

# **Constitutional Law and Public Administration in India**

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## **Introduction to Union & State Legislatures**

A very important aspect of the Indian Constitution is the legislature of Union and States. India is a parliamentary democracy. The preamble of the Indian Constitution says India is a sovereign, socialist, secular, democratic, republic country. The Constitution of India is the supreme law of the land. Article 1 of the Constitution says India, that India or Bharat shall be a Union of States. India is a Union of States. This shows that there is a legislature for the states as well as a legislature for the centre.

India is the largest, most populous democratic state in the world. Democracy has existed in India since independence. The preamble states, that we the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic, republic, it is very important that we have sovereign status in the international aspect. India is a socialist country as a matter of principle. India is also secular as a matter of principle. It exhibits democratic values by conducting free and fair elections in a timely manner.

The term republic means the head of the state is elected by the government and is not a monarchy. It aims to secure to all its citizens, justice- social, economic, and political, liberty of thought, expression, faith, belief, and worship. It also provides equality of status and opportunities in many areas and promotes among them all the fraternity of the individual, and the dignity of the individual. Unity and integrity of the nation also assumes a very important position in India. Though India is a union of states, none of the states shall have the power to secede from the mainland. India is a powerful federation of states.

On the 26<sup>th</sup> day of November 1949, this constitution was adopted for the country. The preamble of the constitution which is of great significance shows how the legislature becomes more prominent. The term 'socialist' was inserted by the 42<sup>nd</sup> amendment in 1976, because India is a welfare state and socialism was made a principle, a policy by the government. The constitution also states that it is a secular state which means that India does not have a state religion. It does not follow any religion as a state religion. It respects and promotes every religion prevalent in the country.

All these words of the preamble aid in the interpretation to the Constitution. Preamble is the preface of the constitution. It contains the ideals and principles of the Constitution. It provides an interface between the different functionaries of the constitution namely, legislature, executive and judiciary. Whenever there must be any interpretation, various decisions of the supreme court have resorted to the preamble for its interpretation. The preamble reflects the purpose and objectives that the constitution makers sought to achieve. For example, though the word socialist was not present, initially it was an inherent principle of the executive and legislature. Whenever a policy has to be made, socialist principles have to be adopted by the government. The directive principles of the state policy had already mentioned the principles of socialism in its law making.

The Supreme Court in its judgement said that preamble is the most precious part of the constitution. It is the soul of the constitution and key to the constitution. It is a jewel set in the constitution. It shows the importance of preamble in the interpretation and understanding of the constitution. The very important case of *Berubari Union* in 1960, in a presidential reference under Article 143(1), was on the implementation of the Indo-Pakistan agreement related to Berubari Union. Article 3 of the Constitution gives power to the parliament to secede or to give any part of the country to a foreign territory. Through this case, the court said that the preamble is key to open the mind of the makers. In a very significant ruling, the supreme court has said that preamble was not a part of the constitution, and it can only help in interpretation of the constitution; but this observation was later changed by an important case called the *Kesavananda Bharati* case in 1973. In this case, the Supreme Court held that preamble is part of the constitution. It is a source of power to understand the constitution and thus it deviated from the *Berubari Union* case stating that it is a very important part of the constitution, and it is one of the basic structures of the constitution.

In the preamble, when we look into the word democratic, a free and fair election is a necessity. Universal adult franchise is adopted by the government where Indian citizens above the age of 18 have the right to vote by means of free and fair elections. The general elections to the central government and to the state government is held once every five years. The responsibility of holding and conducting the elections is of the Election Commission of India. The term of Lok Sabha or the Vidhana Sabha is for five years unless dissolved earlier for many reasons. Here, people send their representatives through elections, which are direct to the Lok Sabha or indirectly to the Rajya Sabha.

Both Lok Sabha and Rajya Sabha constitute the parliament. These members of parliament represent the people. They are the voice of the people. Universal adult franchise means any citizen of India who has attained the year of 18 irrespective of his caste, creed, sex, gender, race or ethnicity has the power or right to cast the vote unless he is disqualified by a legislation in this regard. The age of voting was brought down to 18 from 21 through the 61<sup>st</sup> Amendment of 1988 thereby making the participation in electoral politics more

inclusive in nature and including more youngsters to be participants in the democratic process.

Most of the provisions of the Indian Constitution are borrowed from the Government of India Act of 1935. We have been following the system of parliamentary democracy which the United Kingdom has been following for many years. Parliamentary democracy means a system of democratic governance where parliament is responsible to the people. Legislature is directly responsible to the people through elections. India governs on the principle of republic form of government where the citizen chooses their representative. Republic means the head of the government is not a monarch or a king or an authority by inheritance. He is elected by the people through an indirect method called representation by means of single transferable vote. The parliament is the highest law-making body in India. In India, the President is the nominal executive and the Prime Minister is the real executive. This is also followed in the parliamentary democracy of the United Kingdom. In the UK, the President becomes the nominal executive but has many constitutional powers, but the real executive is the Prime Minister. Article 74 provides for the Council of ministers headed by the Prime Minister who aids and advises the President in its functions.

Whoever gets the majority, whichever party, or the coalition of the party secures the majority seats in the Lok Sabha and forms the government. The other ministers in the parliament are appointed by the President on the advice of the Prime Minister. This is another important philosophy called Collective Responsibility. The Prime Minister and the Council of Ministers are collectively responsible to the Parliament. The minister who is an executive should also be part of the legislation.

This is another important deviation from the strict principle of separation of powers. The separation of powers theory says that there shall be a strict separation between legislature, executive and judiciary. But in Indian parliamentary democracy there is separation of powers between executive and judiciary but there is no strict separation of powers between legislature and the executive because whoever is a minister should primarily be a member of the parliament, that is either the Lok Sabha or the Rajya Sabha. Ministers are the members of the parliament and the members who are elected to the parliament only can become the ministers. The President dissolves the Lok Sabha on the recommendation of the Prime Minister, So, in principle, the executive has the power to dissolve the legislature.

Another important aspect of India's model of parliamentary democracy is that the executive is responsible to the legislature. The ministers are responsible and answerable to the legislature. They are answerable to the questions posed in the legislature. Even though the Indian Parliament is based on the British model, India has a republican system where the President is elected. Great Britain has a monarchy, and the United Kingdom has an unwritten constitution, but India has the lengthiest written constitution in the world. The difference between the Indian system and the British system lies in the fact that, despite

both countries having republic systems, India has a republic, but the United Kingdom has monarchy. India chose the republic system of government where the head is not a monarch but is elected by the people.

Unlike the limited role of monarch, the President of India has many responsibilities. The written constitution in India specifies the roles and responsibilities of the President. It says that all the power and authority of the sovereign independent India shall vest in the head of the state who is the President of India. In the United Kingdom, the monarchy reigns but he does not rule. The unelected monarch is the head of the nation. He is in a representative role for the sovereign acts of the elected government. His main functions include appointing the Prime Minister and all other ministers. He can open and address the new sessions of Parliament. He gives royal assent to the bills passed by the Parliament signifying that they all have become the law.

After the independence in 1947, India became a member of the Commonwealth. The Commonwealth is a voluntary association of the former colonies of the United Kingdom. After gaining independence they become the members but are sovereign nations. They are mere associations. Article 1 of the constitution gives us a clear picture of what kind of democracy India has. India follows federalism. In federalism, the national government is responsible for the broader governance of the nation while the states are autonomous, having powers to rule the respective provisions in the state. Both the national government and state and the center have the power to make law. The states have a certain level of autonomy and independence in certain areas from each other. But significantly, the national government enjoys certain strong centralizing powers over the local government. And that is the specific reason why India inserted the word 'shall be a union of states.'

The Indian form of federalism is called quasi-federalism because India has a strong central government. For example, the United States has a federal government, but the state's governments have greater autonomy than the central government. However, the framers of the Indian Constitution adopted another version of the federalism where the union and state governments have the powers to make law in their own spheres of administration but significantly the central government has more advantage over law making powers due to the centralizing tendencies or the centralizing characteristics of the union of states and that is why it is called quasi-federalism.

Because India was formed as a federation after the princely states came into the sovereignty of the central government, the physical integrity was absolute and therefore the states have no right to secede from the union. Indian constitution has what is called asymmetrical federalism which means that India has the unitary state with the federal characters. In a very important observation, in the words of Sir Ivor Jennings, 'India is a federation with strong centralizing characters'.