt. and the component state govt to decide whether they are operating under the frame of the constitution in desired manner. This aspect of essentials of a federal feature involves two connected matters. Firstly, there must be some authority, normally the courts of law to maintain the divisions of powers not only between the state govt. but also between the federal govt on one hand and the state govt. on the other. The Cart of law is vested with power to declare laws made by the Federal or state Govt, Ultra virus on the ground of excess of power. Secondly, to constitute a final supreme court which should not be dependent upon the federal or state govt. and should be armed with the final authority to interpret the constitution.

4. OUTSTANDING FEATURES OF OUR CONSTITUTION

The constitution of India is remarkable for many outstanding feature which will distinguish it from other constitutions even though it has been prepared after "ransacking all the known constitution of the world" and most of its provisions are substantially borrowed from others. So though our constitution

may be send to be a “borrowed constitution, the credit of its farmers lies in gathering the test features of each of the existing constitutions and in modifying them with a view to avoiding the fault that have been disclosed in their working and to adopting them to the existing conditions and needs of the country.

There were members in the constituent assembly, who criticised the constitution which was going to be adopted as a ‘Slavish imitation of the west or not suited to the genius of the people. Many people said that it would unworkable. But the fact that it has survived for about sixty years.

The Longest known Constitution

The Constitution of India has the distinction of being the most length and detailed constitutional document the world has so far produced. The original constitution contained as many as 395 Article and 8 schedules. Even after the repeal of several provisions it still contain 450 Articles and 12 schedules. The most important repeal which has increased the length of the constitution is 42nd C.A. Act – 1976 (as modified by the 43rd and 44th C.A. Act – 1977-78). The 73rd C.A. Act-1992 has added 16 articles and provided for the election of Panchayat. They Comprise a new part, Part IX. By the same amendment new schedule (schedule -11) has been added which enumerates the function to be delegated to the Panchayats. The 74th C.A. Act-1992 was passed to establish Municipalities and provide for election to them. It has inserted part-9A consisting of 18 Articles schedule 12 inserted by this Amendment mentions the function to be assigned to the Municipalities.

Incorporates the accumulated experience of different constitution: The farmers sought to incorporate the accumulated experience gathered from the working of all known constitution and to avoid all defects and loopholes that might be anticipated in the light of those constitution. Thus while, they framed the chapter on the FRs upon the models of the American constitution and adopted the parliamentary system of government from UK, they took idea of DPSP from the constitution of Irish and added elaborated provisions relating to Emergencies in the light of the constitution of the German Reich and Govt of India Act – 1935.

Peculiarity of the Problems to be solved

The vastness of the country, and the peculiar problems to be solved have also contributed towards the bulk of the constitution. This there is one entire part (part-XVI) relating to the SC/ST and other backward classes; one part (Part XVIII) relating to the official language and another part (Part-XVII) relating to the Emergency provisions.

Constitution of the Units also included

While the constitution of the US deals only with the Federal Govt. and leaves the states to draw up their own constitutions, the Indian Constitution provides the constitution of both the union and the Units, with the same fullness and precision. Since the units of the Federation differed in their historical origins and their political development, therefore some special provisions have been inserted, to meet the regional problems and demands (in Article 371-371-I) in certain states such as Nagaland, Assam, Manipur, Andhra Pradesh, Maharashtra, Gujarat, Sikkim, Mizoram etc.

The state of J&K was accorded a special status and was allowed to makes its even state constitution.

Both Justiciable and Non Justiciable Rights included FRs/DPSP

There is not only a bills of rights containing justiciable FRs of the individual (P-III) on the model of the Amendments to the American constitution but also (Part-IV) containing DPSP, which longer no justiciable right upon the individual but are nevertheless to be regarded us the fundamental in the governance of the country. Being in the nature of principle of social policy as contained in the constitution Irish.

More Flexible than Rigid

Another distinctive feature of the Indian constitution is that it seeks to in part flexibility to a written federal constitution. It is only the amendment of a few of the provision of the constitution that requires ratification by the state Legislatures and even then ratification by ½ of them would? Suffice the rest of the constitution may be amended by a special majority of the union parliament it a majority of not less than 2/3 of the members of each have (p+v), which again must be majority of the total membership of the House.

On the other hand, parliament has been given power to alter or modify of many of the provisions of the constitution by a simple majority like (a) changes in the names, boundaries areas and amalgamation and separation of states (b) Abolition or creation of a second chamber of state legislature (c) Administration of SC and ST Areas (d) Creation of state Legislature and Council of Minister for a certain Union Territories.

Yet another evidence of this flexibility is the powers given by the constitution itself to parliament to supplement the provision of the constitution by legislation is the power given by the constitution itself to parliament to supplement the provision of the constitution by legislation. Though the makers of the constitution aimed at exhaustiveness, they realised that it was not possible to anticipate all exigencies and to lay down detailed provisions in the constitution to meet all the situation and for all times. Therefore, the constitution lays down certain basic principles and, empowers parliament to supplement these principle by legislation Thus (I) as to citizenship, act (5-8), only lay down the conditions for acquisition of the citizenship at the commencement of the constitution and Art 11 vest plenary powers in the parliament to legislate on this subject. In pursuance of this power parliament has enacted citizenship Act, 1955 (II) similarly while laying down certain fundamental safeguards against preventative detention, Art 22(7) empowers parliament to legislate on come subsidy matters relating to the subject. The law made under this power have therefore to be read along with provisions of Art. 22. (III) Again while banning un-touchability. Art 17 provides that it shall an offence punishable in accordance with law and in exercise of this power, parliament has enacted the protection of civil rights act 1957 which must be referred to as supplementing the constitutional prohibition against untouchability.

The Obvious advantage of this scheme is that the law made by parliament may be modified according to the exigencies for the time being, without having to restore to a constitutional amendment.

Fundamental Rights & Constitutional Remedies

While the Directive principle are enforceable at the instance of any person what FRs has been infringed by any action of the state-Executive & Legislature and the remedies for enforcing these rights namely, the writ of habeas corps, mandamus, prohibition, Quo-waroanto and certiorari are also guaranteed by the constitution. Any law or executive order which offends against a FRs liable to be declared void by the Supreme Court or the High Court.

Fundamental Rights subject to reasonable regulation by legislature:

The balancing between supremacy of the constitution and sovereignty of the legislature is illustrated by the novel declaration of FRs which our constitution embodies. The idea of incorporating in the constitution a has been taken even US. But the guarantee of individual rights in our constitution has been very carefully balanced with the needs for the security of the state itself. The Indian Constitution is makes each of the rights subject to legislative control under the terms of the constitution itself, apart from those exceptional cases where the interests of national security, integrity or welfare should exclude the application of FRs altogether.

Social Equality also guaranteed by the Constitution:

Another peculiarity of the Chapter on Fundamental Rights in the Indian Constitution is that it aims at securing not merely political or legal equality, but social equality as well. Thus, apart from the usual guarantees that the State will not discriminate between one citizen and another merely on the ground of religion, race, caste, sex or place of birth, — in the matter of appointment, or other employment, offered by the State, — the Constitution includes a prohibition of 'untouchability, in any form and lays down that no citizen may be deprived of access to any public place, of the enjoyment of any public amenity or privilege, only on the ground of religion, race, caste, sex or place of birth.

We can hardly overlook in this context that under the Constitution of the USA, racial discrimination persists even to-day, notwithstanding recent judicial pronouncements to the contrary. The position in the United Kingdom is no better as demonstrated by current events.

Universal Franchise:

The adoption of universal adult suffrage (Art 396) without any qualification either of sex, property, taxation or the like, is a bold experiment in India having regard to the vast extent of the country and its population with an over-whelming illiteracy.

Parliamentary Govt Combined with an Elected President

It has been stated at the outset, that the form of Govt. introduced by our constitution both at the union and the states is the parliamentary Govt of British type. A primary reasons for the choice of this system of govt. was that the people had a long experience of this system of govt was that people had a long experience of this system under the govt of India Act. The makers of our constitution rejected the presidential system of govt as it obtains in America, on the ground that under that system the E/L are separate from each other, which is likely to cause conflicts between them, which our infant democracy to ill afford to risk.

But though British model of parliamentary or cabinet form of govt was adopted a hereditary monarch or rules at the head could not installed because India declared herself a "Republic" Instead of parliamentary system. In introducing this amalgam, the makers of our constitution followed the Irish president. As in the constitution of Irish the Indian constitution superimposes an elected president upon the parliamentary system of responsible govt. But though an eluted president is the Executive head of the Union, he is to be act on the advise of his Ministers although weather he so, act according to the advice of his ministers is not questionable in the courts and there is no made.

Federal System with Unitary Bias

Perhaps the most remarkable achievement of the Indian constitution is to confer upon a federal system the strength of a unitary government. Though normally the system of govt is federal, the constitution enables the federation to transform itself into a unitary states such a combination of federal and unitary system in the same constitution is unique in the world.

5. THE PHILOSOPHY OF THE CONSTITUTION

Every constitution has a preamble, a preface with which it starts. And the Preamble embodies its basic purposes or its objectives. These objectives form the foundations on which the constitutional structure is built. These foundations, in fact, constitute the philosophy of the Constitution.

The objectives of a constitution, however, are not the product of any simple exercise in which a small group of people charged with the responsibility of making a new constitution give expression to their ideas or ideals. Often it is the product of a long period of struggle for political independence by a people subjected to foreign domination; or it could be the result of a gradual evolution of ideas and aspirations cherished by people who want to establish their own separate national identity. Whatever be the case, many persons as well as socio-political movements, sometimes over long periods of time, have made their contributions in crystallising the objectives of a constitution. This is true of the philosophy of the Constitution of India also.

The Impact of the National Movement

The national movement for political independence in India has a history of over a century. Every since the so-called "sepoy mutiny" which was the first war of independence against the British East India Company in 1857, enlightened public opinion in the country, however, feeble its voice was, stood for a new independent India with certain ideals and aspiration.

The Indian National Congress was the chief spokesman of this new voice and the British government in India gradually was forced to listed to that voice. Many of the resolutions passed at the annual conference of the Congress spelt out the ideals for which it stood and what it aspired for the country. As the movement gathered momentum and its leadership was taken up by a new band of men who had definite ideas as to how the India of the future was to be given shape, these ideas and ideals became clearer and better understood. The Motilal Nehru Committee Report of 1928 is perhaps the best example. The Committee was comprised of heterogeneous and independent elements. It recommended for the first time as federation as a constitutional remedy to drive out the twin evils of autocracy and compartmentalism from Indian political life. It also had recommended the inclusion of a group of fundamental rights in the Constitution to inspire the confidence of the minorities, linguistic and religious.

Gandhian Influence

The advent of Mahatma Gandhi as a powerful spokesman of the Indian cause had its own impact on

the philosophy of the future constitution of India.

In 1931, when Gandhiji was standing on the deck of a ship taking him to London, as the spokesman and representative of nationalist India to the Second Round Table Conference, he was asked by a newspaper correspondent as to what constitution he would bring back if he could help it. His reply is worth reproducing here:

It is not an exaggeration to say that not only in the Preamble but in several other parts of the Constitution, there is a perceptible vibration of the Gandhian concept of independent India.

Objectives Resolution by Jawaharlal Nehru

The Constitution Assembly met for the first time on December 9, 1946. In the very first session, inspite of the absence of the Muslim League, the Assembly went ahead with its programme of business. On December 15, Jawaharlal Nehru moved in an inspiring speech perhaps the most important resolution which has become famous since then as "the Objectives Resolution" defining the aims and objects of the Assembly and the constitution in the following terms:

1. This constituent assembly declares its firm and solemn resolve to proclaim India as an independent sovereign republic and to draw up for her future governance a constitution; and
2. Wherein the said territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the independent sovereign India, shall be a union of them all; and
3. Wherein all power and authority of the independent sovereign India, its constituent parts and organs of government, are derived from the people; and
4. Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status and of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
5. Whereby shall be maintained the integrity of the territory of the republic and its sovereign rights on land, sea and air; according to justice and the law of civilized nations; and

Preamble of the Constitution

The Preamble of the Constitution is largely based on the objectives resolution moved by Nehru and later adopted by the constituent Assembly unanimously.

The Preamble:

It will be seen that the ideal embodied in the above Resolution is faithfully reflected in the Preamble to the Constitution, which, as amended in 1976, summarises the aims and objects of the constitution:

"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 the individual and the unity and integrity of the Nation:

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

The importance and utility of the Preamble has been pointed out in several decisions of our Supreme Court. Though, by itself, it is not enforceable in a Court of law, the Preamble to a written Constitution states the objects which the constitution seeks to establish and promote and also aids the legal interpretation of the constitution where the language is found to be ambiguous.

The Preamble to our Constitution serves, two purposes:

- (a) It indicates the source from which the constitution derives its authority;
- (b) It also states the objects which the constitution seeks to establish and promote.

Independent and Sovereign

As has been already explained, the constitution of India, unlike the preceding Government of India Acts, is not a gift of the British Parliament. It is ordained by the people of India through their representatives assembled in a sovereign constituent assembly which was competent to determine

the political future of the country in any manner it liked. The words – ‘We, the people of India.... adopt, enact and give to ourselves this constitution’ thus, declare the ultimate sovereignty of the people of India and that the Constitution rests on their authority.

Sovereignty means the independent authority of a State. It means that it has the power to legislate on any subject; and that it is not subject to the control of any other State or external power.

Republic

The Preamble declares, therefore, in unequivocal terms that the source of all authority under the Constitution is the people of India and that there is no subordination to any external authority.

We have an elected President at the head of our State, and all office including that of the President will be open to all citizens.

On and from the 26th Jan., 1950, when the Constitution came into force, the Crown of England ceased to have any legal or constitutional authority over India and no citizen of India was to have any allegiance to the British Crown. But though India declared herself a Republic, she did not sever all ties with the British Commonwealth did Eire, by enacting the Republic of Ireland Act, 1948. Infact, the conception of the Commonwealth itself has undergone a change owing to India's decision to adhere to the Commonwealth, without acknowledging allegiance to the Crown which was the symbol of unity of the Old British Empire and also of its successor, the 'British Commonwealth of Nations'. It is this decision of India which has converted the 'British Commonwealth' a relic of imperialism, into a free association of independent nations under the honourable name of the 'Commonwealth of Nations'. This historic decision took place at the Prime Ministers' Conference at London April 27, 1949, where, our Prime Minister, Pandit Nehru, declared that notwithstanding her becoming a sovereign independent Republic, India will continue "her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of the independent nations and as such the Head of the Commonwealth," It is to be noted that this declaration is extra-legal and there is no mention of it in the Constitution of India. It is a voluntary declaration and indicates a free association and no obligation. It only expresses the desire of India not to sever her friendly relations with the English people even though the tie of political subjugation was severed. The new association was an honourable association between independent States. It accepts the Crown of England only as a symbolic head of the Commonwealth (having no functions to discharge in relation to India as belonged to him prior to the Constitution), and having no claim to the allegiance of the citizens of India. Even if the King or Queen of England visits India, he or she will not be entitled to any precedence over the President of India. Again though as a member of the Commonwealth, India has a right to be represented on Commonwealth conferences, decisions at Commonwealth conferences will not be binding on her and no treaty with a foreign power or declaration of war by any member of the Commonwealth will be binding on her, without her express consent. Hence, this voluntary association of India with the Commonwealth does not affect her sovereignty to any extent and it would be open to India to cut off that association at any time she finds it not to be honourable or as Pandit Nehru explained.

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6. BASIC PRINCIPLE

EVERY Constitution will reflect the ideas and ideals of the people who framed it. Although it is intended to be a document of permanent value, it is bound to reflect also the conditions and circumstances of the period in which it was framed. The Constitution of India is no exception to this and it embodies certain basic principles. Let us therefore, begin by a study of these principles which form the foundations of democratic government in India.

A careful study of the Constitution will show that there are at least eight such basic principles. These are: (1) Popular Sovereignty, (2) Fundamental Rights, (3) Directive Principles of State Policy, (4) Socialism, (5) Secularism, (6) Judicial Independence, (7) Federalism and (8) Cabinet Government. We may examine briefly the scope of each of these principles.

Popular Sovereignty

India is a sovereign socialist democratic republic. The opening words of the Preamble of the Constitution emphasise the ultimate authority of the people of India from whose will the Constitution emerged. The

Preamble proclaims the solemn resolution of the people to constitute India into a sovereign, democratic republic.

The principle of popular sovereignty implies firstly, that the ultimate authority of all governmental agencies springs from the will of the people as expressed in the Constitution and secondly, that the authority is renewed from time to time through popular elections at regular intervals. Further, under our Constitution those who wield the executive power of the government are responsible to the legislatures and through them to the people. Thus, in the affairs of the State, it is the will of the people that prevails ultimately, and not: the will of a few individuals however important or powerful.

This principle is reaffirmed in several places in the Constitution, particularly in the chapter dealing with Elections. The elections to the House of the People (Lok Sabha) and the Legislative Assembly of every State have to be held on the basis of adult suffrage. Further, such elections should take place at least once every five years. The Constitution also ensures the democratic ideal of "one man, one vote, one value" irrespective of his wealth, education, social status or importance otherwise. In 1996 it was 590 million.

This was perhaps the most fundamental and far-reaching decision of the founding fathers of our Constitution. It was indeed an act of faith, a homage to the people of India and implicit in the liberal outlook of India's freedom struggle. India thus becomes the largest democracy in the world. In 1951, when India went to the polls for the first time under the Constitution, the number of eligible voters was around 160 million. In 1999, for the thirteenth General Elections, the number was as large as about 650 million.

The framers of the Constitution were not satisfied by merely providing for universal adult suffrage. They wanted also to ensure free elections by creating an independent constitutional authority - the Election Commission of India - to be in-charge of everything connected with the elections.

Free elections are a reality in India. They secure for the electors both the freedom of choice from among competing candidates who stand for differing programmes and policies, and the secrecy of the ballot. The eleven general elections that independent India has so far had, at almost regular intervals since 1951, have demonstrated that in spite of their poverty and widespread illiteracy and difficulties in communication, the people in general have been able to exercise robust commonsense in electing candidates of their choice and thus exercise their supreme authority in setting up a democratic, responsible government. A very significant feature of these

elections is the remarkable involvement of the common citizen with the machinery and functions of democratic self-government, the steady growth of political consciousness and

Fundamental Rights

The success or failure of a democracy depends largely on the extent to which civil liberties are enjoyed by the citizens in general. Liberty, however, is not an easy term to define. "The ... world has never had a good definition of the word liberty", said President Abraham Lincoln on April 18, 1864, soon after the American Civil War on the question of slavery, "and the American people, just now, are much in want of one. We all declare for liberty, but in using the same word we do not all mean the same thing. With some the word liberty may mean for each man to do as he pleases with himself and the product of his labour, while with others the same word may mean for some men to do as they please with other men, and the product of other men's labour." Here are two, not only different, but incompatible things, called by the same name, liberty. And it follows that each of the things is, by the respective parties, called by two different and incompatible names - liberty and tyranny.

Genuine democracy must forever guard against the temptation to transform itself into a system under which the ruling majority claims infallibility for itself. While democracy required that the will of the people limit the freedom of the government, it also requires that the freedom of the popular will be limited. A popular will not so limited becomes the tyranny of the majority which destroys the freedom of political competition and thus uses the power of the government to entrench itself permanently in the seat of power and to prevent a new majority from forming. Further, it will tend to think and act as if it will provide the ultimate standard of thought and action and there is no higher law to limit its freedom. As Professor Harold Laski has beautifully put it, "If in any State there is a body of men who possess unlimited political power, those over whom they rule can never be free". The emergence of such a state of affairs will result in the disappearance of certain vital characteristics of democracy, the spirit of questioning and individual initiative. Their place will be taken up by unquestioned submissiveness and

conformity, the most distinguishing characteristics of a totalitarian system. This is perhaps the most serious danger inherent in the dynamics of modern democracy which is to be strongly guarded against.

There are two possible alternative safeguards which a constitution can provide to remedy the situation. First, it can guarantee certain basic rights to the individual citizen against all encroachment by the State. Secondly, it may so divide the powers of the State, and entrust them to separate agencies that no body of men possesses unlimited power. The Constitution of India has chosen the first alternative and tries to achieve the objective by embodying in it a set of fundamental rights and guaranteeing them through an independent judiciary. These rights impose limitations 'both on legislative and executive powers. On the one hand, the legislature is prohibited from passing certain laws which would curtail: the individual's freedom. On the other, the executive is compelled to adhere to certain formalities and procedures when it deals with the citizens. Thus, in an attempt to secure fundamental freedoms, the Constitution delimits the respective spheres of activity of the State and the individual and erects a wall, as it were, between the government and the people.

The Constitution affirms the basic principle that every individual is entitled to enjoy certain rights a human being and the enjoyment of such rights does not depend on the will of any majority or minority majority has the right to abrogate such rights. In fact, the legitimacy of the majority to rule is derived from the existence of these rights. These rights include all the basic liberties such as the freedom of speech, movement and association, equality before the law- and equal protection of laws, freedom of religious belief, and cultural and educational freedoms. The Constitution has classified these rights into seven categories and one of them is the right to constitutional remedies which entitles every aggrieved person to approach even the Supreme Court of India to restore to him any fundamental right that may have been violated.

The prime importance of these rights is that while the will of the majority decides how these freedoms are to be implemented, the existence of the freedoms themselves is not subject to that will. On the contrary, these freedoms set the conditions under which the will of the majority is to be formed and exercised. They establish the framework of "democratic legitimacy" for the rule of the majority. It must be stressed, however, that the fundamental rights guaranteed by the Constitution are not absolute. Individual rights, however, basic they are, cannot override national security and general welfare. For, in the absence of national security and general welfare, individual rights themselves are not secure. Freedom of speech does not mean freedom to abuse another; freedom of movement does not mean freedom of physical attack on others. The Constitution has made express provisions dealing with such limitations of fundamental rights so that those who seek to enjoy the rights may also realise the obligations attending them.

Directive Principles of State Policy

The wall of separation which the fundamental rights erect between the government and the people is indeed one of the greatest and surest safeguards of the life, liberty and the pursuit of happiness of the individual. But conditions of unhindered growth of private power, like absolute governmental power, are capable of destroying individual freedom. Concentration of private power, mainly in the form of economic controls, in the hands of a few individuals is equally destructive of the dynamic qualities of a democratic society as dictatorial government could be. In a highly capitalistic society, a few giants in the industrial and financial world, who concentrate in themselves the bulk of economic power, can easily subject the rest of the community to the travails of a feudalistic or extreme capitalist order.

After having provided against the emergence of a totalitarian system through the constitutional guarantees of fundamental rights, the framers turned their attention to deal with the possible future menace of a private capitalist concentration of economic power and to ensure the establishment and sustenance of a society which provided for the diffusion of economic power among the different sections of the people.

The methods they sought to provide for the purpose are embodied in the chapter on Directive Principles of State Policy, which embodies another basic principle of the Constitution. In this context the Constitution of India follows the example of the Constitution of the Irish Republic which has a chapter on Directive Principles of Social Policy.

The Directive Principles command the State and every one of its agencies to follow certain fundamental principles while they frame their policies regarding the various fields of state activity. These principles, on the one hand, are assurances to the people as to what can they expect from the

state and, on the other, are directives to the Governments, both Central and State, to establish and maintain a new "social order in which justice, social, economic and political shall inform all the institutions of national life". The State shall in particular, direct its policy towards securing:

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and controller the material resources of the community are so distributed as best to sub serve the common good;
- (c) that the operation of the economic system does not, result in the concentration of wealth and means of production;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers; men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited 'to their age or strength.
- (f) that childhood and youth are protected against exploitation and against moral and material abandonment.

In short, these and other Directive Principles form a new Magna Carta, a charter of economic freedoms, to the underprivileged, ordinary man in the Indian society.

Socialism

Increasing intervention as well as participation by the State in the economic field' has been a distinguishing feature Of the twentieth century. There is hardly any country today in which the state is not actively engaged in a variety of activities involved in economic, industrial and commercial management. This is broadly described as the influence of socialist ideas on state activity.

Even before the adoption of the new Constitution, the Government of independent India had made clear its policy to enter the economic field in a very active manner. The Industrial Policy Resolution of 1948 gives ample evidence of this. It envisaged a greater role for the State in the economic development of the country. Certain industries such as atomic energy, manufacturing of arms and ammunition and Railways were declared to be the sole monopoly of the State. The right of the State to nationalise any major industry and bring it within the public sector was also clearly stated. Nevertheless, the Constitution did not explicitly state anywhere that it stood for the establishment of a socialist State.

The Directive Principles of State Policy, however, unmistakably set out the socialist objective of the Constitution, although one might point out that they do not go far enough to establish a full-fledged socialist order. But then, it is also clear that our constitution with its emphasis on a set of guaranteed fundamental rights did not envisage a collectivise socialist state like any of those in Eastern Europe before the 'collapse of the Soviet Union. On the contrary, it aims at establishing a democratic socialist state which, while' moving progressively towards the socialist ideal, wants at the same:, time, to protect and preserve basic human rights.

Nevertheless successive amendments to the Constitution clearly show that the direction is more towards the realisation of the socialist than the democratic ideal. The Constitution was amended several .. times with a view to realising this objective. Among those amendments, special mention may be made of the First, Fourth, Seventeenth, Twenty-fifth, Twenty- ninth, Thirty-fourth and Forty-second Amendments. Almost every one of these gave precedence to Directive Principles over Fundamental Rights in the implementation of certain legislate enactments. The Forty-second Amendment (1976) went a step further and amended the Preamble of the Constitution to include specifically the term "socialist" which was absent in the original form in which it was enacted.

Secularism

The Constitution aims to establish secular State. The concept of secular State envisaged by' the Constitution is that the State will not make any discrimination whatsoever on the ground of religion, caste or community against any person professing any particular form of religious faith. No particular religion will be identified as State religion nor will it receive any State patronage or preferential status. The State will not establish any state religion; nor will the State accord any preferential treatment to any citizen or discriminate against him simply or the ground that he professes a particular form of religion. The fact that a person professes a particular religion will not be taken into consideration in his relationship with the State or its agencies.

Although the term secular was not included anywhere in the Constitution as it was originally passed in 1949, the fathers of the Constitution were clear in their mind as to what they meant by secularism. Dr. Ambedkar, Chairman of the Drafting Committee, while participating in the debate in Parliament on the Hindu Code Bill, in 1951, explained the secular concept as follows:

"It (secular state) does not mean that we shall not take into consideration the religious sentiments of the people, All that a secular state, means is that this Parliament) shall not be competent to impose any particular religion upon the rest of the people. This is the only limitation that the Constitution recognises". In the Constituent Assembly itself several members had expressed similar ideas in more elaborate terms.

The Forty-second Amendment of the Constitution (1976) sought to make the position explicitly clear by introducing the term SECULAR as part of the Preamble of the Constitution. As a result the Preamble now reads: WE, THE PEOPLE OF INDIA HAVING SOLEMNLY RESOLVED TO CONSTITUTE INDIA, INTO A SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC.

Secularism is a western concept. In its evolution over the centuries, it took an anti-God and anti-religious character. Later the secular movement somewhat modified its totally hostile stand towards religion due to the influence of democratic ideas of tolerance and freedom of conscience. Yet it continued to oppose the use of religious institutions and religious motivations in the legal, political and educational processes. So long as religion does keep to its own sphere, secularism is religiously neutral, it neither endorses nor disapproves of religiousness.

The concept of secularism as embodied in the Constitution of India cannot be viewed in the sense in which it is viewed in the West as described above, but only in the context of the following provisions of the Constitution. The Constitution guarantees freedom of conscience, freedom to profess, practise and propagate religion and also freedom to establish religious institutions and manage or administer their affairs. It prohibits discrimination on grounds of religion and guarantees legal and social equality to all by providing for equality before the law and equal protection of laws, prohibiting discrimination with regard to places of public importance and providing for equal opportunity in matters of public employment. The Constitution also guarantees religious and linguistic minorities the right to establish and administer educational institutions of their choice and to conserve their script, language and culture.

These provisions would naturally indicate that our Constitution endeavours to build up in India the philosophy of secularism on the basis of freedom, equality and tolerance in the field of religion. And viewed in this context, it is clear that the Constitution of India does not build a wall of separation between the state and religion. The essence of secularism is that the State is non-partisan in its relations to citizens, no matter to whatever religion they belong.

Thus the distinguishing features of a secular democracy as contemplated by the Constitution of India are: (1) that the State will not identify itself with or be controlled by any religion; (2) that while the State guarantees to everyone the right to profess whatever religion one chooses to follow (which includes also the right to be an agnostic or an atheist), it will not accord any preferential treatment to any of them; (3) that no discrimination will be shown by the State against any person on account of his religion and faith; (4) that the right of every citizen, subject to any general condition, to enter any office under the State will be equal to that of his fellow citizens. Political equality which entitles any Indian citizen to seek the highest office under the State as opposed to what obtains in a theocratic state is the heart and soul of secularism as envisaged by the Constitution.

Judicial Independence

The judicial function is indeed a delicate and difficult one. It involves the process of deciding what is just in a controversy between two or more contending parties. If the parties have no confidence in the impartiality of the judiciary, justice becomes an empty word. Man's long struggle has been to live under a government of laws, not of men. Equal justice under law has for long been his cherished ideal, a system under which the same law is applicable to all alike. Man has in all ages been striving to escape the regime that dispenses justice according to the 'political or religious ideology of the litigant or the whims or caprices of those who run the government. As a consequence: of this struggle, there 'was established a principle of abiding value, that no judiciary can be impartial unless it is independent. In fact, the judicial process ceases to be judicial the moment those who seek to judge cease to be independent of every form of external influence. Hence the importance of judicial independence.

The framers of the Constitution were aware that democratic freedom was meaningless in the

absence of an independent machinery to safeguard it. No subordinate or agent of the Government could be trusted to be just and impartial in judging the merits of a conflict in which the Government itself was a party. Similarly, a judiciary subordinate either to the Centre or the States could not be trusted as an impartial arbiter of conflicts and controversies between the Centre and the States. These were the compelling reasons for the creation of an independent judiciary as an integral part of the Constitution and for the adoption of judicial independence as a basic principle of the Constitution.

In its bid to establish complete independence of the judiciary, the Constitution has first erected a wall of separation between the executive and the judicial. After effecting such separation, it has created conditions 'that are conducive to making the judiciary independent. Thus, rigid qualifications are laid down for the appointment of judges and provision has been made for compulsory consultation of the Chief Justice of India in the appointment of every judge of the Supreme Court and the High Courts. The judges are appointed almost for life and their conditions of service cannot be altered to their disadvantage, once they are appointed. They are given high salaries and their conduct is made a subject beyond the scope of discussion in the legislature. They can be removed from office only for proved misbehaviour. For this purpose, both the Houses of Parliament will have to: pass resolutions against a judge supported by a two-third majority of those who sit and vote and at least an absolute majority of the total membership of the House.

The judiciary in India, even under the British rule, was noted for its integrity and independence. Under the Constitution, its position has been made doubly secure so that it can become in reality the most impartial arbiter of the conflicts and controversies which fall within its jurisdiction. Anyone can approach it to secure the restoration of a fundamental right whenever it is violated. Even a casual analysis of the hundreds of decisions which the Supreme Court and the High Courts have given so far will easily prove that the judiciary in India is working in a spirit of impartiality and in an atmosphere of independence.

Federalism

Federalism stands for a union or association of States resulting in the formation of a composite State with a separate and distinct government at the Centre. The government at the Centre and the governments in the States share, on an agreed basis, the totality of governmental power. There is, however, no rigid formula for such sharing of power. Hence the federal form of government is an elastic form of government depending on the manner in which power is shared between the Centre and the States. The United States of America, Switzerland, Canada, Australia and the Federal Republic of Germany, to cite some of the leading examples of federations, have each a varying pattern of relations between their respective Central, Government and those of the States. But the basic objective of federalism, unity in diversity, devolution in authority and decentralisation in administration, is clearly evident in every one of them.

India is a land of immense diversity with an essentially basic unity. The diversity of India is tremendous; it is obvious; it lies on the surface and anybody can see it. And yet, beneath the diversity of physical and social features, language and custom, race and religion, there exists an underlying Unity and uniformity of life and living habits from Kashmir to Kanyakumari and from Gujarat to Nagaland. The framers of the Constitution could not ignore these basic characteristics and they turned to federalism as a solution of a number of problems they confronted in their attempt at framing a constitution of a new, united India. Particularly, they wanted to preserve both the "infinite variety and the innate unity" that animated the length and breadth of India.

The choice of federalism as a constitutional form and as the basis of a national government in India was not a sudden development upon the transfer of power on 15 August, 1947. It was there for many years and, in a limited form, it was already in operation in British India. For the solution of the constitutional problem of a multi-racial, multi-lingual and multi-regional country like India with a vast area and a huge population, federalism was only a natural choice. Nevertheless, the framers were cautious to ensure that the unity they sought to establish through federalism was of an abiding nature, and in case of a future conflict between that unity and the diversity preserved under the Constitution, the former should prevail over the latter. In other words, it was their intention to create an indestructible Union and the supremacy of the Union over the State in a number of matters vitally affecting the interests of the country as a whole.

The Cabinet Government

The most distinctive characteristic of a Cabinet system of Government is the complete and continuous responsibility of the executive to the legislature. The Cabinet is composed of the Prime Minister, who is the chief of the executive, and his senior colleagues who share the responsibility with him for the formulation and execution of the policies of the government. In contrast to a system of checks and balances as obtains under the Presidential system of the United States, the Cabinet system embodies the principle of concentrated authority under strict control. The Cabinet is the central shaft to which all the other agencies of government are geared.

Individual members of the Cabinet are the heads of the different departments of the administration. Collectively, the Cabinet shaped the programme of legislation which is submitted to Parliament and from it emanate the broad and general policies. The Parliament also checks and controls the performance of the administration. Thus, the Cabinet system facilitates on the one hand, the intimate cooperation between the executive and the legislature and, on the other, ensures the responsibility of the executive to the legislature, the representative of the people.

Under the Cabinet system, the Head of the State occupies a position of great dignity, but practically all authority, nominally vested in him, is exercised by the Cabinet or the Ministry which assumes full responsibility for acts performed in his name. The unity and collective responsibility of the Cabinet are achieved through the Prime Minister, who is the cornerstone of the Cabinet arch. His colleagues in the Cabinet are appointed on his recommendation and they always go out of office along with him. He is thus central both to the formation and the dissolution of the Cabinet.

The real merit of a Cabinet system is that the executive being responsible to the legislature is always being watched. The moment it proves unequal to the task, or it goes off the track or flouts the will of the legislature, it can be removed from office by a vote of no confidence. Under the modern party system if the Party in office has a stable majority in the legislature, the Cabinet may wield overwhelming power, so long as the members of the Party are solidly behind it. Under such conditions, as Professor Herman Finer put it, "the Cabinet although a creature of Parliament becomes a creature which leads its' creator". But under different conditions, Parliament will 'assert and no Cabinet will be able to dominate. The instability of Cabinet does not become chronic as was the case under the Fourth Republic of France. A Parliamentary Executive is preferable to a Presidential Executive whose main merit is the stability of the executive for a fixed period.

The Constitution of India has adopted as a basic principle the British Cabinet system almost in its entirety. The only special feature of the Indian Constitution which deserves special mention in this context is the position of the Prime Minister. The Constitution expressly gives him a distinctly superior position .by making him the head of the Council of Ministers. In Britain, although in practice the Prime Minister holds a superior 'position, he is, at least in theory, described as first among equals. In India, the Cabinet system of government under the Constitution is established not only at the Central level, but also in the States. In every State there is a Council of Ministers headed by a Chief Minister, just like the Prime Minister who heads the Central Cabinet.

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Questions on Constitutional Development (for Prelims)

1. Which of the following Act transfer the power of Governance from East India Company to British crown
 - (a) Regulating Act
 - (b) Charter Act 1833
 - (c) Government of India Act 1858
 - (d) Indian Council Act 1861
2. Morley-Minto Reform was enacted in the year
 - (a) 1861
 - (b) 1892
 - (c) 1909
 - (d) 1919
3. In which of the following Act the seeds of the separation was sown
 - (a) Indian Council Act 1892
 - (b) Indian Council Act 1909
 - (c) Indian Council Act 1861
 - (d) Indian Council Act 1935
4. Through which of the following Act the post of Secretary of State India was created
 - (a) Government of India Act 1858
 - (b) Government of India Act 1892
 - (c) Indian Council Act – 1909
 - (d) Government of India Act - 1935
5. What was India called from 1947 to 1950.
 - (a) Dominion India
 - (b) British India
 - (c) Dominion British
 - (d) Indian British India
6. Who was the Governor – General of dominion India
 - (a) Mountbatten
 - (b) C. Rajgopalchari
 - (c) Sardar Patel
 - (d) Dr. Rajendra Prasad
7. Dominion status was conceded by which of the following Act/Plan
 - (a) Govt. of India 1935
 - (b) Indian Independence Act 1947
 - (c) Wavell Plan
 - (d) Cabinet Mission Plan
8. Prior to the Acceptance of Governo General Post of Dominion India what was the position of C. Rajgopalchari
 - (a) Governor of Bengal
 - (b) Governor of Madras
 - (c) Governor of Bombay Presidency
 - (d) None of these
9. What was the post of given to Dr. Rajendra Prasad prior to his being made president of independence India.
 - (a) Food & Agriculture Minister
 - (b) Home Minister
 - (c) Minister of External Affairs
 - (d) Minister of Parliamentary Affairs
10. The power of central legislature of India ceased to exist on
 - (a) 15th August 1947
 - (b) 14th August 1947
 - (c) 26th July 1947
 - (d) 28th July 1948
11. Consider the following statements
 - (1) Charter Act of 1853, abolished East India Company monopoly of Indian trade.
 - (2) Under the Government of India Act 1858 the British Parliament abolished the East India Company altogether and undertook the responsibility of ruling India directly.
 Which of the statement(s) given above is/are correct
 - (a) 1 Only
 - (b) 2 Only
 - (c) Both 1 & 2
 - (d) Neither 1 nor 2
12. With reference to Siman Commission recommendation, which one of the following statement is correct
 - (a) It recommended the replacement of diarchy with responsible government in the provinces.
 - (b) It proposed the setting up of inter-provincial council under the Home Department.
 - (c) It recommended the creation of Indian Police Service with provision for increased pay and allowances for British recruits as compared to Indian recruits.
 - (d) It suggested the abolition of bicameral legislature at the centre
15. Match the List-I with List-II and select the correct answer using the code given below the lists

List-I	List-II
(A) Ireland	1. Emergency Power
(B) U.S.A.	2. Office of the CAG
(C) Govt. of India Act 1935	3. Nomination of members to the Rajya Sabha by the President
(D) Britain	4. Function of Vice-President

Code:

	A	B	C	D
(a)	3	2	1	4
(b)	2	3	4	1
(c)	3	4	1	2
(d)	1	2	3	4

16. The Indian parliamentary system is different from the British parliamentary system in that India has:

- (a) both a real and nominal executive
- (b) a system of collective responsibility
- (c) bicameral legislature
- (d) the system of judicial review

17. Which of the following countries has Non-written constitution

- (a) Ireland and England
- (b) Australia, New-Zeland and England
- (c) New-Zeland and England
- (d) UK and Australia

18. Match the List-I with List-II and select the correct answer using the code given below the lists

List-I	List-II
(A) Secularism	1. Elected president at the head of our state
(B) Republic	2. Independent authority of a state
(C) Sovereign	3. All the factors of production are collectively owned by proletariat
(D) Socialism	4. No identified state religion

Code:

	A	B	C	D
(a)	4	2	1	3
(b)	3	1	2	4
(c)	3	2	1	4
(d)	4	1	2	3

Answers

Answer 1: (c) By the Govt. of India Act 1858 the power was transferred from East India Company to British crown.

Answer 2: (C)

Answer 3: (b) By the Indian Council Act 1909 the separate seats were reserved for Muslims in Election.

Answer 4: (a) By the Govt. of India Act the post of Secretary to India post was created.

Answer 5: (C)

Answer 6: (b)

Answer 7: (b)

Answer 8: (b)

Answer 9: (a)

Answer 10: (a)

Answer 11: (b) The Abolition of East India Company monopoly of Indian trade by Govt. of India Act 1958 by this act the British parliament assured the responsibility of ruling India directly

Answer 12: (a)

Answer 13: (c)

Answer 14: (d)

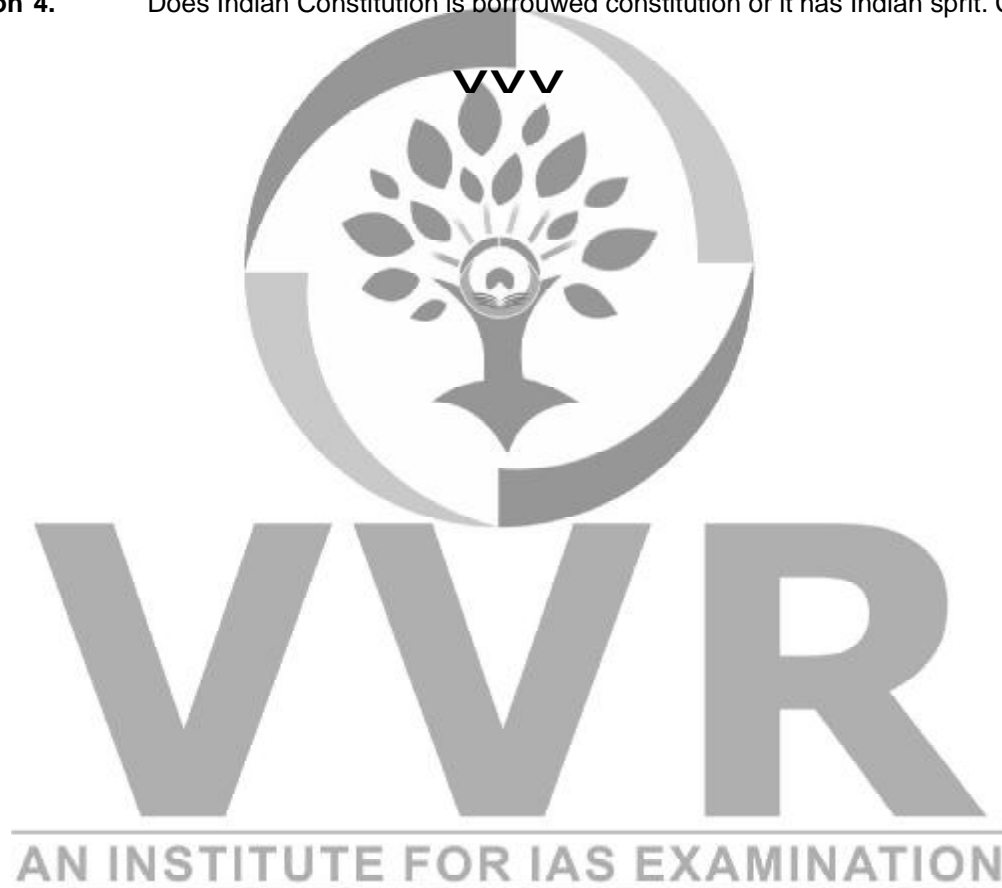
Answer 15: (c)

Answer 16: (d)

VVV

Questions on Constitutional Development (for Mains)

- Question 1.** Indian Constitution is lawyer based constitution. Comment
- Question 2.** Critically Examine the Nature of the Indian Constitution.
- Question 3.** Discuss the Philosophy of Indian Constitution. Does Indian Constitution drive some roots from National Freedom Struggle.
- Question 4.** Does Indian Constitution is borrowed constitution or it has Indian sprit. Comment





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