

## UNIT – 6

# POLITICAL SYSTEM OF INDIA

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### **6.0 Objective :**

Following India's independence in 1947, the Constituent Assembly deliberated over the precise constitutional future of India. On 26 January 1950, India became a Republic, and the Constitution of India was promulgated. Jawaharlal Nehru had become the country's first Prime Minister in 1947, and in 1952, in the country's first general election, with a universal franchise, Nehru led the Indian National Congress to a clear victory.

This unit will help you understand the history of the political system of India, its basic features and the procedure of the drafting of the Indian constitution. The amendment process and the review of constitution is also explained.

### **6.1 Introduction :**

Most countries in the world have a constitution. A constitution serves several purposes. First, it lays out certain ideals that forms the basis of the kind of country that we, as citizens, aspire to live in. A constitution tells us what the fundamental nature of our society is. It helps to serve a set of rules and principles that all citizens of a country can agree upon as the basis of the way in which they want the country to be governed.

In this unit, you will learn about the historical background of the political system of India, the procedure of the drafting of the Indian constitution and its features, its amendment procedure and also about the contents of the Preamble.

## **6.2 Political System of India : Historical Background :**

Political system is a social institution which deals with the governance of a state and its relationship with the people. Political system of a country denotes the structure of institutions that constitute the State and its Government. India is no different; it had also developed government and political institutions to give shape and form to the fundamental principles.

The British Government introduced the parliamentary system in India. Whether it was a conscious decision on their part is debatable, as some feel that they were not completely familiar with the system themselves. Many of the modern thinkers have even gone to the extent of saying that the system was introduced by the British Government in a state of 'absent-mindedness'.

The real intentions behind the mindset of the British rulers cannot be traced down completely. However, with a look at their writings one can get an idea of their perspective. Governor General Lord Hastings wrote in his private journal in 1818:

A time not very remote, will arrive when England will, on sound principles of policy, wish to relinquish the domination which she gradually assumed over this country, and from which she cannot at present recede. At that hour it would be the proudest boast, and most delightful reflection, that she had used her sovereignty towards enlightening her temporary subjects, so as to enable the native communities to walk alone in the paths of justice, and to maintain, with probity towards the benefactors, that commercial intercourse in which we should then find a solid interest.

These words not only show the real interests of the British mindset, they are still a reflection of the long term relations with Britain which exist till today.

### **The Quasi-Parliamentary System**

Some form of parliamentary system begun in India as early as 1853 after the initiation of 'Indian Council Act'. Before this Act came into being, all powers remained in the hands of the Governor General along with his Council.

The Charter Act of 1833 had introduced the first constituents of what we call 'institutional specialization'. Thus the law-making meeting started getting separated from the executive meetings. Furthermore, the council and the legislative were expanded with the introduction of a fourth member. This member was assigned the job of drafting of the laws.

The 1853 Act further enlarged the numbers and, finally, there were six members in all. Two of them were assigned the post of judges. The remaining 4 members were given representation of four specific provinces, which were of great importance. These four provinces included Bombay, Madras, North West Frontier and Bengal.

All the six members at that time were British and no Indian members were allowed to be associated with this procedure.

### **Consequences of 1857, 'The First War of Independence'**

The period between 1757 and 1857 was a period of consolidation for the British in India, a period in which numerous territories got annexed. A number of Indian princes had their powers

confiscated, restricted and limited and were forced to sign treaties. These were treaties through which they were forced to accept subsidiary alliance. Thus, they succumbed to the authority of the British Crown.

The Mughal Emperors still had their thrown but they were basically like puppets in the hands of the British administrators. The setting up of the English educational system and the construction of canals and rail-roads along with initiation of new colleges were some more features of this period. The old traditional orders and regime was being replaced by this new system.

### **Indian Councils Act**

The British parliament passed the Indian Councils Act in 1861. The 'added members' of legislative council were further enlarged to twelve. The new feature of this act was that even Indians were allowed to be its members. In 1862, three Indians got appointment as Council members. They were:

- 1 The Raja of Banaras
- 1 The Maharaja of Patiala
- 1 Sir Dinkar Rao

### **Indian National Congress**

Although Indians were now allowed to be members of the legislative council, our leaders were not content with such a small achievement. The Indian National Congress was established in the year 1885, with the support of Allan Octavian Hume, who was a member of Indian Civil Service. According to Hume, 'Something like the Congress should be set up as a safety valve for the escape of great growing forces, generated by our own action'. Many people at that time saw Hume as a supportive figure to the Indian National Congress. He was considered a British who although was part of the British regime, still wanted to do something good for the Indian people.

After its initiation, a resolution was passed by the Congress. It stated:

‘The concession made by the Act of 1861 be further expanded: to the Councils 1946. This assembly is responsible for the drafting of our present constitution.’

The future of the Indian government was still pretty much undecided as could be noticed from Jawaharlal Nehru's speech:

Whatever system of government we may establish here, fit in with the temper of our people and be acceptable to them ..... We stand for democracy but what form of democracy, what shape it might take is another matter ..... for this House to determine.

### **6.2.1 Party System**

The party system of any country is decided upon by the existing and prevalent political culture of that country, and India is no exception to this. Similarly, the political culture of the society is dependent upon the values and attitudes of the people living in that society. Accordingly, depending upon the number of parties which exist in a country, the political party system is divided into:

- 1 Single party system
- 1 Bi-party system
- 1 Multi-party system

- 1 National Party
- 1 State party
- 1 Local Party

There are a number of factors which influences this party system in our country and the way it functions. They are:

- 1 Co-existence of the political parties
- 1 Principles and ideologies of parties
- 1 Elements of caste, class and race
- 1 Number of political parties
- 1 Party coalition and alliances

To become a national party, political parties need to have completed at least five years in service to political activities along with securing a minimum of four percent of the total number of votes in previous elections to state legislature. To become a national party, a political party must have recognition in four or more states.

### **Election Commission**

Election Commission was set up with the purpose that free and fair elections would take place in the country. With the significance of elections in the democratic setup of our country, the agency of election commission is a very important body. It was formed as per provision in the Constitution of India. The election commission conducts election for the Parliament and the state legislatures and also for the post of the President and Vice-President.

The composition of the Election Commission includes Election Commissioners along with a Chief Election Commissioner. The number of election commissioners is decided by the Indian President.

The Chief Election Commissioner is the acting chairman of the Election Commission. Although the President has the right to decide upon the numbers of Election Commissioners, he still has to follow the rules enacted under the parliament. In addition, the President may also appoint Local Election Coinmissioners for the assistance of the Election Commission. There is also a State Election Commission for each state.

### **Responsibilities**

The responsibilities of the election commission include:

- 1 Preparing the voters list
- 1 Renewal of the voter's list after each census and before every election
- 1 Declaring the time of the elections
- 1 Fixing dates for filing and scrutinizing nominations for the election :
- 1 Fixing dates for the counting of the votes
- 1 Allotting symbols and providing recognition to political parties
- 1 Preparation and implementation of the code of conduct' The code of conduct needs to be followed by all the parties
- 1 Settlement of election disputes
- 1 Declaration of election results
- 1 Scrutinizing the expenses of the election and of candidates

### **The Ruling and the Opposition Parties**

The party which wins the majority of seats in the elections comes into power. When one single party is not able to gain majority, an alliance of parties comes into power. The losing party or alliance

of parties performs the role of the opposition. The opposition also has a significant part to play in democracy. Its duties and responsibilities include:

- 1 Opposing the repressive tendencies of the ruling party.
- 1 Criticizing and scrutinizing the drawbacks of the administration and exposing them in front of the public.
- 1 Opposing the misdemeanor of the ruling party and its leaders and generating the public opinion against those misdeeds.
- 1 Evolving and forming substitute policies and strategies.
- 1 Imparting the general public with political enlightenment.

### **Decentralization**

Democratic nations of the world put great emphasis on the decentralization of power. In India also, several measures have been taken in this view. The Panchayati Raj system is an example of this idea of decentralization. Also, in the 73rd and the 74th Amendment of the Indian constitution, more power was given to self-government institutions, so that democratic governance could be made more effective.

The features of this amendment were:

- 1 Quinquennial elections were made compulsory at local administrative levels.
- 1 Local self-governments got structural consistency throughout the state.
- 1 The state election commission got the responsibility of conducting elections for the Panchayats.
- 1 Grama sabhas were formed. This was done to make sure that people participated in the process of development.
- 1 Local bodies were given greater power to interfere with planning and development activities.

### **Challenges Ahead**

The Parliamentary system has been working well in our country. There are rapid developments and these developments are not without challenges. Some of the challenges include:

- 1 Unemployment
- 1 Disruptive tendencies
- 1 Terrorism
- 1 Illiteracy
- 1 Political instability
- 1 Nepotism
- 1 Parochialism
- 1 Corruption

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## **6.3 Constituent Assembly and Drafting of the Indian Constitution :**

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The idea of making the Constitution cannot be attributed to the Constituent Assembly alone. It needs to be seen in the evolutionary perspective. The adoption of the famous Motilal Nehru Resolution in 1924 and 1925, on the national demand, was a historic event. It is because the central legislature had, for the first time, lent its support to the growing demand of the future Constitution of India . It

also agreed to the opinion that the Constitution of India should be framed by Indians themselves. In November 1927, the Simon Commission was appointed without any Indians represented in it. Therefore, all-party meetings, held at Allahabad, voiced the demand for the right to participate in the making of the Constitution of their country.

Earlier, on 17 May 1927, at the Bombay session of the Congress, Motilal Nehru had moved a resolution. The resolution called upon the Congress Working Committee to frame the Constitution for India in consultation with the elected members of the central and provincial legislatures, and the leaders of political parties. Adopted by an overwhelming majority with amendments, it was this resolution on the Swaraj Constitution which was later restated by Jawaharlal Nehru in a resolution passed by the Madras Session of the Congress on 28 December 1927.

In an all-party conference in Bombay on 19 May 1929, a committee was appointed under the Chairmanship of Motilal Nehru. The committee established the principles of the Constitution of India. The report of the committee, which was submitted on 10 August 1928, later became famous as the Nehru Report. It was the first attempt by Indians to frame the Constitution for their country.

The report depicted the perception of the modern nationalists. It also provided an outline of the Constitution of India. The outline was based on the principles of dominion status and it suggested that the government should be made on the parliamentary pattern. The report asserted the principle that sovereignty belongs to Indians. It laid down a set of fundamental rights and provided for a federal system with maximum autonomy granted to the units. The residuary powers were given to the central government.

A broad parliamentary system with government responsible to the Parliament, a chapter on justifiable fundamental rights and rights of minorities envisaged in the Nehru Report in 1928 largely embodied the Constitution of the independent India.

The Third Round Table Conference issued a White Paper outlining the British government's proposal for constitutional reforms in India. However, the joint parliamentary committees, which examined this proposal, observed that a specific grant of constituent power to authorities in India is not, at the moment, a practicable proposition'. In its response, the Congress Working Committee in June 1934 declared that the only satisfactory alternative to the White Paper was that the Constitution be drawn out by the Constituent Assembly. They demanded that the members of the Constituent Assembly be elected on the basis of adult suffrage. Significantly, this was the first time that a definite demand for a Constituent Assembly was formally put forward.

The failure of the Simon Commission and the Round Table Conference gave rise to the ratification of the Government of India Act, 1935. The Congress in its Lucknow Session in April 1936 adopted a resolution in which it declared that no constitution imposed by an outside authority shall be acceptable to India. The resolution asserted that it has to be framed by an Indian Constituent Assembly elected by the people of India on the basis of adult franchise. On 18 March 1937, the Congress adopted another resolution in Delhi which asserted these demands.

After the outbreak of World War II in 1939, the demand for a Constituent Assembly was reiterated in a long statement issued by the Congress Working Committee on 14 September 1939. Gandhi wrote an article in the *Harijan* on 19 November 1939, in which he expressed the view that the Constituent Assembly alone can produce a Constitution for the country which truly and completely represents the will of Indians. It declared that the Constituent Assembly was the only way out to

arrive at the solution of communal and other problems of the country. The demand was partially considered by the British government in the 'August Offer of 1940'.

In March 1942, the British government sent the Cripps Mission to India with a draft declaration which needed to be implemented at the end of the Second World War. The main proposals of the Mission were:

- 1 The Constitution of India was to be framed by an elected Constituent Assembly of the Indian people.
- 1 The Constitution should give dominion status to India, that is, equal partnership of the British Commonwealth of Nations.
- 1 There should be an Indian Union, comprising all the provinces and Indian states.
- 1 Any province or Indian state, which was not prepared to accept the Constitution would be free to retain its constitutional position existing at that time. With such provinces, the British government could enter into separate constitutional arrangements.

However, the Cripps Mission was a failure and no steps were taken for the formation of the Constituent Assembly until the World War in Europe came to an end in May 1945. In July, when the new labour government came to power in England, Lord Wavell affirmed that His Majesty's intention was to convene a Constitution-making body as soon as possible.

In 1946, the British Cabinet sent three members, including Cripps to make another serious attempt to solve the problem. However, the Cabinet delegation rejected the claim for a separate Constituent Assembly and a separate state for the Muslims. It forwarded the following proposals:

- 1 There would be a Union of India, comprising both British India and states, and having jurisdiction over the subjects of foreign affairs, defence and communications. All residuary powers would belong to the provinces and the states.
- 1 The Union should comprise an executive and a legislature having representatives from the provinces and states.

To explain the actual meaning of the clauses of the proposals of the Cabinet Mission, the British Government published the following statement on 6 December 1946: 'Should a Constitution come to be framed by the Constituent Assembly in which large section of the Indian population had not been represented? His Majesty' government would not consider imposing such a Constitution upon any restrictive part of the country.'

The British Government for the first time pondered over the likelihood of forming two constituent assemblies and two states. The Cabinet Mission recommended a basic framework for the Constitution and laid down a detailed procedure to be followed by the Constitution-making body. In the election for the 296 seats, the Congress won 208 seats including all the General seats except nine. The Muslim League won seventy-three seats.

With the Partition and Independence of the country on 14 and 15 August 1947, the Constituent Assembly of India was said to have become free from the fetters of the Cabinet Mission Plan. Following the acceptance of the plan of 3rd June, the members of the Muslim League from the Indian dominion also took their seats in the Assembly. The representatives of some of the Indian states had already entered the Assembly on 28 April 1947. By 15 August 1947, most of the states were represented in the Assembly and the remaining states also sent their representatives in due course. The Constituent

Assembly, thus, became a body to fully represent the states and provinces in India, free from external authority. It could change any law made by the British Parliament.

### **6.3.1 Composition of the Constituent Assembly**

The Constituent Assembly was first held on 9 December 1946. It included provinces comprising Pakistan and Bangladesh today, and represented the princely states of India as well. Further, the delegations from provinces of Sind, East Bengal, West Punjab, Baluchistan and the North West Frontier Province in June 1947 formed the Constituent Assembly of Pakistan in Karachi. After India became independent, the Constituent Assembly became the Parliament of India. The Constituent Assembly was indirectly elected by the Provincial Legislative Assembly members (lower house only), as per the scheme of the cabinet delegations. The prime features of the scheme were as follows:

- 1 Every Indian state or group of states and the province were allotted a specific number of seats relative to their populations respectively. Due to this, the provinces were needed to elect 292 members and the Indian states were assigned a minimum number of ninety-three seats.
- 1 Each provincial seat was distributed amongst three major communities, Muslim, Sikh and General, proportional to their respective population.
- 1 Within the Provincial Legislative Assembly, each community member elected his own representatives through proportional reorientation with single transferable vote.
- 1 The selection method for Indian representatives had to be determined through consultation.

In all, the Constituent Assembly was to have 389 members but Muslim League boycotted the Assembly. Only 211 members attended its first meeting on 9 December 1946. Apart from that, the Partition Plan of 3 June 1947 gave rise to the setting up of a separate Constituent Assembly for Pakistan. The representatives of Bengal, Punjab, Sind, North West Frontier Province, Baluchistan, and the Sylhet district of Assam had to join Pakistan. Due to this, on 31 October 1947, when the Constituent Assembly reassembled, the House membership was lessened to 299. Out of these, 284 members were actually present on 26 November 1949 and signed the Constitution to regard it as finally passed.

### **6.3.2 Committees to Draft the Constitution**

The salient principles of the proposed Constitution were outlined by various committees of the Assembly. There were twenty-two major committees formed by the Constituent Assembly to handle different tasks of the making of the Constitution. Out of these, ten focused on procedural affairs and twelve on substantive affairs. The reports of these committees created the basis for the first draft of the Constitution.

#### **Committees on Procedural Affairs**

- 1 The Steering Committee
- 1 The Rules of Procedure Committee
- 1 The House Committee
- 1 The Hindi-translation Committee
- 1 The Urdu-translation Committee
- 1 The Finance and Staff Committee
- 1 Press Gallery Committee

- 1 The Committee based on the Indian Independence Act of 1947
- 1 The Order of Business Committee
- 1 The Credential Committee

#### **Committees on Substantial Affairs**

- 1 The Drafting Committee (Chairman: Dr B.R. Ambedkar)
- 1 The Committee for negotiating with States (Chairman: Dr Rajendra Prasad)
- 1 The Union Constitution Committee (Chairman: Pandit Jawaharlal Nehru)
- 1 The Provincial Constitution Committee (Chairman: Sardar Patel)
- 1 A Special Committee to examine the Draft Constitution (Chairman: Sir Alladi Krishnaswami Iyer)
- 1 The Union Powers Committee (Chairman: Pandit Jawaharlal Nehru)
- 1 The Committee on Fundamental Rights and Minorities (Chairman: Sardar Patel)
- 1 The Committee on Chief Commissioners Provinces
- 1 The Commission of Linguistic Provinces
- 1 An Expert Committee on Financial Provisions
- 1 Ad-hoc Committee on National Flag
- 1 Ad-hoc Committee on the Supreme Court

During its entire sitting, the Constituent Assembly had eleven sessions and 165 days of actual work. After three years, the historic document, that is, the Constitution of free India was adopted by the Assembly on 26 November 1949. It came into force on 26 January 1950.

The draft Constitution had 315 Articles and thirteen Schedules. The final form of the Constitution, as it was originally passed in 1949, had 395 Articles and eight Schedules. This shows that the original draft had undergone considerable changes. In fact, there were over 7000 amendments which were proposed to be made in the Draft Constitution. Of these, 2473 were actually moved, debated and disposed of. It was indeed a great democratic exercise as discussion, debates and deliberation were encouraged. There was also a great tolerance of criticism. It was truly a full-fledged democratic procedure which helped in the making of the Constitution.

#### **6.4 Preamble to the Constitution of India :**

The philosophy of the Indian Constitution is clearly reflected in the Preamble of the Indian Constitution. The Preamble to the Indian Constitution was formulated in the light of the 'Objectives Resolution', which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947. Also, the drafting committee of the Constituent Assembly, after a lot of deliberations, decided that the 'Preamble stands part of the Constitution'.

The Preamble to the Constitution of India reads as follows:

'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 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 Preamble makes it clear that the basic tasks which the Constitution makers envisaged for the Indian state were to achieve the goals of justice, liberty, equality and fraternity. These objectives help us to decode the messages and mandates of our Constitution in terms of our contemporary needs and futuristic perspectives.

### **Explanation of the Preamble**

A careful study of the Preamble reveals the following points:

- (a) **Source of the Constitution :** The first and the last words of the Preamble, i.e., 'We, the people of India.....adopt, enact and give to ourselves this constitution' convey that the source of the Constitution is the people of India. The people have formulated their Constitution through the Constituent Assembly, which represented them.
- (b) **Nature of the Indian political system :** The Preamble also discusses the nature of the Indian political system. The Indian polity is a sovereign, socialist, secular, democratic republic.
  - (i) **Sovereign:** After the implementation of the Constitution on 26 January 1950, India became sovereign. It was no longer a dominion. Sovereignty means the absence of external and internal limitations on the state. It means that Indians have the supreme power in deciding their destiny.
  - (ii) **Socialist:** After the Forty-Second Constitutional Amendment, the Constitution of India declares itself a socialist polity. The Indian socialist state aims at securing for its people 'justice-social, economic and political' . A number of provisions in Part IV of the Constitution dealing with the Directive Principles of State Policy are intended to bring about a socialist order of society.
  - (iii) **Secular:** Secularism is another aspect of the Indian polity, which was included by the Forty-Second Constitutional Amendment. Secularism in India contains both negative as well as positive connotations. In its negative connotation, it denotes absence of religious discrimination by the State. Positively; it means right to freedom of religion. However, secularism does not mean the right to convert from one religion to another.
  - (iv) **Democracy:** The Preamble declares India to be democratic country. The term 'democratic' is comprehensive. In its broader sense, it comprises political, social and economic democracy. The term 'democratic' is used in this sense in the Preamble and calls upon the establishment of equality of status and opportunity.

In a narrow political sense, it refers to the form of government, a representative and responsible system under which those who administer the affairs of the state are chosen by the electorate and are accountable to them.
  - (v) **Republic:** Lastly, the Preamble declares India to be a republic. It means the head of the state is elected; that the position is not hereditary. The President of India, who is the head of the state, is elected by an electoral college.

(c) **Objectives of the Political System :** The Preamble proceeds further to define the objectives of the Indian Political System. These objectives are four in number: Justice, Liberty, Equality and Fraternity.

(i) **Justice:** The term implies a harmonious reconciliation of individual conduct with the general welfare of the society. In the light of 'Objectives Resolution' and the Preamble, the idea of socio-economic justice signifies the following three features:

- 1 The essence of socio-economic justice in a country can be valued only in terms of positive, material and substantive benefits to the working class, in the form of services rendered by the State. Socio-economic justice, in the negative sense, means curtailment of the privileges of the fortunate few in the society, while positively, it suggests that the poor and the exploited should have the full right and opportunity to rise to the highest station in life.
- 1 Socio-economic justice is qualitatively higher than political justice.
- 1 The stability of the ruling authority is relative to its ability to promote the cause of socio-economic justice for the common man. In an empty stomach, adult franchise would soon become a mockery. Political justice too, would soon lose its significance if socio-economic justice is not forthcoming.

The objectives to secure justice for the citizens got concrete reflection in the provisions of Chapters III and IV, namely, the Fundamental Rights and Directive Principles.

(ii) **Liberty:** The term 'liberty' is used in the Preamble both in the positive and negative sense. In the positive sense, it means the creation of conditions that provide the essential ingredients necessary for the fullest development of the personality of the individual by providing liberty of thought, expression, belief, faith and worship. In the negative sense, it means absence of any arbitrary restraint on the freedom of individual action.

(iii) **Equality:** Liberty cannot exist without equality. Both liberty and equality are complementary to each other. Here, the concept of equality signifies equality of status, the status of free individuals and equality of opportunity.

(iv) **Fraternity:** Finally, the Preamble emphasizes the objective of fraternity in order to ensure both the dignity of the individual and the unity of the nation. 'Fraternity' means the spirit of brotherhood, the promotion of which is absolutely essential in our country, which is composed of people of many races and religions. 'Dignity' is a word of moral and spiritual import and imposes a moral obligation on the part of the Union to respect the personality of the citizen and to create conditions of work, which will ensure self-respect.

The use of the words, unity and integrity, has been made to prevent tendencies of regionalism, provincialism, linguism, communalism and secessionism and any other separatist activity so that the dream of national integration on the lines of enlightened secularism is achieved.

## **6.5 Basic Features of the Indian Constitution :**

The Indian Constitution represents the vision and values of its founding fathers and is the basis of the faith and aspiration of Indian people. When the Indian Constitution was formally ratified on 26 November 1949, it concluded a process that resulted in a remarkably forward-looking document that enshrined individual liberty, equality of opportunity, social justice and secularism. As per this Constitution, the Republic of India was inaugurated on 26 January 1950.

Salient features of the Constitution of the Republic of India are as follows:

### **1. Living Document**

The Constitution is a living document, an instrument which makes the governmental system work. Unlike many other developing countries that became Independent after the World War II, it has survived as a living document with necessary amendments.

### **2. Written Constitution**

The Constitution of the Republic of India is written. As originally passed, it had 395 Articles and 8 Schedules. The written Constitution is very essential for a federal state so that whenever there is any dispute between the federal government and the federating units, it becomes the basis to resolve these disputes. In sheer physical terms, Indian Constitution is definitely the largest and most detailed Constitution in the world. The Constitution of USA contains only 7 Articles, Canada's 147 Articles and Australia's 128 Articles.

The framers of the Constitution tried to provide the solution of all the possible problems of administration and governance of the country. Even those matters which are taken as conventions in other countries have been put to writing in the Indian Constitution.

### **3. Sovereign Democratic Republic**

The Indian Independence Act, 1947 declared India a dominion with the Queen of England as the Head of the State. The Governor-General was appointed by the Queen and acted as her representative in India. The authors of the Constitution decided that Dominion status was not in conformity with the dignity of the Indian nation. The preamble of the Constitution, therefore, declared India as a Sovereign Democratic Republic. It means that India as a nation does not owe allegiance to any foreign power, is independent in her dealings with foreign countries and enjoys equal status in the world community with other independent sovereign states.

India is a democracy. It means that sovereignty rests with the people of India. They govern themselves through their representatives elected on the basis of universal adult franchise. Besides, the Constitution confers on Indian citizens some fundamental rights which are considered to be the essence of a democratic system.

### **4. Parliamentary Form of Government**

The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the Executive of the Union is the President. As per Article 79 of the Constitution of India, the council of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President, who shall exercise his functions in accordance with the Prime Minister's advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head.

The Council of Ministers is collectively responsible to the House of the People (Lok Sabha). Every State has a Legislative Assembly. Certain States have an upper House also called State Legislative Council. There is a Governor for each State who is appointed by the President. Governor is the head of the State and the executive power of the State is vested in him. The Council of Ministers with the Chief Minister as its head advises the Governor in the discharge of executive functions. The Council of Ministers of a State is collectively responsible to the Legislative Assembly of the State.

The Constitution distributes legislative powers between Parliament and State legislatures as per the lists of entries in the Seventh Schedule to the Constitution. The residuary powers are vested in the Parliament. The centrally administered territories are called Union Territories.

### **5. A Federal System with Unitary Bias**

The Constitution is federal in nature but the term 'Federation' has not been used in our Constitution. India has been described as a Union of States according to Article 1 of the Constitution. There are twenty-nine states in the union, each one with a separate Executive, Legislature and Judiciary. Powers have been divided between the Union Government on the one hand and the States on the other by the Constitution itself. The Constitution is sovereign and there is provision for judicial review.

The most remarkable feature of the Indian Constitution is to confer upon a federal system the strength of a unitary government. Though normally the system of government is federal, during an emergency the Constitution enables the federation to transform into a unitary State.

### **6. Adult Franchise**

At the time when the Constitution was made, a vast majority of Indian people were illiterate. The framers of the Constitution took the bold step of conferring the right to vote on every adult citizen of India irrespective of the differences of education, property or sex. Every citizen who was 21 years of age was given the right to vote. It has been reduced to 18 years later. This makes the Constitution democratic in the real sense of the term.

### **7. Rigid and Flexible**

The Constitution is rigid in the sense that most of its parts cannot be amended by the ordinary law-making process. However, it provided for amendments and therefore it is flexible. The Indian Constituent Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution as in Canada or by making the amendment of the Constitution subject to the fulfillment of extraordinary terms and conditions as in America or Australia. In its place, it has provided a most facile procedure for amending the Constitution.

It is only the amendment of few of the provisions of the Constitution that requires ratification by the State legislatures and even then ratification by only half of them is sufficient.

The rest of the Constitution can be amended by the special majority of the union Parliament, i.e., a majority of not less than two-thirds of the members of each House present and voting, which again must be a majority of the total membership of the House.

Within a period of less than 60 years, the Constitution has been amended 94 times. It proves that the Constitution is flexible. The procedure laid down by the Constitution for its amendment is neither very easy, as in England, nor very rigid as in the United States.

### **8. Independence of Judiciary**

The framers of the Constitution were aware that democratic freedom was meaningless in the absence of an independent machinery to safeguard them. 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, 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.

## **9. Supreme Court and Judicial Review**

Supreme Court is a necessary element in a federal polity. Accordingly, the Indian Constitution has established a Supreme Court of India. The Court has both original and appellate jurisdiction. It has the power of judicial review. It can declare any Legislative enactment or administrative act as unconstitutional if it is deemed to be in conflict with the provisions of the Constitution. Besides, the Supreme Court is a court of record.

## **10. Single Citizenship**

The Constitution of India grants only one citizenship to all the citizens. In a federation sometimes a citizen gets double citizenship, one of the Union and the other of State in which that person lives.

## **11. Detailed Administrative Provisions**

B.R. Ambedkar observed, it is perfectly possible to pervert the Constitution without changing the form of administration. To prevent such subversion of the Constitution, detailed administrative provisions were included in it.

We have in the Indian Constitution detailed provisions about the organization of the judiciary, the services, the Public Service Commission, Election and about the division of powers between the Union and the States.

## **12. Constitution of the Units**

The Constitution of a federal State usually deals only with the federal Government and leaves the federating units to draw their own constitutions. This practice was followed in the framing of the constitutions of the USA, USSR, Canada and other Federal States. However, the Indian Constitution provides the Constitutions of both the Union and the States. This has contributed to the bulk of the Indian Constitution.

## **13. Secular State**

India is a secular State. It means that the State does not recognize, establish or endow any church or religious organization. It does not seek to promote the spiritual or religious welfare of the people. It allows freedom of religion. The Constitution guarantees freedom of worship, faith and conscience. It does not discriminate in matters of government employment on the basis of religion. The term 'Secular' did not occur in any part of the original Constitution. It was incorporated in the preamble by the Forty-second Constitutional Amendment in 1976.

## **14. Welfare State**

The preamble of the constitution describes India as a socialist state. The term was added to the preamble of the Constitution by the Forty-second Constitutional Amendment Act of 1976 by the Indira Gandhi led Congress government. However, it is to be noted that 'Socialism' envisaged by the Constitution is not the usual State socialism seen in Russia or China which entailed the nationalization of all the means of production, distribution, communication, etc. Gandhi explained the nature of Indian Socialism by stating, 'We have always said that we have our own brand of socialism. We will nationalize the sectors where we feel the necessity. Just nationalization is not our type of socialism.' Socialism in the Indian context means that the government endeavours to make the distribution of wealth more equal, provides a decent standard of living for all and is committed towards the formation of a welfare state.

### **15. Liberal Constitution**

Liberalism is a political philosophy that is centred on the freedom of an individual. The Indian Constitution contains many features that make it liberal in nature, the most important being the section on fundamental rights.

The constitution of India recognizes six fundamental rights. These are:

1. Right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles.
2. Right to freedom which includes speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation, right to life and liberty, right to education, protection in respect to conviction in offences and protection against arrest and detention in certain cases.
3. Right against exploitation, prohibiting all forms of forced labour, child labour and traffic in human beings.
4. Right to freedom of religion, including freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes.
5. Cultural and Educational rights preserving Right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice.
6. Right to constitutional remedies for enforcement of Fundamental Rights.

These six fundamental rights guaranteed in the Indian constitution is comparable to features seen in liberal constitutions around the world including the Bill of Rights in the American Constitution. Along with the fundamental rights, the remedies for enforcing the rights, namely, the writs of *habeas corpus*, *mandamus*, *prohibition* and *certiorari* are also guaranteed by the Constitution under Article 32. However, unlike other liberal constitutions around the world, the Indian Constitution today does not recognize the right to property as a fundamental right. Although originally a part of the Indian Constitution, the right to property was deleted from the list of fundamental rights after the 44th Amendment to the Constitution in 1978. However at the same time, in another part of the Constitution, Article 300 (A) was inserted to affirm that no person shall be deprived of his or her property save by authority of law. Thus, today the right to property in India is a legal and not a fundamental right.

### **16. Fundamental Duties**

Part IVA on fundamental duties was incorporated in the Constitution by the Forty-second Amendment Act. Article 51 A of the Constitution enumerates ten fundamental duties of the citizens of India: to respect and abide by the Constitution and the laws; to uphold the sovereignty of the nation; to respect the democratic institutions enshrined in the Constitution; to abjure communalism and violence, etc. However, unlike the fundamental rights, the fundamental duties are not enforceable in the courts.

### **17. Directive Principles of State Policy**

A distinctive feature of the Constitution is that it contains Chapter IV on the Directive Principles of State Policy. These Directives relate mostly to social and economic justice, such as adequate means of livelihood for all, distribution of wealth so as to serve the common good, equal pay for equal

work, protection of adult and child labour, free and compulsory primary education, etc. These are the guiding principles of State policy. The authors of the Constitution did not make the Directive Principles justiciable.

The Directive Principles are not enforceable by the courts, i.e., if the government of the day fails to carry out these objects no court can make the government ensure them. Still the principles have been declared to be fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

### **18. Drawn from Different Sources**

A distinguishing feature of the Indian Constitution is that it was prepared after carefully looking at all the known constitutions of the world at that time. The first meeting of the Constituent Assembly of India took place in the Constitution Hall, New Delhi. On 9 December 1946, it was chaired by Dr Sachchidananda Sinha. In his address Dr Sinha referred to several constitutions that were in existence at that time and said:

As a matter of fact, the French constitution-makers, who met in 1789 at the first Constituent Assembly of their country, were themselves largely influenced by the work done, but a couple of years earlier in 1787, by the historic Constitutional Convention held at Philadelphia by the American constitution-makers, for their country. Having thrown off their allegiance to the British King in Parliament, they met and drew up what had been regarded, and justly so, as the soundest, and most practical and workable republican constitution in existence. It is this great constitution, which had been naturally taken as the model for all subsequent constitutions not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia, and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of the American Constitution than to those of any other.

The parliamentary system has been borrowed from England, the concept of independent judiciary and judicial review and fundamental rights from the US Constitution, the federal features from Canada and the Directive Principles from Ireland. Many provisions related to administration have been taken from the Government of India Act, 1935.

These borrowings were not blind as the framers of the Constitution modified them with a view to avoid the faults that have emerged in practice and adapted to the existing conditions and needs of the country. India's religious and ethnic diversity, caste inequalities and widespread illiteracy and poverty demanded these unique provisions. The Constituent Assembly members were equal to this task, debating and discussing the clauses of the Draft Constitution threadbare.

### **19. Reservation in Legislatures and Services for Backward Classes**

A distinctive feature of the Indian Constitution is that there is reservation of seats for the Scheduled Castes and Scheduled Tribes in the House of the People and in the State Assemblies. The Constitution also lays down that the claims of the Scheduled Castes and Scheduled Tribes shall be taken into consideration in making appointments to services in connection with the affairs of the Union or a State.

There is also reservation of the seats for Anglo-Indian community in the House of the People and in some State Assemblies.

## **20. Official Language of India**

A provision was made in the Constitution to declare Hindi in the Devanagiri script as the official language of India. Till that time English was to continue as the official language.

## **21. Basic Structure**

Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. However, the Supreme Court has acted as an arbiter to the legislative enthusiasm of Parliament ever since Independence. With the intention of preserving the original ideals envisioned by the constitution-makers, the apex court pronounced that Parliament could not distort, damage or alter the basic features of the Constitution under the pretext of amending it.

Though the phrase 'basic structure' itself is not found in the Constitution, the Supreme Court recognized this concept for the first time in the historic Kesavananda Bharati case in 1973. Since then the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by the Parliament. However, the final word on the issue of the basic structure of the Constitution has not been pronounced by the Supreme Court yet. The sovereign, democratic and secular character of the polity, rule of law, independence of the judiciary, fundamental rights of citizens are some of the essential features of the Constitution that have appeared time and again in the apex court's pronouncements.

## **6.6 Amendment Process and Amendment and Review of the Constitution :**

A Constitution, to be living, must evolve. If the impediments to the growth of the Constitution are not removed, the Constitution will suffer a virtual atrophy. The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of government and the public for some years now.

The democratic institutions provided in the Constitution are basically sound and the path for progress does not lie in denigrating any of these institutions. However, there could be no denying that these institutions have been subjected to considerable stresses and strains and that vested interests have been trying to promote their selfish ends to the great detriment of public good.

It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles. It is also proposed to specify the fundamental duties of the citizens and make special provisions for dealing with anti-national activities, whether by individuals or associations. Parliament and the State Legislatures embody the will of the people and the essence of democracy is that the will of the people should prevail. Even though Article 368 of the Constitution is clear and categorical with regard to the all-inclusive nature of the amending power, it is considered necessary to put the matter beyond doubt. It is proposed to strengthen the presumption in favour of the constitutionality of legislation enacted by Parliament and State Legislatures by providing for requirements as to the minimum number of Judges for determining questions as to the constitutionality of laws and for a special majority of not less than two-thirds for declaring any law to be constitutionally invalid. It is also proposed to take away the

jurisdiction of High Courts with regard to determination of Constitutional validity of Central laws and confer exclusive jurisdiction in this behalf on the Supreme Court so as to avoid multiplicity of proceedings with regard to validity of the same Central law in different High Courts and the consequent possibility of the Central law being valid in one state and invalid in another state.

To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under Article 136 of the Constitution. It is also necessary to make certain modifications in the writ jurisdiction of the High Courts under Article 226.

It is proposed to avail of the present opportunity to make certain other amendments which have become necessary in the light of the working of the Constitution.

### **6.6.1 Procedure of Constitutional Amendment**

Article 368 of the Constitution confers power on Parliament to amend the Constitution and provides the procedure for it. A Bill seeking to amend the Constitution can be introduced in either House of Parliament by a Minister or a private member. Motion for leave to introduce the Bill can be adopted by a simple majority of members present and voting. The Constitution provides for the following three types of constitutional amendments.

#### **1. Amendment by Simple Majority**

Bills regarding formation of new states or alteration of areas of existing states, or creation or abolition of Legislative Councils in the states, etc. are treated as ordinary Bills and passed by a simple majority of the House. They are not regarded as Constitution (Amendment) Bills although they have the effect of amending some provisions of the Constitution.

#### **2. Amendment by Special Majority**

A Bill seeking to amend any other part of the Constitution has to be passed in each House of Parliament by a special majority i.e., by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the vacancies or absentees. The expression 'present and voting' means members who vote for 'a yes' or for 'noes'. Members who vote as 'abstention' are not treated as 'present and voting'.

According to the established procedure, the two-thirds majority is required at all the effective stages of the Bill and not merely at the Third Reading (passing) stage of the Bill. As such motion that the Bill be taken into consideration; motion that the Bill as reported by the Select/Joint Committee be taken into consideration; motion that the Bill, as passed by Lok Sabha, be taken into consideration; motion for adoption of clauses and schedules to the Bill, and final motion that the Bill be passed are all required to be passed by a special majority. Motion that the Bill be circulated for eliciting public opinion thereon or that the Bill be referred to a Select/Joint Committee can be passed by simple majority. In case of special majority, voting is always by Divisions and the Chair, while announcing the result of the voting, specifically mentions that a particular motion or clause has been carried by a special majority.

The Constitution (Twenty-fourth Amendment) Bill, 1970, regarding the abolition of privy purses and privileges of the rulers of former Indian States, the Constitution (Sixty-fourth Amendment) Bill,

1989 and the Constitution (Sixty-fifth Amendment) Bill, 1989, regarding establishment of the Panchayati Raj bodies and the Municipalities in rural and urban areas, respectively could not be passed as these Bills did not get the requisite majority in Rajya Sabha.

### **3. Amendment and its Ratification by States**

An amendment to the Constitution which seeks to make any change in articles relating to the election of the President, the extent of the executive power of the Union and the states, the Supreme Court and the High Courts, any of the lists in the Seventh Schedule, representation of States in Parliament or article 368 of the Constitution itself, after it is passed by the Houses of Parliament by the special majority, has also to be ratified by legislatures of not less than one-half of the states by resolutions to that effect before the Bill making provision for such an amendment is presented to the President for assent, which is done after receipt of authenticated copies of resolutions from the State Legislatures. When a Bill duly passed by the Special majority or where necessary, ratified by states, is presented to the President, he is obligated to give his assent to the Bill and thereupon the Constitution stands amended in accordance with the Bill.

#### **Power of Parliament to Amend the Constitution and Procedure Thereafter**

1. Notwithstanding anything in this Constitution, Parliament may, in exercise of its constituent power, amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
2. An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in:

- 1 Article 54, article 55, article 73, article 162 or article 241, or
- 1 Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- 1 Any of the Lists in the Seventh Schedule, or
- 1 The representation of States in Parliament, or
- 1 The provisions of this article

The amendment shall also require to be ratified by the Legislatures of not less than one-half of the states by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

3. Nothing in article 13 shall apply to any amendment made under this article.

4. No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976 shall be called in question in any court on any ground.

5. For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

## **6.7 Summary :**

In this unit, you have learnt that:

1. Political system is a social institution which deals with the governance of a state and its relationship with the people. Political system of a country denotes the structure of institutions that constitute the State and its Government. India is no different and it had also developed government and political institutions to give shape and form to the fundamental principles.

2. The British Government introduced the parliamentary system in India. Whether it was a conscious decision on their part is debatable, as some feel that they were not completely familiar with the system themselves.

3. Some form of parliamentary system begun in India as early as 1853 after the initiation of 'Indian Council Act'. Before this Act came into being, all powers remained in the hands of the Governor General along with his Council.

4. The period between 1757 and 1857 was a period of consolidation for the British in India, a period in which numerous territories got annexed. A number of Indian princes had their powers confiscated, restricted and limited and were forced to sign treaties. These were treaties through which they were forced to accept subsidiary alliance. Thus, they succumbed to the authority of the British Crown.

5. The British parliament passed the Indian Councils Act in 1861. The added members' of legislative council were further enlarged to twelve. The new feature of this act was that even Indians were allowed to be its members.

6. Although Indians were now allowed to be members of the legislative council, our leaders were not content with such a small achievement. The Indian National Congress was established in the year 1885, with the support of Allan Octavian Hume, who was a member of Indian Civil Service.

7. The party system of any country is decided upon by the existing and prevalent political culture of that country, and India is no exception to this. Similarly, the political culture of the society is dependent upon the values and attitudes of the people living in that society.

8. To become a national party, political parties need to have completed at least five years in service to political activities along with securing a minimum of four per cent of the total number of votes in previous elections to state legislature.

9. The idea of making the Constitution cannot be attributed to the Constituent Assembly alone. It needs to be seen in the evolutionary perspective. The adoption of the famous Motilal Nehru Resolution in 1924 and 1925, on the national demand, was a historic event. It is because the central legislature had, for the first time, lent its support to the growing demand of the future Constitution of India.

10. The salient principles of the proposed Constitution were outlined by various committees of the Assembly. There were twenty-two major committees formed by the Constituent Assembly to handle different tasks of making of the Constitution. Out of these, ten focused on procedural affairs and twelve on substantive affairs.

11. The philosophy of the Indian Constitution is clearly reflected in the Preamble of the Indian Constitution. The Preamble to the Indian Constitution was formulated in the light of the 'Objectives Resolution', which was moved by Nehru on 13 December 1946 and almost unanimously adopted on 22 January 1947.

12. The Indian Constitution represents the vision and values of its founding fathers and is the basis of the faith and aspiration of Indian people. When the Indian Constitution was formally ratified on 26 November 1949, it concluded a process that resulted in a remarkably forward-looking document that enshrined individual liberty, equality of opportunity, social justice and secularism.

### **6.8 Questions for Exercises :**

1. Analyse the historical background of the political system of India. Also discuss the Indian party system.
2. Write a short note on the election commission and its responsibilities.
3. Discuss the committees formed to draft the Indian constitution.
4. Explain the important points of the Preamble to the constitution of India.
5. State the basic features of the Indian constitution.
6. Analyse the procedure of the amendment and the review of the constitution of India.

### **6.9 Suggested Readings :**

1. Johari, J.C. 1974. Indian Government and Politics. New Delhi: Vishal Publications.
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