



## Polity Class Notes for IAS and PCS

### Chapter – 3 Silent Features of the Constitution

Silent Features of the Constitution
42 <sup>th</sup> Amendment (1976)
It is also called 'Mini Constitution'
In Keshvananda Bharti Case
Supreme Court ruled that constituent Power of Parliament under Art 368 does not enable to alter the 'Basic Structure' of Constitution.
Features of Constitution
Longest written Constitution
Write like – USA and unlike, unwritten like British
<b>Reason:</b> diversity, Influence of GoI Act 1935 and Single Constitution for both center & state (except Jammu & Kashmir)
Blend of Rigidity and Flexibility
<ul style="list-style-type: none"> <li>➤ Constitution is classified into Rigid &amp; Flexible.</li> <li>➤ <b><u>Constitution as Flexible</u></b></li> </ul> <p>Ex. USA is a flexible Constitution , one that can be amended in the same manner as the ordinary laws are made</p> <ul style="list-style-type: none"> <li>➤ <b><u>Constitution as Rigid</u></b> <ul style="list-style-type: none"> <li>• Constitution Amendment requires special procedure (2/3 + majority of Present members of house) and with same are provision rectification by half consent state.</li> </ul> </li> </ul> <p>So, Constitution of India – neither rigid nor flexible but synthesis of both.</p>
Federal System with Unitary Bias
<ul style="list-style-type: none"> <li>➤ Federal system, mean Two government ruled</li> </ul> <p><b><u>Characteristics of federal system</u></b></p> <ul style="list-style-type: none"> <li>➤ Division of Power</li> <li>➤ Written constitution</li> <li>➤ Supremacy of Constitution</li> <li>➤ Rigidity of Constitution</li> <li>➤ Independent judiciary</li> <li>➤ Bicameralism</li> </ul>



However:

- Indian Constitution also contain a large number of unitary or non – federal features.

#### **A strong center**

- Single citizenship
- Flexibility of constitution
- Integrity of Judiciary
- Appointed of State government by center
- Indian service (IAS/IPC/IFS)
- Emergency provision
- Governor appointed
- Unequal representation of Rajya sabha
- Judicial Review

**Note:**

**Art 1:** India is union of state, not result Agreement of state. No state has Right to secede from federation.

#### **Parliamentary form of Government**

- Parliamentary government called “west minister model”, cabinet government, and responsible government.
- Indian state has elected head (Republic)
- British state has hereditary head

#### **Synthesis of Parliamentary Sovereignty and Judiciary Supremacy**

- Supremacy in USA – Judiciary
- Supremacy in British – Parliament
- India is differ from USA & British. Scope of Judiciary review in India is Narrow than US. This is because American constitution provides “due process of law” and India follows “procedure established by law” (India – Art 21).
- Procedure established by law: SC can declare the parliamentary law as unconstitutional through its power of judiciary Review.
- The Parliament on the other hand – can amend major portion of Constitution through its constituent power.

#### **Integrated and Independent of Judiciary**

- SC at the top position , High court is Subordinate Court and District Court is work under HC
- The single system of Courts enforces both center & state.
- In USA: federal law are enforced by federal court & state law enforce by state court.
- In India SC is guarantor of Fundamental Rights.
- Constitution has various provision to ensure its independence of judiciary
  - Security of Tenure of judge
  - Fixed service condition
  - All expense of SC from CFI (Consolidate fund of India)
  - Prohibition on discussion on Conduct of Judge in legislature

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- Ban on practice after retirement
- Contempt of court

### **FR (Fundamental Rights)**

- FR are not absolute & subject to reasonable restriction.
- They suspended during National emergency except Art 20, 21

### **DPSP**

- DPSP are Novel feature of State/ State Policy
- Classified as Gandhian , socialist and Liberal
- Welfare state in India
- DPSP are Non – justiciable in Nature
- By Minerva Mills case – Constitution is Bedrock between FR & DPSP

### **FD (Fundamental duties)**

- It is Not provided by constitution
- They are added under Art 51 A
- These were added by 42<sup>th</sup> Amendment of 1976 on recommendation of swaran Singh Committee. By 86<sup>th</sup> amendment, one FD added to RTE (Right to Education)– 2002 under Art – 21A which Provide free education 6 to 14 year
- Veena Committee Related to FD

### **Secular State**

- Not particular Religion of state
- Word added by 42<sup>th</sup> Amendment and some articles shows secular nature of constitution Art 14, 15, 16, 25, 26, 27, 28, 29, 30 and Art 44 – UCC (Uniform civil court)

### **Universal Adult Franchise**

- Eligible for 18 year
- Age reduced 21 to 18 years by 61<sup>th</sup> Amendment 1988

### **Single Citizenship**

- Single citizenship in India whereas Double citizenship in USA

### **Independent Bodies**

- UPSC and SPCS
- EC (Election commission)
- CAG
- FC

### **Emergency Provision**

- National emergency –Art 352
- State Emergency (President rule)- Art 356
- Financial emergency-Art 360

### **Three – Tier Government**

- Panchayat raj and urban bodies
- India is indestructible union of destructible State where as USA is destructible union of indestructible state

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➤ **Election**

- 44<sup>th</sup> amendment – election will be Based on 1971 census till 2000
- 84<sup>th</sup> amendment – election will be Based on 1991 census till 2000
- 87<sup>th</sup> amendment – election will be Based on 2001 census

Sources of the Constitution		
S.No	Country	Subject
1.	Britain	<ul style="list-style-type: none"> <li>• Rule of law</li> <li>• Parliamentary form of government</li> <li>• Cabinet System</li> <li>• Single Citizenship</li> <li>• Bi – cameral, Parliamentary system</li> <li>• Law making procedures</li> <li>• Parliamentary Privileges</li> </ul>
2.	USA	<ul style="list-style-type: none"> <li>• Preamble, Judicial review</li> <li>• Independence of Judiciary</li> <li>• Fundamental rights</li> <li>• post of Vice President</li> <li>• procedure of impeachment of President and removal of Supreme Court and High Court judges</li> </ul>
3.	Irish/Ireland	<ul style="list-style-type: none"> <li>• DPSP (Directive Principle of State Policy)</li> <li>• method of election of President</li> <li>• nomination of some members to the Rajya sabha/ council of State</li> </ul>
6.	Canada	<ul style="list-style-type: none"> <li>• Federation with strong center</li> <li>• Advisory jurisdiction of the Supreme Court</li> <li>• residency power to be vested in the center</li> <li>• appointment of Governors by center</li> <li>• Union-state relationship</li> </ul>
7.	Australia	<ul style="list-style-type: none"> <li>• Joint sitting</li> <li>• Concurrent list</li> <li>• trade and commerce provisions</li> </ul>
8.	Germany	<ul style="list-style-type: none"> <li>• Provision related to Emergency (except Financial emergency)</li> </ul>
9.	Japan	<ul style="list-style-type: none"> <li>• Procedure Established by law</li> </ul>
10.	South Africa	<ul style="list-style-type: none"> <li>• procedure of Constitutional Amendment (with 2/3<sup>rd</sup> majority)</li> <li>• election of members of Rajya Sabha (by proportional representation)</li> </ul>
11.	USSR	<ul style="list-style-type: none"> <li>• Fundamental Duties and ideals of Justice (socio, economic and political)</li> </ul>
12.	France	<ul style="list-style-type: none"> <li>• Republican system, principle of liberty, equality and fraternity</li> </ul>
13.	Scandinavia	<ul style="list-style-type: none"> <li>• lokpal</li> </ul>

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14	GOI, 1935 ACT	<ul style="list-style-type: none"><li>• Public service commission</li><li>• Office of governor</li><li>• Emergency provision</li><li>• Judiciary</li><li>• Federal schemes</li></ul>
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