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“COMPARISON OF SALIENT FEATURES OF THE INDIAN AND USA CONSTITUTION”

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PLACE

CHAPTER-I

INTRODUCTION

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself"

The above statement defines the importance and need of a Constitution for a country. A constitution is the highest law of a country and reflects the fundamental principles on which a system of government and administration of a country is based. The term constitution comes through French from the Latin word constitution, used for regulations and orders, such as the imperial enactments. A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. These rules together make up, i.e. constitute, what the entity is.

The constitution of a country needs to reinvent itself to keep pace with the global changes. Hence, comparative analysis gains importance in this respect. However, before going into the details of that, a cursory glance at various political systems in the world needs attention.

AIMS AND OBJECTS OF THE STUDY

- To study the salient features of USA and the Indian Constitution.

RATIONAL AND SIGNIFICANCE OF THE STUDY

- Better understanding of the Indian US and UK Constitutions
- Aimed to understand the various salient features
- Comparison of salient features of both the Constitutions

RESEARCH METHODOLOGY

Doctrinal Legal Research Methodology has been used by the Researcher in the present study. The Researcher has sought the aid of Books, Articles, Journals, Law Commission Reports, and Personal Experience as Primary Source and the Internet as the Secondary Source.

1.1 POLITICAL SYSTEMS AROUND THE WORLD

When we speak of political systems, it's difficult to determine what the most common types are. After all, many political systems are similar, or have similar roots. Many countries actually have republics of some kind - variants of democracy.

Understanding different political systems is important. Each political system has its advantages and disadvantages. Some of the five more common political systems around the world include Democracy, Republic, Monarchy, Communism and Dictatorship.

Here are some overviews of these

five fairly recognizable political systems:

1. **Democracy:** A democracy in a more traditional sense is a political system that allows for each individual to participate. We often hear the United States referred to as a democracy. Indeed, many refer to the U.S. as a representative democracy.

2. **Republic:** In theory, a republic is a political system in which the government remains mostly subject to those governed. In some cases, a representative democracy (or any form of democracy) might be considered a republic. The main characteristic of a republic is that the government is subject to the people, and leaders can be recalled.

3. **Monarchy:** In a monarchy, a ruler is not usually chosen by the voice of the people or their representatives. A monarch is the head of state until he or she abdicates or until death. In many cases a monarch is the final word in government.

There may be functionaries to make decisions and run the political system, but the monarch has discretion with the laws, and how they are enforced.

However, as with other political systems, there are different types of monarchies.

4. **Communism:** In most cases, a communist state is based on the ideology of communism as taught by Marx and/or Lenin. However, some argue that these political systems are not true to the ideals espoused by these revolutionary thinkers. Communist states are often dominated by a single party, or a group of people. Sometimes communists call themselves "workers' states" or "socialist," but there are very real differences in their operation. Communism is often considered an Authoritarian Political System.

5 Dictatorship: Another authoritarian form of government is the Dictatorship. Normally, a dictator is the main individual ruling the country. In some cases, the political system is run by a small group of people. Dictators are not restricted by constitutions or parliaments. The governed are usually not consented in any way. Elections held are usually affairs in which the dictator is the only candidate.

One of the more common types of dictatorship is the Military Dictatorship, in which a military organization governs, running the political system. Sometimes, the military just exerts a great deal of pressure on the government, running the country de facto.

CHAPTER 2

INDIAN CONSTITUTION

The constitution of India was framed by the Constituent Assembly, set up in 1946 under the provisions of cabinet mission plan. Dr. Rajendra Prasad was the president of Constituent assembly and Dr. B.R. Ambedkar was the Chairman of the seven - member Drafting Committee which drafted the constitution.

The Indian constitution is the lengthiest and most detailed written constitution in the world. Though most of the features of our constitution are substantially borrowed from others, the framers gathered the best features of each of the existing constitutions and modified them according to the existing needs and conditions of the country.

The Preamble of the constitution declares India a sovereign, Socialist, Secular, and democratic republic. It highlights justice, liberty, equality and fraternity as objectives of the constitution. The Constitution of India consists of A Preamble, 22 Parts, 12 Schedules and 395 Articles. Although it is federal in nature it also has a strong unitary bias.

2.1 SALIENT FEATURES OF INDIAN CONSTITUTION

The Constitution of India has some distinct and unique features as compared to other constitutions to the world. As Dr. B.R. Ambedkar, the Chairman of the Drafting Committee puts it, the framers had tried to accumulate and accommodate the best features of other constitutions, keeping in view the peculiar problems and needs of our country.

The following are the salient features of the Constitution of India.

1 Drawn from Different sources

The framers of the constitution sought to incorporate the good provisions of all existing constitutions of different countries in the world.

Our Parliamentary system of government is borrowed from British constitution.

Fundamental rights and Power of judicial review to the supreme court, are taken from United States of America.

Directive Principles of state policy are taken from Ireland.

Emergency provisions are taken from constitution of Germany. The structural part of the constitution is to a large extent derived from the Government of India Act, 1935.

2. Longest Written Constitution

Indian Constitution can be called the largest written constitution in the world because of its contents. In its original form, it consisted of 395 Articles and 8 Schedules to which additions have been made through subsequent amendments. At present it contains 444 Articles and 12 Schedules, and more than 98 amendments. There are various factors responsible for the long size of the constitution. One major factor was that the framers of the constitution borrowed provisions from several sources and several other constitutions of the world.

They have followed and reproduced the Government of India Act 1935 in providing matters of administrative detail. Thus, the Constitution of India became an exhaustive and lengthy one.

3. Partly Rigid and Partly Flexible

The Constitution of India is neither purely rigid nor purely flexible. There is a harmonious blend of rigidity and flexibility. Some parts of the Constitution can be amended by the ordinary law-making process by Parliament.

Certain provisions can be amended, only when a Bill for that purpose is passed in each house of Parliament by a majority of the total membership of that house and, by a majority of not less than two-third of the members of that house present and voting. Then there are certain other provisions which can be amended by the second method described above and are ratified by the legislatures

of not less than one-half of the states before being presented to the President for his assent.

4. Sovereign, Socialist, Secular, Democratic, Republic.

The Preamble of the Indian constitution declares it to be a sovereign socialist secular democratic republic.

The word '**Sovereign**' emphasis that India is no more depended on any external authority. It is internally and externally sovereign. Its membership with the Commonwealth of nations and that of the UNO do not restrict her sovereignty, (it is a self-imposed limitation, a mutual commitment)

The word '**Socialist**' has no specific or definite meaning. The word means some form of ownership of the means of production and distribution by the state. This word was inserted by the 42nd amendment. Though it already existed, this amendment merely spells out clearly this concept.

The word '**Secular**' means, the state has no religion of its own as recognized religion of the state. It treats all religions equally. In a secular state the state regulates relation between man and man. It is not concerned of relation between man and God.

The word '**Democratic**' means that the constitution has established a form of Government which gets its authority from the will of the people. Rulers

- are elected by the people and are responsible to them. Justice Liberty Equality and Fraternity which are essential characteristics of a democracy which form the base of our Preamble and the objective of our constitution.

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

5 Parliamentary System of Government

& India has adopted the Parliamentary system as found in Britain. In this system, the executive is responsible to the legislature, and remains in power only as long as it enjoys the confidence of the legislature. The president of India, who remains in office for five years is the nominal, titular or constitutional head. The Union Council of Ministers with the Prime Minister as its head is drawn from the legislature. It is collectively responsible to the House of People (Lok Sabha), and has to resign as soon as it loses the confidence of that house. The President, the nominal executive shall exercise his powers according to the advice of the Union Council of Ministers, the real

executive. In the states also, the government is Parliamentary in nature.

6 A Federation

Article 1 of the Constitution of India says: - "India, that is Bharat shall be a Union of States."

Though the word 'Federation' is not used, the government is federal. A state is federal when (a)

A there are two sets of governments and there is distribution of powers between the two,

B there is a written constitution, which is the supreme law of the land

C there is an independent judiciary to interpret the constitution and settle disputes between the centre and the states.

All these features are present in India. There are two sets of government, one at the centre, the other at state level and the distribution of powers between them is quite detailed in our Constitution. The Constitution of India is written and the supreme law of the land.

At the apex of single integrated judicial system, stands the Supreme Court which is independent from the control of the executive and the legislature.

7 Fundamental Rights

A state is known by the rights it maintains", remarked Prof. H.J. Laski.

The constitution of India affirms the basic principle that every individual is entitled to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental rights.

They are:

- i) Right to equality
- ii) Right to freedom
- iii) Right against exploitation
- iv) Right to freedom of Religion,
- v) Cultural and Educational rights and
- vi) Right to constitutional remedies.
- vii) Right to property (Article-31) originally a fundamental right has been omitted by the 44th Amendment Act, 1978. It is now a legal right

These fundamental rights are justifiable and the individual can move the higher judiciary, that is

to the Supreme Court or the High Courts, if there is an encroachment on any of these rights, under Article 32 (Right to Constitutional Remedies). However, fundamental rights in India are not absolute. Reasonable restrictions can be imposed keeping in view the security- requirements of the state.

8 Directive Principles of State Policy

A novel feature of the Constitution is that it contains a chapter in the Directive Principles of State Policy. These principles are in the nature of directives to the government to implement them for establishing social and economic democracy in the country.

It embodies important principles like i) adequate means to livelihood,

ii) equal pay for both men and women,

iii) distribution of wealth so as to subserve the common good, iv) free and compulsory primary education,

v) right to work,

vi) public assistance in case of old age, unemployment, sickness and disablement,

vii) the organization of village Panchayats, special care to the economically backward sections of the people etc.

Most of these principles could help in making India welfare state. Though not justiciable. These principles have been stated as; "fundamental in the governance of the country".

9 Fundamental Duties

A new part IV (A) after the Directive Principles of State Policy was incorporated in the constitution by the 42nd Amendment, 1976 for fundamental duties. These duties are:

i) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

ii) To cherish and follow the noble ideals, which inspired our national struggle for freedom;

iii) To uphold and protect the sovereignty, unity and integrity of India; iv) To defend the country and render national service when called upon to do so;

vi) To value and preserve the rich heritage of our composite culture; vii) To protect and improve the natural environments including forests, lakes, rivers and wild life and to have compassion for living creatures;

viii) To develop scientific temper, humanism and the spirit of inquiry and reform;

ix) To safeguard public property and to abjure violence;

x) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement.

The purpose of incorporating these duties in the Constitution is just to remind the people that while enjoying their right as citizens, should also perform their duties for rights and duties are correlative.

10 An Independent Judiciary

The judiciary occupies an important place in our Constitution and it is also made independent of the legislature and the executive. The Supreme Court of India stands at the apex of single integrated judicial system. It acts as protector of fundamental rights of Indian citizens and guardian of the Constitution. If any law passed by the legislature or action taken by the executive contravenes the provisions of the Constitution, they can be declared as null and void by the Supreme Court. Thus, it has the power of judicial review. But judicial review in India constitutes a middle path between the American judicial supremacy in one hand and British Parliamentary supremacy in the other.

11 Single Citizenship

The Constitution of India recognises only single citizenship. In the United States, there is provision of dual citizenship. In India, we are citizens of India only, not of the respective states to which we belong. This provision would help in promoting unity and integrity of the nation.

12 Adult Suffrage

The old system of communal electorates has been abolished and uniform adult suffrage has been adopted. Under the Indian Constitution every man and woman above 18 years of age has been given the right to elect representatives for the legislature. The adoption of the adult suffrage

(Article 326) without any qualification either of sex, property, taxation or the like is a bold experiment in India.

2.2 EMERGENCY PROVISIONS OF INDIAN CONSTITUTION

Emergency is a unique feature of Indian Constitution that allows the center to assume wide powers so as to handle special situations. In emergency, the center can take full legislative and executive control of any state. It also allows the center to curtail or suspend freedom of the citizens. Existence of emergency is a big reason why academicians are hesitant to call Indian constitution as fully federal. Emergency can be of three types - Due to war, external aggression or armed rebellion, failure of constitutional machinery in a state, or financial emergency. However, technically, Proclamation of Emergency is only done upon external aggression or armed rebellion. In the second case, it is called Presidential Rule, and in the third case it is called "Proclamation of Financial Emergency:

2.2.1 Proclamation of Emergency

Art 352 says that if the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened due to outside aggression or armed rebellion, he may make a proclamation to that effect regarding whole of India or a part thereof.

However, sub clause 3 says that President can make such a proclamation only upon the written advice of the Union Cabinet. Such a proclamation must be placed before each house of the parliament and must be approved by each house within one month otherwise the proclamation will expire.

- In the case of *Minerva Mills v. Union of India* AIR 1980, SC held that there is no bar to judicial review of the validity of the proclamation of emergency issued by the president under 352(1). However, court's power is limited only to examining whether the limitations conferred by the constitution have been observed or not. It can check if the satisfaction of the president is valid or not. If the satisfaction is based on mala fide or absurd or irrelevant grounds, it is no satisfaction at all.

2.2.2 Effects of Proclamation of emergency

The following are the effects arising out of proclamation of emergency :

Art 353:

Executive power of the Union shall extend to giving directions to any state. Parliament will get power to make laws on subjects that are not in Union list.

If the emergency is declared only a part of the count, the powers in 1 and 2 shall extend to any other part if that is also threatened.

Art 354:

Provisions of art 268 to 279, which are related to taxation, can be subjected to exceptions as deem fit by the president. Every law such made shall be laid before each house of the parliament.

Art 355:

It is the duty of the Union to protect States against external aggression.

Art 357:

Provides that in the case of proclamation under art 356

- Parliament can confer upon the president the power of legislature of the state to make laws or the power to delegate the power to make laws to anybody else.
- The parliament or the president can confer power or impose duties on the Union or Union officers or Union authorities.
- President can authorize the expenditure from the consolidated fund of the state pending sanction of such expenditure by the parliament.

Art 358:

While proclamation of emergency declaring that security of India or any part of the territory of India is threatened due to war or external aggression, is in operation, the state shall not be limited by Article 19(Fundamental Rights). In other words, government may make laws that transgress upon the freedoms given under Article 19 during such emergency. However, such law will cease to have effect as soon as emergency ends. Further, every such law or very executive action that transgresses upon freedoms granted by Article 19 must recite that it is in relation to the emergency otherwise, it cannot be immune from Article 19.

It also says that any acts done or omitted to be done under this provision cannot be challenged in the courts after the end of emergency.

In the case of M M Pathak v. Union of India AIR 1978,

SC held that the rights granted by 14 to 19 are not suspended during emergency but only their operation is suspended. This means that as soon as emergency is over, rights transgressed by law will revive and can be enforced. In this case, a settlement that was reached before emergency between LIC and its employees was rendered ineffective by a law during emergency. After emergency was over, SC held that the previous settlement will revive. This is because the emergency law only suspended the operation of the existing laws. It cannot completely wash away the liabilities that preexisted the emergency.

Art 359:

This article provides additional power to the president while proclamation of emergency is in operation, using which the president can, by an order, declare that the right to move any court for the enforcement of rights conferred by part III except art 20 and 21, shall be suspended for the period the proclamation is in operation of a shorter period as mentioned in the order. Further, every such law or every executive action recite that it is in relation to the emergency.

Art 360: Provides that if the president is satisfied that a situation has arisen whereby the financial security of India or the credit of India or of any part of India is threatened, he may make a declaration to that effect. Under such situation, the executive and legislative powers will go to the center.

This article has never been invoked.

2.2.3 Effects of Proclamation of Emergency on the Fundamental Rights

1 Federal laws will overrule state legislation, and the Union is empowered to govern areas (eg. Policing) that are normally devolved to the states.

The Union is also empowered to take over and completely control the taxation and budgetary revenue processes. Under financial emergency, the Union is empowered to have the final say in the promulgation of financial acts approved by the state legislature.

The Union may decide to suspend some or all of the fundamental rights guaranteed by Part III (Articles 12 through 35) of the constitution - which include:

- Freedom of equality before law
- Freedom of speech and expression
- Freedom to assemble peacefully
- Freedom for movement across Indian territory
- Freedom to practice any profession, occupation, trade or business.
- Freedom to practice or propagate religion.

Further, the right to challenge the suspension of the above mentioned rights (the right to constitutional remedies) may also be suspended.

However, this provision will not cover the suspension of Articles 20 and 21 which govern rights to personal liberty, Right to silence, freedom from double jeopardy and freedom from unlawful arrest and detention. Any individual who deems that his rights under these categories have been suspended unlawfully, can challenge the suspensions under a court of law.

The Union may decide to dismiss the legislative functions of a state legislature and impose federal law for a period of six months. This state of suspension may be renewed at the end of this period under the vote of Parliament (indefinite number of times) until such a time when the Election Commission of India can certify the feasibility of holding free and fair elections in the state to reconstitute the legislature. Any order to the above effects however, should be passed by the House of Parliament

"as soon may be after it is made".

The Three Kinds of Emergency:

"As per the articles 352, 356 and 360 in the constitution of India, President of India has been given extraordinary power to declare emergency to meet any kind of threat to the country. Those powers are 10

President of India in Constitution are called emergency provisions.

2.2.4 Effects of national emergency (Article 352)

- If the president of state is not satisfied with a grave emergency exists whereby the security of India or any part is threatened whether by a war or an external aggression or an armed rebellion,

then he may proclaim a state of national emergency for the whole of India or a part of India.

- Such a proclamation of emergency may be revoked by the president subsequently.
- The proclamation of emergency made under article 352 may be subjected to the judicial review and its constitutionally can be questioned in a court of law on the grounds of malafide:
- The proclamation made must be approved by both the houses of parliament within one month after proclamation.
- The effect of proclamation of emergency is the emergence of the full-fledged Unitary Government.

2.2.5 Effects of State Emergency (Article 356):

- Article 356 provides that if the President, on receipt of a report from the Government of a state or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may issue a proclamation.
- By that proclamation the president may assume to himself all or any of the powers vested in the Governor and may declare that the powers of the legislature of the State shall be exercisable by the Parliament.
- The proclamation issued under Article 356 must be laid before each House of the Parliament. If the proclamation is not approved by both Houses, it will expire in two months.
- The proclamation so approved by Parliament (by simple majority) shall be in operation for six months, however, it may be revoked in between or extended further by the Parliament.

2.2.6 Financial Emergency (Article 360):

- Article 360 states that if the President is satisfied that a situation has arisen whereby the financial stability or the credit of India or of any part there of is threatened, President may declare a state of financial emergency.
- During the period such proclamation is in operation, the executive authority of the Union extends to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, any such directions may also include:

1. A provision required the reduction of salaries and allowances of all or any class of person serving a State or the union.

2. A provision requiring all Money Bills or other Financial Bills to be reserved for the consideration of the President after they are passed by the legislature of the State.

- A proclamation issued under article 360 will remain in force for two months, unless before the expiry of the period it is approved by both the Houses of the Parliament.
- A proclamation issued under Article 360 will remain in force for two months, unless before the expiry of the period it is approved by both the Houses of the parliament.
- Once approved it remains in force till revoked by the President.

CHAPTER 3

USA CONSTITUTION

The United States Constitution is the supreme law of the United States of America. The Constitution, originally comprising seven articles, delineates the national frame of government. Its first three articles entrench the doctrine of the separation of powers, whereby the federal government is divided into three branches:

The legislative, consisting of the bicameral Congress;

The executive, consisting of the President;

The judicial, consisting of the Supreme Court and other federal courts.

Since the Constitution came into force in 1789, it has been amended twenty-seven times. In general, the first ten amendments, known collectively as the Bill of Rights, offer specific protections of individual liberty and justice and place restrictions on the powers of government. The majority of the seventeen later amendments expand individual civil rights protections. Others address issues related to federal authority or modify government processes and procedures. Amendments to the United States Constitution, unlike ones made to many constitutions worldwide, are appended to the end of the document. At seven articles and twenty-seven amendments, it is the shortest written constitution in force.

The Constitution is interpreted, supplemented, and implemented by a large body of constitutional law. The Constitution of the United States is the first constitution of its kind, and has influenced the constitutions of other nations.

3.1 Salient Features of the USA Constitution

Following are some salient features of the USA constitution.

1 Written Constitution:

American constitution is a written constitution framed in 1787 and enforced in 1789. It consists of seven articles; three of them related to structure and powers of Legislative (Article 1), Executive (Article 2) and Judiciary (Article 3) and the other four dedicated to position of states (Article 4), modes of amendments (Article 5), supremacy of national power (Article 6) and ratification (Article 7). It also holds that constitution is the supreme law of the land. Article one is the longest and cannot be amended. Like other constitutions, it also consists of a preamble; a single sentence that introduces and defines purpose of the document.

2 Rigid Constitution:

It is one of the most rigid constitutions in the world which means that for amending it, a special and difficult procedure has to be followed. It consists of 2 steps;

PROPOSAL FOR AMENDMENT:

Either two-third (67%) of both the houses (Senate and House of Representatives) shall propose for amendment to constitution or on the application of legislatures of two-third (67%) states shall call a convention for proposing amendment.

RATIFICATION OF PROPOSAL:

The amendment shall be ratified by the legislatures of three fourth (75 %) of all states or by the convention of three fourth of states.

It is because of this rigidity that American constitution has been amended only 27 times in over 200 years.

3 Popular Sovereignty:

In U.S, the people rule i.e. they have delegated their powers to the government and the government owes its authority to the will of the people. The principle of popular sovereignty is stated in the Preamble of constitution as "we the people.....do ordain and establish this constitution for United States of America."

4 Bicameral Legislature:

The constitution of USA provides for bicameral legislature i.e. two houses in the centre. According to Article 1, "All legislative powers are vested in Congress." Congress consists of two houses i.e. Lower House or House of Representatives and the Upper House or Senate.

HOUSE OF REPRESENTATIVES:

The House of Representatives has 435 members who are elected by the people through adult franchise method for a period of two years on population basis i.e. state with larger population gets more seats in this house like California has 53 members.

SENATE:

The members of Senate are elected by the state legislatures. Each state has two senators meaning that each state has two votes in senate. These senators are elected for a period of six years on parity basis. The total number of senators is 100 as the total states are 50.

5 Separation of Powers:

The doctrine of separation of powers divides power between the three pillars/institutions of government to prevent interference of one institution in the affairs of another. The powers are divided among Congress, President and the Judiciary.

Congress has the power to make laws which outline general policies and set certain standards. President can enforce, execute and administer law. He is assisted by his cabinet but is solely responsible for all actions of Executive branch. Judicial Powers are exercised by the Supreme Court which interprets laws and decided cases and controversies in conformity with the law and by the methods prescribed by law.

6 Checks & Balances:

The system of Checks and Balances laid down by the separation of powers prevents misuse of powers. The powers are provided in such a way that it provides a check upon other institutions.

Examples:

- President can veto a bill passed by the Congress. The congress can pass legislation over president's veto by two third majority.
- President has the power to appoint judges of the Supreme Court subject to approval of the Senate.

- The constitution has vested the powers of "Judicial Review" in Supreme Court. Supreme Court can approve, reject or review any action taken by the President or laws made by the Congress as it did in Marbury v. Madison Case

All this creates a system which makes compromises necessary which is a sign of healthy democracy. It prevents the rise of dictators as well.

7. Federal System:

The U.S constitution provides for a federal system of government which means that powers are divided among centre/federal government and the states. According to Article 1, the federal government has jurisdiction over 18 matters and residuary powers are vested in states. States are autonomous bodies and centre cannot meddle in their affairs. In case of conflict, Supreme Court decides or settles the dispute.

8 Presidential System:

The constitution provides for a presidential form of government. Article 2 provides the powers, election and their matters related to president.

President is elected for a term of 4 years and is not answerable to Congress but cannot dissolve Congress. He has a cabinet to assist him in running his executive powers.

9. Republicanism:

The constitution calls for a republican system with President as elected head of the state. The constitution derives its authority from the people and is supreme law of the land. Neither centre nor states can override it.

10. Bill of Rights:

The first ten amendments to the constitution are called "Bill of Rights".

The BOR provides for the rights of a person's property, liberty, freedom of speech, press, religion and assembly.

11. Dual Citizenship:

The constitution provides for dual citizenship i.e. citizen of United States and the state where one

is domiciled. Britain and Pakistan provides for single citizenship.

12 System of Spoils:

When a president is elected, he does appointment of public offices. If in elections, President elected is of the opposition party, he dismisses the public office bearers and makes fresh appointments. Under this system, a civil servant appointed by one president on political consideration cannot retain his office when an opposition President secures victory in polls.



Emergency Provisions Of The USA Constitution

The Emergency Concept Relying upon constitutional authority or congressional delegations made at various times over the past 200 years, the President of the United States may exercise certain powers in the event that the continued existence of the nation is threatened by crisis, exigency, or emergency circumstances.

What is a national emergency? In the simplest understanding of the term, the dictionary defines an emergency as an unforeseen combination of circumstances or the resulting state that calls for immediate action." The Constitution explicitly provides some emergency powers:

- Congress may authorize the government to call forth the militia to execute the laws, suppress an insurrection or repel an invasion.
- Congress may authorize the government to suspend consideration of writs of habeas corpus "when in cases of rebellion or invasion the public safety may require it.
- Felony charges may be brought without presentment or grand jury indictment in cases arising "in the militia, when in actual service in time of war or public danger.
- A state government may engage in war without Congress's approval if "actually invaded, or in such imminent Danger as will not admit of delay.
- Aside from these, many provisions of law exist in various jurisdictions, which take effect only upon an executive declaration of emergency. The National Emergencies Act regulates this process at the federal level, It requires the President to specifically identify the provisions activated and to renew the declaration annually so as to prevent an arbitrarily broad or open-ended emergency. In all such cases, the government must continue to act within the limits of the law and constitution.
- A state governor or local mayor may declare a state of emergency within his or her jurisdiction. This is common at the state level in response to natural disasters. The Federal Emergency Management Agency maintains a system of assets, personnel and training to respond to such incidents.

For example, on December 10, 2015, Washington state Governor Jay Inslee declared a state of emergency due to flooding and landslides caused by heavy rains.

- The 1977 International Emergency Economic Powers Act allows the government to freeze

assets, limit trade and confiscate property in response to an unusual and extraordinary threat to the United States that originates substantially outside of it. As of 2015 more than thirty emergencies under the EPCRA remain active regarding various subjects, the oldest of which was declared in 1979 with regard to the government of Iran.

INDIAN CONSTITUTION IS SUPERIOR OVER THE USA CONSTITUTION

1) Drawn from Different sources: Our constitution is a patchwork of many constitutions around the world, hence it is a unique blend which is compatible in all kinds and types of states. Compared to the USA Constitution which is dual.

There are two different constitutions. One exists at the Central level and the other at individual State level.

Hence there is no uniformity in the American Constitution as there is in the Indian Constitution. A crime committed in one state may not have similar punishment in the other state. There is no uniformity.

2) Written Constitution: First and foremost, The Constitution of India is the longest written constitution of any sovereign country in the world, containing 444 articles in 22 parts, 12 schedules and 98 amendments, with 117,369 words in its English-language translation, while the United States Constitution is the shortest written constitution, at 7 articles and 27 amendments. In USA there are dual constitutions here no special court can be established. The decision at state level is final and

Hence, we have written laws which can be referred to at any point of time as they are permanent. They are Supreme and the apex court can be approached for breach of these laws.

3) Rigid and Flexible: The Constitution of India is neither purely rigid nor purely flexible. There is a harmonious blend of rigidity and flexibility. Some parts of the Constitution can be amended by the ordinary law-making process by Parliament. The USA Constitution is very rigid. It means that the process to amend the Constitution is very difficult. There The rigidity of the Constitution is evident from the fact that only 27 amendments have been made so far in the Constitution. Hence with changing times our Constitution can be amended using certain.

constitutional provisions as compared to American which does not have easy amendment provisions.

4) Unitary and Federal Character: The Indian constitution is a mix of unitary and federal forms. The centre takes control of the states in cases of emergency. Hence the unitary character is displayed. At all other times states control their own jurisdictions and may approach the centre for any breach of laws. Hence the separation of powers is wisely done.

Comparatively the American constitution is federal in character. There are 50 states in America each with its own government, and then there is the central government for the whole country. The US Constitution has all the features which are essential for a federation: division of powers, supremacy of the constitution, independent judiciary, bicameral legislature, and dual citizenship. Both the federal government and state governments exercise authority within their respective spheres as demarcated for them by the Constitution.

Hence though Indian constitution is uniform and unitary it also possesses a federal character which is an edge over the American constitution.

Parliamentary System of Government

India has adopted the Parliamentary system as found in Britain. In this system, the executive is responsible to the legislature, and remains in power only as long as it enjoys the confidence of the legislature. The president of India, who remains in office for five years is the nominal, titular or constitutional head. The Union Council of Ministers with the Prime Minister as its head is drawn from the legislature. The President, the nominal executive shall exercise his powers according to the advice of the Union Council of Ministers, the real executive. In the states also, the government is Parliamentary in nature.

In the United States Presidential form of Government has been at work. The constitution- framers decided to have a government which was strong and yet limited. It means that the President is the head of the state as well as the government. President neither is responsible to the legislature nor is the legislature responsible to the President. The President remains in office for a fixed term. At the same time President cannot dissolve the legislature before the expiry of its full term.

A comparative analysis shows that, the Parliamentary system of government carries more weightage as the President is responsible to the people.. He is in position for a limited period and is responsible to the people and stays in place only as long as he enjoys the confidence of the people.

(6) A Federation

Article 1 of the Constitution of India says: - "India, that is Bharat shall be a Union of States." Though the word 'Federation' is not used, the government is federal. A state is federal when

(a) there are two sets of governments and there is distribution of powers between the two, there is a written constitution, which is the supreme law of the land there is an independent judiciary to interpret the constitution and settle disputes between the centre and the states.

The American constitution is federal in character. There are 50 states in America each with its own government, and then there is the central government for the whole country. The US Constitution has all the features which are essential for a federation: division of powers, supremacy of the constitution, independent judiciary, bicameral legislature, and dual citizenship. Both the federal government and state governments exercise authority within their respective spheres as demarcated for them by the Constitution

The Indian Constitution is federal and democratic in nature. There is separation of powers between the state and the centre. Both exercise their powers within the respective jurisdiction. However during emergency in India, the centre takes control of the state and devises certain precautionary measures suitable to the existing conditions.

7) Separation of Powers:

The US Constitution is based on the principle of separation of powers which means that the three organs of government, the executive, legislature and judiciary carry out their functions independently without interfering in the area and working of the other organs. The Constitution framers were greatly impressed by the ideas of Montesquieu and therefore accepted the concept of Separation of Powers. The Constitution provides a clear cut separation of powers, where the law making power lies in the hands of the legislature; executive power with the President and judicial power in the hands of the Supreme Court and other inferior courts.

In India too there exists Separation of powers. However during emergency period the Centre takes control of the states and does what is best for the states. Once the emergency period is over the state become operational once again.

8) Fundamental Rights

"A state is known by the rights it maintains", remarked Prof. H.J. Laski. The constitution of India affirms the basic principle that every individual is entitled to enjoy certain basic rights and part III of the Constitution deals with those rights which are known as fundamental rights.

The American constitution guarantees fundamental rights to its citizens via the Bill of Rights.. The Government has been denied the power to limit or take away the rights and freedoms of the people as granted by the Bill of Rights. The Supreme Court acts as the protector of the rights of the American people. At the time of its making, the US Constitution did not contain a formal Bill of Rights for which the Constitution was criticized by some states. To remove such criticisms ten amendments were made in the Constitution after which a Bill of Rights was incorporated in it.

The Indian constitution during emergency suspends all articles except the article 20 and 21. This does not exist in British constitution.

10) Directive Principles of State Policy

A novel feature of the Indian Constitution is that it contains a chapter in the Directive Principles of State Policy. These principles are in the nature of directives to the government to implement them for establishing social and economic democracy in the country.

It embodies important principles like

- adequate means to livelihood,
- equal pay for both men and women,
- distribution of wealth so as to subserve the common good,
- free and compulsory primary education, right to work,

public assistance in case of old age, unemployment, sickness and disablement, the organization of village Panchayats, special care to the economically backward sections of the people etc.

Most of these principles could help in making India welfare state. Though not justiciable. These principles have been stated as; "fundamental in the

11 Fundamental Duties

A new part IV (A) after the Directive Principles of State Policy was incorporated duties are: in the constitution by the 42nd Amendment, 1976 for fundamental duties. These

To cherish and follow the noble ideals, which inspired our national struggle for freedom; To uphold and protect the sovereignty, unity and integrity of India;

To defend the country and render national service when called upon to do so; To value and preserve the rich heritage of our composite culture;

To protect and improve the natural environments including forests, lakes, rivers and wild life and to have compassion for living creatures;

viii) To develop scientific temper, humanism and the spirit of inquiry and reform; ix) To safeguard public property and to abjure violence; x)

To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement.

The purpose of incorporating these duties in the Constitution is just to remind the people that while enjoying their rights as citizens, should also perform their duties for rights and duties are correlative.

12 An Independent Judiciary

The judiciary occupies an important place in our Constitution and it is also made independent of the legislature and the executive. The Supreme Court of India stands at the apex of single integrated judicial system. It acts as protector of fundamental rights of Indian citizens and guardian of the Constitution. If any law passed by the legislature or action taken by the executive contravenes the provisions of the Constitution, they can be declared as null and void by the Supreme Court. Thus, it has the power of judicial review. But judicial review in India constitutes a middle path between the American judicial supremacy in one hand and British Parliamentary supremacy in the other.

13 Single Citizenship

The Constitution of India recognises only single citizenship. In the United States, there is provision of dual citizenship. In India, we are citizens of India only, not of the respective states to which we belong. This provision would help in promoting unity and integrity of the nation.

14 Adult Suffrage

The old system of communal electorates has been abolished and uniform adult suffrage has been

adopted. Under the Indian Constitution every man and woman above 18 years of age has been given the right to elect representatives for the legislature. The adoption of the adult suffrage (Article 326) without any qualification either of sex, property, taxation or the like is a bold experiment in India.

15 **Supremacy of Constitution:** In the US, the Constitution is supreme. No other law is above the Constitution. No law can violate the Constitution of USA. The government of United States derives all its powers from the Constitution.

16 **Government cannot carry out any work by violating the provisions of the Constitution.** The Supreme Court protects the supremacy of the Constitution by exercising the power to reject any law or policy, which is against the spirit of the Constitution. No State constitution can contain any provision against the US Constitution. In case a State law violates the provisions of the US Constitution, that law is declared as null and void by the Supreme Court.

17 **Independent Judiciary:** The courts in the USA, whether federal or state courts, are independent of the control of the legislature and the executive. Supreme Court is the highest court of appeal in the USA. The judges of the Supreme Court are appointed by the President with the approval of the Senate. The judges hold office for a very long term, and can be removed from office only through a difficult process of impeachment. Judges are men of high qualifications and they get good salaries and other service benefits.

18 **Judicial Review Power of the Supreme Court:** This is a very significant feature of the U.S constitution. It is the power of the Supreme Court to reexamine the laws made by the legislature, and the policies made by the President. If it finds any law or any policy unconstitutional it can reject such laws and policies. This power of the judiciary has enhanced the position of the American judiciary. It has the power to finally determine the meaning and scope of the Constitutional provisions.

19 **Dual Citizenship:** Each American enjoys the common citizenship of the United States of America as well as the citizenship of that state of the federation to which he belongs. For example a resident of the state of Florida is a citizen of Florida and a citizen of United States of America at the same time. This feature enables each state to maintain its individuality.

In India there is single citizenship. There is no need for dual citizenship. A person is guaranteed freedom of movement and trade under the fundamental rights. An Indian is free to move to any state for trade profession. A single citizenship resolves all issues and guarantees ample freedom by the constitution.

The constitution of India not only guarantees freedom of movement for trade and business but also protects the citizen by conferring certain rights on citizens which is absent in the British constitution.

20 Bi-party System: The US political system has naturally provided an opportunity for the rise and development of several political parties, out of which two parties have become dominant and major political parties. They are the Republicans and the Democrats. These two parties are directly and continuously involved in the struggle for power in the US political system. They have made it possible for the Americans to work their democratic system in a successful and efficient way.

Checks and Balances: Even though the principle of Separation of Powers prevails in the US yet complete separation is neither possible nor desirable.

Therefore, the framers of the Constitution created a system of mutual checks and balances among the three organs of government. For example, appointments and treaties made by the President require the approval of the Senate. Likewise, the bills passed by the Congress become law only when signed by the President.

Again, the Supreme Court can reject any law made by the Congress or any policy made by the President as unconstitutional by exercising its power of judicial review. In fact, the Constitution provides a net-work of checks and balances among the three organs of the government.

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CONCLUSION

The working of the constitution has stood the test of the time but certain recent developments such as fragmented polity, rise of regional political parties and governments formed by regional parties in the states, for e.g. in Tamil Nadu, Bihar, W Bengal etc has posed new challenges for the centre-state relations.

Similarly, the advent of coalition govt post late 1980's has raised certain questions for which constitution provides either ambiguous answers or no answers at all.

Considering the complexities and huge quantum of the task of modern day govt and changing nature of Indian politics there is a need to review and amend the constitution. Some of the areas in which changes are required are:

Eligibility of legislators: Those candidates facing corruption and criminal charges should not be allowed to contest the elections.

Frequent disruptions of parliamentary sessions have become the norm of the day.

Minimum hours for which parliament have to work should be incorporated in the constitution. Changes in civil services rules to ensure impartiality and neutrality.

The fundamental rights under part III of our constitution too need to include many of those rights that have developed over a history of various judicial pronouncements. These rights though not really stated in part III have been recognized as fundamental in nature and are better known as 'implied fundamental right'. For e.g.: Right to food, right to livelihood, right to clean potable drinking water, right to fresh and clean environment.

Hence, today if it's getting harder to run the constitution then the problem does not lie in the constitution but in the "working" of the constitution. As the architect of Indian Constitution said

Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile.

-Dr. B.R. Ambedkar, November 4, 1948 governance of the country.

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