

of the individual and the unity of the nation. The ideal of fraternity is also upheld by the U.N. Charter. In its Declaration of Human Rights, the United Nations proclaims:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Dignity of Individual. According to Preamble of the Constitution dignity of individual has been contemplated. In all walks of life the individual will be given foremost consideration. While taking into consideration individual, his sex, status and religion is not to be taken into consideration.

The Preamble of the Indian Constitution assures the unity of the nation by emphasizing "fraternity" or the spirit of brotherhood amongst all the Indians irrespective of the differences of caste, creed, language or culture. To curb fissiparous tendencies, the word 'integration' has also been added in the Preamble by the Forty-second Amendment.

According to some critics no harm would have been done had there been no Preamble to the Constitution. According to them there are many constitutions in the world which have no preamble. But the fact remains that the Preamble embodies the spirit of the constitution and the ideal of the Indian people to promote national unity and common welfare.

Commenting on the significance of the Preamble ex-Chief Justice M. Hidayatullah says: "It is the soul of our-Constitution which lays down the pattern of our political society which it states *the* Sovereign Democratic Republic. It contains a solemn resolve which nothing but a revolution can alter".

SALIENT FEATURES OF INDIAN CONSTITUTION

The Constitution—of India has the following salient features:

(i) **Written Constitution.** Like the Constitution of Canada, the U.S.A., France and Ireland, India also has a written Constitution.

One finds not only the broad principles contained in the document but exhaustive administrative details too. An impressive list of Fundamental Rights and another of Directive Principles of State Policy have been added in the Constitution. The whole administrative machinery of the constituent units has also been discussed in detail. The relations between the Centre and Units have not been ignored, by the framers of the Constitution. The document also contains some provisions to safeguard the interests of the minorities and backward classes. Many details which are usually left for administrative machinery to work out have been incorporated and embodied in the constitution of India. The result of all this is that the Constitution of India has become bulky—in fact one of the bulkiest in the world.

(ii) **Division of Power.** The division of powers between the Centre and the constituent units is statutory in a federation. Three lists for legislative purposes have been drawn up, namely, The Union List, The State List and The Concurrent List. Ninety-seven items appear on the Union List. The Parliament alone is authorised to legislate in these subjects. These subjects include External Affairs, Defence, Currency and Coinage, Income tax, etc. The State List contains sixty-six items of which the State Legislatures will legislate (Education, Police and Jails, P.W.D., Land Revenue, Local Self-Government, etc.). The Concurrent List has forty-seven items. They include Labour Welfare Printing Press, Newspaper, Police, Jails and Social Security etc. On these forty-seven subjects the Union as well as the Units can legislate. If both Union and Units have legislated on anyone of the aforesaid forty-seven subjects, obviously the law made by the Union Parliament prevails. On the subjects mentioned in the concurrent list both the centre and state can legislate. In case of conflict central law will prevail over the state law.

In spite of scrupulous care and precaution in classifying all subjects in the above lists some subjects are still left out unclassified. These subjects are known as the residuary subjects. The Union legislature has been empowered to legislate on these residuary

subjects. If there is any encroachment on legislation in any sphere from either side, the Supreme Court can declare such an act as null and void or unconstitutional.

(iii) **Independent Judiciary.** The Constitution provides for an independent Judiciary. The Supreme Court is the highest court of justice and appeal in India. It serves as the custodian and defender of the Constitution. This court interprets the Constitution and decides disputes between the Centre and the Units or between one unit and the other regarding their jurisdiction etc. The Supreme Court protects Fundamental Rights of the citizens. According to the Constitution of India, the Supreme Court has the right of judicial review also. The Supreme Court can declare Acts *ultra-vires* if these go against any provision of the Constitution. The Supreme Court debarred the Parliament from curtailing the Fundamental Rights of Indian citizen (*Golak Nath and Other v. The State of Punjab*). However by the 24th amendment the Parliament acquired the right even to amend the Fundamental Rights. This was further confirmed by the Supreme Court in *Keshavnand Bharti* case. The Forty Second Amendment formally reduced it to writing. In *Minerva Mills* case the Supreme Court has asserted that the Parliament in India has not got unlimited right of amending the Constitution.

By the passing of Forty Second Constitution Amendment set some powers of the courts were curtailed but these have been given back by the passing of Forty third and Forty fourth Constitution Amendment Acts.

The Supreme Court has necessary power to issue writs of *habeas corpus*, *quo warrant mandamus*, etc. There is no appeal from the judgments of the Supreme Court and these are binding on all the courts of India. The executive in India is bound by the decisions of the Supreme Court.

(iv) **Strong Centre.** The Constitution of India provides for a strong Centre. In most of the spheres, the Centre has an upper hand over the Units. In the amendment of the Constitution the States do not have any initiative nor they have to play any prominent

part. Similarly during an emergency, the President in the exercise of his emergency powers, makes the Centre all powerful. Then, the Governor of State is appointed by the President who keeps the President informed.

In the executive field, the Centre and the constituent units have powers extending to all the subjects mentioned in the Concurrent List. But the Centre has a great hold over the units. In this connection Article 257 of the Constitution says that Centre has power to give necessary instructions to the States. And the States have to abide by what the Centre says. Even if the Units and the Centre have legislated on the same subject, the law made by the Centre will prevail. Moreover, the laws made by the States should be in conformity with those made by the Centre.

If the legislatures of two or more States express a desire that the Parliament may legislate on certain matters falling within the State List then the Parliament will have a legal right to legislate on the subject or subjects. Over this Act the State legislatures will have no control and it may be repealed or modified only by the Parliament itself.

Moreover when the Rajya Sabha passes a resolution declaring a subject of the State List to be of national importance in the national interest and recommends that Parliament may make a law on that particular subject. Parliament will have a legal right to make a law on that particular subject. This Act may be applicable to the whole of India or a part thereof. This Act is valid for one year only. By another resolution of the Rajya Sabha the term of the Act may be extended for another year.

In the financial field, the States are completely at the mercy of the Centre. For grants-in-aid and subsidies the State have to look forward to the Centre. Thus Constitution has placed the Centre qualitatively as well as quantitatively in a much stronger position than the Units. No wonder the Units of Indian federation have come to be described as glorified municipalities.

Centre has right to take over the administration of any State in its own hands when there is failure of constitutional machinery. The breakdown will be reported to the President, by his representative Governor in the State. When President takes over the administration of a State or States in his own hands the Parliament legislates and administers the State(s). In India there is no state which has not come under Presidential rule. In fact this power of the President has been very much criticised, particularly by the opposition parties.

There is also a single administrative service, called All India Service whose officers can be posted in the States and are accepted by them. Supreme Court of India is the final Court of appeal for States also etc., etc.

(v) **Less Federal More Unitary.** The Indian Constitution is federal in form, but the Centre has been given overwhelming powers over the Units. This tends the federation a unitary colouring. In times of emergency it becomes purely unitary. That was the reason why the authors of the Constitution did not use the word 'federation' but used the word "Union of states" instead.

The Constitution of Canada has been the source of inspiration for the framers of Indian Constitution to give the present shape of the federation. The framers of the Indian Constitution had learnt the lesson from their own history also. It was felt that in the past whenever the Centre had been weak in India foreigners invaded and enslaved her. It was, therefore, to guard against the fissiparous tendencies of the Units and the border States and other such factors that the Centre in India has been given a paramount position.

(vi) **Single Citizenship.** A federation normally provides for double citizenship—one of the federation or the Centre and the other of the particular State in which the citizen lives. One finds this system, for instance, in the Constitution of the U.S.A. But the Indian Constitution has a different system. It has adopted single citizenship for the whole of India. The citizen may be residing in any State of India but he will be an Indian citizen.

(vii) **Parliamentary Form of Government.** Sometimes the form of Government in India is called Parliamentary-cum-Presidential. It is so because beside the Parliamentary features there are some Presidential features also in our government. For instance the Constitution provides for a President who can, take over the entire administration of a State and suspend its Constitution. Also, he can send back the non-money bills to Parliament for reconsideration. Moreover the President is empowered by the Constitution to send message to any House of the Parliament and the House to which the message is sent has to consider it at the earliest opportunity. The Constitution has specifically stated that the President is the sole judge to decide whether an emergency should or should not be declared in a State and that when emergency once declared should be lifted. However, it must not be forgotten that these rights are always exercised by him on the advice of the cabinet. President does not possess any independent powers in this regard. The origin of the Parliamentary form of government can be traced back to England from where we have borrowed it. The Indian Constitution prescribes the same form for the Centre and the States also.

The chief executive head of the country, President, is required to function as a titular or nominal head of the country. All executive authority has been vested in the President by the Constitution and all governmental power is exercised in his name. But this is all in theory. He is supposed to act on the advice of his ministers and it is in fact the ministry (responsible to popularly elected Parliament) that exercises all powers in the name of the President. This ministry is formed out of the members of the legislature and is collectively responsible to the Parliament. A vote of no-confidence by the legislature can oust the ministry. The President, becomes a mere silent spectator. He is just like the British monarch exercising paramount powers in the Forty Second Amendment, which made it obligatory for the President to act on the advice of the council of ministers. This position has now been changed with the passing of Forty Fourth Constitution Amendment Act.

(viii) **Protection for the Backward Classes and Minorities.** Untouchability had been posing a problem of great dimensions in

this country for a long time. Article 17 of the Constitution forbids the practice of untouchability. This is a revolutionary step taken by the Fathers of the Indian Constitution to eradicate a deep-rooted social evil. Provision has been made in the Constitution to protect the interests of the backward people and the minorities. In order to protect their interests a certain number of seats have been reserved for them in the Parliament and in the State legislatures. For Government services and in the requirement by Public Service Commissions a fixed percentage of seats is reserved for them. Originally, the period of giving such facilities to the backward classes was upto January 1960, which is always being extended.

(ix) **Secular Nature of the Constitution.** Every citizen of India has perfect freedom to profess, propagate or practise any religion he likes. The Preamble clearly says that there will be freedom of faith, worship, belief and conscience in India. The Indian State is secular or non-religious in character. In fact it does not identify itself with any religion or faith. To improve the secular nature of the Indian polity the word SECULAR has also been included in the Preamble by the Constitution Forty Second Amendment Act.

(x) **Blend of Rigidity and Flexibility.** A Federal Constitution must have some amount of rigidity. But some amount of flexibility is also necessary because the Constitution must adapt itself to the changing circumstances. As Pandit Nehru says: "If you make any Constitution rigid and permanent, you stop the nation's growth, the growth of the living, vital organic people". But if the Constitution is very flexible it loses its stability and lowers itself in popular esteem. The method of amending the Constitution in the U.S.A. is rather too difficult. In England, on the other hand, the amendment of the constitutional law is very easy. India has struck a middle path with the result that the Indian Constitution is neither as rigid as that of the U.S.A. nor as flexible as that of England. Some parts of our Constitution can be amended by simple majority while special procedure for amendment has been laid for amending certain other provisions of the Constitution.

(xi) **Fundamental Rights.** "A state is known by the rights it maintains" says Prof. Laski. Rights are the backbone of democracy. Like the U.S. Constitution, the Indian Constitution contains a chapter on Fundamental Rights. The most important Fundamental Rights guaranteed by the Constitution are : (i) Right to equality before law and equality of opportunity, (ii) Right to freedom of speech, assembly, expression and association; (iii) Right against exploitation, (iv) Right to freedom of religion, (v) Cultural and educational rights, are the last but not the least. (vi) the right to constitutional remedies.

These rights have been made justiciable. The Supreme Court and the High Courts have been made the guardians of these rights. In case these rights of an individual are infringed by anybody, he can approach the courts for their enforcement. However, no right can be absolute. This is so because rights and duties are inter-dependent. These Fundamental Rights are a landmark in the Constitutional development in India and lend to our Constitution liberal and upto-date colouring.

(xii) **Directive Principles of State Policy.** Part IV of the Constitution contains a striking new feature—an impressive list of the Directive Principles of State Policy. These principles have been borrowed from the Constitution of Ireland. These principles include free and compulsory education for children; good nutrition for the people and raising the standard of living; equal wages for equal work for women and men; tolerable conditions of work; equitable distribution of wealth; separation of executive from judiciary and the attempt on the part of the State to establish world peace and international harmony.

These principles are non-justiciable unlike the Fundamental Right. If the State does not implement these principles, nobody can approach the courts for their enforcement. That is why the Directive Principles have come to be criticised as "mere moral precepts" or "pious aspirations of the framers of the Constitution" or "Useless". The Directive Principles have been given over-riding authority over the Fundamental Rights under certain conditions. For example Twenty-Fifth Amendment lays down that if any law is passed to

give effect to the Directive Principles of State Policy under Article 39 (b) or (c) it shall not be declared void on the ground that it is inconsistent with the rights conferred by Articles 14, 19 and 31. However, in the Fundamental Right case of 1973 (also known as Keshvanand Bharati case) in which the 24th, 25th and the 29th amendments were challenged, the Supreme Court declared clause 'C' added to Article 31 by the 25th Amendment as *ultra-vire*, but upheld the constitutional validity of the 24th and 25th Amendments. Thus the judiciary once again took the stand that the Directive Principles are only subsidiary to the Fundamental Right. Under the 42nd Amendment the directive principles were given precedence over Fundamental Rights. But with the passing of Forty Fourth Constitution Amendment Act the position has again changed. Now Fundamental Rights have got precedence over Directive Principles of the State Policy.

(xiii) **Universal Adult Franchise.** The Constitution of India envisages universal adult franchise. Men and women of any race, caste or creed who have attained the age of 18 are qualified to cast their votes. There are absolutely no qualifications laid down for the voters in matters of education, taxable status or property. To extend the franchise so liberally and in one stride is a bold and remarkable step indeed. Most significant feature in this regard is that the women have been given the right to vote. Thus what women got in advanced countries with great struggle has been given to the women of India with a single stroke of pen.

(xiv) **Provision of Emergency.** The President has been empowered by the Constitution to declare a state of emergency if he is satisfied that such a situation has actually arisen or is likely to arise. Emergency can be of three types: (i) Threat of external invasion or internal disturbance or disorder. (ii) Constitutional breakdown in one State or in more than one State, or (iii) Financial instability or crisis. During the emergency the Centre wields overwhelming powers. The Constitution becomes unitary and the Parliament legislates on the entire State List. If the President declares an emergency for one State, the administration of that State is taken

over by the President himself. He authorises the Parliament to make laws for that State. In short during emergencies federal structure is converted into unitary one and Fundamental Rights of the people are taken away from them.

(xv) **Integration of Indian States.** When in 1947 Pakistan was created and India became independent, there were some four hundred and fifty princely States left with India. They differed from each other in population and size—some being as big as a British Indian province, some as small as a village. These states were reduced to part 'B' and part 'C' States under the new Constitution of India. Some small states were merged into the neighbouring states or provinces. According to the Merger Agreements the rulers of these states surrendered extensive authority to the Dominion Government. Some other states were grouped together on the basis of social, cultural, and lingual and other affinities. The other few states or groups of states were constituted into Chief Commissioner's Provinces. They came directly under the administration of the central government.

(xvi) **Provision for Public Service Commission.** The Constitution provides for a Union Public Service Commission for the Centre. For the States, however, provision has been made for separate Public Service Commissions. The Union Public Services Commission has been entrusted with the following responsibilities:

1. All matters concerning the mode and method of appointment to all the civil and public services under the Union.
2. All matters concerning transfer of people from one service to another promotion to a higher rank and the general principles of making recruitment.
3. All matters of discipline and code of conduct for the central government employees.
4. All matters with regard to pension and other benefits regarding injury sustained during the tenure of service under the Central Government.